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VOLUME 17

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 23, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:34 a.m. on February 23, 1990. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

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C O N T E N T S

1 WITNESSES:

2

3 <u>STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4 Michael J. Fox.	7	8	40	
5 Joseph P. LeBeau	41	85		
6 John Byers	91	97		
7 George K. Greiner, Jr.	99			

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E X H I B I T S

	<u>COURT'S</u>	<u>IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2			
3	Number 4	6	
4	Number 5	119	
5	<u>STATE'S</u>		
6	Number 28	(withdrawn, page 164)	
7	Number 103	--	136
8	Number 105	--	45
9	Number 111	--	77
10	Number 112	--	74
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16	Number 120	96	154
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21	Number 125	118	154
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25	Number 129	118	154
	Number 130	118	154

EXHIBITS (Cont'd)

	<u>STATE'S</u>	<u>IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2			
3	Number 131	118	154
4	Number 132	118	154
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21	Number 149	118	154
22	Number 150	118	154
23	Number 151	121	--
24	Number 152	121	--
25	Number 153	121	--
	Number 154	127	129

P R O C E E D I N G S

1
2 (Tape No. C-3637)

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

5 THE COURT: We resume Trooper Fox's testimony.
6 You're still under oath, sir.

7 MS. HENRY: Your Honor, at this time, I was going
8 to be playing the tape, and I was going to request that a
9 transcript be provided to the jury. Would you like a court
10 exhibit on the transcript?

11 THE COURT: Yes. Have it marked for
12 identification.

13 MR. MADSON: Your Honor, I would object to the
14 passing out of a transcript. It seems to me the tape is
15 quite clear. It's audible, and I don't know what possible
16 assistance a transcript might have, and it could have
17 errors in it, and it is likely to confuse rather than help
18 or assist the jury. So (inaudible).

19 THE COURT: The testimony was that there have
20 been a couple of errors, and I'll give the same instruction
21 to the jury I did with the other transcript. Your
22 objection is overruled.

23 Ladies and gentlemen, Miss Henry will pass you a
24 transcript, and when you're finished with it, return it to
25 the front counter. The instruction I give you for this

1 transcript are similar to the ones I gave you for the
2 earlier transcript.

3 The transcript is not evidence. It's what you
4 hear is evidence. If there's any deviation between what
5 you hear, any variance between what you hear and what you
6 read, disregard what you read. If what you hear, for
7 example, is unintelligible but there's a word for it on the
8 transcript, disregard that word, even though it would
9 seemingly explain what you hear. It's what you hear is the
10 evidence, and not what you read.

11 You may pass them.

12 (Pause)

13 This is going to be Court's Exhibit Number 4, Mr.
14 Madson, for the record.

15 (Court's Exhibit 4 was marked
16 for identification.)

17 MS. HENRY: May I proceed with playing the tape,
18 Your Honor.

19 THE COURT: Yes, you may.

20 (Pause)

21 Has the tape been admitted in evidence?

22 MS. HENRY: Your Honor, I thought I had moved
23 yesterday for it. If I did not, I would move it at this
24 time. It's Exhibit 102.

25 MR. : (Inaudible).

1 MS. HENRY: I do _____. It's in evidence as
2 Exhibit 102.

3 MR. _____ : Well, it is (inaudible).

4 THE COURT: Is it? All right.

5 Before you play it --

6 (The following was had at the bench:)

7 THE COURT: Yes, sir. Is there any dispute that
8 where it says JH that it will be Joseph Hazelwood
9 throughout? Is there a genuine dispute about that?

10 MR. MADSON: Oh, I don't believe so.

11 THE COURT: All right.

12 (The following was had in open court:)

13 Whereupon,

14 MICHAEL J. FOX

15 recalled as a witness by counsel for the State of Alaska,
16 and having been previously duly sworn by the Clerk, was
17 further examined and testified as follows:

18 DIRECT EXAMINATION -- Resumed

19 (Tape played)

20 (Inaudible)

21 MS. HENRY: Your Honor, I have some concern that
22 they won't be able to hear it. Perhaps we should put it
23 back to the witness stand tape (inaudible).

24 THE COURT: Well, you can take the microphone off
25 of --

1 (Pause)

2 THE COURT: Ladies and gentlemen, I want to
3 emphasize my instructions at this time. It's what you hear
4 is evidence. What you read on that document is not
5 evidence, so keep that in mind as you listen to this tape,
6 and wherever you can listen and not read, make the best
7 effort to listen and not read.

8 (A tape recording was played in open court.)

9 MS. HENRY: I have no further questions, Your
10 Honor.

11 CROSS EXAMINATION

12 BY MR. MADSON:

13 Q Trooper Fox -- it is Trooper Fox, is it not?

14 A Yes.

15 Q And your name is Michael J. Fox?

16 A Correct.

17 Q Well, sir, let's go back to the past for awhile
18 if we can here, and I'll ask you some questions about March
19 23rd. And I think you said on your direct examination that
20 you had gotten in quite late from Cordova, and obviously
21 went right to bed.

22 A No. I arrived on the ferry at about 10:30 at the
23 dock. Hitched a ride home from a guy that was on the ferry
24 there, and I actually walked in the door at about 11:00.

25 Q What time did you go to bed then?

1 A At about midnight.

2 Q Now, I believe you said you got a call at about
3 2:30, 2:20?

4 A 2:20.

5 Q You were asleep?

6 A Yes.

7 Q And at that time, who spoke to you?

8 A I believe it was Chief Peterson at the Coast
9 Guard Marine Safety Office in Valdez.

10 Q Did you know Mr. Peterson?

11 A Yes, I know Mr. Peterson.

12 Q So you recognized his voice?

13 A Yes.

14 Q And you knew it wasn't Captain McCall?

15 A Yes.

16 Q And what did he tell you?

17 A He told me that the ship was grounded on Bligh
18 Reef and that there was an oil spill.

19 Q That's all he knew at that time, basically?

20 A That's about all, yeah.

21 Q And you said, well, you know, in essence, is
22 there anything I can do, right?

23 A Well, yeah. I repeated -- I asked him to repeat
24 it several times, and usually I would -- well, I would have
25 expected to have something go along with it, like they were

1 on fire, or they lost power and drifted ashore, or
2 something like that, that they're aground because of
3 something, and he never had a because of something. So I
4 asked him --

5 Q So you didn't know any reason.

6 A Right.

7 Q Right.

8 A So I asked him to repeat it several times, to try
9 to get a better picture of what he was telling me.

10 Q He called you because you're on a list of people
11 to call --

12 A A notification list.

13 Q A what?

14 A A notification list.

15 Q What is that notification list?

16 A I don't know. It's their list.

17 Q It's the Coast Guard's list?

18 A Yes.

19 Q So you just know that -- was it you or -- well,
20 they didn't call you because you're -- it was Michael Fox,
21 State Trooper, it's because you were kind of standing in
22 for Mr. Alexander, the other trooper. Is that right?

23 A On that call, I'm not sure if they called me
24 because I was the Division Official Wild Life, or if it was
25 because of the state troopers. I knew that Trooper

1 Alexander was out of town, so I knew I was the only public
2 safety person there, so I knew that I should pass it down
3 through the public safety command, which is the trooper at
4 dispatch.

5 Q Well, I guess what I'm trying to get at is they
6 may have called you because you're in the fish and wild
7 life part of the state troopers as opposed to the law
8 enforcement part, right?

9 A May have.

10 Q But at that time, no matter what, they weren't
11 asking for your assistance as a law enforcement officer.
12 They were just telling you what happened?

13 A They were just telling me, yes.

14 Q And you evidently, after the call was completed,
15 did you try to go back to sleep, or did you go back to
16 sleep?

17 A Well, I called them right back again, and asked
18 were there a public safety hazard? Was there a fire? Was
19 there a risk of injury to anybody? The village of
20 Chachiklek is nearby there, and I'd have to be concerned if
21 there was a fire or something headed towards that village,
22 or -- you know, it seemed like a pretty big event, and I
23 ought to find out a little bit more of the details.

24 Q I guess so you didn't find any more details?

25 A No. They said everything is pretty normal. It's

1 just hard aground, leaking oil.

2 Q Hard aground, leaking oil, and that's all that
3 was known?

4 A That was it.

5 Q So did you then go back to bed?

6 A Well, I was still in bed. My phone's right there
7 by the bed.

8 Q So it was about two hours later then, about 4:30,
9 when the second call came from Mr. Peterson?

10 A Right.

11 Q Again, Mr. Peterson?

12 A Well, I believe it was -- I can't say for sure,
13 but I think Mr. Peterson kind of got me on the line and
14 sort of held me for Commander McCall. And I don't think
15 Commander McCall actually dialed me right up, but I --
16 Commander McCall passed the message to me.

17 Q So then you spoke directly with McCall?

18 A I believe so.

19 Q And -- now, you didn't take any notes of that
20 conversation at 4:30 in the morning, I presume?

21 A No. Not right then, no.

22 Q Can you say for sure that Commander McCall did
23 not ask you at that time to get some blood test -- blood
24 kits or something out to the Exxon Valdez?

25 A No, he didn't say to bring a blood testing kit.

1 Q Well, you were informed, were you not, that
2 somehow there was something said that there was supposed to
3 be a drunk captain on board the Exxon Valdez. That's the
4 message that you got?

5 A They wanted a trooper out there right now, yeah.

6 Q You subsequently learned that this message got
7 garbled somehow between whoever sent it from the Exxon
8 Valdez to the Coast Guard station, to McCall, to you --
9 because that isn't what happened, right?

10 A I'm not sure what the question is --

11 Q Well --

12 A -- but when I got to the bridge, Falkenstein
13 asked me, "Where's the blood sampling stuff?" and I didn't
14 know what he was talking about.

15 Q That's my question. So, somehow, if he made that
16 request, back to the shore, to the VTC Center, and McCall
17 got on the phone and called you, somehow that message
18 didn't get through, right?

19 A I would say yes, yeah.

20 Q Because you said in your direct examination that
21 you got the examination that there was a drunk captain that
22 you had to go help subdue.

23 A Right.

24 Q Now, did McCall ask you anything about a portable
25 breathalyzer, or anything like that?

1 A No.

2 Q A breath test kit?

3 A No. Before I left, I called the police
4 department and told them that I may be bringing some people
5 in for alcohol sampling, to be ready, because I was under
6 the impression that I would get the people, take them off
7 the tanker, bring them into town, where we would go through
8 a normal drunk driving thing.

9 Q When you say "them," were you talking about more
10 than one you were going to bring back now, or at this time,
11 or --

12 A Well, whoever, you know.

13 Q Okay.

14 A But one or more, whatever.

15 Q Your understanding, your state of mind at that
16 time was that there was one individual that you had to go
17 and physically subdue?

18 A Right.

19 Q Right?

20 A Right.

21 Q And you felt that the Tom had called, the Tom
22 that relayed the message, was not Tom Falkenstein?

23 A I thought it was Tom McCarty of the DEC -- who
24 was not even there.

25 Q Who's not where?

1 A He wasn't on the boat.

2 Q You didn't know that.

3 A No. I thought when they said "Tom" they meant
4 Tom of the DEC, not Tom of the Coast Guard.

5 Q Did that strike you at all strange that Tom
6 McCarty, I think you said his name was, would be calling
7 you for this assistance?

8 A Well, actually, that made the most sense to me,
9 because the DEC people are responsible for oil spill
10 pollution in the state of Alaska, and they go to every oil
11 spill that there is at the terminal, and Tom McCarty would
12 be the senior person when Dan Lawn is out of town, which I
13 thought he was still out of town, as he was on the previous
14 oil spill over at the terminal a few weeks before that.

15 So when they told me Tom needed help with this
16 problem, I thought he meant Tom of the DEC. I never
17 imagined that the Coast Guard couldn't handle that problem.

18 Q The Coast Guard couldn't handle the problem
19 themselves, right?

20 A Right.

21 Q And had to call you in.

22 A I would have been surprised if the Coast Guard
23 was asking for me, yeah.

24 Q Yeah.

25 And as far as you know, Tom -- well, I'll get to

1 that point, but in any event, then, you must have got up,
2 got dressed, put your uniform on, right?

3 A Right.

4 Q Side arm?

5 A Yeah.

6 Q Weapon.

7 A Right.

8 Q How about some kind of club or something, to, you
9 know --

10 A No, I had --

11 Q -- knock folks on the head?

12 A I had my uniform, my gun, my handcuffs and my
13 notebook.

14 Q And your what?

15 A My notebook. That was it. I had left my truck
16 at the airport when I flew to Cordova. I got in on the
17 ferry, which is several miles from the airport, so I came
18 directly home, and in my truck is my stick and my cameras
19 and all those things.

20 Q So you didn't take your stick or camera?

21 A No, I thought it would be -- from the way they
22 were talking to me, I figured it would be best just to get
23 there as quick as I could and not worry about the other
24 stuff, the time it would take me to recover that.

25 Q I take it you must have had some thoughts going

1 through your mind at this time, like, "This is no way to
2 start a morning," or something, you know, going out there
3 to _____ arresting somebody.

4 A Well, I was surprised that the ship was there,
5 yeah.

6 Q Yeah.

7 A That was very unusual, yeah.

8 Q And unusual for you to be going out this far to
9 have to subdue somebody, or --

10 A Oh, not that so much. We go to the village, we
11 go to the -- we -- I've driven to Glen Allen in the middle
12 of the night with cold weather, my head out the window,
13 trying to stay awake. I've done all kinds of crazy calls
14 that --

15 Q So this was no crazier than normal?

16 A Well, it's just another one.

17 (Laughter)

18 Q Anyway, you got out there, right?

19 A Yeah.

20 Q I think you said you got a boat, so he took you
21 up to the --

22 A Coast Guard boat, yes.

23 Q Were they waiting for you when you got there?

24 A Yes.

25 Q So they -- somebody was expecting you to come to

1 the dock there, right?

2 A A couple of the crew members and myself actually
3 pulled in the parking lot right at the same time, and there
4 was a couple of more guys already on the boat, and we just
5 kind of took right off.

6 Q Did you have any conversation with them to say,
7 you know, what's going on? You know, what's happening?

8 A No. It was pretty obvious they didn't know much
9 either.

10 Q So you got out to the ship, the Exxon Valdez.
11 You explained that it was difficult getting up there
12 because the oil on the starboard side, you had to go round
13 the port side, right?

14 A Exactly.

15 Q And got up the ladder, went to the bridge, and lo
16 and behold, there was no ranting and raving drunk up there,
17 right?

18 A Right.

19 Q And did you see Falkenstein and Delozier up
20 there?

21 A Yes.

22 Q And you said, well, you know, "What do you want?"

23 A Yeah. I was ready to go, and nothing was there.

24 Q And nothing was there. And the atmosphere was
25 very subdued and very quiet, depressing?

1 A Silent, yeah.

2 Q This was about 6:45 a.m., you said?

3 A I got alongside 6:45, and I was on deck at 7:05,
4 I believe. So it took a few minutes to walk up to the
5 bridge.

6 Q And I think you said -- well, I don't know if you
7 said it or not, but would you agree, then, that it was just
8 kind of a helpless feeling or situation? You know,
9 everybody's sitting there, and there's nothing much you can
10 do.

11 A Well, I'll tell you, you see that much oil in the
12 water. I mean, you knew, man, this was a big problem.

13 Q And there isn't much you can do about it at the
14 moment, right?

15 A Well, everyone was just kind of stunned, I think.

16 Q You just stood there looking at it.

17 A Yeah.

18 Q And it was obvious, wasn't it? I mean, that's
19 the understatement of the century, perhaps, but --

20 A Yeah, it was -- it was real obvious to me.

21 Q So then you saw Mr. Falkenstein, and he said
22 something about, "Well, where's the blood kit," or
23 something like that?

24 A Yes.

25 (TAPE CHANGED TO C-3637)

1 Q And you must have responded, "What are you
2 talking about?"

3 A I said, "I don't draw blood."

4 Q Did Mr. Falkenstein -- or _____, excuse me
5 -- act upset, or did he say, "Well, why are you here?" or
6 something?

7 A No, he said, "Let's solve the problem. Let's
8 move along here, and we'll take these guys to town and take
9 blood samples, and get somebody out here and do it."

10 Q So you discussed that with him at that time?

11 A Sure.

12 Q And Mr. Delozier, too?

13 A Yeah, sure.

14 Q And you were certainly there to help in any way
15 you could, right?

16 A Well, I --

17 Q Or were you doing the investigation? I mean,
18 who's doing --

19 A No, that was one of the first things we
20 established. You know, if I had probable cause to arrest
21 somebody, then I would have arrested them and taken them to
22 town and that would have been it. And, well, you know, I
23 don't have probable cause here to --

24 Q let me ask you about that. You say "probable
25 cause." That means you have to some kind of reasonable

1 belief that a person has committed a crime, and you can
2 then arrest him?

3 A Sure.

4 Q Yeah. And if it's a drunk driving, or something
5 like that, you have to have some observable things to look
6 at --

7 A Some evidence, yeah.

8 Q -- in that individual, right?

9 A Right.

10 Q And from what you learned, you didn't have that?

11 A I didn't feel I had enough, and the Coast Guard
12 said that they didn't, neither. They said they could take
13 blood samples just because of the accident. And I said,
14 "Well," -- I asked them, I said, "Are you a hundred percent
15 sure that you can legally do this? Otherwise, I will go
16 through the State's avenues. I will launch an
17 investigation right here and now, and we'll do it the state
18 way, search warrant --

19 Q What is the state way?

20 A Well, a search warrant, for one thing, to get the
21 captain up and get some blood out of him. And that type of
22 investigation. But I said, "Are you a hundred percent sure
23 that you can take blood out of these guys?" And they said,
24 "Yes, we can." And I said, "Well, fine, let's do it."

25 Q So you were agreeable to help do it the Coast

1 Guard way --

2 A Right.

3 Q -- because that was the most expedient, and
4 that's what they wanted, right?

5 A Right.

6 Q And you were certainly there to assist them any
7 way you could, as a state --

8 A Right.

9 Q Well, in that respect, did you tell them that you
10 knew of people right there in Valdez that you could get on
11 board to draw the blood because you couldn't?

12 A Sure. We talked about how we were going to get
13 it.

14 Q Did you tell them individuals, or, I mean, who
15 you could use?

16 A Well, they would run off to the phone -- one of
17 the Coast Guard guys would go to the phone and talk to the
18 office and try to get somebody out there, yeah.

19 Q And this was 7:00 o'clock or thereabouts?

20 A Yeah. It started right away.

21 Q And right away, you informed him. "Hey, I know
22 people we can get out here."

23 A Sure. We all knew that. We all lived there, and
24 we know there's three doctors and nurses and EMT-3s. We --

25 Q Did they tell you, then, why they didn't want to

1 use the people you suggested?

2 A No, but I kept asking them.

3 Q But they never told you?

4 A No, they didn't -- they'd go back to the phone
5 and talk on the phone some more, and come back.

6 Q Did you feel that you were maybe getting a little
7 ignored at this point?

8 A Well, it was their investigation, so you kind of
9 do the best you can.

10 Q Yeah, and in doing that, you are trying to offer
11 services that appear to be not accepted?

12 A Well, you reach a point where, if it's their
13 thing, then they've got to do it, and there's no sense, you
14 know, getting into any kind of argument, or fighting about
15 it. I knew they were trying to get somebody out there, and
16 I knew I told them all that I could tell them, and it's
17 just time to let them do their job.

18 Q So anyway, did they tell you why, then, that they
19 didn't want to take anybody onto the boat, to shore, to
20 have the breath test done in Valdez?

21 MS. HENRY: Objection. Hearsay.

22 MR. MADSON: What grounds?

23 MS. HENRY: Hearsay.

24 MR. MADSON: Well, Your Honor, on direct, he's
25 gone into every conversation with every person on this

1 vessel. I think I can certainly, since the door is open,
2 ask him the same questions about who he's talking to and
3 what was said.

4 THE COURT: Objection sustained.

5 MR. MADSON: Your Honor, I would also say that it
6 isn't for the purpose of the truth of what was said, but
7 simply to show what this person, this gentleman, did as a
8 result of the conversation.

9 THE COURT: Objection sustained.

10 BY MR. MADSON: (Resuming)

11 Q Then, Trooper Fox, after having conversation with
12 them, and evidently these people did not come out from the
13 shore that you suggested, right?

14 A A Coast Guard medic came out.

15 Q And when did he arrive?

16 A I don't know when he arrived. They told me
17 arrived -- it was after Gregory Cousins' interview I found
18 out he was there. He had arrived and had started doing his
19 sampling before I even knew he was there.

20 Q Well, you've got like the three hours here from
21 the time you got on board and this was discussed until
22 then. What did you do in this three-hour period?

23 A Well, we -- the first block of time, we just sort
24 of decided what we were going to do. And then we moved on
25 to the interviews of Mr. Kagan, and then I had a brief

1 conversation with the captain --

2 Q Let me stop you right here. What was that time
3 that you had that brief conversation?

4 A That was at 8:30.

5 Q So I understand, when you got on board at around
6 7:00, no one directed you to go right to the captain's
7 quarters or anything like that?

8 A Well, no one was directing me anything.

9 Q Yeah. Well, no one asked you to go and see the
10 captain, right?

11 A No.

12 Q In fact, you were told he was in his cabin,
13 right?

14 A I was told he was in bed, in his cabin.

15 Q Do you know whether he was in bed or not?

16 A Do I know that?

17 Q Yes.

18 A I didn't go look, no.

19 Q Oh, you didn't peak in the door and see if he was
20 in the bed or not, right?

21 A No.

22 Q You just knew he was in his quarters.

23 A Yes.

24 Q So when you saw him, about what time was that?

25 A 8:30.

1 Q Okay. And that was the time you saw him in the
2 passageway?

3 A Well, it was either on the bridge or right
4 outside the bridge in the companionway.

5 Q And were you with anybody at the time?

6 A There were other people around, yeah.

7 Q Do you remember who else was there?

8 A No, I can't say.

9 Q Now, you said at that time you kind of came up
10 and said, "Gee" -- you introduced yourself at that time?

11 A Yes, I did.

12 Q Said who you were, and you were there helping
13 them, and with the state investigation, right? And you
14 said something like, "Well, you know, what's the problem?"

15 A Yeah.

16 Q And he said, "Well, you're looking at it."
17 Right? Did he gesture at all with his hands, or did he
18 just stand there when he made this comment?

19 A I can't remember that.

20 Q Trooper Fox, as you indicated earlier when you
21 got there, the situation was pretty obvious. There was a
22 ship hard aground on a reef with oil coming out of it,
23 right?

24 A Right.

25 Q Would you say that the comment, "You're looking

1 at it," may have been one that was designed, or spoken to
2 communicate with you that the problem is obvious, you're
3 looking at it?

4 A No, because --

5 MS. HENRY: Objection. Speculation.

6 THE COURT: Don't answer the question.

7 BY MR. MADSON: (Resuming)

8 Q Well, you don't know what was in the captain's
9 mind when he said that, right?

10 A No. I don't know what was in his mind.

11 Q After you -- where were you going when you say
12 you met him in the entryway?

13 A I believe we were going to find Gregory Cousins,
14 to interview him.

15 Q The interview sequence, or who was going to be
16 interviewed first, was determined by the Coast Guard and
17 not yourself, right?

18 A Yes, Mark Delozier.

19 Q You told Mr. Delozier that you would certainly
20 want to be present, or wanted to be present to assist in
21 interviews?

22 A I sort of asked him, you know, "Would you like me
23 to be there, help you form questions," you know, listen.

24 Q Did he indicate one way or the other?

25 A He said, sure, yeah.

1 Q Okay. Who was interviewed first? Mr. Kagan?

2 A Mr. Kagan, yeah.

3 Q Were you there for his entire interview?

4 A No.

5 Q It's a fact, is it not, that Mr. Delozier started
6 that interview with Mr. Kagan before you got there?

7 A Yes, that's true.

8 Q He didn't wait for you to show up?

9 A He started before I got there.

10 Q Did Mr. Delozier have a tape recorder with him?

11 A No.

12 Q Did you?

13 A I borrowed one from the DEC officer.

14 Q Mr. Lawn?

15 A Dan Lawn.

16 Q And so did you tell Mr. Delozier you had a tape
17 recorder?

18 A Mr. Lawn offered it to Mr. Delozier, and he said
19 he didn't want it, and I said, "I'll take it."

20 Q You wanted it.

21 A Yes.

22 Q You thought it would be a valuable tool, right?

23 A Yes.

24 Q An extra resource to have to preserve a
25 conversation right?

1 A Just like that, yes.

2 Q So that's the only one you've got?

3 A Yes.

4 Q Why?

5 A Because Delozier didn't want to interview -- or
6 record Mr. Cousins.

7 Q Did he tell you why?

8 A No.

9 Q How about Mr. Kagan? That one wasn't recorded --

10 A We didn't have the tape recorder before that,
11 because after Mr. Kagan's, I said to him, "Aren't you tape
12 recording these?" And Mr. Delozier said, "No." I said,
13 "Gee, you probably should."

14 Q You were there, then, for part of Kagan's
15 interview, and then all of Cousins' interview?

16 A Yes.

17 Q And obviously, you were there for all of Captain
18 Hazelwood's interview?

19 A Yes.

20 Q And part of that, however, the tail end of it is
21 cut off, or erased over, or something happened at the end
22 of that tape, right?

23 A Well, the tape is a two-sided cassette tape, and
24 the first side went out when we were talking about
25 lightering and what was going to happen on salvage on the

1 vessel, and that -- the interview was actually over and we
2 were talking about what we were going to do as far as
3 securing the other ship alongside it, and I was going to
4 get a helicopter to fly back to town, that sort of thing.

5 So the interview actually ended in the transcript
6 before the last page, you can see where --

7 Q On that last point, you said you were getting a
8 helicopter, you had access to a helicopter to come out to
9 the shore, to the ship?

10 A Well, while we were there, and this lightering
11 and all that were taking place, the oil companies, I assume
12 it was, began bringing out big sections of pipe, and
13 people, you know, workers and stuff, so there were
14 helicopters starting to come and go sometime around noon,
15 I'd guess. And it was -- they were coming out full and
16 going back empty, so I just rode back --

17 Q Okay, but it wasn't until noon or thereabouts
18 when they started coming, you say?

19 A It was after -- it was later in the day. I
20 couldn't tell you what time. But there was quite a bit of
21 activity on the deck there, helicopters and equipment and
22 stuff.

23 Q What I was getting at was if you had access to a
24 helicopter, say, when you first got on board, if you wanted
25 to take somebody back for a breath test, or something like

1 that. Did you have access to a helicopter at that time?

2 A None had been there yet, I don't think. I don't
3 know. But I'm sure, if I would have wanted to, I would
4 have gotten one.

5 Q Getting back to your short meeting with Captain
6 Hazelwood in the passageway about 8:30 --

7 A Yes.

8 Q -- when you spoke to him, that conversation
9 confirmed your original suspicion, did it not, that there
10 was no probable cause to arrest Captain Hazelwood for being
11 intoxicated.

12 A Yes.

13 Q You saw no signs of intoxication?

14 A No.

15 Q Now, when you -- the tape that you made here is
16 interrupted a couple of times, or interrupted at least
17 once, about somebody (inaudible) and things like that. Do
18 you recall that?

19 A Yes.

20 Q Okay. Captain Hazelwood was still in command of
21 the ship, was he not?

22 A Yes.

23 Q No one told you that he'd been relieved, or
24 anything like that?

25 A It was obvious he was still the captain.

1 Q He was giving orders and commands and taking
2 control?

3 A He was on the phone a lot.

4 Q And then again, at the time of the interview,
5 what time was that, sir?

6 A Captain Hazelwood's interview?

7 Q Yes.

8 A 1:05, I think.

9 Q 1:05 in the afternoon?

10 A Yes.

11 Q Okay, let's go back again, though, to -- let's
12 say about 11:00 o'clock. Were you present when blood
13 samples were drawn from the crew members?

14 A I saw the lady crew member -- I believe her name
15 is Maureen Jones -- I saw her blood and urine sample taken.

16 Q And you were aware that this Coast
17 Guard _____ had come on board for the purpose of
18 taking blood samples?

19 A Yes.

20 Q Did you talk to him at all?

21 A Yes.

22 Q Did you advise him of anything that you
23 particularly wanted?

24 A Well, I saw him. She was sitting at the
25 captain's desk and he did the sampling, and he had a urine

1 sample there from her, and then he was packing it up --
2 they come in a styrofoam pack about this big, with a seal
3 that goes around it.

4 And when he was done with her, I was watching how
5 he was doing it, because I knew it would be evidence. And
6 he put a sticker, a label around -- a seal around the
7 package, and signed it and dated it and put the time on
8 there, and I couldn't see what he was writing on there, so
9 I went over and I said, "How are you doing this? Are you
10 following good procedure here to secure this as evidence?"
11 And he showed me what he was doing, and I said, "Okay, have
12 you done that to all of them?" And he said, "Yeah." And I
13 said, "Okay, that looks real good."

14 Q So you were making sure that, for state purposes,
15 this evidence was going to be sealed and taken care of
16 properly, right?

17 A I made sure that it was not a haphazard
18 operation.

19 Q I guess I may have missed it, but were you
20 actually present, then, at any time when Captain
21 Hazelwood's blood was drawn, or urine sample was taken?

22 A I didn't see -- I just saw the girl get sampled.

23 Q Did you also talk to Delozier or Falkenstein
24 about how they -- what method they were using, or how they
25 were taking care of the samples?

1 A I asked them, "What happened to the samples?"
2 And they said, "The medic would take them back," and the
3 medic was already gone then. So he had already taken them
4 back.

5 Q You wanted to find out where they were going or
6 what they were going to do with them?

7 A Well, it's just a basic rule of investigation.
8 You keep track of evidence, yeah.

9 Q Because you might want to use it again later,
10 right?

11 A No, it was to secure the integrity of it.

12 Q Yeah, but I mean you might want to have access to
13 it later to find out where it's going, what they're going
14 to do with it, right?

15 A I don't really understand the question.

16 Q Well, I guess what I'm saying is, what good would
17 it do to know how they're taking care of it, if you don't
18 ever want to see it again, or be involved with it again?

19 A Well, I knew it was going to be an issue again.
20 So you'd want it to be a valid issue, or a valid piece of
21 evidence.

22 Q Have you done this before as a state trooper --
23 taken blood samples -- not personally taken the sample, but
24 had them done?

25 A Once.

1 Q What did you do (inaudible).

2 A I say once on humans.

3 Q I don't even want to go into that.

4 (Laughter)

5 Okay, once on a human. What did you do with the
6 human sample of blood?

7 A I took it from the nurse who drew it, and sealed
8 it up, and mailed it to our crime lab.

9 Q And you made sure that it was sealed properly,
10 and it was -- in other words, sent by mail or something?

11 A Yes.

12 Q And done the proper way, right?

13 A Yes.

14 Q And you were more or less trying to make sure the
15 same thing was done with the Coast Guard samples, right?

16 A Trying to keep the chain of custody good, yeah.

17 Q Then I guess there's -- if I understand your
18 testimony correct, there's a gap in time here from the
19 24th. You left the ship on the 24th, sometime?

20 A I believed it was around 2:30. I arrived in town
21 around 3:00 o'clock, so I -- takes awhile to get out on the
22 deck, and to where the helicopter is, and they make you put
23 the stuff on, the float stuff, and gear things and what
24 not. So I believe I took off on the ship around 2:30 and
25 arrived in town around 3:00.

1 Q But you returned to the ship on April the --

2 A 2nd.

3 Q 2nd. What was the purpose of going out there on
4 April 2nd?

5 A My assignment was to search for documents that
6 could have been destroyed or thrown away in the trash, and
7 alcohol containers, or alcohol -- evidence of alcohol use
8 in the captain's suite and in the garbage and the trash.
9 And then there was other people, they were looking at the
10 navigation equipment and the vessel logs and the whole -- a
11 whole series of things that I wasn't involved with.

12 Q Well, let's see. I'm trying to do a little
13 calculation here, and I may be a little long, but it looks
14 like this is a week plus two days, nine days later, after
15 the --

16 A Well, it was April 2nd, whenever that was,
17 however many days --

18 Q So it was at least a week later, right?

19 A Yes.

20 Q And you have no idea who'd been on board, or who
21 had done what, in that time?

22 A Well, there's a lot of people on board.

23 Q Yeah, that's right, and you don't know what
24 happened on that vessel when you weren't there? Who was
25 throwing trash away, or who was doing anything, right?

1 A Well, salvage operation with a bunch of people
2 living and working on the boat. Yes. But I don't know
3 what -- who was there, individuals, I don't know.

4 Q But you went through all the trash.

5 A Yes, we did.

6 Q Must have been an interesting job.

7 A Filled this room.

8 (Laughter)

9 Q And after going through all that trash, I guess
10 you didn't find anything of significance?

11 A No alcohol and I believe we saved a few
12 documents, but I don't know what their value was.

13 Q And you went through the captain's quarters at
14 that time, right?

15 A Yes.

16 Q You had a search warrant this time, didn't you?

17 A Yes.

18 Q And you basically went through everything at that
19 time, and didn't find anything except this Moussy beer,
20 right? Is that when you took the beer, by the way?

21 A The full bottles?

22 Q Yeah.

23 A No, I took the full bottles out on the same --
24 the 24th.

25 Q Well, were there some empty bottles that you took

1 also?

2 A On April 2nd, they asked them to count up and
3 save empty bottles of Moussy, or whatever, and we did
4 that. But I didn't --

5 Q How many empty bottles did you find?

6 A Boy, there was a lot of them. I don't remember.
7 I'll just take a guess at over a hundred.

8 Q A hundred empty Moussy bottles. Did you save all
9 of them

10 A Yeah, we gave them -- the District Attorney
11 wanted them, so we gave them to him.

12 Q Do you know where they are now?

13 A No, I -- we didn't want to save them. He did.

14 Q Were you familiar at all with this Moussy beer,
15 prior to the time you took the full bottles?

16 A Never heard of it.

17 Q So you don't know what classification the state
18 of Alaska may consider it, whether it's alcoholic or
19 nonalcoholic?

20 A Don't know about it.

21 Q While you were on the Exxon Valdez, did -- you
22 were there, certainly the captain's quarters, right?

23 A Right.

24 Q As you come out of his quarters, now, into the
25 passageway, is there a door that leads directly to a deck?

1 A You come out of his room, and it's right on a
2 very narrow companionway. You turn left forward, in a
3 companionway that goes up through a door and up some stairs
4 to the bridge, and that same companionway has other halls
5 and quarters off of it. Directly across from it is the
6 radio officer's room --

7 Q But my question is --

8 A And I don't really know if there's a -- it's an
9 in -- it's not a bulkhead companionway. It's inside the
10 ship. So any door would have to be on another
11 companionway.

12 Q So you don't know if there's a door directly out
13 of his quarters that goes right on to a deck?

14 A There's a window in there, but I didn't look
15 outside of his window.

16 Q Well, if you don't know, sir. You know, I don't
17 need you to speculate. You're just saying you don't know,
18 right?

19 A In his room?

20 Q No, no, no. As you leave the room, _____.
21 Into the companionway. Out of -- out of his quarters.

22 A You're in a companionway.

23 Q If there's a door, a door at that point that
24 leads directly outside?

25 A No, there isn't. The companionway is inboard of

1 the bulkhead of the ship, like an inner companionway, so
2 there couldn't be a companionway, so there couldn't be a
3 door right there to the outside, because it's inside the
4 ship.

5 Q Okay. I don't believe I have any other
6 questions. Thank you.

7 REDIRECT EXAMINATION

8 BY MS. HENRY:

9 Q Trooper Fox, the first time you saw Captain
10 Hazelwood and you indicated that you saw no signs of
11 impairment, what time was that?

12 A The first time I saw him?

13 Q Yes.

14 A 8:30.

15 Q In the morning?

16 A Yes.

17 MS. HENRY: I have no other questions.

18 MR. MADSON: I have no other questions.

19 THE COURT: May the witness be excused?

20 MR. MADSON: I would think so, yes, Your Honor.

21 MS. HENRY: Yes, Your Honor.

22 THE COURT: You're excused.

23 THE WITNESS: Thank you.

24 MS. HENRY: The State will call Joe LeBeau.

25 (Pause)

1 Whereupon,

2 JOSEPH LE BEAU

3 called as a witness by counsel for the State of Alaska, and
4 having been duly sworn by the Clerk, was examined and
5 testified as follows:

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

8 THE WITNESS: My name is Joseph Paul LeBeau.
9 Last name is spelled L-e capital B as in boy -e-a-u.

10 THE CLERK: And your current mailing address,
11 sir?

12 THE WITNESS: The work address is care of the
13 Alaska Department of Environmental Conservation, Post
14 Office Box 871064, Wasilla, Alaska, 99687.

15 THE CLERK: And your current occupation, sir?

16 THE WITNESS: I'm employed by the Alaska
17 Department of Environmental Conservation as an
18 Environmental Field Officer.

19 THE COURT: Ms. Henry, we'll be taking a break
20 around 10:00 o'clock, so you might --

21 MS. HENRY: All right. Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. HENRY:

24 Q Mr. LeBeau, how long have you worked for the
25 Department of Environmental Conservation?

1 A Approximately 13 years, 14 years.

2 Q Fourteen years?

3 A Fourteen years.

4 Q And can you tell us where you have been assigned
5 during those fourteen years?

6 A Initially, I was assigned -- I started working
7 for the Department in 1976 in Valdez. I remained there
8 until January of 1979 and from March of 1979 until the
9 present, I've been working in Wasilla.

10 Q So on the day of the Exxon Valdez grounding, you
11 were living in Wasilla?

12 A That is correct.

13 Q How is it that you were notified of the
14 grounding?

15 A Mr. Lamereau (PH) called me at approximately 1:30
16 in the morning on March 24th, and --

17 Q Who's Mr. Lamereau?

18 A Mr. Lamereau is the regional supervisor for the
19 south central region for the Department of Environmental
20 Conservation.

21 Q Did he request you to go to Valdez?

22 A Yes, he did.

23 Q Did you leave shortly thereafter?

24 A I put together some clothes, and had to wash some
25 clothes, and I left Valdez -- left Wasilla at approximately

1 4:30 in the morning from the office. I went by -- back --
2 went to the office and collected some equipment to take to
3 Valdez, and I took Mr. McKean with me, as well. And --

4 Q Who's he?

5 A Mr. McKean is an Environmental Field Officer who
6 works for the Department in Wasilla, and we went to Valdez
7 at that time.

8 Q Did you drive, or did you fly?

9 A We drove by state vehicle. We left at 4:30 and
10 arrived at about ten minutes after 9:00 in Valdez.

11 Q Sir, as part of your -- when you got to Valdez at
12 some point, did you actually board the Exxon Valdez?

13 A Yes. I believe I -- we flew out by float plane
14 from Valdez with Valdez Aero Services. I boarded the Exxon
15 Valdez, I believe at around 11:30 in the morning.

16 Q Now as part of your responsibilities, did you
17 assist other investigators in seizing documents on the
18 Exxon Valdez?

19 A Yes, I did.

20 Q And in particular, did you assist a state
21 trooper, Trooper Dial (PH), in seizing some documents?

22 A Yes, I did.

23 Q Sir, I'm showing you what's been marked as
24 Plaintiff's Exhibit Number 105 for identification. Would
25 you please identify that exhibit?

1 A This is an oil record book, marked Exhibit Number
2 105. This came from the Exxon Valdez.

3 Q And was that seized when you were assisting
4 Trooper Dial?

5 A Yes, I believe it was.

6 Q Do you remember what day that was?

7 A I believe that was in May.

8 Q All right. So it was --

9 A It was --

10 Q -- a long time after the grounding.

11 A Yes.

12 Q And to the best of your knowledge, is that a --
13 was a copy made of the original?

14 A Yes there was a copy made of the original on the
15 vessel.

16 Q And the Exhibit 105, is that a true and correct
17 copy of the original, as best you recall?

18 A Yes. I believe it is.

19 Q You had a chance to look at that before you came
20 into court today, is that correct?

21 A Yes, I did.

22 MS. HENRY: All right. At this time, State moves
23 into evidence Exhibit 105.

24 MR. MADSON: Well, where's the original, is my
25 question?

1 BY MS. HENRY: (Resuming)

2 Q Do you know where the original is, sir?

3 A I believe the original is left with the vessel?

4 MR. MADSON: Could I just ask a few questions,
5 Your Honor, before I -- you know, voir dire before I decide
6 whether to object or not?

7 THE COURT: Well, do you have a genuine dispute
8 with the authenticity of this copy?

9 MR. MADSON: Well, Your Honor, I don't know. I
10 just saw this for the first time. The --

11 THE COURT: Objection overruled. If there is an
12 objection, it's admitted.

13 MS. HENRY: Thank you.

14 (State's Exhibit 105 was
15 received in evidence.)

16 BY MS. HENRY: (Resuming)

17 Q Do you see some numbers at the bottom of this
18 document?

19 A Yes.

20 Q Do they appear to be stamp numbers?

21 A Yes, they do.

22 Q Do you know what those numbers mean?

23 A No, I do not.

24 Q During the time that you were in Valdez, did you
25 and other members of the Department of Environmental

1 Conservation track or monitor the movement of the oil in
2 Prince William Sound?

3 A Yes, we did.

4 Q And can you tell us the method in which you did
5 that?

6 A Yes. We flew out and overflew the oil, marked on
7 the chart, drew on the chart, the nautical chart, the
8 location of the oil, and then returned -- that chart was
9 returned to the Environmental Conservation Office in
10 Valdez. Subsequently there was a map produced of the --
11 maps -- the charts had been digitized on a digitizing
12 tablet and then stored in the computer. The information
13 that was draw on the charts was then also transferred into
14 the computer, and the computer produced some oil spill
15 tracking maps.

16 There were different individuals who flew the
17 flights, and each individual who flew the flight had an
18 individual chart or map to -- on which they could draw the
19 location of the oil for the oil spill tracking.

20 Q And, weather permitting, did you try to fly every
21 day, or twice a day?

22 A Yes. The Department tried to fly as often as
23 possible, when it was safe to do so.

24 Q Now, for the first couple of days, did you only
25 use one plane?

1 A I -- I'm not sure about the first couple of
2 days. I knew that the first day we only had a few aircraft
3 in the area. The -- I spent the first two days, I believe,
4 on the oil tanker.

5 Q All right. Now, specifically, a plane would fly
6 over the spill, and there would be someone other than the
7 pilot that would be actually looking at the spill?

8 A Yes. There could be as many as three people in
9 the aircraft. On March 24th there was the pilot, Mr.
10 Lockwood, Mr. Sotner, and myself in the aircraft.

11 Q And who are Mr. Lockwood and Mr. Sotner?

12 A Mr. Lockwood is an Environmental Field Officer
13 with the Department of Environmental Conservation. Mr.
14 Sotner is also an Environmental Field Officer with the
15 Department of Environmental Conservation.

16 Q And then one of you would have, what, a
17 navigation chart?

18 A Yes.

19 Q And what exactly would happen?

20 A We would go ahead and draw the location of the
21 oil onto the navigational chart, and then that navigation
22 chart would be brought back to Valdez and entered into the
23 computer system.

24 Q Did the person who was drawing on these charts
25 try to distinguish between heavy oil, sheen --

1 A Yes, they did.

2 Q -- and other types of substance?

3 A Yes, they did.

4 Q And what type of substances would they
5 distinguish between?

6 A Well, there was oil, heavy oil, sheen, mousse and
7 light oil concentrations.

8 Q All right. What is mousse?

9 A Mousse is an oil and water emulsification, very
10 similar to the dessert-like mousse, chocolate mousse, or
11 that sort of thing. It --

12 Q It's been --

13 A It's thickened. It has a -- and, because of wind
14 and wave action, the oil has become a very different in
15 character from the -- from its original state. The
16 physical properties are -- it's very thick and very
17 viscous. Very similar to a chocolate mousse.

18 Q Now, the persons that drew on the charts were --
19 these persons were all DEC employees?

20 A There were also -- there were some individuals, I
21 believe, who drew on charts who were employees of the
22 Environmental Protection Agency.

23 Q And then these charts then went -- eventually
24 were fed into a computer. Is that correct?

25 A Yes, they were.

1 Q And then the computer printed out --

2 A Yes.

3 Q -- what? What did it print out?

4 A It would generate a daily map, or possibly
5 twice-daily map, that would combine all of the charts that
6 were -- that had been brought back to the Department.

7 THE COURT: Why don't we take our recess now.

8 MS. HENRY: That would be fine.

9 THE COURT: Counsel has been doing that.

10 We'll take our break, ladies and gentlemen.

11 Remember not to discuss this matter among yourselves or any
12 other person and not to form or express any opinions. Is
13 there anything we need to take up, counsel?

14 MR. COLE: Well, Judge, at some point, yes, we
15 would like to take something up, but --

16 THE COURT: Then we'll do it right now. You
17 folks just start your break.

18 (Whereupon, the jury leaves the courtroom.)

19 THE COURT: Mr. Cole?

20 MR. COLE: Judge, I want to bring to the Court's
21 attention a little problem that we're having in this case,
22 and that happens to be the defense attorney's cooperation
23 with the experts. We gave Mr. Madson a letter yesterday
24 asking him to give us the phone numbers of the experts
25 whose numbers are unlisted, and he wrote back on the memo,

1 "We're not talking."

2 We talked to Mr. Chalos. We've attempted to
3 contact some of their experts. Mr. Chalos told Mr. Adams
4 yesterday to quit calling their experts.

5 I can quote you a conversation that Mr. Madson
6 had, apparently with the newspaper yesterday, which says
7 that he has found an expert working -- who says the work of
8 the NTSB is nonsense. He is quoted as saying, "I don't
9 want to tell anybody yet in case we have to use them as an
10 expert. I don't want the State contacting him," and that's
11 a direct quote out of the newspaper.

12 I know Mr. Madson knows what the criminal rules
13 in Alaska are. They're found in criminal rule 16. He's
14 been an attorney in this state for many years. I'm not
15 sure how they do things in New York, but in Alaska --

16 THE COURT: Let's not be namecalling, now, Mr.
17 Cole --

18 MR. COLE: Well, all I'm saying, Judge, is
19 that --

20 THE COURT: Let's just stick with the request you
21 have.

22 MR. COLE: The request is that they turn over the
23 numbers of the people, and that they not be directing their
24 people not to talk with us. I mean, if they make that
25 decision, but under our rules, an attorney cannot tell

1 another person not to talk with the other side.

2 MR. MADSON: Well let me respond to my part of
3 it, which is quite limited. First of all, I didn't write
4 the, "We're not talking," on there, but I don't think we
5 ought to get into squabbles like that.

6 Your Honor, we're not talking fact witnesses
7 here. We're talking retained witnesses that we paid for.
8 We have every right, in that situation, to have these
9 people say, "Look. We retained you; we may or not use you
10 in this case; we don't know yet. So, therefore, we don't
11 want you talking to the other side." It's like a civil
12 case.

13 There's no difference between a civil and a
14 criminal case. Retained expert witnesses in a civil case
15 are never talking with the other side, unless there's a
16 deposition.

17 I've been doing that for years, and I've never
18 had this concern before, that -- we may get a request, is
19 it okay to have a conversation, but most of the time what
20 happens is you get into this kind of a situation. You're
21 not there. It's a telephone conversation with a person
22 representing your opponent, and then they come into court,
23 and they say, "Mr. Expert, I had a conversation with you,
24 and didn't you admit such-and-such?" And he says, "No, I
25 didn't." And there you are.

1 Now, if we're going to ever have one of these
2 type of conversations, naturally we're going to be present,
3 and I think there should be a recording, and things like
4 that. But to have your opponent simply call the other --
5 your retained experts to find out what they're going to say
6 is not under the rules. It's not necessary, and that's
7 simply our position.

8 MR. CHALOS: Judge, what I would like to add to
9 that, if I recall correctly, you ordered us at the
10 beginning of this trial to turn over expert reports to Mr.
11 Cole. We expeditiously turned over to him two very, very
12 thick reports, complete reports, with backup material, with
13 pictures, with explanations.

14 All we've gotten from Mr. Cole are summaries
15 prepared by Mr. Adams saying that I spoke to this expert
16 and he says the ship was sunk in an hour-and-a-half. Then
17 they give us two pieces of paper in support of that, but no
18 backup material, and that's only come within the last few
19 days. We've given our reports almost three weeks ago, Your
20 Honor.

21 So I think Mr. Cole is not being fair in his
22 description of what's going on here, insofar as the experts
23 are concerned.

24 I might add also that Mr. Adams, when he speaks
25 to our experts, or he attempted to speak to our experts,

1 was very heavyhanded with them. He said to them, "What
2 business do you have coming to Alaska to testify?" Now, I
3 don't think that's proper. And that's the point we're
4 trying to make.

5 THE COURT: Well, I hope we can take a little
6 higher road than what I hear.

7 Do you have any summaries or reports of the
8 experts whose telephone numbers you're not disclosing?

9 MR. CHALOS: No, Your Honor. Whatever reports we
10 had we turned over to Mr. Cole immediately after you told
11 us to -- as a matter of fact, we didn't even have the
12 reports when you ordered us to turn them over. But we
13 hurried up, had the experts put it together, and gave it to
14 them.

15 Now, the -- the report on the computer simulation
16 expert is a thick report, and then it's accompanied by data
17 that's about an inch thick, backup data. That's the way a
18 proper expert report is presented.

19 Mr. Cole has given us two sheets of paper from a
20 naval architect who supposedly did very, very complicated,
21 and very sophisticated computer analysis of the stability
22 of this vessel. All we have is two pieces of paper showing
23 us graphs and charts. Ridiculous stuff.

24 THE COURT: Mr. Madson, did you make that quote
25 in the paper that was read?

1 MR. CHALOS: No, Your Honor. I made that quote.

2 MR. MADSON: No. wait a minute. Which one are
3 you talking --

4 (Laughter)

5 MR. CHALOS: Oh, sorry. Hey. I thought you
6 meant on the piece of paper.

7 THE COURT: Okay. You made the quote, "We're not
8 talking." Now, Mr. Madson, did you make the quote in the
9 newspaper?

10 MR. MADSON: Your Honor, the newspaper guy called
11 me and he said, "Well, what's going on with this voice
12 thing?" And I told him, I says, "I think it's nonsense. I
13 did not talk to this expert myself but one of our people
14 did," and he says, "Well, do you have his name?" And I
15 says, "No. I don't want you to have it, and I don't want
16 it to get to the State because we're going to have to use
17 him."

18 THE COURT: All right.

19 MR. MADSON: Yes.

20 THE COURT: All right. I'm ordering you to
21 produce the expert's name, address and telephone number to
22 Mr. Cole. If you have received anything from him in
23 writing, I want you to -- Mr. Russo?

24 MR. RUSSO: I have some information on --

25 THE COURT: That's fine. You're interrupting me,

1 and I don't appreciate that.

2 MR. RUSSO: Sorry.

3 THE COURT: Mr. Madson, produce the name, address
4 and telephone number to Mr. Cole of the person you were
5 referring to when you made that statement, an expert who's
6 name you don't want to disclose, and if you received
7 anything in writing from him whatsoever, I want you to
8 produce it to me for in camera review. I'll determine
9 whether or not it constitutes a report, or any kind of a
10 test. I'll let you know before I release it to Mr. Cole,
11 so you can place your objection on the record.

12 However, it sounds to me like you have made a
13 statement here that you may intend to use this witness, and
14 so under the Criminal Rule 16, I'm ordering you to produce
15 that information.

16 If you have telephone numbers and addresses of
17 witnesses which you intend on using, I'm ordering you, Mr.
18 Chalos, to disclose that to -- I'm talking about expert
19 witnesses that are covered by Rule 16 -- I'm ordering you
20 to disclose that information to Mr. Cole.

21 If your experts don't want to talk to Mr. Cole, I
22 suppose that's up to them. However, I will call your
23 attention to the canons of professional conduct, and I
24 think there are quite a few cases that address what happens
25 to an attorney who specifically instructs a witness not to

1 talk. I don't know if that pertains to criminal defense
2 attorneys or not; it may not. However, you might want to
3 review that, just in case.

4 I do order you to produce the names, addresses
5 and telephone numbers to those witnesses that you might be
6 calling in this case -- expert witnesses only, that are
7 covered by Rule 16.

8 If you have any reports, or any kind of summaries
9 that have been given to you, or any kind of test results
10 that have been given to you, whether they are in a summary
11 form, whether they are in a written form, or they have been
12 told to you that you wrote down, I want you to produce
13 those to Mr. Cole.

14 This is not pretrial discovery anymore. This is
15 trial, and we're doing this to avoid a legitimate request
16 for a continuance by the State that might occur if they're
17 surprised, when they didn't need to be surprised.

18 The State has the same rights at this stage of
19 the proceeding as you do.

20 MR. CHALOS: Well, it seems, Judge, if I may say,
21 with all due respect, that this has been a one-way road.
22 We're asked to produce and provide, and have done so, as
23 far as the reports are concerned, to Mr. Cole. He's had
24 access to these reports for three weeks now.

25 We get piecemeal information, insofar as their

1 experts are concerned. So really, if we're going to
2 balance the scale, I think the same ruling should go out to
3 Mr. Cole.

4 THE COURT: Absolutely. It should. The State
5 should know that, because you have much greater discovery
6 rights than the State does in criminal proceedings. If you
7 have any indication that there's been an abuse by the State
8 of this, you can call it to my attention. I will issue
9 orders to remedy those abuses.

10 MR. CHALOS: Well, I'll tell you what the abuse
11 has been. I'm convinced that there has been an instruction
12 by the State to their experts not to prepare reports. I'm
13 thoroughly convinced. Because, in these type of matters,
14 the type of reports that would be generated by their
15 experts would be a full report with backup material. All
16 we're getting are just two pieces of paper for all these
17 experts.

18 THE COURT: Which experts are you referring to?

19 MR. CHALOS: I'm referring to Mr. Greiner, who is
20 a -- I don't know what kind of an expert he is, but Mr.
21 Greiner. I'm referring to Mr. Vorus. I'm referring to Mr.
22 Milweed, who, by the way, we haven't received, except for a
23 one-page statement, haven't received a single stitch of
24 evidence, or charts or graphs, or discussion as to what
25 he's going to testify to.

1 I'm talking about their alcohol experts --

2 THE COURT: Who else? Go ahead.

3 MR. CHALOS: That's all I can remember.

4 THE COURT: Have you received anything -- now,
5 you know Mr. Greiner's name, address and telephone number,
6 is that correct?

7 MR. CHALOS: Yes.

8 THE COURT: And have you received any kind of
9 documentation pertaining to him?

10 MR. CHALOS: I received again, about two or three
11 pages, but to be fair, I should say that I spoke with Ms.
12 Henry yesterday about Mr. Greiner, and she agreed to make
13 him available if I wanted to interview him.

14 THE COURT: All right. Mr. Vorus. How about
15 him?

16 MR. CHALOS: No. Just about three pieces of
17 paper.

18 THE COURT: Do you have his name, address and
19 telephone number?

20 MR. CHALOS: Yes, but I don't know where he is
21 now. I think he's either en route or he's here.

22 THE COURT: You've had his name, address and
23 telephone number how long?

24 MR. CHALOS: No, we didn't have his phone
25 number. Just his address.

1 THE COURT: How long have you had that?

2 MR. CHALOS: Oh, I guess since we've filed the
3 notice of experts. But that's true also of our experts.

4 THE COURT: How long have you had that? I don't
5 know when that date was.

6 MR. CHALOS: Let's say three weeks, four weeks.

7 THE COURT: And you have three pieces of paper?
8 What are those three pieces of paper?

9 MR. CHALOS: I'll show you.

10 This is supposed to be a sophisticated analysis
11 of a naval architect who's been working on this for, I
12 don't know, four, five months. This is it.

13 (Pause)

14 There's no way to tell what he bases his
15 assumptions on, what values he used, what he considered,
16 what he didn't consider.

17 THE COURT: This document says memorandum. It
18 has one page typewritten, which indicates what Mr. Vorus
19 would -- his opinion would be that the vessel had capsized
20 and sunk sometime between an hour, and hour-and-a-half
21 after _____, after Captain Hazelwood _____
22 successful in his attempts at removing the vessel from the
23 rocks. There are some computer simulations, and then there
24 are some predictions on the Exxon Valdez grounding.

25 I find that satisfies the rule.

1 Now, what about -- what's the next one? Mill?

2 MR. CHALOS: Milwee.

3 THE COURT: I'm sorry, Milwee?

4 MR. CHALOS: Milwee. M-i-l-w-e-e.

5 THE COURT: Do you have his name and address.

6 MR. CHALOS: I have his name and address.

7 THE COURT: How long have you had this?

8 MR. CHALOS: The same time that the State has had
9 our experts' name and addresses.

10 THE COURT: Can you be a little more specific? I
11 don't know that date, either.

12 MR. CHALOS: About three to four weeks.

13 THE COURT: All right. Now, what is it, what
14 have you got from the State regarding his?

15 MR. CHALOS: We got a -- as best as I can
16 remember, because I don't have his file with me, it was a
17 one-page summary.

18 THE COURT: A summary of his testimony, or what
19 he would say? Or his test, or what?

20 MR. CHALOS: I don't think it was a summary of
21 his testimony, just some background and just some things
22 that he said, and that was it.

23 THE COURT: All right. And what about the
24 alcohol experts. Which names are you referring to on
25 these?

1 MR. MADSON: I got that one, Your Honor, and it
2 simply was he was going to testify on certain subjects. It
3 was a one-paragraph memorandum from Mr. Adams.

4 THE COURT: And who was the alcohol expert?

5 MR. MADSON: I forget his name --

6 MR. CHALOS: (Inaudible).

7 MR. MADSON: (Inaudible).

8 MR. COLE: Prowdy.

9 MR. MADSON: Prowdy. That's it.

10 THE COURT: How long have you had that name and
11 address?

12 MR. MADSON: Oh, same length of time, Your Honor.

13 THE COURT: All right. And what did he say on
14 the paper?

15 MR. MADSON: It said basically we expect to call
16 Dr. Prowdy who will testify on the following, probably
17 three subjects: intoxication, the effects of alcohol and
18 physiology. Things like this.

19 THE COURT: All right.

20 Mr. Cole, do you have any other documents
21 pertaining to these witnesses that they've provided you,
22 pertaining to test summaries, or an indication of what they
23 will say if called as a witness?

24 MR. COLE: Judge, all I have is today, I saw --
25 come across the Panafax 26 pages that Professor Vorhus had

1 sent to him which we are going to be providing as soon as
2 court is through today. It's a 26-page --

3 THE COURT: You came across it. It -- how long
4 have you had it?

5 MR. COLE: It just came in today.

6 THE COURT: All right.

7 MR. COLE: This morning. It's dated this
8 morning.

9 THE COURT: Anything else that pertains to these
10 witnesses?

11 MR. COLE: Everything that we have has been
12 turned over.

13 THE COURT: All right. Well, no. Wait a
14 second. Before you make those expressions, Mr. Madson and
15 Mr. Chalos, it seems to me that the State has complied with
16 Criminal Rule 16 in its spirit and its intent. Now, if
17 there's anybody playing hide the ball here, it's the
18 Defendants playing hide the ball.

19 Now, you have certain rights that you can hide
20 the ball, because you're criminal defendant's attorneys.
21 But don't be complaining to the State about them hiding the
22 ball. They're complying with the rule.

23 MR. : Judge --

24 THE COURT: Now, I've ordered you to comply with
25 certain things, and that's the end of it. They've provided

1 as enough information here that complies with the rule, and
2 they've told you they've given you everything. Now,
3 there's not much else you can make them do, and I'm not
4 about to make them go out and do something.

5 Now, I don't know about Sam Adams being
6 heavyhanded. That's not too relevant, as far as I'm
7 concerned right now.

8 MR. CHALOS: Judge, with all due respect, you
9 ordered us three weeks ago to turn over our reports. We
10 complied in good faith. We've given them thick reports.
11 They've had three weeks to analyze them.

12 Mr. Cole is going to turn over to us today 26
13 pages of sophisticated calculations --

14 THE COURT: He just got it, he said.

15 MR. CHALOS: Why did he just get it? He's had
16 this expert for how long? That's the point. I mean, we
17 could have asked our expert to give us the calculations the
18 day that they were testifying.

19 THE COURT: That's fine. All right. We've had
20 enough hearing on this. You've heard the order of the
21 Court. It seems to me when somebody says, "We're not going
22 to talk" and "We've got an expert we're not going to
23 disclose the names to," when there's a rule that says
24 you're supposed to --

25 MR. CHALOS: No, we've disclosed the names.

1 THE COURT: -- that there's a very good example
2 when there's an intention shown that you're going to call
3 an expert, that you're not given information to.

4 So I find that both of you, in this case, have
5 deliberately contravened the spirit of Rule 16. Now, I
6 want you to --

7 MR. CHALOS: That's not true, Judge.

8 THE COURT: -- start complying -- please, Mr.
9 Chalos.

10 MR. CHALOS: That's not true, Judge.

11 THE COURT: Well, I find it is true, and I don't
12 want to have any more argument from you. So just disclose
13 the names and addresses of witnesses and the reports of
14 those witnesses you intend on calling.

15 MR. : She has that.

16 THE COURT: That's the end of it. That's the end
17 of it, counsel. That's the end of it.

18 Now, is there anything else we can bring up?

19 MR. MADSON: I would certainly like to, but I
20 guess it's the end of it, Your Honor.

21 THE COURT: That's the end of the discovery
22 question. Now, is there anything else we can bring up?

23 MS. HENRY: Your Honor, I think we should
24 probably take up the exhibits I was about to introduce, if
25 there's going to be an objection, we might as well take

1 that up now. That's why I started with those exhibits
2 before the break, just to make sure --

3 MR. MADSON: Yes, there is. First of all,
4 relevancy. They don't -- I think we all know there was an
5 oil spill. We're going to have more prolonged, detailed
6 testimony on a spill, and he's going to go where it goes.
7 It's all hearsay. He doesn't know who did it. It was all
8 generated by other people. We expect the fact there was a
9 spill.

10 Now, if you want to show how far it went, then if
11 that's admissible, Your Honor, then I think I have the
12 right to go in to show how far it shouldn't have gone, and
13 what could have been done that wasn't, and I would be able
14 to elaborate on that, but anyway, I would object to these.

15 THE COURT: Your objection on relevance is
16 overruled, and as far as you taking up how far it shouldn't
17 have gone, that remains to be seen. Kusmeyer is a case
18 right on point. I've already ruled that you cannot show
19 that Alyeska or some other agency didn't do their job, and
20 as a result, the oil spill was greater than it could have
21 been.

22 I've already made that ruling, Mr. Madson. If
23 you wish me to reconsider that, you can do so in writing.

24 MR. MADSON: I can't do it before these are
25 introduced, Your Honor.

1 THE COURT: Well, I've already ruled on your
2 objection as relevance. That objection is overruled.

3 MR. MADSON: Could I just put something on the
4 record on this? It's much easier than having to do it in
5 writing. It takes two minutes.

6 THE COURT: You've already made your objection.
7 Now, if you have an application to the Court, you can do
8 so, but I've already ruled on your objection as to
9 relevancy.

10 MR. MADSON: I would like to make an offer of
11 proof, Your Honor, on the record with regard to relevancy.
12 And it's more than relevancy. It goes much further than
13 that, and I can do it very briefly.

14 THE COURT: All right. Go ahead.

15 MR. MADSON: Because I think the Court, with all
16 due respect, is missing the point here. This has nothing
17 to do with that case, for the very -- the reason is,
18 Captain Hazelwood is charged with creating a risk, a risk
19 that damage will occur by spilling oil in an amount of over
20 \$100,000.00. That's the damage.

21 Okay. There's the creation of the risk. If part
22 of that risk is the consideration of others that are part
23 of the whole process to stop that from occurring, then I
24 think we have the right to show that it isn't like the case
25 the Court cited, where it's an intervening separate act

1 that one has no right to rely on, because this is a
2 situation where everybody in the industry knew there was an
3 oil contingency plan for this very purpose. That was part
4 of it.

5 And to show them that they didn't do their job,
6 isn't to show that there was an intervening cause. Not at
7 all. It was to show that this reduces the risk that was
8 involved, if there was a plan that was supposed to prevent
9 the very thing from happening.

10 THE COURT: All right. Your offer of proof has
11 been made. The ruling stands, Mr. Madson. Evidence of
12 Alyeska's, for example, failure in your opinion to take
13 prompt steps to reduce this damage comes directly out of
14 Kusmider, as far as I'm concerned.

15 The culpable state of mind in this case is
16 reckless. The damage of \$100,000.00 or more, risk of
17 damage, is a circumstance. And an intervening cause as to
18 a circumstance is covered by Kusmider. So I'm going to
19 continue in this type of ruling.

20 Now, you can make your applications, and I
21 suggest you do so if you have other evidence you want to
22 introduce so you can preserve your record, but I'm giving
23 you a clue as to my ruling. It will be consistent with the
24 Kusmider case.

25 Is there anything else we can take up?

1 MR. MADSON: Only a cup of coffee.

2 THE COURT: All right. We stand in recess.

3 THE CLERK: Please rise. This Court stands in
4 recess, subject to call.

5 (A recess was taken from 10:20 a.m. until 10:40
6 a.m.)

7 THE CLERK: This Court now resumes its session.

8 THE COURT: You may proceed.

9 MS. HENRY: Thank you, Your Honor.

10 (Pause)

11 THE COURT: We're on the record, ladies and
12 gentlemen.

13 BY MS. HENRY: (Resuming)

14 Q Before the break, I think we were talking
15 about _____ and that persons were drawing charts, and
16 then they'd be put into computers. Is that right?

17 A Yes, that's correct.

18 Q All right. Showing you what's been marked as
19 Plaintiff's Exhibit Number 116 for identification, would
20 you please identify that?

21 A Yes. This is a map of Prince William Sound and
22 it's a -- it's the oil identified in the upper righthand
23 corner as a black mass. There's a heavy thick oil legend
24 over here on the lefthand side in the box.

25 Q Okay. And the box --

1 A And --

2 Q The box indicates which DEC person was the one
3 that actually drew it on the chart. Is that right?

4 A It -- I think it represents the DEC person that
5 turned the map into the -- Mr. Kenzorik (PH).

6 Q And what is the -- who is Mr. Kenzorik?

7 A Mr. Kenzorik is the computer operator that
8 generates the maps -- or that generated these maps, I
9 believe.

10 Q And for Plaintiff's Exhibit Number 116 for
11 identification, is there a date and a time on that?

12 A Yes. That's -- March 24th, eleven to twelve
13 hundred, 1989.

14 Q And, to the best of your recollection, does the
15 depiction of the placement of the spill at that time, is
16 that accurate?

17 A Yes. That's fairly accurate.

18 Q Does that diagram also show some -- something
19 from the Exxon Val -- or Exxon Baton Rouge?

20 A Yes, it does. There's an oily ballast water
21 discharge from the Exxon Baton Rouge.

22 Q And that's reflected on the chart also?

23 A Yes, it is.

24 Q Showing you what's been marked as Plaintiff's
25 Exhibit Number for identification, would you please

1 identify that?

2 A Yes. This is from the state of Alaska,
3 Department of Environmental Conservation. It's an
4 indication -- it indicates the spread of the oil on March
5 25th, 1989 from 1635 to 1800, which would be 4:35 to 6:00
6 o'clock in the afternoon. It's all indicated as heavy
7 slick, 60 square miles in this upper righthand area of the
8 map.

9 Q And which DEC employee's name is on there?

10 A This is also Mr. Sotner.

11 Q Does that, as best you remember, accurately
12 reflect the placement of the oil on that date and time?

13 A Yes. That would have been the -- that would have
14 been the approximate location of the oil at that time.

15 Q I'm showing you what's been marked as Plaintiff's
16 Exhibit Number 114 for identification. Would you please
17 identify that?

18 A Yes. This is -- this is a map of the oil, again,
19 the oil depicted in this -- on this particular map, dated
20 March 26th, 0815 to 0930, there's heavy sheen indicated by
21 the legend on the left, and there's also heavy slick
22 indicated as a -- as part of the legend.

23 Q Which DEC employee --

24 A And this is also Mr. Sotner.

25 Q And to the best that you can recall, does that

1 depict the presence of the sheen and the slick on that date
2 and time?

3 A I wasn't in the air on that date and time.

4 Q All right. Where were you on that date?

5 A On March 26th, I would have been in Valdez.

6 Q Did you ever board the Exxon Valdez on that day,
7 do you recall?

8 A Yes, I did.

9 Q So you would have been in that area?

10 A Yes. I would have been in the area. The oil was
11 in the -- was generally spread throughout this area.

12 This is Exhibit Number 114?

13 Q And although you were not in the air that day,
14 you were in the area of the Exxon Valdez and the --

15 A Yes.

16 Q -- (inaudible).

17 A Yes, I was.

18 Q Does that accurately reflect, as best you could
19 tell from being on the ground as opposed to in the air, the
20 area?

21 A Yes. That's a reasonable -- it's a reasonable
22 representation of the oil.

23 Q Showing you what's been marked as Plaintiff's
24 Exhibit Number 113 for identification, could you identify
25 that?

1 A Yes. This is an expanded diagram of an island --
2 and I'd have to look here to see the name of the island. I
3 believe this is Night Island, in this vicinity here. And
4 just to the southeast, or southwest, rather, of Naked
5 Island, and it depicts the spread of the oil down along the
6 easternmost boundary of Night Island, and also up into the
7 space between Night Island -- it's Night Island passage --

8 Q Sir, perhaps you can point on the big chart.

9 A Yes.

10 (Pause)

11 Yes. The oil was spreading down Night Island
12 passage in -- about this vicinity, and also had come down
13 into this vicinity, and had come down a little bit, down in
14 this direction here, towards Montague Island -- Montague
15 Island being along this area here. This is Night Island.
16 Naked Island indicated here.

17 Q Okay. And -- you can go ahead and sit down. The
18 Exhibit I just showed you ,which is Plaintiff's 113 for
19 identification, what is the date on that?

20 A This is dated March 29th, 016 -- 0615 to 0800
21 hours. And this is indicated that this is done with IR --
22 with daylight.

23 Q What does that mean?

24 A Infrared with daylight.

25 Q Who's name is on that?

1 A Mr. Sundat (PH) and Mr. Lefsi (PH).

2 Q Who's Mr. Lefsi?

3 A I don't know Mr. Lefsi.

4 Q Okay. Now, to the best that you can recall, is
5 the placement of the oil accurate on that chart for that
6 date and time?

7 A I believe that's accurate.

8 Q Showing you what's been marked as Plaintiff's
9 Exhibit Number 112 for identification, would you please
10 identify that?

11 A Yes. This is an exhibit that shows combined oil
12 from March 30, 1989, combined -- these -- this was a
13 combined map of Joe Sotner and Richard Sundat from March
14 30, 1989, between 1700 hours, which would be 5:00 o'clock,
15 and 1856, which would be 6:56 in the evening.

16 Q Does that chart break down the oil as sheen or
17 heavy or something?

18 A Yes, this breaks -- this chart is broken down
19 into wind rows, sheen and heavy oil.

20 Q What is wind rows?

21 A A wind row would be an isolated finger of oil
22 that the wind had -- had separated out, and it would be
23 just lined up in a straight line, or blown into a straight
24 line.

25 Q To the best that you can recall, does that chart

1 accurately reflect the placement of the oil on that date
2 and time?

3 A These were the -- this is the report that we
4 received from Mr. Sotner and Mr. Sundat on that date.

5 MS. HENRY: At this time, the State would move
6 into evidence Plaintiff's Exhibit 112 through 116.

7 MR. MADSON: I object to those, Your Honor, on
8 the grounds stated earlier, plus they're merely
9 cumulative. They have no probative value, and if it does,
10 it's certainly outweighed by any prejudicial effect it
11 would have.

12 THE COURT: All right. Those objections are
13 overruled.

14 MS. HENRY: Thank you, Your Honor. May they be
15 admitted?

16 THE COURT: They're admitted.

17 (State's Exhibits 112 through
18 116 were received in
19 evidence.)

20 (Pause)

21 BY MS. HENRY: (Resuming)

22 Q Sir, I'm showing you what's been marked as
23 Plaintiff's Exhibit Number 111 for identification. Can you
24 identify that exhibit?

25 A Yes. This is an aerial photograph taken by Errol

1 Matthew, who is a contractor to the Department of
2 Environmental Conservation. It shows the Exxon Valdez
3 which -- and also the -- I believe that's the Exxon tanker
4 Baton Rouge.

5 Q Are they connected _____ --

6 A They're tied -- the Baton Rouge is moored
7 alongside the Exxon Valdez.

8 Q Do you know where they were at that time?

9 A The boats were at Bligh Reef. The Exxon Valdez
10 was -- was rocking back and forth with the tide on Bligh
11 Reef.

12 Q Does that photo also depict any oil?

13 A Yes, that photo depicts oil contained by a
14 containment boom in front of the Exxon Valdez and the Baton
15 Rouge.

16 Q Do you know what day that photograph was taken?

17 A I believe this would have been taken March 26th.

18 Q All right. Do you know what day of the week that
19 was? Do you remember?

20 A March 26th would have been on Sunday.

21 Q It would have been Sunday morning, or Sunday
22 evening. Do you know?

23 A I can't tell from this -- the --

24 Q Do you recall a storm coming up on Sunday?

25 A Yes. There was a windstorm that started on

1 Sunday afternoon about 2:30 or so.

2 Q And, based on that, can you tell from this
3 photograph if it was taken before that storm started?

4 A I believe -- no, I -- there appear to be some
5 swells, and that may have been taken in the afternoon on
6 the 26th.

7 Q All right. And does it accurately reflect the
8 placement of the two vessels, the boom, the oil within the
9 boom, and then also some sheen in the water?

10 A Yes. It certainly reflects the accurate
11 placement of the two vessels, the boom, and the oil, and
12 the oil distribution across -- away from the vessels.

13 MS. HENRY: The State would move into evidence
14 Plaintiff's Exhibit Number 111.

15 MR. MADSON: Well, I object, Your Honor, on the
16 grounds raised earlier, and certainly as to relevance. Is
17 this to show the place where the boom or the containment,
18 or what? I don't know the purpose of this photograph, is
19 what I'm saying. There's a number of photos already of the
20 oil, and how many more we need, it's certainly cumulative.
21 It doesn't show containment.

22 THE COURT: Why don't you come up here for a
23 minute.

24 (The following was had at the bench:)

25 THE COURT: Mr. Madson, when you say on the

1 grounds voiced earlier, I don't know what you're saying,
2 because (inaudible) your objections, I want to know what
3 they are. If your objection is relevance, I'm going to
4 overrule it.

5 (The following was had in open court:)

6 THE COURT: The objection as to relevance is
7 overruled.

8 MR. MADSON: _____ and also cumulative, Your
9 Honor, and no probative value.

10 THE COURT: All right. In the future, make all
11 your arguments before I rule. I'll rule now again. I'm
12 going to overrule that objection, too. Make them all at
13 once.

14 The document is admitted.

15 MS. HENRY: Thank you, Your Honor.

16 (State's Exhibit 111 was
17 received in evidence.)

18 (Pause)

19 BY MS. HENRY: (Resuming)

20 Q Sir, on April 15th last year, did you have
21 occasion to visit the beaches on Elinor Island?

22 A Yes, I did.

23 Q And what was the purpose of that?

24 A I had been asked to gather some demonstrative
25 evidence, some oil samples, and some videotape of the oil

1 on a beach, on -- out in Prince William Sound that was
2 damaged as a result of the grounding of the Exxon Valdez.

3 Q All right. If you would -- using the chart, can
4 you show us where Elinor Island is?

5 A Yes.

6 Q The pointer is behind you to your right, sir.

7 (Pause)

8 A Yes. Elinor Island is right in this vicinity,
9 right here, at the tip of this Night Island group, adjacent
10 to Night Island passage.

11 Q And although you indicated a little earlier, can
12 you give us an idea of generally the path of the oil?

13 A Yes. The oil essentially moved down through
14 here, like this.

15 Q And so it impacted Elinor Island?

16 A It impacted Elinor Island.

17 Q What's the island just below Elinor Island?

18 A That's Ingot Island. Below that, it's Disc
19 Island, and I believe this -- this is all part of Night
20 Island, through here.

21 Q Was there any particular beach that you --

22 A That I looked at?

23 Q -- looked at?

24 A Yes. I landed in Northwest Bay, which is up in
25 this portion, the northwestern portion of Elinor Island.

1 Q All right. You can go ahead and resume your
2 seat.

3 Did you, in fact, take some samples of oil from
4 that beach?

5 A Yes, I did.

6 Q And you also said another purpose was to take
7 some videotape?

8 A Yes. We took some videotape. I brought a
9 employee of the department with me to operate the video
10 camera.

11 Q And who was that?

12 A That was Laurie Telford.

13 Q Now, were you wearing any special clothing when
14 you did this?

15 A Yes. I had a Mustang flotation suit on -- it's
16 orange in color. And also I had on some rubber gloves when
17 we were collecting samples of the oil. And in addition, I
18 had some coveralls, some protective coveralls, to protect
19 the Mustang suit from --

20 Q To protect what?

21 A To protect the Mustang suit, the orange suit,
22 from contamination with the oil.

23 The protective coveralls were a disposable
24 coverall, both -- one pair -- I had several different
25 pairs. Some were white, some were yellow in color.

1 Q Did the helicopter pilot make you do anything
2 with these?

3 A Yes, the helicopter pilot made me take them off
4 every time I went to get back into the helicopter, because
5 they were covered with oil. And they were disposed of in
6 plastic bags into the baggage compartment into the
7 helicopter, and properly disposed of when we arrived in
8 Valdez.

9 Q And did you have an opportunity to review the
10 videotape that was taken that day?

11 A Yes, I did.

12 (Pause)

13 Q I'm showing you what has been marked as
14 Plaintiff's Exhibit Number 118 for identification. Do you
15 recognize that, sir?

16 A Yes, this is the -- this is a tape of the -- that
17 was taken on Elinor Island.

18 Q On April 15th?

19 A On April 15th, yes.

20 Q And when was the most recent time you've reviewed
21 that?

22 A A couple of days ago in your office.

23 Q Now, does that accurately reflect scenes of you
24 taking samples of oil, and then also scenes of the beaches
25 on Elinor Island?

1 A Yes, it does. It very accurately depicts the
2 operation that I was performing on Elinor Island on that
3 day.

4 MS. HENRY: The State would move into evidence
5 Plaintiff's Exhibit Number 118.

6 MR. MADSON: Your Honor, with all due respect.
7 This is highly, totally irrelevant. It's taken on, as I
8 understand it, April 15th of a beach scene. There's no
9 relevance whatsoever to what the State has to prove, which
10 is the amount of damage or risk, risk of damage over
11 \$100,000.00. That has been shown a hundred times over.

12 This is cumulative. It's designed only for one
13 purpose, and that is to prejudice my client in the eyes of
14 the jury. It has no other purpose, and I strenuously
15 object.

16 THE COURT: Will counsel approach the bench.

17 (The following was had at the bench:)

18 THE COURT: What is the purpose of this?

19 MS. HENRY: Your Honor, this is not for the
20 damage of property, but it's person is to (inaudible) and
21 we have to show that an oil spill, in this case,
22 meets _____ risk of damage by widely dangerous means.

23 THE COURT: Mr. Madson?

24 MR. MADSON: Your Honor, I made my objection.

25 THE COURT: All right. The objection is

1 overruled.

2 (The following was had in open court:)

3 MS. HENRY: Sir, before we --

4 THE COURT: It's admitted.

5 MS. HENRY: Thank you.

6 (State's Exhibit 118 was
7 received in evidence.)

8 BY MS. HENRY: (Resuming)

9 Q Before we play the video, did you have sound when
10 you were taping the video?

11 A Yes. There was some sound on the video. During
12 a portion of the video, the helicopter was running on the
13 beach, and that overwhelmed any -- most of the audio
14 portion of the videotape.

15 Q So listening to the audio isn't going to be very
16 helpful?

17 A It would not be very helpful at all.

18 Q Okay. So before I actually play it, perhaps you
19 can explain a couple of things on it. There's a shot
20 showing a creek with something in it. What is that?

21 A Well, there's some oil. It looks like little
22 shadows floating by, and it's actually little globules of
23 oil sort of washing off of the beach down into the sea.

24 Q And there's also a shot of a cooler. What is
25 that for?

1 A The cooler was used to preserve the samples, to
2 keep the samples at a -- there was some blue ice in the
3 cooler, and we're storing the samples in the cooler. In
4 addition, I was also carrying equipment with me in the
5 cooler.

6 Q There are also some shots -- there appear to be
7 some shots of the beach. Where was that taken?

8 A Those were beaches in Northwest Bay. The --

9 Q How about the shots from the helicopter? What
10 were those?

11 A The shots from the helicopter were taken along
12 the shoreline in Northwest Bay and kind of along through
13 this -- well, Northwest Bay is kind of a -- shaped in --
14 like this. I don't know how to describe that.

15 Q Like a W, maybe?

16 A Like a W. And it was flown around -- we flew
17 around, and I had the video camera hung in the window of
18 the helicopter. There's a small, little window that can be
19 opened, and occasionally you'll -- I wasn't able to view
20 all of the videotaping as it was taking place, but -- and
21 occasionally you'll see the window frame include into the
22 photograph.

23 Q Now, was this taken at any particular time?

24 A This would have been at low tide, and the
25 videotape depicts the staining of the oil along the shore

1 in Northwest Bay.

2 Q Was there any booming done in that area?

3 A Yes. There was some booming in place. In
4 addition, there was a rope mop skimmer.

5 Q What is that?

6 A A rope mop skimmer is a device that -- it's a
7 specially treated mop type of arrangement. It's about --
8 oh, this large in diameter, and it -- you roll that out
9 around some pulleys and through the oil, and then it's --
10 the mop is squeegeed, you know, back into a drum and the
11 oil is collected. This device is -- collects the oil, and
12 then as it runs around back on to the -- there's a limited
13 portion, view of that.

14 We attempted to hover over that area to show the
15 rope mop skimmer. That skimmer -- there was -- the
16 helicopter didn't have enough power to remain in place.

17 Q And does the video also show some booms in place?

18 A Yes, it does.

19 MS. HENRY: Now, at this time, I request to be
20 able to play the video.

21 THE COURT: How long is the video tape?

22 MS. HENRY: The first one that I was going to pay
23 was about twelve minutes.

24 THE COURT: All right. No sound. Is that
25 correct?

1 MS. HENRY: Correct.

2 THE COURT: All right.

3 (Whereupon, from 11:04 a.m. to 11:15, a videotape
4 was played.)

5 (TAPE CHANGED TO C-3639)

6 BY MS. HENRY: (Resuming)

7 Q Sir, is the videotape that was just played one of
8 many videos that were taken of beaches?

9 A Yes. it's one of many, many videos that was
10 taken of beaches.

11 Q And, to your knowledge, is the oil spill as a
12 result of the grounding of the Exxon Valdez the largest
13 one _____ in the United States?

14 A Yes.

15 MS. HENRY: Thank you, sir. That's all the
16 questions I had.

17 CROSS EXAMINATION

18 BY MR. MADSON:

19 Q Mr. LeBeau, was it the largest one in the world?

20 A To my knowledge no, it was not.

21 Q What other ones were larger?

22 A I believe the Amoco Guidez (PH) was larger.

23 Q Where was that?

24 A On the coast of France.

25 Q Which ship was involved in that? What tanker?

1 A The Amoco Guidez.

2 Q And where was that from?

3 A I believe that ship belonged to Amoco.

4 Q Is that an American company? American-Arabian
5 company?

6 A I'm not sure. I'm not sure.

7 Q Do you know if the captain was prosecuted for
8 that spill?

9 A (Inaudible).

10 MS. HENRY: Objection. Relevance.

11 THE COURT: Don't answer the question.

12 Sustained.

13 BY MR. MADSON: (Resuming)

14 Q Any other ones that were larger?

15 A I'm not aware of any others at the moment?

16 Q Why did you take that video?

17 A I was requested to -- to gather --

18 Q By who?

19 A By Dean Guaneli.

20 Q Who is Dean Guaneli?

21 A Dean Guaneli is with the Attorney General's
22 office.

23 Q And that's with the state of Alaska, right?

24 A Yes, that's correct.

25 Q And this was taken April 15th, was it not?

1 A That's correct.

2 Q And that's well over two weeks after the spill,
3 right?

4 A Yes, it was.

5 Q And I imagine that was taken to document the oil
6 on the beaches, to show what was there?

7 A That's correct.

8 Q Have you taken any after that?

9 A Yes, I did.

10 Q Did you bring those with you?

11 A No, I did not.

12 Q Are you going to take any this summer, this
13 spring?

14 A I probably will not be taking any. Probably
15 won't be working on the oil spill this summer.

16 Q Do you know if there are plans to take additional
17 videos this spring and summer?

18 A I am not personally aware.

19 Q Was that video taken for possible use as far as a
20 lawsuit by the state of Alaska against Exxon and Alyeska?

21 MS. HENRY: Objection. Calls for speculation or
22 hearsay.

23 MR. MADSON: If he knows, Your Honor.

24 THE COURT: Well, if the basis of how he knows is
25 somebody else told him, then that would be hearsay, and I

1 don't see how that is going to assist the finder of
2 fact _____ in any event, so I'm going to sustain the
3 objection.

4 BY MS. HENRY: (Resuming)

5 Q The oil that you were sampling, the video showed
6 you putting oil in a jar. I assume that was you, I --

7 A Yes.

8 Q Okay. You kept those samples for some purpose?

9 A Yes.

10 Q What for?

11 A Those were collected as demonstrative evidence
12 samples.

13 Q That it was, in fact, crude oil?

14 A That it was, in fact, a mixture of crude oil and
15 sea water and other amalgams.

16 Q You also answered some questions from Ms. Henry
17 regarding booming that we could see, skimmers, right?

18 A A skimmer, yes.

19 Q A skimmer and some booms.

20 A Yes.

21 Q What are booms?

22 A Booms are devices that are -- typically they're
23 -- they'll consist of a float, and -- in the upper portion
24 -- and a skirt in the bottom portion, and then the --
25 typically it will be the weight on the bottom side of the

1 skirt to hold the skirt in place.

2 There are also sorted booms, which are simply a
3 floating component of sorted material that's used to gather
4 oil off of water, or off of the land.

5 Q Are there both types employed in the video?

6 A I believe there were.

7 Q Who put them there?

8 A I don't know.

9 Q What purpose do they have, just to contain oil?

10 A To protect the beach, typically. To gather oil.

11 I --

12 Q Do you know when they were placed there?

13 A No, I do not.

14 Q Do you know what their -- somebody must have put
15 them there for a purpose; you said to protect the beach.
16 It looked like it was too late, right?

17 A Possibly they were put in place there to protect
18 other beaches so that the oil, when it was washed off the
19 beach at high tide, would not wander around and impact
20 their beaches.

21 Q And who would have -- whose purpose -- I mean,
22 whose responsibility is it to put those booms there?

23 MS. HENRY: Objection. The witness has already
24 answered he doesn't even know who put them there.

25 THE COURT: Mr. Madson?

1 BY MR. MADSON: (Resuming)

2 Q You don't know who put them there, or who's
3 responsible to put them there, to prevent oil from
4 spreading?

5 MS. HENRY: Same objection.

6 THE COURT: He's answered he doesn't know who put
7 them there. Was that what you said?

8 Do you know who put them there?

9 THE WITNESS: I don't know personally who put
10 them there.

11 THE COURT: All right.

12 BY MR. MADSON: (Resuming)

13 Q Do you know who was supposed to put them there?

14 MS. HENRY: Objection. Speculation and
15 relevance.

16 THE COURT: Sustained.

17 BY MR. MADSON: (Resuming)

18 Q What were you doing there, as a DEC
19 representative?

20 A I was there collecting demonstrative evidence
21 samples, and taking --

22 Q At the request of the Attorney General's office?

23 A The Attorney General's office, Mr. Guaneli.

24 Q And you had no knowledge at all about the
-25 different roles, including DEC, what they play in oil

1 containment or prevention or anything like that?

2 MS. HENRY: Objection. Relevance.

3 THE COURT: Sustained.

4 MR. MADSON: No other questions.

5 THE COURT: Thank you.

6 MS. HENRY: I have no other questions, Your

7 Honor.

8 THE COURT: You're excused sir.

9 (The witness was excused.)

10 THE COURT: Call your next witness.

11 (Pause)

12 Whereupon,

13 JOHN BYERS

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 you please state your full
18 name, and spell your last name?

19 THE WITNESS: My name is John Byers, B-y-e-r-s.

20 THE CLERK: And what is your current mailing
21 address?

22 THE WITNESS: My current mailing address, 222
23 West 7th Avenue, Box 17, Anchorage.

24 THE CLERK: And your current occupation, sir?

25 THE COURT: I'm a Radioman in the Coast Guard.

1 DIRECT EXAMINATION

2 BY MS. HENRY:

3 Q Sir, how long have you been in the Coast Guard?

4 A Fifteen years.

5 Q And were you recently requested to execute a
6 subpoena issued by the -- at the request of the District
7 Attorney's office?

8 A Yes, ma'am.

9 Q In fact, there were two subpoenas. Is that
10 correct?

11 A Yes, ma'am.

12 Q And what were you requested to do?

13 A I was requested to proceed to Valdez, and to make
14 some recordings off of an original tape to verify that they
15 were accurate and correct.

16 Q And what tape are we talking about?

17 A These two tapes that I have here.

18 Q Okay. The original tape, what kind of -- what
19 was this original tape?20 A The original tape was a magnasync recorder, which
21 is a 30-channel recorder, and it is commonly used to record
22 radio traffic, and that's the purpose of the tape.23 Q Now, with the recording, I assume that you record
24 at the time the traffic, radio traffic, is occurring? Is
25 that --

1 A It started and continues for 24 hours. It does
2 not stop. It is a continuous reporting. Any dead spots,
3 or anything else, would be on that tape.

4 Q And are the original tapes kept by the United
5 States Coast Guard in the ordinary course of business?

6 A Yes, they are.

7 Q And specifically, the tape that you were
8 recording off of, was that a tape that was originally
9 recorded on March 24, 1989?

10 A Yes, it was.

11 Q Now, the subpoenas that you received, were they
12 specific as to a time on the tape that you were to record?

13 A Yes, ma'am.

14 Q Now, how could you tell a time on the tape?

15 A The recording instrument itself has a display for
16 the time. You can enter in the time that you wish to go
17 to, and the machine will electronically seek that time. In
18 the course of recording onto the tape, it also records the
19 time, and that's how I was able to go to the exact times.

20 Q And there were actually two subpoenas for you to
21 record, two different times?

22 A Yes, ma'am.

23 Q And you have before you two tapes. Are those the
24 tapes that you --

25 A Yes, they are.

1 Q Now, the subpoena, the first subpoena, do you
2 recall the time that was requested that you tape the
3 conversation?

4 A Yes. If I can refer to these. The first time
5 was at 0031, minute 31, and that ran through minute 31. It
6 was actually a couple of seconds in there. It was minute
7 31 and 35 seconds through minute 31 and 57 seconds, which
8 is on the tape.

9 Q So that tape would be a conversation that
10 occurred at 31 minutes after midnight on the 24th?

11 A Yes.

12 Q And is that an accurate copy of that
13 conversation?

14 A Yes, it is.

15 Q From the original?

16 A Yes, ma'am.

17 Q And what about the second one?

18 A Also on this first tape, if I may --

19 Q Sure.

20 A -- there was also minute 38 through 39.

21 Q So it continued for --

22 A There was a gap of seven minutes on what had been
23 requested, which was blank. That was the dead time.

24 Q All right.

25 A The recording which made this is voice actuated.

1 Q All right. So maybe we'd better -- you started
2 recording at 31 minutes after midnight?

3 A Yes.

4 Q And then there was a quiet time?

5 A There was a quiet time.

6 Q Now, is that reflected on the tape, or not?

7 A No, that is not reflected on the tape.

8 Q And then another conversation begins?

9 A And then another conversation begins.

10 Q And is that on the tape?

11 A That is on the tape.

12 Q What time was that conversation?

13 A That was at minute 38 through minute 39.

14 Q Okay. Now, when you say minute 38, what --

15 A Zero zero three eight.

16 Q All right.

17 A Of the same hour.

18 Q Why don't you go ahead to the second tape?

19 A Okay.

20 The second tape, the time on that was 0911.26
21 through 0913.47.

22 Q And that would be 9:00 o'clock in the morning?

23 A Yes.

24 Q On the same day?

25 A On the same day.

1 Q The conversations on that tape, are they -- do
2 they accurately reflect the conversations on the original
3 tape?

4 A Yes, they do.

5 (Pause)

6 (State's Exhibit 120 and 121
7 were marked for
8 identification.)

9 Q I'm going to show you what has been marked as
10 Plaintiff's Exhibit Number 120 for identification first
11 and, just so the record is clear, which tape is that?

12 A I would have to -- which tape is this?

13 Q Yes. As far as the time of conversation.

14 A I would have to go through and look at the time
15 on the conversation.

16 Q Go ahead.

17 A 0031.35 through 0031.57; and 0038.47 through
18 0039.44.

19 Q All right. Go ahead.

20 I am showing you what has been marked as
21 Plaintiff's Exhibit Number 121 for identification. Which
22 tape is that?

23 A This is the 0911.26 through 0913.47.

24 (Pause)

25 MS. HENRY: Thank you, sir. That's all the

1 questions that I have.

2 MR. MADSON: I guess I can't ask him, Your
3 Honor. I don't know what it's for, so I don't know any
4 questions. Well, maybe I do. A lawyer -- it's hard for a
5 lawyer to sit here and not say anything.

6 CROSS EXAMINATION

7 BY MR. MADSON:

8 Q What did you record that on, sir? What did you
9 record these tapes, what kind of equipment?

10 A What did I use to record these?

11 Q Yeah, right.

12 A I used a Dentron cassette recorder.

13 Q A what?

14 A A Dentron?

15 Q Dentron.

16 A Cassette recorder.

17 Q How did you do that? Did you hold a microphone
18 at --

19 A No, sir.

20 Q -- _____ speaker, or what?

21 A No, sir. This is hard wired through, meaning it
22 has a connection from the speaker jack of the 30-channel
23 into the cassette player.

24 Q Is that a variable speed cassette player that you
25 use, recorder?

1 A No, not to my knowledge.

2 Q You don't know.

3 A I do not know.

4 Q Was it 110 powered, or battery-powered at the
5 time?

6 A It was 110.

7 Q And do you know what its characteristics are, its
8 performance characteristics, pitch and wow and flutter and
9 all that kind of stuff?

10 A I have no idea.

11 Q And you made it only because the District
12 Attorney's office subpoenaed you and requested you to do
13 this?

14 A Yes, sir.

15 Q So you did it?

16 A Yes, sir.

17 MR. MADSON: I have no other questions.

18 MS. HENRY: No questions, Your Honor.

19 THE COURT: You're excused.

20 (The witness was excused.)

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

23 (Pause)

24 Whereupon,

25 GEORGE K. GREINER, Jr.

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

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

6 THE WITNESS: George Kirk Greiner, Jr.,
7 G-r-e-i-n-e-r.

8 THE CLERK: And what is your current mailing
9 address?

10 THE WITNESS: 3107 Northeast 160th Street,
11 Ridgefield -- that's R-i-d-g-e -- Washington, 98642.

12 THE CLERK: And your current occupation, sir?

13 THE WITNESS: I'm a consultant.

14 DIRECT EXAMINATION

15 BY MR. COLE:

16 Q Captain Greiner, why have you been called to
17 testify in this matter?

18 A I've been called on behalf of the State to
19 identify the damage to the bottom of the tanker through a
20 series of photographs and analyze it, to do a
21 reconstruction of the track line of the Exxon Valdez after
22 it left the narrows in Prince William Sound, and also to
23 evaluate the actions after the grounding by the captain.

24 Q Where do you live right now?

25 A I live in the state of Washington, Ridgefield,

1 Washington.

2 Q Would you describe what you do for a living now?

3 A Yes, sir. I'm a marine safety consultant.

4 Actually, I do two things. I run a company called Maritime
5 and Environmental Consultants, and that is an expert
6 referral company; and I also do consulting in the marine
7 safety field.

8 Q How long have you been involved in the maritime
9 industry?

10 A The industry -- since I graduated from the Coast
11 Guard Academy in 1953.

12 Q Would you -- let's talk about your educational
13 background. Where did you attend the Coast Guard Academy
14 in 1953?

15 A The Coast Guard Academy is located in New London,
16 Connecticut.

17 Q How long a program is it?

18 A It's a four-year program.

19 Q And do you receive some type of degree?

20 A Yes, sir. I received a Bachelor of Science
21 degree.

22 Q And did you attend any schools after attending
23 the Academy?

24 A Yes, sir. I attended a number of service
25 schools, and I also attended a college -- University of

1 Puget Sound -- later on, in Washington.

2 Q I'd like to focus on a couple of these, the Navy
3 firefighting in 1954?

4 A Yes, sir.

5 Q What was that?

6 A That's a school conducted by the Navy which
7 basically teaches officers how to fight fires on vessels.

8 Q What -- did you attend a school named the Desland
9 Engineering School?

10 A Yes, sir. Desland Engineer School -- Desland
11 stands for Destroyer Atlantic, and it's a Navy school. I
12 believe it's a 16-week school preparing officers for the
13 duty of engineer officer on military ships. Engineer
14 officer is the equivalent of a chief engineer on merchant
15 ships.

16 Q When did you attend that school?

17 A I attended that school in 1955.

18 Q And after that, did you the attend the Navy
19 Damage Control School?

20 A Yes, sir, I did.

21 Q When was that?

22 A That was 1955 also, located in Philadelphia,
23 Pennsylvania.

24 Q And what was the purpose of attending that
25 school?

1 A The Desland Engineer School -- I mean, I'm sorry
2 -- the Damage Control School is a Navy school also, and
3 that is one which trains officers how to combat flooding
4 and damage to vessels. In other words, fires, flooding,
5 collision, et cetera. I guess it's what the name applies,
6 damage control; the control of damage on vessels.

7 Q What did they -- what were -- were there any
8 specific courses that they taught you in that school?

9 A Yes, sir. They taught you about vessel
10 stability. They taught you some about strength of
11 materials, the manner of repairing -- temporarily repairing
12 damage on vessels, holes in the hull or -- and bulkheads,
13 and such like that.

14 Q Did you attend a Loran school in 1956?

15 A Yes, sir. Loran stands for Long Range Ace
16 Navigation, and it's a school for prospective commanding
17 officers. It's a radio transmitting station.

18 Q Now, I notice that several of these schools are
19 Navy schools. Why were you attending Navy schools?
20 Weren't you in the Coast Guard?

21 A Yes, sir. I was in the Coast Guard. The Coast
22 Guard sends their people to Navy schools for several
23 reasons. Number one, there aren't enough people in the
24 Coast Guard to support a school, specialized school, in the
25 Coast Guard, and number two, the Coast Guard operates under

1 the Navy in time of war, so that there is a relationship.

2 Q What school, then, did you attend in 1958?

3 A I went to the Merchant Marine Safety School, then
4 located in New London, Connecticut.

5 Q Why did you go there?

6 A The Merchant Marine Safety School is the school
7 which they send officers to before they enter the marine
8 safety field, or the Merchant Marine safety field. The
9 Merchant Marine safety field is the regulation of
10 commercial shipping. But before they went into that type
11 of duty, they had to go through and successfully complete
12 that school.

13 Q And what was taught at that particular school?

14 A There's a lot taught at it. A lot of
15 regulations. Code of Federal regulations. The manner of
16 inspecting vessels -- in other words, how to apply the
17 regulations. Licensing of people to sail as officers in
18 the Merchant Marine. The investigation of casualties that
19 occurs in the Merchant Marine.

20 It basically touches the whole realm of
21 information necessary to at least start out in that field.

22 Q Investigation of casualties. Will you explain to
23 the jury what that particular area was?

24 A Yes, sir. Any time an American vessel has a
25 casualty in U.S. waters, or a -- I'm sorry, anywhere in the

1 world -- or a foreign vessel has a casualty in U.S. waters,
2 the Coast Guard investigates it. If it exceeds damage in
3 the amount of a certain amount of dollars, \$25,000.00 I
4 think it is now.

5 Also, if the vessel grounds, if there's a
6 collision, if there's injury where a person is injured over
7 72 hours, the Coast Guard is charged with an investigating
8 casualty, and this is the procedure, the teaching of the
9 procedure to use by a person that's investigating it.

10 There is a second half to the investigation, and
11 that is that, since the Coast Guard has licensed people,
12 they -- when they find negligence or misconduct, they take
13 action against the license, and the investigator would be
14 the one who took action against the license, and the
15 investigator would be the one who took action against the
16 license before an administrative law judge.

17 Q Now, does the accident training that you receive
18 include some knowledge about salvage and what's required?

19 MR. CHALOS: Objection, Your Honor. He said he
20 went to a marine safety school, not an accident school.

21 THE COURT: You've been asked the question.
22 Objection is overruled.

23 BY MR. COLE: (Resuming)

24 Q Did the area that you were taught about accidents
25 and safety, did that include any information about salvage?

1 A No, sir, it didn't.

2 Q Now, the next school that you attended is the
3 Army Instructor Training School in 1967. Is that correct?

4 A Yes, sir.

5 Q And what was that for?

6 A I was assigned as the officer in charge of the
7 Marine Safety School. That's the same school that I went
8 to nine years previously. It is now located in Yorktown,
9 Virginia. And, as such, I would be expected to teach in
10 that school, so they send you to a school to teach you how
11 to teach.

12 Q The next area that you -- or the next educational
13 program is a computer institute program. Is that correct?

14 A Yes, sir. In 1976.

15 Q And what was that for?

16 A That's just an orientation on how to use
17 computers. I was bringing them into our office in the
18 Coast Guard and I wanted to know more about them.

19 Q You received a law degree in 1977?

20 A Yes, sir.

21 Q And where was that at?

22 A University of Puget Sound.

23 Q And how many years did it take you to get that?

24 A Four years, sir.

25 Q And in 1978, you attended a United States Coast

1 Guard hazardous chemicals school. Why was that?

2 A Yes, sir. One of the duties that the Coast Guard
3 Captain of the Port has is to regulate the handling of
4 hazardous cargoes, and to clean up, or supervise the
5 cleanup, of spills of hazardous materials. That may
6 involve evacuation of areas.

7 It may not involve the Coast Guard directly in
8 the clean up. They may just oversee the spiller, and see
9 that he cleans properly. Or it may involve the Coast
10 Guard.

11 Q Now, how long were you in the Coast Guard?

12 A I retired in 1982. I graduated from the Coast
13 Guard Academy in 1953, but technically, I was in the Coast
14 Guard when I entered the Coast Guard Academy in 1949. So
15 that would make 33 years.

16 Q Would you give the jury an idea of the positions
17 that you held while you were in the Coast Guard?

18 A Yes, sir. I held a number of positions, but I'll
19 run through them. I spent three years on ships out of New
20 York, 327-foot vessels -- these were the largest ones the
21 Coast Guard had at the time. From there, I went to
22 commanding officer of the Loran Station in Cape Sarachef,
23 Alaska. That was my first tour in Alaska.

24 From there, I went down to Alameda, California,
25 where I was the base engineer, and industrial manager.

1 Then I went to my first marine safety assignment in New
2 York, starting in 1958, and running for four years.

3 From there, I came back to Alaska again in the
4 marine safety field from 1962 to 1965. From 1965 on, I
5 went back to -- until 1967, I went back to sea again,
6 aboard a Coast Guard cutter, 327-foot cutter, as the
7 engineer officer, and the ship was based in Almeida,
8 California.

9 In 1967 and 1968, I went to Yorktown, Virginia
10 and was the officer in charge and instructor at the
11 Merchant Marine Safety School. The executive officer
12 billet became vacant, and I was moved up into that, and so
13 I spent two years as executive officer of the base.

14 Then I went to Marine Inspection again, in
15 Seattle, Washington, for four years -- for five years, and
16 that's where I went to law school, or started it. From
17 there, I went to Washington, D.C., where I was executive
18 secretary of the Marine Safety Council.

19 The Marine Safety Council is the organization in
20 the Coast Guard that handles the promulgation and overview
21 of Coast Guard regulations. In other words, if a
22 regulation is to be issued by the Coast Guard, my office
23 was the one that handled it on a day-to-day basis.

24 From there, I went to commanding officer of the
25 Marine Safety Office in Portland, Oregon, and that

1 assignment involved not only Captain of the Port Authority,
2 but the officer in Charge of Marine Inspection. Officer in
3 Charge of Marine Inspection is an antiquated term, but it's
4 the senior person that is responsible for the safety of
5 inspection and licensing and investigation of marine ships,
6 merchant marine ships.

7 Q In that particular port.

8 A In that -- in that particular instance, it was
9 the state of Oregon and the southern half of the state of
10 Washington. That was the area.

11 Q Now, would you explain to the jury what the term
12 Captain of the Port is?

13 A The Captain of the Port is a term, an individual
14 has the authority to regulate shipping in a port subject to
15 the regulations. In other words, the -- his power is
16 restricted by the regulations. But basically, he can make
17 vessels move. He can require vessels not to move. He does
18 inspection of certain operations of vessels, primarily
19 while they're either anchored or at dock. The handling of
20 hazardous and dangerous cargoes within a port. These are
21 the responsibilities that he has.

22 If there is a fire or an accident, he may be the
23 one who is in charge of the Coast Guard activities, fire
24 fighting -- if the Coast Guard is involved in it; they
25 usually are. But he would oversee the safety aspect.

1 Q Would you tell the jury what your experience was
2 in the Coast Guard specifically dealing with marine
3 casualty investigations?

4 A Yes, sir. I -- when I was in New York, was the
5 first time I was involved in casualty --

6 Q When was this?

7 A -- investigation. And that basically was back in
8 1980 -- 1958 through 1962. I was assigned to the Casualty
9 Investigation Branch. We had probably ten or twelve
10 officers assigned to it. The senior officer who was in
11 charge of investigations was an attorney.

12 There was another attorney in the office; the
13 rest of us were not attorneys. And I broke in as an
14 investigator underneath them. I spent over a year in that
15 particular aspect in the New York office.

16 Q What were you doing during that time?

17 A Primarily investigating misconduct of merchant
18 seamen and when they occurred, casualties to vessels, and
19 there were several major casualties when I was there.

20 Q When you say investigating casualties of major
21 vessels, what do you mean?

22 A We want to determine what the cause was, whether
23 there was any negligence by the people involved. In most
24 cases, it's -- the watch -- the officer that's on watch on
25 the bridge, if it's a navigational problem, that could be

1 the master, and is in certain cases. It could be the
2 pilot, if there was a pilot aboard.

3 Q Did it also have to do with any problems in the
4 Coast Guard's navigational system? Would you investigate
5 things like that?

6 A There would be a person not from my office, from
7 the Navigation Office, who would go out and check to see if
8 the aids in the area were operating properly.

9 Q Well, after your three years in New York, four
10 years in New York, where did you next get experience in
11 marine casualty investigations?

12 A I came here to Alaska, to Juneau, Alaska. At
13 that time, the Juneau office was the only Marine Safety
14 office in Alaska. So we covered all of Alaska.

15 Q Would you explain what you did there?

16 A Because the office was a small office, we did
17 everything. In other words, we issued licenses, including
18 grading pilots for pilotage license in Alaska. We would
19 investigate casualties. We would inspect the vessels, the
20 Alaska ferries, other vessels that were in the area, and I
21 think I mentioned investigate casualties.

22 Q Where did you travel take you investigating
23 casualties out of Juneau?

24 A Well, most of it was in southeast Alaska. I got
25 up into the Bering Sea several times. I was at Valdez

1 several times. And basically, it would take us wherever
2 there was a commercial vessel operating that required Coast
3 Guard inspection.

4 Q And when did you complete your tour there?

5 A In Alaska? 1965.

6 Q When is the next time you were involved in a
7 marine casualty investigation with the Coast Guard?

8 A When I was the officer in charge of the school in
9 Yorktown, and that would have been 1967, I was the one who
10 taught the course in investigations. In other words, I
11 taught the other officers basically how investigations were
12 to be conducted. I think it was about that time that I
13 also wrote a book on investigations.

14 Q What was that book that you wrote?

15 A I wrote a -- I'm sorry. It wasn't. It was my
16 next tour of duty. It was when I was in Seattle.

17 It was a book of some 170 pages, I believe, that
18 was an in-house book to be used by Coast Guard personnel in
19 investigating casualties, and accident misconduct by
20 seamen.

21 Q Now, after leaving Yorktown as instructor, when
22 was the next time that you worked in the area of marine
23 casualty investigation?

24 A After leaving Yorktown, sir? Went on to
25 Seattle. In Seattle, I was there for five years, starting

1 in 1970.

2 Q What were you doing there?

3 A The first year, I was in charge of licensing. We
4 had a staff of two officers and several civilians. We
5 issued licenses and merchant mariners' documents to all
6 merchant seamen that were eligible for them.

7 The next three years, I was in charge of
8 investigations. We had a staff of probably five or six
9 officers at that time who were doing investigations, and
10 the last year, I was in charge of inspection of vessels.

11 Q Now, you retired from the Coast Guard when?

12 A 1982, May.

13 Q And did you continue to be involved in marine
14 casualty investigation after retiring from the Coast Guard.

15 A Yes, sir.

16 Q Would you tell the jury what your experience was
17 after you retired from this area?

18 A Well, I've been involved in the investigation of
19 a number of casualties, ranging from recreational boats to
20 major vessel casualties. The -- I don't have the exact
21 number, or breakdown, of the type, but I can tell you those
22 that we've -- that I've done -- of major vessels that I've
23 done reconstructions on.

24 Q Would you tell the jury that?

25 A The first acquaintance that I had with a major

1 investigation of a marine casualty was the Andrea
2 Dorea/Stockholm. Now, these were two famous ships that
3 collided north of New York.

4 The Coast Guard was not involved in it, but the
5 analysis of the course recorder was something that I became
6 interested in, and talked to the security people about it,
7 and to the authors of two books that wrote what caused the
8 casualty. Again, there was no official Coast Guard
9 involvement in that.

10 However, in New York, the Santa Rosa, a passenger
11 ship, collided with the Volcan (PH), a freighter, and later
12 the Constitution, another passenger vessel, collided with
13 the Gelanta (PH). I was involved with both of those. I
14 was not the senior investigator in them, but I was involved
15 in the reconstruction of the track lines of both vessels
16 before and up to the collision.

17 When I was stationed in Seattle, there were three
18 major collisions in the Strait of Wandafuka (PH). These
19 were all in fog, and I don't remember the names of the
20 vessels except for one. One was the American flag vessel
21 C.E. Dant. But all of them involved collision between an
22 inbound and an outbound vessel, and to a certain --
23 required a reconstruction of the track lines leading up to
24 them.

25 The next one was the grounding of the Mobile in

1 the Columbia River, which was a tanker. The Ming Winter, a
2 freighter that grounded in the Columbia River. The Tosca,
3 a foreign freighter that collided with a fishing vessel and
4 sank it off of northern California in the mid-1986s.

5 The Arco Anchorage, which was a tanker that went
6 aground in December of 1985 in Port Angelus, Washington,
7 and there was a significant spill of oil in that case.
8 That vessel was operated under a pilot at the time, and a
9 reconstruction was done, and a hearing held, at which I
10 testified.

11 I have the current one, and there's one other
12 that I'm just starting.

13 Q Now, included in these marine casualty
14 investigations, have you been asked -- have you had to look
15 at damage that was sustained by the vessels involved in any
16 of these incidents?

17 A Yes, sir. One of the jobs in the Coast Guard, of
18 course, is the overseeing the repair of vessels, so
19 whenever a vessel is -- sustains damage, if it is an

20 A flag vessel, the Coast Guard inspector will be
21 involved. The investigator and the inspector may work hand
22 in hand, they may not work hand in hand. But both of them,
23 and I've had both jobs, will look at the damage and the
24 inspector isn't particularly interested in what caused it,
25 or an analysis of it, but he does it anyway, for his own

1 information. The investigator is, of course, and that is
2 part of his investigation, is analyzing the damage -- when
3 it's in dry dock.

4 Q And have you been also involved in the salvage
5 operations that have gone on after tankers have been
6 involved in accidents or collisions?

7 A Not really, no.

8 Q Now, would you tell the jury, have you been asked
9 to consult in your professional -- in your consulting work
10 -- what type of consulting work do you do now?

11 A Marine safety.

12 Q Have you been asked to testify in the past?

13 A Yes, sir.

14 Q Can you give the jury an idea of the number of
15 times that you've been required to testify (inaudible)? An
16 approximation?

17 A Okay. In all the cases that I've been involved
18 with since I retired, I might have testified in between 30
19 and 35 cases.

20 Q And prior to that, were you required to testify
21 when you were in the Coast Guard?

22 A No, sir. Coast Guard personnel very infrequently
23 testify. It generally is a fact witness. I can only
24 remember once when I was in the Coast Guard that I
25 testified, and it was in Juneau, Alaska.

1 Q The work that you have done as consulting, have
2 you done primarily Plaintiff work, or primarily Defendant
3 work, or what?

4 A I've done about 60 percent Plaintiff work, which
5 includes several criminal cases -- I'm sorry. 60 percent
6 Plaintiff and 35 percent Defendant. That doesn't add up to
7 a hundred percent. 5 percent is nonlitigation work, and of
8 the defense cases I've represented, I've been involved in
9 one criminal case.

10 Q Have you been, since being involved in your
11 private consulting firm, have you been qualified as an
12 expert in other court jurisdictions?

13 A Yes, sir.

14 Q Would you give the jury an idea of how many times
15 that has occurred?

16 A It occurs every time that you appear as an
17 expert. Marine cases are primarily held in federal courts,
18 so the federal courts that I've been qualified as an expert
19 are in Anchorage, Seattle, Portland, San Francisco and
20 Hawaii. And I don't think -- I think that's all the
21 federal courts.

22 Q You have -- you indicated you were asked to
23 provide services for the state of Alaska in this matter.
24 When were you asked to do this?

25 A I don't remember the precise date. I remember it

1 was within a few days after the Exxon Valdez went aground.
2 It would have been late March.

3 Q What were you asked to do at that time?

4 A I was asked to come up to Alaska and board the
5 vessel, assist in the investigation with the view of doing
6 a reconstruction of the track line of the vessel.

7 Q Are you being paid for your services?

8 A Yes, sir.

9 Q Would you tell the jury what that contract
10 (inaudible)?

11 A That's a contract to be paid at the rate of
12 \$95.00 an hour, plus expenses.

13 THE COURT: Mr. Cole, this might be a good time
14 for us to take a break, before you get into the substantive
15 testimony.

16 MR. COLE: Yes.

17 THE COURT: Okay. We'll take our next break,
18 ladies and gentlemen. Remember my instructions not to
19 discuss the matter, or form or express any opinions. Thank
20 you.

21 (Whereupon, the jury leaves the courtroom.)

22 THE CLERK: Please rise. This Court stands in
23 recess subject to call.

24 (A recess was taken.)

25 (State's Exhibits 122 through

1 150 were marked for
2 identification.)

3 THE COURT: Before we get the jury in here, Mr.
4 Russo kindly complied with the Court's order and gave me a
5 copy of some documents. One is a letter to Mr. Russo from
6 George Patkin (PH) with an attachment. Two numbered
7 paragraphs on and another attachment, that indicates
8 there's recognition of low-level alcohol intoxication from
9 speech signal. A two-page document.

10 I reviewed that in chambers. I told Mr. Russo
11 Mr. Madson _____ document that I would normally
12 provide over to the other side and Mr. Madson -- I said,
13 however, if you object, we can put it on the record. Mr.
14 Madson indicated some sort of objection to me turning this
15 over to Mr. Cole, so you can put that on the record at this
16 time, Mr. Madson.

17 MR. MADSON: Well, first of all, Your Honor, Rule
18 16 says -- relates only to reports from experts, which may
19 be disclosed to the prosecution upon order of the Court.
20 This, first of all, is not a report.

21 Secondly, it's from experts that you intend to
22 use at trial. We don't know if we need to use him or not.
23 Since he was retained and consulted only because the State
24 said we want -- they intended to rely upon, or use experts
25 in this unknown big field of recognition of intoxication by

1 spectogram.

2 So as a result, we contacted him. The letter he
3 wrote back, the one the Court has there, is in response to
4 Mr. Russo's conversations with him in which he asked him
5 opinions and also whether or not he could do, or could not
6 do, certain things. That's certainly within the -- the
7 scope of the attorney privilege. It's a work product. It
8 isn't a report.

9 At that time, he said, "Here's my fees. Here's
10 basically what I think I can do." He hasn't done it. We
11 don't know if it can be done, and we don't even know if we
12 need to -- we intend to use him or not. He is a backup in
13 case the Court decides to go with a Fry hearing, or with a
14 hearing on the merits on this.

15 So it doesn't come at all within Rule 16.

16 THE COURT: All right. This is marked as Court's
17 Exhibit 5?

18 THE CLERK: Yes, sir.

19 (Court's Exhibit 5 was marked
20 for identification.)

21 THE COURT: Okay. We've marked it for
22 identification for the record, and we'll keep it as a part
23 of the record, as Court's Exhibit 5.

24 And your objection is noted. Mr. Cole, you can
25 approach the bench. I'm overruling the objection. And if

1 we do end up having a Fry hearing on this, this will be
2 helpful for everybody to have in advance of the Fry
3 hearing. It will prevent any unnecessary delays on the Fry
4 hearing, too.

5 MR. MADSON: Then Your Honor, I think the same
6 ruling should apply to the State, and we should be entitled
7 to every bit of correspondence, phone notes and everything
8 else that they've had with any expert, whether or not they
9 intend to call him or not.

10 THE COURT: Your request is denied.

11 Are we ready now with the jury?

12 MR. COLE: Judge, I just wanted to mention that
13 there's been a stipulation reached between the parties, and
14 I'll approach the Court. Just as to business records, and
15 the information contained in this package is business
16 records.

17 THE COURT: Should we have this marked as one
18 exhibit, then? State's exhibit?

19 MR. COLE: Well, actually, it says three exhibits
20 there.

21 THE COURT: Have they been marked?

22 MR. COLE: No they have not.

23 THE COURT: Okay. What have been the next three
24 numbers in order?

25 THE CLERK: (Inaudible) 151, 152 and 153.

1 THE COURT: Is there a stipulation as to the
2 admissibility of these documents, 151, two and three as
3 business records.

4 MR. MADSON: Not admissibility, Your Honor. Just
5 that they're business records.

6 THE COURT: Okay. So the hearsay objection is --

7 MR. MADSON: That's right.

8 THE COURT: -- is overcome.

9 MR. MADSON: They are business records, and we
10 have so stipulated.

11 THE COURT: Okay. So we don't have a hearsay
12 objection. There may be a relevancy objection.

13 MR. MADSON: That's correct, or other objections.

14 THE COURT: Or other objections. Okay.

15 (State's Exhibits 151, 152
16 and 153 were marked for
17 identification.)

18 THE COURT: Are we ready now with the jury?

19 MR. COLE: Yes. We would just like to take the
20 data up at some point. We don't have to do it right now.
21 We're ready to go.

22 THE COURT: Okay. Just so, Mr. Madson, you
23 understand my ruling, I've ordered the State to comply with
24 criminal rule 16. If you have any specific examples where
25 they are not complying if you will bring it to my

1 attention, I will issue some remedial orders. Your broad
2 request, every letter, note, conversation, things like
3 that, will be in general denied, but you have specific
4 requests in the future, please bring them to my attention,
5 and I will address them as they come up. But broad
6 requests like that will be -- will be denied.

7 MR. MADSON: Well, specifically, all
8 correspondence, whether the report or not. That's what our
9 letter as, and I think they must have some in their files,
10 too.

11 THE COURT: Mr. Cole, let's address that now.
12 There's -- this witness, now, Mr. Greiner, has been going
13 over a -- it looks like a vitae of some sort of his
14 credentials. Did you have that available to you before
15 this witness was called?

16 MR. COLE: I did, and I provided copies of all
17 the curriculum vitae of the witnesses that we received, and
18 that was given to them when we gave them copies -- notice
19 of our expert witnesses.

20 THE COURT: Okay. All witnesses that you intend
21 on calling, your expert witnesses, you understand that
22 you're under the order of the rule in this court to produce
23 any summaries, letters, notes of conversations that reflect
24 what the witness would testify to, any documentation the
25 witness has provided you, including any publications that a

1 witness has created, any books he's written, any --
2 anything he's provided you that would go to his credentials
3 as an expert. So you understand that?

4 MR. COLE: I have one that I received last night
5 that is a letter from Captain Beevers, and I'll provide
6 that today.

7 THE COURT: Okay. Very well.

8 Let's bring the jury in.

9 (Whereupon, the jury enters the courtroom.)

10 THE COURT: Mr. Chalos, these are extra copies --
11 I don't need these -- of the witness, proposed witness
12 Patcom (PH). Thanks.

13 (Pause)

14 Thank you, ladies and gentlemen. You may resume,
15 Mr. Cole.

16 BY MR. COLE: (Resuming)

17 Q Captain Greiner, what -- after being hired by the
18 state of Alaska in this matter, what evidence have you
19 reviewed prior to coming into court today?

20 A I've reviewed a large number of things. I have a
21 table of contents of information that was sent to me by
22 your office. It involves the NTSB transcripts, their
23 exhibits, with the exception that some of the exhibits were
24 not enclosed, and they were listed as not available.

25 Certain trooper's statements, certain statements

1 taken by the Coast Guard.

2 I've gotten vessel records, maneuvering data off
3 of the bridge, bell log, bell logger, course recorder, log
4 books. I don't know how much detail you want me to go
5 into.

6 Q Fine.

7 MR. CHALOS: Judge, could we approach the bench a
8 second?

9 THE COURT: All right.

10 (The following was had at the bench:)

11 MR. CHALOS: Judge _____ witness is
12 referring to (inaudible).

13 THE COURT: How do you know if you haven't seen
14 it?

15 MR. CHALOS: _____ particular list that he's
16 referring to.

17 (Inaudible remarks)

18 THE COURT: Does he -- has he been given things
19 by the State that have not been provided to the Defendant?

20 MR. COLE: (Inaudible).

21 THE COURT: (Inaudible) cross-examination I will
22 let you (inaudible).

23 (The following was had in open court:)

24 BY MR. COLE: (Resuming)

25 Q In addition to this information, did you visit

1 the Exxon Valdez at any time?

2 A Yes, sir. I visited it three times.

3 Q Would you tell the jury when you visited the
4 Exxon Valdez?

5 A The first time, I believe it was the 2nd of
6 April. The Exxon Valdez at that time was still on Bligh
7 Reef. The second time -- I believe it was in June. I
8 don't have a specific date. At that time, the vessel was
9 at anchor in a bay at Naked Island. And the third time was
10 in September when the vessel was in dry dock, and that was
11 in San Diego.

12 Q Why did you go to the Exxon Valdez on the 2nd,
13 '89? March, April 2nd?

14 A I went there in company with some of the -- with
15 an attorney -- I think it was Trooper Fox. It was one of
16 the troopers. We went there to obtain records from the
17 vessel under a subpoena. And to examine the vessel in
18 general, just get a general feel for the vessel.

19 Q And in June of 1989, why did you go to the vessel
20 at that time?

21 A We did a test on the rudder. I was interested in
22 how the rudder behaved and specifically the steering
23 console, whether, for instance, the -- if it was in
24 automatic pilot, would an alarm sound, or would the rudder
25 turn if he turned the wheel? And that was the primary

1 reason. In both cases, we oriented ourselves with regard
2 to the equipment on the bridge.

3 Q And the third time you visited the Exxon Valdez,
4 that was in dry dock?

5 A Yes, sir. That was down in San Diego on the
6 grading dock, and we took photographs. Hugh Ackroyd, a
7 photographer from my area and I, went down and, in company
8 with Bill Milwee, an attorney from your office, an attorney
9 representing Exxon, Bill Vorhus -- I think that was all of
10 us that were there, we inspected the bottom, looked at it,
11 analyzed it, and photographed it.

12 Q Would you explain how a vessel the size of the
13 Exxon Valdez gets placed in dry dock?

14 A In this particular dock, which is a grading dock,
15 there -- there are basically two types of dry dock. One is
16 a floating dry dock, where they flood the dock and sink it,
17 and then put the vessel on it.

18 In a grading dock is a dock that is built into
19 the earth. In other words, it doesn't go up and down. The
20 gates are closed. They pump it -- they fill it with water,
21 they open the gates, they move the vessel in, and close the
22 gate, and then pump the water out, as opposed to a floating
23 dry dock, where they pump the water, not out of the water
24 surrounding the vessel, but out of the dock itself, and it
25 fills up and it lifts the vessel with it.

1 Q Now, I'd like to talk about the damage that you
2 observed to the Exxon Valdez. Would you tell the jury the
3 damage that was done to the -- well, let's begin this way.

4 (Pause)

5 (State's Exhibit 154 was
6 marked for identification.)

7 BY MR. COLE: (Resuming)

8 Q I'm showing you a model. Do you recognize what's
9 been identified as Plaintiff's Exhibit Number 154?

10 A Yes, sir. That appears to be a model of the
11 Exxon Valdez.

12 Q And as you saw it, is that a fair and accurate
13 representation, to a smaller scale, of the Exxon Valdez?

14 A Yes, sir. It's missing some of the smaller
15 things, like rails and things like that, and -- but it
16 appears, to my recollection, and I compared it with a
17 photograph earlier. It appears to be a fair
18 representation.

19 MR. COLE: I would move the admission of what's
20 been identified as Plaintiff's Exhibit Number 154.

21 MR. CHALOS: Your Honor, may I have a short voir
22 dire on this?

23 THE COURT: All right.

24 VOIR DIRE EXAMINATION

25 BY MR. CHALOS:

1 Q Mr. Greiner, you say that this is -- represents a
2 fair and accurate model of the Exxon Valdez?

3 A As I recall it, yes, sir.

4 Q As you look on the deck, it omits, does it not,
5 the pressure vacuum valves?

6 A Yes, sir.

7 Q And it omits the IG system valves?

8 A The valves themselves, yes, it does. The IG
9 system is here, but not the valves.

10 Q And it omits the rudder _____?

11 A No, sir. The rudder's here.

12 Q Oh, sorry. It was turned the wrong way.

13 As a matter of fact, from where I'm standing
14 here, I don't see any of the inert gas system on there at
15 all. Is that true?

16 A I believe that this is part of the inert gas
17 system right here, on the righthand side of the line,
18 but --

19 Q You're not sure?

20 A I'm not sure whether it has that much detail. As
21 I indicated, some of the detail is missing, but what is
22 here is a fair representation.

23 Q Well, what you're saying is it's a fair
24 representation of the hull, really, not -- not the vessel
25 itself?

1 A I -- no, I'm not. I mean, there is a
2 superstructure, and there is piping on deck, and there are
3 winches and things like that that are -- they're manifolds
4 and piping. Now, what I said is that everything isn't
5 there, and I gave you an example that the rails weren't
6 there and, in fact, all -- you've pointed out some other
7 things that aren't there. That's true. Everything isn't
8 there.

9 MR. CHALOS: Now, Judge, the pressure vacuum
10 valves and the inert gas system are indeed, and have been,
11 important elements of this case. I would think that any
12 model that omits them being represented as being a fair and
13 accurate model of the ship would not be accurate and, for
14 that reason, I would ask that it not be admitted into
15 evidence as a fair and accurate representation of the
16 vessel.

17 THE COURT: I think you've pointed out some of
18 the absences, and that's made clear. You can argue that
19 effect. I'm going to overrule your objection. The model
20 comes in.

21 (State's Exhibit 154 was
22 received in evidence.)

23 DIRECT EXAMINATION -- Resumed

24 BY MR. COLE:

25 Q Now, would you point out for the jury where the

1 center cargo tanks are on the bottom of this vessel?

2 A I'm not sure what you mean by center cargo tanks,
3 because -- you're talking about the longitudinal ones?

4 Q Yes.

5 A Yes. Okay. I'll do it this way.

6 Q Sure.

7 A The center tanks are down the center of the
8 vessel. Basically, there are three tanks across. You have
9 the center tanks, port tanks and the starboard tanks.

10 Q And which one is the starboard side, and which
11 one are the port?

12 A The starboard side is the right side. The port
13 side is the left side. Port and left have the same number
14 of letters in them and that's how I remembered it when I
15 started.

16 Q Now, would you describe for the jury the damage
17 that you observed through the center cargo area, the center
18 line of the vessel?

19 MR. CHALOS: Your Honor, I'm going to object to
20 the word "damage," because there's been evidence that some
21 of this -- some of the plating was cut while the vessel was
22 en route to San Diego. I wouldn't consider that to be
23 damage. I think the more proper question is, just have him
24 describe what he saw rather than characterize it as damage.

25 THE COURT: Mr. Cole.

1 MR. CHALOS: Damage just means damage, Judge. I
2 don't see anything improper by using that language. It's
3 damage to the bottom of the vessel.

4 THE COURT: Will you be able to distinguish
5 between damage that may have arisen as a result of the
6 grounding, and damage which arose as a result of repairs?

7 THE WITNESS: No, sir.

8 THE COURT: Okay. I'll let you cross-examine the
9 witness on that. I'm going to let the witness testify as
10 to what he saw.

11 BY MR. COLE: (Resuming)

12 Q What did you see down the center -- the center
13 line of the vessel?

14 A Basically, this being the front of the bow, the
15 damage started just a little to the left of the bow and
16 went down through the center line and diagonal, and ended
17 somewhere in this area here. I'd like to explain that from
18 here aft, by the superstructure, after you have engineering
19 compartments and such like that, the tanks end at this area
20 here, and I'm talking about forward of the house.

21 There's a pump room in there, but, for all
22 intents and purposes, this is all tanks, and this is
23 machinery or living area in here.

24 The damage ended on the starboard side prior to
25 reaching the pump room, which is immediately forward of the

1 engine room.

2 Q Now, you can set that down there.

3 I'm showing you what's been marked for
4 identification as Plaintiff's Exhibit Number Number 103.
5 Do you recognize that diagram?

6 A Yes, sir. I do.

7 Q And what is that a diagram of?

8 Q That is a diagram of the portion of the Exxon
9 Valdez forward of the engine room. In other words, the
10 portion from here, forward. And I'm pointing to the area
11 of the Exhibit 154, which is where the superstructure, the
12 forward part of the superstructure.

13 A And there are numerous lines running vertically
14 across this diagram. What are those?

15 A Those are frames.

16 Q What's a frame?

17 A These are structural members. In other words,
18 the vessel is made up of planks and structural members.
19 It's a structural member that runs transfers or from side
20 to side on the vessel. They're also some longitudinal,
21 which means they run the length of the vessel.

22 Q And there is certain indications of squiggly
23 lines and such lettering that's on this. What is that?

24 A These are the indications of damage placed on
25 them for the salvage crew. They came from divers. In

1 other words, it was information that was acquired from
2 divers during the salvage operation. And the drawing
3 itself was obtained from the salvage master, Mickey Leitz
4 (PH).

5 Q And did the damage that you see drawn on this
6 correspond with the damage that you observed when you
7 looked at the Exxon Valdez at dry dock?

8 A The damage in dry dock is probably more extensive
9 than is on this exhibit. Part of that is because
10 additional plates were missing. Part of it is because this
11 was done as an underwater survey, and there are things that
12 divers just don't pick up.

13 Q But to the extent that it notes the damage, does
14 that fairly and accurately represent what you saw?

15 A Yes, sir.

16 Q Now, there are a number of numbers with arrows
17 placed across this damage diagram. What are those?

18 A These are numbers that I placed on there that
19 represent the photograph that was taken at that place. In
20 other words, there's a two digit -- there's a number, a
21 dash and another number. The first number is the roll of
22 the film. The second number is the negative of the film.
23 The arrow is the direction the camera was facing at that
24 point.

25 Q And do those numbers correspond to pictures that

1 you've brought into court here today?

2 A Yes, sir. They do.

3 Q How do they correspond to those pictures?

4 A The photograph that has the same number on the
5 back of it as is shown on Exhibit 103 is the photograph
6 that was taken where the number appears on Exhibit 103. In
7 other words, the back of the photograph will have 8-10 on
8 it, and if you look at Exhibit 103, you will find 8-10, and
9 that's where that photograph was taken.

10 Q And, at the bottom of the diagram, there are
11 indications of damage that was done to the starboard side.
12 Would you explain what that was?

13 A The starboard side sustained substantial damage
14 as the result of the tide going out. In other words, when
15 the tide went out, and the vessel sat heavier on it, it --
16 it squashed, basically. And this is illustrative of the
17 damage that was noted in the very righthand side of the
18 vessel, the starboard side of the vessel.

19 Q And was that damage observed by you when you
20 inspected the Exxon Valdez in dry dock?

21 A Yes, sir. It was.

22 MR. COLE: Your Honor, I would move for the
23 admission of what's been identified as Plaintiff's Exhibit
24 Number 103.

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

1 dire on this?

2 THE COURT: Short, yes.

3 VOIR DIRE EXAMINATION

4 BY MR. CHALOS:

5 Q Mr. Greiner, you say that when you viewed the
6 ship down in San Diego, that the damage you observed was
7 more extensive than the damage that's shown in this
8 diagram?

9 A That's correct.

10 Q Because there had been plates cut away?

11 A Yes, sir.

12 Q And you didn't prepare this particular diagram?

13 A I didn't prepare the diagram itself. I believe
14 Mr. Hudson, who's sitting in the courtroom, prepared --

15 Q No. My question was, you didn't prepare it?

16 A I prepared the numbers on it. Not the diagram
17 itself.

18 Q So you don't know if that diagram accurately
19 reflects the condition of the vessel at the time that the
20 diagram was made?

21 A No, sir As I indicated, it probably didn't,
22 because everything -- all the damage couldn't have been
23 picked up and put on there. It's a fair representation on
24 it, but it isn't down to the little engine --

25 Q But you don't have any personal knowledge of

1 whether this diagram represents the condition of the vessel
2 at that time?

3 A You're correct. I don't.

4 MR. CHALOS: Your Honor, I don't think that this
5 witness can attest to the accuracy of this diagram. I move
6 that it be kept out.

7 THE COURT: Objection overruled. It's admitted.
8 There's sufficient foundation for its admission.

9 (State's Exhibit 103 was
10 received in evidence.)

11 BY MR. COLE: (Resuming)

12 Q Now if you wouldn't mind picking up that pointer
13 right there --

14 MR. CHALOS: Your Honor, we ask that it be moved
15 back, so we can see it as well.

16 THE COURT: If you move that TV screen out of the
17 way, _____ back and forth between counsel table, too.
18 Can you see it there, Mr. Chalos?

19 MR. CHALOS: Yes, I can see it now.

20 THE COURT: Would counsel approach the bench,
21 please?

22 (The following was had at the bench:)

23 THE COURT: Mr. Chalos, I recognize that neither
24 one of you are going to agree with my rulings all the
25 time. That's part of the way this is played. However,

1 it's very unprofessional for you to turn around and you and
2 Mr. Russo engage in conduct that expresses your displeasure
3 with my ruling. I've noticed that several times. I don't
4 want to bring it up in front of the jury, but it's not
5 necessary.

6 MR. CHALOS: All right.

7 THE COURT: Okay, sir.

8 (Inaudible remarks)

9 (The following was had in open court:)

10 BY MR. COLE: (Resuming)

11 Q Now, Captain Greiner, can you indicate on this
12 diagram where the bow is, and where the _____ is?

13 A Yes, sir. This is the bow, the front end of the
14 vessel, and the stern, the end of the vessel, is not shown
15 on here. If you remember, I indicated that this part here
16 represented this part of the vessel here, so the diagram
17 shows the portion of the vessel forward, and I've been
18 referring to Exhibit 154.

19 Q Would you show the jury where the forepeak of
20 this vessel is?

21 A Yes, sir. It's right here.

22 Q And which side is the starboard side and which
23 side is the port side?

24 A The starboard side, or the right side, is down.
25 The port side is up. You're basically looking down on the

1 vessel, like this.

2 Q Now, would you point out to the jury where the
3 damage that was done to the center line began?

4 A Damages to the center line began both to the left
5 and right, on the port and starboard, of the center line,
6 right in this area here. The bow, of course -- it's right
7 here. Just right in the forepeak area.

8 Q And where did it go from there?

9 A It moves aft, slightly diagonal across the
10 vessel. In other words, let me lay my pointer down as to
11 the center line of the damage that I'm now describing, and
12 that's -- that basically is it. You can see, it starts
13 center, on the center line, but a little to the left, as
14 well as to the right, and it ends all on the starboard side
15 aft.

16 Q Now, would you describe -- is there a way that
17 you can tell that all of that damage was done -- is there
18 any indication that that type of damage was done in a
19 continuous period of time? Or, you know, at the same time?

20 A The -- let me characterize the damage. The
21 damage was done by running over a very solid object,
22 assumed to be a rock, or rocks, that started here, moved
23 aft, and passed behind the vessel. In other words, the
24 object, or objects, that made this tearing of the bottom of
25 the hull, ended up behind the vessel, before it was finally

1 stopped.

2 Q And if a person was looking in this -- stand over
3 here -- in this area right in here, on the bottom of the
4 vessel, what -- what -- would you describe what you would
5 see going down the vessel?

6 A In this area here, if you're standing just
7 forward of the vessel, and you're looking aft, basically
8 you see what -- I guess I can describe it as a tunneling
9 effect. In other words, you can see that the damage,
10 looking in this direction, and looking aft, that the damage
11 is higher in the center than it is on either side.

12 Q Would you step up to the chart, to the board, and
13 draw a picture of what the -- an outline -- (inaudible).

14 A Yes, sir. I'm getting trapped here.

15 (Pause)

16 Q Just describe for them that tunnel effect.

17 A This is looking from the bow, the fore part of
18 the ship, aft. And the damage appeared in this pattern.
19 Obviously, it was torn and such, but there seemed -- you
20 could look down there, and you see a tunnel. Not a high
21 tunnel, but a tunnel effect, to indicate where the damage,
22 or the rock, had passed -- actually, it's the reverse. The
23 rock stood still -- where the vessel passed over the rock.

24 Q Now, what damage did you observe at the -- toward
25 the starboard end, toward the stern, at this end?

1 A There was score marks running fore and aft in the
2 afterpart down here. There were -- just forward to that,
3 there was -- the hull was torn, the plates of the hull were
4 torn, but at the very end, it was scratch marks from the
5 rock.

6 Q What does scored mean?

7 A Scored means basically when an impervious
8 material is -- has a ridge in it that's caused by another
9 object.

10 MR. COLE: Judge, I'm going to ask at this time
11 if we could move it a little bit further. I'm going to be
12 using these pictures to show the damage that's set out in
13 this diagram.

14 THE COURT: Assuming they're going into evidence,
15 that's okay.

16 MR. COLE: We'll go through that right now.

17 (Pause)

18 BY MR. COLE: (Resuming)

19 Q Captain Greiner, I'm showing you what's been
20 marked for identification as Plaintiff's Exhibit Number
21 133. Do you recognize that photograph?

22 (Pause)

23 Do you recognize that?

24 A Yes, sir. I recognize the photograph.

25 Q What is that a photograph of?

1 A This is a photograph of the Exxon Valdez, a
2 portion of it.

3 Q Where is this photograph taken?

4 A The photograph is taken -- let me look at the
5 number on the back of it again -- is taken aft, looking
6 forward. If I might suggest, I think when the -- I think
7 that when the tags were put on them, they were put in the
8 reverse order from what I had them before, so that --

9 (Pause)

10 Q I'm showing you what's been marked for
11 identification as Plaintiff's Exhibit Number 125. Do you
12 recognize that?

13 A Yes, sir.

14 Q And what is that a diagram of?

15 A That's a photograph of the Exxon Valdez forward
16 looking aft.

17 Q Is that an accurate representation of the Exxon
18 Valdez in that particular point, as you observed it?

19 A Yes, sir. It is.

20 Q Now, I'm showing you what's been marked for
21 identification as Plaintiff's Exhibit Number 126. Do you
22 recognize that photograph?

23 A Yes, sir, I do.

24 Q And what is that a photograph of?

25 A It's a photograph of the Exxon Valdez, the bottom

1 of it, the forward section, and it's photographed on 9-7.

2 Q And where is that taken?

3 A 9-7 is taken right on the center line, right
4 here.

5 Q Does that photograph accurately represent what
6 you observed when you saw the Exxon Valdez in dry dock?

7 A Yes sir. It does.

8 Q I'm showing you what's been marked for
9 identification as Plaintiff's Exhibit Number 128. Do you
10 recognize that?

11 A Yes, sir, I do.

12 Q What is that a photograph of?

13 A A different portion of the bottom of the Exxon
14 Valdez.

15 Q Which portion of that was that?

16 A This is -- sorry. This is photograph 7-27, which
17 was taken here, looking aft.

18 Q Does that accurately reflect the damage that you
19 observed when you were at that point?

20 A Yes, sir, it does.

21 Q I'm showing you what's been marked for
22 identification as Plaintiff's Exhibit Number 127. Do you
23 recognize that?

24 A Yes, sir, I do.

25 Q And what's that a photograph of?

1 A The bottom of the Exxon Valdez.

2 Q And where is that photograph taken?

3 A That photograph was taken at this location right
4 here, looking aft.

5 (TAPE CHANGED TO C-3640)

6 Q And does that accurately reflect the picture that
7 you observed at that particular point that day?

8 A Yes, sir, it does.

9 Q I'm showing you what's been marked for
10 identification as Plaintiff's Exhibit Number 129. Do you
11 recognize that photograph?

12 A Yes, sir.

13 Q What is that a photograph of?

14 A That's a photograph of the Exxon Valdez, and I
15 happen to be in the photograph.

16 Q Does -- where was that photograph taken?

17 A That was taken at this location here, which is
18 just to the right of the center line in number three center
19 tank.

20 Q Does that accurately reflect the -- what you saw
21 that day at that particular point?

22 A Yes, sir, it does.

23 Q I'm showing you what's been marked for
24 identification as Plaintiff's Exhibit Number 130. Do you
25 recognize that photograph?

1 A Yes, sir. I do.

2 Q What is that a photograph of?

3 A That's a photograph of the Exxon -- of the bottom
4 of the Exxon Valdez.

5 Q And where was that taken?

6 A That was taken right here, facing aft.

7 Q And is there an individual in that picture?

8 A Yes, sir. There is.

9 Q Who is that individual?

10 A That's the attorney for Exxon.

11 Q I'm showing you what -- does that picture
12 accurately reflect what you observed there?

13 A Yes, sir, it does.

14 Q I'm showing you what's been marked for
15 identification as Plaintiff's Exhibit Number 131. Do you
16 recognize that exhibit?

17 A Yes, sir, I do.

18 Q What's that a photograph of?

19 A The bottom of the Exxon Valdez.

20 Q And would you indicate to the jury where that
21 photograph was taken?

22 A That photograph was taken right here, just about
23 on the center line, and it was taken facing -- facing aft.

24 Q Does that accurately represent the image that you
25 observed when you were at that place?

1 A Yes, sir. It does.

2 Q I'm showing you what's been marked for
3 identification as Plaintiff's Exhibit Number 132. Do you
4 recognize that?

5 A Yes, sir, I do. It's a photograph of the Exxon
6 Valdez bottom.

7 Q And where was that photograph taken?

8 A That was taken right here, and again, it's facing
9 aft.

10 Q And does that accurately reflect the damage that
11 you observed when you were in that position?

12 A Yes, sir, it does.

13 Q Now, finally, showing you what has been
14 identified as Plaintiff's Exhibit Number 133, do you
15 recognize that photograph?

16 A Yes, sir, I do.

17 Q And what's that a photograph of?

18 A That's a photograph of the bottom of the Exxon
19 Valdez. It's taken at this position here, and it's facing
20 forward. Most of the photographs are facing aft. This
21 one's facing forward. And it --

22 Q Does that fairly and accurately represent the
23 scene that you saw when you were at that particular point?

24 A Yes, sir, it does.

25 (Pause)

1 Q Now, photographs 125 through 133 that we've just
2 discussed, are those photographs that were taken by you?

3 A No, sir. They were taken in my presence, but
4 they weren't taken by me.

5 Q And they were taken in San Diego when you were
6 down at dry -- down visiting the Exxon Valdez at dry dock?

7 A Yes, sir. They were.

8 (Pause)

9 Q Now, I'm showing you what's been marked for
10 identification as Plaintiff's Exhibit Number 134. Do you
11 recognize that?

12 A Yes, sir, I do.

13 Q What is that a photograph of?

14 A That is a photograph of the bottom of the Exxon
15 Valdez.

16 Q And where was that photograph taken?

17 A This photograph was taken right here, at this
18 location, which is to the right of the center line, looking
19 aft -- up in the bow area.

20 Q And does that -- was that photograph taken in San
21 Diego when you were there?

22 A Yes, sir. I was present.

23 Q And does that accurately depict what you observed
24 when you were in that position?

25 A Yes, sir.

1 Q Now, I'm showing you what's been marked for
2 identification as Plaintiff's Exhibit Number 135. Do you
3 recognize that photograph?

4 A Yes, sir. This is a photograph of the bottom of
5 the Exxon Valdez, and it was taken at this location here.
6 In this particular instance, you'll notice that the arrow
7 faces at about the angle shown by my pointer. It's not
8 facing aft.

9 Q Is that a -- was that photograph taken while you
10 were in San Diego?

11 A Yes, sir.

12 Q And does it accurately reflect the damage that
13 you observed when you were in that position?

14 A Yes, sir.

15 Q Now, I'm showing you what's been marked for
16 identification as Plaintiff's Exhibit Number 136. Do you
17 recognize that photograph?

18 A Yes, sir. I recognize this as a photograph that
19 was taken in my presence when I was in San Diego, and it
20 was taken at this location, facing aft.

21 Q And does that accurately reflect what you
22 observed at that time?

23 A Yes, sir, it does.

24 Q While in San Diego?

25 A Yes, sir, it does.

1 Q Now, I'm showing you what's been marked for
2 identification as Plaintiff's Exhibit Number 137. Do you
3 recognize that document?

4 A Yes, sir. It was a photograph taken in my
5 presence of the bottom of the Exxon Valdez, and it was
6 taken at this location, facing aft.

7 Q And was -- is that accurately reflect what you
8 observed at that point?

9 A Yes, sir, it is.

10 Q I'm showing you what's been marked for
11 identification as Plaintiff's Exhibit Number 138. Do you
12 recognize that photograph?

13 A Yes, sir, I do. It's a photograph that was taken
14 in my presence of the bottom of the Exxon Valdez, and it
15 was taken at this location right here, facing aft.

16 Q And does that accurately represent the damage
17 that you observed when you were in that position?

18 A Yes, sir, it does.

19 Q I'm showing you what's been marked for
20 identification as Plaintiff's Exhibit Number 139. Do you
21 recognize that photograph?

22 A Yes, sir, I do. This is a photograph taken in my
23 presence of the bottom of the Exxon Valdez. Again, this is
24 a photograph not taken in the normal course. It was taken
25 looking from the right to the left instead of aft on the

1 vessel.

2 Q And does that accurately reflect the damage that
3 you observed when you were in San Diego that day?

4 A Yes, sir, it does.

5 Q I'm showing you what's been marked for
6 identification as Plaintiff's Exhibit Number 140. Do you
7 recognize that?

8 A Yes, sir, I do. This is a photograph of the
9 bottom of the Exxon Valdez, and it was taken in my presence
10 at this location here. This one also looks from the right
11 side to the left side of the vessel.

12 Q Does that accurately reflect the damage that you
13 observed when you were in San Diego on that particular
14 date?

15 A Yes, sir, it does.

16 Q From that point,

17 I'm showing you what's been marked for
18 identification as Plaintiff's Exhibit Number 141. Do you
19 recognize that photograph?

20 A Yes, sir, I do. This is a photograph taken in my
21 presence of the bottom of the Exxon Valdez, and it was
22 taken at this location in the number two starboard tank
23 face -- looking aft. The camera was looking aft.

24 Q Does that accurately reflect the damage that you
25 observed when you were in San Diego that day?

1 A Yes, sir, it does.

2 Q I'm showing you what's been marked for
3 identification as Plaintiff's Exhibit Number 142. Do you
4 recognize that photograph?

5 A Yes, sir. This is a photograph taken in San
6 Diego of the bottom of the Exxon Valdez and -- in my
7 presence, and was taken -- this -- at this location, facing
8 aft.

9 Q Does that accurately reflect the damage that you
10 observed when you were in San Diego that day in that
11 particular place?

12 A Yes, sir, it does.

13 Q I'm showing you what's been marked for
14 identification as Plaintiff's Exhibit Number 143. Do you
15 recognize that photograph?

16 A Yes, sir, I do. It's a photograph taken in my
17 presence in San Diego of the bottom of the Exxon Valdez,
18 and it's taken at this location here, center of the number
19 two starboard tank, looking aft.

20 Q And does that accurately reflect the damage that
21 you observed when you were in San Diego that day in dry
22 dock?

23 A Yes, sir.

24 Q _____ that point?

25 A Yes, sir, it does.

1 Q I'm showing you what's been marked for
2 identification as Plaintiff's Exhibit Number 144. Do you
3 recognize that photograph?

4 A Yes, sir. It's a photograph taken in my presence
5 of the bottom of the Exxon Valdez in San Diego, and it's
6 taken at this location here, looking aft.

7 Q And does that accurately reflect the damage that
8 you observed when you were in San Diego that day?

9 A Yes, sir, it does.

10 Q I'm showing you what has been marked for
11 identification as Plaintiff's Exhibit Number 145. Do you
12 recognize that document?

13 A Yes, sir, I do. This is a photograph taken in my
14 presence in San Diego of the bottom of the Exxon Valdez,
15 and it's taken at this point here, on the starboard side,
16 looking aft.

17 Q Does that accurately reflect the damage that you
18 observed in that photograph?

19 A Yes, sir, it does.

20 Q I'm showing you what's been marked for
21 identification as Plaintiff's Exhibit Number 144. Do you
22 recognize that photograph?

23 A Yes, sir, I do. It's a photograph taken in my
24 presence in San Diego of the bottom of the Exxon Valdez and
25 it's taken in this location right here, looking aft.

1 Q Does that accurately reflect the damage that you
2 observed when you were standing in that place while you
3 were in San Diego?

4 A Yes, sir, it does.

5 Q I'm showing you what's been marked for
6 identification as Plaintiff's Exhibit Number 147. Do you
7 recognize that photograph?

8 A Yes, sir, I do. This is a photograph taken in my
9 presence of the bottom of the Exxon Valdez in San Diego.
10 Again, this is not following the norm. This is from the
11 center of the vessel, or very close to it, looking
12 outboard, or looking away from the center line to the
13 starboard side.

14 Q Does that accurately reflect the damage that you
15 observed when you were in that particular place that day?

16 A Yes, sir, it does.

17 Q I'm showing you what's been marked for
18 identification as Plaintiff's Exhibit Number 148. Do you
19 recognize that photograph?

20 A Yes, sir, I do. This is a photograph of the
21 Exxon Valdez taken in my presence in San Diego, and it was
22 taken right here, at this location. The locations which
23 I'm referring to are on Exhibit 103.

24 Q Does that photograph -- does that exhibit
25 accurately reflect the damage that you observed in that

1 particular area?

2 A Yes, sir, it does.

3 Q I'm showing you what's been marked for
4 identification as Plaintiff's Exhibit Number 149. Do you
5 recognize that?

6 A Yes, sir, I do. This is an accurate photograph
7 of the bottom of the Exxon Valdez taken in my presence
8 while I was in San Diego, and it was taken at this location
9 right here, facing aft.

10 Q Does that accurately reflect the view of the
11 vessel that you observed when you were in that particular
12 position when you were observing the Exxon Valdez in dry
13 dock?

14 A Yes, sir, it does.

15 Q Finally, showing you what's been marked for
16 identification as Plaintiff's Exhibit Number 150. Do you
17 recognize that photograph?

18 A Yes, sir, I do. This is a photograph of the
19 Exxon Valdez taken in my presence in San Diego and that is
20 -- was taken at this location, facing aft.

21 Q Captain Greiner, did you take that last batch of
22 photographs?

23 A No sir, I didn't.

24 Q Who did take those?

25 A Hugh Ackroyd, a photographer who accompanied me

1 down to San Diego from Portland, Oregon.

2 Q Did he take them while in your presence?

3 A All the photographs were taken in my presence
4 with me standing within twenty feet of them.

5 MR. COLE: Your Honor, at this time, I'm going
6 to move for the admission of what's been identified as
7 Plaintiff's Exhibit Number 125 through -- I believe it's
8 150.

9 MR. CHALOS: No objection.

10 THE COURT: Admitted.

11 (State's Exhibits 125 through
12 150 were received in
13 evidence.)

14 MR. COLE: Your Honor, at this time, I would like
15 to request to be allowed to have Captain Greiner step
16 forward with this diagram to show the jury exactly where
17 those are, and point out some of the damage that was done
18 on the pictures.

19 THE COURT: All right.

20 (Pause)

21 Mr. Chalos, if you want to move over there so you
22 can see --

23 (Pause)

24 Bend it a little bit over this way for me, too,
25 and (inaudible). Can all the jurors see that okay?

1 BY MR. COLE: (Resuming)

2 Q Captain Greiner, let's start with what has been
3 identified as Plaintiff's Exhibit Number 125. Would you
4 show where that photograph was taken, and then briefly
5 describe to the jury what they're looking at?

6 A This photograph was taken right here, just a
7 little to the left of the center line, looking aft. You're
8 seeing the initial markings where the vessel first came in
9 contact with the bottom. The blocks that are underneath
10 here are bilge blocks -- I'll mention them in --

11 Q You need to hold that up --

12 A I'm sorry.

13 The bilge blocks are these blocks right here, and
14 they're approximately four foot high. This is what the
15 vessel rests on. In other words, they're put in there
16 before the vessel comes into the dry dock, and the vessel
17 is -- when the water is pumped out, the vessel comes down
18 and sits on them. They're -- I believe they're concrete
19 blocks with a wood top on it, in other words, a crushing
20 piece. And you'll see them throughout all the photographs.

21 Q Now, can I ask you to identify that position on
22 this, also?

23 A It's right here. Let me -- let me hold the
24 picture up. It's in this direction, in this location here,
25 looking aft.

1 Q Now, showing you what's been identified -- what's
2 been admitted as Plaintiff's Exhibit Number 125, show the
3 jury what that is a picture of, and where that was taken?

4 A This photograph --

5 Q Incidentally, before you do that, would you show
6 the jury how you are identifying where these photographs
7 were taken?

8 A Okay. The photograph on the back of it has a --
9 has two tags. This is the Court's tag. This one is the
10 photographer's tag, and at the bottom, he has a series of
11 numbers. I assume that the first five digits, or numbers,
12 are his case number, and we're only interested in the last
13 grouping, and in this particular photograph, it's R, which
14 stands for roll, 9, dash 7, which is the negative.

15 The A after it is because, on 35 millimeter film,
16 they'll have a number 7 and a little over to the right,
17 they'll have a 7A in case the roll is loaded just a little
18 out of the normal frame. So the last letter can be
19 disregarded. It's, in this case, negative 7, and it's
20 taken right here.

21 Q So that would be roll 9, negative 7.

22 A Yes, sir. You can always match them up by
23 looking at this number, with the number that's on here.

24 Q Would you show the -- tell the -- that's upside
25 down, I believe, right?

1 A Yes, sir.

2 Q Would you show -- would you tell the jury now
3 what that is a photograph of?

4 A This is a photograph of -- this is the center
5 line of the vessel, as you can see, and this is another
6 area of initial contact. Here's a ladder here. The
7 plate's been ruptured and there's a ladder there so that
8 workmen can go in, and there are some hoses there.

9 It's a wide angle lens, so there's a little
10 distortion. You can see it at the edges.

11 Q Would you point out other areas that the jury
12 will see photographs of later, so that they can keep this
13 in -- understand where they are in other photographs?

14 A Right here is an area where you will see a rock,
15 a large rock, about the size of a Volkswagen, imbedded in
16 the bottom of the vessel. This photograph, which was taken
17 later than the photographs of the rock you'll see, there is
18 a sign. That sign is not present in the other ones. We're
19 talking about a matter of hours. But this sign right here
20 is a cautionary sign for no one to walk under it, because
21 they are afraid it might fall out.

22 Q Would you point out, in that photograph, where
23 the forepeak is?

24 A The forepeak -- this is the forepeak area, right
25 here.

1 Q I'm showing you number -- Exhibit Number 128.

2 Would you show the jury what that is a picture of?

3 A Okay. I'm looking at the back of it. It's
4 photograph 7-27, and it is taken just a little to the right
5 of the center line back here, and on this exhibit, on 103,
6 the pink lines represent the separations between the
7 tanks. So that there -- you know, this is number one tank
8 center. This is number two tank center. Three, four,
9 five.

10 And so this represents the damage in this area
11 right here. You're looking at the damage -- as you look at
12 the photograph, here is -- I believe this is the bulkhead
13 between the two tanks, right here. That would be the
14 bulkhead, right here between the number one and the number
15 two tank.

16 Normally, there would be plating here. You
17 wouldn't see any of this. But the plating is missing from
18 the area, and what you're looking at, is you're looking at
19 the structural members, which I mentioned before are these
20 members here that are in the vessel, that hold the plating
21 in place.

22 These are the bilge blocks here. And the light
23 here is because the shipyard had put lights underneath it.
24 That's nothing of -- just provided light.

25 Q Now, why isn't there the bottom cover, the plate

1 that go underneath the vessel in that area?

2 A Well, the plates are missing. Whether the plates
3 were torn out in the initial contact, or whether the plates
4 were torn out at a later date, I can't tell. We know that
5 there was a lot of damage done in the initial contact, but
6 there's no way that I have to identify which plates were
7 there after the initial contact and were later cut off, or
8 which plates were missing after the initial contact.

9 Q And finally, would you just show the jury on this
10 -- using this model -- where this photograph was taken.

11 A Okay, this photograph -- on the model, it's
12 difficult to see, but the person who made the model made
13 the bulkheads between the tanks a little thicker than the
14 pieces that represent the structural members, and -- so
15 here is the bulkhead between the two tanks.

16 The photograph is taken underneath, on the
17 bottom, right in here, facing aft. Turn it over? In other
18 words, it's taken right here, looking aft.

19 Q Would you show the judge that real quick? He's
20 in a bad place.

21 (Pause)

22 Number 127?

23 A Number 127 is photograph 9-1, and it's taken
24 here, underneath the number one center tank. And it
25 represents -- these are score marks here that we talked

1 about before, and of course, here your plating has been
2 ripped out. Again, the bilge blocks are right here.

3 Q Number 129?

4 A 129 is photograph 7-9, taken in this location,
5 under the number 3 center tank -- this is number 3 center
6 tank. And this was taken -- the person in it is me. It
7 gives you an idea of the size, the magnitude that we're
8 talking about, here. The reason I was in it is I was
9 shooting a flashgun off at that point so we'd have better
10 -- a better photograph.

11 Q Now, what is this, in this area right in here?

12 A This is a crushing effect, and not a tearing
13 effect. In other words, in this area, as we'll discuss
14 later, there is a twelve-foot rise and fall of the tide.
15 So when the vessel is on the bottom at high tide, and the
16 tide goes out, it's -- it's going to try to go down, but
17 the rocks there, you're going to get crushing damage
18 underneath there.

19 Q Now, number 130?

20 A 130 is photograph 823, which is taken underneath
21 the number 4 center tank in this area here. You can see
22 the scoring marks. You can see the -- on the photograph
23 itself, the marks that the rock left as the vessel passed
24 over it. In other words, this is a very good indication
25 that -- of the vessel's movement here.

1 Q Of the vessel going over something?

2 A Yes. The vessel going over the rock. It
3 indicates the direction that the vessel was going at that
4 time. The person in it is the attorney for Exxon.

5 THE COURT: Mr. Cole, I think we'll stop. It's
6 1:30.

7 MR. COLE: Sure.

8 THE COURT: That completes the trial day. We'll
9 resume again at 8:15 a.m. on Monday. This is Friday, so
10 you'll have two days, the weekend. Don't discuss this case
11 among yourselves or with any other person, and do not form
12 or express any opinions concerning the case.

13 Avoid the media information about this case, or
14 media information about the oil spill in any regard,
15 involving any of this, the people involved, or the
16 companies involved. I've told you that enough times. I
17 don't need to go into detail. But I just want to emphasize
18 its importance.

19 So have a safe weekend, and we'll see you back at
20 8:15 a.m. on Monday.

21 (Whereupon, the jury leaves the courtroom.)

22 THE COURT: Is there anything I can do for
23 counsel before we recess?

24 MR. COLE: I'll provide the stuff that we
25 mentioned up there, Judge, as far as that information that

1 we've -- of what we've sent Captain Greiner, and any
2 reports that he's done for this, we'll turn it over today.

3 MR. CHALOS: Judge, yes. I notice that Mr.
4 Greiner has a blue book in front of them that he keeps
5 referring to. I think it would speed up my
6 cross-examination if I were allowed to review it, either
7 tomorrow or Sunday. This way I can eliminate a lot of the
8 questions relating to the document in front of him.

9 THE COURT: Are you using that book in any way to
10 assist you in your --

11 THE WITNESS: The book contains a number of
12 the --

13 (Pause)

14 The book contains a number of the exhibits that
15 are present in the court, and it also contains a
16 spreadsheet that I worked out myself in doing the
17 reconstruction, and a few other things that are not
18 exhibits in the court.

19 THE COURT: Any problem with that?

20 MR. : I don't have any problem with
21 it.

22 THE COURT: Okay. Well, you want to have it some
23 time before your cross-examination. You'll expect to
24 finish up in a couple of hours on Monday?

25 MR. COLE: Yes.

1 THE COURT: Well, sometime between now and your
2 cross-examination, Captain Greiner, would you let Mr.
3 Chalos look over it in your presence?

4 THE WITNESS: Certainly.

5 THE COURT: You don't have to turn to him. He
6 can do it in your presence.

7 THE WITNESS: Certainly.

8 THE COURT: Okay. Anything else?

9 MS. HENRY: Your Honor, I do have one other
10 matter. Plaintiff's Exhibit Number 120 and 121, which are
11 the two tapes that were brought in by the Coast Guard
12 personnel this morning, I didn't have them until he brought
13 them in this morning myself, and the defense has requested
14 copies of those. They already have a copy of the complete
15 tape, but they would like to have a copy of those portions
16 that I have specifically requested.

17 So I would request permission to take those tapes
18 from the courtroom -- they have not been admitted. I have
19 not moved to admit them yet -- so that I can make copies
20 for us and for the defense.

21 THE COURT: Any problem allowing that to be
22 done? Okay. Then you can do that.

23 MR. COLE: There's one exhibit, Your Honor, that
24 I would like to withdraw, and that is what has been
25 identified as Plaintiff's Exhibit Number 28. It's merely a

1 replica, a copy, of what has already been admitted 103, and
2 it's not going to be used. If the defense counsel wants
3 it, I just wanted to get it out of here.

4 MR. CHALOS: I think that this is the document,
5 the original document, that was prepared by Mr. Leitz. I
6 believe Mr. Leitz will be called as a witness, either by
7 prosecution or --

8 THE COURT: Okay. That's fine. Let's leave it
9 here, then.

10 MR. : I just -- let me explain to you
11 what the numbers are.

12 MR. CHALOS: Okay.

13 MR. : These are all the photographs
14 that I took, but the only ones that are included, that we
15 had blown up, are the ones that are underlined.

16 MR. CHALOS: Well, then I have no objection, Your
17 Honor. It appears to be a modified version of 103.

18 THE COURT: Do you have any objection to Mr. Cole
19 withdrawing it from the court, and withdrawing it from --

20 MR. CHALOS: No, I don't.

21 THE COURT: Okay. Then you may do so.

22 (State's Exhibit 28 was
23 withdrawn.)

24 THE COURT: And would counsel approach the bench
25 just a minute, please?

1 MR. : All of us, or just one --

2 THE COURT: I think all of you should come up.

3 Ms. Henry?

4 (The following was had at the bench:)

5 THE COURT: I don't know how that article in the
6 paper about the speech (inaudible) all seen that this
7 morning in the paper, but it's not in evidence, and I don't
8 if counsel, do you want _____ release that information
9 to the press?

10 MR. : No, sir.

11 MR. : (Inaudible).

12 THE COURT: Okay. Nobody here releases
13 information to the press (inaudible). I just want to make
14 sure that (inaudible). Okay. I didn't think either one of
15 you had, but I wanted to be sure.

16 (The following was had in open court:)

17 THE COURT: Okay. Is there anything else we can
18 do before we recess for the weekend?

19 MR. : No.

20 THE COURT: Have a nice weekend. We'll see you
21 Monday.

22 THE CLERK: Please rise. This Court stands in
23 recess, subject to call.

24 (Whereupon, at 1:34 p.m., the hearing recessed.)

25

1
2 SUPERIOR COURT)
3 STATE OF ALASKA) Case No. 3ANS89-7217
Case No. 3ANS89-7218

4 I do hereby certify that the foregoing transcript
5 was typed by me and that said transcript is a true record
6 of the recorded proceedings to the best of my ability.

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9 ALEXANDRA TOMALONIS

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VOLUME 18

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 26, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:36 a.m. on February 26, 1990. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

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MARY ANN HENRY, Esq.

On behalf of the Defendant:

DICK L. MADSON, Esq.

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George K. Greiner, Jr.

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E X H I B I T SDEFENDANT'SIDENTIFICATION IN EVIDENCE

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STATE'S

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(Tape C-3640)

(Whereupon, the jury enters the courtroom.)

THE CLERK: -- Karl S. Johnstone now presiding.

JUDGE JOHNSTONE: You may be seated. I really appreciate you folks being on time. That really assists us. We'll resume with Captain Greiner's testimony. Your still under oath, sir.

THE WITNESS: Yes, sir.

MR. COLE: Can he come forward again, Your Honor?

Whereupon,

GEORGE K. GREINER, JR.

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

BY MR. COLE: (Resuming)

Q Now, Captain Greiner, we were talking -- when we left off, we left off at Plaintiff's Exhibit Number 131. Would you show the jury where that photograph was taken again?

A That was taken right here, near the center line of the vessel, looking aft.

Q Now what are we observing in that photograph?

A This is part of the tunneling that we were talking about before and these are the score marks that run down

1 the length of the vessel. We're looking aft, in this
2 direction here.

3 Q And those score marks are an indication of what?

4 A Rock having passed -- the vessel having passed
5 over rock or some such substance.

6 Q And real briefly, just to -- real quickly, explain
7 how you got -- where that picture was taken from again.

8 A The picture numbers on the back here, the last few
9 digits, R8 means the roll and 19 is the negative number of
10 that roll and that matches the number here, 819.

11 Q Now Exhibit Number 132?

12 A This is 8-15, this is a little further aft. And
13 it's taken a little further outboard to starboard to the
14 righthand side of the vessel, this again being the bow, and
15 it's looking aft. And again you can see the score marks
16 here. These bilge blocks, which I mentioned to you before
17 which support the vessel, the vessel rests on them, go in a
18 straight line, generally, from bow to the stern. There are
19 a number of them across here. So you can see the diagonal
20 effect, the five-degree diagonal effect that I had talked
21 about earlier.

22 Q Now at this point, would you point out what the
23 light is in the back there so the people can get an idea of
24 that?

25 A Yes, this is daylight. In other words, we're

1 looking out from underneath the vessel and this is all the
2 way out, beyond the vessel.

3 Q Now one thing I'd like you to talk about is what
4 this line right here represents on the diagram.

5 A May I use the model?

6 Q Sure.

7 A As we move aft on the bottom of the vessel, we no
8 longer have a square bottom, in other words, the top sides
9 and the bottom here. It starts to fair out and you can see
10 the shape of it there. And this represents the shape of
11 the stern which starts actually well forward of the deck
12 house. That's what these lines represent in here.

13 Q Now Plaintiff's Exhibit Number 133, where was that
14 photograph taken?

15 A 133 is the aftermost photograph taken and it is
16 looking forward, instead of aft. The light at the end is
17 all the way at the bow this time. And this shows the
18 scrapes coming out the other side of the bilge blocks that
19 we looked at in the previous drawing -- I'm sorry,
20 photograph.

21 Q Now you indicated that there had been some
22 crushing effect from the tides going up and down --

23 A Yes, sir.

24 Q -- in the damage that you saw -

25 A Yes, sir.

1 Q -- in this area right in here.

2 A Yes.

3 Q Did you see any crushing effect where the bottom
4 -- the stern of the vessel was touching ground?

5 A No, it did not appear here that this portion of
6 the vessel was touching bottom when the tide went out and
7 up and, therefore, as the vessel finally rested, this part
8 here would not have been touching bottom.

9 Q You would have expected to see some type of damage
10 like that if it had been touching bottom.

11 A Yes, the weight of the vessel would have caused an
12 indentation, a large indentation, of the plate, as well as
13 the structural members behind it.

14 Q And was this characteristic, this damage right
15 here, characteristic of the type of damage that was
16 observed in this back portion?

17 A Yes, it was.

18 Q Now Plaintiff's Exhibit Number 134?

19 A This is Photograph 93 and it's taken up forward in
20 this location right here. In other words, the first series
21 of photographs took you down the center line and then off
22 to the starboard side aft. We're now starting further
23 over, further to the right of the vessel, and we're going
24 to go back through the same thing. This is again scoring
25 and it does not seem to have any crushing here. It's

1 certainly indented and torn, but it doesn't have any of the
2 crushing that we'll see further aft here.

3 Q Plaintiff's Exhibit Number 135?

4 A This is Photograph 4-21 and it's taken right
5 here. This is taken with quite a wide angle lens. Note
6 that it is not facing exactly aft. We're looking inboard.
7 And here, for the first time, appears the rock in the
8 lefthand corner that you're going to see. This is
9 outboard. When you're here, since it's on the lefthand
10 side, it's over in this section here and we'll have other
11 photographs of it later.

12 Q Now these two photographs right here, Number 1-36
13 and 1-37, would you describe where those are?

14 A These two photographs show the rock, right here
15 and right here, and they are taken -- 23 and 25, they're
16 these two photographs taken right here, 25 being the lower
17 one, being this one here, and 23 being a little further
18 upward, being this one here.

19 Q Was there a ladder in that one?

20 A Well, they're taken at different times. I think
21 the ladder on this one may be actually out of the picture
22 to the left, but some of these were taken at different
23 times. These are consecutive, almost consecutive in the
24 roll number, so they would have been taken about the same
25 time. I assume the ladder is out of the picture to the

1 left.

2 Q Now just discuss this 139 and give the jury a
3 sense of how big this vessel is.

4 A Okay, this is photograph R -- I'm sorry, 419. 419
5 is taken right here and it's looking from the starboard
6 side of the vessel to the port side of the vessel. It's
7 not looking fore and aft; it's looking in this direction.
8 And you can see the people here. It gives you an idea of
9 the size of the vessel. You know, we're not even anywhere
10 near the main deck on this in looking at it.

11 Q Now Number 140, where was that taken?

12 A 140 is Photograph 5-13 and that is taken here.
13 Again, it is looking across the ship, rather than fore and
14 aft. It's looking from the righthand side of the ship to
15 the lefthand side of the ship. This is scoring, tearing.
16 Again, we don't see the large insets here that you'll see
17 later on from the rise and fall of the vessel when it was
18 on the rock. This indicates there was probably no rock
19 here at the time when she came to rest. When I say no rock
20 here, there's obviously rock below it, but no rock in
21 contact with the vessel.

22 Q And that would be evidenced by the crushing effect
23 if it were sitting on rock.

24 A If it was sitting on the rock, yes, sir.

25 Q Now Number 141?

1 A This is 5-21. It's taken right here, looking aft,
2 and we're now starting to see the crushing effect. This is
3 the Number 2, in the way of Number 2 tank, and this is the
4 area in here where I believe the vessel came to rest in
5 contact with the rock.

6 Q Number 142?

7 A 142 is Photograph 9-32. And 9-32 is taken right
8 at the side of the vessel, looking down the side of the
9 vessel, and here you can see the crushing of what's called
10 the turn of the bilge. The turn of the bilge is the
11 rounded part of the hull which goes between the top side of
12 the hull and the bottom. In other words, this portion
13 right here is called the turn of the bilge. The bilge is
14 the bottom of the vessel, inside, where the water
15 accumulates or water -- this is called the turn of the
16 bilge.

17 This photograph shows the turn of the bilge.
18 That's this area right along here. And you can see the
19 crushing effect in there from having rested on the rock and
20 the tide going out and the weight of the vessel coming down
21 on it.

22 Along the side here is the side of the graving
23 dock. You'll notice that there isn't much clearance
24 between the vessel and the side of the dock, just a few
25 feet. And so all this structure here is the wall, the

1 side wall of the dock in which it sits.

2 Q And do Plaintiff's Exhibit 144 and 146 also show
3 that?

4 A These are Photographs 9-34 and 39 -- I'm sorry, 34
5 and 37. They're taken side by side, right underneath the
6 turn of the bilge, and they show similar effect to what we
7 saw in the last photograph. They're just taken a little
8 further aft.

9 Q Are they showing the -- can you point out the
10 damage, the structural damage, to the underside, the bilge
11 of the vessel?

12 A You can see the buckling in here along the turn of
13 the bilge and in here, the members are pushed upward and
14 this whole area in here is concave upward as a result of
15 the contact with the rock after, in my opinion, after it
16 had stopped.

17 Q Number 147?

18 A 147 is Photo 7-20 and 7-20 is taken right here.
19 Now this is taken near the midships, but it's looking
20 outboard, it's looking towards the righthand side of the
21 vessel and you can see the crushing damage here. Now I'm
22 not talking about tunnel fore and aft; I'm talking about
23 looking from the center to the side of the vessel and this
24 is all set in there as it rested on the rock.

25 Q Now when you were walking underneath this part of

1 the vessel, about how high was the vessel above the ground?

2 A I think it's a little less than four feet. I know
3 that I got a sore back from walking hunched over all the
4 time.

5 Q Give the jury an idea of what the type of height
6 it was in the area in here under the bottom.

7 A In the area in which the photograph is taken, I
8 could stand up and walk under it. As a matter of fact,
9 there's a ladder here and, normally, ladders, the steps are
10 one foot apart. So there's one, two, three, four, five,
11 six there and it's a little higher in here.

12 Q Now Number 143, would you point out where that was
13 taken from and describe the damage that's seen in that?

14 A 5-26 is taken right here. It's further in towards
15 the center. Again, it's looking aft into the area that's
16 crushed. This is the side of the graving dock here. We're
17 looking dead aft. You're missing plates here. You're
18 actually looking up into the tank itself. The gray
19 background here is the -- I guess it's the bulkhead between
20 the Number 2 and the Number 3 tanks. No, I'm sorry, this
21 is a web frame. The bulkhead is shown right in this area
22 here. It's back further than this area here. But you're
23 missing your plate here. Here's the plate; it's torn off
24 in this area here. And you have crushing in there.

25 Q What is this? What type of metal are we talking

1 about?

2 A We're talking about heavy steel. These are the
3 channels that make up the longitudinal frames here. And I
4 don't know what the thickness of them is, I didn't measure
5 them, but they're heavy.

6 Q And Number 145?

7 A 145 is Photograph 5-32. 5-32 is taken here.
8 Again, we're looking at the crushed area and you can see
9 how the frames, the longitudinal frames -- longitudinal
10 means fore and aft, in this direction -- the longitudinal
11 frames are pushed upward.

12 Q And what are we seeing up in there, where the
13 lights are?

14 A We're looking, again, up into the tank. There's
15 ladders for the workmen to gain access from below into the
16 tanks. This area right here where there's a light is a web
17 frame, a very heavy frame that goes from left to right,
18 _____ ship on the vessel. It's called the transverse
19 frame. And this is a light inside the tank.

20 Q Now the last three photographs, would you just
21 briefly describe where those are taken and what they show?

22 A These last three photographs are Photographs 8-5
23 here, 8-9 here and 5-36 here. These are all looking aft
24 from the area that's crushed and as you can see, there is
25 no crushing here. This is just scoring.

1 Q And do you have an opinion on how that scoring got
2 there?

3 A Well, the vessel passed over a rock, but it did
4 not sit on the rock in this area after it had stopped. Had
5 it done that, it would have been crushed upwards. And,
6 again, those photographs are taken -- I think 36 is --
7 what's that one?

8 Q 5-36.

9 A That's taken here, in the middle of the Number 3
10 tank and the other two are aft of it.

11 Q Thank you, you can resume your seat.

12 (Witness returns to his seat.)

13 BY MR. COLE: (Resuming)

14 Q Now, Captain Greiner, do you have an opinion as to
15 -- let's go back to the basics again. Do you have an
16 opinion as to how the structural damage that you observed
17 on the bottom of the Exxon Valdez occurred?

18 A Yes, I do.

19 MR. CHALOS: Your Honor, I'm going to object to
20 any opinion that this witness may offer. He hasn't been
21 qualified as a structural expert. He saw the damage. He
22 can offer an opinion as to what he saw, but it would have
23 to be a lay opinion, because as far as I remember from last
24 Friday, Mr. Cole hasn't qualified Mr. Greiner as an expert
25 in that area.

1 MR. COLE: I think that he talked about his
2 background in the Coast Guard, working on tanker and vessel
3 damage investigations and he's qualified to give an opinion
4 about that.

5 JUDGE JOHNSTONE: Objection overruled.

6 BY MR. COLE: (Resuming)

7 Q Again, could you give the -- do you have an
8 opinion on how the damage occurred?

9 A Yes, sir.

10 Q Would you tell the jury, using your pointer there,
11 what that opinion is?

12 A There are two substantial series of damages. One
13 is where the vessel passed over a rock or a series of rocks
14 that caused damage in this area here. Those rocks were
15 left astern of the vessel when it came to rest.

16 Q Wait a minute. What do you mean by "left astern
17 of the vessel"?

18 A They were left. They passed and were back aft
19 from the vessel, astern, behind the vessel when it finally
20 stopped. There's a second series of rocks that it hit that
21 it came to rest on and they are in this area here, and I'm
22 showing the Number 2 and the Number 3 tanks. And the
23 reason that I believe that they came to rest there is
24 because of the crushing effect which you saw in the
25 photographs that was created when the tide went out.

1 There's a tide rise and fall of about 12 feet in this area.

2 Q Explain to the jury how the vessel is affected by
3 -- how the vessel was damaged by the tide going in and out.

4 A Well, the weight of the vessel is -- more of the
5 weight of the vessel is supported by the rock and,
6 therefore, it's crushed.

7 Q What happens when the tide goes out?

8 A The water level falls. You have shallower water
9 over the rocks.

10 Q And what happens to the ship, to the vessel, when
11 the water level falls?

12 A The vessel will take a list. In this particular
13 instance, since the side is supported by the rocks, it
14 can't sink any further because it's supported by the rocks,
15 but the other side which is not supported by rocks can. We
16 will go from a list from one side to the other. And as I
17 understand from the testimony, it went from a two-degree
18 port to a two-degree starboard list. When it was on the
19 rock and you had high water, it would have a port list, a
20 list to the left, and when -- I'm sorry, when you had low
21 water, it would be supported by the rock and you'd have a
22 list to the left.

23 Q I'm showing you what's been marked for
24 identification as Plaintiff's Exhibit Number 123 and Number
25 124. Do you recognize those exhibits?

1 A Yes, sir, I do.

2 Q Beginning with what's been identified as 123,
3 would you tell the jury what that is, without showing it,
4 just tell -- what is that?

5 A This is a tide graph, showing the rise and fall of
6 the tide at Rocky Point. This is Rocky Point right here
7 and I'm pointing to an exhibit which I guess is marked on
8 the back. It's a chart of Prince William Sound. And this
9 is where the vessel went aground. So the difference is
10 from here to here. The coastal geodetic survey tide tables
11 don't have the tide for every specific place in the United
12 States; they only have it for specific places. And the
13 closest one to where the vessel grounded is the one at
14 Rocky Point and that's why I used that one.

15 Q How were those graphs that you have in front of
16 you made?

17 A The graphs are computer generated. They're
18 generated by Tide Graph International, who is a colleague
19 of mine and who I furnished information to, and he prepared
20 these on his computer.

21 Q And in the form that they are in, in this graph,
22 is that a form that you typically rely upon in doing your
23 work in the field of reconstruction?

24 A Yes, sir, it is.

25 Q And do they -- Number 123, what's the difference

1 between Number 123 and 124?

2 A 123 is on the 24th of March, Friday, the 24th of
3 March, and 124 is the previous day, which is the 23d of
4 March.

5 MR. COLE: I would move for the admission of
6 what's been identified as Plaintiff's Exhibit Number 123
7 and 124.

8 MR. CHALOS: No objection.

9 JUDGE JOHNSTONE: They're both admitted.

10 (State Exhibits 123 and 124
11 were received in evidence.)

12 BY MR. COLE: (Resuming)

13 Q Would you tell the jury what the tide was at 12:00
14 o'clock that evening?

15 A May I hold this up and show them?

16 Q Show how it works.

17 A The graph represents zero -- the heavy line at the
18 bottom is what's called datum and that corresponds to the
19 tide level at which soundings on a chart are taken, so that
20 above and below zero, the soundings or the depth of water
21 indicated by the soundings would be changed by the amount
22 of tide that you had. At midnight, it was plus ten feet,
23 so that in the area of Bligh Reef, if you had a sounding of
24 80 feet shown on the chart, it would actually have 90 feet
25 of water there because you'd have to add the ten feet. The

1 tide continued to rise for approximately two hours and, at
2 about 2:00 o'clock in the morning, we had high tide and
3 that was a tide of 12.4 feet, approximately. The exact
4 figures I have elsewhere, but for our purposes, that's good
5 enough.

6 The tide doesn't actually follow these. These are
7 predicted ones and as close as you can get for predicted.

8 Q When was the next low tide that morning?

9 A The next low tide was at, oh, between 8:00 and
10 8:30, right here, and it was at zero tide. So there's a
11 difference of 12.4 feet down to zero, that's the difference
12 of 12.4 feet.

13 Q Okay, now back to the damage now. You talked
14 about the first contact that the vessel had with the
15 ground. How would that have affected the vessel's speed at
16 that point?

17 A It would have slowed it down considerably.

18 Q And why is that?

19 A It's friction on the bottom of the vessel. Energy
20 is absorbed in the tearing of the plates, the deformation
21 of the bottom.

22 Q Can you tell -- is there a way of telling exactly
23 how long it took the vessel to pass over the first contact
24 with the bottom?

25 A No, there is not a way of telling exactly. It can

1 be estimated, but there is no way of telling exactly
2 because no one knows how much energy was absorbed by the
3 contact with the rock.

4 Q Can a person give an estimate as to approximately
5 the amount of time?

6 A Yes, sir.

7 Q Would you explain how that's done?

8 A The period of time to pass over the first rock
9 would be -- well, the first rock would make contact with
10 vessel somewhere in here and it would pass out from
11 underneath the vessel about 800 feet aft of that, about in
12 this area here. And so we're dealing with the time it
13 takes for the vessel to move forward 800 feet, plus the
14 length of whatever the rock was itself that was in contact
15 with the bottom.

16 We know that the speed of the vessel before it
17 started into the turn was about 12 knots and as it starts
18 into the turn to the right, it slows down and I've
19 estimated that it had a speed of about 11.4 knots when it
20 first came in contact with the rock because it was in a
21 turn.

22 An estimate, purely an estimate, of the speed when
23 it passed over it, based on the slowing down of it, is
24 somewhere in the neighborhood of 6.6 knots. Now the manner
25 in which I arrived at this, I didn't say it was 6.6 knots.

1 I said, "Let's use an average of 9 knots as the speed that
2 it was doing during this transit," for mathematical
3 purposes. And when you use an average of nine knots, then
4 you come out with 6.6 is the speed when it passes over, out
5 behind the stern. And then it's a simple calculation as to
6 speed, distance and time.

7 Q Before we get into that, then, how did the damage
8 get done to the starboard side? Do you have an opinion on
9 that?

10 A Yes. After the first rock passed, the first rock
11 or rocks passed -- after the vessel passed over the first
12 rocks or rock, it then hit a subsequent series of rocks and
13 it came to rest with those rocks in this area here. This
14 is some 300-plus feet from the bow, so, again, we're
15 talking about a minimum distance the vessel would have had
16 to have passed forward in order for the rocks to reach
17 here.

18 Q You can tell, can you not, from the damage that
19 was done on the starboard side, that the initial contact
20 did not cause this vessel to stop immediately.

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

22 JUDGE JOHNSTONE: Rephrase your question.

23 Objection sustained.

24 BY MR. COLE: (Resuming)

25 Q How can you tell that the vessel did not come to a

1 dead stop after it passed over the first rock?

2 A Well, if it passed over the -- back here, we just
3 have light scoring. The first rock would not have been
4 under the bow at that time because it would have raised the
5 bow and, back here, we would have had much heavier scoring.

6 Q The first rock -- okay, it wouldn't have been
7 under the stern.

8 A That's correct, the first rock would not have been
9 under the stern here because we have light scoring. As the
10 vessel moved forward, that rock, the first rock, could not
11 have been under the stern, in my opinion, when it hit the
12 second one because, had it done that and it would have
13 lifted the bow, that would have made heavier marks back
14 aft. In other words, it would have caused the stern,
15 assuming this is the stern here -- if the second rock came
16 underneath the bow before the first one passed out from
17 behind the stern, then the bow would have been lifted and
18 the stern would have gone down and you'd have more scoring
19 aft.

20 Q Well, how did this vessel go so far after hitting
21 the second rock?

22 MR. CHALOS: Objection, Your Honor, no foundation,
23 leading.

24 JUDGE JOHNSTONE: The form of the question is --

25 BY MR. COLE: (Resuming)

1 Q How did the vessel go past from the bow to the
2 second tank after it hit the first rock?

3 A The vessel was not stopped after it hit the first
4 rock. It still had weigh on.

5 Q How can you tell that?

6 A Because the first rock wasn't underneath it and it
7 came to rest -- I'm sorry, because the second rock wasn't
8 underneath it and it had not come to rest yet. It came to
9 rest on the second rock here. And if the second rock were
10 underneath the bow, we would have had more scoring astern.

11 Q Now have you -- do you have an opinion on how far
12 the vessel traveled after striking the first rock --

13 A After --

14 Q -- being in contact with the first rock. How far
15 forward the vessel traveled?

16 A Okay, it traveled the 800 feet to pass over the
17 first rock and then an additional 300-some feet to bring
18 the second rock underneath it at this point.

19 Q Okay, that is a minimum or a maximum or what?

20 A That's a minimum.

21 Q Why do you say that?

22 A The distance the -- the first rock could have
23 passed astern of the vessel and then there would have been
24 a time before it hit the second rock. However, if you look
25 at the course recorder --

1 Q I don't want to go into that.

2 A Okay.

3 Q Just show what you mean by drawing a diagram. Can
4 you do that?

5 (Witness approaches the drawing board.)

6 THE WITNESS: Sure. Let's assume we have two high
7 points or two rocks on the bottom here. This is the
8 floor. The vessel is coming from left to right and the bow
9 of the vessel passes over this first rock.

10 Q I think you're standing in the way of some of the
11 jurors. You need to --

12 A I'm sorry, let me move this side of it here. I
13 can use my pointer. The bow of the vessel passes over the
14 first rock. It has to proceed far enough so that this rock
15 is behind the vessel. If it were not, we would find a
16 crushing effect from this rock when the vessel was
17 stopped. So we have passed 800 feet, minimum, to get from
18 the bow of the vessel to the position where the score marks
19 disappear on the bottom. That's 800 feet, approximately.
20 So we now have a vessel which is somewhere in this position
21 here.

22 Then this rock -- the vessel has to move forward
23 far enough for this rock to come underneath the area in the
24 center of the vessel where we have the crushing and that's
25 another 300 and some feet.

1 Now you asked me about minimum and maximum. If
2 this rock were just forward of the bow when this one was
3 just after the stern, then that would be the minimum
4 distance. We would have the length of the vessel -- and
5 I'm not talking about the total length; I'm just talking
6 about the portion that was scored -- 800 feet, plus the
7 distance that it took the vessel to move forward onto that
8 rock of 300-some feet.

9 BY MR. COLE: (Resuming)

10 Q Maybe you could show this by assuming that this is
11 the first rock, right here, and this is the second rock.
12 What would have happened as this vessel passed over?

13 A Okay, let me have the model.

14 MR. CHALOS: Judge, I thought the witness has
15 already explained it. I think this is cumulative and this
16 is the same question he just explained, the answer he just
17 gave.

18 JUDGE JOHNSTONE: Objection overruled.

19 THE WITNESS: We have the vessel hitting the first
20 rock. Photographs indicate that it hit it just on the
21 bow. It passes over it and it -- the score marks disappear
22 somewhere in this area here. And so we have now passed
23 with this rock astern -- I'm going to back the vessel up a
24 little. I don't have enough room -- before it contacts
25 this one and then it moves forward on this until it comes

1 to rest in this area here, which is where the crushing
2 effect is found on the bottom.

3 BY MR. COLE: (Resuming)

4 Q Now if these rocks had been close enough for the
5 vessel to come in contact with both, what would you have
6 seen at the back of the vessel?

7 A Well, if it had -- if this one had contacted
8 before that one, if it had contacted the second rock before
9 it passed over the first rock, I think you would find
10 heavier score marks and more damage back here because this
11 would tend to lift the bow of the vessel up.

12 Q What would tend to lift the vessel?

13 A The rock, this rock, the second rock.

14 Q Okay. Now can you give the jury an idea of how
15 long this whole process would have taken, an estimate of
16 how long this would have taken to do something like this?

17 A Approximately two minutes.

18 Q And how did you reach that result?

19 A Well, you can --

20 Q Based on speed and the distance traveled.

21 A Well, it's a simple calculation. If you're going
22 to assume that it moved forward a total of 1,100 feet, in
23 other words, 800 plus 300, then you can figure out the
24 time. It comes out to approximately two minutes. We know
25 that the speed at the end was zero and we know the

1 beginning speed, so we can use an average speed between the
2 beginning speed and the ending speed.

3 Q Now let's go to something else and we'll come back
4 to that. You were asked to reconstruct the course of the
5 Exxon Valdez on March 23d and March 24th of 1989, is that
6 correct?

7 A That's correct.

8 Q What information did you use in doing that
9 reconstruction of the track taken that evening?

10 A I used a number of things. I obviously read
11 testimony and such like that. But primary is the vessel's
12 course recorder. This is an automated piece of equipment
13 that records the heading of the vessel, minute by minute,
14 as the vessel moves along. The second thing is a bell
15 book. The bell book is kept on the bridge. It is manually
16 kept and entries are made in it. They put things in it
17 such as what speed -- when they have a speed change, they
18 put the new speed change in there. They may put positions
19 in there, which in fact they did, in other words, that they
20 passed the beam of a certain light or a certain aid to
21 navigation, the timetables. The vessel kept a chart. We
22 use the chart, the positions that were charted.

23 There is a bell logger on the vessel, also. A
24 bell logger is an automated record of the orders to the
25 engine room and the rpm that the vessel is going at any --

1 well, at whenever an entry is made. This is automated;
2 it's not done by -- manually.

3 I also used the vessel's maneuvering
4 characteristics. The vessel's maneuvering characteristics
5 are posted on the bridge of the vessel. They're required
6 by Coast Guard regulation and they show the speed at
7 various rpm, under various load conditions. They also show
8 the turning times for the vessel, in other words, if you
9 put a rudder on, a full rudder on, how long it takes to
10 turn and how far the vessel turns.

11 Q How about the drafts?

12 A Yes, the ship's log -- there were two places that
13 the drafts were indicated. One was in the Coast Guard
14 vessel data sheet and the other was the Calibret, which is
15 an independent company that takes the soundings of the
16 tanks on the vessel to determine how much oil was loaded.
17 When they do that just before the vessel leaves, they take
18 the draft of the vessel and they record it.

19 Q I'm showing you what's been marked for
20 identification as Plaintiff's Exhibit Number 2. Do you
21 recognize that document?

22 A Yes, sir, I do.

23 Q And is that the course recorder of the Exxon
24 Valdez?

25 A This is a copy of the course recorder for the

1 Exxon Valdez for the 23d, 24th, at local time, of March.

2 Q Now I'm showing you what's been identified as
3 Plaintiff's Exhibit Number 16, marked for identification as
4 Plaintiff's Exhibit Number 16. Do you recognize that
5 diagram?

6 A Yes, sir, I do, that's a section or a portion of
7 the course recorder, Exhibit 2.

8 Q And is that, in blown up form, an accurate
9 reproduction of the Exhibit Number 2 that's previously been
10 admitted?

11 A It is, with certain information added to that.

12 Q We'll get to that. Is that of the whole -- is
13 this --

14 A No, sir, it is not, it's a reproduction of a
15 portion of Exhibit 3 -- I'm sorry, Exhibit 2.

16 Q Now there are certain names on this diagram. What
17 do those represent, those names?

18 A The labels represent events that occurred so that
19 in looking at this, you can correlate it with events that
20 occurred.

21 Q And the labels that are on that, are they
22 consistent with the opinions that you have drawn in this
23 manner?

24 A Yes, sir, they are.

25 MR. COLE: Your Honor, I would move for admission

1 what's previously been identified as Plaintiff's Exhibit
2 Number 16.

3 MR. CHALOS: Your Honor, I would have no
4 objection, subject to this witness connecting the labels to
5 his opinion later. Right now, we haven't heard his
6 opinion, so without that opinion, I think it would be
7 inadmissible. But I won't object, subject to the
8 connection.

9 JUDGE JOHNSTONE: All right, it's admitted,
10 subject to that condition.

11 (State Exhibit 16 was
12 received in evidence.)

13 BY MR. COLE: (Resuming)

14 Q Captain Greiner, would you take a minute and
15 explain to the jury how you read a course recorder on a
16 vessel?

17 (Witness draws on the drawing board.)

18 THE WITNESS: I'm going to draw a diagram first.
19 It's a simple diagram of a compass rose. The compass rose
20 and the compass is used to indicate in what direction the
21 bow of the vessel is pointed and it runs from zero all the
22 way around to 360 degrees, zero and 360 being the same
23 point on it. There are four, obviously, quadrants to it.
24 If you divide it into quarters, there are four quadrants.
25 And for the purposes of the course recorder, we're going to

1 examine only one quadrant at a time. The course recorder,
2 itself, is an instrument which has a moving tape on it,
3 this tape here, which is Exhibit 2. And it has two
4 styluses or pens on it which leave a trace on it as the
5 paper moves along. The styluses are connected to the lower
6 one, which creates the large -- which creates this trace
7 here is connected to the gyro. In other words, the gyro
8 points to the direction the ship is headed. And so at any
9 one time, you can look at this and find the heading of the
10 vessel.

11 However, this only represents a single quadrant.
12 It doesn't represent the 360 degrees. In order to know
13 what quadrant it is, we have the second pen or stylus which
14 traces the quadrant up here. Now it's a little offset in
15 this one, but this is the lower quadrant which is 270 to
16 360. So when the upper stylus is there, we're reading
17 courses that are here and we will use the appropriate
18 scale. Here is the scale right here, 270 to 360. When the
19 stylus moves up into the next quadrant above -- and I'm
20 pointing to the upper stylus now -- it shows 180 to 270.
21 We will read the heading off of this, off of this scale
22 here.

23 Now you'll notice that there are two changes
24 here. In other words, the vessel is coming along in the
25 lower quadrant. We're going to use this scale here. And

1 so at this point, it's at 270 or very close to it. This
2 indicates that there is either -- because it's not at the
3 bottom here, that there is either an error of one degree or
4 that the recording mechanism has got some play in it there
5 because we changed from one quadrant to another right at
6 this point. So it should go all the way to the bottom and
7 then start up again.

8 We now have moved into the second quadrant, the
9 180 quadrant to 270, so we've been going along here at 270
10 and then we swing into the other quadrant, we go 250, 260
11 as we come up this line.

12 Now that's how it works. I hope -- it's difficult
13 for some people to explain. I hope I've explained it
14 adequately for you.

15 BY MR. COLE: (Resuming)

16 Q Well, that's fine. Now you can take your seat.

17 (Witness returns to his seat.)

18 BY MR. COLE: (Resuming)

19 Q Would you tell the jury how you read this as
20 time? Is time measured on this?

21 A Yes, it is. The time is measured along this
22 scale, right here, and it's measured -- because the vessel
23 transits to various areas of the world or many and the time
24 zone will change, the local time, it's common for them to
25 use Greenwich (mean) time. Greenwich (mean) time is the

1 time kept at Greenwich, England, and it is a standard used
2 throughout the world. And so these times are Greenwich
3 time and you have to convert them over to local time, which
4 is none hours different.

5 Q So at 7:00 a.m. on that vessel, what time is it in
6 Alaska time?

7 A It's 10:00 o'clock in the evening, 10:00 p.m.

8 Q Based on the course recorder --

9 A Incidentally, there's an area here, it shows on
10 the original, it says 2400 and that should be up here.

11 Q So 9:00 a.m. on this is 12:00 midnight.

12 A Yes, sir.

13 Q At 10:00 o'clock or in the time period prior to
14 that, what course heading was the vessel going at during
15 that time?

16 A This was 270. It shows 269, I believe, but it's
17 within one degree of that.

18 Q And then which direction did the vessel turn at
19 about 10:00 o'clock?

20 A It turned to the left -- well -- yes, it turned to
21 the left to transit the Narrows.

22 Q And you indicated that it transited the Narrows
23 there. How do you know that that was when it transited the
24 Narrows?

25 A Because I know the time and in my reconstruction,

1 I've -- you can't tell by looking at this, but in my
2 reconstruction, I know that's when it transited the
3 Narrows.

4 Q Between the time of 10:00 o'clock and 11:00
5 o'clock?

6 A Yes, sir.

7 Q At 11:40 -- 10:40, 10:40, did the vessel change
8 course there?

9 A Yes, sir, it changed further to the left and then
10 steadied up and then came back to the right.

11 Q And at 10:50, what course heading did it take at
12 that time?

13 A This was the -- it shows on here 218. You're
14 using this scale right here. Look on the -- I'm sorry --
15 yes, we're in this quadrant right here, 180 to 270, so
16 we're going to use this scale to read it. And you wanted
17 this one right here?

18 Q Yes.

19 A Okay, so we'll go across to that scale, 210, 215,
20 218 is the heading there.

21 Q And where was the tanker during that period?

22 A It was transiting the upper part of the Sound. It
23 had just left the Narrows, southbound, essentially
24 southbound.

25 Q Now you indicated up there that the pilot was away

1 at 11:24, between 11:20 and 11:30?

2 A Yes, sir.

3 Q And that was based on what?

4 A This is based on the bell log, the one kept on the
5 bridge of the vessel.

6 Q And the next two notations up there, right at
7 11:30 and right at 11:40?

8 A Yes, the turn starts at about 11:28, right in
9 here, and goes to --

10 Q What is "cc 200 degrees"?

11 A Change course to 200 degrees gyro.

12 Q And is that what's reflected by that particular
13 part of the graph?

14 A Actually, it's 199, approximately.

15 Q And then what happens after that?

16 A Well, they go along until about 40 and -- "minute
17 40," that's 40 minutes after 11:00 in the evening and then
18 they change course again to 180 and --

19 Q Is that reflected by the "cc 180"?

20 A Yes, sir, it is. This is the changing of the
21 course, right here, and then he's steady on about 180.

22 Q Now did you also use the bell logger in --

23 A Yes, sir.

24 Q -- in coming to your _____ here? I'm showing
25 you what's been marked for identification as Plaintiff's

1 Exhibit Number 3 and Plaintiff's Exhibit Number 92. Do you
2 recognize those two documents?

3 A Yes, sir, I do.

4 Q And what are those two documents?

5 A These are the bell recorder of the automated --
6 the record of the automated equipment that keeps track of
7 the engine orders and the rpm.

8 Q Now I'm showing you what's been marked for
9 identification as Plaintiff's Exhibit Number 17. Do you
10 recognize that diagram?

11 A Yes, sir, that is an extract of Exhibit 92, plus
12 it has labels on it.

13 Q Of the portions that are extracted, is that a fair
14 and accurate representation of those parts of Plaintiff's
15 Exhibit Number 92?

16 A Yes, sir, it appears to be. Yes.

17 Q And the names that are on the program -- the
18 labels that are on there, do they correspond with certain
19 things that occurred on the Exxon Valdez that evening?

20 A Yes, sir, they do.

21 MR. COLE: I would move for the admission of
22 what's been identified as Plaintiff's Exhibit Number 17.

23 MR. CHALOS: Your Honor, the same comment as with
24 Exhibit 16, subject to connection.

25 JUDGE JOHNSTONE: Are you going to tie all these

1 labels in terms of --

2 MR. COLE: Yes.

3 JUDGE JOHNSTONE: It's admitted with that
4 condition.

5 (State Exhibit 17 was
6 received in evidence.)

7 BY MR. COLE: (Resuming)

8 Q Now this diagram in Plaintiff's Exhibit Number 17
9 shows what, again?

10 A The automatic bell logger that's maintained on the
11 vessel.

12 Q What does that show?

13 A It shows -- let me take an example here. There is
14 a time and there is the engine order and there is the rpm
15 at that time. Over here, we have a chevron indicating that
16 that is an order and then these are the symbol for "at." I
17 don't know what they're technically called, but those are
18 made by the bell logger under its own program at a specific
19 time. There may be an event that occurs that has nothing
20 to do with rpm that is not reflected on here. This just
21 reflects the rpm changes.

22 Q Now --

23 A Excuse me, may I add one more thing?

24 Q There are times when you have a speed change where
25 the rpm is given here, such as 50 rpm. The next one is two

1 minutes, well, not quite two minutes past that, it shows
2 55, so that it doesn't log each rpm change. You have to
3 interpolate between those two entries to see that it went
4 from 50 to 55.

5 Q And the times that are on that, the times are
6 recorded, is that correct?

7 A Yes, sir, it's the time that's recorded.

8 Q And are they on Greenwich (mean) time, also?

9 A Yes, sir, they are.

10 Q So 9:00 o'clock would have been what time?

11 (Tape changed to C-3641)

12 THE WITNESS: 9:00 o'clock would have been
13 midnight, Alaska standard.

14 BY MR. COLE: (Resuming)

15 Q And would you explain, just show the jury,
16 beginning at the earliest point on that chart and when is
17 the latest point on that chart?

18 A Okay, the chart's read from the bottom, on the
19 lefthand side, 7:00 o'clock, 7:47, Greenwich time, and
20 9:00, 9:00 Greenwich time, 9:00 Greenwich time, going up to
21 10:00, 12:00, 1600 -- this is in military time. When you
22 get above 12, you have to subtract 12 from it to get the
23 local. That's a p.m. That would be 4:00 p.m., 1600, and
24 the date is there, the 24th of March.

25 Q And 9:00 o'clock Greenwich (mean) time is what

1 time in Alaska standard?

2 A Midnight.

3 Q Now in reconstructing the track of the Exxon
4 Valdez that evening, how did you do that? Explain to the
5 jury how you did that.

6 A There are different pieces of information that you
7 have to put together to make a track line. And in order to
8 do that, I extracted them from the bell logger and from the
9 course recorder and put them on a spread sheet, on a
10 computer spread sheet.

11 Q What's a spread sheet? Just explain briefly what
12 it is.

13 A A spread sheet is a way of listing information,
14 line by line, and you can also have it do calculations for
15 you. For instance, if I'm going to have an entry at minute
16 one and an entry at minute two and, in the next column, I'm
17 going to change -- let's say I'm using the heading of the
18 vessel and it goes from five to ten degrees, I can have it
19 calculate the rate of turn in the next column if I wanted
20 to. It has mathematical capabilities.

21 Q Now I'm showing you what's been marked for
22 identification as Plaintiff's Exhibit Number 155. Do you
23 recognize that?

24 A Yes, sir, this is my spread sheet.

25 Q Now what information did your spread sheet provide

1 you with?

2 A The first column, I used Greenwich (mean) time
3 because the number of the records were in Greenwich (mean)
4 time. The second column was converting it to local time,
5 so that I could relate it to events that were in local
6 time. The third was the heading of the vessel at the
7 particular time that appeared in the first column.

8 Q How did you get that heading?

9 A That heading came off of the course recorder,
10 which is this exhibit here. I took it off of this. And,
11 actually, there is an expanded version of that which is
12 even more accurate, but for all intents and purposes, it
13 came from that source's information.

14 The next column is a calculated column where the
15 spread sheet will calculate the rate of turn for you. In
16 other words, it takes the difference in the heading and
17 gives you the rate of turn.

18 Q During the period?

19 A During the interval between -- this is in every
20 minute. In other words, it's logged every minute, so that
21 the intervals are one minute apart. So it's the rate of
22 turn in degrees in the preceding minute.

23 The next column is the bell log. The bell log is
24 the manually kept log on the bridge that I mentioned. The
25 next column is the bell recorder and the only thing that

1 that column has in it is when there was a change, such as
2 here, they went full ahead. It just says "slow ahead,"
3 "full ahead," whatever it was. The following column is the
4 rpm. The rpm is also taken from here and you'll see it
5 right here. Now since I did mine minute by minute and this
6 is not a minute by minute record, I had to interpolate
7 between these entries.

8 The next column is speed of the vessel at a
9 particular rpm. Now this is an uncorrected speed. This is
10 the speed taken from the vessel's data which was corrected
11 for its draft.

12 Q What do you mean, "corrected for its draft"?

13 A The vessel's data, the speeds for it on the
14 maneuvering data are given under two loading conditions,
15 fully loaded and ballast, which means empty. The vessel on
16 this night was neither, it was in between, and it was about
17 78 percent loaded. And so you have to adjust because it is
18 neither the speed that's shown for fully loaded or empty.
19 So you take a percentage of that and that's what I've got
20 here. I made a graph up of it. That's an uncorrected
21 speed.

22 Then the next column is the speed correction
23 column. The speed correction here is made for one of two
24 reasons. Number one, when you increase speed, the vessel
25 doesn't increase speed immediately. It takes a period of

1 time for it to increase. And so I have made an adjustment
2 each time the speed increased or decreased. Also, when the
3 vessel turns, if you go into a hard turn, when the turn is
4 90 degrees completed, you will have lost about a third of
5 your speed, in other words, the vessel will have slowed
6 down and so you have to make an adjustment when you make a
7 turn. That gives you the speed through the water. And
8 then I put in a current correction.

9 Q How did you get that?

10 A The current correction is based, in part, on the
11 tide, on the rising tide, which you have here. You're
12 going to have water flowing into Valdez Harbor and so you
13 have to slow the vessel down to account for this current.
14 The current is not great in Prince William Sound or even in
15 the Narrows, but there is some. The correction is very
16 minor there. That gives you speed over the bottom. It
17 then calculates, the spread sheet calculates for me how far
18 it's traveled in the last minute, how far the vessel's
19 traveled in the last minute.

20 And the last column is accumulative distance
21 traveled and I've taken certain points and set them as
22 zero. In other words, when the vessel passed Buoy 9, for
23 instance, I set that at zero and then let it run, so five
24 minutes later, it would tell me how the vessel had
25 traveled; six minutes later, it would tell me the same

1 thing.

2 The last column is a comment column and I put
3 comments in there to remind myself of events that occurred
4 which I've taken from logs or other information. Maybe it
5 came from testimony.

6 Q So now the gyro headings that you took were off
7 the course recorder that's here --

8 A Yes.

9 Q -- and the expanded version of the course
10 recorder.

11 A That's correct.

12 Q Then there's a formula for determining the rate of
13 turn per minute, is that correct, and that's the next
14 column?

15 A The speed correction column you're talking about?

16 Q No, after the heading, the gyro, the rate of turn
17 per minute.

18 A Oh, I'm sorry. Yes, the rate of turn in degrees
19 per minute is a calculated amount.

20 Q And the notations in the column from the bell log
21 are from the actual bell log.

22 A Yes.

23 Q The bell recorder notations are the notations on
24 the bell recorder that you observed in this case.

25 A Yes.

1 Q The rpm is based on the bell logger and your
2 extrapolation in between.

3 A Yes.

4 Q The speed from the graph is determined by what
5 again?

6 A The speed from the graph is determined by a
7 mathematical calculation, based on the percentage loading
8 of the vessel.

9 Q And the speed correction is based upon whether or
10 not it's in a turn or not in a turn.

11 A That's a subjective correction, either for
12 increasing or decreasing speed as a result of change of
13 speed or decreasing speed as a result of a turn.

14 Q Now your comments, then, at 7:20, which would have
15 been about 10:20, is that correct --

16 A I'm sorry, 7:20? Yes.

17 Q And you commented -- what was your comment there?
18 How did you reach that comment?

19 A "Entrance Island abeam on the port side, .36
20 nautical miles," that came out of the bell book that was
21 kept on the bridge.

22 Q Okay, and the comment that was made at 10:32?

23 A Same explanation, same source.

24 Q And the comment at 7:45, which would be 10:45.

25 A Yes, 10:45 p.m., same source for that information.

1 Q And at 10:53, your comment?

2 A Same sources of information.

3 Q At 11:24?

4 A "Pilot off," same source.

5 Q Your comment at 2329, which is 11:30, -- :29.

6 A There's no comment on this exhibit.

7 Q No, there isn't, okay. What's the next comment
8 that you have?

9 A 2338. That's 10:38 p.m. and that's a two-line
10 fix, Buoy 9 bearing and range. That was taken off of the
11 chart and I believe from some of the testimony.

12 Q And your next comment is?

13 A Next comment is at 11:55, radar range and bearing
14 to Busby Island. That was taken off of the chart and from
15 testimony.

16 Q And the next comment? Are there any more?

17 A No, sir.

18 Q Now does that document represent a fair and
19 accurate representation of the calculations that you made
20 and used, used and made in coming to -- in developing a
21 track line for the Exxon Valdez on the 23d and 24th?

22 A Yes, sir.

23 MR. COLE: I would move for the admission of
24 what's previously been identified as Plaintiff's Exhibit
25 Number 155.

1 MR. CHALOS: No objection.

2 JUDGE JOHNSTONE: It's admitted.

3 (State Exhibit 155 was
4 received in evidence.)

5 BY MR. COLE: (Resuming)

6 Q Now based on the numbers that you received from
7 that document, did you prepare a diagram of the track line
8 taken by the Exxon Valdez?

9 A Yes, sir, I prepared an enlargement of a section
10 of the chart and placed a track line on it.

11 Q And where did you start from in your line?

12 A The Narrows.

13 Q Okay. And where did you end up at on that?

14 A Well, the track line ends up at Bligh Reef, where
15 it went aground. The chart goes a little south of that.

16 Q I'm showing you what's been identified as
17 Plaintiff's Exhibit Number 122. Do you recognize that
18 document?

19 A Yes, sir, I do, it's the document I prepared that
20 we've been discussing.

21 Q And the red line that runs down through the middle
22 of this, what does that represent?

23 A That represents the track line of the Exxon Valdez
24 on the evening of the 23d and the early morning of the 24th
25 of March 1989.

1 Q And how did you determine that that was the
2 course?

3 A From the information which I had gotten from the
4 spread sheet, that I had recorded on my spread sheet.

5 Q Okay, and then there are various numbers that you
6 have put on the chart along the red line. What are those?

7 A The ones that are horizontal are times. There are
8 others that run along the track line that are the courses.

9 Q Well, let's begin with the top one here, 2:20.
10 What was that a time of?

11 A That's the time of a fix, 2:20. There's a
12 triangle that shows where it was at that time.

13 Q And how did you get that?

14 A That one, I believe, was from the radar from the
15 Coast Guard.

16 Q Okay. And then there's one at 2256. What is
17 that?

18 A That's a Coast Guard radar fix that was plotted on
19 there.

20 Q And the various fixes that are taken down there,
21 did you get that from looking at the chart and the bell
22 book?

23 A Yes, I got it from the -- several of them came
24 from the chart that was used on the bridge of the Exxon
25 Valdez and some of them came from the bell book

1 information.

2 Q Now there is certain information that is provided
3 and printed and put on adhesive next to that. How did you
4 get that information?

5 A I prepared the labels myself and the information
6 on the labels came from, in some cases from testimony, in
7 other cases from log book entries.

8 Q And is it accurate, to the best of your knowledge?

9 A Yes, sir, it's accurate, to the best of my
10 knowledge.

11 Q Okay. And there's a red area on this. What is
12 that?

13 A That's the red sector of Busby Light. Some aids
14 to navigation --

15 Q Before we go into that, that's just the red
16 sector, is that right?

17 A Yes.

18 MR. COLE: Your Honor, I move for the admission of
19 what's been identified as Plaintiff's Exhibit Number 122.

20 MR. CHALOS: Your Honor, I have no objection,
21 except as to one tab, specifically a tab at 2344. With
22 that tab removed, I would have no objection to this
23 document being admitted.

24 JUDGE JOHNSTONE: Why don't you bring it up here,
25 so I can look at what you're talking about without showing

1 it to the jury? Okay, I see what you're talking about.
2 Why don't you ask specifically this witness about that and
3 if we can clear that up, we won't have a problem?

4 (The following was said at the bench.)

5 MR. CHALOS: Your Honor, I also object to this
6 because that's not correct, what they say. It was the LPU,
7 not sea speed, the input program. It would take another 45
8 minutes to get to sea speed is the testimony.

9 JUDGE JOHNSTONE: Why don't you see if you can
10 clear that up with the witness.

11 MR. COLE: Sure.

12 (The following was said in open Court.)

13 BY MR. COLE: (Resuming)

14 Q The notation at 2344, you put that at what, why
15 did you put that?

16 A I put that there because I got it from the
17 testimony given by the helmsman.

18 Q Are you sure about that number?

19 A The number, itself, comes from -- the time comes
20 from the fact that the -- what's indicated on here was
21 given simultaneously with the order for the helm. It is
22 not the point at which it occurs, but it doesn't purport to
23 be the point at which it occurs, either. It's the point at
24 which an order was given, not the point at which the action
25 was taken.

1 MR. COLE: Could I have a minute, Your Honor?

2 JUDGE JOHNSTONE: What time is it?

3 MR. COLE: It's 9:52.

4 JUDGE JOHNSTONE: We'll take a little recess at
5 this time. It'll be about ten or 15 minutes. Don't
6 discuss the case among yourselves or with any other
7 person. Don't form or express any opinions.

8 THE CLERK: Please rise. This Court stands at
9 recess.

10 (Whereupon, the jury leaves the courtroom.)

11 (Whereupon, at 9:54 a.m., a recess is taken.)

12 (Defendant's Exhibit V-AB was
13 marked for identification.)

14 (Whereupon, the jury enters the courtroom.)

15 (The following was said at the bench.)

16 JUDGE JOHNSTONE: You didn't tell me about this.
17 Now he's objected to this one and I think this is supported
18 by the evidence.

19 MR. CHALOS: (Inaudible) get a better fix on Naked
20 Island.

21 JUDGE JOHNSTONE: He said he was going into the
22 southbound -- the northbound lane, but he didn't say
23 anything about leaving the (inaudible).

24 MR. : (Inaudible.)

25 JUDGE JOHNSTONE: Well, you have no objection to,

1 "The vessel was in a traffic separation scheme," you have
2 no objection to that phrase, do you?

3 MR. CHALOS: No, none whatsoever.

4 JUDGE JOHNSTONE: (Inaudible) but there was
5 testimony that he called up and said, "We're going to
6 deviate a little bit through the ice and I'll call you with
7 a better fix at Naked Island"?

8 MR. : (Inaudible.)

9 JUDGE JOHNSTONE: Before you do that, is there any
10 testimony that supports he did it without advising _____?

11 MR. COLE: Yes.

12 JUDGE JOHNSTONE: What is that?

13 MR. COLE: It's Cousins' testimony that
14 (inaudible) "Don't you think we should call because we're
15 leaving," and he said, "I already did that." And the
16 second thing was Taylor said he never called when they left
17 the zone and told that they had left the zone. He only
18 called about 11:35, right there, and said, (inaudible)
19 ". . . through the ice."

20 JUDGE JOHNSTONE: Okay, I understand. Remember
21 that when he was up there (inaudible) and you said Cousins
22 testified that Captain Hazelwood told him to go ahead and
23 take the course (inaudible).

24 MR. COLE: No, he said that, "When I was checking
25

1 the radars on the ice that I could see in the front, I told
2 the captain (inaudible)," after the 2339 because he came on
3 board there and that's the first thing he did, so it's
4 sometime in here that he was plotting the ice and he saw
5 it.

6 JUDGE JOHNSTONE: Who can testify it occurred
7 right there? Who can testify that it occurred where that
8 arrow is? Who has testified that it occurred where that
9 arrow is?

10 MR. COLE: That the vessel leaves the traffic
11 system?

12 JUDGE JOHNSTONE: Without advising them.

13 MR. COLE: He's going to testify that the vessel
14 left the traffic system.

15 JUDGE JOHNSTONE: Okay, is there any evidence that
16 he advised ETC at that point that he was leaving the
17 northbound lane?

18 MR. CHALOS: Judge, there's also no evidence that
19 he had to tell them at that point. Further out, he's told
20 them that, "I'm going to the southbound lane," and then
21 called them up again (inaudible).

22 JUDGE JOHNSTONE: I think I remember that
23 testimony, he's got to deviate further.

24 MR. : I can show you the transcript.

25 MR. CHALOS: (Inaudible.)

1 JUDGE JOHNSTONE: Okay, at this time, Mr. Cole,
2 until you can tie it up a little better, you have to
3 eliminate "without advising ETC," because I think that's
4 argument.

5 JUDGE JOHNSTONE: Just relax. The jury's not
6 going to be able to see that right now anyway, I think.

7 MR. : (Inaudible.)

8 (The following was said in open Court.)

9 JUDGE JOHNSTONE: Ready now?

10 MR. CHALOS: Yes, Your Honor.

11 JUDGE JOHNSTONE: Any further reason why the
12 exhibit should not be admitted, Mr. Chalos?

13 MR. CHALOS: No objection, Your Honor.

14 JUDGE JOHNSTONE: Okay, the exhibit's admitted.
15 What number is that exhibit now, please, again?

16 MR. COLE: This is Exhibit 122, yes.

17 JUDGE JOHNSTONE: Okay, 122 is admitted.

18 (State Exhibit 122 is
19 received in evidence.)

20 BY MR. COLE: (Resuming)

21 Q Now you started to talk about this red sector that
22 you have outlined here, Captain Greiner. Could you explain
23 that?

24 A Yes, sir. Certain aids to navigation have a red
25 sector in them. There's a light here on Busby Light and

1 when you're anywhere else here, it appears white. If
2 you're in this area here, it appears red. And so if, as a
3 mariner, you see it and it's red, you know that you're in
4 this particular sector.

5 Q And that is just an outline of the dots that
6 appear on the actual chart.

7 A Yes, sir, on the chart, itself, there is a dotted
8 line that goes down there and there's a dotted line that
9 goes down there that delineates this sector. The bottom
10 line is not on the chart. I ended in there because that
11 was past any interest that we have.

12 Q Now, you indicated that the triangles along this
13 line are what?

14 A They're fixes. I use a triangle for fixes, that's
15 the way I was trained.

16 Q And these begin from your -- when the vessel was
17 abeam of Entrance Island?

18 A Yes, sir.

19 Q And then how did you get this area right here,
20 what the course was through the Narrows?

21 A I principally used the fixes from the radar that
22 the Coast Guard had to bring it through this area here.

23 Q And what was the heading after the vessel left the
24 Narrows and started to enter the lower part of the arm?

25 A The heading is shown right here, course 219. The

1 actual heading varied slightly and it varied from 217 to
2 218 degrees. But the course, as I understand it, was set
3 for 219.

4 Q And what are these circles that are with 2306 and
5 2312?

6 A Those are two positions that show on a chart that
7 was on the bridge of the Exxon Valdez. Testimony --
8 information regarding how those positions were obtained was
9 very sparse. I don't know whether they are fixes or
10 whether they are what we call dead reckoning positions.
11 There is, I believe, one line of testimony in this trial
12 here where somebody refers to it as a fix, but I've shown
13 them there just so you can correlate them with the line.

14 Q The 2320 note that you have there, that's what?

15 A Okay, 2330, "Third mate off the bridge to assist

16 . . .

17 Q 2320.

18 A I'm sorry, 2320, "Third mate off the bridge to
19 assist pilot departure and stowing of the pilot ladder."

20 Q And the 2324, what does that indicate?

21 A That's the pilot departure.

22 Q And 2325, what does that indicate?

23 A That's when the third mate returned to the bridge
24 after having stowed the ladder.

25 Q Now did your analysis of the course recorder

1 indicate that a turn had been -- that a new heading of 200
2 degrees had been come to during right around 2339?

3 A Yes, at 2339, the course was changed to
4 approximately 200.

5 Q That was the course it was running on. What was
6 the speed of the vessel at about 2330, 2335?

7 A The speed over the bottom at 2335 was about 11-1/4
8 knots.

9 Q When did this vessel then leave the traffic
10 separate scheme?

11 A Okay, the traffic separation scheme is outlined
12 here by the dotted lines. There is an inbound lane and an
13 outbound lane and the gray portion here is the separation
14 between them. When the red line passed over the dotted
15 line is the point at which he left the vessel traffic
16 system or the scheme here and I calculated that at 2351.

17 Q And then the next notation that you have on that
18 is 2352. What was that notation?

19 A The speed of the vessel was set on what's called
20 LPU, load program up. It's an automated sequence run by a
21 computer that will increase the rpm of the engine and,
22 thus, the speed of the vessel to its sea speed. Up to this
23 point, it had been operating on full maneuvering speed,
24 which is slower.

25 Q And the notation you have at 2353?

1 A "Master leaves the bridge."

2 Q Now during this segment of the track of the Exxon
3 Valdez this evening, about what heading was it on?

4 A 180.

5 Q And do you have a little mark on the line that
6 will tell the jury about what time 12:00 midnight was on
7 this?

8 A Yes, sir, I have two here. This is three minutes
9 after and it's right opposite the one -- when I put the
10 course of 180 down and then --

11 Q Wait a minute. Three minutes after what?

12 A I'm sorry, three minutes after the previous fix.
13 That would be 11:58.

14 Q And that corresponds with this mark where, right
15 next to the one on course 180?

16 A That's correct. And then the next mark on the red
17 line below it is the approximate position of the vessel at
18 midnight and it's just north of the red zone.

19 Q Now when does the course recorder indicate that
20 the vessel began to make a change heading in this manner?
21 Why don't I just pull this out?

22 A We're on 180 and between minute one and minute
23 two, the -- that's one minute after midnight or two minutes
24 after midnight -- the heading of the vessel started to move
25 sharply to the right.

1 MR. COLE: I'm looking for the expanded course
2 recorder that I believe I had marked on Friday.

3 BY MR. COLE: (Resuming)

4 Q Have you got the expander?

5 A Yes, I do.

6 (State Exhibit 156 was marked
7 for identification.)

8 BY MR. COLE: (Resuming)

9 Q Now I'm showing you what's been marked for
10 identification as Plaintiff's Exhibit Number 156. Do you
11 recognize that?

12 A Yes, I do.

13 Q What is that? Why do you recognize that?

14 A Because, for one, I gave it to you, but it came
15 out of the National Transportation Safety Board hearing and
16 it's an expanded portion of the course recorder.

17 Q Would you explain what it's an expanded portion
18 of?

19 A Yes, this is an expanded portion of that that was
20 between 11:45 p.m. and 15, 16 minutes after midnight on the
21 24th of March 1989.

22 Q Can you give the jury an idea of what that would
23 be on this?

24 A Yes, it starts somewhere in here and goes down to
25 approximately that point right there.

1 Q And do you know what method was used to do that?

2 A Yes, the NTSB used an optical scanner to digitize
3 the course recorder and put it into a computer and then
4 this was generated from the computer record that had been
5 made.

6 Q And is it a fair and accurate representation of
7 that segment in a blown-up sense?

8 A Yes, sir, it is.

9 MR. COLE: I would move for the admission of
10 Plaintiff's Exhibit Number 156.

11 MR. CHALOS: Your Honor, may I have a short voir
12 dire on this?

13 JUDGE JOHNSTONE: Approach the bench, please, Mr.
14 Chalos, Mr. Cole.

15 (The following was said at the bench.)

16 JUDGE JOHNSTONE: Mr. Chalos, on several
17 occasions, you have used short voir dire to cross examine
18 witnesses and that's not the purpose of voir dire and you
19 don't get a voir dire on every exhibit, unless you have a
20 genuine good faith dispute with its foundation. Now what
21 is your dispute? That sounds like, if anything, that's a
22 foundation.

23 MR. CHALOS: Yes, this particular expanded version
24 was done by the NTSB, but it's (inaudible). The NTSB is no
25 longer relying on this because it was done in error, so

1 this is an erroneous expanded version.

2 JUDGE JOHNSTONE: How do we know the NTSB is no
3 longer relying on it?

4 MR. CHALOS: Because I've spoken with the
5 NTSB.

6 JUDGE JOHNSTONE: Well, how are you going to,
7 through cross examination, explain this?

8 MR. CHALOS: Well, I can certainly ask him in
9 cross examination, but he says that this is a fair and
10 accurate representation of the (inaudible).

11 JUDGE JOHNSTONE: That's his opinion. Your
12 question goes to the weight of his opinion, not to the
13 admissibility of it.

14 MR. CHALOS: Judge, I was just trying to save some
15 time.

16 JUDGE JOHNSTONE: No, I don't mind you cross
17 examining in due cross, but not during a voir dire
18 foundation issue.

19 (The following was said in open Court.)

20 JUDGE JOHNSTONE: The exhibit is admitted.

21 (State Exhibit 156 was
22 received in evidence.)

23 BY MR. COLE: (Resuming)

24 Q Now in examining the course recorder, does it
25 appear that the slope of the vessel changes, of the line
changes after 12:00 o'clock, after 12:02?

1 A Yes, sir, it does. The slope gradually increases
2 for a little over a minute and then we have a steady slope
3 until about a minute, just before a minute -- let's see,
4 just before six minutes after midnight.

5 Q Now what does the slope on this line represent,
6 would you explain that to the jury?

7 A The slope represents the rate of turn. In other
8 words, while we can calculate what the rudder was, we can
9 also look at it and the steeper it is, the faster the
10 vessel is swinging.

11 Q How about -- isn't it the flatter the line is, the
12 faster it's turning, would that be correct?

13 A Well, see, you've got it on the side. I look at
14 it from this angle. When you look at it in this angle, in
15 this position, the more horizontal the line is, the faster
16 the swing is.

17 Q Now based on the information that you have
18 reviewed, you indicated that, prior, that in your opinion,
19 based on the damage that you observed, there were two
20 strikes on the bottom.

21 A Yes, sir.

22 Q Is that conclusion corroborated by your analysis
23 of the course recorder?

24 MR. CHALOS: Objection, Your Honor. He's leading
25 the witness, no foundation.

1 JUDGE JOHNSTONE: Objection overruled.

2 THE WITNESS: Yes, sir, the -- I can indicate to
3 you where the beginning and the end, where I believe the
4 beginning and the end of the forward motion was on this
5 course recorder. And I can indicate to you approximately
6 where the end of the first contact occurred.

7 BY MR. COLE: (Resuming)

8 Q Would you give your opinion on that?

9 A Yes, sir. This area here, which I call a
10 discontinuity is where the initial contact took place and
11 it flattens out -- well, in this mode, it is sharper. And
12 you can see it on the Exhibit 156 much better than you can
13 see it here.

14 Q Is that the initial contact or the place where it
15 came to rest at 12:07?

16 A 12:07 was the place where it came to rest.

17 Q Okay, what were you pointing at there?

18 A I'm pointing here at where -- at 12:05, almost
19 12:06 is where this line starts to change direction and
20 obviously, it's come into contact with something which has
21 slowed its rate of turn down and then the rate of turn
22 starts to increase again. And if you look at the graph in
23 this direction, looking right along the slope of the line,
24 you can see that there is another change of the slope that
25 occurs at about a minute seven and a half and this is where

1 I believe the vessel stopped.

2 Q Can you show the jury, on the large course
3 recorder, the area that you're talking about?

4 A This is the initial contact. That's the end of
5 the initial contact. And down in here, which is not
6 apparent on this one, is where the vessel came to rest.
7 Initial contact and the vessel came to rest in here.

8 Q Now when did the vessel get steadied up after --
9 it was making a hard right turn at some point, is that
10 correct?

11 A Yes, the turn reversed at this point here which is
12 shortly after ten minutes after midnight.

13 Q How far had the vessel turned to the right at that
14 point?

15 A The vessel had turned -- notice that we changed
16 our sectors here and now we're in Sector 270 through 360
17 and so we read it right here and it had come right to about
18 305.

19 Q So it didn't go to the right until 270 and then
20 start heading back to the left.

21 MR. CHALOS: Objection, Your Honor.

22 JUDGE JOHNSTONE: It's leading, Mr. Cole.

23 MR. CHALOS: It also mischaracterizes the
24 testimony, Your Honor.

25 BY MR. COLE: (Resuming)

1 Q Would you explain why that curve does not indicate
2 that the vessel started, was making a right turn and then
3 started making a left turn at 270 degrees?

4 MR. CHALOS: Objection, Your Honor, form.

5 JUDGE JOHNSTONE: Objection overruled.

6 THE WITNESS: The swing of the vessel is, with the
7 exception of the changes that I've noted in here, is
8 continuous all the way through this arc. The fact that the
9 pen reverses does not mean that the vessel changed its
10 swing because you'll notice up here that it changed
11 sectors. And so the swing to the right continues through
12 this. In other words, we're in the 180 to 270 sector here
13 and so this swing is coming down this scale here. It
14 reaches 270 there and then we have to look at the next
15 scale because we've changed our sectors. And it continues
16 to swing on to the right until it stops at this point here
17 and reverses the swing.

18 BY MR. COLE: (Resuming)

19 Q And how would that have occurred? Why did that
20 occur? Why did it reverse its swing?

21 A The swing was reversed because I understand the
22 rudder was shifted. When I say the rudder was shifted, I
23 mean it was put from one side to the other side.

24 Q Now I'd like to focus on the time period from
25 12:38 on the course recorder to about 1:41. Would you

1 describe for the jury the actions that are -- the heading
2 changes that are occurring during this period?

3 A Okay, the headings are changing to the right and
4 left every time you reach a peak because we're not changing
5 sectors here, we're not changing quadrants. So the
6 vessel's head is being moved back and forth. Each time we
7 reach a peak on one end, that's the change from going from
8 left to right or right to left and it changes back and
9 forth all the way up to where the label "Stop" is.

10 Q Was the vessel moving at this time?

11 A In my opinion, it was not. When you say "moving,"
12 I'm sorry, what do you mean?

13 Q Was it going forward?

14 A No, sir, it was not going forward.

15 Q What was the largest degree of turn in any one
16 time?

17 A 14 degrees, 14-1/2 degrees and it's between here,
18 this point at which the heading was 276 -- I'm using this
19 scale here -- and up to here where it was 290-1/2 degrees.
20 Let's call it 14 degrees.

21 Q Now based on this information and the damage
22 diagram that has been made, that you observed and made
23 available, can you give an opinion as to how far the bow
24 might have been traveling during this 14-degree turn?

25 A Yes, sir. The bow moves back and forth, as does

1 the stern, when you pivot around a point. In other words,
2 if the vessel is aground at a point and you're going to
3 move it back and forth, the bow is going to move laterally
4 and the stern. And using a 14-degree change in heading of
5 a vessel, I came up with the bow -- if you're going to
6 assume that the rock is, oh, somewhere around 384 foot from
7 the bow, the bow will swing 94 degrees -- 94 feet back and
8 forth.

9 Q From one end of the turn to the other.

10 A Yes, sir.

11 Q And how about the aft of the vessel, would it be
12 moving during this time?

13 A Yes, sir, it moves the same number of degrees, but
14 because the pivot point is forward of the center of the
15 ship, it moves a greater distance laterally.

16 Q Can you demonstrate that again with your little --

17 A Yes, sir. If we're going to have the pivot point
18 -- let's assume this is the bow. The pivot point is
19 forward of the midships section here. As we move back and
20 forth, we're going to have the same number of degrees turn
21 -- and we're using 14 for this calculation -- but the
22 amount that this goes back and forth is much less than the
23 amount the stern goes back and forth.

24 Q Do you have an opinion as to what Captain
25 Hazelwood was attempting to do during that period, 12:38 to

1 1:41?

2 MR. CHALOS: Objection, Your Honor. I don't think
3 Mr. Greiner's been qualified as a master mariner or someone
4 having a license as a deck officer, so I don't know if he
5 can give an opinion as to what a captain is doing because
6 he doesn't have that kind of experience.

7 JUDGE JOHNSTONE: Mr. Cole?

8 MR. COLE: He's done accident reconstruction. He
9 can give his opinion on the type of orders that are being
10 given at this time.

11 JUDGE JOHNSTONE: objection overruled. He can
12 give his opinion.

13 THE WITNESS: Yes, sir, the movement of the rudder
14 back and forth is consistent with trying to work a vessel
15 off of a rock or the bottom.

16 BY MR. COLE: (Resuming)

17 Q Why do you say that?

18 A I can think of no other reason for it. If the
19 converse was true, that he was trying to hold it on there,
20 he certainly would not have moved it back and forth. Also,
21 moving it back and forth exposes the vessel to additional
22 damage.

23 JUDGE JOHNSTONE: Move to strike, Your Honor, not
24 responsive.

25 JUDGE JOHNSTONE: Mr. Cole?

1 BY MR. COLE: (Resuming)

2 Q What risk does --

3 JUDGE JOHNSTONE: Mr. Cole, there's a motion.

4 MR. COLE: I'm sorry, I'll withdraw it. You can
5 strike it. I'll ask the question.

6 JUDGE JOHNSTONE: All right, we'll strike that
7 last statement made by the witness.

8 BY MR. COLE: (Resuming)

9 Q What risk was there in moving this vessel in
10 attempting to get off the reef?

11 A The risk was additional damage to the vessel and
12 possible injury or death to people in the engine room.

13 Q What type of additional damage to the vessel?

14 A If the vessel was successful in moving forward,
15 the rock upon which it was resting could have very easily
16 caused damage in the engine room, holing of the engine room
17 and flooding of the engine room.

18 Q What about damage to the prop. or the rudder?

19 A It could have done that, also.

20 Q What would have been the risk to the vessel if
21 those had occurred?

22 A Well, if you flood the engine room, you lose the
23 buoyancy of the engine room and it's my opinion, without
24 doing any calculations, that it in fact would -- well, I
25 know that it would increase the weight of the vessel or

1 decrease the buoyancy of the vessel and it could be totally
2 lost if it came off.

3 MR. COLE: Nothing more, Your Honor.

4 JUDGE JOHNSTONE: Mr. Chalos?

5 MR. CHALOS: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. CHALOS:

8 Q Good morning, Mr. Greiner.

9 A Good morning, sir.

10 Q I looked over your resumé here and I noticed that
11 you're an attorney.

12 A I'm licensed as an attorney, yes, sir.

13 Q I see also that you're a member of the Washington
14 State Bar Association.

15 A Yes, sir.

16 Q The Maritime Law Association.

17 A Yes, sir.

18 Q And the Association of Trial Lawyers of America.

19 A That's correct.

20 Q Have you, as an attorney, represented any clients?

21 A Only once.

22 Q Just once in your career?

23 A I represented a client outside the family once in
24 my career.

25 Q Did you do some personal injury work as a lawyer?

1 A No, no.

2 Q Now your company is called Maritime and
3 Environmental Consultants --

4 A Yes, sir.

5 Q -- is that right? What is the function of your
6 company, what do you do?

7 A Maritime and Environmental Consultants is a
8 referral agency that refers maritime oriented experts or
9 marine environmental experts to those people desiring their
10 services.

11 Q So you provide experts to lawyers, for instance?

12 A Yes, sir.

13 Q In this particular case, have you provided any
14 experts to the State of Alaska?

15 A Yes, sir.

16 Q Who have you provided?

17 A Mr. Beevers, Captain Beevers.

18 Q Anyone else?

19 A No, sir.

20 Q Did you help them get Mr. Milwig, for instance?

21 A No, sir.

22 Q How about Professor Voras?

23 A No, sir.

24 Q Now you have a contract with the State, do you
25 not?

1 A Yes, sir.

2 Q Originally, the amount of the contract was for
3 \$20,000.00?

4 A The contract maximum was \$20,000.00, yes, sir.

5 Q And that was recently increased to \$30,000.00?

6 A That's correct, sir.

7 Q Have you billed the State?

8 A I've billed the State, yes.

9 Q How much have you billed them for, so far?

10 A I think it's between 17 and 18,000.

11 Q Do you expect that your fees are going to exceed
12 \$30,000.00 in this case?

13 A I haven't done the calculations on them. It'll be
14 in the upper 20s at least, yes.

15 Q Now do you have an arrangement with Captain
16 Beevers with respect to the fees that he receives in this
17 case?

18 A Yes, sir.

19 Q He gives some of that back to you?

20 A For the referral, yes, sir.

21 Q How much of Captain Beevers' fees will you take
22 back?

23 A Ten percent.

24 Q Now, Mr. Greiner, you were referred to several
25 times by Mr. Cole as captain.

1 A That's correct.

2 Q The captain that we're talking about was your rank
3 in the Coast Guard when you retired, is that right?

4 A That's correct, sir.

5 Q You don't hold a master's license for commercial
6 vessels.

7 A No, sir.

8 Q As a matter of fact, you don't hold any licenses
9 for commercial vessels, do you?

10 A No, sir. I was eligible for them, but I chose not
11 to sail.

12 Q You don't have, for instance, a chief mate's
13 license or a second mate's license or a third mate's
14 license --

15 A No, sir.

16 Q -- or a chief engineer's or second engineer's or
17 first engineer's?

18 A I have no licenses at all.

19 Q I see from your resumé, again, that the last time
20 you sailed was somewhere in the area of 1965 to 1967.

21 A I sailed as a crew member, yes, sir.

22 Q And that was on the Coast Guard cutter, the Taney?

23 A That's correct.

24 Q That's a 327-foot cutter.

25 A Yes, sir.

1 Q And you said you were the equivalent of the chief
2 engineer on that ship?

3 A That's correct.

4 Q Now did you sail the entire two years or was that
5 ship docked somewhere?

6 A It sailed over 200 days a year.

7 Q And were you on there the whole time?

8 A Yes, sir, I was on there the whole time it sailed.

9 Q What kind of engine does that ship have?

10 A Twin turbine, steam turbines.

11 C Have you ever sailed on a vessel with a diesel
12 engine?

13 A Well, all the vessels have diesel engines. You
14 mean main propulsion diesel engine?

15 Q Main propulsion.

16 A Yes, sir -- oh, no, I have not, I'm sorry, I have
17 not.

18 Q So do you know what kind of engine the Exxon
19 Valdez had?

20 A Yes, sir, a diesel engine.

21 Q Do you know the speed?

22 A You mean the rpm?

23 Q No, the -- you're familiar with the designation of
24 high speed, medium speed and low speed diesel.

25 A Yes, sir.

1 Q Do you know what kind of speed this engine was?

2 A Yes, sir, it's a low speed.

3 Q I take it you've never sailed on any merchant
4 vessels.

5 A Not as a crew member. I've sailed on them for
6 other purposes.

7 Q In your work as a consultant?

8 A No, sir, in the Coast Guard.

9 Q When you say you sailed on them, you mean you went
10 on board to inspect them?

11 A No, sir, I mean I sailed on them.

12 Q For what periods of time?

13 A I sailed on the Keystone tanker for a month, going
14 up and down the East Coast, while we were doing
15 instrumentation and tests on the tanks. I've sailed on a
16 passenger ship for the shakedown cruise out of Seattle,
17 Washington. And there's one other; I don't remember the
18 exact circumstances.

19 Q These were all steam turbine vessels?

20 A I think the tanker was. I was doing deck work. I
21 wasn't doing engineering work down in the engine room, but
22 I'm sure it was. The passenger ship was not, though, it
23 was diesel.

24 Q Okay. On those ships, you didn't do any -- you
25 didn't stand a watch or anything like that.

1 A No, sir.

2 Q You didn't have any navigational duties.

3 A That's correct.

4 Q Now again referring to your resumé, I see that
5 you've been consulted in the past five years I think you
6 said in over 251 cases, is that right?

7 A Yes, sir.

8 Q When you say you were consulted, do you mean
9 people have come to you and said, "Can you find me an
10 expert in this particular field?"

11 A No, sir.

12 Q You were consulted, yourself.

13 A That's correct.

14 Q And you worked on 251 cases in the last five
15 years.

16 A Some of them didn't amount to anything, but I was
17 contacted on them and opened a case file on them, yes, sir.

18 Q I see here that you say approximately 60 percent
19 of those were for plaintiff attorneys, 35 percent was for
20 defendant attorneys and five percent were nonlitigation.

21 A That's correct.

22 Q So that's the way it breaks down.

23 A Yes.

24 Q And I think you told Mr. Cole that you testified
25 30 to 35 times in the past five years.

1 A That's correct, sir.

2 Q Do you consider yourself a professional witness?

3 A No, sir. It depends on how you use the term, but
4 I don't consider myself as such.

5 Q Well, I take it your job is to consult and
6 testify, right, that's your primary function?

7 A My primary function is to consult. If it requires
8 testimony and -- as you can by the number of cases I've
9 consulted versus the number I've testified in, most of them
10 do not require expert testimony.

11 Q You don't have a job -- I mean, for instance,
12 you're not a professional naval architect or a professional
13 engineer or a professional salvage man who has a job that
14 he does and then he testifies in those areas of expertise?

15 A I consider consulting in marine safety as a job.

16 Q But that is your only job.

17 A Yes, sir. No, it isn't. The other portion of it
18 is referring experts to other people, so there's two
19 portions to the type of work I do.

20 Q Okay. Now let's talk about what the State of
21 Alaska has asked you to do in this case.

22 A Yes, sir.

23 Q What did they ask you to do?

24 A They asked me to photograph the -- assist in the
25 photographing of the bottom of the Exxon Valdez in dry

1 dock.

2 Q That was in San Diego?

3 A In San Diego, yes, sir. To evaluate the damage
4 that occurred to the bottom of it. To reconstruct the
5 track line of the vessel and to render opinion with regard
6 to the actions that were taken after the vessel had gone
7 aground.

8 Q Okay. Were you asked to do anything else?

9 A No, sir.

10 Q Nothing at all?

11 A Not that I can recall.

12 Q Can you remember the State asking you to contact
13 the Coast Guard to find out what the pilotage regulations
14 for Prince William Sound were at the time of the grounding?

15 A Yes, sir.

16 MR. CHALOS: Your Honor, may I approach the
17 witness?

18 JUDGE JOHNSTONE: Yes, sir.

19 BY MR. CHALOS: (Resuming)

20 Q I show you what's been marked as Defendant's
21 Exhibit V and ask you, is that a letter you wrote to the
22 Commander of the 17th Coast Guard District in Juneau on
23 29 May 1989?

24 A Yes, sir, it is.

25 Q I show you what's been marked for identification

1 as Exhibit W and ask you, is that a letter you wrote to the
2 Commandant of the Coast Guard in Washington, D.C., on
3 29 May?

4 A Yes, sir.

5 Q In those letters, are you asking the Coast Guard
6 for information relating to pilotage?

7 A Yes, sir, I am.

8 Q At whose request did you make that request?

9 A At the State's request.

10 MR. CHALOS: Your Honor, I offer at this time
11 Exhibits V and W into evidence.

12 MR. COLE: My objection is relevance.

13 JUDGE JOHNSTONE: May I see the exhibits, please?

14 MR. CHALOS: Yes.

15 JUDGE JOHNSTONE: Mr. Cole.

16 (The following was said at the bench.)

17 JUDGE JOHNSTONE: Are you going to tie this up?

18 MR. CHALOS: What, Your Honor?

19 JUDGE JOHNSTONE: He was asked by the State to
20 look into this issue of pilotage, which he did, and he was
21 told (inaudible).

22 MR. COLE: That's hearsay.

23 JUDGE JOHNSTONE: That's going to be hearsay
24 (inaudible). (Inaudible) outside the scope, but there's
25 the existing hearsay objection. How do you answer the

1 hearsay objection?

2 MR. CHALOS: (Inaudible.)

3 JUDGE JOHNSTONE: You're offering it for the truth
4 of the matter that it was waived.

5 MR. CHALOS: (Inaudible.)

6 JUDGE JOHNSTONE: That's hearsay and it goes to
7 (inaudible). I think we'd better take this up outside the
8 presence of the jury.

9 (The following was said in open Court.)

10 JUDGE JOHNSTONE: We need to take this matter up
11 outside your presence. It may take a few minutes and I
12 want to make sure we get a good record on it. Don't
13 discuss the matter or speculate on what we're doing and
14 don't form or express any opinions, please.

15 (Whereupon, the jury leaves the courtroom.)

16 JUDGE JOHNSTONE: All right, maybe we ought to
17 just develop this on the record as completely as possible.
18 As to Exhibits V and W, they're letters by the witness to
19 the Coast Guard to obtain information regarding pilotage.
20 The object was relevance. Why don't you now take it from
21 there, what the purpose is?

22 MR. CHALOS: Yes, Your Honor, Mr. Cole has brought
23 in several witnesses who have testified as to the issue of
24 pilotage. And while I think that the issue is fairly
25 muddled at this particular point in time, there has been

1 testimony by some of the witnesses presented by Mr. Cole
2 that pilotage was in existence in that area at the time of
3 the grounding. He also hired Mr. Greiner, as part of his
4 functions, to contact the Coast Guard to verify that, in
5 fact, pilotage existed. Mr. Greiner has done that. He's
6 written to the Coast Guard. He's gotten information from
7 them and he's gotten public documents from them. He's been
8 referred to public documents and, basically, they show what
9 we've been saying all along, that the pilotage in that
10 particular area has been waived.

11 I think that since Mr. Cole has brought up the
12 issue initially and has presented testimony to the effect
13 that pilotage existed, I think he has an obligation because
14 that's inculpatory evidence now, he has an obligation under
15 the Code of Ethics, if he has exculpatory evidence, which
16 he does -- he's hired a man to get him that -- he has an
17 obligation to bring it forth.

18 Now he didn't ask this witness any question about
19 the pilotage and this witness said he wasn't asked to do
20 anything else, but obviously that's not correct because
21 he's written numerous letters and gotten several responses
22 to them. So I think that I'm entitled to question him on
23 it with respect to credibility, number one, and, number
24 two, as exculpatory evidence.

25 Now the evidence that we're talking about is not

1 so much as to whether pilotage existed or not. What we're
2 talking about is -- and Mr. Greiner, in one of his letters,
3 pinpoints the issue -- is what could Captain Hazelwood
4 reasonably believe at that time, given the situation with
5 respect to pilotage. Could he reasonably believe that
6 pilotage was waived, independent of whether in fact it was
7 or not? And I think Mr. Greiner has come to certain
8 conclusions and I would like to explore those conclusions.

9 JUDGE JOHNSTONE: All right. Mr. Cole, at the
10 side bar, said here's an objection, also, to the scope of
11 the direct. This is something that's a totally new matter,
12 it seems like to me, that wasn't covered in the direct, the
13 pilotage. It has been covered by other witnesses. And you
14 want to elicit his expert opinion as to whether or not
15 Captain Hazelwood could reasonably have relied on
16 information that the pilotage was no longer in effect.

17 MR. CHALOS: Yes, but, first, setting the
18 foundation for it on the basis of information that he
19 gathered in that regard.

20 JUDGE JOHNSTONE: Well, let's make sure we get
21 this clear. You have other exhibits you haven't referred
22 to.

23 MR. CHALOS: Yes.

24 JUDGE JOHNSTONE: You have information he
25 received, Captain Greiner received, indicating that

1 pilotage had been waived and you want to admit those
2 documents, also, at this time.

3 MR. CHALOS: Well, I can do it in one of two
4 ways. I can ask him about it, without admitting the
5 documents, Your Honor, or I can admit the documents if you
6 think that would assist.

7 JUDGE JOHNSTONE: Well, I'm not telling you how to
8 do your case. I'm asking you what your intentions are.

9 MR. CHALOS: I had intended originally to
10 introduce the letters into evidence, but I can do it the
11 other way. Right now, my intention is to introduce the
12 letters.

13 JUDGE JOHNSTONE: Okay, and also you wanted to ask
14 Captain Greiner his opinion, as I understand it, his expert
15 opinion, as to whether or not Captain Hazelwood could have
16 reasonably relied on Coast Guard information that pilotage
17 had been waived.

18 MR. CHALOS: Yes.

19 JUDGE JOHNSTONE: Okay, Mr. Cole?

20 MR. COLE: Well, I guess -- well, these are the
21 two.

22 JUDGE JOHNSTONE: Mr. Cole indicated at side bench
23 hearsay and outside the scope of direct. Those are the
24 objections I've heard so far.

25 MR. COLE: Where are the two documents that he

1 received?

2 MR. CHALOS: What's that?

3 MR. COLE: Where are the two documents that he
4 received from the Coast Guard that indicated --

5 MR. CHALOS: You mean the enclosures?

6 MR. COLE: Right.

7 MR. CHALOS: You never gave them to me.

8 JUDGE JOHNSTONE: What is it you're trying to
9 admit, Mr. Chalos, that's the question, what exhibits?

10 MR. CHALOS: I'm trying to admit Exhibits --

11 JUDGE JOHNSTONE: The two requests by Captain
12 Greiner and how about the two responses? Are there
13 responses you wish to have admitted?

14 MR. CHALOS: Yes, I'll identify the letters for
15 the record, Your Honor. Exhibit V was the letter of
16 May 29th to the Commander of the 13th Coast Guard District.

17 JUDGE JOHNSTONE: That's V, as in Victor?

18 MR. CHALOS: Yes.

19 JUDGE JOHNSTONE: Okay.

20 MR. CHALOS: W is a letter dated May 29th to the
21 Commandant..

22 JUDGE JOHNSTONE: I have those down already. I'm
23 talking about the responses that you want to admit.

24 MR. CHALOS: X is a letter from Mr. Greiner, again
25 to the Commandant, dated July 20th, 1989. Exhibit Y is a

1 fax to Mr. Cole dated August 16th.

2 JUDGE JOHNSTONE: A fax from Cole?

3 MR. CHALOS: No, from Mr. Greiner to Mr. Cole.

4 And Exhibit Z is a letter dated October 18th, 1989, from
5 the Coast Guard, from the Commandant's Office to Mr.
6 Greiner.

7 JUDGE JOHNSTONE: And is it in that letter where
8 he has represented that the pilotage was waived?

9 MR. CHALOS: Yes. And Mr. Cole says that there's
10 a reference to an enclosure in this particular letter and
11 my response to that was we never received the enclosure.

12 JUDGE JOHNSTONE: Okay, may I see the letter now,
13 Exhibit A you're talking about? Why don't we take a brief
14 recess and, Mr. Cole, you can look at that and you can
15 articulate your objections when I get back, about five
16 minutes?

17 THE CLERK: Please rise. This Court stands at
18 recess.

19 (Whereupon, at 11:04 a.m., a recess was taken.)

20 JUDGE JOHNSTONE: Be seated. All right, Mr. Cole?

21 MR. COLE: Judge, my objection is -- I'm going to
22 focus first on the answer from the Coast Guard to Captain
23 Greiner. First of all, I've noticed that the enclosures
24 that are noted in this, that are referred to are evidence
25 that you have already excluded and that's Exhibit U.

1 MR. CHALOS: Wait a minute, no, no, that's not --
2 that's --

3 MR. COLE: That's what it says, exhibit --
4 Enclosure Number 2, Federal Register, Volume 53, Number 108
5 of June 6th, 1988. Defendant's Exhibit Number U is --
6 which is proposed changes in the regulations to eliminate
7 pilotage, these are proposed. Now you've already ruled
8 that these are inadmissible because they were only
9 proposed. And that's one of the --

10 JUDGE JOHNSTONE: Mr. Chalos didn't focus on that;
11 he focused on the waiver of the policy.

12 MR. COLE: Right and that enclosure is based on a
13 federal code of procedure, it looks like, the history of
14 Prince William Sound. Our objections are, one, that is
15 hearsay. The statement from Michael Brown is something
16 that we cannot cross examine as to what he meant as a
17 policy waiver was in effect. It's just plain hearsay.

18 Number two, the opinion that he's giving is
19 speculative if it's in response to Captain Greiner's
20 request of what a tanker captain would reasonably -- what
21 Joseph Hazelwood would reasonably believe to be the law at
22 this time, which is I think what he says in -- Captain
23 Greiner says in his letter.

24 So for those two reasons, we believe that that
25 information is speculative. It's also outside the scope of

1 redirect -- of direct.

2 As to the memo, Plaintiff's Exhibit Number Y,
3 there's nothing on this memo that is relevant to the issues
4 in this case, so Y we object to relevance.

5 As to Plaintiff's Exhibit Number W, X and V, which
6 are all requests by Captain Greiner for information from
7 the Coast Guard, first of all, two of them don't go to
8 anybody that is referred to. I mean two of them go to
9 Juneau -- one of them goes to Juneau and there's no
10 response and no nothing, so we would object on relevance
11 grounds there.

12 As to the two letters that were sent on May 29th
13 and June 20th, we feel that they have no relevance because
14 of the hearsay objection to the response.

15 JUDGE JOHNSTONE: Mr. Chalos, let me ask you a
16 couple of questions and maybe we can speed this up.
17 Without getting Z in, if you don't get Z in, what relevance
18 does Y, X, W and V have? I mean the whole purpose of
19 getting that in is to lay a foundation, isn't it, for the
20 response of the Coast Guard waiving pilotage?

21 MR. CHALOS: Yes, Your Honor, as far as Z is
22 concerned, I suppose I can ask him the question whether he
23 received any information from the Coast Guard, without
24 actually referring to the letter, because I don't think
25 hearsay is an appropriate objection as far as an expert

1 basing his opinion on anything. The way I read 702 and
2 703, an expert may rely on what would normally be
3 inadmissible in forming his opinion.

4 JUDGE JOHNSTONE: Okay, now, we have a hearsay on
5 one. We also have the opinion is speculative. I'm
6 assuming that that means, in this case, how is Captain
7 Greiner going to be able to speculate or give an opinion,
8 expert opinion, on what Captain Hazelwood may or may not
9 have been relying on, without further information than what
10 he has so far.

11 MR. CHALOS: Your Honor, it's not the witness
12 saying what Captain Hazelwood would have relied on, but
13 anyone having access to this information, including
14 himself, what would they conclude, what could a person
15 reasonably conclude, not necessarily what Captain Hazelwood
16 would have concluded. I'm not going to ask him his opinion
17 of what Captain Hazelwood might have thought, but could a
18 reasonable person, taking everything into account,
19 including documents that he received from the Coast Guard,
20 could a reasonable person conclude that pilotage had been
21 waived, at best, and at worst, that it was a confusing
22 situation.

23 JUDGE JOHNSTONE: Anything further you want to add
24 to your offer to overcome hearsay and opinion objections?

25 MR. CHALOS: No, not at this time.

1 JUDGE JOHNSTONE: Okay, I'm going to sustain the
2 objections on the basis of hearsay. Also, I will not
3 permit the witness to give his opinion, as requested,
4 because it would be based upon hearsay. It's also beyond
5 the scope of his expertise. It's not the type of opinion
6 that will assist the finder of fact in this case. It would
7 disclose information that would be used by the jury for an
8 improper purpose and the danger of that outweighs its value
9 as support for the expert's opinion. It's furthermore
10 outside the scope of direct testimony and has nothing to do
11 with Mr. Cole's examination.

12 So for those three reasons, inquiry regarding what
13 he asked the Coast Guard and any information he received
14 from the Coast Guard or the use of that information in
15 support of his opinion that a captain might be able to rely
16 on a waiver of pilotage will be prohibited. Let's get the
17 jury back in.

18 MR. CHALOS: Your Honor, before we bring back the
19 jury, do I understand the Court to be instructing us that
20 even if we call Mr. Greiner back as our expert on this
21 particular issue, we'd be precluded from asking him
22 questions about what he did in respect to opinion
23 information with regard to the pilotage?

24 JUDGE JOHNSTONE: I just made a ruling based on
25 the offer you've made now and Mr. Cole's objections. I

1 think you might be able to infer that if you ask the same
2 questions of Captain Greiner if you call him as your
3 witness that no longer would the objection beyond the scope
4 of direct be applicable, but you might be able to infer
5 that the other objections would still stand and I would
6 rule the same way. I don't know what your questions would
7 be, but if they were precisely what you've offered it for
8 now with the same questions and the same rationale, I think
9 you can reasonably rely that I would rule the same.

10 MR. CHALOS: And that's notwithstanding Rules 702
11 and 703 with respect to this kind of testimony?

12 JUDGE JOHNSTONE: That's correct, I've ruled on
13 the basis of, number one, hearsay and also, number two, 705
14 and 702. I don't think it's the kind of opinion that
15 experts of his caliber would really rely on or people in
16 Captain Hazelwood's position would rely on. And 705, the
17 data that he relied on would be used for an improper
18 purpose. So I've ruled on the basis of 702 and 705, and
19 703 incidentally, and 801. Are we ready now with the jury?

20 MR. CHALOS: Your Honor, just one more point. Are
21 you saying that the letters that he wrote to the Coast
22 Guard are 801 hearsay documents?

23 JUDGE JOHNSTONE: I'm saying that based on what
24 you've said, without his opinion coming in or without the
25 letter from the Coast Guard, then they have no meaning, so

1 that would be a relevance objection which would be
2 sustained. Let's bring the jury in.

3 (Whereupon, the jury enters the courtroom.)

4 (Tape changed to C-3642)

5 JUDGE JOHNSTONE: Thank you for your patience,
6 ladies and gentlemen. You may resume, Mr. Chalos.

7 MR. CHALOS: Thank you, Your Honor.

8 BY MR. CHALOS: (Resuming)

9 Q Mr. Greiner, just picking up where we left off, in
10 addition to the things that you told us about, you were
11 asked by the State to look into the issue of whether
12 pilotage applied or not, were you not?

13 A Yes, sir.

14 Q So when you said that you weren't asked to do
15 anything else, that was a mistake.

16 A I was giving you the principal things they had
17 asked me to do and that was such a small part of what I had
18 done that I didn't consider it of significance. I had
19 forgotten it, as a matter of fact.

20 Q Even though you wrote to the Coast Guard three,
21 four or five times and you also filed an appeal, correct?

22 MR. COLE: I object.

23 MR. CHALOS: Your Honor, this goes to credibility.

24 JUDGE JOHNSTONE: I think he's answered the
25 question and I think to go any further would go against the

1 spirit of my earlier ruling, Mr. Chalos. Objection
2 sustained.

3 BY MR. CHALOS: (Resuming)

4 Q Now before we get into the specific tasks that you
5 were hired to accomplish, before you came here today, what
6 testimony and exhibits did you review?

7 A Today?

8 Q No, in the course of events. Did you review the
9 crew members' testimony given here at trial?

10 A No, sir. When you say crew members, that's fairly
11 broad.

12 Q All right, let's say --

13 A I looked at Cousins.

14 Q -- Mr. Cousins?

15 A Yes, I looked at Cousins.

16 Q How about Mr. Kagan?

17 A No.

18 Q How about Mr. Kunkel?

19 A Yes, no others.

20 Q No others?

21 A No others.

22 Q Okay. Did you review any of their NTSB testimony?

23 A Yes.

24 Q Did you review any of the exhibits that have gone
25 into evidence here?

1 A I don't know what exhibits have gone into
2 evidence, but I reviewed a number of -- I've reviewed all
3 the NTSB exhibits, yes.

4 Q All of them?

5 A No. All of those that were listed. In other
6 words, they provided a list of them and in some of them,
7 they said "Not available," so those obviously I didn't
8 review.

9 Q And I take it you reviewed statements given to the
10 NTSB by various crew members.

11 A Yes, sir.

12 Q All right, let's go to San Diego. One of your
13 tasks was to hire a photographer, was that --

14 A I recommended the photographer, they hired him,
15 yes, sir.

16 Q Are you taking a piece of his fee?

17 A No, sir.

18 Q Now what was the purpose of your going down to San
19 Diego?

20 A The purpose of it was to look at the damage, to
21 assist the photographer. I took the notations as to where
22 the photographs were taken and looked at the damage.

23 Q Okay. And after doing that, you told us you came
24 to certain conclusions, is that right?

25 A At some point or other, yes.

1 Q The first conclusion that you came to was the
2 vessel was sitting on some rock in the way of Tanks Number
3 2 and 3?

4 A Actually, that was the second conclusion. The
5 first conclusion was that it passed over a rock.

6 Q And then came to rest on a different rock in the
7 way of Tanks Numbers 2 and 3?

8 A That's correct.

9 Q And you also came to the conclusion that there was
10 a lot of set in damage, that is damage pushed up, in that
11 area as a result of the rise and fall of the tide?

12 A Yes, sir, in the way of 2 and 3 tanks.

13 Q Do you remember -- this vessel ran aground on the
14 24th of March.

15 A Yes.

16 Q Do you remember what day it was refloated?

17 A Not precisely. It was April 8th, 6th, something
18 like that, in the neighborhood, I believe.

19 Q So she was aground, you would agree, ten, 12, 14
20 days?

21 A Yes.

22 Q And you had two tides a day.

23 A Yes.

24 Q The vessel moved up and -- rather the vessel
25 shifted at each time.

1 A I would expect it to.

2 Q Did you come to any conclusions as to whether the
3 vessel stayed on the bottom, wherever it was resting on the
4 bottom, throughout the tide changes?

5 A Yes.

6 Q In other words, the only thing that moved during
7 the tide changes was the vessel heeling one way or the
8 other, depending on the state of the tide.

9 A That is correct.

10 Q But she was resting on the bottom at all times.

11 A Yes.

12 Q Now you saw certain damage at San Diego, is that
13 correct?

14 A That's correct.

15 Q You don't know, do you, whether that damage that
16 you saw in San Diego was caused by the grounding,
17 subsequent to the grounding and moving the vessel off the
18 ground and taking the vessel to Naked Island or taking it
19 back down to San Diego?

20 A Some of it was obviously damage that occurred
21 afterwards, yes.

22 Q But you can't tell exactly what damage occurred
23 where.

24 A That's not true.

25 Q Well, tell us about the damage that you could tell

1 that occurred at the time of the grounding.

2 A The crushing damage occurred at the time of the
3 grounding. The vessel was afloat after she came off
4 ground. The first series of damage that I described to you
5 occurred while the vessel was in a turn. It was five
6 degrees, approximately, from the keel. And it's my opinion
7 that they occurred when it passed over the first rock and
8 came to rest on the second rock.

9 Q Well, we're going to get to that opinion because I
10 think it needs to be explored, but what I'm saying is the
11 actual damage that you viewed in San Diego was not the
12 condition of the vessel when she ran aground, was it?

13 A Well, it wasn't the condition of the vessel when
14 it ran aground. The damage --

15 Q At the moment of grounding.

16 A But with respect to the plates, no. With respect
17 to the structural members, it occurred as a result of the
18 grounding and it may have been aggravated while she was
19 aground at dates later than the date she went aground.

20 Q Because of the tidal condition.

21 A Yes, sir.

22 Q Now we saw some pictures here where the plates
23 were missing.

24 A Yes, sir.

25 Q You can't tell -- could you tell when you looked

1 at the vessel in San Diego what was carried away as a
2 result of the grounding and what was cut away in preparing
3 the vessel to go to San Diego?

4 A No, sir.

5 Q Now did you come to any opinions as to whether the
6 vessel was impaled on the rock when she was aground?

7 A I've described how it sat on the rock. When you
8 say impaled, I'm not sure exactly what you mean.

9 Q What I mean by that, was the rock sticking up into
10 the ship at some point?

11 A Well, it certainly was one, we have a photograph
12 of it. As I looked at the damage, at some points -- how
13 far in the ship are you talking about? In other words,
14 obviously, the rocks protruded in below where the original
15 skin was.

16 Q That's what I'm driving at. There was evidence of
17 that.

18 A Oh, certainly, certainly.

19 Q Have you heard of the term "interference with the
20 bottom"?

21 A I don't know how you're using it.

22 Q Well, the way I'm using it is, for instance, a
23 rock protruding up or steel protruding down across the
24 bottom. Have you heard of those terms?

25 A Yes.

1 Q And you had evidence of that in this case, did you
2 not?

3 A Yes.

4 Q Now let's talk about your opinion about the two
5 significant touchings. You say that, you opine that there
6 were two touchings starting at five minutes after midnight
7 and continuing to about seven minutes after midnight?

8 A Yes, sir.

9 Q It took two minutes to go through the initial hit
10 and then the ultimate stop.

11 A Yes, sir, approximately.

12 Q And how long did you say the vessel -- how long
13 did it take for the first rock to travel the length of the
14 vessel?

15 A Approximately a minute.

16 Q In your opinion, what kind of noise would the crew
17 expect to hear? What kind of vibration would they expect
18 to feel?

19 A It depends on where you are in the vessel and I
20 talked to a number of people who have been on vessels that
21 have gone aground and they hear different noises in
22 different places on the ship. It's strange. Sometimes
23 they're almost totally inconsistent.

24 Q Well, I thought you testified that, in your
25 opinion, the first hit was a substantial hit in the sense

1 that it made this tunnel right down the center of the ship,
2 veering off to starboard, is that right?

3 A Yes.

4 Q Now that kind of tunneling, you would expect the
5 vessel to be hitting pretty hard, wouldn't you?

6 A Relative -- yes.

7 Q And you would expect, if you're a crew member, to
8 hear something or feel something.

9 A Yes.

10 Q Okay. Now you read the testimony, you said, of
11 certain crew members. Do you remember reading that they
12 felt a tilt and some vibrations for a period of 15 to 20
13 seconds and then the vessel stopped?

14 A I don't remember -- I remember them hearing the
15 noises periodically. I don't remember the latter part of
16 your question, that it then stopped. I don't know what you
17 mean by then. Obviously, it stopped within --

18 Q The vessel then came to a dead stop after 15 or 20
19 seconds. Do you remember reading that testimony?

20 A No, no, I don't.

21 Q If that was the testimony, that contradicts what
22 you said, doesn't it?

23 A Not necessarily. Vessels go aground sometimes
24 without people hearing them go aground, so some of the
25 initial damage may have not been of such a noise level that

1 they heard it.

2 Q And that's just speculation on your part, isn't
3 it?

4 A That's correct. I'm drawing on my experience
5 where vessels have gone aground and some people haven't
6 heard anything.

7 Q All right, let's talk about --

8 MR. CHALOS: May I approach the witness, Your
9 Honor?

10 BY MR. CHALOS: (Resuming)

11 Q You say that you believe, referring now to
12 Exhibit 16 -- incidentally, when you reviewed the
13 statements given by the crew members to the NTSB, is that
14 the kind of thing that you would do normally in the kind of
15 reconstruction that you were hired to do here?

16 A Yes, sir.

17 Q And you rely on what they said and come to certain
18 conclusions?

19 A I may or may not rely on what they say, I would
20 take it into consideration, because obviously there's
21 contradictory testimony and you try and figure out which
22 one fits the pattern best.

23 Q Okay. Now you believe that the grounding occurred
24 somewhere between 12:05, the initial hit --

25 A Yes, sir.

1 Q -- and 12:07, when you think the vessel came to
2 rest.

3 A Yes, I think 12:07 on the NTSB is down here
4 somewhere.

5 Q Okay. Now did you calculate the rate that the
6 vessel was swinging prior to this 12:06 per minute?

7 A Yes, sir, it's in the spread sheet.

8 Q And what did you conclude was the rate of turn
9 just prior to 12:05?

10 A Well, it depends -- 12:03 was 13 degrees; 12:04
11 was 16 degrees; 12:05 was 15. Then it slowed down. 12:06
12 was 13 and 12:07 was six.

13 Q Okay. Did you do any analysis of what 13 or 14
14 degrees of heading change would correspond in terms of
15 rudder on that ship?

16 A No, I did not.

17 Q You didn't think that was important to reach your
18 conclusion?

19 A I wasn't -- no, not to reach my conclusion. I
20 wasn't asked to. I was asked to reconstruct the track
21 line.

22 Q All right. Now subsequent to what you say is the
23 grounding at 12:07, did you do any calculations as to what
24 the rate of swing was to the right after that, per minute?

25 A Yes.

1 Q What did you conclude the rate of change was, per
2 minute, after 12:07?

3 A The spread sheet indicates that it then went up to
4 27 degrees at minute eight and 17 degrees at minute nine
5 and then it tapered off and then it reversed.

6 Q Okay. Just so we don't confuse the jury, the
7 course came down to about -- I guess, 12:09, it came to 270
8 and then continued on until about 305, about ten after.

9 A Yes, sir.

10 Q It's fair to say, isn't it, that, so the jury is
11 not confused, if you took this section and just dropped it,
12 that would be more representative of what was happening.

13 A Yes, you could flop this over and lay it down
14 below and for this purpose, it would probably be less
15 confusing.

16 Q Right. In other words, the ship came to 12:05, to
17 12:07 there was a slight hitch in there and then she
18 continued to swing on a steady basis right up to course 305
19 to the right.

20 A Yes, sir.

21 Q Okay. And then there was a hard left at that
22 point.

23 A That's correct.

24 Q And that's the 12:10. Now do you remember reading
25 Mr. Cousins' testimony, that he said he ran aground and he

1 immediately went over to the wheel and gave it a hard left?

2 A Yes, sir.

3 Q Now that happened at 12:10, didn't it, according
4 to the course recorder?

5 A No, sir.

6 Q At what time did that happen?

7 A Well, it occurred before that. The response of
8 the ship is not instantaneous. In other words, first of
9 all, it takes time to swing the rudder over. Secondly, it
10 takes time for the rudder to follow. And then you have a
11 reaction time. So --

12 Q Well, it wouldn't take four minutes, would it?

13 A No, sir.

14 Q It would take about 30 seconds for all this to
15 happen?

16 A Well, the swing of the rudder, it depends on where
17 you start it from, but my recollection was that it takes 25
18 seconds to swing from center to full and that's just for
19 the rudder to follow the command, so that's at least 25
20 seconds. Plus it takes you time to turn it over yourself.

21 Q Were you here or did you read the testimony of the
22 Sperry people that said they did a test on this ship and
23 they could go from hard right to hard left in about 26, 27
24 seconds?

25 A I received information both that it took 25

1 seconds to go from hard left to hard right and from zero to
2 hard left and I thought it was a Sperry that said from zero
3 to hard left was 25 seconds. I may be incorrect on it, but
4 I did not read their testimony on it.

5 Q You didn't, okay. Assuming it took even a minute,
6 and I'll give you the benefit of that, if Mr. Cousins said,
7 "We ran aground. I ran over to the wheel and gave it a
8 hard left," and let's say that that whole process took a
9 minute.

10 A Yes.

11 Q If this is shown that the hard left -- or rather
12 the left swing of the vessel started at about 11 after,
13 right -- it's fair to say, then, that what Mr. Cousins was
14 describing took place around ten after, isn't it?

15 A Yes.

16 Q Okay, that doesn't square with what you're saying
17 was the time of the grounding, does it?

18 A You're leaving out other parts of the testimony,
19 though.

20 Q Such as?

21 A I think there was the testimony that the vessel
22 veered sharply to the right. And if you look at the
23 portion of the course recorder from here to there, or at
24 least up into here, there is an increase in the rate of
25 turn from here down and up through there. But that fits

1 with his testimony, so --

2 Q Well, do you recall Mr. Cousins saying that before
3 the grounding, he gave this vessel a hard right? Do you
4 remember that?

5 A I have not read Mr. Cousins' testimony before this
6 Court.

7 Q Well, is the rate of turn of I think you said 27
8 degrees, then dropping down to about 20 degrees per minute,
9 isn't that consistent with how this vessel would react with
10 a hard right on it?

11 A I'm not sure that it would be a hard right, with a
12 right rudder on it. I -- you know.

13 Q All right. And isn't it also consistent, then,
14 with Mr. Cousins saying, "I put hard right on there and the
15 vessel swung to the right and then we ran aground and I ran
16 over and gave it a hard left"?

17 A Yes, but you've left out the testimony that went
18 between that and that is the vessel veered sharply to the
19 right.

20 Q After the grounding?

21 A After the grounding, yes, sir.

22 Q Okay. Well, wouldn't that be picked up in this
23 area here somewhere after 12:10?

24 A No, sir. No, sir. What you're proposing is that
25 this area right here be the hard right rudder where, in

1 fact, if you look at the expanded one, the turn is actually
2 slowing down from minute nine, slowing down considerably
3 from minute nine. If you look at the expanded one, I would
4 say that the rudder was put over hard left at probably
5 before nine minutes after midnight.

6 Q Let's talk about this a second. You're referring
7 to Exhibit 156 and this is the NTSB expanded version?

8 A Yes, sir.

9 Q Were you aware that this expanded version is in
10 error and that the NTSB is not using this any longer?

11 A No, sir, I was not.

12 Q You're not aware of that?

13 A I'm not.

14 Q Were you aware that this version is a minute off?

15 A It appears to be -- there appears to be an
16 inconsistency here of approximately a minute, yes.

17 Q And no one ever told you that the NTSB has
18 disavowed this expanded version?

19 A No, sir.

20 Q This is the first time you're hearing that?

21 A That's correct.

22 Q Okay, when you said that this is an accurate
23 representation of this --

24 A Yes.

25 Q -- that's not correct because this is a minute

1 off, isn't it?

2 A Well, how much do you want to nit-pick on it? It
3 is a representation of the line and the shape and such like
4 that of this, yes.

5 Q A minute off?

6 A Approximately, yes.

7 Q Now you started to tell us how the NTSB got this
8 expanded version. You said it was done by some sort of --
9 what?

10 A Optical scanning.

11 Q That optical scanning gives you a point to point
12 reading, doesn't it?

13 A It gives you -- it digitizes the line. When you
14 say point to point, it digitizes it in increments of
15 points. I mean --

16 Q So it's not really a reproduction of this. It's
17 an interpretation of this, isn't it?

18 A Well, when you -- I don't know what you mean by
19 interpretation. We print things out on printers nowadays
20 that are made up of dots, but you don't see dots, you see
21 the character, itself. You can make it -- when you go into
22 a newspaper, you print things at 600 dots per inch or less
23 and it comes out -- you can reproduce this as dots. This
24 line is not as thick as that line, there's no question
25 about it, and that's why this line is easier to use. But

1 you can do that by adjusting it in the computer.

2 Q Now you haven't done any reproduction or any
3 expansion of this yourself, have you, of this course
4 recorder?

5 A Yes, I have.

6 Q Do you have that here with you?

7 A No, but it's just like this.

8 Q All right, let's talk about something else for a
9 second. You say you believe because of this hitch at
10 12:05, 12:06, that represents the first hit, is that right?

11 A Yes.

12 Q Did you, on your plot, your course recording plot,
13 figure out where the ship was at 12:05? Did you run it
14 down?

15 A Yes. At -- no, not at 12:05, I didn't. The
16 latest time I have on here is two minutes after 12:00.

17 Q Well, if the vessel happened to be, at 12:05, in
18 an area where there's 38 fathoms of water, your theory
19 would not be supported, would it?

20 A I would doubt that that could occur because the
21 only other thing that have caused this is bottom action and
22 I don't think you're going to get bottom action from this
23 type of bottom with that characteristic and the rapid
24 buildup and such like that.

25 Q Now is that the only thing that could cause this

1 little hitch in the course recorder at 12:05, just
2 bottom --

3 A No, sir.

4 Q How about some counter rudder?

5 A That's correct, that could.

6 Q Do you remember reading the NTSB statement of Mr.
7 Kagan?

8 A Yes.

9 Q And do you remember Mr. Kagan telling the NTSB
10 that he was trying to steady up on course 245 and he used
11 some counter rudder?

12 A Yes, the statement is not a verbatim statement.
13 It's a summary by somebody who is interpreting what he says
14 and it contains words similar to that. I don't have them
15 memorized.

16 Q What course was this vessel on at the time you say
17 it ran aground?

18 A When it first ran aground?

19 Q In this.

20 A Right here. Right here.

21 Q What course is she on?

22 A Let me get it from my spread sheet here. About
23 234.

24 Q Now take a look at the course recorder.

25 A Okay, we're coming down here. We're in this

1 sector here --

2 Q Yes.

3 A -- and so we're using scale here -- I'm sorry,
4 thank you -- 248.

5 Q And the line starts actually a little bit before
6 there, around 244, does it not? In other words, what I'm
7 saying is before you get to the flattening out of the
8 course, you'd have to move the rudder prior to when it
9 indicates on there.

10 A If you're going to assume that that's made by a
11 rudder, yes.

12 Q Okay.

13 A In other words, it isn't a sharp zig-zag. It's
14 faired. There's a gradual change, yes.

15 Q Okay. Now isn't that change consistent with what
16 Mr. Kagan told the NTSB, that is that he was trying to
17 steady up at 245 at that point?

18 A No, it isn't.

19 Q It isn't.

20 A No.

21 Q So you're saying that there's no doubt in your
22 mind that at that point in time, the vessel was aground,
23 but you don't know on your chart where the vessel was
24 located?

25 A Where it was located -- I put the grounding

1 location on the chart. I'm not sure I understand your
2 question.

3 Q Well, I think what you're saying is you work
4 backwards. What you're saying is that you know the vessel
5 ran aground here --

6 A Yes.

7 Q -- and you assume that that's 12:05, 12:06.

8 A 12:07.

9 Q Okay, what I'm saying to you is did you run it
10 down this way on the basis of your calculations to find out
11 where that ship would have been at 12:05?

12 A 12:05 is somewhere in this area right here. Let's
13 see, three -- wait a minute. Yes, it would be somewhere in
14 that area right there.

15 Q Okay and there's 38 fathoms of water in that area,
16 isn't there?

17 A Well, we go from, and very sharply, we go from
18 over 20 down to ten.

19 Q Okay, but ten, ten fathoms, plus two for the tide
20 is 12 fathoms, right? That's 72 feet. And this ship was
21 drawing 57 feet.

22 A Yes.

23 Q So it wouldn't have hit there, is that right?

24 A Have you -- I'm sure you've worked with charts
25 before and soundings and --

1 Q The question is either yes or no. If the ship is
2 drawing 57 feet and there's 72 foot of water, she's not
3 going to --

4 A It would -- okay, that's correct, that's correct.

5 Q Now let's talk a little bit about this spread
6 sheet that you used, that you made up.

7 A Yes, sir.

8 Q That particular spread sheet is a computer
9 generated spread sheet?

10 A Parts are computer, parts are manually entered.

11 Q You had prepared a spread sheet originally which
12 had certain numbers, is that right?

13 A I prepared a number of spread sheet. As I've
14 gotten information, I changed them and such like that, and
15 you'll notice the date at the top of it which indicates --
16 it's just like drafts of a letter.

17 Q Okay. You've made some recent changes to your
18 spread sheet, didn't you?

19 A As late as this morning, yes, sir.

20 Q Okay, and you made some changes on the basis of a
21 simulation that you received from the NTSB, is that
22 correct?

23 A No, sir.

24 Q You didn't make any changes on the basis of --

25 A You said that I received from the NTSB. I didn't

1 receive that from the NTSB.

2 Q Okay, who did you receive this simulation --

3 A I received it from Kings Point, the people that
4 made it up. Well, actually, I received it from the
5 attorney general -- the district attorney's office, I had
6 received parts of it. And I just learned about it and
7 inquired about it and he said yes, he had it, and he gave
8 it to me. I just had it a few days.

9 Q Okay, this -- the report that you reviewed is a
10 computer simulation of the vessel's course, is it not?

11 A Yes.

12 Q And it was prepared by the Marine Safety
13 International KAORF people at Kings Point.

14 A Yes.

15 Q Have you read this?

16 A I've gone through it, yes. I have not made a
17 specific analysis of it. I've made some comments on it,
18 yes.

19 Q And you used some of the data from this, as well,
20 in your calculations, did you not?

21 A Yes, I did.

22 Q And this is the type of report that experts like
23 yourself would look at in making a reconstruction of
24 courses?

25 A Certainly, we look at them, yes.

1 Q Have you ever used simulator facilities before,
2 such as KAORF?

3 A No, sir, I have not.

4 Q Now when you made this chart with your track line,
5 that was before you saw this report, right?

6 A Before I saw anybody else's reconstruction, yes,
7 sir.

8 Q Okay. But since then, after you looked at this
9 report, you've made changes in your own calculations,
10 right?

11 A Yes.

12 Q So if you were to replot this, it would be
13 different. I'm not saying it would be a lot different or a
14 little different, but it would be different than this, on
15 the basis of your new numbers.

16 A The only thing that was changed was the rate of
17 turn here or, actually, when the turn started, that's the
18 only thing that was done with respect to that.

19 Q Now in your calculations, which is -- what did we
20 say it was? Is it 156? No, 155.

21 A Yes, sir.

22 Q What rudder angle did you assume?

23 A Initially, I assumed -- where are you talking
24 about?

25 A Along the track line. Let's start with -- let me

1 withdraw the question. I'll set the foundation.

2 Do you agree that at 2355, the vessel was abeam of
3 Busby Island Light?

4 A Yes, sir.

5 Q Okay, let's start there.

6 A Okay.

7 Q Coming down to about a minute and a half after, I
8 take it you assume that the rudder was in the middle,
9 amidships.

10 A Principally, yes.

11 Q Starting at a minute and a half, two minutes
12 after, what rudder angle did you assume in your
13 calculations?

14 A I didn't assume any -- I did not use a rudder
15 angle to come up with my calculations.

16 Q You didn't.

17 A No.

18 Q Well, wouldn't the placement of the rudder, the
19 rudder angle, affect the speed of this vessel?

20 A Certainly.

21 Q So in other words, the more rudder you have, the
22 slower the ship is going to go.

23 A Correct.

24 Q That's called the braking effect, right?

25 A Yes.

1 Q Okay. Well, how did you determine your speed if
2 you didn't figure any rudder angle?

3 A I assumed for turns that there would be a slowdown
4 and it -- there are no statistics given in the vessel's
5 characteristics or data for anything, except a hard
6 rudder. And so if you're going to use less than a hard
7 rudder, it would be significantly less. And if you'll
8 notice the amounts that I used, the speed corrections, were
9 generally under a knot. They were not -- I didn't use much
10 speed correction at all.

11 Q Well, you had a chance to look at the KAORF
12 simulation, did you not?

13 A Yes.

14 Q And they did a whole analysis of what the rudder
15 angle was at any particular time, right?

16 A Yes.

17 Q And you didn't use any of those numbers?

18 A I used -- I changed my mind with -- I was
19 convinced that a hard rudder had not been put on from that
20 report. I found a number of things that I didn't agree
21 with in the report. But I did use that portion of it, yes.

22 Q Did you also conclude that less than ten degrees
23 of rudder was used at any particular time from 2355 until
24 the grounding occurred?

25 A Yes.

1 Q You did.

2 A Yes.

3 Q What degree of rudder did you conclude was used?

4 A I didn't come up with a specific amount. It was
5 less than ten, more than four, somewhere around seven or
6 eight degrees. We're talking about average rudder; we're
7 not talking about the actual rudder. We're talking about
8 over a period of time, what the average rudder was.

9 Q Now are you familiar with -- strike that. Did you
10 look at any charts that gave you precise soundings in the
11 area of Bligh Reef?

12 A No charts, no, sir.

13 Q Wouldn't that have assisted you to support your
14 conclusion by looking at a detailed sounding chart and
15 running your track line to it?

16 A If you'll pardon me, you're nit-picking. I didn't
17 calculate this with the intent of identifying every rock on
18 the bottom or whether the vessel was five feet to the left
19 or five feet to the right. The purpose of this is to give
20 the jury an idea of what occurred.

21 Q Well, you'll have to forgive me. I'm not
22 nit-picking in the sense that you came to a certain
23 conclusion that contradicts what the evidence is in this
24 case. I want to test the theories and the basis for your
25 conclusions.

1 A Okay.

2 Q So I want to know if you looked at a detailed
3 sounding chart of Bligh Reef to make a determination as to
4 whether your theory that the vessel was aground at five
5 minutes after midnight is correct.

6 A No, I didn't.

7 Q You know that they're available, do you not?

8 A I know they're available a lot of places. I was
9 not aware that there was one available here.

10 Q Are you familiar with the U.S. Department of
11 Commerce Hydrographic Survey H-9384?

12 A No, I've never seen it before.

13 Q You've never seen it before.

14 A No.

15 Q You didn't even know it existed, did you?

16 A That's correct.

17 Q These are soundings of Bligh Reef, are they not?

18 A What's what it purports to be. What's the date on
19 it?

20 Q 1973.

21 A Okay.

22 Q In any event, you made no attempt to look at any
23 chart with detailed soundings?

24 A That's correct.

25 Q Sir, you made certain calculations with respect to

1 your theory that the vessel hit twice, is that correct?

2 A Yes, sir. You're talking about the speed and
3 time.

4 Q Yes, the speed and time.

5 A Yes.

6 Q Distance. Let me show you. Oh, you have it in
7 front of you.

8 A Yes. I don't have the same copy you do because
9 when you were talking to me the other day, I noticed an
10 error in it and I corrected it.

11 Q Okay. When did you make these calculations?

12 A Initially?

13 Q Yes.

14 A Last week.

15 Q Was that the first time you made these
16 calculations?

17 A Yes.

18 Q Was that the first time you came up with this
19 theory of two hits?

20 A No, sir.

21 Q Did you speak to Mr. Voras about this theory of
22 the vessel hitting twice?

23 A I'm sure it came up in casual discussion, but I
24 never went to him and said, "What do you think?" But I'm
25 sure it's come up in casual discussion.

1 Q Did you see Mr. Voras' letter of September 11th,
2 1989, which we marked as Exhibit AA for identification?

3 A No, sir.

4 Q You've never seen this?

5 A Not to the best of my recollection, no, sir.

6 Q Okay. I'm going to read you a paragraph.

7 MR. COLE: Objection, hearsay.

8 MR. CHALOS: Your Honor, I just want to see if
9 this is part -- if he relied on any of this in form or
10 substance to form his opinion.

11 JUDGE JOHNSTONE: He said he's never seen it. He
12 said he's never seen the letter, Mr. Chalos, so how would
13 you expect him to answer he relied on it?

14 MR. CHALOS: The contents, not the letter.

15 JUDGE JOHNSTONE: Objection sustained, Mr. Chalos.

16 BY MR. CHALOS: (Resuming)

17 Q Mr. Greiner, did you and Mr. Voras have a
18 discussion that it would be important for the district
19 attorney, for you, as experts for the district attorney, to
20 conclusively establish that there were two hits as a basis
21 for saying that the logical conclusion of that would be
22 that Captain Hazelwood would not try and back this vessel
23 up?

24 A No, sir, I don't remember any discussion between
25 Mr. Voras and I on that subject.

1 Q Did you have any discussion with any of the other
2 experts on this notion that you had to prove that the
3 vessel hit twice?

4 A No, sir, there was never any discussion that we
5 had to prove anything. We were given our -- we were told
6 to come up with our own conclusions.

7 Q And you say you didn't discuss that conclusion
8 with Mr. Voras before you came up with it.

9 A No, sir. I think the answer is yes, sir, that is
10 correct, I did not discuss it with him.

11 Q Like a good lawyer, right. Okay, let's talk --

12 MR. CHALOS: May I approach the witness again?

13 JUDGE JOHNSTONE: You don't need to keep inquiring
14 for that. You've got free leave.

15 BY MR. CHALOS: (Resuming)

16 Q Let me ask you to come to the chart table for a
17 second. Would you draw on here how you believe this vessel
18 was aground? Do you have a notion of how the vessel was
19 aground?

20 A You're talking about when it was -- when it
21 finally stopped?

22 Q Yes, when it finally came to a rest.

23 (The witness draws on the board.)

24 THE WITNESS: Basically, that was the principal
25 part of contact.

1 BY MR. CHALOS: (Resuming)

2 Q All right, could you give us a side view below?

3 (The witness draws on the board.)

4 BY MR. CHALOS: (Resuming)

5 Q Okay, and what part was resting on the bottom?

6 A You're talking about port or starboard?

7 Q The starboard side.

8 (The witness draws on the board.)

9 THE WITNESS: It also probably depends on the
10 tide, but --

11 BY MR. CHALOS: (Resuming)

12 Q Well, I think you told us that the vessel remained
13 on the bottom at all times anyway.

14 A I'm talking about the extent. In other words, if
15 the vessel sits down on this and this is put into it --

16 Q Right.

17 A -- it might be over a larger --

18 Q Well, let's say as it's approaching high tide. Is
19 that what you're drawing there?

20 (The witness draws on the board.)

21 BY MR. CHALOS: (Resuming)

22 Q Okay, this area right here at the stern, okay --

23 A This?

24 Q Yes, mark that with an A, if you will, as being
25 the engine room area, wherever you would see the engine

1 room, right.

2 (The witness marks on the board.)

3 BY MR. CHALOS: (Resuming)

4 Q And where's the propeller and the rudder?

5 (The witness draws on the board.)

6 THE WITNESS: No, you're correct, it is not.

7 BY MR. CHALOS: (Resuming)

8 Q All right, can you -- even though your scale is
9 off there, can you tell us approximately how many feet the
10 vessel would have to travel forward before the propeller
11 and engine room were reached on that rock?

12 A Approximately 400 to 450.

13 Q Would you write that down, 450 feet?

14 (The witness marks on the board.)

15 BY MR. CHALOS: (Resuming)

16 Q So before the vessel's engine room would be in
17 danger of holding or the propeller or the rudder be in
18 danger of striking that rock, that it was aground, the
19 vessel would have to travel 450 feet?

20 A Yes.

21 Q Okay. In your calculations, did you do any
22 calculations as to how many tons this vessel was aground?

23 A No, sir, I didn't.

24 Q Would you explain to the jury what we mean by tons
25 aground?

1 A The amount of weight that is supported by the
2 rock, as opposed to the buoyancy of the vessel.

3 Q And you made no such calculations?

4 A No, sir.

5 Q Did you make any calculations as to what thrust
6 this engine could give?

7 A No, sir.

8 Q You made no such calculations?

9 A No, I did not.

10 Q And I take it you also made no horsepower
11 calculations of this engine.

12 A No, sir, I didn't.

13 Q Now you say you believe that the risk created by
14 Captain Hazelwood in maneuvering the vessel after the
15 grounding was that he would go forward --

16 A Yes.

17 Q -- and damage his engine room --

18 A Yes.

19 Q -- and his propeller --

20 A Yes.

21 Q -- and his rudder.

22 A Yes.

23 Q Do you know how much thrust would have to be
24 generated by this vessel's engine before the vessel could
25 move even one inch?

1 A No.

2 Q You don't.

3 A There's no way to calculate it. We don't know the
4 amount of -- the total amount of contact area, the
5 intrusion and how much it will take. However, we're
6 looking at it with hindsight and the captain didn't have
7 that knowledge at the time.

8 Q That's not my question. My question is there are
9 formulas for determining how much thrust would be needed to
10 move this vessel one inch, are there not?

11 A With no rock?

12 Q With the rock, the way it was aground.

13 A You'd have to make certain assumptions, yes.

14 Q Okay, you didn't make that calculation.

15 A No, sir, I didn't.

16 Q So when you say that he risked damaging the engine
17 room or the propeller, you really have no basis for saying
18 that. In other words, you don't know if Captain
19 Hazelwood's vessel was capable of moving even one inch
20 forward in the manner that she was aground.

21 A Obviously, it wasn't. It didn't move forward,
22 apparently.

23 Q Is it your opinion that this vessel, in spite of
24 the use of the engine and the rudder, it did not move
25 forward?

1 A Not significantly, no.

2 Q And is it also your opinion that there was no
3 damage done to the vessel subsequent to the grounding by
4 the use of the engine?

5 A No, sir, I didn't say that.

6 Q Do you have an opinion?

7 A Yes, I do.

8 Q Was there -- did you see any evidence of such
9 damage in San Diego?

10 A I didn't see specific evidence of it, no.

11 Q So you're speculating that there must have been
12 some damage.

13 A Yes.

14 Q The type of damage that you're speculating about,
15 would that have created any more of a spill in this case?

16 A In actuality, no.

17 Q Now, sir, you've never been, or perhaps you have
18 been, on a vessel that ran aground.

19 A I've been on a vessel that's run aground. This
20 was an intentional grounding.

21 Q When you say intentional, what do you mean?

22 A It was a tanker that I was riding down in the gulf
23 area and as it left the dock, they put the bow into the
24 bank in order to turn the tanker around. The bank was
25 known to be soft mud.

1 Q And you weren't navigating at the time. I take it
2 it was somebody else.

3 A No, sir, I was on the bridge, but I wasn't
4 navigating.

5 Q Okay, the vessel ran into the bank of soft mud?

6 A Yes, sir.

7 Q How did she come back?

8 A She continued to swing on hard rudder and there
9 was a tug that when she had backed around, pulled her free
10 of the bank. I'm sure the ship's --

11 Q In other words, they pulled her backwards.

12 A Yes.

13 Q Sir, would you agree that when this vessel ran
14 aground, she was hard aground, given the evidence?

15 A After it stopped, yes, sir. With good hindsight,
16 yes, sir.

17 Q And using that same good hindsight, would you
18 agree that -- strike that. I'd like to talk a little bit
19 about this red sector that you drew. This is -- what
20 you're talking about here with the red sector is what you
21 would expect someone that's on the bridge of the ship,
22 looking back at Busby Island Light would see in that
23 particular area.

24 A If the vessel was within it, yes, they would.

25 Q Okay, so if the vessel is anywhere beyond this

1 dotted line, someone on watch, standing on the bridge wing,
2 looking back at Busby Island Light would see a red light.

3 A If they were beyond this point here on the track
4 line, yes.

5 Q Okay. But someone being on the bridge, let's say
6 at 2355, 11:55, wouldn't see any red light?

7 A That's correct.

8 Q Okay. Sir, do you have a -- have you reached any
9 conclusions or do you have an opinion as to whether if a
10 turn was started at 2355 using ten degrees right rudder on
11 this vessel and the way she was loaded and the speed she
12 was traveling whether she would have missed Bligh Reef?

13 A Yes, sir.

14 Q What is your opinion?

15 A It would have missed it.

16 Q Have you calculated by how much?

17 A No, I've seen the calculations in your report, but
18 I haven't calculated it independently, no.

19 Q Okay.

20 A I'm sorry, in the NTSB report.

21 Q All right. Now you see this portion right here,
22 the 55 and 38 fathom mark --

23 A Yes.

24 Q -- just slightly below the 2355 fix?

25 A Yes.

1 Q If a ten-degree right rudder was placed on this
2 vessel, given the condition she was in and the speed she
3 was traveling, do you have an opinion as to whether she
4 would have missed Bligh Reef?

5 A Yes.

6 Q What's your opinion?

7 A It probably would have missed Bligh Reef.

8 Q Again, you haven't done the calculations.

9 A That's correct.

10 Q Okay. If the turn was started at a minute and a
11 half after, using your figures, and a ten-degrees right
12 rudder was placed on the vessel, in the condition she was
13 in, at the speed she was traveling, do you have an opinion
14 as to whether she would have missed Bligh Reef?

15 A She may have passed over the 20 fathom mark there.

16 Q That's 120 feet.

17 A I know that. And that's also when you should be
18 concerned in that area. It goes up very rapidly.

19 Q All right. Aside from being concerned, she still
20 would have made it, in your opinion.

21 A At a minute and a half after midnight, yes.

22 Q Sir, there's been some talk by some witnesses that
23 after the grounding, the captain used full maneuvering
24 speed, do you recall that, in --

25 A Yes, sir.

1 Q Do you know how much horsepower this engine can
2 generate at 55 horsepower -- at 55 revolutions?

3 A No, sir, I don't.

4 Q Do you know how much horsepower this engine can
5 generate at full sea speed?

6 A No, sir, I don't.

7 Q I take it you didn't try to acquaint yourself with
8 those characteristics of the vessel.

9 A No, sir. You asked me that before and I said I
10 did not do anything with regard to horsepower.

11 Q Sir, if the captain's intent, as you testified,
12 was to go forward and try and get off the reef, would you
13 expect him to use 55 rpms or the full sea speed, if he was
14 hard aground as you've described?

15 A I'm not familiar enough with the plant to know if
16 the plant can go directly up to full sea speed without
17 going through the computer load up system. I think you may
18 be able to bypass it and do that, but I don't have that
19 specific knowledge. From the bridge control, the best
20 knowledge I have is that you can go to full maneuvering
21 speed directly.

22 Q I want you to assume for a moment that the engine
23 has a feature that permits the captain, in an emergency, to
24 use full sea speed just by pressing a button. If in fact
25 he's trying to drive this vessel forward off the reef,

1 would you have expected him to go to full sea speed ahead?

2 A I can't anticipate what this captain would have
3 done under those circumstances.

4 MR. CHALOS: Your Honor, if we can have a short
5 break, I think I can wrap up fairly quickly.

6 JUDGE JOHNSTONE: All right.

7 MR. CHALOS: I just need to gather my notes
8 together.

9 JUDGE JOHNSTONE: We'll take our break now, so
10 don't discuss the matter among yourselves or with any other
11 person and don't form or express any opinions.

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

14 (Whereupon, the jury leaves the courtroom.)

15 (Whereupon, at 12:14 p.m., a recess is taken.)

16 (Whereupon, the jury enters the courtroom.)

17 THE CLERK: We're back in session.

18 MR. CHALOS: Thank you, Your Honor.

19 BY MR. CHALOS: (Resuming)

20 Q Mr. Greiner, I'd like to go back to my last
21 question. Do you recall the question that I asked you?

22 A No, sir.

23 Q The question is that if Captain Hazelwood was
24 truly intent on getting this vessel off the reef by going
25 forward, as you believe he was --

1 A Yes, sir.

2 Q -- would you consider it reasonable to then
3 assume, as an expert, that he would use the fullest power
4 available for him to do that?

5 MR. COLE: Objection, speculation.

6 JUDGE JOHNSTONE: Objection overruled.

7 THE WITNESS: He may choose not to because he may
8 feel that if he used that amount, that if he needed that
9 amount in order to move the vessel, it could damage the
10 vessel.

11 BY MR. CHALOS: (Resuming)

12 Q Well, wouldn't he then be acting prudently by
13 using less than the full power, if that's what he was
14 concerned about?

15 A I don't consider going forward at all as prudent.

16 Q All right, let's talk about that then. You can't
17 tell us, sitting here today, whether using his engines at
18 55 rpms could have moved the vessel one inch, let alone 450
19 feet that you said would be necessary before he risked
20 damaging his engine.

21 A You are correct.

22 Q I take it you're not a salvage expert.

23 A That's correct.

24 Q And you wouldn't hold yourself out as an expert on
25 salvage.

1 A No, sir, I wouldn't.

2 Q Would you agree, though, that the holing that you
3 saw in San Diego occurred either in your hypothetical first
4 or second hit?

5 A Yes.

6 Q Now you spoke about the rudder being used after
7 the grounding.

8 A Yes, sir.

9 Q Okay. And you spoke about a calculation that you
10 made that the vessel's head move something like 94 feet as
11 a result.

12 A Yes, sir.

13 Q I take it you assume that that was all done as a
14 result of rudder movement.

15 A Yes, sir.

16 Q Did you in any way figure that perhaps the ship's
17 heading was changed by the tide coming in and the vessel
18 pivoting on the rock?

19 A Did I consider it? Yes, I did. The report for
20 the tides and currents in that area are weak and negligible
21 and if there was a current in that area, I would only
22 expect it to move the vessel in one direction and not back
23 again.

24 Q Did you come to any conclusion -- strike that.
25 You said that the use of the rudder, in your opinion, was

1 consistent with someone trying to get off the reef.

2 A Yes, sir.

3 Q Again, you've never been a master of a ship.

4 A That's correct.

5 Q And, again, you don't know what was in Captain
6 Hazelwood's mind at that particular point.

7 A You're absolutely correct.

8 Q Okay. And you said that the only thing you can
9 think of, with whatever experience you have in these type
10 of matters, was that he was trying to get off the reef.

11 A Yes, sir.

12 Q Did it occur to you that perhaps the rudder was
13 being used by the captain to make a determination as to how
14 and where he was aground?

15 A No, sir, but it would not be a safe way to do
16 that.

17 Q Captain Greiner, it's true, is it not, that one of
18 the ways you can determine how your vessel is hung up on
19 the reef is to find out whether the vessel swings in a
20 certain way or not, isn't it true?

21 A I would assume that that could be done, but that's
22 not the way it's supposed to be done.

23 Q But you're not a salvage expert and you're not a
24 captain.

25 A I've been a deck officer. I've not been a

1 captain, no. I've navigated a lot of vessels.

2 Q I thought what you told us earlier was that you
3 were a chief engineer.

4 A No, you asked me a specific point in time on a
5 specific vessel. That's correct. I've sailed as a deck
6 officer on two other vessels and I've gone aboard other
7 ones, buoy tenders and, for instance, I've taken a buoy
8 tender through Wrangle Narrows as a navigating officer.

9 Q That was back in the '50s.

10 A '60s.

11 Q Early '60s, late '60s?

12 A Mid-'60s.

13 Q I take it in those instances, you weren't
14 grounded.

15 A No, sir.

16 Q And you weren't the commanding officer.

17 A That's correct.

18 Q And whatever decisions that would have been made
19 if that vessel ran aground would have been made by the
20 commanding officer.

21 A After it went aground?

22 Q Yes.

23 A Oh, absolutely.

24 Q Now you said even though you don't know whether
25 this vessel was capable of moving an inch, you said that

1 the risk you perceived was that if this vessel moved
2 forward 450 feet, the engine room would be holed.

3 A Yes.

4 Q But you didn't do any calculations to see if that
5 would in any way affect the stability of this vessel, did
6 you?

7 A I don't have to.

8 Q You don't have to. Why not?

9 A I know it will affect the stability of the
10 vessel. If you put water in the engine room, it's
11 certainly going to affect the stability of the vessel.

12 Q Well, in what way would it affect it, did you
13 calculate that?

14 A I didn't calculate it, no. I didn't need to
15 calculate it.

16 Q And you said that -- strike that. Just to clear
17 something up, you used the term gyro when you were
18 referring to the course recorder.

19 A Yes, sir.

20 Q What you're talking about there is the gyro
21 compass on the vessel, rather than the automatic mike, am I
22 correct?

23 A Yes, that is correct, it's -- the input for the
24 course recorder comes from the gyro compass.

25 Q Sir, in response to -- before I ask you that, you

1 didn't see any evidence of any additional damage being
2 caused by the vessel moving with the use of the rudder, did
3 you?

4 A There was none that I observed. As I indicated,
5 there were plates missing that were cut off later and I
6 couldn't tell whether they had been damaged or not.

7 Q And certainly by using the rudder, he didn't move
8 the vessel forward at all.

9 A No, it was an attempt, but as far as I know, it
10 didn't move forward.

11 Q Okay. In response to Mr. Cole's questions on
12 Friday, you said that you had been to firefighting school?

13 A Four times, something like that, yes.

14 Q Is that the firefighting school in Bayonne, New
15 Jersey?

16 A No, sir, I don't think I've ever been to that
17 one. I've been to one in Cape May, one in San Diego, one
18 in Newport, one in Philadelphia.

19 Q That's the one where they put you in a tank and
20 set the tank on fire and you fight the fire for a couple of
21 minutes and then you run away, that's the one?

22 (Witness laughs.)

23 THE WITNESS: Excuse me for laughing. I wouldn't
24 describe it that way.

25 BY MR. CHALOS: (Resuming)

1 Q You know the one I'm talking about?

2 A Well, they light the fire in a simulated vessel
3 and then you go in and fight the fire. The first time,
4 they just run you through without a mask, so that you can
5 understand what happens when you're in smoke.

6 Q Do you consider yourself an expert on fighting
7 fires on board a ship?

8 A I've -- yes.

9 Q In looking at your resumé, I notice that you
10 listed certain casualty investigations that you've been
11 involved with.

12 A Yes, sir.

13 Q But I also noticed that you omitted the Protectus
14 Alpha.

15 A Protector Alpha, yes, sir.

16 Q You admitted that casualty that you've been
17 involved with?

18 A I did.

19 Q Did you omit it for a purpose?

20 A No.

21 Q In that particular casualty, you were the
22 commanding officer?

23 A Captain of the port, officer in charge of marine
24 inspection, yes.

25 Q And you were the ranking officer when you went on

1 board?

2 A Yes, I was.

3 Q The ship was on fire?

4 A The ship was on fire.

5 Q You had to make some quick decisions, didn't you?

6 A Yes.

7 Q There were certain risks that were involved.

8 A Yes.

9 Q And you made the decisions.

10 A Yes.

11 Q Somebody got killed, didn't they?

12 A Yes.

13 Q And another guy got seriously injured.

14 A That's correct.

15 MR. COLE: Your Honor, I'm going to object as to
16 the relevance of that line of questioning and move to
17 strike.

18 MR. CHALOS: Your Honor, the relevance is that --

19 JUDGE JOHNSTONE: No, I don't want an offer of
20 proof in front of the jury, based on what I've heard so
21 far. Approach the bench, please.

22 (The following was said at the bench.)

23 JUDGE JOHNSTONE: Okay, your motion to strike is
24 denied and you waived it by not making objections to
25 relevance when the questions were asked. As to further

1 questions, what are you going to try to show with further
2 questions?

3 MR. CHALOS: (Inaudible.)

4 JUDGE JOHNSTONE: Okay

5 MR. COLE: I'm going to waive my objection. If
6 he's not going to strike it, then I'll proceed (inaudible).

7 JUDGE JOHNSTONE: Well, the problem with this is
8 Mr. Cole didn't have notice of what you were going to ask.
9 The fact that he was involved in an accident in which
10 somebody may have been killed is bringing up a prior act
11 (inaudible) and I don't know what its probative value is in
12 this case. Probably, you should have brought it to my
13 attention, "I'd like to bring up something he was engaged
14 in before."

15 MR. CHALOS: (Inaudible.)

16 JUDGE JOHNSTONE: All right, you've explored it
17 far enough. I've overruled the objection and I'm going to
18 sustain the objection to further inquiry in this area.

19 (The following was said in open Court.)

20 JUDGE JOHNSTONE: The objection as to relevance is
21 sustained to any further inquiry in this area.

22 BY MR. CHALOS: (Resuming)

23 Q Captain Greiner, I take it you've had situations
24 as the captain of the port and as a Coast Guard officer
25 where you had to make quick decisions under very trying

1 circumstances.

2 A Yes, sir.

3 Q And I suppose, sometimes, things are done right
4 and things are not in the course of events.

5 A Hopefully, they're done right.

6 Q And -- but you don't know that at the moment that
7 you're doing it. It's only in hindsight that you go back
8 and say, "Well, perhaps I would have done something
9 differently."

10 A Yes, but you're trained and -- in other words, the
11 type of job you are in is something that you're trained for
12 and you're trained for the unusual. And so when it comes
13 along, usually, you're prepared for it, you fought it out
14 in advance, even though it may be an emergency.

15 Q Captain Greiner, in that regard, looking back on
16 the casualty now, would you agree that this was a major
17 casualty, the grounding of the Exxon Valdez?

18 A Yes.

19 Q And would you also agree that it was a major
20 salvage operation?

21 A Yes.

22 Q And would you agree that the type of casualty and
23 type of salvage operation that we're talking about goes
24 beyond any training that a crew member on a ship would
25 have, captain or otherwise?

1 A Salvage certainly, the master is not equipped for
2 salvage.

3 Q Well, the moving of the vessel off the reef after
4 the grounding is in the nature of a salvage operation, is
5 it not?

6 A I guess one could call it that. I don't refer to
7 it as a salvage operation, no.

8 Q Well, in order to remove a vessel that's stranded,
9 whether you do it at that particular moment or you do it
10 later, that's called salvage, isn't it?

11 A Okay, I think we're just arguing in a matter of
12 semantics as to what you call it.

13 Q Okay, I think you're right. I have no further
14 questions.

15 REDIRECT EXAMINATION

16 BY MR. COLE: (Resuming)

17 Q As captain of the port, you were required to make
18 decisions that affected people's lives, is that correct?

19 A Yes, sir.

20 Q So you were aware that you would ultimately be
21 responsible for those decisions, is that correct?

22 A Absolutely.

23 Q Mr. Chalos asked you about ways to find out the
24 location of the damage and he specifically talked about
25 using the rudder. Are there other ways to find out where

1 the location of the damage is and how the vessel shifts?

2 A Yes, absolutely, and the normal method of doing it
3 is to take soundings around the vessel, using a lead line.
4 To determine what the depth of water is in the various
5 spots, you look at your --

6 Q Let's just slow down here. Would you explain to
7 the jury what a lead line is?

8 A Okay, a lead line is a line with a piece of lead
9 on the end of it and you go around to various positions in
10 the vessel and you lower -- you can feel when the lead hits
11 the bottom. In other words --

12 Q Various positions on the level, you mean on the
13 edge of the --

14 A Edge of the ship, I'm sorry, on the edge of the
15 ship. And you can feel when it hits the bottom and it's
16 marked so that you can tell what the depth is.

17 Q Okay, let me just give you an example. If a
18 vessel were sitting like -- set that thing. How would the
19 lead line if the vessel was sitting like this, in other
20 words, open water here and in front?

21 A You walk around the vessel and you drop the lead
22 line and you measure the depth of water here. You know
23 what the draft of the vessel is, itself. And since the
24 depth of water is greater than the draft of the vessel, you
25 know the vessel isn't sitting on the bottom there. And you

1 do the same thing as you go around and up here, you're
2 going to find that your draft and your depth of water are
3 identical, so you'll know that the vessel is aground at
4 that area. And you can work your way on around and do the
5 thing, do that all the way around the vessel.

6 Q Now Mr. Chalos asked you about the reconstruction
7 there. What evidence did you have through the information
8 that was provided to you that the track line you made there
9 was consistent with the track line -- with the physical
10 information?

11 A Well, we have a number of things. You start out
12 with the position of the grounding, with the position of
13 Busby Light, with the position here of Buoy 9, with the
14 position coming off of -- out of Valdez Narrows. There are
15 two other positions in here which not much is said about.
16 Then you take the track line and run it along the course
17 and over those, go back and check and see if your speeds
18 that you've calculated match those and if they do match,
19 that's a confirmation of it.

20 You have to weigh the various pieces of
21 information, too, because they won't always agree. For
22 instance, times don't always agree. Various clocks are set
23 at different times. You'll notice in the spread sheet that
24 there's a difference between the bell log and the bell
25 logger of a minute or two minutes. But taking all those

1 into consideration, then you come down with a track line
2 that best fits all of the information.

3 Q Is there certain inaccuracies with just the course
4 recorder, itself?

5 A Yes, sir. I pointed out here that there is
6 probably a one-degree error here and, of course, the course
7 recorder is run by a clock. We don't know that the clock
8 that the course recorder is run by is identical to the
9 clock which other things, for instance the rpm, were kept
10 by. There is, here, a question as to whether there is an
11 error in time. In other words, NTSB has approximately a
12 minute -- their chart is a minute different than this one.
13 I don't know whether they found that this was an error, in
14 other words, the times here were in error by one minute,
15 and corrected theirs for that. But you will notice that
16 there is a difference between -- and you can see right here
17 that there's -- that's about a minute two, and I think they
18 should minute -- I say minute two -- minute -- at 10:00 --
19 11:42 or :42-1/2, where the NTSB one shows it about a
20 minute earlier than that.

21 Q Now what about the course recorder's accuracy when
22 it's on the edges of quadrants?

23 A When it's on the edges of quadrants, this is the
24 area where play in the mechanism will most show up. I
25 guess I should point out here, too, that it went above, at

1 the end of the quadrant, it went above the top line by
2 about half a degree.

3 Q Well, you were explaining the inaccuracy on
4 quadrants, themselves. Would you explain that?

5 MR. CHALOS: Your Honor, I think this goes beyond
6 the cross examination. I don't really understand what
7 we're doing. Is he impeaching the chart that Captain
8 Greiner drew here?

9 JUDGE JOHNSTONE: Objection overruled. You may
10 continue, Mr. Cole.

11 BY MR. COLE: (Resuming)

12 Q Is there any inaccuracies noted in say when the
13 course recorder is recording on the edge of a quadrant?

14 A Well, I've pointed out this one here and this one
15 up here. Actually, that's not on the edge of a quadrant --
16 well, it is, it is. This is the last degree. I've pointed
17 those two out. Those are the only ones that I see.

18 Q How about reliance on crew members' statements?
19 Were you aware that Mr. Radtke denied -- or, no, Mr. Kagan
20 denied using a counter rudder to the NTSB and to the Court
21 here in this trial?

22 A Yes, sir, I am.

23 Q And would that be consistent with the conclusions
24 you've drawn in this case?

25 A Yes, it would.

1 Q The rudder orders that people gave, did you see
2 any evidence in the course recorder that any rudder orders
3 were executed before 12:01, while it was on 180, after it
4 steadied up?

5 A No, sir.

6 Q Would that include the period 11:56, 11:57, 11:58?

7 A Yes, sir, it's constant there.

8 Q Is there any way to reconstruct exactly the turn
9 that the Exxon, the course that the Exxon Valdez took out
10 that port that day?

11 A No, sir, there isn't, not that I'm aware of.

12 Q And what have you tried to do in this?

13 A I tried to give a general representation for the
14 -- so that the jury could understand the track line of the
15 vessel and where different events occurred and putting in
16 times there.

17 Q Now Mr. Chalos asked you about the damage that
18 witnesses had testified to. If Mr. Radtke had indicated
19 that he had heard a sound coming that seem to travel from
20 the bow to the stern, would that be consistent with the
21 damage that you observed in this matter?

22 A Yes, sir.

23 Q Now these charts that we have here, how accurate
24 are they, as far as fathom marks? Do you know when these
25 were made?

1 A No, I don't. I've been involved with charting,
2 chart analysis before because when the ARCO Anchorage went
3 aground, there was a question as to the type of bottom and
4 where rocks were and such like that and I had the occasion
5 to talk to the cartographers back in Washington, D.C. And
6 with charts that are older charts, there may be rocks in
7 between where they've taken the soundings. With the newer
8 ones, there usually aren't; they're done with a different
9 method.

10 Q Did you use the various testimony of witnesses
11 about rudder commands that they said were ordered and
12 executed in coming to your conclusions?

13 MR. CHALOS: Objection, Your Honor, leading the
14 witness.

15 JUDGE JOHNSTONE: Overruled.

16 THE WITNESS: The primary thing that I used was
17 the actual course recorder because this shows the response
18 of the vessel. Whether a command was given or not is not
19 really relevant; it's whether it was executed. And if it's
20 executed, it's shown by the course recorder.

21 BY MR. COLE: (Resuming)

22 Q Can you tell the rudder angle that was ordered
23 from the track line of the course recorder?

24 A No, sir.

25 Q Can anybody?

1 A They -- no, they can't tell what's ordered. They
2 may be able to analyze the average of what was given, but
3 not what was ordered.

4 Q Did you have to reach any -- did you have to make
5 any calculations as to the horsepower of this engine to
6 determine whether or not Captain Hazelwood created a risk
7 of further damage by trying to move this thing ahead?

8 MR. CHALOS: Objection, Your Honor, foundation,
9 leading.

10 JUDGE JOHNSTONE: Objection overruled.

11 THE WITNESS: No, sir, I didn't.

12 BY MR. COLE: (Resuming)

13 Q Why is that?

14 A The -- because as one sits on the bridge, one
15 doesn't know how deeply impaled the vessel is and the
16 amount of horsepower to get it off can't be calculated
17 sitting on the bridge. Full power, full maneuvering power
18 is a significant amount of power and if it was able to move
19 the vessel, could have caused additional damage.

20 Q You indicated that you did not see damage done
21 from the twisting motion of the vessel.

22 A That's correct.

23 Q What are the reasons for that?

24 A It could be that the plates were missing or that
25 the area was compressed later from sitting on the rock.

1 MR. CHALOS: Your Honor, I move to strike,
2 speculation.

3 JUDGE JOHNSTONE: That's been waived by not
4 raising the proper objection, but it would have been
5 overruled anyway, so go ahead.

6 BY MR. COLE: (Resuming)

7 Q And when you went aground the one time, was that
8 in mud or did you hit rocks?

9 A Mud.

10 Q I'm showing you what's been marked for
11 identification as Plaintiff's Exhibit Number 157. Do you
12 recognize that at all?

13 (State Exhibit 157 was
14 marked for identification.)

15 THE WITNESS: I have seen it here before and I
16 recognize what it purports to be, yes.

17 BY MR. COLE: (Resuming)

18 Q Is there anything wrong with the damage that's
19 represented in that diagram?

20 A I'm not sure about the damage, but the area that
21 was aground appears to be incorrect.

22 MR. CHALOS: Your Honor, I'm not sure I understand
23 this. He's shown an exhibit and he's got to say what's
24 wrong with it?

25 JUDGE JOHNSTONE: Mr. Cole, that seems like a

1 little deviation from what you'd normally be using an
2 exhibit for.

3 MR. COLE: Well, it's because I'm not admitting it
4 through this witness, Your Honor. I'm just having Captain
5 Greiner identify this.

6 JUDGE JOHNSTONE: Are you proposing you're going
7 to admit it through some other witness after this witness
8 has indicated it's improper, something is incorrect about
9 it?

10 MR. COLE: Yes.

11 JUDGE JOHNSTONE: All right, then you've laid a
12 foundation that it's incorrect and you're going to try to
13 admit this through another witness.

14 MR. COLE: Right.

15 MR. CHALOS: Well, Your Honor, I would object
16 because I think any witness he would admit it through would
17 be one of his own witnesses. It's not something that's
18 drawn by our witnesses.

19 JUDGE JOHNSTONE: Is it something that the defense
20 witness you intend -- you expect to propose admission on?
21 Don't show it to the jury. Don't show it to the jury. No,
22 just answer my question. When you say you expect to admit
23 it through another witness, is it through your own witness?

24 MR. COLE: Yes.

25 JUDGE JOHNSTONE: Okay. All right, do you still

1 have an objection of him pointing out the irregularities in
2 this exhibit?

3 MR. CHALOS: I guess I don't. I'm just confused
4 by the process of it.

5 JUDGE JOHNSTONE: Well, I think I was a little
6 confused, too, but we'll let Mr. Cole -- why don't you
7 proceed, Mr. Cole, and see if we can tie this up?

8 (Tape changed to C-3643)

9 BY MR. COLE: (Resuming)

10 Q You were talking about the one inaccuracy --

11 A Yes, sir.

12 Q -- as you perceived it from looking --

13 A Yes, sir, the area of grounding here is not
14 consistent with the damage on the vessel.

15 Q But the other parts are.

16 A Yes.

17 MR. COLE: I have nothing further.

18 RE-CROSS EXAMINATION

19 BY MR. CHALOS: (Resuming)

20 Q Mr. Greiner, you told Mr. Cole that as captain of
21 the port, you felt responsible for I suppose the people
22 that you oversaw.

23 A Yes, sir.

24 Q And I take it, though, that you've never been
25 brought up on criminal charges for something that you did

1 in that capacity.

2 A No, sir, nor even reprimanded.

3 Q And you weren't court marshaled for the Protectus
4 Alpha matter, were you?

5 A That's right, I wasn't in charge of the
6 firefighting on there.

7 Q Now you spoke about soundings. You said that you
8 would take soundings to determine how the vessel was
9 aground, is that right?

10 A Yes, sir.

11 Q Well, a sounding wouldn't tell you what the vessel
12 -- how the vessel is aground, would it? It would just tell
13 you what the water is around the vessel, right? In other
14 words, if she was aground in the center of the vessel,
15 underneath, soundings wouldn't tell you anything in that
16 regard because you could have good water on either side.

17 A Theoretically, you could have a pinnacle and the
18 ship was on the middle of the pinnacle and you have deep
19 water on either side, I would agree with that, you could.

20 Q And the only way to know how you're hung up in
21 that situation is to use your rudder, not to take
22 soundings.

23 A No, sir, it isn't.

24 Q It isn't?

25 A No.

1 Q That's your opinion.

2 A Absolutely.

3 Q Based again on --

4 A That's not the only way to do it, no.

5 Q But it's one of the ways to do it, isn't it?

6 A It would work.

7 Q Okay. Now just to clear something up again, would
8 you agree with me that if the vessel was in 38 fathoms of
9 water at five minutes after midnight, in this case, that
10 your theory of the vessel striking at that time would be
11 incorrect?

12 A I think it's five and three-quarter minutes or
13 something like that.

14 Q Let's say six minutes.

15 A Six minutes, and it depends on whose clock your
16 using. Yes, if it's in 38 fathoms of water, it's not going
17 to be aground.

18 Q Okay. Now you spoke a little bit about the
19 clocks. You had an opportunity to look at the clocks on
20 this ship, didn't you?

21 A Yes.

22 Q That was on April 2d?

23 A Yes.

24 Q And you said in one of the reports that you wrote,
25 even though you didn't test the clocks, you believe that

1 they were essentially correct.

2 A I don't remember that I said, but if you would
3 refresh my recollection, I'd appreciate it.

4 Q Yes, I will.

5 A I think you misquoted me. I'd prefer the whole
6 sentence to be read.

7 Q Right.

8 A Okay, in answer to your question, what I said is
9 the clocks on the vessel, although apparently operating,
10 were not checked for accuracy, since they had all been
11 reset for daylight savings time the day before I came
12 aboard. So the check was -- there's no ascertainment of
13 accuracy of the clocks.

14 Q Well, I take it, though, if you wanted to check
15 them at that point, you certainly could have done it to see
16 if there was any difference between the clocks, is that
17 right?

18 A Certainly I could have, but that wouldn't prove
19 anything.

20 Q Now, again, when you plotted that track line, you
21 said that you used certain empirical data and the empirical
22 data that you used was all prior to 2355, is that right, in
23 terms of fixes that were taken by the vessel and other --

24 A No, sir.

25 Q That's not correct.

1 A That's not correct.

2 Q Okay, let me bring you down then to what you
3 marked as 0002 --

4 A Yes.

5 Q -- two minutes after midnight.

6 A Yes.

7 Q Okay, it's at that point that the vessel started
8 to use some rudder.

9 A Yes.

10 Q But you told us, though, that subsequent to that
11 point in time, you didn't calculate how much rudder was
12 used.

13 A That's correct.

14 Q And certainly the rudder would -- the use of the
15 rudder would affect the speed.

16 A Yes.

17 Q Okay, so anything after 0002 might or might not
18 accurate on this particular chart, depending on what rudder
19 you were using.

20 A You asked me before whether I used everything that
21 was -- all the things that were before that and I answered
22 your question no. And the reason I answered it no is
23 because this position here is one of the positions used.

24 Q Right.

25 A And that's where we've got to end up. That's

1 where the ship ended up.

2 Q We're saying the same thing. You say the vessel
3 was aground here.

4 A Yes.

5 Q "I assume . . .," meaning you, you assume that
6 that's about five to six after midnight.

7 A Seven, somewhere in that area, yes.

8 Q Seven, okay. What I'm saying to you, though, you
9 didn't go back to 0002 and calculate, minute by minute, the
10 movement of this vessel, using the --

11 A Angle of rudder.

12 Q Right.

13 A That is correct, I did not.

14 Q Now Mr. Cole asked you, by looking at the course
15 recorder --

16 A Yes, sir.

17 Q -- you can't tell -- there's no indication of
18 rudder orders being given before a minute and a half after
19 midnight, right?

20 A Yes, sir.

21 Q It's true, is it not, that the course recorder
22 wouldn't tell you when an order was given? It only tells
23 you when an order is carried out.

24 A That is correct.

25 Q Okay. So to be more accurate, what the course

1 recorder is showing you is the moment that the vessel's
2 heading is changed.

3 A And that's the way I answered the question, yes,
4 sir.

5 Q Yes. And, in fact, Mr. Cousins could have given
6 an order to the helmsman at 2355, 11:55, and the helmsman
7 didn't carry it out for five minutes, that could have
8 happened.

9 A That could have happened.

10 Q And the course recorder won't tell you that.

11 A You're right.

12 Q Now, Mr. Cole asked you about Mr. Radtke's
13 testimony, where he said he felt the sensation that
14 appeared to him to be something starting forward and
15 working its way back.

16 A Yes, sir.

17 Q Do you also remember reading that Mr. Radtke said
18 the whole thing took about 15 to 20 seconds?

19 A No, sir.

20 Q You didn't read that.

21 A I didn't read Radtke's. He gave me a portion of
22 what Radtke was supposed to have said. I've not read the
23 rest of it.

24 Q And Mr. Cole didn't give you the portion that said
25 he only felt it for about 15 or 20 seconds?

1 A No, sir.

2 Q Now that would be inconsistent with your theory,
3 wouldn't it, if that's all he felt it?

4 A If the vessel was stopped at the end of 15 seconds
5 and if it went aground in 15 seconds and then it was
6 stopped at the end of 15 seconds, it would be inconsistent,
7 yes.

8 Q Now you said that these particular charts, the
9 soundings, are not accurate. I take it -- you were out to
10 the ship on the 2d of April. You didn't take the
11 opportunity to take soundings of the area, in effect,
12 bolster the argument that you're making or the opinion that
13 you're giving here?

14 A Your question starts with a misquotation of what I
15 said. I didn't say the soundings were inaccurate.

16 Q What did you say?

17 A I said that the -- there may be other things in
18 between the soundings that don't show up. In other words,
19 in some cases, these are taken with a bottom, straight
20 bottom sounding fathometer or, in some cases, maybe with a
21 lead line, although I doubt in that depth of water. And it
22 may not indicate something that is a short distance away.

23 Q But bottom line, though, you didn't do any
24 soundings yourself.

25 A That's correct.

1 Q You said you didn't have to make any calculations
2 to determine if Captain Hazelwood created a risk by using
3 the engine here, is that right?

4 A That's correct.

5 Q Would you agree that the risk is only created in
6 those situations where something would happen as a result
7 of your actions?

8 MR. COLE: Objection, speculation and misstatement
9 of the law.

10 JUDGE JOHNSTONE: I'm going to let the question
11 stand. We'll clear this up with the jury instructions.

12 BY MR. CHALOS: (Resuming)

13 Q In other words, before you can assume that a risk
14 exists, the actor who's supposedly creating the risk has to
15 be capable of doing something. Would you agree with that?

16 A Has to be capable of doing it? Certainly he
17 doesn't have to have the results. I don't know whether he
18 has to -- under the law, I don't know whether he has to be
19 capable of it or not. He may attempt to do something,
20 believing he can do it, and the fact that it isn't
21 physically possible I don't think -- you're asking me to
22 interpret the law and I don't know.

23 Q Let me put it to you this way. You said here the
24 risk that Captain Hazelwood was creating was rubbing his
25 ship forward 450 feet and damaging the engine room, right?

1 A Or laterally.

2 Q But 450 feet.

3 A No, no, no. No, no, no. When he moves this from
4 side to side, there could be a rock alongside the stern of
5 the vessel which when he used the rudder, it could come up
6 against and it could hole the engine room or hole a
7 different part of the vessel.

8 Q You don't know, sitting here today, whether in
9 fact there was a rock.

10 A No, sir.

11 Q Okay. So what you do know, though, he would have
12 to move 450 feet forward to damage the engine room, at
13 least as far as that risk is concerned.

14 A As far as the rock that it was sitting on is
15 concerned, yes.

16 Q Well, before you could say that he created that
17 kind of risk, wouldn't you need to know that he was capable
18 of doing that?

19 MR. COLE: Objection, asked and answered.

20 JUDGE JOHNSTONE: You're invading the Court's
21 province. I'll instruct on the law in this area. This
22 witness is not qualified to give that answer. Objection
23 sustained.

24 BY MR. CHALOS: (Resuming)

25 Q Now you said that full maneuvering speed on this

1 vessel is significant power, is that what you said?

2 A I used that word, yes.

3 Q You're a former chief engineer or the equivalent
4 of a former chief engineer.

5 A Yes, sir.

6 Q Is it your testimony that you didn't bother to
7 find out what the power curves were on this vessel?

8 A No, sir.

9 Q Don't you think that would be important to -- in
10 order to come to the conclusion that you came, that is
11 knowing what power this vessel had at 55 rpms?

12 A Well, it's sufficient power to drive a vessel of
13 large size at 12 knots.

14 Q Well, running at 12 knots is not the same thing as
15 being aground, would you agree?

16 A You're correct.

17 Q Okay.

18 A You're correct, I agree.

19 Q So before you can say that it was significant
20 power, you'd have to first figure out how many tons were
21 aground and how much thrust would be needed to move that,
22 wouldn't you?

23 A If you are -- you're saying that you would have to
24 calculate it. In hindsight, that might be true. You might
25 be able to calculate it and say that it would have been

1 impossible for him to do what I perceive he was trying to
2 do.

3 Q Well, has anyone told you that it was impossible,
4 it would have been impossible for him to do what you
5 perceive he was trying to do?

6 A I think that I said that I agreed that it was
7 impossible because he attempted to move the vessel and
8 didn't, so that it doesn't take somebody else to interpret
9 it. It didn't move.

10 Q Wasn't it also impossible because the thrust that
11 would have been required to move this vessel just an inch
12 was so great that this vessel's engines, even running at
13 full sea speed ahead, couldn't generate even 99 percent of
14 the thrust that was required?

15 A With hindsight, that can be said, yes, I agree.
16 In other words, we know that there is a large area in
17 contact and the power didn't overcome it. The acts speak
18 for themselves; it didn't move.

19 Q Did Mr. Cole explain the law, as it relates to
20 risk, to you, creation of a risk?

21 A No, sir.

22 Q He didn't.

23 A Well, he explained it to the extent that he said
24 that the results don't have to occur, it's the risk that's
25 involved, and that's the extent of which --

1 Q That's how he explained the law to you?

2 A That's all that he told me or that I recall that
3 he told me. He may have told me more, but I don't recall
4 any more.

5 MR. CHALOS: I have no further questions, Your
6 Honor.

7 JUDGE JOHNSTONE: Counsel approach the bench for a
8 minute, please.

9 (The following was said at the bench.)

10 JUDGE JOHNSTONE: I've gotten an urgent call from
11 Judge Hall, he's been trying to reach me and he says it's
12 urgent. I don't know what it is. I want to find out how
13 much longer you have now.

14 MR. COLE: About three questions.

15 JUDGE JOHNSTONE: Okay, go ahead and ask them and
16 we'll finish up.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. COLE: (Resuming)

19 Q Based on your review of the record, do you believe
20 Captain Hazelwood had any idea what force power was
21 required to drive that vessel off the ship?

22 MR. CHALOS: Objection, Your Honor. How would he
23 know what Captain Hazelwood knew?

24 JUDGE JOHNSTONE: I'll sustain that objection, Mr.
25 Cole.

1 BY MR. COLE: (Resuming)

2 Q Mr. Chalos indicated one scenario of why this
3 vessel didn't turn until 12:02. Are there other scenarios
4 of why this vessel didn't turn until 12:02? He said that
5 if Mr. Cousins had given an order and Mr. Kagan had not
6 followed it, the vessel wouldn't have turned. Are there
7 other reasons why that could happen?

8 MR. CHALOS: Your Honor, if I may object, my
9 question went to -- in response to Mr. Cole's question
10 which was no rudder orders were given until 12:02. I
11 wanted to clear up that you can't tell that from looking at
12 the course recorder. I wasn't getting into any other area
13 in that regard.

14 JUDGE JOHNSTONE: Objection overruled. You may
15 answer the question.

16 BY MR. COLE: (Resuming)

17 Q Are there other reasons?

18 A Yes.

19 Q Would you tell the jury what those would be?

20 A That the orders weren't given at that time or they
21 weren't given until later.

22 Q How about whether -- would it make a difference
23 whether the vessel was on automatic pilot or on gyro?

24 MR. CHALOS: Objection, Your Honor, this is going
25 beyond cross, recross.

1 JUDGE JOHNSTONE: No, I don't think so, I think
2 you brought that up. Objection overruled.

3 THE WITNESS: Yes, sir, if it's on gyro or
4 automatic steering, movements of the helm will not result
5 in a movement of the rudder and there's no alarm on it.

6 Q I have nothing else, thank you.

7 MR. CHALOS: Just two quick questions.

8 FURTHER RECROSS EXAMINATION

9 BY MR. CHALOS: (Resuming)

10 Q Mr. Greiner, did you read the testimony of Mr.
11 Cousins and Mr. Kagan to the effect that they took this
12 vessel off gyro at 20 -- at 11:53?

13 A I didn't read the testimony of Mr. Kagan at all
14 and the testimony of Mr. Cousins, I don't remember the
15 exact time, but I remember that he said he had taken it
16 off, yes.

17 Q Okay. There's no indication, by looking at the
18 course recorder, or you have no reason to believe that the
19 vessel was on gyro after 11:53, do you, by looking at the
20 course recorder?

21 A I can't answer that with the degree of accuracy
22 I'd like to.

23 MR. CHALOS: No further questions.

24 JUDGE JOHNSTONE: May the witness be excused?
25 Pardon me?

1 MR. CHALOS: Yes, nothing for me.

2 JUDGE JOHNSTONE: You're excused.

3 THE WITNESS: Thank you.

4 JUDGE JOHNSTONE: We'll recess for the day, ladies
5 and gentlemen. We'll see you back at 8:15 a.m., tomorrow
6 morning. Please remember my instructions not to discuss
7 this matter among yourselves or with any other person and
8 not to form or express any opinions.

9 We'll see you back tomorrow. Please be safe. Is
10 there anything we need to take up, Counsel?

11 MR. COLE: I'm not aware of any.

12 MR. CHALOS: No.

13 JUDGE JOHNSTONE: Okay, we stand recessed, thank
14 you.

15 THE CLERK: Please rise. This Court stands
16 recessed.

17 (Whereupon, the jury leaves the courtroom.)

18 (Whereupon, at 1:16 p.m., proceedings adjourned.)

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VOLUME 19

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	:	
	:	
-----	x	

Anchorage, Alaska

February 27, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:56 o'clock a.m., on February 27, 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

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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STATE

Steven Tuttle	4	14		
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Robert A. Beevers	20	120		
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E X H I B I T S

STATE'S

FOR IDENTIFICATION

IN EVIDENCE

158

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P R O C E E D I N G S

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(Start Tape C-3643)

THE COURT: Mr. Cole, are you ready with your next witness?

MR. COLE: Yes, your Honor.

MS. HENRY: Your Honor, the State would call Steve Tuttle.

Whereupon,

STEVEN TUTTLE

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

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

THE WITNESS: Steven Tuttle, T-U-T-T-L-E.

THE CLERK: And your current business mailing address?

THE WITNESS: 605 West 4th Avenue, Room 57, Anchorage, 99501.

THE CLERK: And your current occupation, sir?

THE WITNESS: With the Division of law Enforcement, Special Agent, employed by the U.S. Fish and Wildlife Service.

DIRECT EXAMINATION

BY MS. HENRY:

Q Sir, how long have you been with the Fish and

1 Wildlife Service?

2 A I have been employed by the Fish and Wildlife
3 Service for approximately eleven years.

4 Q And as a special agent during those eleven years?

5 A No. As a special agent I have been employed for
6 approximately six and a half years.

7 Q What are your responsibilities?

8 A The responsibilities of a special agent would be one
9 of a criminal investigator, which would involve investigating
10 violations of Federal wildlife laws.

11 Q Is part of your department's responsibility as a
12 result of the oil spill caused by the grounding of the Exxon
13 Valdez, the collection and inventory of animals and birds that
14 were killed as a result of the oil spill?

15 A Yes, it was. One of our primary duties was just
16 that.

17 MR. MADSON: Your Honor, I am going to object to
18 this testimony. It's totally irrelevant.

19 THE COURT: Objection overruled, Mr. Madson.

20 BY MS. HENRY: (Resuming)

21 Q Go ahead. Was that one of your responsibilities?

22 A Yes, that is correct.

23 Q Was it also one of the department's responsibilities
24 to oversee the rehabilitation centers for the live birds and
25 otters?

1 A That is correct.

2 Q Were spill coordinators assigned to different areas?

3 A Yes, approximately the first week in May, oil spill
4 coordinators were assigned to various locations including
5 Seward, Homer, Kodiak and Valdez.

6 Q Now what would happen if someone found an animal or
7 a bird that appeared to have been killed as a result of the
8 oil spill?

9 A The collection system that was established had those
10 individuals transfer those animals, whether they are live or
11 dead, to a representative of the Fish and Wildlife Service and
12 that individual would catalog by species and store, if it's a
13 dead animal, in a secure location, if it's a live animal, we
14 would make sure the animal had proper care and was sent to an
15 existing rehab facility.

16 Q All right.

17 Were statistics kept as to the number of animals
18 that had been killed by the oil spill, and birds?

19 A Yes. Part of the collection process involved the
20 cataloging, and each oil spill coordinator was responsible for
21 tallying those totals and reporting those totals to our
22 regional office.

23 Q And then the regional office would have a grand
24 total?

25 A That's correct.

1 Q Now, do you have the statistics as of October 18,
2 1989?

3 A Yes, I do. That was supplied to me by our public
4 affairs office here in Anchorage.

5 Q And how many birds have been killed by that date as
6 a result of the Exxon Valdez oil spill?

7 MR. MADSON: Your Honor, I'll object. He is relying
8 on hearsay. He has no personal knowledge about how many
9 birds.

10 MS. HENRY: Perhaps I could do some more foundation.

11 THE COURT: All right.

12 (State's Exhibit Number 158

13 was marked for identification.)

14 BY MS. HENRY: (Resuming)

15 Q Did you review the statistical report that was filed
16 as of October 18th, 1989?

17 A Yes, I did.

18 Q And who was that filed by?

19 A Who was?

20 Q Who was it compiled by?

21 A It is compiled by our regional oil spill coordinator
22 who passes it along to our public affairs officer who makes it
23 available to the public.

24 Q And so it is published as a public document?

25 A It is available to the public. As to whether it is

1 published, it probably is in the way of newspaper articles,
2 things of that nature.

3 Q And have you reviewed the statistics in that report?

4 A Yes, I have.

5 Q And based upon your personal knowledge and your
6 responsibilities in overseeing portions of this, are those
7 statistics accurate?

8 A If the oil spill coordinators followed the
9 collection and cataloging procedures which were initiated by
10 law enforcement personnel, then those figures would be
11 reasonably correct.

12 Q Do you have any reason to believe that they would
13 not have followed the procedures you set up?

14 A No, I do not.

15 Q How many birds were killed as a result of the Exxon
16 Valdez oil spill?

17 MR. MADSON: Your Honor, I will still make the same
18 objection.

19 THE COURT: It sounds like it is going to be based
20 on something he has read or heard from something else. It's
21 not a public document, because we're not admitting the
22 document here. Do you wish to be heard any further on your --

23 MS. HENRY: Your Honor, in that case I would attempt
24 to admit the public document. May I approach the Court?

25 THE COURT: You can have it marked and proceed

1 further. But do you want to be heard any further on the
2 objection of hearsay as to his testimony?

3 MS. HENRY: Yes, your Honor.

4 Your Honor, this witness is in the enforcement arm
5 of the department, and as part of that was -- set up the
6 procedures that would be followed by the individual oil spill
7 coordinators in each city in order to make sure that the
8 animals, live and dead, were collected, and that appropriate
9 statistics were kept. The oil spill coordinators then,
10 following these procedures, would keep the statistics and then
11 turn them in to the regional coordinator who actually prepared
12 this document.

13 Under 803 Subsection 8, which is a case in exception
14 to the hearsay rule, being public records and reports, this
15 would be included as a public record or report, kept by a
16 public agency during its ordinary course of duties. And the
17 factual findings in the report were resulting from an
18 investigation made pursuant to authority granted by law.

19 Additionally, the statistics are a combination of
20 statistical information compiled by several oil spill
21 coordinators, and under Rule 1006, which indicates summaries
22 of voluminous writings can be put into one document. And
23 therefore under the public records exception and the 1006,
24 which indicates summaries can be introduced, I would request
25 that either the witness be permitted to give the bottom line

1 figures or that the document of the statistical summary be
2 introduced, which is Exhibit 158.

3 THE COURT: All right.

4 The witness will not be permitted to testify. It is
5 hearsay what he has to say. I don't know about that document
6 at this point. If that's all you have for it, the document
7 will be permitted in either as a public record. It sounds to
8 me from what you said it's an investigative report by law
9 enforcement personnel or an investigative report prepared for
10 the government. When offered by in the case in which its a
11 party, these are not within the exceptions to the hearsay rule
12 under Subsection B of the rule.

13 MS. HENRY: Your Honor, I am not introducing it as
14 an investigatory report, I'm introducing it as a public record
15 of statistics kept by a public agency in the course of their
16 duties.

17 THE COURT: Well, so far you haven't laid a
18 sufficient foundation for it. The objection is sustained.

19 MS. HENRY: All right.

20 BY MS. HENRY: (Resuming)

21 Q Sir, the oil spill coordinators were required to
22 keep statistics of birds or animals that were turned in to
23 them, whether live or dead, is that correct?

24 A That is correct.

25 Q And how was that procedure set up?

1 A Before the oil spill coordinators were assigned, law
2 enforcement personnel were dispatched to the various
3 locations, Valdez, Homer, Seward, Kodiak. At that point I was
4 dispatched to Seward and I initiated the deployment of
5 personnel, be they volunteers or employed by the oil spill
6 clean up companies. And there was a certain procedure which
7 they had to follow, and that was in the even of collecting
8 dead animals, they would designate on a map where it was
9 collected. It would be collected en masse at a central
10 repository when they returned from being out at sea. We would
11 then assume that property. We would inventory all the
12 property by species. Being that these animals were very much
13 covered with oil, it was difficult to ascertain species. For
14 someone not familiar with bird identification, it would be
15 very difficult for them to ascertain what species. That's why
16 Fish and Wildlife individuals were called in.

17 In doing that inventory system, a written sheet -- a
18 written tally was kept for all the dead animals. And each day
19 that tally, that total of that day would be called into the
20 regional office. I personally did such inventories and the
21 tallies for dead birds in quantities that ran from anywhere
22 from one hundred to close to four hundred birds a day.

23 Then law enforcement personnel, through a rotational
24 basis, would continue this process, continue to keep the
25 tallies, until the oil spill coordinators were assigned to

1 each location, at which point law enforcement personnel were
2 excused from that duty. The oil spill coordinators then
3 continued that same process of maintaining that log, that
4 tally of animals, both live and dead.

5 Q Was it made clear to first the agents and then the
6 oil spill coordinators that it was their duty to keep these
7 tallies and to report them to the regional oil spill
8 coordinator?

9 A Yes.

10 Q And as a part of the responsibility of your business
11 -- your department to maintain information regarding the
12 status of wild animals and birds in the State of Alaska?

13 Q For species that the Fish and Wildlife Service has
14 jurisdiction over, yes.

15 Q And that would include?

16 A Migratory birds.

17 Q Would it also include any marine animals?

18 A Yes, marine mammals including sea otters and polar
19 bear and walrus. The Fish and Wildlife Service has primary
20 jurisdiction over those marine mammals.

21 Q And showing you what has been marked as Plaintiff's
22 Exhibit Number 158 for identification, would you once again
23 identify what that is?

24 A Looking at Plaintiff Exhibit Number 158, this is a
25 cumulative summary of totals provided by the U.S. Fish and

1 Wildlife Service of birds, sea otters, eagles, both live and
2 dead, that had been affected by oil.

3 Q Is it also broken down by region?

4 A It is broken down by the regions Kodiak, Homer,
5 Seward and Valdez.

6 Q And is that document available to the public?

7 A Yes, it is.

8 MS. HENRY: Your Honor, at this time I would once
9 again move into evidence Exhibit 158 under Subsection 8 of
10 Rule 803, that this is a public record. It is a data
11 compilation from a public office or agency setting forth its
12 regularly conducted and regularly recorded activities or
13 matters observed pursuant to duty imposed by laws to which
14 there was a duty to report, or factual findings resulting from
15 investigation made pursuant to authority granted by law.

16 MR. MADSON: I have the same objection, your Honor.
17 I don't believe this witness is the person who has the
18 foundation and the knowledge necessary to show whether that's
19 a public document or not. It doesn't purport to state that
20 and I think we need -- a public document, has to be somebody
21 that had access to it and made it public, and I don't think
22 that's been shown.

23 Secondly and more importantly, I would renew my
24 objection under Rule 403 that even though it may be marginally
25 relevant, it is outweighed by the danger of unfair prejudice,

1 waste of time, and goes into other issues which are certainly
2 not important here. Captain Hazelwood isn't charged with
3 killing birds or anything of that sort.

4 THE COURT: The relevancy objection is overruled.
5 it is probative on one of the elements of the case, the
6 statements prove here. And as to a public record, I am going
7 to overrule your objection on that, Mr. Madson. It comes in
8 under 803 (8) at this time.

9 (State's Exhibit Number 158
10 was admitted in evidence.)

11 BY MS. HENRY: (Resuming)

12 Q In reviewing that document, sir, you have already
13 indicated that that document includes animals that were
14 collected alive and also animals and birds that were collected
15 dead, is that correct?

16 A Yes, it does.

17 Q And this is also divided into the different areas,
18 is that right?

19 A That's correct.

20 Q Are there subtotals and grand totals on these stats?

21 A On this there appears both subtotals as per
22 collection region and grand totals at the bottom of the page.

23 Q Now how many birds have been killed as a result of
24 the Exxon Valdez oil spill, total?

25 A Cumulative grand total for dead birds, 36,471.

1 Q And how many sea otters?

2 A Cumulative total for dead sea otters, 1,016.

3 Q And how many eagles?

4 A Cumulative total for dead eagles, 144.

5 MS. HENRY: Thank you, sir. That's all the
6 questions I have.

7 CROSS EXAMINATION

8 BY MR. MADSON:

9 Q Well, sir, I am looking at Exhibit Number 158, and
10 where on here does it say that this is a public document? Is
11 there anywhere on the face of this it indicates that the
12 public has access to this and how?

13 A On top of the page it says FWS, Fish and Wildlife
14 Service, PAO, Public Affairs Office. So that document is
15 through the Public Affairs Office who deals with media
16 releases.

17 Q Do you know if this was ever released to the media?

18 A That particular document?

19 Q Yeah.

20 A I'm not aware.

21 Q So you're assuming that because there's a number up
22 on the top that says USFWS-PAO? You're assuming that it would
23 be or is accessible to the public?

24 A Yes. Certain parts of it have been released, as far
25 as totals. I have seen that in newspaper articles.

1 Q Just parts -- what's the purpose of just having
2 parts of it released and not all of it?

3 A Apparently there is some interest as to how many
4 birds and how many otters were impacted by the oil.

5 Q And in that regard, what statute do you operate
6 under that requires you to accumulate totals of birds? Or
7 migratory birds or anything that would have been injured or
8 killed by the oil spill?

9 A We were acting under the authority of Title 16
10 United States Code 703.

11 Q And that just keeps data collection, is that what it
12 is?

13 A No, it addresses the Migratory Bird Treaty Act.

14 Q So what does it do? What are you supposed to do
15 under that Treaty Act? You enforce -- let me _____.
16 You're an enforcement officer, right?

17 A That's correct.

18 Q And you work for the State of Alaska?

19 A No, the United States Fish and Wildlife Service.

20 Q Oh, I'm sorry. The Fish and Wildlife Service. You
21 would enforce let's say hunters are out there killing way too
22 many migratory birds, for instance, even though it may be
23 legally in the season, are you involved with illegal hunting,
24 let's put it that way?

25 A Yes, among others, yes.

1 Q And then you just -- you basically keep status of
2 how many birds, let's say, are killed in a hunting season,
3 what variety types?

4 A No, not necessarily. Anything that impacts a
5 species that the Federal government -- meaning U.S. Fish and
6 Wildlife Service -- has jurisdiction over, U.S. Fish and
7 Wildlife Service has jurisdiction over, the U.S. Fish and
8 Wildlife Service Division of Law Enforcement would have the
9 authority to look into, be that an oil spill or be that
10 hunting. It could mean anything as far as far as any
11 environmental condition, man or natural, that impacts a
12 Federally protected species.

13 Q Well, who owns these birds and mammals?

14 A The people of the United States.

15 Q In other words, they are not owned by the State of
16 Alaska as far as you know?

17 A No, they are not.

18 Q They are not property of the State of Alaska?

19 A No, they're --

20 MR. MADSON: Well, your Honor, I would renew my
21 objection at this time based on the witnesses answers. They
22 are not State property, there is no damage, there's no
23 dollars, and that's what this case is all about, it's risk of
24 damage of over \$100,000. And this has absolutely nothing to
25 do with it. It is strictly for prejudicial value.

1 THE COURT: All right, you may be heard now.

2 MS. HENRY: Thank you, your Honor. With regard to
3 the last objection, it doesn't _____ that the State
4 must prove, and that is that the risk of damage by widely
5 dangerous means occurred, and that State must show that the
6 oil spill must show that the oil spill was a widely dangerous
7 means. Widely dangerous means definition includes definitions
8 of poisonous things, and showing how many animals were killed
9 as a result of the oil spill shows that the oil spill is a
10 widely dangerous means.

11 THE COURT: All right.

12 Mr. Madson, I see no reason to change my ruling at
13 this time. You went to foundation on it and the objection is
14 overruled. The testimony stands.

15 Now are you finished with the witness at this time?

16 MR. MADSON: Just one last question perhaps.

17 THE COURT: Okay.

18 BY MR. MADSON: (Resuming)

19 Q Sir, if the animal dies as a result of oil, let's
20 take a sea otter for instance, the oil coats the outside of
21 the animal, correct?

22 A Yes.

23 Q And then it allows or requires -- not requires, but
24 it -- the animal will die because it loses its heat insulation
25 value of its coat, is that correct?

1 A It's my understanding that the insulating quality of
2 the fur is depleted due to the oil on the fur.

3 Q And that, sir, is not poison, is it? That's a
4 different form of death other than poison?

5 A Hypothermia is different --

6 Q Uh-huh.

7 A Rather than ingesting from licking the fur, is that
8 what you're saying? Which the sea otters can do either way.

9 Q They can do it either way.

10 A Right.

11 Q So we can't say of all these animals which died of
12 what type of death was caused by the oil.

13 A Whether ingestion of oil or by hypothermia?

14 Q Right; that's right. You can't say from looking at
15 these figures?

16 A No, you can't say from looking at those figures.

17 MR. MADSON: I have no other questions, your Honor.

18 MS. HENRY: I have no other questions, your Honor.

19 THE COURT: You're excused.

20 (The witness was excused.)

21 MR. COLE: Your Honor, at this time the State would
22 call Captain Robert Beevers to the stand.

23 Whereupon,

24 ROBERT A. BEEVERS

25 called as a witness by counsel for the State of Alaska, and

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

3 THE CLERK: Would you please state your full name
4 and then spell your last name.

5 THE WITNESS: Robert A. Beevers, that's B-E-E-V-E-
6 R-S.

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

8 THE WITNESS: 18606 Engebretson Road.

9 THE CLERK: Spell the road?

10 THE WITNESS: E-N-G-R-E-T -- E-N-G-E-B-R-E-T-S-O-N,
11 Granite Falls, Washington.

12 THE CLERK: And you current occupation, sir?

13 THE WITNESS: I am a retired merchant marine captain
14 and my present occupation is retired and part time consultant,
15 and I run a small business besides.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. COLE:

19 Q Captain Beever, why have you been called upon to
20 testify in this matter?

21 A Well, I was originally called by the State to --
22 after the Exxon Valdez grounded to advise the State on
23 maritime matters and to look the -- go out to the ship and
24 look the ship over, determine anything we could, interpret
25 documents for the State, and give them my -- my knowledge in

1 the maritime field in determining what happened.

2 Q Would you tell the jury how long have you been
3 involved in the maritime industry?

4 A Okay. I first started to sea in 1963, and as an
5 unlicensed seaman. 1967, I got my original -- my third mate's
6 license. And 1973 I got my master's license. And I sailed
7 steady -- steady from 1963 to 1987 when I retired.

8 Q Did you attend any maritime schools to get your
9 license, third mate's license?

10 A I didn't attend a maritime academy. I went to a --
11 a school sponsored by the Master, Mates and Pilot's Union that
12 lasted sixty, ninety days, something like that, and which you
13 have an intensive study period on just the duties of a third
14 mate and the navigation -- the various things required by the
15 Coast Guard to take and pass the test.

16 Q We've heard testimony that some tanker captains,
17 masters, have attended school -- a maritime school, academy,
18 and have gotten their third mate's license after graduation.
19 How was your acquiring of your third mate's license different?

20 A Well, in order for me to sit for third mate's
21 license, I had to have a minimum of three year's sea time on
22 deck, had to have an able seaman ticket, and then take the --
23 well, it was the same test that a graduate of a maritime
24 academy would take to pass the third mate's exam.

25 Q So it would be just a little bit different route to

1 getting the same result?

2 A Yes.

3 Q Since 1980 -- 1973 when you began working as a
4 master, how much of your career -- well, let me ask you this.
5 How much of your career has been spent working on oil tankers?

6 A From the time I got my third mate's license, I made
7 one trip on a freighter -- my first trip on a license was on a
8 victory ship, maybe 65 days --

9 Q What's a victory ship?

10 A Oh, that's an old freighter, a World War II type
11 freighter. Captain Hazelwood knows, I am sure, about victory
12 ships, too. But then my only other freighter was in 1985. I
13 was captain on a small freighter that went to Antarctica. And
14 other than that, all of my sea time has been on tankers.

15 Q How much time have you -- have you worked in the
16 Prince William Sound trade?

17 A Okay. I originally came up in 1977, when they were
18 just preparing to open the pipeline and they -- the oil
19 companies had chartered three vessels to make trips in and out
20 of Prince William Sound so that all the captains that were
21 going to be involved in the tankers could get their pilotage
22 for Prince William Sound. And I did that and obtained my
23 pilotage. And then within a year after that -- let's see, in
24 the latter part of '78, I believe -- I was on the Overseas
25 Juneau on my first trip in and out of Prince William Sound.

1 And from that point on, with the exception of the freighter
2 trip, basically it has been Prince William Sound to Long
3 Beach, Prince William Sound to Panama, that trade.

4 Q The time that you got your pilotage, was there a
5 group of tanker captains aboard with you that time?

6 A Yes. They --

7 Q Explain how that happened.

8 A Well, like I say, they were planning on opening the
9 pipeline. Prince William Sound wasn't a place that too many
10 large ships frequented up to that point. So it had been
11 determined by the Coast Guard that pilotage was going to be
12 required from Cape Hinchinbrook into the dock. And an
13 agreement between the State pilot association and the Alyeska
14 Terminal and the oil companies, it evolved that they would go
15 from Rocky Point to the dock, and the ships captains would get
16 pilotage from Cape Hinchinbrook to Rocky Point.

17 So they chartered these vessels while they were
18 waiting for the pipeline to open and made trip after trip in
19 and out of Prince William Sound so that everyone could make
20 the required number of trips that they needed and then set for
21 a test and pass a pilot's test.

22 Q Would you give the jury an estimate of how many
23 trips you made in and out of Prince William Sound while you
24 were working that trade?

25 A Okay.

1 It would be hard to say exactly, but I would say
2 fifty, sixty maybe, something like that.

3 Q Would you be working year round during those years?

4 A Yes. During that time my company had decided we
5 would work -- to set the schedule, we would try to work four
6 months on, four months off, four on. So that would
7 effectively change the seasons where you would rotate winter,
8 summer. Basically that was so we could each have a chance at
9 having Christmas at home and change the seasons around.

10 Q During your time period that you worked in the
11 Prince William Sound trade, did you also act as a -- did you
12 also -- were you also placed on vessels that didn't have
13 pilotage?

14 A Yes. As things worked out, we had -- had captains
15 that were coming around to come in the trade that hadn't
16 obtained their pilotage. And how on vacations I made trips on
17 vessels for Maritime Overseas to ride with people that were
18 getting the required trips for pilotage.

19 Q What is Maritime Overseas?

20 A That was the company I worked for at the time.

21 Q And did they own the tankers that you were respon --
22 that you were the captain of?

23 A Yes.

24 Q Back to the time that you were aiding in the
25 piloting of these tankers, can you give the jury an idea of

1 how many times this would have occurred?

2 A I really can't now, but -- I really can't say. It
3 wasn't a lot of trips as a pilot, but -- I don't know, from a
4 few to several.

5 Q Now, did you take any trips other than through the
6 Prince William Sound during that period of time? In and out
7 of Prince William Sound. Did you make any trips to the
8 Persian Gulf?

9 A Oh, yeah. Twice during that time on the Overseas
10 Juneau was diverted off from our Prince William Sound, West
11 Coast and Panama run, and went to the shipyards in Singapore
12 and from that point went to the Persian Gulf to pick up a load
13 of oil to take to a discharge port. In effect there what they
14 were doing was picking up a load of cargo so they didn't have
15 to make a trip back empty.

16 Q Did you -- let's talk about some of your experience
17 in ice. Have you made any trips to Antarctica?

18 Q Yes. I made the one trip in 1985 on a freighter in
19 which we left the United States and went to Antarctica to
20 provide all the -- once a year they send a freighter down
21 there to provide all the goods that the National Science
22 Foundation and the people that are handling the logistics of
23 all the scientific experiments going on need, and it's a once
24 a year thing. You go down and they have sent a Coast Guard
25 icebreaker down to break a path into the McMurdo Sound base,

1 and then we come down and follow the icebreaker in, discharge
2 the cargo, and then come back out.

3 Q Did you encounter icing conditions during that time?

4 A Oh, yes, yes. Uh-huh.

5 Q How about have you made any trips to the Soviet
6 Union?

7 A Yes. During the -- a few years back when the tanker
8 business was in a slump, there were several tankers cleaned up
9 and used to carry grain to the Soviet Union. And I made
10 several trips there. And this was back in the -- oh, early,
11 mid-70's. And in one of those trips we were sent to Leningrad
12 in February. And it was an unusually cold winter and the
13 Baltic was froze and we followed an icebreaker in and out
14 through the Baltic Sea, approximately 200 miles in and out, to
15 go to Leningrad to discharge the load of grain.

16 Q Did you encounter icing conditions during your trips
17 in and out of Prince William Sound?

18 A Yes. We would -- they would occasionally have ice
19 coming off the Colombia Glacier and drifting out across the
20 traffic lanes, yes.

21 Q Can you give the jury an idea were there certain
22 periods where that was greater than others?

23 A Oh, yes, it varies from time to time. They'll --
24 some trips you'd come in there were no ice at all. Other
25 trips you'd come in there was quite a bit of ice has calved

1 off and drifted out across the lanes. Sometimes it is a
2 problem, sometimes it isn't.

3 Q What type of tankers were you operating in and out
4 of Prince William Sound while you were in that trade?

5 A Okay. The first tanker that I was captain on was
6 the Overseas Juneau. That was a 120,000 ton steam driven
7 tanker. The next one that I was on just for a short period of
8 time was the Overseas Ohio, which is a 90,000 ton, double
9 hulled, steam tanker. Then I was on the Overseas Boston,
10 which is a 121,000 ton diesel motor ship. And then the last
11 ship I was on before I retired was the OMI Columbia. It's a
12 136,000 ton diesel.

13 Q Just a quick question about diesel vessels. How do
14 you start and stop a diesel engine on these tankers?

15 A Well, they are controlled from a lever either on the
16 bridge if you are in bridge control or a lever in the engine
17 room that acts the same as the lever on the bridge. And how
18 they -- how that's done as far as the bridge officer is
19 concerned, you merely push the lever to what you -- if you
20 want to stop, you push the lever to stop. And the reaction in
21 the engine room is the fuel is cut off to the engine and it'll
22 come to a stop. If you want to change -- if you want to
23 restart or change directions, then it's -- you just push your
24 lever to ahead. And to start the engine they have a reservoir
25 of air which will kick it over for -- to get the engine moving

1 and that pulls the fuel into the cylinders and it fires then
2 as they under compression.

3 Q Is there any warming up that needs to be done on a
4 diesel?

5 A Normally, everything is going right they normally
6 have the lube oil heated up, they have the fuel heated. They
7 need to heat the heavy fuel oil in order to be able to use it.
8 And it's something you could start -- you could start a diesel
9 cold, I believe, but normally they do keep them heated up.
10 That is part of the engineer's duties in operating a ship.

11 Q Where else have you acted -- have you traveled as
12 master of tankers? Can you give the jury -- have there been
13 other parts of the world that you have traveled as the master
14 of a tanker?

15 A Oh, yes. Years back now, I was chartered on -- some
16 of the ships that I was on when I first got a master's license
17 were chartered to the Navy on the Military Sealift Command and
18 with that we went Persian Gulf to Vietnam to the Philippines,
19 Guam, Hawaiian Islands. In Rota, Spain, for example. All
20 over the world. Up and down the East Coast, the Caribbean
21 area, in and out of almost every port that has a refinery
22 there.

23 Q Have you gotten -- your license, did you ever get
24 pilotage in any other areas besides the Prince William Sound?

25 A Yes, Cook Inlet. During my time off in, I think, 82

1 and 83, I made enough trips in Cook Inlet to qualify to set
2 for a pilot's license for pilotage from sea to anchorage.

3 Q Now, during this time that you were working, who
4 were you mainly employed by? During the time you were working
5 in the Prince William Sound area?

6 A Okay.

7 My primary employer at that time was Maritime
8 Overseas.

9 Q And how did Maritime Overseas operate? Did they own
10 the oil, or how was their -- what was their capacity?

11 A No. How that works, they are strictly a
12 transportation company that owns ships and they charter the
13 ships to various oil companies either on a voyage charter or
14 time charter, and carry oil for -- whatever, if it's a six
15 month time charter for six months, they will make whatever
16 trips that particular oil company wants. Or if it's a longer
17 charter, two years, say, then it's the same thing.

18 And as the charters expire, they will put the tanker
19 on the market for another charter and perhaps another oil
20 company picks them up. So during that time I worked for -- on
21 a ship that was chartered to Exxon, chartered to Sohio,
22 chartered to ARCO, and Chevron and maybe some other companies.
23 But those four I am sure that we were chartered to them at
24 various times.

25 Q Would your responsibilities as a captain change

1 depending on which oil company you happen to be chartering
2 for?

3 A No. Your master's responsibility is the same. What
4 would change would be the various paperwork that each oil
5 company required, and basically they are the same. They are
6 just a different form but the same information is required.

7 Q Did you have any policy, operation, or bridge
8 manuals that were handed out by Maritime Overseas?

9 A They had -- I don't think they called it that. They
10 had a manual with instructions, and I don't know if it was --
11 no, it was called Master's Instruction. But it's an operating
12 manual to tell you how they would like you to operate their
13 vessel, yes.

14 Q And how about the oil companies that you worked
15 under, did they distribute bridge manuals also?

16 A I -- they probably did. I don't remember
17 specifically getting bridge manuals. I know we got all of
18 their updates and all of their letters that they sent to their
19 fleet. While we were under charter to them they would send
20 those to them. They may well have sent out a bridge
21 organization manual.

22 However, in our case, the company we're working for,
23 their operation manual would be what we would -- would go by.

24 Q What is the purpose of having a bridge operation
25 manual?

1 A Well, so that you will do things and operate the
2 ship in a manner that the company expects you to.

3 Q Has your knowledge with -- has your work with all of
4 these companies allowed you to acquire any special knowledge
5 as to the maritime customs that have evolved in the safe
6 operation and navigation of crude oil tankers?

7 A Well, I would say so, because we have worked for
8 several different oil companies, and worked, you know, worked
9 in the industry all that time, worked for all the major oil
10 companies and got to see how each one of them did things,
11 along with how my company as a transportation company did
12 things.

13 Q Let's talk about the maritime industry a little bit,
14 specifically the tanker industry. Generally, what type of
15 crews did you have? What type of ship personnel were
16 contained on a tanker that you were master of?

17 A Well, you would have, of course, your master. Then
18 you have your deck officers, and that consists of a chief
19 officer who is the second in command of the vessel, and your
20 right hand man as a master on a tanker. You have a second
21 officer who normally does the detail work on upgrading your
22 charts, keeping your charts corrected, your sailing
23 directions, make sure the bridge and the bridge equipment and
24 supplies in good order. And then your third officer, which is
25 usually he's -- that's the junior member of the staff, and

1 other than his bridge duties he is normally left with the
2 duties of taking care of and inventorying, inspecting fire
3 fighting and safety equipment, things of that sort. And
4 there's other details you give him. And that takes care of
5 the deck officers.

6 You have a radio officer which is self explanatory.
7 He handles the vessel's radio traffic, does the electronic
8 maintenance normally, and stands a radio watch for safety.
9 They are being done away with here I think now.

10 But then you have your engineers. Chief engineer
11 which he is overall charge of the operation of the engine
12 room. With a first assistant. The ships I was on normally
13 had a first assistant, second assistant and third assistant.
14 And they do various duties in the engine room as laid out by
15 the chief engineer and help maintain and operate the plant and
16 the ships equipment.

17 Your unlicensed departments would be your deck
18 department, which is normally -- when I was sailing it
19 consisted of nine men. You had six AB's and three ordinaries.
20 They have now reduced that down on most of them to six AB's.

21 Your engine unlicensed would vary depending on the
22 ship. You'd normally -- you have a pumpman. You normally
23 have three -- on most of them they have three oilers, a
24 pumpman and possibly a wiper as a cleanup man which some ships
25 have done away with. Some don't -- that changes from ship to

1 ship.

2 And then you have your steward department that takes
3 care of the cooking and quarter cleaning. And that could be
4 anywhere from -- it used to be four or five men, and some of
5 them three. Now I understand they are down to two.

6 Q Now, I'd like to talk a little bit about the people
7 who work under you. Were you given a choice in who you got to
8 choose as an able bodied seaman?

9 A No. The ships I was on was unionized. The company
10 just called the union and they sent the people out. Now, I
11 did have the choice when they came out of approval or
12 disapproval of them. You had to have a good -- you know,
13 naturally you had to have a good reason if you turned a man
14 down and didn't take him. And I also had the right, if he
15 didn't perform his job in a prescribed manner, that if I had a
16 legitimate legal reason to dismiss him, I could dismiss him.

17 My officers, they come out of union, but a lot of
18 them worked for the company. And there again, if they didn't
19 perform like you wanted, you had the right to do something in
20 that regard.

21 Q The able bodied seamen that worked under you, when
22 the were at watch, what were their responsibilities?

23 A Okay.

24 Normally at sea, their duties are steering the ship
25 and lookout when they're on watch. During working hours, if

1 one man -- when you don't need a look out, you'll have one man
2 standing the wheel watch the other man, would be doing some
3 sort of maintenance around the vessel.

4 That's -- there are other duties besides at sea
5 would be cargo watches in port. They do any valve turning,
6 any line handling, any putting out your fire fighting
7 equipment, taking off blanks, putting on blanks, looking for
8 leaks, operating the equipment for crude oil washing if you're
9 in a discharge port. Generally doing whatever the watch mate
10 then tells him in order to operate the ship.

11 Q How does someone become qualified to get his AB
12 license?

13 A Okay.

14 Well, they start out as an ordinary seaman. Now,
15 years back it was three years as ordinary to become an AB.
16 Then it dropped to twelve months to get a limited AB ticket.
17 And now I understand there's six months plus special training.
18 I'm not just sure on the latest thing. But basically still,
19 you can -- twelve months I know you can as ordinary seaman and
20 then you can go to the Coast Guard, take a test in which they
21 cover various things that would expect an able seaman to do,
22 and if he can pass that test and they give him a little
23 written test along with practical knowledge, talking to him
24 about tying knots, reading the compass, various things that he
25 would need to know. And if he passes that test then they will

1 give him an able seaman endorsement.

2 Q In this test taking procedure, are they required to
3 demonstrate skills in ship handling?

4 A In steering? No, what they would probably do is to
5 maybe run through a routine of rudder commands and ask him
6 what they would do, which is -- lets the inspector know that
7 they have an idea about it. But there is no way that they can
8 take them out and see if they could steer a ship.

9 Q Well, how does an able bodied seaman then acquire
10 the ability to steer a vessel?

11 A That's hands on experience learned on the ship.

12 Q How could you tell as a master whether someone was
13 qualified to steer a vessel?

14 A Well, what you have to do is get in open water and
15 put it in hand steering and let them steer and observe how
16 they steer, give them a few course changes, see how they
17 respond to that, how they do that. And then put it on -- what
18 I always tried to do was -- with the new men when we left port
19 is I would make them steer for their two hours of wheel watch
20 and then review the course recorded, see if they do with the
21 few minor course changes that we would give them. And if they
22 did fine on that and had experience in the past on other
23 vessels, and seemed okay, then that ended it.

24 If I wasn't satisfied with their steering, well
25 then, they continued steering by hand for a trip maybe, or a

1 week, whatever you felt was necessary.

2 Q Is there a difference between someone who is
3 qualified to steer, to be an able bodied seaman, and someone
4 who you would have confidence in steering the vessel in say
5 tight or closed waters?

6 A Oh, yes. What the Coast Guard would call qualified
7 to steer is anyone who has passed an AB test. And what -- for
8 steering in close quarter situations or in tight waters, you
9 would want someone you had confidence in, either someone that
10 had been on the ship with you in trips past that you knew
11 could steer or someone who had already that trip proven that
12 he was capable of steering.

13 Now occasionally it comes a time if you change all
14 six AB's at one, then you are not sure of any of them, so you
15 have to watch very closely the first trip until you, you know,
16 decide which ones are good helmsmen, which ones aren't.

17 Q Would the master, the captain, have the discretion
18 to place an AB -- whatever AB at the helm that he wanted?

19 A Oh, yes.

20 Q Why would you do that?

21 A Well, if you were unsure of a man, you would -- and
22 you were in a tight situation, you would just tell that man,
23 you know -- you'd change your watches around. You'd probably
24 put him on lookout and the other AB on the wheel, or if
25 necessary keep someone over from the previous watch to steer

1 until you got out into open water and then let the AB that you
2 were uncertain of take over.

3 Q I would like to shift the focus here to have you
4 explain the relationship between the master and the chief
5 engineer on board. How -- what type of reporting duties does
6 the chief engineer have to the master?

7 A Okay.

8 The chief engineer handles the maintenance and
9 basically the running of the operation of the engine room.
10 Now, the chief engineer is still a crew member under the
11 master. But as the engine room and machineries become more
12 important, his job has become more important. But part of his
13 duties besides operating and running the engine room is to
14 report fuel consumption to the master; he needs to report any
15 requirements that he needs in the way of fuel, lube oils, what
16 have you, so it can be ordered, maintained, you know, to
17 maintain the vessel. He needs to report any problems with any
18 of his engineers or personnel underneath him that he is aware
19 of to the master. And every day he gives a noon slip with the
20 engine room data that he has logged in the engine room in
21 regards to miles on the engine slip, fuel consumed, so that
22 the master can keep -- be kept aware of the operation of the
23 engine room. And any damage to the engine room, any equipment
24 failures, things like that, anything that would in the normal
25 routine operation of the ship be something that was important

1 enough that the master should know, it's his obligation to
2 advise him.

3 Q With the coming of the importance of the machinery
4 on board these tankers, does the master's responsibilities
5 towards that, have they decreased towards the engine room and
6 its contents?

7 A No, no. They have never decreased the master's
8 responsibilities.

9 Q How important is a chief mate on board a tanker?

10 A Well, as I said, he is your right hand man in
11 operation of the vessel. He's -- the chief mate stands a
12 watch, depending on the ship -- normally I always had the
13 chief mate on the 4:00 to 8:00 watch. The chief mate takes
14 care of the hands on part of the cargo loading, the
15 discharging, ballasting, any tank washing that you would have
16 to do, the general maintenance of the vessel, the ordering of
17 all the supplies and equipment used by the deck department,
18 and he keeps -- let's see, I lost my train of thought. He
19 keeps track of all the crew overtime in the deck department
20 for review by the master and turning in.

21 And depending on the ship -- normally you don't give
22 the chief mate any of the various voyage abstracts and
23 reports, because he has got enough paperwork. But depending
24 on your second and third mates, you may even have the chief
25 mate doing some of that. So he is very important to the

1 operation of the vessel.

2 Q What's abstracts?

3 A This is a form with various information that you
4 need to turn in to the company and/or the charterer in order
5 to determine how much oil -- you'll have an abstract with the
6 loading information on how long it took you to load, what time
7 you docked, undocked. Various times so that for billing and
8 charging a company if you are chartered or in case it's a
9 charter and there's a problem for -- it's a method to keep
10 track of the oil, keep track of what the ship is doing, keep
11 track of the various financial charges back and forth.

12 Q When you began sailing as a master on these tankers,
13 how did they -- how did the loading process get accomplished?
14 The loading of crude oil --

15 MR. MADSON: Your Honor, I hesitate to object, but I
16 think we're getting pretty far afield. I mean, we are talking
17 now 1977, how a ship was loaded. I don't know what in the
18 world relevance that has to anything here.

19 MR. COLE: I'll tie it in.

20 THE COURT: All right.

21 BY MR. COLE: (Resuming)

22 Q How did the loading of a tanker occur at that time?

23 A Oh, in -- you say when we started in Valdez? At
24 that time the ships that I was on did not have inert gas.
25 They were open, they loaded them the same as they had loaded

1 tankers for fifty years, I guess. It was open ullage caps
2 with a screen and a mates --

3 Q What do you mean by open ullage caps?

4 A Okay.

5 Well, that was a gauging cap that you could measure
6 your oil through this open cap. At that point the mate on --
7 would be out on deck going from tank to tank checking and
8 there was a tremendous amount of walking, a lot of -- because
9 each tank had to be checked individually. Well, as they
10 modernized the ships and went into a little -- got a little
11 more modern and revamped them, they went into an automatic
12 gauging system. They went to the inert gas systems that
13 created -- that had a closed tank then where you didn't have
14 to look at each tank. You used your automatic gauging
15 systems. They had built in back up systems that you could
16 check which was at each tank if you need it, and evolved to
17 the fact that the chief mate was then usually in the cargo
18 control office instead of out on deck running around.

19 Q Would it be fair to say that it has become fairly
20 automated in some of the more advanced vessels?

21 A Yes, it has become more and more automated, and it's
22 due to the ships getting bigger and the crews getting smaller,
23 that is the only way that they could keep operating this, by
24 trying to reduce the physical workload that was put on the
25 mates loading.

1 Q And as the captain, were you aware of the cargo
2 loading and unloading process that occurred on the vessel that
3 you happened to be --

4 A Oh, yeah; yes.

5 Q Did your responsibilities as to that lessen with the
6 greater automation of this?

7 A No, no.

8 Q Would you tell the jury, Captain Beevers, what are
9 the responsibilities of a tanker captain?

10 A Okay.

11 First, the master's in overall command of the
12 vessel. He's in charge of the safety of his crew and vessel
13 at all times. The master -- he has the responsibility of safe
14 navigation. He has responsibilities of watching the pilot if
15 you have a pilot on board. He has the responsibility of
16 maintaining discipline on his ship if necessary. He has the -
17 - despite the fact that in most of the companies that the
18 companies pay their crew members direct now, he has the
19 financial responsibility of seeing that they do get their
20 monies legally. He has the -- he's the company's
21 representative in all business matters pertaining to the ship.
22 If you have to purchase stores or equipment, the master is the
23 man that is responsible for the money for that, responsible
24 for -- the responsible for all of the government papers,
25 custom's forms, immigration, that you would have to file for

1 sailing. He is responsible for the safety of the cargo on
2 board. He is -- on and on and on. I --

3 Q Is he responsible for the command of the engine
4 room?

5 A Overall, yes. The chief engineer makes his
6 decisions. The chief engineer makes a mistake that is beyond
7 what the captain would be aware of, then the chief engineer is
8 going to have to accept some of the responsibility. But
9 ultimately the master is responsible for the engine room also.

10 Q What about in emergencies? What are his
11 responsibilities in emergencies?

12 A Okay.

13 The master there again is responsible for the safety
14 of the crew, the safety of the vessel. He's responsible to --
15 it's his duty to be sure and -- in an emergency to notify
16 anyone that he needs for assistance and aid. It is his
17 responsibility to try to -- try to keep the damage to a
18 minimum. Anything that happens in the operation of a vessel
19 basically reverts back to the master.

20 Q Does he make decisions as to whether or not to, say
21 for instance, abandon the vessel?

22 A That's in an emergency abandoning a vessel would
23 certainly be something the master would make that decision.
24 In an emergency if you needed to call for salvage, that would
25 be the master's decision. If you needed to get outside help -

1 -
2 Q Let's stop there. What do you mean by call for
3 salvage?

4 A If you needed help in -- if you needed to get
5 someone to get your vessel out of trouble, that would be up to
6 the master to make the decision as calling for him.

7 Q Are there such things as salvage agreements in
8 industry?

9 A Yes; yeah.

10 Q Would you tell the jury what a salvage agreement is?

11 A Well, it would be an agreement between a company
12 that's trying to salvage a vessel and the vessel. And they
13 have a -- the standard everyone that I think is aware of in
14 the industry is Lloyd's Open Form, which is a -- basically
15 it's a little more complex, but basically that is a no cure,
16 no pay. You take the job with the idea that you will save the
17 ship or you will not get paid.

18 Q If you do save the ship?

19 A You get a percentage of the value of what you have
20 saved. And that is determined by a board of insurance people
21 and salvage people.

22 The other way is by being hired on a cost plus basis
23 or a contract basis. And that's -- it just depends on the
24 situation which one that you would go. And that's another
25 decision that -- those decisions normally in the actual

1 practice are made through the communications by people in the
2 home office. But if it comes down to it, that's a decision --
3 if there is no decision made and one needs to be made
4 immediately, that's again the master's responsibility.

5 Q Would you describe for the jury, why are pilots
6 required in certain parts of a ships travel?

7 A Yes. The -- various governments around the world,
8 including the United States, have determined that for the safe
9 operation of the vessels, it is prudent to have an experienced
10 seafaring person with local knowledge and experience in the
11 local area to assist ships coming in and out. And so they
12 have set up -- each country has set up various rules for their
13 pilots. What areas they need them in and what their training
14 should be, what they need to know.

15 Q So the concept of pilotage in having a pilot aboard,
16 that's not something that is unique to the United States?

17 A No, this is world wide and it has been in practice
18 for many, many years. Years back, say in sailing ship times,
19 it was normally an option -- an optional thing. Now most
20 Federal and state laws and international -- various other
21 country laws, they require them in certain areas.

22 Q Can you give the jury an idea of different parts of
23 the world that require pilotage, where you sailed?

24 A Almost every place that I mentioned earlier that I
25 have been to, there's -- other than Antarctica, there's no

1 pilotage down there. But most every -- every other port --

2 Q In Africa?

3 A They would have pilots there -- any place that I've
4 been in Africa, they've had a pilot.

5 Q What's a pilot's responsibility once he comes on
6 board?

7 A Okay.

8 The pilot will come aboard, discuss his -- his job
9 and what he is going to do with the master, and his
10 responsibilities are normally to assist the master in getting
11 the vessel safely in port. And in practice what this means is
12 that he normally takes the conn of the vessel and then he will
13 maneuver the vessel, using his local knowledge and experience,
14 into the port. But there again, always the pilot is under the
15 -- under the -- he's working under the master. If the master
16 decides this pilot is unfit, or this pilot is doing something
17 drastically wrong, the master has the option of stepping in
18 and taking the ship away from him.

19 Now I will say this. You need to -- you have to
20 know it. It's not a light decision to make. You need to know
21 where your vessel's at, you need to know when you take over
22 what you're going to do then, because --

23 Q When you say, when you take over, you mean take
24 over from the pilot?

25 A Yes. If you take over from the pilot and assume the

1 conn, you have to be very aware of the area that you're taking
2 over in so that you don't take over and do something to damage
3 your ship.

4 Q If the -- if you don't have a problem with the
5 pilot, what are your responsibilities during the time the
6 pilot is on board?

7 A Okay.

8 The -- what normally happens, the responsibility is
9 still the same. You're in charge of the vessel. But what
10 normally happens is that when a pilot comes aboard is that if
11 you are in a tight situation, or suppose you're docking or
12 undocking or you are in a narrow channel, a master should be
13 on board so that he can watch the pilot, watch his moves, and
14 so that he can best -- after all, the master should still know
15 his ship better than a pilot just coming aboard. He should be
16 there to take over in case there is something major happens.
17 He should be there in case the pilot makes a minor error to --
18 normally instead of taking over, you would just correct him
19 or just mention it to him. And You have to be -- you have to
20 be there to do this.

21 Now, once you're out in an area where it's not an
22 immediate danger, the master can kind of step back and relax
23 or -- it -- you can go down below for a minute, if you're not
24 in an area where you're needed on the bridge.

25 Q Where have the pilots -- when you've been required -

1 - in areas where you have been required to have a pilot, where
2 are the pilots during that time?

3 A They're on the bridge conning the vessel.

4 Q Have you ever had a situation where a pilot was not
5 on the bridge conning the vessel where he was required?

6 A No.

7 Q Where would -- you indicated that you had pilotage
8 from Prince William Sound to Rocky Point?

9 A Yes.

10 Q Where would you pick up and drop off the pilot on
11 your trips inland and out?

12 A We would pick up the State pilot just off of Rocky
13 Point and proceed into the terminal. And then we would --
14 outbound we would drop him off off from Rocky Point.

15 Q What was your understanding of your responsibilities
16 while in Prince William Sound without the pilot on board?

17 A From Rocky Point out?

18 Q Yes.

19 A Okay.

20 At that point, I was normally the only person on the
21 vessel with pilotage, and I assumed my responsibility was to
22 be on the bridge piloting the vessel in and out.

23 Q What about if you had to go to the, say, for
24 instance the restroom during this time?

25 A There's usually facilities right on the bridge on

1 most of the modern ships. It's just a matter of stepping into
2 the -- stepping -- usually it's in the back of the bridge off
3 the chart room, stepping into the bathroom facilities there
4 and then right back within a few seconds or a minutes time.

5 Q What about messages that you had to send back to
6 say, Valdez, or to other ports. How would you do that?

7 A Well, that's --

8 MR. MADSON: Your Honor, unless it is clear that he
9 is speaking only from his own knowledge and his own
10 experience, and this in now way is probative of what was done
11 on the Exxon Valdez, I guess I wouldn't object. But I think
12 that should be made very clear.

13 THE COURT: I don't understand. Are you objecting
14 or are you not objecting?

15 MR. MADSON: Well, it is not relevant, your Honor,
16 unless it is made very clear that it's just from his prior
17 experience. So I think with that in mind, I would object,
18 because I don't know how to keep that separate. This is just
19 his experience when he was there and in no way relates to what
20 was done on March 23rd and March 24th last year.

21 THE COURT: Your objection as to relevance is
22 overruled.

23 BY MR. COLE: (Resuming)

24 Q How would you send -- what type of messages would
25 have to be sent off during this period in and out?

1 A Okay.

2 Normally on your departure, when you leave the dock,
3 you normally have to give your last line and gangway away to -
4 - information to the local agent, which is usually done VHF
5 from the bridge. They have a portable radio. So that is
6 taken care of right on the bridge.

7 You normally have a departure message which you
8 send, usually after Hinchinbrook is where most people take
9 departure.

10 Q Where do you send that to?

11 A Okay.

12 You would have a message to send to -- in my case, I
13 would have a message to send to my company that I'd departed.
14 I'd have a message to send at that time usually to the
15 charterer, whichever oil company had the vessel chartered.
16 And usually a message then to the terminal that you were
17 proceeding to. And then --

18 Q How would you send those messages?

19 A You'd just -- I would write them out and give them
20 to the radio operator and he would -- as when we had telex on,
21 he would telex them off.

22 Q Would you explain to the jury what "sailing
23 coastwise" means?

24 A That's from port -- you are sailing from a port in
25 the United States to another port in the United States.

1 Q What does sailing under the register mean?

2 A Registry, that's a foreign trip. That doesn't have
3 to be a foreign trip. You have to be ready to make a foreign
4 trip. So you might leave Valdez under registry on your way to
5 Panama and stop in Long Beach for fuel, crew changes,
6 something of that sort.

7 (Start Tape C-3644)

8 And which time, I think you have to get in and out
9 within twenty-four hours to do that. But it means that you
10 are taking your cargo foreign if you are under registry, as a
11 rule.

12 Q What determines if you are sailing coastwise or
13 under registry?

14 A Where you're aboard your orders tell you to go. if
15 you're going to Panama then you'd be under -- they have a dual
16 certificate now, so it's no -- the change is not anything you
17 do in a fact on the ship. It's a change in the way the
18 agents -- what you turn in to the customs. Coastwise there's
19 no customs involved, anything, but if you're going under --
20 going foreign, you have customs, you have the certified crew
21 list to get, you have papers to file that way.

22 Q What do you mean by dual certificates?

23 A Well, years back you had your register was -- you
24 were under enrollment if you were coastwise, so you had a big
25 -- your certificate of registry set enrollment and it probably

1 mentioned coastwise then. If you went foreign, you had to go
2 down to the Coast Guard and they would issue another registry
3 that you had -- I forgot the wording, but you were under
4 registry and something about sailing foreign.

5 Well, that was basically a waste of everyone's time
6 changing each time, so they went to a dual registry which is
7 the ship's register now says coastwise registry, I believe, is
8 stated, and that is used as far as the ship is concerned for
9 both. And like I say, what makes the difference is the port
10 that you're taking your cargo to.

11 Q If a vessel was traveling from -- a tanker from San
12 Francisco to Valdez and back to Long Beach, would you be
13 traveling coastwise or under the registry?

14 A You're coastwise.

15 Q And upon reaching Cape Hinchinbrook, if you had
16 pilotage endorsement to navigate that vessel between Cape
17 Hinchinbrook and Rocky Point, would you be a pilotage vessel
18 or a nonpilotage vessel?

19 A Repeat that please?

20 Q If you were engaged in the San Francisco to Valdez
21 and then back to Long Beach, upon reaching Cape Hinchinbrook,
22 if you had pilotage endorsement to navigate the vessel between
23 Cape Hinchinbrook and Rocky Point, would you be a pilotage
24 vessel or a nonpilotage vessel?

25 A It would be a vessel that required pilotage.

1 Q Where would you be allowed to proceed to under your
2 Federal --

3 A Under my license I would be allowed to go as far as
4 Rocky Point.

5 MR. COLE: Judge, do you want to take a break? This
6 is a break. It doesn't make any difference, we can go
7 forward.

8 THE COURT: Okay. We'll take a ten or fifteen
9 minute break, ladies and gentlemen. Remember my instructions
10 not to discuss the matter among yourselves. Not to form or
11 express any opinions and please pay particular attention to my
12 cautions about media information. Avoid any media information
13 concerning anything concerning the oil spill. Screen it, walk
14 away from it, anything that gets you away from it.

15 We stand in recess.

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

18 (The Court stood in recess from 10:11 o'clock a.m.
19 until 10:30 o'clock a.m.)

20 THE CLERK: The Court now resumes its session.

21 THE COURT: Mr. Cole.

22 MR. COLE: Thank you, your Honor.

23 BY MR. COLE: (Resuming)

24 Q Captain Beevers, before we begin, would you tell the
25 jury, how often have you been called to testify in the past as

1 an expert?

2 A The -- how many times?

3 Q Yeah. Have you been -- how many times have you been
4 -- what have you done since you retired?

5 A Okay.

6 I have done a small amount of consulting, I've done
7 my other business, and kind of relaxed and enjoyed myself. In
8 the past I have testified on matters for Maritime Overseas,
9 matters for Central Gulf Lines involving operations of the
10 ship and various customs duties that came forth on a couple of
11 those cases. And testified for -- in cargo cases when I
12 worked for Maritime Over -- or United Maritime over events
13 that happened during that. I testified about that later on.

14 Q When you say testified, do you mean gave
15 depositions?

16 A No. Well, I have given depositions on personal
17 injuries, things of that sort. This -- the one I just
18 mentioned is a court case in New York involving sharing of --
19 average sharing on a machinery failure in doing a voyage.

20 Q Did you visit the Exxon Valdez at any point?

21 A Yes. Within a few days after it had grounded and
22 while it was still on Bligh Reef lightering off, I went out
23 with a team sent out by the -- by your office to look for
24 various documents, papers, get -- inspect what we could
25 inspect as far as bridge equipment, things of that sort.

1 Q Did you make any other trips out to Exxon Valdez?

2 A I believe all together I made three trips to the
3 Valdez. I made two fairly early on when it was still on Bligh
4 Reef. I made one trip later on after it had been moved around
5 and anchored and then was preparing -- just before it left,
6 when it was preparing to leave.

7 Q And during that time did you get a chance to walk
8 around the bridge and observe the equipment that was on --

9 A Oh, yes. That was part of what we went out to check
10 originally.

11 Q What material have you reviewed prior to coming in
12 and testifying in this case?

13 A Well, I believe I have looked at everything that we
14 picked up on the vessel during my two trips out there. I have
15 reviewed the statements that were taken by the Coast Guard and
16 by the FBI and by whoever -- the State Troopers. I have
17 reviewed all the statements that they took. I reviewed the
18 grand jury material, all the exhibits, all the statements
19 there. And documents -- just about everything that has been --
20 -- come in, I think, I have reviewed it. And also the
21 Courtroom testimony of Mr. Cousins and Mr. Kunkel.

22 Q And did you review the NTSB material?

23 A NTS -- yes, NTSB material, I reviewed all of that.

24 Q Do you know how many pages of material that comes
25 to?

1 A Quite a bit. I have got a big box that's
2 approximately this long full of notebooks with the material in
3 it. So that's -- I wouldn't have an -- you know, as far as
4 pages, I couldn't hazard a guess even, but it is considerable.

5 Q With this information in mind that has been
6 provided, have you -- has it enabled you to reach any opinions
7 concerning the conduct or actions taken by the master of the
8 Exxon Valdez on March 23rd and March 24th of last year?

9 A Yes.

10 Q I'd like to begin with the captain returning to the
11 vessel on the evening of the 23rd. Do you have any opinion
12 about that activity and whether or not that constitutes bad
13 judgment?

14 MR. MADSON: Your Honor, I will to that. We're
15 asking to have one witness evaluate somebody else, and in his
16 opinion whether it's good judgment or bad judgment. That's an
17 issue the jury has to decide in relationship to the
18 instructions the Court gives in a case, not personal opinions.

19 THE COURT: Well, I'm not -- we're not going to get
20 to that yet. The question is, do you have any opinion. The
21 form of the question is so broad, Mr. Cole, I am going to
22 require you, if you are going to ask this witness opinion
23 questions, to be very narrow and specific with them so they
24 will give some assistance to the jury here if they get
25 admitted.

1 MR. COLE: Okay.

2 BY MR. COLE: (Resuming)

3 Q What is your opinion as to the -- the actions taken
4 by the master prior to the Exxon Valdez undocking that
5 evening?

6 MR. MADSON: I'd still object. First of all, we
7 don't know if he has an opinion, and secondly, if he does, it
8 is without sufficient foundation and it is irrelevant.

9 THE COURT: Objection sustained. The objection as
10 to the foundation and the form of the question is sustained.

11 BY MR. COLE: (Resuming)

12 Q Have you reviewed information about when the captain
13 returned to the vessel that evening?

14 A Yes, I have.

15 Q And have you formed any opinions about how that --
16 how the Captain acted in that -- at that time period?

17 A Yes.

18 Q What are those opinions?

19 MR. MADSON: And I would object again. Acted in
20 what respect and how and what relevance does that have to
21 something that occurred hours later.

22 THE COURT: The objection as to the form of the
23 question is sustained, Mr. Cole.

24 MR. COLE: Could I have just a minute?

25 (Pause.)

1 BY MR. COLE: (Resuming)

2 Q Do you have an opinion as to the captain's judgment
3 in returning late to the vessel?

4 A Yes.

5 Q What is that opinion?

6 MR. MADSON: Your Honor, I object again. I think
7 judgment is not an issue here.

8 MR. COLE: Judge, can we approach the Bench?

9 THE COURT: Yes.

10 (An off the record Bench conference was had.)

11 THE COURT: Okay. At this time the objection as to
12 the form of the question will be sustained under evidence rule
13 705. Mr. Cole will have to lay a better foundation.

14 BY MR. COLE: (Resuming)

15 Q Captain Beevers, what information specifically did
16 you review concerning the time period from what the captain
17 was doing between 7:30 on March 23rd and 8:30, when he came
18 aboard?

19 A That's 8:30 p.m.?

20 Q 8:30 p.m.

21 A Okay.

22 THE COURT: Is that 7:30 p.m.?

23 BY MR. COLE: (Resuming)

24 Q 7:30 p.m. to 8:30 p.m. on March 23rd, 1989.

25 A Okay.

1 Let's see, I read the interview with the taxi
2 driver, Mr. French. I read Patricia Caples' interview. I
3 read the statement by -- her statement. I read the chief
4 mate's statement, Mr. Kunkel. I read Mr. Cousins' statement
5 regarding that period.

6 Q Did you read statements by Mr. Glowacki?

7 A Yeah, I read the chief engineer's statements, the
8 radio officer's statement, and --

9 Q Did you see any information, deck security logs that
10 would have indicated when the --

11 A Yeah, correct. The Alyeska logs for the -- at the
12 guard -- at the gate by the guards. That was part of the
13 documents and statements and literature that I read.

14 Q Did you read any of the deck logs that would have
15 told you when the vessel was --

16 A Yes, I --

17 Q -- cast off?

18 A -- reviewed the deck log for that day, the --

19 Q And based upon all this evidence, have you reached
20 any opinions as to the conduct of the master, Joseph
21 Hazelwood, between 7:30 and 8:30 p.m. on March 23rd, 1989?

22 A Yes.

23 Q Would you tell the jury what that opinion is?

24 MR. MADSON: I still raise my same objection, your
25 Honor.

1 THE COURT: The objection on relevancy is overruled.

2 THE WITNESS: Could you repeat the question?

3 BY MR. COLE: (Resuming)

4 Q Would you tell the jury what that opinion is?

5 A Well, my opinion is from all the documents that I
6 read is he was uptown with the radio officer, chief engineer,
7 and they had been drinking and had stopped by to pick up a
8 pizza and had another drink. They had gotten a taxi, came
9 back to the ship. And my opinion of what all this led to is
10 that he should have been on the vessel earlier. He came back
11 late. All the cargo was done, the vessel was ready to sail.
12 And basically they were waiting to get the paperwork done, get
13 the boom away and sail.

14 And by being late, the bad judgment in coming back
15 late comes in in the fact that this reduced the captain's time
16 to review the ice report, whether such things as that, and
17 this may have eliminated one of his options in the fact that
18 if the ice report would have indicated ice was very bad, he
19 could have made a decision at that time to remain at the dock
20 until he could arrange undocking in order to have a daylight
21 transit through the area of ice. This is one option that was
22 open to the master that evening in making his decision on what
23 to do.

24 Q Have you ever stayed overnight?

25 A No, I haven't. However, I brought a ship in at one

1 time, the Overseas Boston, and -- which relieved to go on
2 vacation in Valdez, and my relief -- the ship was scheduled to
3 sail at night. My relief didn't sail, he waited until he
4 could make a daylight transit through the ice.

5 Q Now, have you reviewed information concerning the
6 vessel's travel approximately a half an hour after docking
7 until the vessel reached Potato Point?

8 A Yes. There again --

9 Q What evidence have you reviewed on that?

10 A Captain Murphy's statement, Mr. Cousins' statement,
11 the -- I can't recall the AB -- the statement from the
12 wheelsman at that time, Radtke, I believe, or Claire. And I
13 believe that is all that had any -- that's all I can think of
14 now that had any direct relationship to that period you are
15 mentioning.

16 Q And have you reached any opinions on Captain
17 Hazelwood's failure to be on the bridge during the transit
18 through the narrows?

19 MR. MADSON: I'm going to object; it's a leading
20 question.

21 THE COURT: Can you rephrase your question, Mr.
22 Cole?

23 BY MR. COLE: (Resuming)

24 Q What is your opinion on Captain Hazelwood's failure
25 to remain on the bridge through the transit through the

1 Narrows?

2 MR. MADSON: Your Honor, I will object on the
3 grounds of relevancy. The transit through the Narrows had
4 absolutely nothing to do with what occurred afterwards.

5 THE COURT: Objection overruled. Relevancy
6 objection is overruled.

7 BY MR. COLE: (Resuming)

8 Q What is your --

9 A Okay.

10 Once they undocked and left, left the dock to go
11 out, at the point between the dock and turning to enter the
12 Narrows is a fairly safe area. If Captain Hazelwood would
13 have needed to go below for a minute at that time, that would
14 be well within the normal operations of a vessel, because the
15 pilot after all is conning, the pilot is -- knows the area
16 very well. The mate, I believe the chief mate was up there
17 when he undocked. So this would be all right.

18 But he should have been back on the bridge as they
19 turned to enter the Narrows, should have remained on the
20 bridge through the Narrows to watch for any errors in pilot
21 command, any errors in following the pilot's order by the
22 quartermaster, any errors in the third mate in handling the
23 engine bridge control lever for speed, and should have been
24 there in case of a -- any emergency, any unforeseen emergency
25 that came up so that -- because that area through the Narrows

1 is very, very -- it's a close quarters area, very tight, and
2 it's an area that the master should be there in order to
3 respond immediately to a problem.

4 Q Did you ever leave the bridge while you were
5 traveling through the Narrows?

6 A No.

7 MR. MADSON: I would object, your Honor, on the
8 grounds of relevancy. What he did or did not do as a personal
9 preference is totally immaterial.

10 THE COURT: The answer came in before Mr. Madson was
11 able to make an objection. Do you wish to be heard on the
12 objection?

13 MR. COLE: Yes, your Honor.

14 One of the elements that I have to prove, the State
15 has to prove in this case is that Captain Hazelwood acted --
16 was aware of and consciously disregarded a substantial and
17 unjustifiable risk. In addition to that, the risk must of
18 such a nature that it would constitute a gross deviation from
19 the standard of care that another person would exercise --
20 reasonable person would exercise under similar circumstances.

21 One of the ways of proving that is to show what
22 other people do in that particular situation. I think that
23 his personal choice, given his experience in the trade, is
24 exactly on point.

25 THE COURT: Objection overruled, Mr. Madson.

1 MR. MADSON: Your Honor, if I may, what this is
2 going to do is open the door for how many people to come in
3 here and disagree or agree, and maybe we can take a majority
4 vote. That's my position; I think it's irrelevant.

5 THE COURT: The objection is overruled, Mr. Madson.

6 BY MR. COLE: (Resuming)

7 Q What was your standard procedure going through the
8 Narrows? As master?

9 A Okay.

10 We would always have, you know, your complement up
11 there would be a watch officer and a helmsman. The pilot
12 would be on the bridge with the conn. I would be on the
13 bridge to observe and to be ready to take care of any problems
14 that comes up. And one of the big problems is the fact that
15 with more and more foreign ships and less American ships in
16 the trade, the pilots are all used to giving commands to
17 foreign ships is starboard 10 degrees rudder, where American
18 ships, it's left and right instead of port and starboard. And
19 even the good pilots make errors all the time. This is a
20 simple little thing you would think the helmsman would
21 understand, but it's something that might cause a delay in the
22 helmsman's response before it is realized by the pilot or the
23 helmsman what he means. So that's just one little item that
24 you catch quite frequently. The possibilities for an error in
25 setting the speed due to the fact that the vessel is required

1 to make six knots or less than six knots is something that I
2 feel as master that you have to keep a close watch on. And
3 the possibility of a steering failure. You have an escort tug
4 that you may have to try to hook up immediately to help save
5 the ship from possible grounding in that area. And these
6 points and other similar things is why a master should be
7 there at that time.

8 Q What was your experience when you were asked to
9 pilot vessels in from Hinchinbrook using your Federal pilotage
10 endorsement, with other captains, through the Narrows?

11 A Any ship that I was on, the captain stayed on the
12 bridge going through the Narrows.

13 Q Now, I'd like to focus on the period after the pilot
14 -- after the vessel exited the Narrows to when the pilot got
15 off. What information have you reviewed on that?

16 A Basically the same, for the statements of Captain
17 Murphy, the statements of Mr. Cousins, the statements of the
18 helmsman at the time, the deck log book, bell book.

19 Q Did you take the statements of the -- did you review
20 the statements of the watch -- the lookout that evening?

21 A Yes, whoever was on watch, the lookout, AB, the
22 helmsman, everyone concerned with the navigation of the ship
23 at that time.

24 Q And did you review the bell logger and course
25 recorder during that time?

1 A Yes.

2 Q Do you have any opinions as to what occurred during
3 that time?

4 A Well, it was a routine passage out at that time, and
5 this is up to when Murphy got off between -- was a routine
6 passage, seemed to follow the optimum track line. Everything
7 went normal. And Captain -- the original statements indicated
8 that the captain did not return until just before Captain
9 Murphy got off.

10 And there was a problem with him coming up to the
11 bridge on time. There again, this is a -- there's nothing --
12 he has enough area there for the master to leave the bridge if
13 he needs to go below for something. But there's certain times
14 you should be on the bridge, and when the pilot is leaving
15 certainly the master should be up there in time to review
16 where the vessel is at, the speed the vessel is making, get
17 his eyes adjusted to the night vision, get all the information
18 the pilot has to leave him -- leave with him. And again, get
19 an ice report or determine what he is going to do from the
20 time he relieves the State pilot until he gets to sea.

21 Q Now, I'd like to focus on the period of time from
22 when the pilot disembarked from the Exxon Valdez that evening
23 until Captain Hazelwood left the bridge that evening.

24 A Okay.

25 Q What information have you reviewed in that regard?

1 A Okay.

2 I have reviewed the deck log book, the bell book,
3 the course recorder, I have reviewed Mr. Cousins' statements,
4 I reviewed the statements of Mr. Claire, Mr. Radtke, Maureen
5 Jones and Mr. Kagan.

6 Q And do you have -- before I ask you about your
7 opinion, at that point in a journey out of Prince William
8 Sound, what is the normal or routine practice or custom that
9 is employed after the master is dropped off?

10 A The pilot.

11 Q The pilot.

12 A Normal routine under a normal situation would be for
13 the vessel to disembark the pilot, stow the pilot equipment
14 away, go ahead and proceed out the outbound lanes. Normally
15 at that time a vessel would start increasing to sea speed.
16 Have the lookout come up to the wing of the bridge. Then the
17 master or whoever has the pilotage piloting the vessel out
18 just report in to when abeam of Rocky Point that you report
19 into the VTC advising him of your speed and estimated time of
20 being abeam of Naked Island. And proceed out uneventfully out
21 the traffic lanes.

22 (Pause.)

23 Q And there is a pointer right here. Would you use
24 that pointer to show about in what area that occurs generally?

25 A Okay.

1 Okay, here's the track line down. At this point
2 they are still under the conn of the State pilot. You come on
3 down and somewhere around in here the -- before you get down
4 to the lanes here the State pilot will disembark and the
5 master or whoever has pilotage will take the conn of the
6 vessel and proceed right on down this lane and follow the
7 traffic lanes right on out and make a turn, go on out to Cape
8 Hinchinbrook.

9 Q What would be -- in a normal or routine transit,
10 what would be the speed that you would use? How fast?

11 A At this point in a normal transit I would increase
12 to sea speed, which on most vessels is close to 16 knots on
13 most tankers. That seems to be the overall average. And at
14 this point you would normally put your lookout on the wing of
15 the bridge. You would normally have your sailors -- hopefully
16 they would be finished securing everything. You would have
17 your last check to make sure the vessel was seaworthy so that
18 you were ready to proceed to sea.

19 Q In your evaluation or reading of the material and
20 the testimony, was this a normal or routine transit that you
21 would have employed these types of procedures?

22 A No.

23 Q Why is that?

24 A Because of the report from the VTC in regards to ice
25 in the area of Columbia Bay between Point Freemantle and

1 Glacier Island.

2 Q Did it make a difference that this was being done at
3 night?

4 A Yes.

5 Q Why is that?

6 A Well, naturally in the daytime you are going to have
7 better visibility and you will be able to see the ice better
8 and be able to see your land better. At night you have to
9 depend on being able to see your navigation lights that's
10 placed in various areas around and use your radar for land.
11 In the daytime you would have the option of being able to use
12 visual bearings off from light houses or tangents off from
13 islands, things of that sort.

14 Q Have you seen the drawings that Mr. Cousins made of
15 what the ice looked like on that evening?

16 A Now that I haven't seen, no. That's --

17 Q Now if Mr. Cousins indicated in his testimony to the
18 jury that this area surrounded by the green line was an
19 indication of the icing conditions that he saw that evening on
20 the radar that went from Point Freemantle all the way over to
21 Bligh Reef --

22 A Okay, now, what is this -- how did he -- I mean,
23 this is a general area here that I -- but what is --

24 Q And if he indicated that that was the gap between
25 the leading edge of the ice and Bligh Reef, that line, would

1 you consider that to be a fairly large amount of ice that
2 would constitute a danger to the vessel of your ship?

3 A That would depend on the size of the ice and how
4 thick. Depending on how large a piece, individual pieces are,
5 how many pieces are there, how far apart they are, but
6 normally if you are not sure, you would regard ice as a
7 danger. If you couldn't determine it wasn't, to be on the
8 safe side, you would -- you always want to err on the side of
9 safety when you are dealing with a problem such as this.

10 Q Well, what would be, if a master were looking at
11 that -- that type of image through this radar, say six miles
12 before it, what would be his options at that point?

13 A At that point the -- at six miles you're back up in
14 here someplace. At that point it is going to be pretty hard
15 to tell how much ice is there, whether it's a few scattered
16 pieces, whether it is large pieces, small pieces --

17 Q Why is it hard to tell from that distance?

18 A Well, the -- with radar you have a situation of
19 range resolution and bearing resolution which tends to make
20 targets look bigger. The further away they are from you the
21 bigger the target will look in comparison to its actual size.
22 So it would give you a false indication that the ice is --
23 there's more ice or there's -- the ice is bigger than it
24 really is, there is more ice in the area than it really is.

25 And one option he would have would be to continue on

1 down the lanes at maneuvering speed -- reduce the speed so he
2 has got time to look the situation over, determine at that
3 time if the ice is really thick enough to divert around --

4 Q You said get close enough to determine what the ice
5 really looks like. What do you mean by that?

6 A Be within a couple of miles of the edge of the ice.

7 Q How would that help you?

8 A Well, at that point, as the targets get -- you could
9 turn your radar down to a -- to a -- to a smaller scale.
10 Instead of a twelve mile scale, say you could be down on a
11 three mile scale at this point. And that would give you a
12 better picture. You're closer to the target so there's lesser
13 distortion of the size due to the resolution and range
14 bearing.

15 And at that point, you might find that the picture
16 looks considerably different than it does from back here on a
17 six mile scale or twelve mile scale or whatever you have to be
18 on that far back.

19 Q When you were transiting out of Prince William
20 Sound, did you ever encounter ice -- for lack of a better word
21 -- images on your radar that were -- that looked like that
22 from a far distance away?

23 A Yeah, I have seen ice -- I've seen ice all the way
24 over, I have seen it over and disappearing on down into here.
25 But also what you find, what I found is on an incoming tide it

1 is not uncommon to have the ice up in here held in for some
2 way, ice down along Glacier Island and ice on over from the
3 separation zone over and pushed up in here and actually have
4 the ice scattered enough that there's -- that I have come down
5 the outbound lane with ice on both sides and have the lane
6 actually basically free.

7 Q When you did that, what speeds would you travel?

8 A At that time, since you're near ice, I tried to go
9 four to six knots, depending on the amount of ice. And this
10 is so that if you need to, you can -- you have time to see the
11 ice and do -- and maneuver to avoid it.

12 Q There has been testimony that this tanker maneuvers
13 better at higher speeds.

14 A No. You lose your -- you have a faster turning. If
15 you put the vessel hard over, it'll -- at full speed, you'll
16 have a quicker response in turning. It's still -- I believe
17 this vessel it's nearly six-tenths of a mile before you are
18 turned to a 90 degree angle away from your course. But the
19 thing, you don't have the time. When you are maneuvering at
20 slower speeds, you have the time to observe an object. When
21 you start making your course change, even though the vessel
22 moves slower, what you do to speed that up then, since you are
23 at four knots and on dead slow ahead or stop to be at four
24 knots, you can kick your engine to half ahead and that will
25 turn you at a much faster rate than --

1 Q How do you use your rudder in that situation?

2 A Maneuvering that slow, any time you use your rudder,
3 it has got to be a hard right or hard left to start a turn,
4 and then ease off and check it when you want to start back up.

5 Q When you give it a -- when you attempt to make a
6 maneuver and you give it a boost as you say, put it to half
7 ahead, when do you do that in the part of your turn?

8 A As you're -- as you're starting your turn, you would
9 put your rudder -- if you wanted to turn to the right, you
10 would put your rudder hard right, kick it half ahead for a few
11 seconds and stop it, and you'd see the vessel swing. And then
12 it is a matter of checking it up and if you have to use more
13 engine to assist in checking it, that's fine. Normally I
14 found that I didn't have to use the engine on checking it
15 because you have -- where you have a lot of sea room and it
16 doesn't matter if you check it up immediately on an exact
17 course at that time, it is a matter of getting it -- the swing
18 stopped and getting it headed on outbound out the lanes.

19 Q Where would you put your watch -- who would you use
20 as watch in those situations?

21 A Okay.

22 On the -- in the -- if it's a daytime passage, I'd
23 just get myself, the watch mate and the helmsman. At night,
24 I'd have the lookout -- weather permitting now. A lookout on
25 the bow, and if we were maneuvering through ice, if there's

1 enough ice to maneuver through I would send the chief mate up
2 to the bow with a radio.

3 Q Why would you do that? Why do you want these two
4 people up at the bow?

5 A The lookout is required by law, and the lookout is
6 fine for normal sightings -- lights, fishing vessels, ice in
7 the distance is fine -- but when you're -- in this maneuver
8 you're perhaps going to be close to what the smaller ice
9 pieces, bergy bits or growlers, and I want a man with the most
10 experience I can get to be up there to advise me of anything
11 that I -- you know, he after all is going to be 800 foot
12 closer, so seven or eight hundred foot closer to the ice than
13 I am. And the chief mate would be the logical man to send up
14 there due to his experience.

15 Q Would you tell the jury how it is that you -- how
16 does the ice -- how does the ship avoid the ice in these type
17 -- using this type of maneuvering?

18 A Okay.

19 Using this what helps you avoid the ice, there is --
20 first off, of course, you are looking for the larger pieces of
21 ice and staying away from them. The what they call brash ice
22 is the small pieces and small ice, that's of no consequence.
23 Such things as what's called a growler, which would be a chunk
24 of ice, three, four, five footer, crossed, that is, floating,
25 these would be a problem if you hit them at full sea speed.

1 There's no doubt about it. But at slow speeds, what you do is
2 you maneuver away from them. And remember, the bow of a
3 vessel is -- of a tanker is a round object, and it is similar
4 to this, say. And it pushes the water aside --

5 Q As it goes through it?

6 A As it goes forward. Instead of cutting through the
7 water where the water is trying to run down the side from the
8 bow, it just literally is like a bulldozer and it just pushes
9 it out to the side and the water goes out. And this will --
10 will automatically carry your ice towards the out -- outside
11 of your bow wave. And between maneuvering away from the ice
12 and this pushing it away, I have never had any problem with
13 avoiding ice.

14 Now, the -- that's another way --

15 Q Well, let me just ask you that. Are there -- is
16 there other ways to go around the ice?

17 A Yes. Another thing is to do -- come down and head
18 over this way, as a lot of ships do. But the problem with
19 that is that you reduce --

20 Q Before you go into the problems, how do you -- what
21 is the other way?

22 A Okay.

23 You'd come down, keep it on maneuvering speed -- now
24 I would at that point -- keep it on maneuvering speed, change
25 course to steer down to the southbound lane. Now when you go

1 out of this lane you have to call the VTS system, the VTC.
2 You tell them what you are doing, you are diverting out of the
3 lanes due to ice. Then you would make your diversion. If you
4 go far enough to go out of the traffic lanes, you again are
5 required to call and tell them that you are leaving the lanes.

6 All right. And then you would come on down around
7 the ice. Now this is extending up reasonably close to Busby
8 Island, reasonably -- very close to Bligh Reef. And to use
9 this method of just skirting the ice, going around the ice,
10 you have to keep one thing in mind -- you have to remember to
11 have enough sea room.

12 Q Why is that important?

13 A So you don't run aground. That's -- if you are
14 going to avoid the ice by going around the ice, you still --
15 you have to look out for the other dangers involved in that.

16 Q What are the advantages of going around the ice?

17 A Well, the advantages there are that you don't have
18 the maneuvering to do. You can operate your ship at a faster
19 speed so you save time. You get on around the ice and on out
20 and on your journey sooner.

21 Q And what are the disadvantages?

22 A The disadvantage of that is running aground.

23 Q What are the advantages of maneuvering through the
24 ice as you explained earlier?

25 A You have deep water here. You have more room. And

1 you can -- your ships' in a safer position.

2 Q What are the disadvantages?

3 A The disadvantages are that it takes more time. You
4 are going at a slower speed, you are maneuvering around the
5 ice. You may have to stop your vessel or stop the engine and
6 go even slower than the four knots at times to do something.
7 So it takes more time. It is more intense as you are doing
8 this. It is a constant checking and maneuvering. And it's a
9 disadvantage also is it uses more people. You've got your
10 chief mate out there after -- after his working cargo and
11 stuff all day, and it's harder on the personnel.

12 Q Captain, who makes the decision on which option to
13 do in that case?

14 A The master.

15 Now there's one other scenario that could happen and
16 does occasionally, is that you make your change over here and
17 then discover that you're too close to Busby Island or the ice
18 is too close to Busby Island, or the ice goes all the way
19 across. At that point then you have to start maneuvering your
20 way back across through the ice.

21 Q And have you done that before?

22 A I -- I don't recall ever getting out of the lanes
23 and having to maneuver back. I recall coming over to the
24 southbound lane and having to maneuver back. Any time I -- I
25 don't recall actually ever leaving the lanes. If I have left

1 the lanes it is because it has been open and I could go all
2 the way out.

3 Q As a captain of a tanker faced with situations such
4 as this, do you take special precautions to assure the safety
5 of your vessel?

6 A Yes. Yeah, your special precautions in this case is
7 the reduction of speed, the extra lookout, and instructions
8 to the lookout what to look for and how to report it so that
9 there's no confusion or no overlooking anything. The use of
10 your -- special attention and use of your radars, especially
11 using the three centimeter on a short range, so that you have
12 as clear a picture as possible of what you're maneuvering
13 with.

14 Q Now, based on the review of the information that you
15 cited earlier, do you have an opinion about the actions taken
16 by Captain Hazelwood from the time the pilot got off of the
17 Exxon Valdez that evening at about 11:24, until Captain
18 Hazelwood left the bridge that evening at about 11:53?

19 A Yes.

20 Q Would you tell the jury what those opinions are?

21 MR. MADSON: Same objection as noted earlier, your
22 Honor.

23 THE COURT: Relevance?

24 MR. MADSON: Yes. And 403 also, I might add.

25 THE COURT: Overruled.

1 THE WITNESS: Yeah. As they dropped the pilot off -

2 -

3 BY MR. COLE: (Resuming)

4 Q Maybe I can use the other one and you can use the
5 two of them in tandem.

6 A Oh, okay.

7 As they dropped the pilot off -- I don't have my
8 glasses on, but back in here some place -- the vessel called
9 Vessel Traffic Control and advised them at that time that they
10 had dropped the pilot off and immediately was asked for an ice
11 report after passing through, and at that point the vessel
12 stated it was altering course to port -- to avoid the ice. So
13 already back at this point the decision was made -- on this
14 one, back at this point the decision was made to divert around
15 the ice. And I don't feel at that point they really had a
16 clear picture of what they had in the lanes.

17 Now the ice report that was issued four hours
18 earlier by the outbound vessel said scattered small pieces of
19 ice. It didn't say a solid field, it didn't say large boogie
20 bits, ice bergs, anything. It said scattered small pieces of
21 ice. So they probably should have come -- I feel that they
22 certainly should have -- due to the lapse in time, four hours
23 later and the fact it's an incoming tide, they should have
24 came a little closer and took a better look.

25 And instead they went around across, took a fix here

1 -- as you can see 39 here -- they took a fix as they crossed
2 the separation zone which is fine, that's what they should do,
3 is change course to 200. It's coming on down and then he
4 changes course somewhere down here to 180. And at this time
5 they are on maneuvering speed despite I believe they mentioned
6 increasing to sea speed, but they never did. They remained on
7 maneuvering speed.

8 At this point right here the vessel was obligated to
9 call the Vessel Traffic Center and advise them that they were
10 leaving the traffic lanes. And --

11 Q What speed was the vessel traveling shortly -- let's
12 say 11:35, after the pilot -- after the pilot had been dropped
13 off?

14 A By 11:35 they should have been back up ten and a
15 half knots, maybe eleven. It depends on the turns. Of
16 course, any time you make a turn, you slow the speed down.
17 But I would say they were probably between ten and eleven
18 knots at that time.

19 Q Now, what about the placement of the vessel on
20 automatic pilot after coming to a heading of 180 degrees?

21 A Okay.

22 They came around to 180 and put the ship on
23 autopilot. And they are in an area here that should really be
24 kept on hand steering.

25 Q Why is that?

1 A Well, you're close to -- you're on a 180 course,
2 which as you can -- is putting you down behind Bligh Reef.
3 You've got Busby Island ahead that you're going to pass
4 approximately one mile off. You've got ice out here in front
5 of you that you've either -- you've either got to maneuver
6 through or go around, depending on the circumstances as you
7 get closer.

8 At that point, if you put the engine on sea speed at
9 that time and start -- or if you put the thing in autopilot,
10 you do not -- you then have to tell someone to change to hand
11 steering and -- in order to make a course change, whereas if
12 you are already on hand steering, you've got the instant
13 response of the helmsman.

14 Q Do you have an opinion as to whether or not Captain
15 Hazelwood exercised good judgment in placing that vessel on
16 autopilot there?

17 MR. MADSON: Same objection, your Honor.

18 THE COURT: Relevance?

19 MR. MADSON: And 403. But his opinion as to what
20 someone else should do or not do when there is no legal
21 requirement that he has to do one or the other is totally
22 irrelevant.

23 THE COURT: Objection overruled.

24 Move the microphone up a little further; it is being
25 blocked by your arm.

1 THE WITNESS: Oh, sure.

2 BY MR. COLE: (Resuming)

3 Q Do you have an opinion on whether or not Captain
4 Hazelwood exercised good or bad judgment when he placed the
5 Exxon Valdez on autopilot on that course heading?

6 A That is in my opinion bad judgment.

7 Q Why?

8 A Just for those -- for that reason. You don't have a
9 man -- your helmsman is no longer steering. You have got him
10 standing there, and it's the possibility of a delay in
11 changing back to hand steering, a delay in the response if you
12 need a course change.

13 Q What about -- do you have an opinion as to leaving
14 the lookout -- or placing the lookout on the bridge wing?

15 A With ice ahead, I would think that's a bad decision
16 also. Now, there was no indication of high winds or bad
17 weather. Normally, the reason you move the lookout from the
18 bow up to the bridge wing coming out of Prince William Sound
19 is because of high winds and choppy seas, something that might
20 be a danger to having a lookout up forward. This evening
21 there were, I think, force two winds, something, very light
22 winds and winds -- a breeze of that nature is not going to
23 cause high enough seas to have spray coming over the deck or
24 seas or anything. There is no weather reason to do that.

25 And the reasons to leave him up there is because of

1 the close proximity to Bligh Reef buoy, Busby Island and the
2 ice. Traditionally a lookout is to be placed as low as
3 possible and as far forward, to -- you know, so that he can
4 safely be placed there. That is traditionally the best place
5 for a lookout.

6 Q Can you give the jury an idea of where this vessel
7 was at approximately 11:52? Just approximately.

8 A Okay. At 2352 they should have been somewhere right
9 in here, just slightly north of Busby Island, and
10 approximately a little over a mile off of Busby Island at that
11 point.

12 Q Do you have an opinion as to whether or not in
13 gauging the load program up at this point, at 11:52, was
14 evidence of good or bad judgment by Captain Hazelwood on March
15 23rd?

16 A That again is bad judgment because you are
17 increasing the vessel's speed going into these dangers ahead
18 of you. You're reducing the time that you have to make a
19 maneuver. You're reducing the options of making a maneuver
20 eventually.

21 Q Would you give the jury an idea of at ten knots,
22 let's say, how fast -- how much -- how long does it take for a
23 vessel to go one mile?

24 A Okay.

25 If you're going ten knots, it would six minutes.

1 Q And how far would the vessel travel in one minute?

2 A Just under two-tenths of a mile. I'd have to get my
3 calculator out here, but right at two-tenths of a mile.

4 Q How far ahead of you from where you are when you're
5 on the bridge is the actual bow of the vessel?

6 A Well, on the Exxon Valdez it was somewhere in the
7 neighborhood of eight hundred foot, I imagine, seven hundred,
8 eight hundred foot. I never actually measured it.

9 Q And as a master of a ship, would you anticipate
10 taking into consideration the rate that the vessel is
11 traveling per minute, the amount of time, and how far up ahead
12 of you the vessel was when you actually took fixes?

13 A Oh, yes, you have to -- you have to consider that.
14 Especially -- that's not so important out in open waters, but
15 in close quarters situations that's very important.

16 Q Captain Greiner -- I'm sorry. Captain Beevers, can
17 you tell us when you're in a situation like this, like was
18 confronting Captain Hazelwood in this case, would you -- do
19 you have an opinion as to what type of fixes should be made
20 during this time?

21 A Well, you certainly should make -- have the watch
22 officer taking and plotting frequent fixes to determine that
23 your vessel is truly doing what you are wanting it to do in
24 maneuvering. And by frequent, I would say ten minutes apart.
25 It doesn't have to be exactly that, but that is frequent to

1 me. Twenty minutes is not frequent in that situation.

2 Q How important is it in a situation like this to have
3 qualified personnel up on the bridge with you?

4 A Well, there again, it is very important, because you
5 want your helmsman to be a good helmsman, you want your watch
6 mate to be competent, capable and efficient, and you want a
7 lookout that is conscientious that's going to report
8 everything as soon as possible that they see.

9 Q Do you have an opinion on whether or not Captain
10 Hazelwood should have left the bridge at 11:53 on March 23rd,
11 1989?

12 A He shouldn't have left the bridge, no.

13 Q Why is that?

14 MR. MADSON: For the record I make the same
15 objection, your Honor. It's a little late, I realize, but I
16 am anticipating the Court's same ruling. So just for the
17 record, I want to object.

18 THE COURT: You did wait too long, but I would have
19 ruled the same way.

20 THE WITNESS: Yes. He had his ship heading into a
21 dangerous situation, a situation that needed someone with
22 experience to maneuver it. A situation that was beyond what
23 you would expect an inexperienced -- relatively inexperienced
24 third mate to be able to do on his own.

25 Q Let's start with that. Why do you consider Mr.

1 Cousins a relatively inexperienced third mate?

2 A Well, he -- he -- I believe he only had like
3 thirteen months sea time, something like that, on his license.
4 Very little sea time. And during that time most of it was
5 spent on the West Coast tanker trade, in which there is very
6 little actual ship handling and maneuvering done by a watch
7 officer in any -- there is no close quarters that they should
8 be maneuvering in. So it would be highly unlikely that he
9 would be experienced at doing anything other than making a
10 small course change out in the open waters at sea, with an
11 occasional maneuvering situation in open sea. But he
12 shouldn't be -- certainly shouldn't be expected after thirteen
13 months to be proficient in handling a tanker of that size in
14 restricted waters.

15 Q What about, do you have an opinion on Mr. Kagan
16 being at the helm?

17 A Yes, I do. If this man -- this man apparently had
18 problems steering vessels before. Apparently had problems
19 following simple orders, and I think the proper thing to do in
20 that case is when he come up on watch, send him out on lookout
21 and have the other AB take the first wheel watch. After their
22 first wheel watch, if they'd of made it around the reef,
23 they'd of been down here in open water. Would have been much
24 more prudent to put someone that you had confidence in on the
25 wheel than to put a man that you knew had had problems

1 steering.

2 Q Do you have an opinion on the type of instructions
3 as to whether or not Captain Hazelwood exercised good or bad
4 judgment concerning the instructions that he left Mr. Cousins
5 with that evening before going below?

6 A Well, I consider it bad judgment because he
7 shouldn't have left. That's the -- he didn't -- the
8 instructions he give him -- normally when you leave a watch
9 mate on the bridge in a situation like that you have a track
10 lane laid out with specific points to make your course
11 changes, specific courses to steer, specific instructions as
12 to when to call the master if you need the master and on like
13 that. In this particular case, it was kind of a vague, come
14 right at Busby Island and go to this point and do this and --
15 but they couldn't lay a definite track line out because they
16 had ice up ahead that they weren't sure how they were going to
17 get through or around.

18 Q Would that -- would that require, under the
19 hypothetical, if you were to leave, going to the chart and
20 actually drawing, physically drawing --

21 A Oh, yeah. You draw your track line out on a chart
22 so that you -- there's no misunderstanding as to what you
23 want, when you want it done, and what actions the third mate
24 should take.

25 Q Do you consider just pointing at a radar and giving

1 the order, when you get abeam of Busby Island, come right and
2 join up with the Vessel Traffic System, an adequate
3 instruction?

4 A Not in this circumstance, no.

5 Q What about Captain Hazelwood's questioning of Mr.
6 Cousins to determine whether or not he was comfortable?

7 A Okay.

8 When I read that, I noticed that he asked Mr.
9 Cousins twice, are you comfortable with these instructions,
10 are you com -- this indicates to me that either Captain
11 Hazelwood wasn't comfortable with leaving Cousins there by
12 himself, or conversely if he felt that Cousins wasn't capable
13 of doing it, he shouldn't have left. Either way you look at
14 it there was a little hesitancy there that he should not have,
15 as long as there is any doubt you shouldn't leave the bridge.

16 Q Do you have an opinion on whether or not Captain
17 Hazelwood exercised good or bad judgment for leaving the
18 bridge for the length of time that he did.

19 MR. MADSON: Same objection, your Honor.

20 THE COURT: Overruled. And that objection is
21 relevancy and 403, as I understand it.

22 MR. MADSON: Correct.

23 THE COURT: Overruled.

24 THE WITNESS: In my opinion, it was bad judgment to
25 leave the bridge period in that particular location at that

1 time, whether for one minute or for twenty minutes. It was
2 bad judgment.

3 BY MR. COLE: (Resuming)

4 Q Now, have you reviewed information concerning what
5 occurred from the time Captain Hazelwood left the bridge until
6 the time of the grounding?

7 A Yes, I have.

8 Q What information have you reviewed on that point?

9 A Okay.

10 I read Kagan's statements, I read Cousins'
11 statement, I reviewed the course recorder, bell logger, and --

12

13 Q Okay.

14 And have you reached any opinions on Captain
15 Hazelwood's good or bad judgment in not coming back to the
16 bridge during that time?

17 A Well, the -- seems to me he left the bridge just
18 before they were abeam of Busby Island, apparently with verbal
19 instructions for Cousins to make a course change at Busby
20 Island. And when Cousins actually called him, it was several
21 minutes after the expected course change and Cousins said at
22 that point I am coming -- I have put ten degrees right rudder
23 on, or I'm coming right, or making the turn. Made some
24 indication that the turn was being made. I would think that
25 Captain Hazelwood would have realized that it's too late at

1 this point, that he's way late on his turn and been back up on
2 the bridge almost immediately.

3 Q What information that was passed to Captain
4 Hazelwood at that time would indicate that there might be some
5 problems up ahead?

6 A Okay.

7 The fact that he is -- his phone call -- how did he
8 put that. That he put ten degrees rudder on and the vessel
9 seemed to be not responding. I have forgotten the exact phone
10 conver -- the statement on exactly what they said, but there
11 was a question on the turn wasn't being made.

12 Q What about the information that they might still be
13 encountering -- coming encounter with the ice.

14 A Okay.

15 That was in the phone, too, at that time. He said
16 we may get into the edge of the ice, which indicates to me
17 that they would probably have to start maneuvering in ice.
18 Because getting into the edge of the ice doesn't mean to me
19 that you are going around the edge of the ice, that means you
20 are getting into the ice.

21 Q And do you have an opinion as to what Captain
22 Hazelwood should have done at that point?

23 A Should have immediately returned to the bridge.

24 Q Now, have you looked at the course recorder that was
25 taken off the Exxon Valdez that evening?

1 A Yes, I have.

2 Q And have you reviewed it to determine whether or not
3 any turns were made -- when a ship course heading was made on
4 the Exxon Valdez during the time period around midnight?

5 A Yes.

6 Q Okay.

7 Now, I would like you to take the pointer and point
8 to the time when the vessel steadied up on a course of 180.

9 A Okay.

10 Right here is where they made their course. Here's
11 where they steadied up, and from here on they're on 180. This
12 little bip here is stopping the turn and probably -- and maybe
13 overturning it. At this point they are on 180.

14 Q And would that be at about 11:50 that evening?

15 A It looks like around 11:50 roughly when they are
16 squared away on it.

17 Q Based on your -- have you looked at course recorders
18 in the past?

19 A Yes.

20 Q Based on your experience, when did the Exxon Valdez
21 begin to make a heading change away from 180 degrees on the
22 night of March 23rd, March 24th, 1989?

23 A Right up here at this point.

24 Q And what time approximately would that be?

25 A That's -- I determined that at two minutes after,

1 which is -- you know, it's kind of hard as small as this is,
2 but I -- interpolating between these, I figured two minutes
3 after, they started making a course change.

4 Q How long would it take for a vessel of this type to
5 change heading after a rudder command of, say, ten degrees
6 right rudder was given and executed?

7 A You should within twenty seconds, if you are really
8 watching close, you should see a change in your heading. You
9 would probably see your rate of turn indicator show a rate of
10 turn before your gyro actually did. And within thirty seconds
11 you should definitely see it moving. Within a minute you
12 should have approximately ten degrees heading change.

13 Q Would this course heading change be reflected on the
14 course recorder?

15 A Yes, it would.

16 Q And let me ask you another question. Assuming that
17 someone gave an order of ten degrees right rudder, but the
18 execution of it only resulted in a rudder angle of six to
19 seven degrees, would you expect -- how long would you expect
20 it before the vessel changed headings?

21 A Probably just a few seconds more than the twenty.
22 Probably thirty seconds you would start moving and within a
23 minute you would see a few degrees change. I haven't figured
24 out that, but within a minute, they should be a heading change
25 that is noticeable.

1 Q And would you expect that type of order and
2 execution to be registered on the course recorder?

3 A Yes.

4 Q Captain Beevers, did you see any indication on the
5 course recorder that this vessel began to turn prior to 12:02?

6 A No.

7 Q If a person gave a rudder order of ten degrees right
8 rudder and this was executed at about 11:57, when would you
9 expect the course recorder to reflect this change?

10 A Between 11:57 and 11:58.

11 Q did you see any indication of that in this case?

12 A No.

13 Q If a person gave a rudder order of ten degrees and
14 only -- and only a six degree rudder order were executed at
15 11:57, would you expect the course recorder to reflect this
16 change in heading?

17 A Yes, in approximately -- just a slightly bit longer,
18 few seconds longer. Maybe a full minute for it to show at
19 that point. But yes, it would show it within a minute.

20 Q Can you explain why this vessel would not have --
21 did not turn until 12:02?

22 A There's about -- there's four possibilities that I
23 can account for. Number one is the vessel was left on
24 autopilot, and when the helm was ordered ten degrees right,
25 there was no response because it was on autopilot. That would

1 be one reason. The second reason is that no rudder command
2 was given.

3 Q Until when?

4 A Until shortly before this 002. The third reason
5 would be that a rudder command was given but the helmsman
6 didn't respond to it until at this point. And the fourth
7 reason would be any combination of the other three.

8 Q How would Captain Hazelwood -- how would Captain
9 Hazelwood's presence on the bridge that evening from 11:52 to
10 12:02 have assured that this vessel would have turned?

11 MR. MADSON: I would object, your Honor. There is
12 no way this witness can speculate as to what another person
13 would or could have done in a different time.

14 THE COURT: Rephrase your question, Mr. Cole. The
15 part about assured makes it difficult.

16 MR. COLE: Okay.

17 BY MR. COLE: (Resuming)

18 Q How would Captain Hazelwood's presence have changed
19 this? Could have changed it?

20 MR. MADSON: Is it would or could now?

21 BY MR. COLE: (Resuming)

22 Q Could have. Could it have --

23 MR. MADSON: I still object. It still calls for
24 speculation.

25 THE COURT: Objection overruled. He can give his

1 opinion.

2 THE WITNESS: Well, Captain Hazelwood is an
3 experienced master that has had several years experience
4 maneuvering vessels and would have been more likely to realize
5 that the response wasn't occurring when it should have. In
6 other words, if he's of ordered ten degrees right rudder,
7 within thirty second to a minute he would have been more
8 likely to realize that the vessel wasn't responding than Mr.
9 Cousins who's got very limited experience.

10 Also, the -- Captain Hazelwood would have probably
11 set his priorities differently if he'd of been there. He
12 would have been more interested in the heading change of the
13 vessel than all of the other running around that was being
14 done by Mr. Cousins, trying to get his fix, get his fix plot,
15 talk to the lookout and all of this. So it is a matter of
16 with the experience you learn where to set your priorities and
17 when you're starting to make a course change in a tight
18 situation, the course change is the -- what your main priority
19 should be.

20 BY MR. COLE: (Resuming)

21 Q Now, have you reviewed the evidence that -- in
22 reviewing the evidence that was presented in this case, there
23 are some names on the course recorder there. The area of
24 transiting the Narrows --

25 A Uh-huh.

1 Q -- is that in your opinion the particular point
2 where the vessel, the Exxon Valdez, was transiting the Narrows
3 that evening?

4 A Yes.

5 Q And where it says pilot away, is that approximately
6 in the time when the pilot was away that evening?

7 A Yes. According to the bell book, I believe it was
8 2324 which would be right in this area.

9 Q And in your opinion, the change course headings, is
10 that -- to 200 degrees, is that where those occurred in this
11 case?

12 A Yes.

13 Q And the one that is labeled change course on 180, is
14 that where that occurs?

15 A Yes.

16 Q And the one that indicates the grounding, is that
17 approximately where that occurred?

18 A Yes. That would be somewhere up in this area right
19 here.

20 Q Now, have you also reviewed the bell logger in this
21 matter?

22 A Yes, I have.

23 Q And in reviewing it have you determined whether or
24 not the engine was shut off somewhere around 12:20, 12:18 that
25 morning? Yes, that morning.

1 A That morning.

2 Yes, it seems to me 12:20. I would have to go back
3 and look at the bell logger to determine, but it seems that
4 time is in that area.

5 Q From looking at the bell logger, does that refresh
6 your recollection?

7 A According to this, the command to stop was given at
8 nineteen minutes and forty-nine seconds past the hour, and --

9 Q Of midnight?

10 A Yes. And it actually stopped at twenty.

11 Q Now, the decision to restart the engine, what time
12 was that according to the bell logger?

13 A According to the bell logger, the order was given at
14 thirty five minutes and fifty seven seconds past midnight.
15 And it responded thirty six twelve.

16 Q And does the label on the course recorder adequately
17 reflect that restarting of the engine?

18 A Yes. That is in this area right up in here.

19 Q And what time was the vessel stopped that morning?

20 A Okay.

21 It was again stopped -- the order was given to stop
22 it, one forty and fifty three seconds. It actually stopped
23 one forty one and three seconds.

24 Q Okay.

25 And does that label on the course recorder

1 accurately reflect that point?

2 A Yeah. That would be right up in here.

3 Q Now, the bell logger -- in reviewing your
4 information that was provided in this case, about what time
5 was the pilot away?

6 A The pilot was away at 2324 -- with this log, 2324.

7 Q And you see the label that is on there, is that
8 approximately in that area?

9 A Yes.

10 Q And the load program up signature, when did that
11 occur?

12 A 2352. Does that sound right? I think so.

13 Q Is there a 2352 time period on the bell logger?

14 A It would be on full ahead. But there's -- what
15 would indicate that the program is coming up -- it says full
16 ahead here, full ahead. And what would indicate it's coming
17 up is the change in RPM's. There's no print out for a load
18 program up. It would just be the fact that the -- it takes
19 forty minutes -- approximately forty minutes to come up from
20 maneuvering up to full ahead, and this would be an indication
21 that it's en route to that.

22 Q Is the fact -- did the action to load program up
23 occur some time between midnight and when the pilot was away?

24 A It had to yes, because here you are at fifty one,
25 that was shortly after they put it on full ahead. And fifty

1 five is considered full ahead maneuvering. That's what the
2 vessel should come to. The fifty six indicates that that --
3 they're never -- they don't have to be exactly on. That would
4 indicate that they are either on full ahead or he has already
5 put the load program up at this point. However, this one you
6 can tell definitely that it's increasing. Fifty six could
7 still just be full ahead maneuvering. It doesn't necessarily
8 mean it was loaded up before that. But sixty one would
9 indicate that the vessel's increasing speed, definitely.

10 Q And in your opinion, did the vessel ground somewhere
11 between nine o five and eighteen minutes after midnight that
12 morning?

13 A Yeah, I think I had...

14 (Start Tape C-3645)

15 A Yeah, I think I had figured out my estimate was 007,
16 I believe, for the grounding. But there's been other people
17 with other information that's changed on that, but that was my
18 first time I worked it out.

19 Q And did the vessel stop the engine -- the engine,
20 was it stopped at 12:20 that morning?

21 A Yes; yes.

22 Q And it was restarted again at 12:36?

23 A Yes, it was.

24 Q And it was stopped again at 1:51?

25 A 1:41, yes.

1 Q 1:41.

2 Now, I would like to go to the events that occurred
3 after the Exxon Valdez grounded.

4 A Okay.

5 Q What evidence have you reviewed during the period
6 from the time after the vessel grounded until approximately
7 2:00 o'clock in the morning?

8 A Okay.

9 I have read everyone's statements that was involved
10 in that on board. Mr. Kunkel; Mr. Cousins; the ABs on watch;
11 the statement from the ABs off watch, what they had done; the
12 engineers; all the crew. I read through the log book. Read
13 all the material that the NTSB hearing had; all the material
14 for the grand jury; all the material that -- all the
15 statements from the Coast Guard investigator, from the State
16 Trooper and the FBI.

17 Q Have you ever been aground?

18 A Not as a master. As a chief mate I was on a ship
19 that ran aground.

20 Q Would you tell the jury about that?

21 A Well, this was another tanker. It was down in Lake
22 Maricaibo, Venezuela. Outbound, fully loaded, coming out a
23 marked channel, and unfortunately the buoys were out of place
24 in one section and the master turned the vessel and ran into
25 the side of the channel which is --

1 Q When you say the buoys were out of place, would you
2 explain to the jury what that means?

3 A Well, on a marked channel, you have buoys on each
4 side of the channel coming out so that you keep between the
5 buoys. For some reason, either misplacement or someone
6 dragged the buoy over inadvertently or something, one buoy was
7 out of place, and in keeping between the buoys, the master ran
8 the ship into the mud.

9 Q What happened when that happened?

10 A Okay.

11 I was chief mate. I was out making sure the vessel
12 was secured, getting ready to go to sea, and the master
13 stopped the vessel, called me, told me that we were aground.
14 Quick, take a look around. It was obvious that we weren't
15 losing any oil, we weren't leaking any oil that we could tell
16 right away. The first thing I did after that was take
17 soundings around the vessel.

18 Q Why do you do that?

19 A So that you know what your situation is. Where you
20 are grounded at, how much water you have where you're not
21 grounded. How far into the mud that you are, how far into the
22 ground you are.

23 Q Why is that important?

24 A Eventually you are going to want to try to do
25 something. This is just information to advise you what you

1 need to do and what action to take. That is one of the most
2 important things with a grounding is to get soundings of the
3 depth of the water around the ship to determine how badly
4 you're grounded and what the situation is.

5 Q How do you take soundings?

6 A They have a hand lead line on the ship. It is
7 merely a large piece of lead about this long and so big
8 around, heavy with a marked hand line on it. And what you
9 normally do is you drop that down. If you are interested in
10 the type of bottom you have, you put tallow -- the little lead
11 has an indentation. You put tallow in there, which will pick
12 up sand or anything. If you you drop this lead down and it's
13 all mud, the thing will come up muddy. You can tell you have
14 a mud bottom. If you are on rock or in sand, you'll drop the
15 lead down and it'll come up clean unless you have this tallow
16 which some of the bottom will adhere to it, you'll see sand,
17 you'll see gravel, what have you. And that determines what
18 you -- you know, that's another aid in determining what action
19 you want to take.

20 Q How did you end up getting that vessel off?

21 A Okay.

22 After checking the tanks and after all of this and
23 determining what we had, where we were grounded, the captain
24 sent me down to determine what would happen if we transferred
25 cargo. Well, first he tried to back off, it didn't work. So

1 then we decided -- after we knew we were safe. So then we
2 transferred cargo from forward to aft in order to tip the ship
3 up, and lighten it up. We tried to back again. Didn't work.
4 So then we got a tug boat to come out, and the tug boat pulled
5 the ship from side to side to get it to rock so that we could
6 -- and then we pulled the stern, backed to stern with him
7 pulling on us, and we backed off.

8 Q How long did that whole process take?

9 A Probably from the time we grounded until we got off,
10 twelve hours maybe.

11 Q Have you ever grounded on any other vessel?

12 A Yeah, I was again chief mate on a ship coming out of
13 the Sabine River in the Gulf of Mexico. And again, this is
14 all mud. And at that point we were out of the river and into
15 the Gulf which is quite shallow. And due to the vessels
16 speeding up and having too much speed on it -- a vessel going
17 through the water fast will squat, will come down in the water
18 slightly. And we were in such shallow water that the vessel
19 squatted and ran into the mud due to the extra draft of being
20 pulled down. Which stopped the ship and it slithered around a
21 while. When they stopped the engine, it actually broke itself
22 loose from the bottom at that point, and then we proceeded on
23 dead slow ahead or slow ahead, whatever the master decided and
24 got on out of the shallow water into deeper water before we
25 resumed our speed. And that vessel there, there was -- there

1 again, we checked -- we were already loose by the time we
2 stopped to check anything. But there was no damage.

3 MR. COLE: Would you like to take a break now, your
4 Honor?

5 THE COURT: Now would be a good time to do one.
6 This is your lunch break, ladies and gentlemen. Remember my
7 former instruction. Don't discuss the matter or form or
8 express any opinions.

9 THE CLERK: Please rise. This Court stands in
10 recess subject to call.

11 (Whereupon, the Court stood in recess from 11:58
12 o'clock a.m., until 12:20 o'clock p.m.)

13 BY MR. COLE: (Resuming)

14 Q Captain, before we go on to that part -- the next
15 part of your examination, did you enter into a contract with
16 the State of Alaska in this matter, to provide services in
17 this case?

18 A Yes, I did.

19 Q Would you tell the jury what you -- what -- how your
20 services -- how you -- how you were to be paid for your
21 services.

22 A I was to be paid for services performed with U.S.
23 dollars. I don't quite understand what you mean?

24 MR. MADSON: Cash or check, I think he means.

25 BY MR. COLE: (Resuming)

1 Q Well, was there -- what is -- what is the agreement
2 as to being paid?

3 A The original agreement was to -- for a contractor --
4 up to a sum of \$20,000. And during the time of working here
5 we exceeded that, and at present the limit is -- they put an
6 addition on to that for \$30,000. Which we are working within
7 that level now.

8 Q And what have your services included, as far as
9 trips up to Alaska?

10 A Originally we came up to go out to the ship, look
11 around and just check things so we'd make sure -- my purpose
12 of being there was to advise the district attorney's office
13 and the Troopers in what documents they might need, where they
14 would be located probably, where we could find this, what
15 information was needed. And then after we had made our trips
16 out and got that, I spent time in the office going over all of
17 this, explaining all of that to the district attorney's
18 office. Kind of interpreting what maritime language meant in
19 the legal language and kind of assisting in what -- what they
20 were actually meaning and what -- also all the statements,
21 what they were talking about when they used nautical terms.
22 What they should have been doing, how the routine works on a
23 ship, things of that nature.

24 Q Were you asked to come up and assist in the
25 presentation of this case to the grand jury?

1 A Yes. I came up and I went through the same thing,
2 explaining everything to the grand jury, presenting them with
3 what facts we had gathered at that time and what I knew of the
4 ship and the case and how -- how we determined, say, where the
5 ship had ended up aground, how we determined where they
6 started. The usual evidence that you would present, I helped
7 work on all of that.

8 Q Were you required to come up when the Exxon Valdez
9 was visited at Naked Island?

10 A Yes. Just before they sailed I again came back up
11 and went out and again we went over the ship, and at that time
12 checked the steering gear and several other things, looked for
13 things. All together I think I have made either five or six
14 trips up here and spent untold days, I don't know just how
15 much time, but considerable time.

16 Q Did you come up prior to the trial _____?

17 A Yes. I've been up here -- I was up here it seems to
18 me ten days, but I may be wrong -- nine or ten days before the
19 trial started, and then I came back. And I have been up here
20 now I think another ten days right now, something like that.

21 Q And can you give the jury an estimate of how much
22 money your services are going to be? How much it is going to
23 cost for your services in total?

24 A Well, assuming we are going to be finished now, be
25 in the neighborhood of thirty -- between thirty and thirty

1 five thousand, somewhere in there, at the rate it stands now.

2 Q Now, in this case did you review the statements of
3 the individuals after the grounding of the Exxon Valdez?

4 A Yes.

5 Q What information did you review from that period of
6 12:00 o'clock to, say, 2:00 o'clock in the morning of the
7 24th?

8 A From 12:00 until 2:00? I reviewed all the -- Mr.
9 Kunkel's statement, Mr. Cousins' statement, I reviewed the
10 unlicensed personnel's statements, the engineer's statements.
11 Everyone concerned with the vessel. I reviewed the statements
12 of the people at the Vessel Traffic Center, I reviewed the
13 statements of -- crew, Vessel Traffic Center -- all the
14 statements there again collected by the FBI from these people.
15 All these statements collected by the Coast Guard
16 investigator and the Troopers.

17 Q Now, when we left off we had talked briefly about
18 becoming grounded on two occasions. Is there a difference
19 between coming grounded on mud and being grounded, say, in
20 Prince William Sound?

21 A Well, yes, it's -- in mud you are less likely to do
22 any structural damage to the vessel, less likely to -- it's
23 more or less in the Mississippi River and Mississippi Delta
24 and the Gulf ports, it's almost a common occurrence to run a
25 ship aground in the mud and then float it off one way or the

1 other or be pulled off, or in fact power -- in the Mississippi
2 River it's nothing uncommon just to power your way on through
3 and even out on the Gulf the same as we did on the second
4 occasion I referred to. And normally there is no damage done
5 to the vessel. It is just soft mud, it absorbs the shock of
6 the vessel hitting, unlike in Prince William Sound where you
7 are more apt to have a rocky bottom, something that will
8 damage the vessel.

9 Q If a vessel is grounded in Prince William Sound,
10 what are the obligations and responsibilities of a master?

11 A Well, still it continues his obligation is the
12 safety of the crew and as far as he can at that time the
13 safety of the vessel.

14 Q What types of actions can he take to ensure -- to
15 attempt to ensure --

16 A Well, in this situation it would be a case of
17 notifying the crew, immediately get them aware of the
18 situation, aware that they are in an extreme emergency. He
19 could prepare his life saving and fire fighting equipment as
20 soon as possible. They could check the -- one thing that is
21 very important to do is to make sure that all the crew is
22 notified. It's not merely enough to send someone to call
23 them, it's not enough if you sounded the general alarm, for
24 example.

25 You would want to make a muster of your crew to see

1 that they were all awake, instruct them in what you wanted,
2 which would include such things as being prepared with your
3 survival suit, no smoking please, no use of electrical
4 appliances, warn them. Most of them would be aware of the
5 dangers though, with oil around and fumes and all, but repeat
6 it again for the ones that may not be experience it. This is
7 a dangerous situation, here's what I expect you to do, what I
8 want you to do.

9 And then you would have them informed immediately,
10 you would have them available to use in doing these other
11 things such as preparing your life boats, preparing your fire
12 fighting equipment.

13 Q Why is it important to have them congregate in an
14 area, for instance?

15 A Well, in case of -- in case you need to abandon
16 ship, this would reduce the time spent rounding the passen --
17 the crew up, and in case you needed them to do any work or
18 anything to help alleviate the problem, they are there where
19 you can get them immediately to go to work. And it -- if you
20 leave them scattered throughout the ship, then if you need
21 fire hoses strung out, you've got to send someone to get the
22 people to do that. If you need someone to turn a valve or
23 open a void space up to inspect for damage, you -- instead of
24 having to look for your crew, you have them available to do
25 this work.

1 Q Now, you indicated that it is necessary to have fire
2 fighting equipment, you said it's obvious. But why is that?

3 A Well, any time you are dealing with petroleum,
4 dealing with fumes from petroleum products, you have the
5 potential for a fire or explosion or both, and you want to be
6 prepared to -- if you do have a fire you want to be prepared
7 to fight the fire and try to stop it as soon as possible.
8 Usually on a major ship, if it get's -- if it is not put out
9 very early, it is beyond the scope of what the crew can
10 handle.

11 Q How important is it to get that fire fighting
12 equipment out immediately?

13 A It is critical; as soon as possible.

14 MR. COLE: Judge, can we approach the Bench for just
15 a minute>

16 THE COURT: Yes.

17 (An off the record Bench conference was had.)

18 BY MR. COLE: (Resuming)

19 Q What other things do you need to establish after a
20 grounding, as a master?

21 A Okay. You need to determine how you're aground, so
22 you would -- back to the soundings. You would take soundings
23 around the vessel. You need to determine the damage if any
24 that's been done to the vessel. And how you would do this
25 would be in the Exxon Valdez case with the print out from your

1 control room on your cargo tank. You would also have to go
2 out visually and check the pump room, check any void spaces,
3 any empty tanks that you have, and determine -- from that you
4 can determine bottom damage, loss of cargo, loss of -- taking
5 on water or something. You'd get a good idea of that. You
6 need to determine where you're grounded at as far as on the
7 chart. You need to notify -- in this case you need to notify
8 the VTC and they will go ahead -- they have a response program
9 where they will notify all the appropriate people for you.
10 And you need to pretty quickly determine the stability of your
11 vessel. So you would have you chief mate doing this. And
12 let's see -- the list -- you know, that's pretty much the
13 immediate thing once you get the fire fighting, life saving.
14 You've got the soundings. You need to determine if your
15 double bottoms, your engine room, any void spaces, you need to
16 -- you need to then determine what your best action is on the
17 vessel to reduce the -- to reduce the damage that has already
18 been done and to avoid any further damage.

19 Q Now, after reviewing the evidence that you
20 mentioned, do you have an opinion on what Captain Hazelwood
21 was attempting to do between 12:38 p.m. -- or a.m., and 1:41
22 a.m., on March 24th, 1989?

23 A Yes, I do have an opinion.

24 Q What is that opinion.

25 A Based on his phone conversations and based on the

1 use of the engine and the rudder, I believe he was trying to
2 remove the vessel from the reef.

3 Q What risk was there from attempting to remove this
4 vessel from the risk -- from the reef?

5 A Okay.

6 You run the risk of further damage to the vessel,
7 such as puncturing -- as you're going ahead, puncturing the
8 void spaces in the pump room area, puncturing into the engine
9 room. Possibly holing your other tanks that haven't been
10 holed yet. And if you in fact do move it off -- are able to
11 move it off the reef, the possibility of sinking or capsizing.

12 Also, while moving it off the reef, with this much
13 oil being spilled in the water _____, you run the further
14 risk of or you increase the risk of fire or explosion.

15 Q Do you have any opinion on whether or not Captain
16 Hazelwood used poor judgment in attempting -- in his actions
17 taken after the Exxon Valdez grounded that morning?

18 A Yes.

19 Q Would you tell us what that opinion is?

20 A I feel that he used very poor judgment in his
21 actions, from the -- basically from the time they grounded
22 until well after the engines had shut off at 1:41.

23 Q Would you tell the jury why you feel that way?

24 A Well, there are several things. First, the time it
25 took to shut the engines down originally, there's excessive

1 there. The minute you ground, and once you get your ship
2 steady up, realize you're aground, stop the ship immediately.
3 As soon as possible.

4 Q Why is that?

5 A To alleviate further damage. There's always the
6 possibility of damaging the rudder, propeller, puncturing more
7 holes in the tank. You know, the other possibilities are all
8 there. I feel his action in not notifying the crew sooner,
9 making sure all the crew was notified -- from the reports I
10 get, there were two crew members who stated they didn't get
11 notified. They should have -- instead of leaving the crew in
12 their rooms scattered throughout the ship, he should have had
13 them gathered up in one spot with their survival suits, life
14 jackets, ready -- ready to -- to do something if they had to.
15 Also if he had of used his entire crew to get his life boats
16 and fire fighting equipment in order, he would have had that
17 done much quicker. And in a situation like this, time was
18 important. And then when he -- after stopping the engine and
19 not -- not really finding out just were the was grounded,
20 where are -- he didn't take soundings as I mentioned before.
21 He didn't really have a good idea of what his situation was.
22 he went ahead and resumed the engines and that was a very poor
23 judgment in my opinion.

24 Q What about, if you were the captain of the Exxon
25 Valdez and your third mate after the grounding called you up

1 and told you, Captain, we've got movement in all the center
2 tanks and all of the starboard tanks, so we're definitely
3 holed --

4 A The chief mate, you mean?

5 Q The chief mate.

6 What would that tell you about the extent of the
7 damage that your vessel had suffered?

8 A Well, you have just suffered very, very, very major
9 damage. That this is a major marine casualty. With that many
10 tanks holed, you probably are losing your ability to stay
11 afloat with that many tanks done. It would be a matter of
12 considerable time to determine if in fact the vessel was
13 capable of being refloated without salvage help. I certainly
14 would -- I wouldn't want to just look at that and decide to go
15 to sea.

16 Q What if after he told you that he then came to the
17 bridge and told you that he had run the -- the ocean motions
18 program, the cargo control program, and that what that told
19 you was that the -- it was stable to go -- the vessel -- the
20 stability of the vessel was acceptable, but the bending and
21 stress moments had been exceeded and that you had -- and could
22 not account for between a hundred thousand and a hundred and
23 fifteen thousand of barrels of oil at that time. What would
24 that tell you?

25 A There again, tell you that you're in serious

1 trouble. That this is a major damage to the structure of the
2 vessel and the vessel -- almost at a glance, with ten holed
3 tanks, you can say this vessel is unseaworthy and not
4 something that you would want to try to go to sea with or try
5 to do anything with. And as far as --

6 Q When you say go to sea, what do you mean?

7 A Well, we're going to get off the reef. I would want
8 to do as little to move that vessel as possible at that time.
9 And I would want to get help there to determine just what we
10 could do as quick as possible.

11 Q And if at some point later, after that, at say, 1:00
12 o'clock, around the 1:00 o'clock area, the chief mate came to
13 the bridge and told you -- and you had gone ahead and made --
14 started to turn -- put the vessel on full maneuvering -- or
15 full maneuvering speed and were negotiating rudder orders, if
16 he came to the bridge and told you that the new print outs
17 indicated that your stability was okay -- was not okay, and
18 that your bend and stress moments were okay, what would that
19 tell you at that time?

20 A Still that at this point you still know you've got
21 ten holed tanks and I wouldn't be trying to get off the reef.

22 Q If you were going ahead at that time, what would you
23 do?

24 A I'd stop the ship immediately, yeah.

25 Q Why is it Captain Hazelwood -- or Captain Beevers,

1 that you believe that the actions of the captain that evening
2 were consistent with taking it off the reef and not trying to
3 put it on the reef?

4 A Well, the -- if -- in order to put the vessel on the
5 reef, to stay on the reef, he would have to know which
6 direction the main part of the reef was. Now, with his vessel
7 like it was and without soundings, without that, he had no
8 idea if going ahead would put him on the reef or off the reef,
9 actually. But by looking at the chart, you'll notice that the
10 vessel is more towards the open water on the Prince William
11 side. And if he was going to stay on the reef, he would not
12 go full ahead to try to get out that way. If you're going to
13 stay on the reef, you would have to know which direction your
14 ship should be headed, and what to do, and you would probably
15 do it in a dead slow or slow ahead manner, slow as you could
16 run the engines.

17 Q And how would you turn the rudder?

18 A I wouldn't. That's -- unless you need -- that
19 again, that depends on -- if you're laying at an angle to a
20 reef that you want to turn around to head into, you might use
21 the rudder one time to spin the ship one way, but you would
22 not have a series of rudder maneuvers in order to stay
23 grounded on a reef. You would -- that's inconsistent. If you
24 -- the rudder movements is an indication he is trying to get
25 the ship moving in order to get it to move ahead, and to move

1 ahead in this case is towards open water.

2 Q What about the tides and the incoming tide? How
3 does that affect your decision?

4 A Well, it is something that you have to consider. He
5 was grounded not quite two hours before high tide. So he had
6 two hours more of water coming in, and that is something to
7 consider, but it is very doubtful that a ship grounded that
8 hard with that much damage is going to refloat anyway. But he
9 could be using -- if it was felt that it might refloat, he may
10 be better off using his time determining if he needed to
11 ballast it in fact, and how to ballast it, if he could figure
12 that out in that time. If not, that's a hard -- a hard
13 problem to figure right there because of the extent of damage.

14 But I wouldn't -- even with the tide coming in, I
15 wouldn't expect the tide to raise a vessel that was that
16 damaged up off the reef.

17 Q If you were attempting to keep yourself on the reef,
18 and you had a high tide at 2:00 o'clock, how long would you
19 run the engines?

20 A Well, if you're going to -- if you have to -- if you
21 in fact are attempting to keep a vessel on a reef, and if
22 that's what he was doing, he needed to do that right on
23 through the high tide and for at least the same period after
24 the tide as to when he grounded. Because you know, as the
25 water comes up, if it provides any buoyancy at all, it will

1 provide buoyancy from the time he grounded through the next
2 minute right on through the highest tide and it would continue
3 to be more buoyant all the way 'til the tide got lower than it
4 was when he grounded.

5 Q Does the fact -- did the fact that Captain Hazelwood
6 did not run the vessel after high tide support your conclusion
7 that he was trying to get off the reef?

8 A Yes. he didn't -- in fact, he shut down just before
9 high tide, because it was -- yeah, that if he was trying to
10 get off, he wouldn't worry about it after the tide -- high
11 tide came and went.

12 Q Captain Beevers, I would like to read you the
13 definition of reckless. In the State of Alaska, a person acts
14 recklessly with respect to a result or to a circumstance
15 described by a provision of law defining an offense when the
16 person is aware of and consciously disregards a substantial
17 and unjustifiable risk that the result will occur or that the
18 circumstance exists. The risk must be of such a nature and
19 degree that disregard of it constitutes a gross deviation from
20 the standard of conduct that a reasonable person would
21 exercise in the situation.

22 Do you have an opinion as to whether or not Captain
23 Hazelwood acted recklessly in his actions prior to the ship
24 being grounded?

25 A Yes, I do.

1 MR. MADSON: Your Honor, I'll object to the opinion.
2 It invades the province of the jury, and that is their
3 decision to make, not from the number of people who are going
4 to come in here and give opinions.

5 THE COURT: Objection overruled. Under evidence
6 rule 704 it can come in.

7 BY MR. COLE: (Resuming)

8 Q What is your opinion?

9 A I feel that he was reckless in his actions.

10 Q Why do you believe this concerning the actions taken
11 prior to the grounding of the Exxon Valdez?

12 A Prior to the grounding? His leaving the bridge in
13 pilotage waters and in an area that it was such close quarters
14 to navigate the vessel, with ice in the area, this is -- and
15 you know, all the preceding things. The vessel's going too
16 fast. They're too close to shoal water, they're too close to
17 land, they're too close to ice. And in a situation where you
18 needed all the experience he could muster on the bridge, he
19 left and left an inexperienced man.

20 Q What was the risk that he created by leaving?

21 A He created the risk of grounding the vessel. He
22 created the risk of completely losing the vessel. He created
23 the risk of fire and explosion and possible death to his crew.
24 He created the risk of pollution, which was -- occurred.

25 Q Now, based on the opinion that I just -- the

1 definition that I just read to you, do you have an opinion as
2 to whether Captain Hazelwood acted recklessly in his actions
3 after the Exxon Valdez was grounded?

4 A Yes, I do.

5 MR. MADSON: Same objection.

6 THE COURT: Same ruling.

7 BY MR. COLE: (Resuming)

8 Q What is that opinion?

9 A My opinion is that his lack of response to the
10 grounding, originally, his slowness in getting things going
11 and then his -- his attempting to remove the vessel from the
12 reef without knowing the results, was a reckless act that
13 there again endangered the vessel, the crew, and endangered
14 the environment and the fact that he could have spilled
15 considerably more oil if in fact the vessel had sank or
16 capsized. And again, this same danger of explosion and/or
17 fire was increased.

18 MR. COLE: I have nothing more.

19 CROSS EXAMINATION

20 BY MR. MADSON:

21 Q Captain Beevers, I am not standing here in the sight
22 of God, am I? You aren't perfect, are you?

23 MR. COLE: Objection; argumentative.

24 THE COURT: Mr. Madson, that's improper.

25 BY MR. MADSON: (Resuming)

1 Q Well, you aren't perfect, Mr. Beevers, are you?

2 A Oh, no; no.

3 Q Have you ever made mistakes?

4 A I've made a lot of them.

5 Q Ever use bad judgment?

6 A I've used bad judgment, yes.

7 Q Ever had somebody be paid to evaluate your judgment
8 and decide whether or not it was good or bad?

9 A No, I haven't.

10 Q Is it fair to say but for chance, grace of God or
11 something, you might be sitting in Captain Hazelwood's place?

12 MR. COLE: Objection; argumentative.

13 THE COURT: Sustained.

14 BY MR. MADSON: (Resuming)

15 Q Chance, is there a possibility or a chance that in
16 your career, and the mistakes you have made and the judgment
17 you have exercised, you could have, but for again, chance,
18 been in the situation where you could be on trial here?

19 A I don't like the word, except for chance in there.
20 There is a -- you know, any time you go to sea and any time
21 you're a master on a vessel and have that responsibility and
22 that big of an item under your control, there's things that
23 you can do that where you have made a mistake and do something
24 wrong that you can definitely be in serious trouble and you
25 can ground your vessel.

1 But the whole idea is that you do all you can to
2 avoid this.

3 Q Sure. Otherwise there wouldn't be accidents where
4 people were perfect.

5 A That's right, yeah.

6 Q And there are accidents.

7 A There are accidents.

8 Q There are sometimes maritime accidents?

9 A That's right.

10 Q Ships go aground. They do it every day, right?

11 A I don't know about every day, but they do it
12 frequently.

13 Q Well, world wide --

14 A Sure, they do it frequently, yes.

15 Q They hit each other? Collisions at sea?

16 A Oh, yes.

17 Q They hit docks?

18 A Yes.

19 Q Many, many things can happen. In other words, with
20 accidents they can happen at sea just as they can on shore
21 with motor vehicles, for instance.

22 A Yes. And there again my response is you have to
23 everything you can to avoid this, and when it happens, you
24 have to do everything you can to get out of the situation with
25 as little damage as you can.

1 Q That's just common sense, isn't it? You try to
2 avoid accidents, if you can, and if you are in one you try to
3 minimize the damage afterwards or do the best you can after
4 the event has occurred?

5 A That's right; yes.

6 Q Now, getting to your history, you said you did not
7 receive any formal schooling or training, correct? That is an
8 academy, a marine academy?

9 A Yes, that's right; yeah.

10 Q Did you go to sea as an AB first then or what?

11 A I went as an ordinary seaman.

12 Q Were you a union member?

13 A Yes, I was.

14 Q Union member all the way until you became an
15 officer?

16 A I was a union member from my first job right on
17 through until I retired. Various -- first the Seafarers
18 International Union as unlicensed, and then I joined the
19 Master, Mates and Pilots, and I was always in a union, right
20 on until I retired.

21 Q So what union were you in at the time you retired?

22 A Master, Mates and Pilots.

23 THE COURT: Could you move that microphone up a
24 little bit? You have a soft voice.

25 THE WITNESS: Up a little bit?

1 BY MR. MADSON: (Resuming)

2 Q So you came up, I don't want to say the hard way,
3 but the informal way, as opposed to the usual or formal way of
4 going to school and coming out with a third mate's --

5 A At the time I did it it was probably 50/50, which
6 one was the usual. There was two ways. Now it's more through
7 the maritime academies, yes.

8 Q In any event, you got a third mate's license in
9 1963, right?

10 A A third mate's license in '67.

11 Q '67?

12 A Uh-huh.

13 Q And a master's in '73?

14 A Yes.

15 Q Going back to that third mate license, you had to
16 take a test for that, right?

17 A Oh, yes.

18 Q Seamanship, navigation, all the things that are
19 necessary to become a deck officer.

20 A Yes.

21 Q Coast Guard gives that, right?

22 A Yes, that's correct.

23 Q That allows you to be a watch officer on a vessel of
24 any size, correct?

25 A Yes.

1 Q And by watch officer, that means you can stand the
2 watch, give commands to a helmsman, navigate the vessel,
3 right?

4 A Yes, that's correct.

5 Q There wasn't any restriction on that third mate's
6 license that said you could only make small course changes at
7 sea, was there?

8 A There's no restriction on the license by the Coast
9 Guard for that, no.

10 Q In other words a third mate doesn't have
11 restrictions about when he can make course changes on his
12 license, right?

13 A There's no restriction on the license. The
14 restriction is --

15 Q My question is on the license.

16 A Okay.

17 There's none on the license.

18 Q The Coast Guard doesn't say, you get a third mate's
19 license and for the next year or three years, you can only
20 make 10 degree right rudder changes?

21 A No.

22 Q You are presumed at that point to be qualified and
23 competent to navigate and basically take a vessel under your
24 command?

25 A When you --

1 Q When I say command, under the command of a captain
2 but still stand the watch --

3 A You are deemed by the Coast Guard to be capable of
4 taking over a watch, normal watch on a ship, and standing
5 watch, yes.

6 Q And that could include times when the captain is not
7 on the bridge and you are there alone?

8 A Oh, yes.

9 Q No restrictions on that as far as the Coast Guard is
10 concerned?

11 A No.

12 Q And a second mate's license is one that is one more
13 up the ladder, is it not?

14 A That's correct.

15 Q More experience on vessels is required?

16 A You have to have minimum of twelve months as third
17 mate, twelve months on a vessel, in order to set for a second
18 mate's license, yes.

19 Q And the test is presumably more difficult than that
20 of a third mate?

21 A Slightly more difficult, yes. They succeedingly get
22 a few more -- it's basically the same thing with just a little
23 harder each time.

24 Q Now when -- oh, by the way, on your license, you've
25 got a radar observer.

1 A Yes.

2 Q What does that entail?

3 A That's again you have to pass a radar observers --
4 back years ago you had to pass a test and the Coast Guard, and
5 now they have -- I believe what they do is they have various
6 approved schools that you take a small course, three day
7 course, one day course or a week, whatever you want, and then
8 you show that instructor that you are competent and he send
9 this over to the Coast Guard. I don't think the Coast Guard
10 gives that test any more. But they still approve the schools
11 that give the test.

12 Q By the way, you don't hold an active license at this
13 time --

14 A I didn't renew my license when I retired, no.

15 Q You mentioned -- getting back to this other point,
16 you mentioned that you were basically retired, you do a small
17 consulting -- amount of consulting, and you have another
18 business. What's that other business?

19 A Construction business.

20 Q It's what?

21 A Construction.

22 Q What kind of construction?

23 A I do everything from building buildings to cement
24 work to foundations, commercial floors, sidewalks around
25 schools, to name a few of the things I've done. Built a horse

1 arena, built garages, built commercial -- fisherman's
2 commercial repair and storage area, things of that sort.

3 Q So it is fair to say you basically you are a
4 building contractor?

5 A It takes about half of my time, yes.

6 Q Okay, one half of you time?

7 A Uh-huh.

8 Q The other, you are consulting the other half?

9 A The other half is spent with whatever I want to do.

10 Q Well, if we look at that half, the half where you're
11 not out there building sidewalks and such.

12 A Yeah, sure.

13 Q How much of that is spent consulting in maritime
14 cases?

15 A Until this case, very little.

16 Q Well, speaking of this case, you got it because of
17 Mr. -- Captain Greiner, did you not?

18 A I got it because Mr. Linton from the DA's office
19 called me and said that Curt Greiner had give him my name as a
20 -- knowing that I was a former tanker captain that had run in
21 and out of Puget -- Prince William Sound.

22 Q And you have a contract with the State that is going
23 to pay perhaps \$35,000 before we're done here?

24 A Possibly.

25 Q But you have to kick back or give Mr. Greiner ten

1 percent of that, right?

2 A I give -- I wouldn't call it a kickback. I pay a
3 fee to him for the --

4 Q A finder's fee he gets?

5 A That's a fee, whatever you want to call it; that's a
6 fee.

7 Q The more you charge, the more he gets, right?

8 A I guess, indirectly, yes.

9 Q You said that you had done just a small amount of
10 maritime consulting until this case came along. What do you
11 mean by a small amount?

12 A Well, a day here, a day there, couple of days,
13 whatever. I spent -- well, I spent a few hours on the phone
14 to Central Gulf. Spent a day doing some running around for
15 stuff for them one time on a case that I -- on a ship that I
16 had been on that they needed me to do some work for getting
17 their -- they had lost their customs entry paper, a minor
18 thing that was nothing. And I have spent time -- like I say,
19 I am not a professional consultant that makes my living doing
20 this. I mean, is that what you wanted to know?

21 Q Okay. That's what I was getting at. You don't
22 consider that to be a major part of your income?

23 A No. I don't expect to make a living off from coming
24 up here on tankers that's run aground, no, if that's what
25 you're getting at. I'll answer that right away.

1 Q You'll have to admit, would you agree, that \$35,000
2 is a fairly substantial fee?

3 A I put a lot of work in it, but yes, it is a
4 substantial fee.

5 Q Well, you put in as much work as you want to
6 basically, don't you? You are paid by the contract limit, but
7 as much as you want to do up to that limit?

8 A No, it's as much as they require me to do. I can't
9 just say I am going to work on this for the next ten days and
10 they -- it depends on what the -- what the district attorney's
11 office feel that they need, what is required. And I suppose
12 if I wanted to, you could pad that. But that's not the way
13 you do business. But I have done what they ask, I have done
14 it when they have asked. And if they have sent me stuff to
15 read, and I send them back -- I haven't sent them back
16 anything, but to discuss with them, I have done that. And
17 they have never said, well, did you spend two hours on that or
18 two days on that. They just assumed that I did it in the time
19 that was --

20 Q Sure. You give them basically hourly -- so many
21 hours per week billing?

22 A What I bill them is days that I actually put in or
23 time that I actually put in, and I do that usually on a
24 monthly basis.

25 Q And is that per hour?

1 A It depends. Up here -- it's based on a per hour
2 basis, yes.

3 Q The State obviously has the power to more or less
4 tell you the scope of your duties. In other words, they want
5 you to look at certain things, right?

6 A Oh, yes. That's what they -- they hired me for a
7 specific thing.

8 Q At the same time, if you feel something else is
9 important, you certainly have the right to go to them and say,
10 hey, I think we ought to do more in this area or go over here
11 and this.

12 A That was part of my original employment was to look
13 at things and see what was necessary and what the needed, yes.

14 Q I think you said that one of your -- one of the
15 things you were hired to do was basically help them put their
16 case together is what you said, grand jury and all that.

17 A I was here to tell them about the maritime field. I
18 don't know if I said put it together. If I did, I don't mean
19 to imply that I was running their case for them or something.
20 I assisted them and I pointed out things that might not be in
21 the usual things that an attorney would run across on a ship.
22 That's --

23 Q Well, one of the the things they must have told you
24 early on is what they needed. In other words, what they
25 expected you to assist them on, right?

1 A Yes.

2 Q In other words, hey, we've got to show this guy was
3 reckless. Can you help us do that?

4 A No. Time after time they told me be objective in
5 your decisions. And Mr. Cole has asked me two or three times,
6 now do you feel comfortable saying this. If you don't, don't
7 go any further with it. And that's -- at any time it is just
8 a matter of saying I don't think that this is what I want to
9 say and that's it.

10 Q He asked you if you felt comfortable with that
11 situation.

12 A Certainly, yeah.

13 Q Did he ask you that twice to be real sure?

14 A No.

15 Q Well, if he had to ask you if you were comfortable,
16 doesn't that imply there's some doubts about whether you were
17 comfortable or not?

18 A I see your point. No, this merely means -- what
19 this means is that, you know, that they are not out to hang
20 the man, they're just trying to get as objective view.

21 Q And of course that objective view is one for which
22 you are being paid?

23 A Yes.

24 Q Uh-huh.

25 Now, we talked early on about pilotage. You said

1 you had an endorsement for Prince William Sound as a Federally
2 licensed pilot, right?

3 A Yes.

4 Q How do you get that? How did you get that?

5 A I think I --

6 Q Let me maybe speed it up. You had to ride on a ship
7 through Prince William Sound a number of times, right?

8 A Yes,

9 Q Any requirement you had to be on the bridge all the
10 time?

11 A I was up there for every trip, yes. You had to --
12 there was a pilot on the bridge that would sign you -- when
13 you made a trip in and out he would sign your ticket. Now, I
14 don't know there again if anybody was checking us to see if we
15 were standing on the bridge.

16 Q You didn't have to be on the bridge?

17 A You did if you wanted to learn your route, yes.

18 Q What was the route? To go through Prince William
19 Sound. What's there to look at?

20 A It was determined that they needed pilotage, so
21 that's what we did.

22 Q You go through Cape Hinchinbrook and then there's
23 Naked Island, and you've got a light -- there's a buoy at
24 Bligh Reef. There's navigation aid at Busby Island, things
25 like this?

1 A Uh-huh.

2 Q That's what you're supposed to learn, right?

3 A This wasn't for me to decide that we needed it. I
4 just had to go comply with it and get the pilotage.

5 Q Yeah, but in other words, the requirement was merely
6 that you made so many transits? The requirement was not that
7 you had to navigate the vessel, steer the vessel or anything
8 else.

9 A Not at that time. You're there as an observer. And
10 the way I interpreted the word observer is that we had to be
11 on the bridge observing.

12 Q You spend any substantial time down below on these
13 trips, not on the bridge?

14 A I went below during my observing trips, there again,
15 out in the open waters. So you stayed -- you came up for the
16 important points, you stayed there most of the time. And due
17 to the fact there was fifteen or twenty people there,
18 naturally if you wanted to go to the bathroom, there was no
19 facilities to feed us on the bridge, so at lunch time you
20 would pick a spot and you'd take a break and go eat. So in
21 that respect we weren't on the bridge during the entire
22 observer trip. But the observer is not required on there,
23 the trip is required. And you -- that's --

24 Q You could be asleep the whole time for that matter,
25 right?

1 A I don't think I saw anybody asleep all the time, no.

2 Q I'm saying you could be as far as just making the
3 trip was concerned.

4 A I doubt very much if the pilot would sign the trips
5 if that was the case. There is a certain amount of integrity
6 in this industry and I don't imagine that they would --

7 Q Unlike perhaps some other ones we won't mention.
8 But anyway, then Captain Beevers, after you get the required
9 number of trips in, you have to take a test. The Coast Guard
10 gave you a test, right?

11 A Yes.

12 Q They don't take you out on a vessel and say steer
13 this thing from Cape Hinchinbrook in port Valdez?

14 A No. It's a written test and a matter of drawing
15 charts, telling the courses and local knowledge, and the usual
16 test they give for -- the Coast Guard gives for pilotage for
17 that area.

18 Q In other words, you are expected to know the area?

19 A Uh-huh.

20 Q And navigational hazards, right?

21 A Uh-huh.

22 Q You would be expected to know, for instance, where
23 Bligh Reef was?

24 A Uh-huh.

25 Q Busby Island?

1 A Yes.

2 Q What navigational aids were to assist you as a
3 mariner in those areas?

4 A Yes.

5 Q Would you agree, sir, that a person on a vessel can
6 acquire that knowledge and have just as much knowledge as a
7 person with a pilotage endorsement, even though he did not
8 take the test?

9 A Yeah, he could have the knowledge, but he wouldn't
10 have the endorsement. He wouldn't have the pilotage license.

11 Q It's maybe like a -- for instance, you drive a car,
12 right?

13 A Yes.

14 Q And you feel you drive a car pretty well, you know,
15 you're a good driver?

16 A Well, I would say so. You know, I haven't had any
17 wrecks lately, so I would assume a good driver.

18 Q You've had wrecks in the past?

19 A I had one years back, yeah.

20 Q Good judgment or bad?

21 MR. COLE: Objection; relevance.

22 MR. MADSON: I'll withdraw it.

23 THE WITNESS: That's --

24 THE COURT: It's withdrawn. Don't answer the
25 question.

1 BY MR. MADSON: (Resuming)

2 Q Anyway, you could be a good driver without having a
3 driver's license, isn't that fair to say?

4 A You can be a good driver without that. You run the
5 risk of violating the law.

6 Q But having a license does not make you a good driver
7 or a bad driver?

8 A No.

9 Q It is simply a test of your ability to be a good
10 driver, right?

11 A Yes.

12 Q And relating that then to the pilotage endorsement,
13 that is a test of one's knowledge of the Prince William Sound
14 area, for instance.

15 A Yes.

16 Q And you could have that knowledge and be just as
17 expert as having the pilotage endorsement, but you just don't
18 -- you don't have that piece of paper, right?

19 A Yeah.

20 Q For instance, in your -- by the way, you mentioned
21 that the -- every time you mentioned what you looked at, as
22 far as other statements and other witnesses are concerned, to
23 form your opinion, you did not mention any trial testimony, I
24 think, except one time you said Mr. Kunkel and Mr. Cousins'
25 trial testimony>

1 A Yeah, I don't know if it was just once, but those
2 are the only two that I have read so far. I haven't read the
3 other testimony of the other people.

4 Q Why did you have just those two?

5 A Because they were more what I was concerned with,
6 what they had to say, than -- I didn't -- what I am here for
7 is the navigating of the vessel and the grounding right there,
8 not other such thing -- other things that happened.

9 Q Well, there were other people on board. Could they
10 not assist in determining whether or not Captain Hazelwood's
11 actions were appropriate or not appropriate and that testified
12 here in this Court?

13 A That could be, I don't know.

14 Q For instance the pilot, Mr. Murphy. Do you know
15 him?

16 A Oh, yes.

17 Q You know he testified.

18 A I haven't received his testimony yet. The -- I read
19 Murphy's earlier statements, that is his statements to NTSB.

20 Q Do you feel sir, sometimes with a forum such as we
21 have here where there are not only statements given, but cross
22 examination and the means and the method to probe into things
23 and perhaps bring more facts and more data out that could be
24 of additional value to in forming an opinion?

25 A It could be, yes.

1 Q You also talked a great deal about ice. I think you
2 spent a lot of time with Mr. Cole and his questions and your
3 responses about ice in Prince William Sound. Is it fair to
4 say from your experience that the amount of ice coming from
5 Columbia Glacier has increased in the later years when you
6 were sailing up there?

7 A Yes.

8 Q For whatever phenomenon that causes that, there was
9 an increase?

10 A Yes.

11 Q The Coast Guard was aware of that.

12 A Yes.

13 Q All people, all masters of vessels going in and out
14 of Prince William Sound were aware of that, right?

15 A Yes.

16 Q The port was never closed because of ice, was it?

17 A Not that I know of, no.

18 Q Coast Guard had the authority to do that if they
19 felt the situation was that dangerous, did they not?

20 A Yes, they did.

21 Q And you said sometimes it was a problem and
22 sometimes it wasn't, right?

23 A Yes.

24 Q And certainly the ability to determine whether or
25 not it was a problem was dependent upon a number of factors,

1 right? I don't want to mislead you, but for instance, you
2 have ice reports.

3 A Yes.

4 Q The ice report is only as good as the observations
5 that were made, right?

6 A That's correct.

7 Q Time, of course, if it was an older report or a
8 fresh one, right?

9 A That's right.

10 Q And even then you had to be pretty close to it to
11 actually be able to see it even on radar or visually?

12 A That sounds fair, yes.

13 Q And at night, it would be much more difficult to see
14 visually?

15 A That's right.

16 Q In fact, let's assume -- by the way, did you look at
17 the weather for this particular night, 23rd-24th?

18 A There was -- yes, there -- I checked the weather,
19 yeah.

20 Q It was quite dark, was it not?

21 A It was dark. It had been some overcast earlier and
22 apparently by the time they were out in the Bligh Reef area
23 there was fairly good visibility because they spotted the --
24 they were able to pick up the lights at a reasonable distance.

25 Q And the ice that you could see visually at night, of

1 course, is dependent upon how good the lookout's eyes are for
2 one thing, right?

3 A Uh-huh.

4 Q The speed of the vessel, the size of the ice --

5 A Uh-huh.

6 Q The color of the ice. Does that change? Is there
7 blue ice and white ice?

8 A Yes, yes. That's right. Some of the ice is flat
9 and tabular and design or with a higher plane maybe that is
10 white, easy to pick up. Some of the smaller growlers have
11 been rolled around enough that they have lost their whiteness
12 and it's a little harder to detect those. But those are
13 usually the smaller pieces. The larger pieces are easier to
14 see and easier to pick up on radar.

15 Q How about the amount of debris they may have in the
16 iceberg, or ice chunk?

17 A yeah, if you got a lot of rock and debris coming
18 down on it, that would discolor the whiteness, yes.

19 Q It discolors it, but I mean how --

20 A Oh, you mean for seeing it?

21 A Yeah, for seeing it, yeah.

22 A Well, naturally white is easier to see at night than
23 -- than a dark object.

24 Q But would you say that radar would be at least one
25 more source of reference a master would have in determining

1 the amount of ice and the type of ice he was going to
2 encounter?

3 A Oh, yes. If your first initial view of the ice at
4 night, that would be your initial contact with the ice is
5 through radar. You would pick radar up -- you would pick it
6 up on radar before you would see it visually.

7 Q And of course that also depends on a number of
8 factors, does it not? The amount of ice, the range you're
9 looking at it, things like this?

10 A Yeah. But you would expect to see it -- see ice on
11 radar at a further distance than you would see it visually.

12 Q And of course there is no way of going back to the
13 night of March 23rd and recreating what Captain Hazelwood or
14 the third mate saw looking in that radar, right?

15 A Not that I know of, no.

16 Q It would be certainly helpful if we could do that,
17 but we can't, right?

18 A That's right.

19 Q We have to use hindsight and decide, like you have,
20 as to whether or not he exercised good or bad judgment, right?
21 Would you agree it's a lot easier to do eleven months later
22 looking back at just papers and records as opposed to actually
23 being there?

24 A Yes, it certainly is easier later. But my decision
25 on Captain Hazelwood was not made on the little individual

1 things like that. It was made on his behavior in leaving the
2 vessel -- leaving the bridge, not on what he saw.

3 Q Well, on that point, sir, you are not speaking for
4 the national United States maritime industry, are you?

5 MR. COLE: Objection.

6 BY MR. MADSON: (Resuming)

7 Q In your opinion?

8 A I am speaking for my -- what I know has been
9 traditionally a master's responsibility and duties.

10 Q What I am saying sir, is you don't have a survey
11 conducted by every retired master, for instance, as to whether
12 or not they agreed with you or not --

13 A I never asked a single one if they agreed with me or
14 not, no.

15 Q Why not?

16 MR. COLE: Objection; relevance, hearsay.

17 MR. MADSON: It goes to the basis of his opinion,
18 your Honor, if we want to find out whether anybody else agreed
19 with him or not.

20 THE COURT: I am going to overrule the objection.
21 You can answer the question.

22 BY MR. MADSON: (Resuming)

23 Q So you never asked anybody to --

24 A I don't know that it is necessary that I have a lot
25 of people agree with me on my opinion.

1 Q Wouldn't it make you feel more confident in your
2 opinion if somebody that you respected looked at the same data
3 and came to the same conclusions?

4 A It probably would, but that's up to them to do that.
5 I wasn't out canvassing the industry to see what people
6 thought, no.

7 Q You weren't asked to do that by the State, right?

8 A No.

9 Q Now, you said you served on ships in the past
10 including I think up to 136,000 tons?

11 A I believe that is the right figure. The OMI
12 Columbia is the name of the ship.

13 Q I didn't get the name but I got the number. There
14 was one I think you said 121,000, which was a diesel?

15 A That was the Overseas Boston, yes.

16 Q You were the master of that ship?

17 A Yes.

18 Q When it says a diesel engine, did it have a slow
19 speed diesel?

20 A Yeah, that had a -- the engine in the Boston was a
21 slow speed diesel, eight cylinder. It was a Salser design
22 built in Japan, I think, under license from Salser.

23 Q Is that a similar type manufacture, the engine, as
24 the one on the Exxon Valdez, Salser?

25 A I believe Salser is in the -- I don't know for sure

1 that they made the one in the Exxon Valdez, but it would be
2 similar because it is a slow speed diesel, yes.

3 Q Maybe you can explain the difference so everybody
4 understands. I mean, there's different means of propulsion in
5 a ship. Steam turbine, right?

6 A Let's don't get too far into this because
7 engineering is not my -- you know, I am a deck officer and I
8 know a little about the engines, but I am not an engineer.

9 Q So as a master then you really don't have that much
10 responsibility over the engine and how it is run and how the
11 chief engineer runs the show down there?

12 A I think I stated that the chief engineer runs the
13 engine room, but that the problems in the engine room are
14 still under the master's authority as master of the vessel.
15 And unfortunately it is under his responsibility. You know,
16 they -- the master is responsible for everything that goes on
17 on the ship.

18 Q But certainly he would rely on the judgment of a
19 good chief engineer, would he not, one he is confident --

20 A Yes, yes; you would have to, yes.

21 Q He is in an area like you have just said, that
22 you're a little unsure, you don't know.

23 A Uh-huh.

24 Q Now, I don't want to ask you detailed questions
25 about this, just the basic difference maybe between the two.

1 A The difference between steam turbine --

2 Q Let's say a steam turbine and a slow speed diesel.

3 A Okay.

4 The diesel when you're maneuvering would respond
5 quicker. If you wanted to put the ship half ahead, say, it
6 would come up to half ahead much quicker than a steam turbine
7 will.

8 Q For instance, are you familiar with power curves,
9 horsepower, RPM power curves?

10 A I have seen -- I am not familiar enough to get into
11 that. I do know what you're talking about, but as far as
12 being able to answer any -- being an expert in that, no.

13 Q Okay, we might get a question or two a little later.

14 Right now you said that as a master on the -- you
15 worked for -- I forget the name, Maritime Overseas, is that
16 what it is?

17 A Yes. My -- Maritime Overseas was the first group of
18 ships, the overseas ships that I was on. And then I worked
19 for OMI Corporation, worked for the OMI Columbia.

20 Q That's a different company all together, right?

21 A Yes.

22 Q You said that Maritime overseas had a manual of
23 instructions for masters.

24 A They had instructions. I don't know if it was in a
25 manual form. I assume -- every company I have ever worked for

1 has had a notebook or a bound book or a book with instructions
2 of how they expect you to operate the vessel. Most of them
3 aren't as extensive with direct duties as the Exxon manual is.

4 Q When did you first see the Exxon manual?

5 A When this -- out on board the Exxon Valdez.

6 Q Uh-huh.

7 And what other companies have you worked for?

8 A I worked -- originally on my license I worked for
9 Victory Carriers, on the one freighter that I was on. I
10 worked for United Maritime out of New York, which is a tanker
11 company that is no longer in business. I worked for Maritime
12 Overseas. Worked for Central Gulf on one trip. I worked for
13 OMI Corporation for the last couple of years or so in the
14 Columbia.

15 Q And these manuals are guidelines, are they not?

16 A Oh, yes. That's --

17 Q Wouldn't you agree, sir, that it would be extremely
18 difficult for any company to lay down hard and fast rules as
19 to what a master should or should not do?

20 A Yes. They are merely guidelines and if you -- if
21 you want to do anything different than that, you certainly
22 have the authority as master to do something different than
23 that.

24 Q In other words the master has a lot of discretion in
25 his judgment, does he not? What to do, what not to do?

1 A The problem with this, he has the authority to do
2 that, yes, and he can do it at any time that -- the problem
3 that he would have is with the company saying, well, this is -
4 - in other words he can do it legally, but the company may
5 then say you are not following our guidelines and go from
6 there as an employee-company thing. But as far as legally,
7 the master has the authority to override the company
8 guidelines and do what he thinks is best for the vessel.

9 Q So the observance or non-observance of company
10 guideline or policy is certainly not a crime?

11 A Not that I know of, no.

12 Q In fact, there is no requirement by the State of
13 Alaska, for instance, that companies have to have rules and
14 regulations on how to operate a tanker vessel?

15 A I think for the Alaska trade they have -- I don;t
16 know now -- they are requiring certain procedures and plans in
17 certain instances -- and for emergencies and things. Now --
18 but that's just come up lately and I am really not familiar
19 with just what they are requiring.

20 Q You didn't look at any of those and evaluate any
21 state laws or regulations and how they may or may not relate
22 to this case?

23 A Not the -- I am not the attorney. My idea -- what I
24 was brought here for was to explain what a master should be
25 doing on a vessel.

1 Q Okay. Maybe -- I didn't mean to mislead you.

2 A Yeah, I am not quite -- understand --

3 Q That was my fault. You spoke about some -- and
4 frankly I didn't understand what your --

5 A Okay.

6 They are making -- they may even be in force,
7 manuals with guidelines on what to do in specific things in
8 the Alaska trade, and just what it is I don't know. So maybe
9 we had better just say I don't know on this.

10 Q Sounds fair; you don't know.

11 A Yeah.

12 Q Nor were you ever given any of these things to look
13 at and examine?

14 A No.

15 Q But you said that you were given particular -- well,
16 maybe you were or weren't. Particular laws or statutes by the
17 State to see how this case would fit within a particular
18 statute or didn't fit? Were you given that assignment?

19 A I wasn't given an assignment to see where it would
20 fit, no.

21 Q Were you given --

22 A The only thing I have ever got in that was in with
23 all of my notes that I got was a note explaining what reckless
24 meant and what a few other things meant. That's --

25 Q When did you first get that definition, sir?

1 A That i don't remember.

2 Q Some time ago?

3 A That would be in the after part of the investigation
4 that I received that, in the last -- in other words, it wasn't
5 when I first went on board the ship, it wasn't immediately.
6 It would be, I would say, in the last two times I have been up
7 here.

8 Q Oh, by the way, I am glad you mentioned that. When
9 you travel back and forth from you home up here, you are paid
10 in addition to your 30,000 or \$35,000?

11 A My expenses are paid, yes.

12 Q So your out of pocket expenses are paid by the State
13 of Alaska, right?

14 A Yes.

15 Q Anyway it's --

16 THE COURT: Would this be a good time for us to
17 break?

18 MR. MADSON: It wouldn't matter, your Honor, we have
19 a long way to go yet.

20 THE COURT: I figured so. Ladies and gentlemen, we
21 will release you until 8:15 a.m. tomorrow morning. As I
22 indicated to you earlier, there is considerable media
23 information being disseminated through the television,
24 newspaper and radio concerning this case, and I have
25 admonished you on several occasions to disregard any

1 information concerning the oil spill. And that is a broader
2 category than just this case. That would refer to any
3 information concerning anybody who might have been involved,
4 whether it would be the defendant in this case, the State of
5 Alaska, Alyeska, Exxon, anything concerning the oil spill is
6 off limits. So -- and I advised you earlier that as an
7 alternative if that instruction is too onerous and cannot be
8 followed, we always have the right of sequestration. That is
9 not necessary at this time according to counsel and so I won't
10 impose that, so long as I am satisfied that you can follow
11 that instruction.

12 I know it's a difficult instruction because you are
13 going to have to have somebody screen the newspapers, you're
14 going to have to avoid certain hours of television, and I
15 imagine almost every radio station has a little news blurb
16 every half hour, so I know it is difficult. But it is very
17 important for you not to be exposed to information in this
18 case.

19 So with that final reminder I am going to let you go
20 until tomorrow. Please don't discuss the case, don't form or
21 express any opinions concerning it.

22 I need to talk to counsel just briefly.

23 (Whereupon the jury exited the Courtroom.)

24 THE COURT: You may step down.

25 (The witness stands aside.)

1 THE COURT: Thank you.

2 How many more witnesses after this one?

3 MR. COLE: Four. Oh, five.

4 THE COURT: And do you expect to be completed by
5 Friday now? Is that a realistic approach?

6 MR. COLE: Thursday or Friday.

7 THE COURT: Thursday. All right then, would you be
8 prepared to start with your first witness on Friday if we got
9 finished on Thursday?

10 MR. MADSON: Your Honor, that has been one of the
11 difficulties we have been faced with here, is trying to figure
12 out, you know, when we are going to start. For instance, I
13 had an expert that could be here Friday but next week is going
14 to be very bad for him. So we were hoping to use him, and I
15 would hate to have him come here on Thursday for -- we don't
16 know, I guess we have just got to play it by ear. But to
17 answer your question, yes, we certainly would anticipate to do
18 that.

19 THE COURT: I was considering the possibility of, if
20 Mr. Cole finished the State's case on Thursday, leaving Friday
21 open for administrative matters concerning this case. There
22 might be some motions, anything else we might be able to -- to
23 do on Friday, and then let you start your case on Monday. But
24 if you had a witness you needed to call on Friday, we could do
25 that.

1 MR. MADSON: Your Honor, could we just kind of wait
2 and see on that. If there case ends up late on Thursday,
3 maybe that would be the best thing to do.

4 THE COURT: Would that be a problem, for the State
5 to do something like that?

6 MR. COLE: No.

7 THE COURT: Well, we will just play it by ear.

8 Is there anything else we can do now before we
9 recess for the day? I am asking you twice.

10 MR. MADSON: I feel comfortable in saying no.

11 THE CLERK: This Court stands in recess.

12 (Thereupon, at 1:31 o'clock p.m., the Court stood in
13 recess.)

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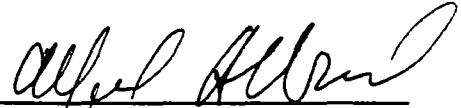
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SUPERIOR COURT)
STATE OF ALASKA) Case No 3ANS89-7217
Case No. 3ANS89-7218

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.


ALFRED H WARD
