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NUMBER OF PAGES (including cover sheet): 81 Part I

REMARKS:

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81 Part II

REMARKS:

21-50

sent per ~~CACI's~~ my request to CACI
Hearing transcripts re motion to quash subpoena
in Hayshood criminal action.

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STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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

Anchorage, Alaska

February 1, 1990

The above-entitled matter came on for hearing on motions before the Honorable Karl S. Johnstone, commencing at 8:02 a.m., on February 1, 1990. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

LEONARD M. LINTON, JR., Esq.

On behalf of the Defendant:

THOMAS RUSSO, Esq.

DICK L. MADSON, Esq.

MICHAEL CHALOS

PRO-TYPISTS, INC.

Professional Transcription Service

On behalf of United States Coast Guard:

R. MICHAEL UNDERHILL, Esq.
United States Department of Justice

EXHIBITS

COURT'S

IDENTIFICATION IN EVIDENCE

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P R O C E E D I N G S

(Tape No. C-3588)

THE COURT: You may be seated. We have two pending matters that we need to address before we resume jury selection. The first is the defense motion for a protective order, and related to that is a U.S. Coast Guard motion to quash subpoena duces tecum. Is a representative of the Coast Guard here?

MR. UNDERHILL: Yes, Your Honor, Mike Underhill, San Francisco Department of Justice, appearing specially on behalf of the United States and the Coast Guard commander, R. Michael Underhill.

THE COURT: Thank you, Mr. Underhill. Welcome to Alaska.

MR. UNDERHILL: Thank you.

THE COURT: Let's take up the motion for protective order first of all.

MR. MADSON: Yes, Your Honor, Mr. Russo's going to be arguing this motion.

THE COURT: Mr. Russo, good morning.

MR. RUSSO: Your Honor, good morning. Your Honor, may I have a request, please? I think it would be more appropriate if we argued the motion to quash first, insofar as the protective order, at least one of the most basic and important issues in the protective order, deals with the

1 refusal of the Coast Guard to give us certain material.
2 How we argue that may be contingent upon the Court's ruling
3 on the motion to quash.

4 THE COURT: Well, it makes no difference in which
5 order we take it. I'm going to take them both under
6 advisement anyway. I'm not going to give you an answer
7 today. The materials that just recently have been filed
8 raise some issues I need to address and I haven't had time
9 to get into them. So it makes no difference to me. I just
10 suggest we get going on the motions, flesh it all out now,
11 and I'll come up with a decision probably by tomorrow or
12 Monday. So why don't you go ahead. You don't want to go
13 first? You want the Coast Guard to --

14 MR. RUSSO: I would like to do the motion to quash
15 first, Judge.

16 THE COURT: Okay, that's fine. Mr. Underhill,
17 you're on.

18 MR. UNDERHILL: Thank you, Your Honor. Your
19 Honor, I don't have terribly much to add. We filed
20 extensive papers in a memorandum and I think that sets
21 forth the legal and factual issues fairly well.

22 What I would like to add, however, is that,
23 listening to some of the reports and press reports, it
24 sounds like the Government has simply thumbed its nose at
25 Mr. Hazelwood's counsel's subpoena. I'd like to clarify

5

1 that. That is not at all true. We have in fact given the
2 defense approximately somewhat over a thousand documents as
3 of, I think, earlier this week. Mr. Nelson, on behalf of
4 the Coast Guard, made arrangements to provide those
5 documents. That consists of roughly half of the total
6 documents that we think would be responsive to the
7 subpoena.

8 Furthermore, as to the issue of the tape
9 recordings, we believe, and I was speaking with Mr. Russo
10 just a minute ago, we think we've resolved that to the
11 satisfaction of the parties. The Government's concern was
12 that anything on the tape that would be subject to any
13 applicable privilege not be disclosed, and we've reached an
14 accord whereby the tapes will be transcribed by a court
15 reporter that will be considered an agent of the United
16 States for purposes of nonwaiver of any privilege. We will
17 read the transcript, we being the Government. If we feel
18 there is anything privileged, we will withhold that,
19 provide to the defense anything no privileged, and then
20 furthermore, I believe, subject to screening of any
21 privileged materials -- and I frankly don't think there's
22 going to be any privileged on the portions of the tape they
23 want. They want to have an expert listen to the tape, to
24 the audio itself, and I think we can accommodate on that as
25 well.

6

1 Further to clarify, Mr. Linton, he may wish to
2 argue this himself, but I think there's -- I don't want to
3 misshaped. Mr. Linton has made a list of documents that
4 were made available by the Coast Guard to the State of
5 Alaska, and in turn, those documents were made available to
6 the defense earlier on in this case, pursuant, I suppose,
7 to the criminal discovery rules of this Court. I just had
8 a chance to look at the list, but it goes on -- well, it's
9 well over a hundred documents, which frankly, are just
10 about everything, I think, that remains to be disputed that
11 we haven't provided pursuant to the subpoena. In other
12 words, the things they say we're not giving them, they've
13 got. And I'm also informed that the Coast Guard informally
14 has provided various other documents to Mr. Chalos, one of
15 the Defendant's other counsel, a long time ago without any
16 subpoena, just in order to cooperate as much as possible
17 and provide the defense as much as we felt we could
18 possibly give them and still maintain the sanctity of our
19 privileges.

20 THE COURT: Is it my understanding that you have
21 released documentation to the State of Alaska already that
22 you are now claiming a privilege for?

23 MR. UNDERHILL: Pursuant to their subpoena -- I
24 think it has to be clarified. Pursuant to the subpoena,
25 we've got concerns that go well beyond this case. We

7

1 think, as a policy matter, we cannot be compelled to
2 disclose the documents pursuant to a state court subpoena.
3 As a matter of trying to accommodate this Court and the
4 parties, as we do in other cases, we will, subject to
5 withholding for privileged materials, generally make them
6 voluntarily available, and that's what we have done. I
7 think that the basic legal issue here is preserving our
8 right to claim the sovereign immunity privilege in this and
9 other cases.

10 THE COURT: To some extent you've voluntarily
11 given up many of the documents that are the subject of
12 subpoena at this time.

13 MR. UNDERHILL: That's correct, both directly to
14 the defense before this case, directly to the defense
15 pursuant to the subpoena -- voluntarily, I add -- and
16 through the State, who then made it also available to the
17 defense. Those include witness interviews conducted by the
18 Coast Guard --

19 THE COURT: What don't they include? Let's get to
20 the matters that you haven't given to the State.

21 MR. UNDERHILL: Mr. Russo has made a list. It's
22 whittled down to this. I haven't actually gone through the
23 subpoena; I just got these. Mr. Russo believes that the
24 only categories in dispute presently are Items 1, 2, 3, 8,
25 15, 18, 19, and 24, and 24 is actually the tape and I think

8

1 that we have a resolution of that, and if that's in fact
2 the case, we have one, two, three, six, seven disputed
3 categories.

4 THE COURT: Now, when you're listing the numbers,
5 what are you referring to, what document are you referring
6 to?

7 MR. UNDERHILL: I'm listing the categories in the
8 subpoena themselves. In other words, there are, I think,
9 26 categories, and those numbers correspond to the
10 subpoena. And I think, just taking a quick look through
11 Mr. Linton's list, I think that in fact -- I'd really have
12 to compare this, Your Honor, but I think that most of the
13 things in Items 1 and 2 have probably already been provided
14 to the defense through the State, and I'd actually just
15 have to go -- and it appears, I think, Category 8, if I'm
16 not mistaken pertains to blood alcohol tests. Looking at
17 Mr. Linton's lists, the things that we have also have
18 already been provided to the defense through the State.

19 THE COURT: Let's take this up in the order in
20 which you've listed them. Number 1 says, "All notes,
21 summaries, reports, memoranda and tape recordings of
22 witness interviews conducted by Coast Guard investigators
23 relating to the grounding on March 24th, 1989." Are you
24 stating that you've provided all of that information to the
25 State?

9

1 MR. UNDERHILL: I can't say all of it, Your Honor,
2 I honestly cannot say. Taking a quick through the list,
3 look through the list, I believe that we have probably
4 provided them just about everything. The list includes
5 interviews -- by "the list", I'm talking about Mr. Linton's
6 list that he says has been provided to the defense. I
7 can't count them all, but it looks like there are 25,
8 possibly even 30, interviews and summaries that have been
9 provided already. I'd honestly have to look through this
10 list and compare them, Your Honor.

11 THE COURT: So it appears that most of them have
12 been provided. It's the "most of them" that gives me
13 concern. How can we determine whether all or less than all
14 have been provided to the State? If they have, then
15 there's no reason to deal with Number 1.

16 MR. UNDERHILL: I understand.

17 THE COURT: Or if they haven't, then we might have
18 to address it.

19 MR. UNDERHILL: I understand. I think that
20 somewhere, somewhere, we have to have some type of a list
21 or file that has the names of people interviewed, and it
22 would be simply a matter of checking the names on this list
23 against those lists and we'd be able to see whether all
24 have been provided or not.

25 THE COURT: Okay, well Mr. Linton is not actually

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1 participating in the jury selection process. He might be
2 available to compare your list with what he had. Would you
3 be able to do that?

4 MR. UNDERHILL: I could stay as long as necessary,
5 Your Honor.

6 THE COURT: Okay, if that becomes necessary to
7 require production of them, but I'm just trying to
8 determine if he has everything you have

9 MR. UNDERHILL: I understand.

10 THE COURT: If he does and he says he's given
11 everything to the Defendant, then that ends the Defendant's
12 question on Number 1 in my opinion. How about Number 2?
13 That says, "All notes, summaries, reports, memoranda and
14 tape recordings of witness interviews conducted by Coast
15 Guard investigators relating to Captain Charles Hazelwood."

16 MR. UNDERHILL: It's a guess, but it's a very
17 educated guess, Your Honor, that this actually is subsumed
18 in Category Number 1. I think we're probably talking about
19 the same thing. And if you take "relating to Captain
20 Hazelwood," I presume that includes not only interviews of
21 Captain Hazelwood but interviews of others pertaining to
22 any of his potential liabilities, so I would construe that
23 as being basically the same as 1, I think, and I would be
24 more than happy to make the same comparison.

25 I don't know if we have made available tape

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1 recordings, and in fact, I'm not sure whether we have tape
2 recordings, but I'd be glad to check on that as well.

3 THE COURT: Number 3, the same thing?

4 MR. UNDERHILL: I think that would partially be
5 subsumed in Category 1, again, although insofar as it --
6 looking at this, it asks for reports and memoranda
7 concerning possible violation of Coast Guard regs. or
8 statutes by crew members respecting the grounding. To me,
9 I suspect that we did not give the State all of that
10 because that very clearly in my opinion calls for
11 attorney-client privilege and also work product, and we're
12 not going to give that to anyone, and I think the law is
13 certainly clear on that. To the extent that it's subsumed
14 in Category 1, I believe it's been provided. I'll be glad,
15 again, to check and see if that in fact is the case.

16 THE COURT: Okay, now I think we're going to get
17 down to the essence of this now. Number 8, "The results of
18 all blood and urine tests taken of crew members of the
19 Exxon Valdez and Coast Guard, Department of Transportation,
20 personnel in connection with the grounding of the Valdez,
21 including chain of custody cards for samples submitted."

22 MR. UNDERHILL: I'm looking at Mr. Linton's list,
23 and under 16, it has "chain of custody samples, urine
24 samples," for one, two, three, four, five, six
25 individuals: Weidman, Kagan, who I know is a vessel crew

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1 member, Captain Hazelwood, Third Mate Cousins, Maureen
2 Jones, and Mr. Blandford. According to the State, that has
3 been made available to them, and it has in turn been
4 provided to the defense already. And I note the next
5 category, or pardon me, two categories down, there's a
6 Federal Express address form concerning blood samples, and
7 Category 18 is Compuchem, C-o-m-p-u-c-h-e-m, Laboratories
8 blood/urine test reports for the same six individuals, so
9 again, those have been provided to the defense through the
10 State.

11 THE COURT: All right, and then --

12 MR. UNDERHILL: I think what I'm saying, Your
13 Honor, I think that takes care of Category 8.

14 THE COURT: Do you have knowledge of whether there
15 were samples taken of any other crew members?

16 MR. UNDERHILL: I don't know, Your Honor, but
17 again, I'd be glad to check.

18 THE COURT: Okay. And Number 15, "Transcripts of
19 telephone conversations regarding blood/urine testing of
20 crew members of the Valdez and Coast Guard, Department of
21 Transportation, personnel."

22 MR. UNDERHILL: To the extent that that would
23 contain attorney-client privilege or work product, we would
24 not provide it. As a practical matter, I don't believe, I
25 don't believe we have any such transcripts anyway. I don't

13

1 believe, at least, that we do, Your Honor.

2 THE COURT: Did the Coast Guard take urine --
3 blood alcohol through urine or blood samples if Coast Guard
4 personnel?

5 MR. UNDERHILL: Everyone concerned, yes, Your
6 Honor.

7 THE COURT: Coast Guard personnel --

8 MR. UNDERHILL: Yes, Your Honor.

9 THE COURT: -- in the radar area?

10 MR. UNDERHILL: Yes.

11 THE COURT: Did you release that to the State?

12 MR. UNDERHILL: I recognize Mr. Blandford's name
13 as being one of the persons released, yes.

14 THE COURT: Besides Blandford?

15 MR. UNDERHILL: I don't know who else. I think
16 possibly Mr. Taylor. In any event, I do not believe that
17 we have transcripts on those yet.

18 THE COURT: How about Number 18?

19 MR. UNDERHILL: To the extent that would include
20 the BA tests provided already and discussed in Categories
21 16 and 18, I think that's been provided. To the extent it
22 would constitute attorney-client privilege or work product,
23 we would not make that available, and I suspect we did not
24 make it available to the State, nor would we make it
25 available to the defense.

14

1 THE COURT: Well, when you take a statement from
2 Taylor or Blandford, is it your opinion that's a work
3 product?

4 MR. UNDERHILL: Yes.

5 THE COURT: Do you take that same position if you
6 take a blood alcohol of Taylor or Blandford?

7 MR. UNDERHILL: Essentially, yes.

8 THE COURT: That that's work product?

9 MR. UNDERHILL: Yes.

10 THE COURT: All right.

11 MR. UNDERHILL: Again, I'm not even sure that --

12 THE COURT: And how about the personnel records of
13 Gordon Taylor and Bruce Blandford, did you submit them to
14 the state? That would be Number 19.

15 MR. UNDERHILL: I'm not -- ask Mr. Linton. Do you
16 know if we --

17 MR. LINTON: No, we do not.

18 MR. UNDERHILL: And as a matter of statute, we
19 would not to either side, and that's pursuant to Mr.
20 Blandford and Taylor's own Privacy Act rights.

21 THE COURT: And then Number 24 is the last one you
22 think there's a dispute on.

23 MR. UNDERHILL: That's correct, Your Honor. I
24 should also clarify, I think on that one we were
25 discussing --

15

1 THE COURT: Was Number 24 submitted to the State?

2 MR. UNDERHILL: No. To my knowledge, no. 24 I
3 should clarify. As I understand it, there's a short
4 portion of the tape that has been transcribed, and to the
5 extent that that exists, we have agreed to make that
6 available to the defense. I think we have. To the extent
7 there are any notes, handwritten notes, summarizing that,
8 we do claim work product on that. To the extent the rest
9 of the tape exists and has not been transcribed, we made
10 available or we are making available a means to resolve
11 that, and I suspect that, if there's any dispute about the
12 handwritten notes that have been withheld, once they get
13 ahold of the transcript, then I think that's rendered
14 moot. They can make their own notes if they want.

15 THE COURT: Mr. Linton, as to the numbers we've
16 gone through, do you have reason to believe that you have
17 less than all of the -- I know you're operating somewhat in
18 a vacuum, but do you have any reason to believe you have
19 less than all the items in Number 1 and Number 2?

20 MR. LINTON: Yes, sir, I do.

21 THE COURT: What don't you think you have?

22 MR. LINTON: I think there was an investigation by
23 the Coast Guard with respect to whether Mr. Hazelwood was
24 drinking in Valdez which was independent of the
25 investigation the Alaska state troopers ran. I wouldn't be

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1 surprised if we didn't duplicate witnesses in the course of
2 finding that, but I did not get reports of such interviews
3 by Coast Guard investigators, looking around Valdez to see
4 if there were any witnesses who could give testimony about
5 Captain Hazelwood's drinking, and I believe there was such
6 an investigator.

7 THE COURT: And anything else in Number 1 or 2
8 that you have reason to believe might be missing?

9 MR. LINTON: No, sir, those are the only things
10 that I know of, but once again, it's a vacuum. I mean,
11 those are things I've heard about and I suspect are out
12 there, but I have no reason to suspect there's anything
13 more than that. But it could just as well exist and I
14 wouldn't know it.

15 THE COURT: All right, the two of you will have to
16 get together and compare notes to see if anything's
17 missing, and I want to find out if it is missing, see what
18 the relevance of that missing material might be and then
19 I'll have to make a ruling on the Coast Guard's motion.

20 MR. LINTON: Very well, sir.

21 THE COURT: And that would be with regard to
22 Number 3 also.

23 MR. LINTON: Very well, Your Honor.

24 THE COURT: All right, let's hear the legal
25 argument of why you think that you don't have to produce

1 this, Mr. Underhill.

2 MR. UNDERHILL: Certainly, Your Honor.

3 THE COURT: I'm assuming that there are some
4 things, your work product statements of Blandford and
5 Taylor, that those are things that you are keeping and you
6 say you have not turned over.

7 MR. UNDERHILL: Yes. Well, actually I'm not
8 sure. I think in fact we may have turned over -- let me
9 check. Well, we've made available an interview of Taylor.
10 I don't see it here but I'd thought that we made available
11 also an interview of Blandford, and I'm again assuming that
12 an interview occurred.

13 THE COURT: Mr. Russo, do you have an interview of
14 Blandford?

15 MR. RUSSO: I don't believe so, Your Honor. A
16 copy of the Coast Guard interview of Blandford relative to
17 his actions on that night? I don't believe we have
18 anything like that.

19 MR. UNDERHILL: In any event, Your Honor, in
20 response to your question as to legal arguments, they are
21 really twofold: One is as a jurisdictional bar, the matter
22 of sovereign immunity, the Government cannot be compelled
23 to provide the documents pursuant to a state court
24 subpoena. The cases I think are very clear on that,
25 particularly in the Ninth Circuit, the Sweat versus Shenck

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1 case, the Borrock case in the Fourth Circuit, Sackett case
2 in the Ninth Circuit, and of course, the Touhy versus Ragen
3 case, R-a-g-e-n, the Supreme Court case, as well as another
4 Supreme Court case ruled upon early in the century that
5 make it extremely clear that, absent the waiver of
6 sovereign immunity, and there is none here, the Government
7 cannot be compelled to produce documents pursuant to the
8 subpoena.

9 The second level of that argument is the Coast
10 Guard, actually the Department of Transportation of which
11 the Coast Guard is a part, has promulgated what are
12 generically called the Touhy regulations, T-o-u-h-y, based
13 upon the Supreme Court case of the same name, which state
14 very clearly that the discretion as to whether to release
15 or not release documents pursuant to a subpoena in a case
16 in which the Government is not a party, rests with the
17 discretion of the chief counsel. Part 7 of 49 CFR sets out
18 various criteria by which the chief counsel is to decide
19 whether to release documents. Admiral Vorlock's affidavit
20 I think is very extensive, very reasoned. It provides the
21 reasons why some documents were provided, and on the other
22 hand provides very clearly the reasons why other documents
23 were not provided. As a practical matter, once that
24 discretion has been exercised, A, because of the sovereign
25 immunity, the only court that would have the power to

19

1 attempt to define whether the discretion was properly
2 exercised would be a federal court, and I think there's
3 even a footnote in the Ninth Circuit's Sweat versus Shenck
4 case which implies at least that it would properly be under
5 the Administrative Procedures Act in federal court. And
6 furthermore, even if they were in the proper court, i.e.
7 federal court, the standard of review of the Coast Guard's
8 actions, or actually the chief counsel's actions, would be
9 -- not be clearly erroneous, but it would be whether the
10 agency had disregarded its own standards, which I think in
11 this case clearly could not be shown to be the case.

12 So to sum up, for reasons of sovereign immunity,
13 because of the federal regulations promulgated by the
14 Department of Transportation, and Supreme Court and Ninth
15 Circuit case law, we cannot be compelled to do it.

16 But I again stress that we have attempted to
17 cooperate as much as possible in an even-handed manner to
18 both parties, both to the State and the defense in order to
19 make as many documents available as we possibly think we
20 can, yet retaining the privileges that we have to maintain,
21 simply because we know as a practical matter in this case
22 this is not the only lawsuit going on. The United States
23 has sustained damages. It has, as far as the license
24 revocation proceedings with respect to Mr. Hazelwood that
25 the Coast Guard has filed, they have stayed those pending

20

1 resolution of this action, so we have to look down the
2 road. And as to those documents not provided, those are
3 the reasons that we haven't, because we are looking further
4 to potential for further litigation, definitely at least on
5 the license revocation proceedings.

6 THE COURT: Was it the Government's intent not to
7 disclose the Blandford interview but to give the Taylor
8 interview?

9 MR. UNDERHILL: I have no idea --

10 THE COURT: Was that intentional or --

11 MR. UNDERHILL: Not to my knowledge, Your Honor

12 THE COURT: -- or was that just an oversight?

13 MR. UNDERHILL: I have no idea, one way or the
14 other. I suspect it was not intentional. I would have to
15 ask the Coast Guard people involved, Your Honor. I don't
16 know if the request was made for Blandford by the State. I
17 honestly don't know.

18 THE COURT: Was it made by the State, Mr. Linton,
19 for Blandford? I would think, of all the people, that
20 would be one that somebody would be fairly interested in.
21 He was the watch stander, wasn't he, at the time?

22 MR. LINTON: He was. I know we were permitted to
23 interview Mr. Taylor. It just escapes me right now whether
24 we were permitted to interview Mr. Blandford.

25 THE COURT: Mr. Blandford took the stand in the --

1 MR. LINTON: Mr. Blandford testified in these
2 proceedings, yes, sir.

3 THE COURT: -- omnibus and testified very
4 completely.

5 MR. LINTON: Yes, sir, plus at the National
6 Transportation Safety Board hearing.

7 MR. UNDERHILL: May I point out one more think,
8 Your Honor. I don't want to assume the role of an
9 advocate, as I think that properly belongs to the attorneys
10 for the parties in the case, but it has been expressed to
11 us, for example, requests for simulations of the Exxon
12 Valdez's track. In conversations with defense counsel, the
13 suggestion was made to them that that is our work product
14 and if they wanted a simulation, go out and hire one. It
15 was responded that they'd already done that, they just
16 wanted to compare notes.

17 I mean, in a lot of these things the same argument
18 can be made. If somebody wants to talk to somebody, don't
19 rely upon our witness interviews; go out and interview the
20 witness or call them as a witness, and I presume, and I
21 understand in fact, that they have subpoenas out or are
22 going to subpoena various Coast Guard witnesses. Ask them
23 the questions directly. That's why you do it, rather than
24 rely upon another attorney's or a party's work product, and
25 that goes all the line down through this thing, and I think

22

1 at some point too it has to be recognized, and it was
2 stated at least implicitly to us, if not explicitly, that
3 part of the purpose for doing this was to gain a strategic
4 advantage in this case, knowing full well that we are not
5 about to disclose, in the most extreme example,
6 attorney-client privilege documents. No party would. The
7 defense certainly wouldn't, we wouldn't expect them to, and
8 I'm sure the State wouldn't.

9 To take that argument, knowing we wouldn't
10 disclose all documents because we could not, that that
11 would form the basis to dismiss, again that's not for us to
12 resolve, but to be put in this position and having people
13 say that we're not cooperating when we have bent over
14 backwards, it troubles me somewhat.

15 THE COURT: One more inquiry for you, Mr.
16 Underhill. Can the Government waive their claim of
17 sovereign immunity?

18 MR. UNDERHILL: Having made a lot of sovereign
19 immunity arguments, the answer I think is yes, but
20 qualified by stating that Congress has to do it. The best
21 example I can give, there's case law, including Ninth
22 Circuit and Supreme Court, on it, Your Honor, and the
23 typical situation is where there's a statute of
24 limitations. The Suits in Admiralty Act, for example, has
25 a two year statute of limitations, and that's the kind of

23

1 work I do. We've had situations arise where a Government
2 attorney has written a typical letter, saying that, "You,
3 Plaintiff, have an extra 60 days beyond the statute to file
4 suit," put in a letter. Later on it turns out, the
5 Government attorney did not have the authority, as an agent
6 of the Government, to waive the Government's sovereign
7 immunity. Although it seemed harsh and I'd say unfair,
8 that was the result of the case law. So the answer is we
9 do not, that is I do not. For that matter I do not believe
10 the Coast Guard has the authority to waive sovereign
11 immunity; only Congress can do that in a law signed by the
12 executive, and that has not been done in this case.

13 THE COURT: When you release information to the
14 State voluntarily, isn't there an argument of waiver that
15 can be made there?

16 MR. UNDERHILL: I think that to the extent that
17 any documents have been disclosed, then I think yes, I
18 think that to the extent those documents exist, and I would
19 direct the Court's attention to a Ninth Circuit case cited
20 in the Government's brief.

21 THE COURT: If that's the case, Mr. Underhill,
22 then what's to prevent this Court, based on your statement,
23 yes, to order you to produce all those documents to the
24 Defendant?

25 MR. UNDERHILL: Are you talking about the

1 documents that have been produced to the State?

2 THE COURT: Yes.

3 MR. UNDERHILL: I don't think we have any problem
4 with that. I mean, if the defense wants to duplicate
5 them --

6 THE COURT: Okay, I thought earlier you said you
7 were here just because of the sovereign immunity issue,
8 that they can get them from the state but you needed to be
9 here to protect the Government's interest by asserting
10 sovereign immunity to that, but it was a voluntary thing
11 you did for the State.

12 MR. UNDERHILL: And for the defense. We have
13 voluntarily done it for them too.

14 THE COURT: Okay.

15 MR. UNDERHILL: The case I was citing, it's a
16 Ninth Circuit case in here, to the extent that the issue in
17 fact was where documents had been produced, the extent of
18 whether the privilege had been waived, and it said,
19 "Certainly as to those documents that were produced, it
20 has, but a blanket waiver of the privilege did not occur."

21 THE COURT: ... Okay.

22 MR. UNDERHILL: Thank you, Your Honor.

23 THE COURT: Mr. Russo? Mr. Russo, this motion
24 really pertains to -- I want to narrow it as much as I
25 can. You have a motion for a protective order in relation

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1 to blood alcohol evidence, and I've been advised today that
2 the State has received a chain of custody information and
3 then the laboratory reports on at least six persons. Is
4 there additional information which exists regarding blood
5 alcohol or Captain Hazelwood?

6 MR. RUSSO: Your Honor, that's precisely the
7 question. We don't know what additional information, if
8 any, may exist in the possession of the Coast Guard. We
9 have specifically asked them for not only blood alcohol
10 tests relating to other crew members, but we've also
11 specifically asked them, pursuant to the subpoena, all
12 information relative to Captain Hazelwood's blood test.

13 Now, I realize and I respect what Mr. Underhill
14 has said relative to the fact of the Coast Guard's given
15 certain documents to the State and the State has given
16 those documents to us. But what assurance do we have that
17 there aren't additional documents or additional information
18 out there relative to this test which we don't have? The
19 purpose of this subpoena was to insure that if there is any
20 additional documents or information that we get it.
21 Clearly, the cornerstone of the State's case against
22 Captain Hazelwood rests on the blood alcohol test
23 administered by the Coast Guard. We want this Court to
24 enforce this subpoena so that Captain Hazelwood is assured
25 that he has all of the relevant information that's in the

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1 possession of the Coast Guard relative to that test so that
2 he is in a position to competently and adequately cross
3 examine the various witnesses that we anticipate are going
4 to be called relative to how that test was conducted.

5 I know, for instance, just based upon what we have
6 already, that there was more than one vial of blood taken
7 from Captain Hazelwood. I think the testimony of Mr.
8 Conner was that he drew three vials of blood. I'd like to
9 know where all those vials of blood are. In addition to
10 that, there were an equal number of vials drawn from the
11 other crew members. I'd like to know where they are. I'd
12 like to know how they were packaged; I'd like to know who
13 had possession of them; I'd like to know where they were
14 after they left Conner's possession. He testified that he
15 put them in the messhall refrigerator next to the lettuce,
16 according to my recollection. These are all things that we
17 feel may be in the possession of the Coast Guard which we
18 don't have.

19 Your Honor, I think, in starting this argument
20 seized upon exactly what the purpose of this subpoena was,
21 for us to make sure that we had everything that the Coast
22 Guard has on these particular categories. Our feeling
23 about it is, Judge, and I think that your position on this,
24 at least as far as you seem to indicate your position is,
25 that when the Coast Guard produced these categories of

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1 material to the State, they waived any claim of privilege
2 for those categories of material. Now, you noticed I used
3 the term categories as opposed to specific items. In other
4 words, I don't think the Coast Guard can waive its
5 privilege only insofar as turning over incriminatory
6 material to the State and withholding exculpatory
7 material. If they turn over witness interviews, if they
8 turn over blood tests, they have to turn over everything
9 that they have relative to that so that we can see it. If
10 they don't turn it over, we're at a disadvantage when it
11 comes time to cross examine the witnesses and to evaluate
12 the evidence.

13 We certainly don't want to get into a situation in
14 this case, Your Honor, where somewhere in the future,
15 pursuant to discovery, whether it be a Coast Guard license
16 revocation proceeding or a civil case, we uncover
17 additional evidence that the Coast Guard has been
18 withholding which is exculpatory. Then perhaps we may have
19 to come back and move for a new trial based on newly
20 discovered evidence because we couldn't discover that
21 evidence through due diligence.

22 The purpose of this is to get all of the evidence
23 that we need now so that all of these issues can be
24 resolved at trial.

25 THE COURT: Do you dispute the sovereign immunity

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1 claim or do you dispute the work product claim or the
2 privilege claim?

3 MR. RUSSO: Well, I do. I dispute the sovereign
4 immunity claim.

5 THE COURT: Do you have case authority to support
6 your dispute?

7 MR. RUSSO: Well, Your Honor, I'd like to first of
8 all cite Mr. Underhill's statement that he concedes that
9 the Government has waived sovereign immunity insofar as
10 those items that they have turned over to the State. Our
11 position is that the sovereign immunity has been waived for
12 those categories of items, and the items in dispute are all
13 categories of items that have been disclosed to the State,
14 so therefore, our position is that, once you open the door,
15 you have to open it all the way; you can't just say, "I'll
16 give you this and I'll give you that and the rest I'm going
17 to keep."

18 THE COURT: Well, do you have any support for that
19 statement, any legal authority, besides your statements?

20 MR. RUSSO: Your Honor, I do have some cases
21 dealing with waiver of privilege in FOIA-type situations.
22 I have a case which I will cite to you. The case is North
23 Dakota versus Andrus, and the cite is 581 Fed 2d 177, and
24 that's the Eighth Circuit. Basically, that case stands for
25 the proposition that a voluntary disclosure of material to

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1 an adverse party by the federal government waives an
2 argument that the material is exempt or privileged under
3 FOIA. I submit that the same reasoning should apply to
4 this case.

5 Additionally, I have another case --

6 THE COURT: What was that? Can you just give me
7 an idea, was that a evidence question?

8 MR. RUSSO: It was material which the federal
9 government disclosed to the Audubon Society and refused to
10 disclose to the State of North Dakota. I do not know
11 specifically what the material was, but the federal court,
12 the Eighth Circuit, made a decision saying that, because
13 the federal government had voluntarily disclosed this
14 material which would otherwise be privileged to an adverse
15 party in a pending state suit between North Dakota and the
16 Audubon Society, North Dakota was entitled to the
17 information as well. In other words, you can't just give
18 material to one party voluntarily and then assert privilege
19 when it comes to giving it to the other party.

20 THE COURT: Did they address the general category
21 or did they address specific information that had earlier
22 been released to the Audubon Society?

23 MR. RUSSO: Specific information had earlier been
24 released voluntarily by the United States to the Audubon
25 Society.

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1 THE COURT: And it was a privilege question they
2 were dealing with?

3 MR. RUSSO: Yes. Now, one other case that I have
4 that is analogous to this is Peck versus the United States,
5 and that's at 514 Fed Sup 210, and that's a case out of the
6 Southern District of New York. Basically, that's a
7 situation where the federal government released a summary
8 of a report dealing with a civil rights violation by an
9 informant to the FBI. Apparently this was an informant who
10 penetrated the Ku Klux Klan and may have participated in a
11 beating of some civil rights workers. The Government only
12 would supply a summary of that particular report, and this
13 case holds that voluntary disclosure of a significant
14 portion of a privileged communication waives the privilege.

15 Now, I believe that these cases are on point
16 insofar as reinforcing the proposition that the Coast Guard
17 cannot selectively give certain information to the Coast
18 Guard and then claim that all other information in that
19 category is privileged. I think that, in the interests of
20 fairness and in the inherent powers of this Court, which
21 has jurisdiction over this trial, it's incumbent upon the
22 Court to see to it that all the relevant evidence that
23 Defendant would normally be entitled to is made available
24 to him.

25 If I may, I'd just like to add a couple of other

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1 things, just a point of clarification relative to the
2 understanding regarding the tapes, Your Honor?

3 THE COURT: Sure.

4 MR. RUSSO: I think we have an understanding with
5 the Coast Guard that will solve the problem. I'd just like
6 to articulate it so that the Court understands what it is
7 and there's no misunderstanding between us.

8 Basically, we have asked for access to whatever
9 inbound or outbound tapes the Coast Guard may have dealing
10 with the Exxon Valdez. Specifically, we want to have
11 access to the original tapes dealing with Captain
12 Hazelwood's conversations with the Coast Guard as recorded
13 on the radio. This process that we're going through now is
14 designed to clear the way for that. My understanding from
15 reading the response is that the Coast Guard has no
16 objection to the defense having access to Captain
17 Hazelwood's conversations but is transcribing the tape to
18 see if there are any other conversations on there which may
19 be privileged. Is that correct?

20 MR. UNDERHILL: That's correct.

21 MR. RUSSO: All right. So assuming that that is
22 done expeditiously, Your Honor, and we have an opportunity
23 to have our expert listen to the tape, I don't think there
24 will be any problem with Paragraph 24

25 THE COURT: What's the timing on that, Mr.

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1 Underhill? Do you have any idea how long it might take?

2 MR. UNDERHILL: I think that the tape was flown to
3 Juneau. There are only a few machines that can play this
4 tape. They don't want to use the one in Valdez because
5 they need that for vessel traffic. It was flown up, I
6 believe, to Juneau yesterday, and I haven't been involved
7 in the actual setting of this up, but I understand that
8 arrangements with a court reporter have already been made,
9 I believe.

10 THE COURT: So we're looking at early next week at
11 the latest?

12 MR. UNDERHILL: I presume, yes, sir.

13 MR. RUSSO: That should be fine.

14 THE COURT: Okay.

15 MR. RUSSO: Your Honor, I would have an additional
16 request. I notice that Mr. Underhill has a list, which I
17 assume was provided to him by the District Attorney
18 regarding items that were received by the District
19 Attorney. I would request that we be given a copy of
20 that. Is that possible?

21 MR. LINTON: I thought I had.

22 THE COURT: Sure, sure you can get a copy.

23 MR. LINTON: I put a few things on your desk this
24 morning and I thought this was one of them.

25 THE COURT: Mr. Linton, are the items contained on

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1 that list all items that have been made available to the
2 Defendant?

3 MR. LINTON: Yes, every item on that list has been
4 made available to the Defendant.

5 THE COURT: Let's mark this for identification.
6 Mr. Linton, why don't you come on up after we mark this and
7 make sure it's the same document. We're going to make this
8 part of the record.

9 MR. LINTON: Yes, and I have copies of each of the
10 documents described and would be happy to have that marked
11 as an exhibit as well.

12 THE COURT: This will be a Court exhibit and why
13 don't you mark it right now and give it to Mr. Linton so he
14 can look at it.

15 (Court's Exhibit 1 was
16 marked for identification.)

17 MR. LINTON: Just so that people don't read into
18 it more than is there, the first 70 items that are listed,
19 1 through 70, are listed as items received from the Coast
20 Guard. That means that they are things that are either
21 received physically from the Coast Guard or are interviews
22 of Coast Guard personnel by the state troopers; that is we
23 were given permission to go interview Coast Guard
24 personnel.

25 There's a list of items that are described as

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1 interviews and the particular agency interviewing the
2 person is designated thereafter AST 3-27. That means it
3 was an Alaska state trooper interview on March 27th. Later
4 there's one, FBI 4-6-89, meaning an interview by the FBI,
5 4-6-89, and USCG, United States Coast Guard, 3-24-89. The
6 purpose, they are listed there not with the idea that those
7 came from the Coast Guard or are of Coast Guard personnel.
8 They are to illustrate how wide an investigation has been
9 done by a combination of the Alaska state troopers, the FBI
10 and to the extent that we've been given Coast Guard
11 materials, the Coast Guard, to lay a foundation for an
12 argument that the defense has enough -- in the event that
13 things can't be resolved between the defense and the
14 federal government, that the State can show the Court that
15 defense has enough to adequately prepare itself through
16 these interviews and through this medium.

17 The last page is headed Other Documents and
18 Records, and they are in the same nature. That is, these
19 are not things that came from the Coast Guard but are
20 things that are of the nature of things in many instances
21 that was asked of the Coast Guard; for example, medical
22 records of crew members. Well, medical records of crew
23 members maintained by Exxon as to Mr. Kagan, Mr. Hazelwood,
24 and Mr. Cousins, for example, was furnished. So if they
25 don't have them from the Coast Guard, they have some from

1 the --

2 THE COURT: Why don't the two of you identify this
3 as being the -- this is Court's Exhibit 1 -- and verify
4 that that is the document that has been given to Mr. Russo,
5 and that's a document you're indicating contains materials
6 that have been provided to the Defendant.

7 MR. LINTON: Yes, sir, every one of them.

8 THE COURT: Okay, any objection to admitting 1 to
9 this proceeding, Mr. Russo?

10 MR. RUSSO: I have no objection to its admission,
11 Judge insofar as this was the document that was given to
12 us. I have not, of course, had an opportunity to look at
13 it to determine --

14 THE COURT: I'm not saying that you have. I'm
15 just admitting it as an exhibit, and based on Mr. Linton's
16 statement as an officer of the Court that this has all been
17 provided to you, and if you dispute that, you can bring
18 that to my attention later on. But I'm assuming that it
19 has been provided to you because of the representation
20 until I hear differently.

21 Okay, anything else you want to add? We're
22 dealing now with the motion to quash.

23 MR. RUSSO: I realize that. Your Honor, I think
24 I've covered the main points that I wanted to cover, and I
25 think I'll rely on the Court's discretion to decide the

1 motion.

2 (Court's Exhibit 1 was
3 received in evidence.)

4 THE COURT: If you discover any other cases that
5 are in your opinion on point that would deal with a
6 voluntary disclosure to the State of certain information
7 resulting in a waiver of the category, I'd appreciate
8 knowing that. There is some disclosure of information here
9 that the Government might have been able to claim sovereign
10 immunity, privilege, work product, and any other case you
11 can find for me I'd appreciate.

12 MR. UNDERHILL: Your Honor, may I give you a
13 cite? I haven't read or at least I don't recall the North
14 Dakota, Eighth Circuit, Andrews case, nor the Peck case.
15 Without reading them, my guess is is that they are not
16 sovereign immunity cases; they go to the scope of whether a
17 privilege has been waived, and that's really the second
18 step of the analysis. The first question Your Honor asked
19 was as to sovereign immunity. I suspect these cases do not
20 respond.

21 As to the issue of waiver of privilege itself.
22 There is a case on point. It is the Ninth Circuit and it
23 was last year. It's cited at page 12 of our memorandum on
24 a different issue. It's Mobil Oil Corporation versus the
25 EPA, 879 Fed 2d 698, Ninth Circuit, 1989, and I believe

1 there were, if my memory serves me correctly, four
2 documents that had been disclosed, whether inadvertently or
3 purposely I don't recall, and the issue was whether the
4 Government -- it's a FOIA case -- was whether the
5 Government had waived the blanket privilege, whatever the
6 claim of privilege was. The answer was, as to those
7 documents themselves, obviously, yes; as to the broader
8 category of documents, no. So I think that would be
9 controlling in this Circuit.

10 THE COURT: Mr. Linton, do you want to be heard on
11 this particular issue at this time?

12 MR. LINTON: No, Your Honor, I would state that
13 because our rules of discovery are a little different and
14 more loose here in Alaska, when we have received things
15 from the Coast Guard we have supplied them to the defense
16 directly, so there have not been things that have been
17 withheld by us.

18 THE COURT: Well then, the thing that needs to be
19 done is that Mr. Underhill and yourself need to go over the
20 categories that appear to be in dispute, and Mr. Russo, was
21 that an accurate recitation of the categories: 1, 2, 3, 8,
22 15, 18, 19, 24, that seem to be in dispute?

23 MR. RUSSO: Yes, Your Honor.

24 THE COURT: Okay, so Mr. Underhill and Mr. Linton
25 can get together and verify what has not been supplied, and

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1 maybe you can at that point indicate the reason, if it's a
2 privilege, work product, and it will be under the general
3 category of sovereign immunity.

4 MR. LINTON: Very good.

5 THE COURT: And then we can take that up later,
6 and we'll come up with a time here in a moment of when
7 we'll take up.

8 MR. LINTON: Certainly.

9 MR. UNDERHILL: Your Honor, I can wait in the back
10 of the courtroom or come back at a time, if Your Honor
11 wishes, or whatever is --

12 THE COURT: I thought we'd take it up some time
13 next week, Monday afternoon probably. We're going to be
14 doing opening statements, presumably, Monday morning. We
15 might have Monday afternoon or Tuesday afternoon available
16 to do this. I don't expect that opening statements will
17 take all day. It will probably take half a day or so.

18 MR. UNDERHILL: Just a personal problem. I'm
19 scheduled to be back in Pennsylvania on a deposition that
20 I've subpoenaed a witness next -- I fly out of San
21 Francisco Tuesday. If need be, somebody else could come.
22 I'm fungible.

23 THE COURT: Okay, if you're fungible and somebody
24 else can come in your place, that's not going to be a
25 problem.

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1 MR. UNDERHILL: What I was going to request, is
2 there a time we could do it earlier, if possible? Since I
3 argued this much I prefer to finish it out, but if the
4 Court can't do it, I do understand.

5 THE COURT: Well, how long would it take you to
6 figure out what you've given the State and what you haven't
7 given the State?

8 MR. UNDERHILL: I've got nothing else to do
9 today. It really depends on whether I could find somebody
10 from the State, or tomorrow, for that matter, I could do
11 it.

12 THE COURT: Well, we could do it at 4:00 o'clock
13 today or 4:00 o'clock tomorrow.

14 MR. LINTON: I'm easy.

15 THE COURT: All right, let's do it at 4:00 o'clock
16 tomorrow then.

17 MR. LINTON: Okay.

18 MR. UNDERHILL: Thank you, Your Honor.

19 THE COURT: You're still on, Mr. Russo. Now we're
20 talking about the other motion.

21 MR. RUSSO: Your Honor, this is a motion for a
22 protective order. In order to expedite this, I'd like to
23 rely on the brief relative to points 1 and 4 on this
24 motion. And I do have a few things I'd like to say orally
25 about points 2 and 3.

40

1 THE COURT: Okay, 1 and 4 is the fatal variance
2 and then the timeliness of it?

3 MR. RUSSO: One concerns the issue of whether
4 blood alcohol can be introduced at the trial as evidence of
5 recklessness.

6 THE COURT: Okay, I have it in different order,

7 MR. RUSSO: I'm reading from the actual motion,
8 Judge, Paragraph 1. Paragraph 4 deals with the chemical
9 test in question was not administered within the time
10 period required by statute.

11 THE COURT: Number 1 suggests that, since it
12 wasn't presented to the grand jury there's a fatal
13 variance. Is that what you're suggesting?

14 MR. RUSSO: Yes.

15 THE COURT: Okay. That's what I said. And then
16 the timing of it is Number 4.

17 MR. RUSSO: Correct.

18 THE COURT: Okay. Okay, we'll submit that on the
19 brief. Do you wish to have argument on those two, 1 and 4?

20 MR. LINTON: No. I would point out one thing with
21 respect to point Number 1 that I didn't include in my
22 brief, Judge, and that is that evidence of alcohol on the
23 breath of the Captain was introduced at grand jury, so it
24 wasn't like the matters before the grand jury were wholly
25 silent on the alcohol point, but I have nothing else to

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1 add, so that it isn't like alcohol is being introduced for
2 the first time, would be introduced for the first time at a
3 trial, not having been presented at all to the grand jury.
4 It is true that the blood alcohol test results and the
5 evidence of the taking of a sample was not introduced
6 before the grand jury, but some evidence of drinking was.

7 THE COURT: All right.

8 MR. LINTON: Otherwise, I'd rest on points 1 and 4
9 on the brief.

10 THE COURT: Okay, they're submitted on 1 and 4.
11 Your application is denied on 1 and 4. I'm prepared to
12 make that ruling at this time and I'm so doing.

13 Now we can go to the other two if you wish to have
14 argument.

15 MR. RUSSO: Your Honor, these other two are
16 somewhat related to the issue that we just discussed
17 relative to the Coast Guard's compliance with our
18 subpoena. This protective order relative to these issues
19 is predicated upon the proposition that, if the Coast Guard
20 fails to comply with out subpoena and does not in fact turn
21 over what we consider to be vital evidence necessary to the
22 defense of Captain Hazelwood, that the State should in fact
23 be precluded from using that evidence at trial. The theory
24 behind that, Judge, I think is a fundamental theory of
25 fairness in that I can't see how the State can benefit from

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1 evidence that it derived from the Coast Guard, for instance
2 the blood test, the cornerstone of their case, without the
3 Defendant having equal access to that source of
4 information. The Coast Guard, in its brief on the motion
5 to quash and also in oral argument, has raised the document
6 of sovereign immunity as being an absolute bar to their
7 having to comply with the State's subpoena. Our position
8 on that is that if in fact it is an absolute bar and we are
9 not entitled to access to what they have, then the State
10 should not be entitled to access to what they have.

11 THE COURT: Are you arguing equal access or are
12 you arguing unequal access? The State said that they've
13 given you everything that have had, which would seem to say
14 equal access.

15 MR. RUSSO: Well, no, I'm saying that on the face
16 of it, Judge, it may appear that it's equal, but we don't
17 have any assurance that it's equal. We don't know what
18 they haven't given the State. I'm not implying that the
19 State has held back anything from us. I would hope and
20 expect that they have given us everything that they have
21 relative to the Coast Guard test, but what I'm saying is
22 that there may be a lot of other information out there
23 relative to this test which the State doesn't have and that
24 we're entitled to before the State should be able to
25 introduce the evidence which it does have from the Coast

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1 Guard. I suppose what I'm fearful of, Judge, is a
2 situation where the Government, the United States, has
3 given only the incriminatory evidence to the State and has
4 withheld other evidence which may be exculpatory to Captain
5 Hazelwood. We have no way of knowing that at this time
6 unless we get some certification of compliance by the State
7 that they have in fact turned over everything. All Mr.
8 Linton can say is that he's turned over what the State has
9 given us.

10 THE COURT: Just a minute, Mr. Russo. You've got
11 a certification of Mr. Linton that he has turned over
12 everything the State has. Now, that's good enough for this
13 Court. It may not be good enough for you, but that's good
14 enough for this Court. Now, there may be some things that
15 he doesn't have that the Coast Guard is retaining. That's
16 what the issue here, I think, is. When he said he's given
17 you everything that the Coast Guard gave him and he's got
18 that box right there in front of him and he's got a
19 document that's been made an exhibit, that's good enough.
20 Now, what you're asking for is what he hasn't got and
21 you're saying that he should be precluded from presenting
22 what he does have because we don't know if there's some
23 exculpatory evidence that's been retained by the Coast
24 Guard. Now, am I summarizing that correctly, or are you
25 suggesting maybe he's having --?

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1 MR. RUSSO: Well, to a large extent you are
2 summarizing it correctly, except for one thing, and that's
3 the rationale behind my argument, and the rationale is
4 that, if Your Honor permits this, we're going to be in a
5 position where he's going to be using evidence which was
6 given to him by the Coast Guard and we're not going to be
7 able to cross examine that evidence adequately because we
8 cannot get to the source of that evidence. It's sort of
9 like a screen or filter, so to speak, whereby he's only
10 been given certain information and maybe not given other
11 information, and he bases a prosecution on that and is
12 allowed to use that evidence. All we want to do is to go
13 to the source to make sure that we have everything relative
14 to that information so that we can cross examine that
15 source, that we can cross examine whoever is going to be
16 brought forth to establish a chain of custody, so that we
17 can cross examine the laboratory technician. It's a very
18 simple type of thing. All we're saying is that if the
19 Government is not going to allow us access to that source,
20 the State shouldn't be allowed to derive its main evidence,
21 its cornerstone of evidence, from the source that we're
22 excluded from. That's all I have to say on it.

23 THE COURT: Okay, let's go to Number 2, your
24 argument on Number 2 that the blood test information seized
25 from the United States Coast Guard was not lawfully

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1 obtained. Now, I assume you mean the blood test seized by
2 the United States Coast Guard. Is that what you're saying?

3 MR. RUSSO: No, no, I'm talking about the blood
4 test that was seized by the Government, meaning the State
5 of Alaska.

6 THE COURT: From the -- okay.

7 MR. RUSSO: If the Coast Guard's argument is
8 correct, and you'll have to -- and I apologize for this.
9 We were not totally familiar with what the Coast Guard's
10 position was going to be until very recently when they
11 submitted their memorandum and now have argued their case.
12 But on the hypothesis that the Coast Guard is saying that
13 the State is not even entitled to that, then in fact if
14 they had seized this blood test evidence and sought to
15 introduce it into evidence, it would be unlawful. And
16 certainly from their brief they seem to be saying that any
17 disclosure of this blood test information was in fact
18 precluded under the doctrine of sovereign immunity or under
19 various CFR sections.

20 Our position on that is, if that's the case, then
21 what's the State doing with it? They should be precluded
22 from having it as well, and if they do have it it means
23 they got it unlawfully and they shouldn't be able to
24 produce that in evidence.

25 THE COURT: Okay, Mr. Linton?

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1 MR. LINTON: Judge, we have provided chain of
2 custody cards; of course, they've heard of testimony of
3 Scott Conner, they've heard how he drew the samples; we've
4 provided by way of discovery chain of custody cards that
5 take it to California; we have supplied a copy of the
6 transmittal, the Federal Express address form that was used
7 to transmit it to the laboratory in California; and we have
8 provided the lab reports of Michael A. Peat, Ph.D., the
9 director of the Compuchem Laboratories, as to six
10 individuals, that is as to four crew members and then as to
11 Mr. Blandford and as to a Mr. Weidman, a Coast Guard
12 employee. That's all anybody -- that's more than a lot of
13 people get in a lot of cases.

14 If there are questions about where the vials are,
15 then they can call the lab and say, "Well, how many
16 vials?" They haven't said they wanted to test the vials.
17 They haven't asked, "Where is their extra blood? Can we
18 test them? Can we get an independent test?" That not
19 their claim. I don't hear that claim at all being asked.
20 There's some statement about, "Well, what happened to each
21 of the vials?" Well, we don't have to, under Rule 16,
22 create statements and bring them in here. We have
23 identified the witnesses who have participated in drawing
24 the blood, in transmitting the blood, testing the blood,
25 and if there are questions about individual steps that were

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1 taken, that's fully appropriate for them to address those
2 people and say, "Hey, when, Doctor, you did this test, did
3 you take notes when you calibrated whatever instrument that
4 you used to test the blood on?" He may have, he may have
5 not, he may not have. I don't happen to know. I haven't
6 been supplied with them. But there's no claim at this
7 point that that's a problem, that they have called the
8 doctor asking about those things and been told that he is
9 refusing to give them. I don't see any obligation for us
10 to go find each of the things that may exist in that form.
11 Are there other records of Federal Express somewhere which
12 back up the fact that they were transmitted by the Coast
13 Guard to the laboratory in California? There may well be,
14 somewhere in the bowels of Federal Express, such a record.
15 They're free to go find it if they really want to contest
16 that, and there's no indication that that's really what
17 they want. We've complied with what Rule 16 requires as to
18 the blood test and the test results.

19 I'm not sure I understand the rest of the
20 argument. It struck me as a little bit of sophistry.
21 Somehow, if someone accidentally violated the federal
22 government's sovereign immunity and gave us the records of
23 the blood test and we gave it to the defense, then we can't
24 use it because that employee of the federal government
25 acted outside the scope of his authority and then therefore

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1 it's illegal and you can't use illegal stuff. That's not
2 the way I've ever heard anything work. The question is
3 does the Defendant have a fair chance to meet the State's
4 evidence, and he's got what he needs to fairly meet the
5 State's evidence on the blood alcohol point.

6 THE COURT: Do you wish anything further?

7 MR. RUSSO: I'd just like to say, Judge, we're
8 certainly not asking the State to create any evidence;
9 we're merely asking for access to evidence that may or may
10 not exist to find that out, and certainly, I think if the
11 State comes into possession of unlawful evidence, it's a
12 well known tenet of criminal law that they should not be
13 able to use evidence obtained unlawfully. I suppose, for
14 instance, if they seized evidence or got evidence pursuant
15 to an unlawful search warrant, they wouldn't be able to use
16 that. So if the evidence was derived unlawfully, they
17 should be precluded from using it in this trial. I have
18 nothing further. Thank you.

19 THE COURT: I'll take this under advisement. I
20 would like to know from Mr. Underhill if there's any blood
21 alcohol information that has not been turned over to the
22 State. If all of the information that was received by the
23 Coast Guard was turned over to the State, then we don't
24 have a problem, the Defendant has it all. If there is some
25 that the Government still has, I'd like to know what the

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1 information is. You don't have to turn it over unless it's
2 otherwise ordered, but I'd like to know what has not been
3 given to the State. The same with the other categories,
4 Mr. Underhill.

5 And we'll take the matter up on the record at 4:00
6 o'clock tomorrow afternoon. If by chance we get finished
7 with jury selection earlier in the day, if I can get ahold
8 of everybody, we might take it up earlier so we can finish
9 earlier.

10 That takes care of these matters. We'll round up
11 the jurors to be voir dired into Courtroom A, and we'll
12 resume jury selection as soon as possible. We stand in
13 recess.

14 (Whereupon, the Court recesses at 9:04 a.m.)

15 (The balance of proceedings of February 1, 1990,
16 were not transcribed.)

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1 SUPERIOR COURT)
 2) Case No. 3AN589-7217 17218
 3 STATE OF ALASKA)
 4

5 I do hereby certify that the foregoing transcript
 6 was typed by me and that said transcript is a true record
 7 of the recorded proceedings to the best of my ability.
 8

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 11 _____
 12 PAUL R. CUTLER
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VOLUME 5

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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

Anchorage, Alaska

February 5, 19~~89~~⁹⁰

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:57 a.m. on February 5, 19~~89~~⁹⁰. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

BRENT COLE, Esq.

Assistant District Attorney

On behalf of the Defendant:

DICK L. MADSON, Esq.

MICHAEL CHALOS, Esq.

C O N T E N T S

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WITNESSES:

<u>STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
LCTDR. Gary Stock	108		122	
William Edward Murphy	126		186	

E X H I B I T S

	<u>STATE'S</u>	<u>IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2			
3	Number 1	111	122
4	Number 2	111	122
5	Number 3	113	--
6	Number 4	113	122
7	Number 5	114	122
8	Number 6	114	122
9	Number 7	115	122
10	Number 8	116	122
11	Number 9	116	122
12	Number 10	117	122
13	Number 11	111	--
14	Number 12	118	122
15	Number 13	118	--
16	Number 14	118	--
17	Number 15	119	--
18	Number 16	112	--
19	Number 21	139	139
20	Number 23	157	157
21	Number 25	165	166
22	Number 31	183 183	
23			
24			
25			

P R O C E E D I N G S

(Tape No. C-3596)

THE CLERK: -- the Honorable Karl Johnstone presiding is now in session.

THE COURT: Thank you, ladies and gentlemen. You may be seated.

We have all fifteen jurors in the jury room. They've been oriented to the security system here. We're ready to bring them in and swear them in. Before we do so, I understand there's a matter that needs to be addressed?

MR. MADSON: Well, Your Honor, very briefly, we've been just served a number of motions for protective orders. I don't know if the Court has seen those or not.

THE COURT: I just got courtesy copies myself.

MR. MADSON: Yes. I presume the Court will not -- will allow us some time to respond to those before --

THE COURT: Absolutely.

MR. MADSON: It looks like they'll come up later on.

Other than that, Your Honor, the other day, before the jury selection proceedings began, Mr. Linton indicated that it would be the State's position that the alcohol, blood alcohol reading of Captain Hazelwood of .06, which was under the limit for the state law but exceeded the Coast Guard limit of .04, was going to be introduced in

1 evidence and argued, at least argued, to the jury that this
2 was evidence of recklessness. And I would ask for a
3 protective order, just as far as opening statements are
4 concerned, that no mention be made of that, or no argument
5 be made on that particular point until we've had a chance
6 to address it and have the Court rule.

7 THE COURT: Mr. Cole?

8 MR. COLE: Well, I believe that our position is
9 that that evidence should come before the jury _____
10 opening.

11 THE COURT: Given the Court's ruling so far, Mr.
12 Madson. I'm going to let the State address that in their
13 opening statement on the assumption that it is likely that
14 it will come in evidence, given the Court's rulings and the
15 Court's familiarity with this case. However, not
16 everything that's said in opening statement comes in
17 evidence, and there is always the possibility this will not
18 come in.

19 I'll let you address it before the actual
20 evidence comes in, but in opening statement, I will let
21 comment be made on that.

22 Is there anything else we need to do before
23 bringing the jury in?

24 MR. COLE: Well, I need to -- are we going to
25 start openings?

1 THE COURT: I'm going to swear the jury in. I'm
2 going to orient them to where they sit. I'm going to give
3 them some preliminary boilerplate instructions, then excuse
4 them before opening statements are made, let you get set
5 up.

6 Is it the intention of the Defendant to make an
7 opening statement following the States'?

8 MR. MADSON: It is.

9 THE COURT: All right. Let's bring the jury in.

10 THE CLERK: Yes, sir.

11 THE COURT: And counsel, did you go over the
12 seating arrangement of the jurors, and is that -- those
13 names on the seating arrangement coincide with those that
14 have been selected?

15 MR. COLE: Yes.

16 MR. MADSON: We believe so, yes.

17 THE COURT: Thank you. Let's bring them in.

18 (Whereupon, the jury enters the courtroom.)

19 THE COURT: Don't have a seat yet, just kind of
20 stand around this area. I've got to tell everybody where
21 they're going to be seated.

22 Is Margaret Glenn or Beatrice Freeman available
23 real quick?

24 Why don't you have seat number one, Miss Glenn,
25 in the front row in the corner. Beatrice Freeman, number

1 two. Is Beatrice Freeman here? Second seat in.

2 Gloria Wing, third seat. Terrell Smith, fourth
3 seat. Albert Oaks, the fifth seat, second row, all the way
4 in. Second row, all the way in.

5 James Rowsey, number six. Terrence Reimer,
6 number seven. Catherine Roselle, number eight. Deborah
7 Crowley, number nine. That will be back in the corner,
8 Miss Crowley.

9 Blondell Walker, number ten. _____ Paine.
10 eleven. Jeffrey Sage, twelve.

11 First alternate, Bobby Lewis, A-1. That would be
12 the next seat, next to Mr. Sage. Terry Turner, alternate
13 two, would be in the corner in the back. George Gouse will
14 be the third alternate.

15 That's where you'll be seated from now on when
16 you come back from breaks, or when you come back from
17 recess.

18 For the alternate jurors, you're drawn in the
19 same manner. You have the same qualifications. You'll be
20 subject to the same examination and challenges. You have
21 to take the same oath and have the same functions, powers,
22 facilities and privileges as regular jurors. An alternate
23 juror who does not replace a regular juror shall be
24 discharged after the jury retires to consider its verdict.

25 For the alternates, I would say the likelihood of

1 an alternate being placed on the regular jury in this case
2 is quite high. Don't feel that because you're an alternate
3 your responsibilities are any less or any less attention
4 should be given to this matter.

5 In trials of much shorter duration, I figure
6 about one-third of the time alternates serve. I've had
7 alternates serve as jury forepersons. So keep in mind your
8 responsibilities are equal to any other juror on the panel.

9 Ladies and gentlemen, before we go any further,
10 I'm going to have Mr. Purden, who is our in court deputy --
11 he's the one who runs all the electronic equipment in the
12 courtroom -- I'm going to have him administer the trial
13 juror's oath. You've already taken one oath, where you
14 promised to truthfully answer the questions put to you.
15 Now you're going to take an oath where you promise, under
16 oath, to follow the Court's instructions.

17 If all of the jurors, including the alternates,
18 would stand, please? Raise your right hand.

19 (Whereupon, the jury was sworn.)

20 THE COURT: Now that you've taken your oath you
21 are ready to serve as jurors. To assist you in your task,
22 I'm going to summarize for you the way in which this case
23 will probably proceed. After you've heard the evidence, I
24 will instruct you on the law, and you will then commence
25 your deliberations.

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The trial will proceed essentially in the following way. First, the prosecutor will make an opening statement outlining what the prosecution expects to prove in this case. Next, the Defendant's attorney may make an opening statement or may reserve it. After that, the State will present its evidence.

When the State has concluded its evidence, the Defendant may present evidence, but is under no obligation to do so. If the Defendant elects to present evidence, the State may present rebuttal evidence. After the evidence has been presented, the parties will have the opportunity to argue the case to you.

The State, because it has the burden of proof, argues first. Then the Defendant is given an opportunity to argue their case. The Defendant does so. Then the State is given the opportunity to rebut the Defendant's arguments. At the completion of the arguments, I will instruct you on the law, and you will commence your deliberations.

After the arguments, you will hear evidence in the case. After you do, your job will be to decide how you evaluate that evidence in the light of the law I give you at the end of the case. I will rely on the jury to determine the facts. This must be done relying solely on the evidence received in this trial. You must not be

1 governed by mere sentiment, conjecture, sympathy,
2 compassion, prejudice, public opinion, or public feeling,
3 but must base your conclusions only upon a fair
4 consideration of the evidence.

5 That evidence will include the sworn testimony of
6 witnesses, exhibits submitted into the record, facts agreed
7 upon by the attorneys, and facts judicially noted by this
8 court. The evidence should be considered and viewed by you
9 in light of your own observations and experiences in
10 everyday life, but you may not consider any other sources
11 of information not presented to you in this court.

12 It will be my duty to decide what law must be
13 applied. In so doing, I will look to a number of sources,
14 including the statutes of the state of Alaska, the
15 decisions of the Alaska Supreme Court and other learned
16 courts, and the advice of the attorneys who have appeared
17 before you.

18 You must apply the law as I give it to you. You
19 may not apply the law as you think it is, or should be, or
20 as another may have told you it is. The instructions I
21 will give you are the only law that you may apply.

22 Every person who testifies under oath is a
23 witness. You, as jurors, are the sole judge of the
24 credibility of the witnesses and the weight their testimony
25 deserves. In deciding whether to believe a witness, or how

1 much weight to give a witness's testimony, you should
2 consider anything that reasonably helps you to judge that
3 testimony.

4 Among the things you should consider are the
5 following: the witness's attitude, behavior and appearance
6 on the stand and the way the witness testifies. The
7 witness's intelligence. The witness's opportunity and
8 ability to see or hear the things about which she or he
9 testifies. The accuracy of the witness's memory. Any
10 motive of the witness not to tell the truth. Any interest
11 that the witness has in the outcome of the case. Any bias
12 of the witness. Any opinion, by reputation evidence, about
13 the witness's truthfulness. The consistency of the
14 witness's testimony, and whether it is supported or
15 contradicted by other evidence.

16 If you believe that a witness testifies falsely
17 as to part of his or her testimony, you may choose to
18 distrust other parts also, but you are not required to do
19 so. You should bear in mind that inconsistencies and
20 contradictions in a witness's testimony, or between his and
21 her testimony and that of others, do not necessarily mean
22 that you should disbelieve the witness.

23 It is not unusual for persons to forget or to be
24 mistaken about what they remember, and this may explain
25 some inconsistencies and contradictions. And it is not

1 uncommon for two honest people to witness the same event
2 and see or hear things differently. It may be helpful when
3 you evaluate inconsistencies and contradictions to consider
4 whether they relate to important, or unimportant, facts.

5 You may believe all, part, or none of the
6 testimony of any witness. You need not believe a witness,
7 even though his or her testimony is uncontradicted, but you
8 should act reasonably in deciding whether or not you
9 believe a witness and how much weight to give to his or her
10 testimony.

11 A witness who has special knowledge, skill,
12 experience, training or education in a particular science,
13 profession or occupation may give his or her opinion as an
14 expert on it, on any matter on which he or she is skilled.
15 In determining the weight to be given such opinion, you
16 should consider the qualifications and credibility of the
17 expert, and the reasons given for his or her opinion. You
18 should also consider those factors used when judging the
19 testimony of all other witnesses on which you have already
20 been instructed.

21 You are not bound to accept any expert witness's
22 opinion. Give it the weight, if any, to which you deem it
23 entitled.

24 Both direct and circumstantial evidence will
25 probably be presented in this case. Direct evidence is

1 given when a witness testifies of his own actual and
2 personal knowledge as to facts to be proven. Accordingly,
3 circumstantial evidence may be defined as evidence of
4 certain facts and circumstances from which one usually may
5 deduce, or infer, other facts in keeping with reason and
6 common sense.

7 Both types of evidence must be carefully
8 considered. Both types of evidence are competent forms of
9 evidence. It is for you to determine the weight of the
10 circumstantial evidence, as well as the direct evidence,
11 neither enlarging nor belittling the force of either.

12 It is the duty of the attorney on each side of
13 the case to object when the other side offers testimony or
14 other evidence which the attorney believes is not properly
15 admissible. By allowing testimony or other evidence to be
16 introduced over the objection of an attorney, the Court
17 does not intend to indicate any opinion on the weight or
18 effect of such evidence. As stated before, you are the
19 exclusive judges of the credibility of all witnesses and
20 the weight and effect of all evidence.

21 When the Court sustains an objection to a
22 question addressed to a witness, you must disregard the
23 question entirely, and may not draw any inference from the
24 wording of it, nor speculate on what the witness would have
25 said if permitted to answer the question.

1 Do not consider as evidence any statements,
2 including opening statements of counsel, arguments,
3 questions or remarks of counsel made during the trial.
4 While not evidence, these generally are meant to help you
5 understand the evidence and apply the law. Consider them
6 in that light.

7 Disregard any argument, statement, question or
8 remark of counsel which has no basis in the evidence
9 produced in open court. Questions by counsel may only be
10 considered as they supply meaning to the answers. Never
11 speculate to be true any insinuation suggested by questions
12 of counsel.

13 In a few moments, ladies and gentlemen, you'll
14 hear opening statements of counsel. Before we do that, I'm
15 going to recess for a short time to allow counsel to set up
16 for their opening statements.

17 The jury room, where you were taken earlier, is
18 the room that you will report to during every break and
19 when you return the next day. Mr. Purden, if he hasn't
20 already, will acquaint you with our entry system to the
21 back of the floor. There's a buzzer there, and you will
22 have to buzz each day and my secretary will see your face
23 on a screen, and she won't let you in unless you give your
24 name first and she can identify you and check you off.

25 You will be given an instruction, which you will

1 get plenty tired of hearing, and that is not to discuss
2 this case among yourselves or with any other person, and
3 not to form or express any opinion. I will try to give
4 that instruction to you every time you take a break, or
5 recess for the day.

6 In addition, you are instructed to avoid media
7 information about this case. Unless you have friends and
8 family who can screen that information for you they should
9 get the newspaper and should screen out, cut out -- they
10 should make sure you avoid watching the newscasts on
11 television and stay off the radio newscasts.

12 That's very important. It's important that you
13 decide this case based solely on what you see and hear in
14 this courtroom, and not be influenced in any way, however
15 slight, by media or any other information outside the
16 court.

17 If you are inadvertently exposed, well, there's
18 not much we can do about that. Disregard it, and report it
19 to me in writing in a note or in open court, to Mr. Purden
20 or myself. An inadvertent exposure by itself is not going
21 to disqualify you, and if you are inadvertently exposed, we
22 may inquire about the exposure and the effect on you of
23 that exposure.

24 To avoid that, don't get exposed. It may be
25 difficult because, as you see, there's some interest in

1 this case, and there's going to be media coverage of this
2 case. I've instructed the media not to cover the jury.
3 There will be no pictures of the jury, no mention of the
4 jurors' names in any publications or any newscasts. That's
5 a strict instruction, which I will enforce.

6 So don't be worried about your privacy being
7 invaded. Nobody should contact you and, if they do contact
8 you, let me know. If somebody tries to give you
9 information at any time, you let me know, and particularly
10 if you know their names or who they are. We'll take care
11 of that matter, stop them.

12 Right now, we're going to take a recess. It will
13 be about ten or fifteen minutes, and when we come back, you
14 will hear opening statements by counsel. We stand in
15 recess.

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

18 (A recess was taken from 9:15 a.m. to 9:31 a.m.)

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

20 At this time, the State will make its opening
21 statement.

22 OPENING STATEMENT ON BEHALF OF THE STATE OF ALASKA

23 MR. COLE: Thank you, Your Honor.

24 Mr. Madson, Mr. Chaldos, Judge Johnstone, ladies
25 and gentlemen. On March 24, 1989, 11 million barrels of

1 Alaskan crude oil spilled into Prince William Sound. This
2 spill was a result of the oil tanker Exxon Valdez going
3 aground on Bligh Reef. This catastrophe represents the
4 largest U.S. oil spill.

5 One spill, the crude oil was carried to points
6 beyond Kodiak Island, and left, in its wake, a path of
7 destruction and death. The oil spill took a part of Prince
8 William Sound that will never be replaced.

9 Joseph Hazelwood, the captain of the Exxon
10 Valdez, was in charge and responsible for that tanker's
11 safety. He was in charge and responsible for that safety
12 of his crew members. He was in charge and responsible for
13 the safety of the cargo that evening.

14 Through his experience and skill, he had achieved
15 this position that required him to take steps to minimize
16 and to avoid exactly what happened in this case. And
17 because of the conditions surrounding, the circumstances
18 surrounding his failure to perform his responsibilities on
19 that evening, he has been charged with four crimes.

20 Count one, he has been charged with criminal
21 mischief in the second degree. That charge is that he,
22 without any right, nor any reason to believe he had such a
23 right, recklessly created a risk of damage to property of
24 another in an amount greater than \$100,000.00 by widely
25 dangerous means.

1 The second count charges him with driving a water
2 craft while intoxicated. That count charges him that on or
3 about the 24th day of March 1989, he unlawfully operated a
4 water craft while under the influence of intoxicating
5 beverages.

6 Count three charges him with reckless
7 endangerment, and that is recklessly creating a risk of
8 serious physical injury to the crew members on those same
9 dates, March 24, 1989.

10 And finally, count four charges him with
11 negligent discharge of oil, that is, that he negligently
12 discharged oil in the Prince William Sound area.

13 Where does this story begin? This story begins
14 with the tanker industry that we have, and that the state
15 of Alaska relies upon. It begins with the pipeline that
16 comes down and carries oil from Prudhoe Bay, Alaska down to
17 the port of Valdez, where there terminals there are run by
18 Alyeska, and where the oil is transferred from land to
19 tankers that await it. And from that point, it is shipped
20 down, out through Prince William Sound, out through the
21 Hinchinbrook entrance, to be shipped to ports along the
22 west coast in Washington, San Francisco, Long Beach, and as
23 far down as Panama.

24 These tankers generally come into this area.
25 They are required by regs to report about three hours out

1 of Hinchinbrook. They are required by regs to report an
2 hour outside of Hinchinbrook entrance. And they provide
3 information to the Coast Guard in their VTC station, and
4 you'll learn that is the Vessel Traffic Center or Vessel
5 Traffic System.

6 It is a system that has been designed by the
7 Coast Guard to help regulate the traffic in and out of
8 Prince William Sound. And those regulations become more
9 and more strict the further you get toward this part, which
10 is called _____.

11 The tankers generally come in, and you'll see
12 that there is what is called traffic lanes that go all the
13 way up, and during the course of this trial, you'll learn
14 that the one on the right is called the northbound traffic
15 lane, and that's what the tankers going into Valdez follow.

16 This color in the middle is called the separation
17 zone; it keeps them apart. And then finally, on the left
18 is the southbound lane, where the tankers depart.

19 You'll find out that one of the areas that will
20 be talked about is this area right outside Bligh Reef.
21 Bligh Reef is located right here. This is called the Bligh
22 Reef buoy. You can see the light; it's marked there. And
23 then the other one is Busby Island, right there.

24 At about 2:38, 2:40 on March 22nd, the Exxon
25 Valdez was headed towards Hinchinbrook. They were outside,

1 and they called in and they gave an estimate. That is the
2 beginning of this trip.

3 They called the Exxon Valdez -- they called the
4 VTC system and reported that they would be -- they would
5 have an ETA of Cape Hinchinbrook about 5:30. At that time,
6 they indicated that they had pilotage. Now, pilotage is a
7 special term of art. You will learn about that during the
8 course of this trial. But what that means is that they had
9 a person on board, a mate or the captain -- and in this
10 case, it was Captain Joseph Hazelwood -- who had a special
11 federal pilotage endorsement that permitted him to travel
12 and navigate the ship from Cape Hinchinbrook to Rocky
13 Point.

14 At that point, a state pilot picks him up, but
15 otherwise, without the pilotage requirement, the tankers
16 were, in the beginning, required to stay here until a pilot
17 arrived to take them in, a special pilot with his federal
18 pilotage endorsement. Or, later on, they were allowed to
19 travel into Valdez up to Bligh Reef under certain
20 visibility and daylight -- visibility conditions and
21 daylight hours.

22 But in this case, Captain Hazelwood had the
23 special pilotage endorsement, and that permitted him to
24 navigate a tanker of this size in Prince William Sound.
25 And you'll learn about what it takes to get a pilotage

1 endorsement of this type. It takes a certain number of
2 trips where you are an observer through the Prince William
3 Sound. You have to pass a physical. You have to have so
4 many trips under your belt besides that. You have to have
5 a ceratin license, a mate's license.

6 But the most important thing is, is that they sit
7 there in your test and they give you a chart, just like
8 this. And it's blank and you're required, in order to
9 pass, to get this pilotage endorsement to fill in all the
10 known navigational hazards, like buoys and lights, and, in
11 addition to that, you're required to put in sounding
12 marks. It's that specific. They require you to go around
13 and plot the sounding marks throughout the area.

14 So in order to get the pilotage, the federal
15 pilotage endorsement which Captain Hazelwood had, you have
16 to have some special training, and you have to have some
17 special knowledge of the Prince William Sound area and its
18 dangers.

19 The Exxon Valdez arrived off Cape Hinchinbrook at
20 about 5:15 that evening. It arrived at Naked Island at
21 about 8:30, and it picked up the pilot who, in this case,
22 was Mr. Ed Murphey, at Rocky Point, right there, at about
23 9:19.

24 This is another one of the maps that you'll be
25 seeing here during the course of this trial, and this is a

1 map of the area right off of Rocky Point, which is right in
2 here, up into the Valdez arm, the port of Valdez, and then
3 we get a special picture of the Valdez terminal, which is
4 located right here.

5 Mr. Murphey came onboard the Exxon Valdez at
6 about this point right in here, and you'll hear the tapes
7 of the inbound traffic, and the conversations that
8 occurred, including Captain Hazelwood's voice.

9 The tanker arrived that evening and docked at
10 berth 5, which -- I'm not sure you can see it -- which is
11 this berth out here off Saw Island. And at that point,
12 what occurs is tankers have come up from -- in this case,
13 it was from San Francisco, but they have no oil. They have
14 -- they carry water in some of their tanks, but basically
15 it's a very light ship.

16 Without water -- it's called "dirty ballast," the
17 water that mixes in with - in the oil tanks to keep the
18 tanker stabilized has to be pumped out. The ship has to be
19 examined to make sure it's fit before the transfer of oil
20 can come from the Alyeska terminal.

21 That process is primarily done by the Chief
22 Mate. In this case, you'll learn that his name is James
23 Kunkel. He began at about midnight that night getting the
24 tanker prepared for the loading of oil.

25 You'll learn about that, and you'll see that it's

1 a highly mechanized system, where most of the operation is
2 done from inside a room called the Cargo Control Room, and
3 done by pushing valves on an instrument panel, that
4 basically regulate all the valves on the tanker.

5 And you can see kind of the schematics of the
6 tanker, and when you see pictures of the Exxon Valdez
7 herself, you'll see how these schematics are consistent
8 with what's on top of the tanker. Through this instrument
9 panel, he can control the discharge of valves and control
10 the loading up of crude oil.

11 After the ballast is -- the dirty ballast is
12 unloaded, then comes the process of loading up the oil, and
13 that started occurring later that morning on the 23rd.
14 It's mostly a mechanized system. There's really not a
15 whole lot of manual work. Sometimes, some of the people
16 have to go out and wash the valves, but you'll learn,
17 during the course of the trial, that this is pretty much
18 automatic, and it's pretty much a one-man job.

19 The other people stand watch their normal times,
20 and we'll talk about that in a little bit, but they just
21 come along and help as they're needed. The day in Valdez
22 is very slow for most people, and it affords the
23 opportunity for a number of the people onboard when they're
24 not on duty to go ashore.

25 On this particular day, three people on the Exxon

1 Valdez did go ashore. Captain Hazelwood, Jerzy Glowacki,
2 the Chief Engineer, and they invited along Joel Roberson.
3 He was the radio man, and he had only been on the tanker
4 for about 30 to 40 days.

5 The three of them went to a place called the
6 Alaska Maritime Agency. Now, the Alaska Maritime Agency
7 has an office in Valdez, and what it does is that it is an
8 agent for Exxon Shipping Company, and it is a company that
9 basically helps them run errands. They are responsible for
10 the cargo manifest handling. They are responsible for
11 entry and exit papers in sailing for a fourth port. They
12 arrange for the delivery of parts. They help crew
13 changes. They make medical supplies. They keep the Exxon
14 company advised of details of the ship's stay in port.
15 They let the company know when to expect its ship at its
16 next destination.

17 Now, the three men -- Captain Hazelwood, Jerzy
18 Glowacki and Joe Roberson -- went to that office building
19 that day, and they made a number of phonecalls. One of the
20 phonecalls that Captain Hazelwood made at the end was to
21 his old friend, Ed Murphey, who had piloted him in that
22 night into the port of Valdez Alyeska terminal. He invited
23 Mr. Murphey out for lunch, and so the four of them -- Ed
24 Murphey, Captain Hazelwood, Jerzy Glowacki and Joel
25 Roberson -- went to lunch at a place called the Pizza

1 Palace.

2 That was around noon, 12:30 or so. At that time,
3 Captain Hazelwood had tea, iced tea. Mr. Delozier -- or
4 Mr. Glowacki and Mr. Roberson drank beer.

5 After lunch that day, the pilot, Mr. Murphey,
6 drove them to a square. It would be like a small mall in
7 Valdez and he dropped them off. The three Exxon employees
8 at that time decided to split up, but they made a --
9 reached an agreement to rendezvous, for lack of a better
10 word, at the Pipeline Club between 4:00 and 4:30. And
11 then, at that point, the three separated and didn't meet up
12 again until the Pipeline Club.

13 Janet Delozier was working that day, and she
14 worked for a dentist at the time, and she got off a little
15 bit after 1:00 o'clock. She was going to go eat at the
16 Pipeline Club and dropped by and realized that they weren't
17 having lunch that day, serving lunch. So she went in and
18 sat at the bar. You'll see a diagram of the bar, and
19 you'll see where she sat in the corner.

20 She was drinking coffee, talking to a friend,
21 when she noticed a person came up and he had a beard. He
22 was wearing a dark sort of overcoat, and he had a
23 distinctive hat. And he walked up within two to three feet
24 of her, and he ordered a drink. And he ordered a special
25 type of Vodka, and the bartender didn't place the order

1 right. Somehow, there was some confusion, and that person
2 ended up saying, "Don't worry about it. This is fine," and
3 went off and sat in the corner.

4 Janet Delozier will identify that person as
5 Captain Hazelwood. That was at about 1:35, 1:40, and
6 shortly after he had been dropped off at the parking lot.

7 Another man came into the bar that -- shortly
8 thereafter. He saw Captain Hazelwood, acknowledged him and
9 went to the bar. He ordered a drink and went back over to
10 where Captain Hazelwood was sitting and the two of them
11 sat.

12 Janet Delozier will tell you that Captain
13 Hazelwood had at least two drinks of vodka that afternoon
14 while she was there. She left to return to her office at
15 about 2:45 that day.

16 Meanwhile, Jerzy Glowacki and Joel Roberson were
17 during their errands. Jerzy Glowacki showed back up at
18 about 4:00 o'clock at the Pipeline Club and ordered himself
19 a drink. About fifteen minutes later, Captain Hazelwood
20 came in the door and joined him. He also ordered a drink.
21 And about ten to fifteen minutes later, Joel Roberson
22 stayed and ordered a drink.

23 These men stayed at the Pipeline Club drinking
24 until about 7:15 that evening. They were supposed to board
25 and leave on the Exxon Valdez at 9:00 o'clock that night.

1 They were supposed to be on board at 8:00 o'clock. They
2 stayed there until 7:30.

3 Now, a secretary for the Alaska Maritime Agency
4 came over and stopped shortly and talked to Captain
5 Hazelwood when they were at the bar at about 4:30.

6 After leaving the Pipeline Club, they walked
7 over, and their plan was to pick up a couple of pizzas at
8 the Pizza Palace, where they'd eaten earlier, and take them
9 back for the crew. When they got there, Jerzy Glowacki
10 walked in and ordered the pizzas. Captain Hazelwood and
11 Mr. Roberson decided to go next door and have another drink
12 at what's called the Club Valdez.

13 There was refreshments at the Pizza Palace, there
14 was drinks that were served there, but they went to the bar
15 next door. Jerzy Glowacki joined them there, and there
16 they waited until their pizzas were ready, and they called
17 a cab. The cab that picked them up picked up another
18 employee from Arco and transported them to the guard's
19 shack.

20 (Pause)

21 The Pizza Palace is right about there. They got
22 in the cab and they rode to -- the terminal is out here, so
23 you have to drive all the way out to there and then come
24 back. You drive all the way out to there, and then you
25 drive along -- or as the guard's shack is right there --

1 and you'll see it when you get a chance to take a look at
2 it -- they checked in at 8:24 that evening at the guard's
3 shack. From there, they were taken out to berth 5, and the
4 ship was sitting, very similar to the ship that's in here,
5 right here at gate 5.

6 While they had been in town drinking, the rest of
7 the crew was preparing to go to sea that evening. James
8 Kunkel was completing the loading of crude oil. That
9 evening, he loaded approximately one hundred -- one million
10 two hundred and eighty-five million barrels of oil on the
11 Exxon Valdez.

12 To give you an idea of what a million barrels of
13 oil does to a tanker, this is a picture of a tanker -- the
14 Exxon Valdez after it was first made, and you'll see how
15 high it rides in the water. When it's loaded with oil, it
16 will go clear up to the dark blue.

17 Mr. Kunkel ended up the Chief Mate, finishing off
18 the loading system, with a little help from Greg Cousins.
19 Greg Cousins, then, being the third mate, prepared the
20 tanker for voyage, and his job was to do the gear tests.
21 There's a lot of tests that have to be done, but
22 essentially, he goes to the bridge and he checks to make
23 sure things like the course recorder, which is an
24 instrument that is used to record the direction that the
25 ship is headed towards, is working.

1 He checks it with a chronometer, which is a very
2 accurate clock aboard the Exxon Valdez. He checks the
3 steering mechanism of the Exxon Valdez to make sure that it
4 is working properly, that the wheel is turning, that the
5 alarms aren't going off, that the rudder is responding to
6 the wheel.

7 He checks the gyros which are designed to
8 coordinate the guidance system on the Exxon Valdez. And he
9 checks the radars and the anti-collision devices.
10 Communication systems were squawking, and he looked at
11 those.

12 At about 8:22 that evening, while he was up on
13 the bridge, Ed Murphey came aboard, Ed Murphey being the
14 pilot that would take the Exxon Valdez out of the port of
15 Valdez through the Valdez Narrows and out to Rocky Point,
16 right there.

17 When Mr. Murphey came aboard, he had his own
18 checklist. You'll find out that he's a specialist. What
19 pilots do is they provide a very special service to
20 people. They allow -- they provide information and
21 knowledge and familiarity with the conditions. This is a
22 part of the maritime industry that has grown up through
23 custom where the pilot supplies his knowledge of the area,
24 and that could be the tides, that could be the dockings,
25 that could be the weather, any unchartered hazards, things

1 like that.

2 He provides that special knowledge, and navigates
3 the tanker out around this particular area. He had his own
4 checklist that night, and he checked things like the radar,
5 the gyros, to make sure that things were working. And he
6 also got himself accustomed to the ship, because these
7 tankers are not all the same. A lot of them -- some of
8 them are smaller, some of them are bigger, some of them are
9 -- most of them now are diesel, _____ steam. There is
10 a lot of different types, and pilots have to accustom
11 themselves to each one. So he spent a little time on
12 that.

13 And when Mr. Murphey got there at around 8:20,
14 the Captain was not around. And he stayed up there with
15 the third mate, and was joined after that by a woman by the
16 name of Patricia Caples. She was an employee of Alaska
17 Maritime Agency, and she had come to get the information on
18 the owages (?), and you'll learn that the owages is the
19 measuring of the tanks.

20 These tankers are so big, and it's so important
21 to have an accurate measurement of the amount of oil that
22 is actually contained in the tanker that what the oil
23 companies do is Exxon and Alyeska hire an independent third
24 party, which is _____ and you'll see that they came in
25 and took the owages. That impartial third party does the

1 measurement and tells -- does the conversions based on the
2 shrinkage of oil due to the decreasing temperature as
3 the _____ travels, but it essentially comes out to
4 what a net amount is.

5 She wanted to get that confirmed, and she had
6 come to see the Captain. All three -- Mr. Cousins, Ms.
7 Caples and Mr. Murphey -- were waiting on the bridge for
8 Captain Hazelwood that evening. He arrived somewhere
9 around 8:30 that evening.

10 At that time, Patricia Caples spoke with him and
11 she walked down to his cabin, which was -- is the first
12 deck below the bridge. And looking at it from this, the
13 bridge is located right here. You can see that this is
14 actually the starboard wing, but on the same level as the
15 bridge where those windows are. One deck below is what's
16 called the Captain's quarters, and his quarters are right
17 on the corner there.

18 Patricia Caples will testify that she noticed
19 signs of intoxication when Captain Hazelwood spoke with her
20 that evening. Captain Hazelwood returned to the bridge
21 after completing that. Ed Murphey will testify that he
22 noticed signs of alcohol on Captain Hazelwood's breath that
23 evening when he came to the bridge.

24 Mr. Murphey and then Captain Hazelwood then got
25 things into order for departing the terminal. Greg

1 Cousins, the third mate, went down below; went out to help
2 with the lines. Jim Kunk -- James Kunkel came up to the
3 bridge. He, the Captain and Mr. Murphey were the ones that
4 were on the bridge at the time of the undocking. It's a
5 process you'll learn about. They use tugs, and every
6 situation is a little bit different, but essentially they
7 pull the tanker off the dock there.

8 Mr. Murphey heads out at about a 300 degree angle
9 out to the middle of the port of Valdez, until somewhere in
10 this area, and then he starts to go right through here.
11 You'll see that there is what's called mill rock there, and
12 it sticks out. It's one of the hazards that they have to
13 watch.

14 (TAPE CHANGED TO C-3597)

15 During the whole time that the tanker is going
16 through this area, it's tracked by the Coast Guard at the
17 VTC center, which is located right here in Valdez. It's
18 tracked by radar. It's monitored. And what you'll see
19 during the course of this, you'll see that there's an area
20 that's marked off by blue lines, and it's put up in the
21 corner here.

22 In that area, there is only allowed one way
23 traffic. In other words, once one tanker is in here, no
24 one else comes in. It can only go one way. And that's
25 because this is a hazardous area. The area from here to

1 here narrows down to less than a half a mile.

2 In addition to having the requirements of one-way
3 traffic, they have speed requirements, and that is that you
4 cannot go more than six knots while you're in this area.

5 Mr. Murphey piloted that ship to this area, and
6 it was fairly uneventful. He -- the weather was a little
7 bit closed in. There will be some testimony that it was
8 snowing a little bit. But the voyage itself was uneventful
9 out through the narrows except for one -- one small detail,
10 and that was Captain Hazelwood left the bridge.

11 Now, you will learn that the pilot navigates the
12 tanker, but he is merely an agent for the master, and you
13 will learn that a pilot -- a master has the authority to,
14 if he feels that his tanker is being navigated improperly,
15 to remove the pilot. He can have him locked up. The
16 ultimately responsibility for this tanker, no matter
17 whether it's being piloted by the pilot or by the captain
18 himself, is with the captain.

19 And during this period probably -- the witnesses
20 will say -- the most dangerous part of this whole journey
21 down the long beach to this place where it's a half a mile,
22 Captain Hazelwood absented himself from the bridge and left
23 it with Mr. Cousins, his third mate, and the pilot.

24 The helmsman at that time was Paul Radkey, and
25 after they had cleared Potato Point, which is right about

1 here, some time after that, at about 10:50 there was a
2 change, 10:40 that evening, there was a change in the ship,
3 and how the ships work are like this:

4 They work in four hour blocks on a tanker ship.
5 The first mate -- or the third mate generally works from
6 what we would consider 8:00 to 12:00 in the morning and
7 8:00 to 12:00 at night. And he has with him two ABs, which
8 are called able-bodied seamen. The able-bodied seamen
9 provide two services -- well, they provide a lot of
10 services, but the major duties that they have when they're
11 on duty is one of them is a lookout and one of them runs
12 the helm.

13 And when I say the helm, that is what we would
14 know -- what we would think of as the steering wheel, and
15 here's a picture of what that looks like. This is the
16 helm. This is a computer steering console that can be run
17 in the held position, which is where you just put it, and
18 its hydrologic. It's very easy to turn, and that turns the
19 tanker.

20 It also has the capability to be run in the
21 automatic pilot which, in the seaman's term, is called Gyro
22 or Iron Mike. But essentially you just head up on a course
23 punch a button, and the tanker will just take that tack and
24 stay on it. You don't have to turn the wheel. In fact, if
25 you turn the wheel, nothing happens.

1 It can also be programmed to turn to a different
2 course. It's a very advanced piece of equipment. It's one
3 of the most advanced in the industry.

4 But the helmsman stands there and looks at both
5 the screen and some instruments that are in front of him,
6 and they tell him what direction the tanker is heading,
7 what the rudder angle is, and what his rate of
8 turn _____ is.

9 These are pictures of what the bridge looks
10 like. This is called the chart room. These curtains are
11 closed at night because, in order to see the charts, you
12 have to have some light. But if you have light in the
13 chart room, it might cause problems for the people who are
14 up trying to read the instruments, so they close these
15 curtains at night in order to keep it dark. And, by doing
16 that, it allows them to keep lights on in the chart room,
17 and that's what it looks like inside the chart room.

18 You can see the tables. This is the course
19 recorder, the chronometer is right there. The tables where
20 they lay out their charts, the _____, the NAVSAT --
21 the navigational satellite instrument. But this right here
22 -- that right there -- is the steering column.

23 Mr. Radkey was replaced that evening by Harry
24 Claar. Mr. Radkey went to the bow of the tanker. And the
25 lookout man stood -- he stood just right up on the front.

1 That's where he was -- for the rest of his hour from about
2 10:50 to 11:50.

3 At about 11:15, as the tanker was approaching
4 being abeam of Rocky Point, the pilot, Mr. Murphey, asked
5 the third mate, Mr. Cousins, to have Captain Hazelwood come
6 to the bridge, because he was getting ready to unload.
7 They were getting ready. And so Mr. Cousins did that. He
8 called down to the captain, and a short time later, the
9 Captain came aboard -- came up to the bridge.

10 Now, it's standard in these times, what they call
11 turning over the conn, and that's when someone else assumes
12 responsibility for the navigation of the tanker. In the
13 course of turning over the conn, there's certain
14 information that you give to the person who's taking that
15 responsibility.

16 It would be things like the ship's heading, the
17 speed of the tanker, any problems up ahead.

18 In this case, Captain Murphey did the same thing,
19 and he advised Captain Hazelwood of the standard things,
20 and he mentioned to him to be careful of the ice. There
21 had been reports of ice and, although Mr. Murphey hadn't
22 seen any, he felt that they were up there, and the ice
23 comes about at the Columbia glacier, and it flows out here
24 and oftentimes will flow right across the traffic zone, and
25 it will get forced out with the outgoing tides. Sometimes

1 it gets brought in. But essentially, it can cause problems
2 right in this area right there.

3 Now, there's a special warning on these charts,
4 and it says, "Caution: During the _____ seasons,
5 Columbia glacier deposits ice which may drift into the
6 northern port of Prince William Sound," right here.

7 "Mariners are advised to exercise extreme caution, and to
8 report all ice sightings to Valdez Traffic."

9 You'll find that same caution on the other
10 charts.

11 The Exxon Valdez was proceeding under Mr. Murphey
12 at a heading of about 219 after it -- sometime after it
13 left Potato Point. He unloaded, he got off -- oh.

14 During the course of Mr. Murphey's conversations
15 with Captain Hazelwood, telling him that this is the
16 information that I need to provide to you, Mr. Murphey will
17 testify that he again smelled alcohol on Captain
18 Hazelwood's breath, and this was three, nearly four hours,
19 after Captain Hazelwood had left the bar, the last bar he
20 had been in.

21 Mr. Murphey then left and went down to the deck
22 and unloaded, with the help of Greg Cousins, and -- the
23 third mate who, at that time, was Mr. Rad -- or the AB was
24 Mr. Radkey. That occurred at 11:24, and the tanker was
25 right in this area right here.

1 Greg Cousins returned to the deck at about 11:36,
2 11:35, and about that time, he took a plot. While he was
3 gone, Captain Hazelwood called up the Coast Guard and told
4 them that he was going to be taking a heading of from 219
5 to 200 degrees, and you'll hear his voice on the tape when
6 he talked to Mr. Taylor who was the VTC watchman that
7 evening.

8 He said, "If I leave the -- I'm taking a heading
9 of two nigh -- two hundred. I have some radar, some ice on
10 my radar, and if I leave the traffic system, I'll give you
11 a call." A short time later, he told them that he was
12 going to be reducing his speed to twelve knots, and that he
13 was going to be dodging the ice is how he described it.

14 He then proceeded on this course down to Rocky --
15 out of Prince William Sound until around 11:50, 11:40.
16 Now, this is a diagram that you will learn is -- what is
17 called the course recorder, and it's a little bit different
18 than you might imagine, but these are the times, and
19 they're in Greenwich Mean Time. 12:00 o'clock -- or 9:00
20 a.m., in this part like here, is really 12:00 o'clock
21 midnight. 8:00 is 11:00 o'clock midnight on the 23rd.

22 And so at about 11:24 right here, the pilot was
23 away. This was when they were transitting the narrows;
24 this is when the pilot went away, and right at about 11:29,
25 the captain ordered the tankers to change course to 200

1 degrees, and that's what this swing is. And you can tell,
2 because this -- at this time right here, we are in what's
3 called the 180 to 270 quadrant, and when you look at the
4 180 to 270 quadrant, you can see -- you can just run your
5 finger down. In other words, to find out what the course
6 does right here, you come over to here, find out which
7 quadrants you're in, the 180, and then you go up to here.
8 And that's when they were heading out right here at about
9 219 with Mr. Murphey.

10 Right here, they changed course to about 200,
11 198, and you can see that right there. And then, at about
12 11:40, the tanker changed course to about 180 degrees.

13 And that course heading put it directly on line
14 with Bligh Reef. You can see that that occurred right
15 about there, while they were in the separation zone. You
16 will learn that Greg Cousins and Captain Hazelwood were
17 looking at the radar and examining and trying to figure out
18 where the ice was in front of them.

19 A lot of things happened in the next thirty
20 minutes. A lot of things. And in what order they come
21 will not be clear to you during the course of this trial.
22 But to the best that you will learn, what happened after
23 that was after staying up on a course of 180 degrees, at
24 some point -- and after seeing the ice that was in front of
25 them, which was described as coming all the way down to

1 within a mile of Bligh Reef, Captain Hazelwood instructed
2 that the autopilot of this tanker be placed on.

3 You will learn that that is not the thing that
4 anybody does in Prince William Sound -- not when they're
5 within a confined area like this. There may be times when
6 the automatic pilot is used in Prince William Sound, but
7 it's well away from this area, and it's never used in an
8 area where maneuverability is critical.

9 In addition, Captain Hazelwood had placed the
10 tanker on full ahead after dropping off the pilot at
11 11:24. That meant that the tanker was building RPMs and at
12 -- actually, at 11:24, it was full ahead. He -- at 11:52,
13 the notes will indicate that the ship was called -- it was
14 called loaded up, and when you go from full ahead to sea
15 speed on one of these tankers, you can't just push an
16 accelerator and have it go there. It takes awhile for it
17 to build up. And they actually have a computer program
18 that's built into the tanker that loads progressively the
19 RPMs in order to build up the speed.

20 So they were going from about 11 knots to what's
21 called sea speed, which is about 16 knots at the time this
22 happened. The load up program was done at 11:52.

23 At that time, Greg Cousins will tell you that
24 they were approaching Busby Island, which was to the
25 tanker's left. To the tanker's right was a sheet of ice

1 that ran all the way back to the Columbia glacier.

2 Straight ahead of them was Bligh Reef.

3 This was, at that time, or shortly thereafter,
4 probably right before that, there was a crew change, and a
5 person by the name of Bob Kagan took over the helm. And
6 you're going to learn about Bob Kagan. You're going to see
7 his personnel files. You're going to hear people talk
8 about his capability as a helmsman. You're going to see
9 him testify.

10 He took over. Maureen Jones was the other
11 able-bodied seaman on duty that evening. She didn't go out
12 to the bow. Captain Hazelwood ordered her to report up to
13 the bridge. You'll learn that normally, when you approach
14 ice, or when you have something like ice out in front of
15 you, the best possible situation is to have a lookout as
16 far out as possible.

17 On this occasion, Captain Hazelwood did not
18 follow that. He brought Maureen Jones up to the bridge.

19 The testimony will be that the weather was good
20 enough that night. Sometimes there is a reason -- there is
21 a reason for bringing the AB, the lookout, up on the wings,
22 because the weather is real bad as you get out into this
23 area. But the testimony will be that the weather was not
24 like that on this evening.

25 So Maureen Jones was on the bridge wing and, to

1 give you an idea of where that is, she stands out -- and
2 this is a picture that was taken from just inside the
3 window -- she stands out on the end out there. Her job is
4 to watch for hazards, for lights, for other traffic, things
5 like that, and to report that.

6 Now, prior to the changing, Captain Hazelwood and
7 Greg Cousins discussed what would be done, and Captain
8 Hazelwood was looking through the radar, and they were both
9 looking through the radar. And he said, "Now, I want you
10 to go down and go by, run this heading, and go around.
11 When you get abeam of Busby Island" -- which is right here
12 -- "start, bring her back over to the right. Do you
13 understand that, Greg? Are you comfortable with that?"
14 And Mr. Cousins acknowledged that he was.

15 Captain Hazelwood told him that he had to go down
16 and do some paperwork below, and he asked him again at some
17 point. Mr. Cousins agreed that would be okay, but his
18 understanding was that Captain Hazelwood would only be gone
19 for a couple of minutes, that he wouldn't leave from 11:52
20 or 11:53 until after 12:10, fifteen minutes later when he
21 returned to the bridge, and after the Exxon Valdez had gone
22 aground.

23 Captain Hazelwood left with his tanker, ice on
24 his starboard side to the point that he did not want to go
25 through it; land, Busby Island, to his left, knowing that

1 he would be coming within close to a mile of Busby Island,
2 and headed straight for Bligh Reef. He left the tanker
3 going full speed ahead. He left the tanker on auto pilot.
4 And he left the bridge with Robert Kagan at the helm, and
5 he left the bridge with Greg Cousins, who had no pilotage
6 endorsement, to navigate this tanker out through Prince
7 William Sound.

8 The only person on that tanker who had the
9 pilotage endorsement to navigate -- to have -- and that was
10 required to have direction and control of the Exxon Valdez
11 was Captain Hazelwood, and he went below.

12 Greg Cousins, then, after Captain Hazelwood went
13 below -- when they had this switch between the helmsmen,
14 Mr. Claar and Mr. Kagan, Greg Cousins heard at that time
15 that the tanker was on Iron Mike, or Gyro, or automatic
16 pilot. You'll hear those names interchangeably. And the
17 minute the captain went below, he changed that. He put it
18 back on helm.

19 He also then went out and took a fix, and he has
20 written down in a map that you'll see a copy of, a fix at
21 2355. Now, to take a fix, you've got to do two things.
22 You've got to plot your distance from where you are to a
23 certain object. That's done through the rangefinder of the
24 radar. And then, you have to lot where you are in
25 relationship to the point, and what they actually end up

1 doing is, when they're abeam, they just draw a line across
2 there, and they figure out how far from the radar they
3 were, and they kind of draw a circle _____ abeam and
4 draw a line through it, so you can get your position.

5 At 2355, this tanker was headed in the same
6 situation going essentially up to sea speed. Greg Cousins
7 had to walk out to the port wing to do this. He had to
8 look at the radar. He had to walk back in to the bridge,
9 go back to the chart room that I showed you, and he was
10 plotting this. And -- oh, the 2355, or 1155 is the time
11 that's arrived at when he's out on the end looking and
12 taking his bearing on Busby Island. So every -- all this
13 was happening after 2355.

14 In the course, at some point -- at some point --
15 Maureen Jones, who was out on the starboard wing, sees a
16 flashing red light. Now, there is a very simple little
17 adage that you'll learn that help's seamen remember where
18 lights should be, and it's: "Red" --

19 (Laughter)

20 MR. COLE: I don't remember.

21 And it's: "Red -- right on red returning, or red
22 on right returning," something like that.

23 (Laughter)

24 MR. COLE: But, anyway, that when you are coming
25 -- when you are returning in, red lights should be on your

1 starboard side. And Maureen Jones saw a red light on --
2 broad on the starboard side when she was going out. She
3 estimated that it was flashing -- they flash at different
4 points, and from the number of times -- the number of
5 seconds between each flash, you can determine which light
6 it is.

7 She determined that it was flashing one every
8 five seconds, and so she reported that, and when she walked
9 in, she only saw Mr. Kagan at the bridge -- in the bridge
10 at the helm. She didn't see anyone else. So she stepped
11 into the chart room, and she saw Mr. Cousins, and he
12 appeared to be bending over, plotting, and at that time she
13 said, "Mr. Cousins," or _____ "Greg, I see a red light
14 broad on the starboard side, flashing one every five
15 seconds, once every five seconds."

16 She then walked out. At that time, Mr. Cousins
17 went out to the bridge area by the helm and again looked in
18 the radar. At some point, he gave an instruction to take a
19 10 degree right turn, and at that time, he was looking at
20 the radar, he called down to Captain Hazelwood, and he
21 said, "Captain, I just started making a right turn. It
22 doesn't appear that we are going to be able to clear the
23 ice on this course."

24 And there was some discussion. Captain Hazelwood
25 said, "Has the second mate come up there?" because Mr.

1 Cousins had not been relieved, at that time, like he was
2 supposed to be at ten to 12:00. Actually, Lloyd McCain,
3 the second mate, was supposed to come on duty at ten to
4 12:00 and relieve him, just like Mr. Kagan relieved Mr.
5 Claar and Miss Jones relieved Mr. Radkey, and there was
6 some discussion.

7 And during that time, Mr. Cousins did not watch
8 Mr. Kagan to make sure that the ship was maintaining a
9 right turn.

10 The turn actually did not start until, according
11 to the course recorder, just shortly before -- after 12:00
12 midnight. When you turn these tankers, they're so big --
13 they're a thousand feet long. And even though you give the
14 rudder angle some angle, the ship doesn't turn like your
15 car would. You have to remember that this tanker is three
16 -- over three football fields long. It's two-and-a-half
17 football fields in front of the bridge. At 12 knots, it
18 travels at almost a mile every two minutes.

19 Although the course change started right about
20 12:01, the ship had to have been turned shortly before that
21 because, like I said, after you turn the rudders and then
22 it takes a little while for the course heading to change.

23 It proceeded down below his course. Maureen
24 Jones said that she came in a second time after going back
25 on the starboard wing and looking at the light again, and

1 realized that that time, that it was not flashing once
2 every five seconds, but once every four seconds. And if
3 you look at the Bligh Reef chart that you have here, you'll
4 see that it says four seconds, and that's what it should
5 have been flashing, once every four seconds. And that was
6 on the starboard side.

7 She said when she went back out on the wing a
8 little bit later, she started feeling the tanker start to
9 turn.

10 Ladies and gentlemen, at about 12:04 the Exxon
11 Valdez struck the first rock that it hit. That rock that
12 it ran over and it probably demolished -- went -- hit the
13 tanker just on the port side of the bow, right in the
14 center, and it ran the length of the ship, and in a curved
15 way, and at the end of the tanker, aft, there are nothing
16 but scratch marks. You'll see those pictures.

17 But the first rock it hit, it was going so fast
18 and it had so much momentum, and it was not deep enough, it
19 went right over. But that did an extensive amount of
20 damage to the center cargo holds.

21 You'll learn that this tanker is divided up into
22 different cargo sections of four _____, and then
23 they're numbered: one, two, three -- I think there's five,
24 as I remember it. And then there is a kind of a general
25 dump hole -- _____ is what call it -- and in some of

1 these, they contain all oil, and in some of them, they
2 contain part oil and part ballast for floating. The major
3 floating is the ballast at the _____ and in the aft,
4 and then two ballast containers on both the starboard side
5 and on the port side.

6 The tanker ripped out, all the way along the
7 bottom, right down the center of the tanker. At the end,
8 there are just scratch marks as it went over.

9 You'll hear testimony from the crew that there
10 were a number of rumblings, but at this speed, it would
11 have taken probably two minutes for this all to happen.

12 The tanker came to rest right about there, when
13 it hit a second rock on the starboard side, and that rock
14 was considerably higher, up closer to the surface of the
15 water. And it did a tremendous amount of destruction to
16 the tanker all the way to about -- at least a third down
17 from the ship in this area.

18 As you can imagine, a lot of things happened in a
19 hurry after that. Greg Cousins called the captain again.
20 Well, before that happened, he had instructed Mr. Kagan
21 after the 10 degree turn to make a 20 degree turn and then
22 make a hard right, and somewhere in the course of this, it
23 hit. It was turning right when it hit the first rock.

24 When it rounded and came to a stop, right around
25 -- sometime around 12:05, 12:07, which is right around in

1 this area, the tanker hit, grounded, started swinging to
2 the left -- or the right. And that's when you see right
3 here the line flatten out, because over time, the heading
4 of the ship is changing very fast. And what it looks like
5 is that this ship stopped and turned left right here, but
6 that's not right. It went from the 180/270 quadrant right
7 there, to the 270/360 quadrant.

8 So really, this ship started at 180 right there,
9 at about 12:01, and within ten minutes, went to nearly 280,
10 290. Very fast.

11 Greg Cousins will tell you that he grabbed the
12 wheel at one point and turned it hard to the left, and that
13 was because the tanker was swinging this way fast, and he
14 was very concerned that if the tanker -- if the engine room
15 area, located in the aft section of the tanker was
16 punctured, people would die. He didn't want the tanker to
17 swing into the reef, so he turned it very hard to the left
18 to bring it back. And you will see that about 290 degrees
19 at 1211, the tanker finally stabilized and started swinging
20 back to the left, right there.

21 Greg Cousins called Captain Hazelwood sometime
22 during this and told him -- he was still in his cabin --
23 after, this is after the initial grounding that, "Captain,
24 I think we're in trouble. We're grounded."

25 Captain Hazelwood came up to the bridge. Greg

1 Cousins had gone out on the port wing, turned on the
2 lights, and the tanker is stuck, and he's looking out, and
3 it's not any question -- this isn't like the Mississippi
4 River. There's not any question that the bottom of Prince
5 William Sound is filled with rocks. It's not silt. So
6 they knew that there was going to be problems, and their
7 first concern was, "Well, where is -- are we leaking oil?"

8 And they couldn't see the oil, but the fumes
9 started becoming very heavy shortly thereafter.

10 The captain came to the bridge and the engine ran
11 at full ahead until 12:19. James Kunkel had gone to sleep
12 that evening, being the third mate -- the chief mate. He
13 takes his position and his responsibilities very seriously,
14 and he awoke. He was very tired. He'd been up most of the
15 night, but he awoke, and he knew something was wrong
16 immediately.

17 He grabbed his stuff and ran up to the bridge,
18 and when he got there, Mr. Cousins was in the chart room
19 plotting, and at that time Greg Cousins told him, "The old
20 man knows," and so Jim Kunkel went -- James Kunkel went
21 back down. He grabbed his mustang suit -- he didn't know
22 if he'd ever get back -- and a mustang suit is like a
23 survival suit. It's designed to protect you in case you
24 get thrown in the water, because the water in Prince
25 William Sound is very cold, and you die soon thereafter.

1 He said -- he will testify -- that the fumes were
2 so overwhelming, the petroleum fumes, that he was -- he was
3 concerned. He thought to the extent of grabbing an air
4 mask. He thought about a lot of things. One of them was
5 his own safety.

6 He woke up Lloyd McCain, the second mate, and the
7 two of them went down to the cargo control center. At the
8 cargo control center, they started looking at -- _____
9 right now, but it's the picture that I showed you earlier
10 of the board, and it has gauges that you can tell, and at
11 that time they came down, he'll estimate it was 12:20,
12 12:25, somewhere in there, but he couldn't believe how much
13 oil and transfer had occurred and lost at that time.

14 He has a computer program that he uses, and the
15 name of the program is called Ocean Motions, and what it's
16 designed to do is it is designed to tell him what the
17 structural integrity of the ship is, and it's used
18 primarily in the loading process, because it's very
19 important that there be an even loading of the tanker. A
20 tanker can become unstable during the loading because it's
21 -- it has nothing in it, and you it's very -- you can't
22 just put all oil, crude oil, in one side and then fill up
23 the other side. It's got to be an even type thing.

24 So he brought up that program, and in that
25 program, it has certain stress and stability factors.

1 Based on what he saw, he believed the tanker to be of
2 marginal stability at that time, and he took the printout
3 and went up to see Captain Hazelwood. He showed him that,
4 asked him what he should do, and Captain Hazelwood says,
5 "No, don't stay up here. Go down below and work out some
6 options for me."

7 And when he -- that's exactly what he did. He
8 went back down to the cargo control room. The computer
9 ended up getting -- the program ended up getting dropped,
10 and he had to reboot it, and that took some time, and in
11 addition to that, he was trying to figure out whether or
12 not the computer program actually had a program for if
13 you're grounded, and what you do, and whether or not this
14 is -- there is certain damage to certain parts of the ship,
15 and he was trying to figure out whether this ship was still
16 stable, whether the stress levels were under the -- were
17 accessible.

18 At approximately 12:36, Captain Hazelwood started
19 up the tanker again. He put it on slow ahead. At 12:40 --
20 or dead slow ahead. At 12:40, he put it on slow ahead. At
21 12:48, he put it on half ahead; and on 12:56, he put it on
22 full ahead.

23 Now, this is 12:30. This is 12:30. From 12:50
24 until 1:41, Captain Hazelwood made this turn, this turn,
25 this turn, this turn, this turn, this turn, this turn, this

1 turn, this turn, this turn, this turn, this turn and this
2 turn in attempts to get this tanker off the reef. He did
3 it without knowing how the tanker was situated or whether
4 or not the tanker would even come off.

5 At some point during the course of that, he
6 received information from Mr. Kunkel, his third mate, who
7 had rerun the program, and was told that the ship was not
8 stable and they should stay around.

9 All these maneuvers were designed to attempt to
10 take that ship off the rocks. The testimony will be,
11 ladies and gentlemen, that if it had come off the rocks,
12 ladies and gentlemen, it would have capsized and nobody
13 would have recovered any oil.

14 There was a million barrels that were litered
15 off. If that ship had capsized, none of it would have been
16 recovered.

17 (Pause)

18 At this time, the Coast Guard in Valdez were
19 reacting. Investigating Officer Mark Delozier, Lieutenant
20 Commander Falkenstein both met at the Coast Guard
21 headquarters. They were joined by a gentleman by the name
22 of Dan Lawn with the Department of Environmental
23 Conservation. The three of them got in a boat and headed
24 out to the Exxon Valdez, out at Bligh Reef.

25 They arrived there -- there was already some

1 other tugs or sailing boats out there when they arrived,
2 and it was around 2:30 -- 3:30 -- 3:20 to 3:30. They could
3 see the oil bubbling out of the tanker, and it was coming
4 out, and it was like -- some of the descriptions should be
5 twelve to sixteen inches thick, because it's coming out of
6 the starboard side.

7 They changed vessels because they wanted -- they
8 were at that time concerned they didn't want to get the one
9 vessel they had oily, and they had some problems initially
10 figuring out which side they were going to enter on, but
11 they ended up going through the oil and getting up on the
12 starboard side, and at that time, these two individuals --
13 Investigating Officer Delozier and Lieutenant Commander
14 Falkenstein -- will tell you about the oil and the fumes
15 and the dangers that they foresaw when they came upon that
16 scene.

17 When they entered the ship, when they came aboard
18 the ship, their first concern was the tanker and the safety
19 of the crew members. They were taken up to the bridge
20 where they asked where the captain was, and were pointed to
21 Captain Hazelwood who was off in the corner.

22 When they walked up to talk to them, both Mr.
23 Delozier and Mr. Falkenstein walked up to within two to
24 four feet. During the course of their conversation with
25 trying to learn what the position of the tanker was,

1 whether it was stable or not, it became apparent to both of
2 them that Captain Hazelwood had been drinking. They both
3 observed it at at that time, and that was at about 3:45.

4 They, after getting an initial briefing, met
5 outside on the wing, and both of them asked the other one,
6 "Did you smell what I smelled?" and they said, "Yes." And
7 they knew that they had to do something. So they called on
8 the radio to the officer -- the watch officer in Valdez and
9 said, "Have the commanding officer stand by." I believe
10 that will be - you will hear that that was Commander
11 McCall.

12 They then went down the Marisat phone. At that
13 time, they -- a Marisat phone is just like a telephone
14 that's on the tanker. At that time, they called to
15 Commander McCall. They explained the situation of the
16 ship, and they also said -- told him -- what they believed,
17 and what they had learned, what observations they had made
18 of Captain Hazelwood and their belief that he had been
19 drinking, and that alcohol was involved in this accident.
20 And they said, "We need some equipment to test this."
21 Initially, they asked for some type of a portable breath
22 test to be brought out.

23 State Trooper Fox, who lives in Valdez and works
24 out of Valdez, is actually a Fish and Wildlife Officer, but
25 he was called up and asked to go out to the Exxon Valdez.

1 He was not told that they needed breath tests. He was told
2 that they had a -- I believe it will be that they had a
3 wild man on board who needed to be controlled. So he left
4 for the Exxon Valdez.

5 When he got there, he talked to Investigating
6 Officer Delozier and when he learned of this, he said,
7 "Look, I can't help you, because I didn't bring anything
8 with me." That was at around 6:00, 6:00 or 7:00 o'clock.

9 The investigation continued with Mr. Delozier
10 trying to get equipment, and there were a number of
11 phonecalls. At some point, at about 9:30, Investigating
12 Officer Delozier was informed that there was a toxicology
13 kit onboard the Exxon Valdez, right there. And so he asked
14 Captain Hazelwood where is this toxicology kit, and he was
15 shown it.

16 And he said, "Okay, now I want to get urine
17 samples from the people that were on the bridge at the time
18 of the grounding." And so Captain Hazelwood ordered Mr.
19 Kagan and Maureen Jones -- Miss Jones and Mr. Cousins to
20 give urine samples, and that was accomplished. But when it
21 came time for him to give his, he told the Investigating
22 Officer that he couldn't do it, he couldn't give it, and
23 that this was somewhere around 10:00 o'clock.

24 The officer, Mr. Delozier, didn't know what to
25 do, so he went back to make his fifth phonecall and tell

1 them, "Look, I've got these, but he won't give me a
2 sample." And so about that time, Scott Connors walks on
3 board.

4 Scott Connors had been a medical technician who
5 had been doing some consulting work in Valdez for the Coast
6 Guard for the past two -- two days. He was scheduled to
7 leave on a flight that morning at 9:30 for Anchorage, and
8 before he was able to go, they tracked him down and pulled
9 -- brought him to the Coast Guard headquarters and said,
10 "We need you to go out and take these blood samples. We've
11 got a problem."

12 He went to the local hospital, gathered up some
13 equipment, and was flown out by helicopter to the Exxon
14 Valdez. When he arrived there, he walked up and met Mr.
15 Delozier and, at that time, he was shown the toxicology
16 kit, and he chose to use that, because it was better -- you
17 were better able -- the equipment was better, it would
18 store it better, and you were better able to keep track of
19 the chain of custody of where these samples were.

20 He then went into the room and, because of the
21 situation with Captain Hazelwood and their suspicions and
22 their knowledge that the alcohol would be wearing off, they
23 told the captain, "You will be the first one that we test."

24 At that time, Captain Hazelwood volunteered to
25 give a urine test, and he also gave blood. He gave three

1 vials. Two were used to test alcohol, one for drugs.

2 At 10:50 in the morning, that morning, eleven
3 hours after the grounding of the Exxon Valdez, he
4 registered a .06. A .06 -- under the Coast Guard
5 regulations, a person that comes aboard a commercial vessel
6 like this is legally intoxicated at a .04.

7 The urine sample was a .09, and you'll hear
8 testimony, expert testimony, as to why those -- there's a
9 distinction between those.

10 Greg Cousins -- no alcohol. Robert Kagan -- no
11 alcohol. Maureen Jones -- no alcohol. Only Captain
12 Hazelwood, at 10:50 that morning.

13 Shortly after that, after all these tests were
14 done, Captain Hazelwood was interviewed in his quarters,
15 and this is after he had received blood tests and
16 everything. It was at about 1:15.

17 Trooper Fox sat down, and that interview was
18 recorded. In the course of that interview, Captain
19 Hazelwood said that he had gone ashore that day and had
20 lunch at the Pizza Palace with the captain -- pilot, Mr.
21 Murphey, and he had drank iced tea -- he made it a point to
22 say he had drank iced tea.

23 He said that he had went by the Pipeline Club to
24 see if anybody off the ship was there. He was specifically
25 asked, "Did you have anything to drink there?" and he said

1 no. He said that he was there at about 3:30 or so for a
2 few minutes. He said that about an hour or so later, he
3 had a beer at the Harbor Club.

4 You're not allowed to drink within four hours of
5 taking command of a tanker ship under U.S. Coast Guard
6 regulations. At 4:30, or an hour or so after the 3:30 time
7 that he had given, he would have been within the four hour
8 time limit.

9 That after about an hour or so later, he picked
10 up the beer at the harbor while they were waiting to pick
11 up a pizza. That they picked up -- that they were picked
12 up by a cab that picked up another person from Arco and
13 proceeded to the Arco terminal.

14 He said that they arrived at the terminal at
15 about 8:00-ish. He said that Captain Murphey was already
16 on board, and that he disembarked.

17 He told the officers that when he came aboard the
18 ship, he had to do some paperwork, and before it sailed, he
19 had one or two Moosey. A Moosey is a, quote, nonalcoholic
20 beverage, that has about .5 alcohol by volume.

21 The best way to compare it is beer. You've heard
22 of .32 beer is a light beer. Beer is normally at about 4
23 to 5 percent alcohol.

24 In this case, the trooper and the Investigating
25 Officer, Mark Delozier, did seize two empty Moosey bottles

1 in his quarters. But they looked and found no other
2 evidence of drinking.

3 Captain Hazelwood described what had happened as
4 far as Captain Murphey being on board, that he had
5 disembarked around 11:30, that he had run into some ice
6 conditions and changed course, that he had heard a
7 shuddering, got a call from the third mate telling him the
8 ship was aground, and that he tried the rudder and engines
9 for a few minutes to see if he could extract it from the
10 situation, but then got his faculties about him, that he
11 thought about it, and driving her off might not be the best
12 way to go because it might exacerbate the damage, so he
13 stopped the engines.

14 That would have been at this point right there,
15 11:41. Also that morning, Captain Hazelwood received a
16 phonecall from an Exxon official by the name of Paul
17 Myers. Paul Myers was a management official onshore, and
18 he called and asked to speak with Captain Hazelwood at
19 11:51, ten minutes after the captain had shut off the
20 engines.

21 At that time, Captain Hazelwood went down and
22 spoke with him for about twenty minutes. In the course of
23 that conversation, Captain Hazelwood admitted -- or stated
24 that he was at fault because he had not been up on the
25 bridge with the third mate. He also told Mr. Myers that he

1 knew the Coast Guard was on the way.

2 This was at -- between 1:50 and 2:10 in the
3 morning, and the Coast Guard got there at about -- were in
4 the area at about 3:15.

5 Captain Hazelwood was not relieved of his command
6 until 10:00 o'clock that evening on the 24th -- twenty --
7 yes the 24th. That was done by Captain Denton. At that
8 time -- it's not until a captain is relieved or his ship
9 docks that he is no longer in command or responsible for
10 that tanker.

11 Captain Denton will talk about what occurred,
12 what his evaluation of the ship was, and how uncertain at
13 that point the stability of the ship was.

14 Based on his actions over the course of two days,
15 March 23rd and March 24th, Captain Hazelwood has been
16 charged, as I said earlier, with four crimes.

17 Criminal mischief in the second degree charges
18 him with recklessly creating of risk of damage to the
19 property of another in an amount exceeding \$100,000.00 by
20 widely dangerous means.

21 The elements that will have to be proved during
22 the course of this will be: that this occurred on or about
23 the 23rd or the 24th of March of last year.

24 That having no right to do so, or any reasonable
25 grounds to believe he had such a right, Joseph Hazelwood,

1 Captain Joseph Hazelwood, acted recklessly.

2 That his actions created a risk of damage to the
3 property of others -- not damage, but created a risk of
4 damage, in an amount exceeding \$100,000.00 and by widely
5 dangerous means.

6 A person acts recklessly when they are aware of,
7 and consciously disregard, a substantial and unjustifiable
8 risk that the results will occur, and you will be
9 instructed on that.

10 In determining the actions of reckless, you will
11 hear witnesses that talk about the following things.

12 Drinking before the tanker left the docks, and drinking
13 regulations, both by the Coast Guard and by Exxon itself.

14 Failing to be on the bridge during the narrows.

15 Placing the tanker on autopilot.

16 Loading up to sea speed in an area requiring
17 maneuverability.

18 Leaving the bridge in the hands of unqualified
19 persons.

20 Leaving the bridge while maneuvering through a
21 confined area.

22 Failing to return to the bridge.

23 Attempting to get the tanker off the Bligh Reef.

24 Those are the factors that will be talked about
25 during the course of this trial.

1 In addition, the damages that you will learn are,
2 as you can imagine, accumulating over time, but the state
3 costs, just spent by the Department of Environmental
4 Conservation for clean up, are over \$24 million. The loss
5 of income to fishermen due to the fisheries closures has
6 been over \$12 million. The damages to the hatcheries, the
7 risk of damage, is well over \$7 million, and no one will
8 know until the returning salmon come.

9 Widely dangerous means will be defined as meaning
10 any difficult to confine substance, force, or other means
11 capable of causing widespread damage including fire,
12 explosion, collapse of a building, or flood, and oil spills
13 come within this definition.

14 The second count is operating a watercraft while
15 intoxicated, and that charge is, as I explained before,
16 that he unlawfully operated a water -- watercraft while
17 under the influence of intoxicating liquor. The important
18 parts of that are that a person operates a watercraft,
19 means to navigate or use the vessel, or use a vessel used,
20 or capable of being used, as a means of transportation.

21 And a person is under the influence of
22 intoxicating liquor when, as a result of the use thereof,
23 his physical or mental abilities are impaired, so that he
24 no longer has the ability to operate or drive a vehicle
25 under the same, or similar circumstances, with the caution

1 characteristic of a person with ordinary prudence who is
2 not under the influence.

3 And you will hear from tanker captains during the
4 course of this trial -- experts -- that will evaluate
5 Captain Hazelwood's actions in this case. But they will
6 all be focusing on how alcohol affected his system, and how
7 he, during the course of this transit from the port of
8 Valdez out to where the tanker finally came to rest on
9 Bligh Reef, manifests those physical and mental
10 impairments, those poor judgments.

11 Reckless endangerment, the State will be required
12 to prove, and we will prove, that Joseph Hazelwood did
13 recklessly engage in conduct that resulted in the Exxon
14 Valdez being run aground and creating a substantial risk of
15 serious physical injury to other people, that risk being
16 the deaths, if that tanker had come off or had not grounded
17 and stayed there.

18 The negligent discharge of crude oil, that Joseph
19 Hazelwood unlawfully and negligently discharged petroleum
20 into the waters.

21 It is these charges that will be submitted to you
22 for your deliberation at the conclusion of this trial, and
23 it is on these charges that the State will ask you to
24 return a fair and just verdict.

25 Thank you.

1 THE COURT: Do you need a break before we --

2 MR. MADSON: I would, Your Honor, certainly. I
3 just was wondering, would the Court go straight through the
4 normal lunch hour? I don't want to start and then, you
5 know, have a break and then come back.

6 THE COURT: I appreciate that, and I wouldn't
7 want to, either. How long do you expect your opening
8 statement will take?

9 MR. MADSON: Well, it certainly will be more than
10 an hour, I expect, Your Honor. I can't really time it, but
11 I would say it would be safe to estimate it.

12 THE COURT: An hour and fifteen minutes or so?

13 MR. MADSON: I would say something like that.

14 THE COURT: Why don't we take a brief recess,
15 come back and have your opening statement, and if it takes
16 us into the ordinary lunch hour, it will do that, and we
17 will just take a little later lunch.

18 MR. MADSON: Thank you.

19 THE COURT: Ladies and gentlemen, before we
20 recess remember my instructions not to discuss this matter
21 among yourselves or with any other person. Please don't
22 form or express any opinions concerning the facts.

23 THE CLERK: Please rise. This court stands in
24 recess subject to call.

25 (A recess was taken from 11:03 a.m. to 11:19

1 a.m.)

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

3 We will hear the Defendant's opening statement at
4 this time. For those of you folks in the back of the room,
5 once you get seated, I'd appreciate it if you'd stay seated
6 during the opening statements. Getting up and leaving and
7 coming back in is relatively disruptive. I'd appreciate
8 your cooperation with that. Mr. Madson?

9 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

10 MR. MADSON: Thank you, Your Honor.

11 Mr. Cole, Miss Henry, ladies and gentlemen, you
12 heard the State's opening argument here, or opening
13 statement, as it's called, and there -- first of all, let
14 me say, and I'm sure some of you already know this, that
15 what Mr. Cole said and what I'm about to say is not
16 evidence. We have the advantage of knowing some of the
17 facts that you do not know, and the purpose in doing this
18 is to try to acquaint you with those facts and how we
19 believe they're going to be presented to you, and certain
20 things to look for.

21 There are different ways that lawyers do this.
22 Oftentimes they say, "Well, it's kind of like a road map.
23 We're just going to try to guide you to the destination."
24 I like to think of it in a little different terms, and
25 especially in this case, I think it's quite appropriate.

1 You're about to read a book, let's say. You know
2 a lot about the book; everybody's been talking about it.
3 And you're going to read it, but you go by the bookstand
4 and you pick it up and you'd like to know a little bit
5 more, and you open up the cover and the inside there is a
6 kind of a summary of what the book is about.

7 That's what we're doing here. Mr. Cole gave you
8 a summary. I'm going to give you a summary of what you're
9 about to read -- or, in this case, hear -- and you, at the
10 end of that time, will decide, not necessarily whether my
11 summary is correct or Mr. Cole's is correct. You're going
12 to decide the contents. That's what's important.

13 You make the decision as to the contents of
14 either that book, or, in this case, this case.

15 A lot of what Mr. Cole said I'm not going to
16 repeat, because a lot of it will be consistent. That is,
17 we believe the evidence will show certain things. Mr. Cole
18 believes the evidence will show certain things.

19 We believe the evidence will show that this was a
20 maritime accident; that Captain Hazelwood was not
21 responsible for that accident. And the evidence we submit
22 to you, ladies and gentlemen, will clearly show in detail
23 how it happened and, hopefully to some extent, why it
24 happened.

25 With regard to the evidence that is not terribly

1 much in dispute, we have the fact that Captain Hazelwood is
2 a captain of the Exxon Valdez; that he arrived there to
3 take on a cargo of crude oil, and that he was in Valdez and
4 on the 24th of March of this year he did go to town.
5 There's noth -- the evidence will show, there is nothing
6 wrong with going to town.

7 He went there. He checked in with the Maritime
8 agents. He did talk to Mr. Murphey who has been an old
9 friend. He's known him for a long time, and Captain
10 Hazelwood has a lot of confidence and trust, and Mr.
11 Murphey, Captain Murphey's, ability as a pilot.

12 They had lunch. No alcohol was consumed.

13 Now we run into the first possible dispute. Mr.
14 Cole said you will hear evidence from Jamie Delozier -- and
15 please note the similarity of name between Jamie Delozier
16 and the Coast Guard officer who investigated this case, by
17 the name of Delozier. The evidence will show that they are
18 husband and wife.

19 Miss Delozier, according to the state, will say
20 that Captain Hazelwood was in this bar drinking at around
21 1:30 or something of this nature, early in the afternoon,
22 2:00 o'clock, after leaving lunch, leaving Mr. Murphey and
23 the other members of the crew.

24 However, the evidence will show that, at about
25 2:15 that afternoon a woman in a flower shop can recall

1 Captain Hazelwood coming in there -- sober. No signs of
2 intoxication whatsoever. No smell on his breath or
3 anything else -- and that, while he was in there, he
4 ordered flowers to be sent by wire to his wife in New
5 York. And so he was not drinking at that hour.

6 Later on, the evidence will show, around 4:00
7 o'clock, somewhere around this area, he did meet with the
8 other crew members and consumed alcohol. He had a couple
9 of drinks.

10 Now, it's important to also note that the ship in
11 question, the Exxon Valdez, has a board there on it when
12 they kind of expect what time the vessel was due to be
13 loaded and due to leave. It's an estimate. The original
14 estimate was about 10:00 o'clock -- or 9:00 o'clock, excuse
15 me -- of what time they were supposed to depart. As it
16 turns out, things went faster than that, and it was going
17 to leave earlier.

18 But Captain Hazelwood did not know that. When he
19 left, he thought it would be a certain time, and he had
20 more time than that, as it turns out, that he actually had.

21 But in any event, after drinking alcohol and
22 having a few drinks with his friends and ordering the
23 pizza, getting into a cab, they proceed to the ship, and
24 they do that in a cab that takes them to what's called the
25 Alyeska check point. That is very important.

1 This check has has very strong, important
2 responsibility. One of the main things they look for is
3 people who are intoxicated going on the vessels. They have
4 a video camera set up there. They have officers that are
5 trained in looking for signs of intoxication, and when they
6 see that, they turn on the video cameras and they also
7 check for alcohol and things like this.

8 But we will expect, and we expect the evidence
9 will show, that the Alyeska personnel who observed Captain
10 Hazelwood will testify that he saw absolutely no signs of
11 impairment whatsoever. None in town; none here.

12 On board the vessel, Pat Cables, the agent for
13 Alaska Maritime, comes onboard, and we expect to show --
14 the evidence to show -- that she may have detected alcohol
15 on the Captain's breath, but she will also testify there
16 were no signs of impairment.

17 Captain Murphey will do the same. He comes on
18 board and he will say, "I smelled -- I see alcohol. I saw
19 no signs of impairment."

20 No crew member, no person other than the crew,
21 will testify that at the time the ship began its leaving
22 the dock loaded with crude oil that Captain Hazelwood was
23 influenced by alcohol at all.

24 Once they start, the State says in its argument,
25 that going through the narrows, as Mr. Cole described to

1 you, a rather treacherous part of the initial voyage,
2 initial journey out of Valdez, that that's a very critical
3 area, and Captain Hazelwood was not on the bridge at that
4 time. He was down below.

5 The evidence will show that is in violation -- in
6 no violation whatsoever of any regulation, law, statute or
7 anything else. In other words, a captain has a complete
8 discretion to leave the bridge if he so desires. The
9 pilot, it's true, is just the person -- an agent of the
10 captain. He, at no time, takes over total command.

11 But in this situation, the evidence will show
12 that Captain Hazelwood knew Captain Murphey was an
13 experienced, trusted pilot, who's been through that area
14 many, many times, and had every reason to believe that he
15 was extremely competent in doing what he was doing.
16 Violated no rule, no regulation by leaving him there to do
17 it rather than simply stand there and watch something he's
18 done many, many times.

19 Now, after leaving the narrows, things get,
20 perhaps, more interesting. Still, we will show -- the
21 evidence will show -- there's no violation of a regulation,
22 no violation of a law. The State would have you believe
23 that there's this big sheet of ice there, this treacherous
24 sheet of ice that this vessel has to go around somehow, and
25 it's extremely dangerous and treacherous.

1 The evidence will show that ice has been a
2 problem, to some extent, in Valdez for some time. That the
3 port is never closed because of ice. It is just one of
4 those things to watch for.

5 The Coast Guard has a number of regulations.
6 They have regulated this entire industry, and they
7 certainly have regulated the traffic there by what's called
8 the VTS system -- Vessel Traffic System. You already saw
9 that on the chart. That's the area where they say, "This
10 is where the ships coming in should be, and this is the
11 area where ships coming out should be in, and we will tell
12 you what to do when, where and high." Really regulates.

13 But there's a lot of things that are not
14 regulated, and that's where we get into this area after
15 leaving the narrows and before you get to Bligh Reef.

16 The pilot Murphey got off at Rocky Point. That
17 is the customary pilot's station. The evidence will show
18 in this case that there's been a lot of changes made about
19 pilots and pilots' stations; that, for example, earlier on,
20 back in the days when the tankers first were coming in and
21 out of Prince William Sound, the pilots went all the way
22 out to Hinchinbrook, all the way up.

23 It turned out that that wasn't a very good idea.
24 There was a couple of accidents. A boat was lost, and the
25 pilots and the Coast Guard and everybody agreed to pull the

1 pilots' station way back.

2 The State then makes a big argument because
3 Captain Hazelwood had this endorsement that third mate
4 Cousins did not have, that the pilot should have stayed on
5 to Bligh Reef.

6 This, ladies and gentlemen, gets us into an area
7 that I would ask you, when you are reading this book, to
8 examine these pages very carefully, because what we're
9 talking about here, and what the evidence is going to be
10 directed to, is two different things. We're talking about
11 qualified personnel versus authorized personnel.

12 The State's position in this case is that Captain
13 Hazelwood was reckless because he turned over the command,
14 or the conn, if you will, to a third mate, Gregory Cousins,
15 who was not qualified or authorized to command this
16 vessel. The evidence, on the other hand, will show that
17 Gregory Cousins not only has a third mate license, he is,
18 in fact, a second mate.

19 It often happens on these voyages that to get a
20 trip -- in other words, to work -- you sometimes work at a
21 lower level, third mate rather than second mate. Or a
22 captain, in fact, may work as a first mate. It's just the
23 nature of the business.

24 So Gregory Cousins was qualified by the Coast
25 Guard, qualified and found competent to com -- to not

1 command, but to stand watch by himself of a vessel of
2 unlimited tonnage -- bigger than the Exxon Valdez. Duly
3 examined and found competent and qualified.

4 The argument here will center around
5 authorization. He did not have the pilotage endorsement,
6 but the evidence will show that Mr. Cousins certainly knew
7 the area. He knew where Bligh Reef was, and that's the
8 purpose of this endorsement, is it simply allow and satisfy
9 the Coast Guard to say that this person has been through
10 here enough times that he's aware of certain navigational
11 hazards. Without that piece of paper, Gregory Cousins
12 still knew the navigational hazards that were involved in
13 Prince William Sound, and particularly Bligh Reef.

14 Now, at this point, you have the captain in
15 command he is behaving normally, calm, speech isn't
16 slurred. He's not staggering. He's not doing anything out
17 of the ordinary. And he changes the course to go around
18 the ice. He notifies the Coast Guard.

19 Contrary to the State's position here, that you
20 get the impression that somehow this is the Titanic, going
21 full speed through dangerous ice filled _____, that is
22 simply not the case. There is ice which is a concern, and
23 can certainly pose a danger to the Exxon Valdez, in
24 particular, maybe more than other ships, because -- for one
25 reason, it's a thinner hull plating.

1 So there's two things a captain can do. He can
2 slow down and maneuver in the ice, which is not in the
3 sheet form, it's icebergs -- chunks, if you will. Or he
4 can maneuver the vessel around the ice. There's his
5 options.

6 Captain Hazelwood took a routine fully accepted
7 maneuver, to go around the ice, to skirt the southern edge
8 of the ice, in the interests of caution and the safety of
9 the vessel and its contents. The Coast Guard, because of
10 their system of control, knew of this and has no objection
11 because captain after captain will say that this is
12 commonly and routinely done.

13 So this heading of 180 degrees toward Bligh Reef
14 is not out of the ordinary whatsoever. In Prince William
15 Sound, you cannot take a heading in any direction, the
16 evidence will show, without being in danger of hitting a
17 rock or a shore or an island sometime. Bligh Reef was just
18 a coincidence, a terrible coincidence that made this case
19 possible.

20 In any event, Captain Hazelwood then discussed
21 with Gregory Cousins who was on the bridge at that time
22 what he was going to do, and he said, basically, "Greg,
23 here's what we have to do, here's what we should do. Avoid
24 all the southern part of the ice." He said, "The thing to
25 do is on this heading" -- the 180 degrees, which is due

1 south -- "when you come abeam of Busby Island light, then
2 make your turn to get back into the lanes."

3 The evidence will show, ladies and gentlemen,
4 that this was not a critical maneuver. This is a simple
5 maneuver. All it takes is for someone to take a sighting
6 of 90 degrees, and any qualified seaman is perfectly
7 capable of doing that. And, at 90 degrees, you turn to the
8 person on the wheel and you say, "Turn to the right."

9 There was a person on the wheel by the name of
10 Kagan. The officer does not actually stand there and steer
11 the ship. True to the tradition of the sea -- one of the
12 few carryovers we still have, perhaps -- the evidence will
13 show that the officer gives the commands and they're
14 carried out by the enlisted personnel, if you want to call
15 it that.

16 So when he became aware of (inaudible) -- the
17 captain, by the way, we will show is not that far away.
18 There is constant communication by telephone between the
19 captain's quarters and the bridge, which is simply down a
20 flight of stairs -- one flight of stairs of thirteen steps
21 -- and a short distance, then, down to his quarters, which
22 is also an office.

23 Because a captain is more than just a navigator.
24 He is the person that has to -- he is an administrator,
25 also. He has many duties in addition to just going from

1 point A to point B.

2 But it's very clear that within seconds -- just
3 within seconds -- the captain can be on the bridge, and
4 that's why his quarters are there. It just simply makes
5 sense, so he can leave, but have ready access to come back.

6 And Gregory Cousins calls down and says,
7 "Captain" -- he says, "I'm starting the maneuver. And
8 Captain Hazelwood says, "What rudder are you giving him?"
9 He says, "10 degrees." Captain Hazelwood says, "That's
10 fine. That will be fine." Plenty of time, plenty of room,
11 to maneuver, to clear Bligh Reef or any other obstacle.

12 This is where the case gets probably -- not only
13 the most interesting, it is the most critical, so everyone
14 needs to know, or wants to know, what happened? And we
15 hope the evidence will show what happened. It will be for
16 you to determine.

17 But as best we think the evidence will come in,
18 it will show that Gregory Cousins was -- gave the command,
19 but he may not have noticed whether the helmsman actually
20 turned the vessel or not. He may not have noticed until
21 too late that he either didn't turn, or else he didn't turn
22 enough.

23 You will see a course recorder here -- and, by
24 the way, on this subject, you've already seen the chart
25 there, and just let me explain briefly that, somewhat like

1 airplanes, like that magic little black box that records
2 pilot conversation and controls of the plane, it's not that
3 sophisticated. It's not what is elaborate.

4 But there are certain things that are
5 automatically done on board ships. one of them is the
6 course recorder. That tells the course the ship took at
7 all times.

8 There is an engine log reporter. Engine commands
9 are all automatically put down. In addition, the officers
10 put down, in their own writing, what they're doing as far
11 as commands are concerned.

12 But some things aren't recorded. The times
13 necessarily on there can be subject to some dispute --
14 we'll get into that in a minute or two -- but in any event,
15 the course recorder is on at all times.

16 The man at the wheel either did not turn until
17 too late but, more than likely, what the course recorder
18 will show is that he had a rudder on, or rudder command,
19 but it wasn't enough. It wasn't enough under the
20 circumstances to clear Bligh Reef.

21 I suppose I may be jumping ahead a little bit,
22 but this is a case that's going to involve a literal parade
23 of experts. There will be experts in every field
24 imaginable in maritime commerce, ship experts, lots of
25 them.

1 These experts, and one of them, we expect, is
2 going to talk about a computer simulation, a simulation
3 that was done from taking the data from the course recorder
4 and other things and factoring in certain rudder angle
5 speeds and things like this.

6 We expect that the evidence will show, from --
7 the uncontroverted evidence from the course recorder and
8 things like this, that had Captain Hazelwood's order or
9 command been carried out at the time it was given, the time
10 that he understood the ship was turning at 10 degrees, the
11 right rudder, that it would have missed, the ship would
12 have missed Bligh Reef by nearly two miles. Almost two
13 miles.

14 In fact, ladies and gentlemen, there will be a
15 set of scenarios there which will show that even if the
16 turn had been started at 12:01-and-a-half, at 10 degree
17 right rudder, it would have cleared Bligh Reef by
18 six-tenths of a mile.

19 There will be a lot of different times and
20 different places put in this, and different rudder
21 commands, and you will hear all about this. But the point
22 is -- and please watch for this very carefully -- is that,
23 number one, the command, if carried out when it was
24 expected to, and when Captain Hazelwood thought it was
25 being done, almost two miles of safety.

1 And secondly, even if it was later than that, or
2 not as much rudder -- as little as 3 degrees -- it would
3 have still safely cleared the reef.

4 This, of course, goes to Captain Hazelwood's
5 knowledge, what he knew and what he did, to determine, as
6 the State is claiming, that he acted recklessly.

7 On this point, in addition -- I want to talk to
8 just briefly about the evidence concerning the Coast Guard
9 VTS system. We spoke about that earlier; you've already
10 heard a lot about that. But what they have is radar, which
11 watches the ships. That's the purpose.

12 There's a man there, sitting there in Valdez,
13 watching a radar screen to see if vessels are where they're
14 supposed to be. Their whole, sole function and purpose in
15 doing this is to insure the safety of the system, that
16 ships don't collide with each other, or rocks, or reefs.

17 The evidence will show that, initially when the
18 system was done, it was a better system.

19 (TAPE CHANGED TO C-3598)7

20 MR. MADSON: It had greater range capabilities.

21 But for one reason or another, which is not
22 important, and really not relevant, the system changed. It
23 became not nearly as good, it didn't have the coverage.

24 This is important because only the Coast Guard
25 knew this. The ship captains were never told that, "Hey,

1 you guys ought to know something. We can't see you all the
2 time now."

3 No. What they're led to believe is that they can
4 rely upon the Coast Guard watch stander, as they're called,
5 to observe them when they're transitting Prince William
6 Sound, and if there's a problem, they have every right to
7 expect somebody would tell them.

8 The evidence in this case will show that there
9 were two watch standers, one by the name of Taylor and one
10 by the name of Blandford. Oddly enough, right around
11 midnight is when they changed their watches. Taylor left
12 and Blandford came off.

13 Taylor basically says, "The Exxon Valdez is going
14 out. It's off-screen now, at the lower range. Can't
15 really see it." Blandford, then, acknowledges this and
16 does not watch the Exxon Valdez. He doesn't watch it at
17 all.

18 But later, after the ship is aground, he switches
19 to a longer range on the radar and, lo and behold, he does
20 find it, prominently displayed on Bligh Reef.

21 They were not watching.

22 So with that, we are on the reef. The evidence
23 will also show that, contrary to what the State has said,
24 that there was some type of a grounding initially at about
25 12:04, we think the clear evidence in this case will show

1 that the actual grounding was at 12:09.

2 Now, that may not sound important to you right
3 now, but please keep this in mind, because later on, it
4 will become very, very important.

5 In any event -- well, one other thing I'd like to
6 mention, because the State, I would submit -- I think the
7 evidence will show something to the contrary rather than
8 what Mr. Cole said -- the ship was not running at full
9 speed at the time this happened.

10 It was programmed up to full sea speed but, as
11 Mr. Cole acknowledge, this isn't just shoving a lever
12 forward. It's not stepping on the gas like you do in a car
13 and, zingo, you're up there. Not hardly. It takes a long
14 time. You'll be told a lot about this ship, a lot about
15 the type of engine it has. A very, very large, low-speed
16 engine, diesel engine. Full speed is around 55 RPM. Very,
17 very slow.

18 It takes a long time to get that mass of a ship
19 from one speed up to another, so while it's put into a
20 program to increase the speed, the evidence will show that,
21 at the time the vessel actually hit the reef, it was only
22 operating at 11.75 knots, and that is not full speed.

23 The evidence will show that Mr. Cousins, the
24 third mate in this case, called Captain Hazelwood as soon
25 as he realized he was in trouble. There was some talk

1 about Maureen Jones, whether she should have been up on the
2 box, or whether she should have been on the bridge. Again,
3 ladies and gentlemen, do not be misled by things like
4 this. There is no rule, no regulation, that says, Captain
5 Hazelwood violated Coast Guard regulations, rule or
6 anything else by deciding to have her come back to the
7 bridge wing rather than the bow.

8 These things are all very important, but again,
9 the ship's captain has a lot of discretion in what he's
10 doing at the time he's doing it. He's the one that knows
11 best, in other words.

12 On this subject, something else is extremely
13 important, and that's, I think -- I would submit to you,
14 ladies and gentlemen, watch for it very carefully, because
15 it's another red herring -- the evidence will show that the
16 auto pilot had absolutely nothing to do with this case.

17 As you've heard, the auto pilot is a way, a
18 means, of keeping the vessel on track without somebody
19 having to actually stand there and steer. They're very
20 handy to have. All ships have them. And a person would
21 have to be blind not to know when it was on auto pilot and
22 when it wasn't, because a red light comes on the screen and
23 says, "Gyro on," or words to that effect. Seamen are
24 perfectly aware of this.

25 The evidence will also show that there is no

1 regulation, there's no law, there's no requirement, that in
2 the particular waters they were transversing at that time
3 that the auto pilot should not be one. Just -- it's a
4 general type of thing, again, subject to the discretion of
5 the captain _____ to say, "I think it's unsafe to do
6 it here," or, "it's safe to do it here," or whatever.

7 And that, you can get into an area where you can
8 have probably one hundred captains come in and say, "I
9 would or I wouldn't." But it's meaningless in the context
10 of this case, because it had nothing to do with it.

11 The facts are, the evidence will show that it was
12 off for fifteen minutes. It had nothing to do with this
13 accident.

14 Whether the captain put it on or not, the facts
15 are that the Court or Mr. Kagan -- Kunkel -- Kagan, excuse
16 me -- turned it off when they were maneuvering Valdez,
17 which Cousins had every right to do. When he had the conn
18 -- he was in command -- he could keep it on or he could
19 keep it off at his discretion, and what he did was say,
20 "Okay. I want it off." You push a button. It's off.
21 It's on now helm steering.

22 No violation. Nothing to do with this.

23 Again, Maureen Jones being on what is called the
24 bridge wing rather than the bow, again is another minor red
25 herring. As Mr. Cole told you, these ships are big.

1 They're very, very long. In foggy conditions, and with
2 slow maneuvering conditions, I think the evidence will show
3 that probably the most logical thing to do, and the safest
4 and best thing to do, was post a lookout up on the bow,
5 because it's a long ways away -- and they have a handheld
6 radio they can radio back if they see something.

7 On the other hand -- if it's clear and the
8 evidence will show this night it was clear -- then, in that
9 situation, it may be better, in fact, to have someone on
10 the bridge wing, because you're elevated at a much higher
11 elevation and can actually see farther.

12 Before we go along to what happens after the
13 vessel is on the reef, and Captain Hazelwood is on the
14 bridge immediately, as soon as Cousins says, "Captain, I
15 think we're in trouble," there's a crunch. He's upstairs
16 and he's there and he takes command.

17 Now, going back, again, one other step. The
18 State's main argument in this case is going to be this
19 endorsement or lack of endorsement. In this area, I
20 neglected to mention earlier, you're going to hear other
21 evidence about what was required and when on this so-called
22 pilotage endorsement.

23 You will hear evidence that there's been a lot of
24 changes made and a lot of _____ as to what pilots are
25 required and when in Prince William Sound for various

1 reasons. The Congress -- the Coast Guard has basically
2 said, "Make regulations in Prince William Sound." They
3 were never done, but it went down to what's called the
4 Captain of the Port.

5 The Captain of the Port is the commander, if you
6 will, of the Coast Guard in charge, in this case, in
7 Valdez. He was then given the authority to make
8 appropriate changes in the pilotage of Prince William
9 Sound.

10 You will hear evidence that over the years this
11 was changed and, in fact, in this particular case, in 1986
12 a change was made. A very, very substantial change,
13 because up until this point, if it was daylight and the
14 visibility was two miles or more, there could be what was
15 called a waiver of this pilotage under certain conditions.

16 In 1986, the Commander said -- he looked at this
17 and he said, "That's not the issue, is whether it's day or
18 night. The issue is visibility. Consequently, I'm
19 changing that and saying that if there's two miles or more
20 visibility, you don't have to have this pilotage
21 endorsement."

22 And he also goes on to say, and he talks about
23 when the pilot with the endorsement should be -- not on the
24 bridge, but it says, "on board." Again, this is not a
25 rule, a regulation, this is a Captain of the Port order, if

1 you will, when he talks about when this particular person
2 should be on board.

3 You will hear evidence, probably more than
4 likely, that one captain might say, "Well, I interpret that
5 to mean I think it would be prudent to be on the bridge."
6 Others would say, "It doesn't matter."

7 We expect there will be captains, fully
8 qualified, competent captains testifying in this case, with
9 no axe to grind, who will say that many times I have been
10 the mate on the ship when the captain has left the bridge
11 and I did not have this pilotage endorsement. Never did.
12 It was not unusual, not uncommon.

13 In fact, ladies and gentlemen, under this waiver,
14 if you will, if you want to call it that, of this
15 endorsement requirement, a foreign vessel could enter
16 Prince William Sound as long as somebody on board could
17 speak English, and that certain other requirements were
18 met. They were certain the ship had certain safety
19 equipment and reported its position ever so often.

20 But one English-speaking person, with no pilotage
21 whatsoever could do this.

22 So we have a situation with Captain Hazelwood
23 with the endorsement, seconds away from the bridge, turning
24 the command over to someone who is absolutely qualified,
25 and the argument will center, not on that, but on whether

1 or not he was, quote, authorized, unquote. Did he have a
2 driver's license, if you will.

3 Getting back to the initial contact with the
4 reef. Some evidence will show that certain persons never
5 even woke up, that it wasn't a sudden crash to the extent
6 that people were panicking and jumping overboard or
7 anything like this.

8 Some individuals never even knew what happened.
9 They just thought something was strange; there was a
10 rumbling going on, and suddenly the ship was stopped, and
11 they realized they weren't going anywhere.

12 The only individual -- and Mr. Cole has mentioned
13 him -- Mr. Kunkel that indicated it was some kind of a
14 problem, he was afraid, if you will; he was afraid. And
15 what the evidence is going to show is that yes, he didn't
16 know what happened. He didn't know what to do.

17 And he came up, found out what was going on.
18 Cousins, "The old man knew what happened," and he finds the
19 captain and he says to him, in effect, "Captain, should we
20 sound the general alarm? Should we have everyone don their
21 suits, their survival suits?"

22 And he's going to say that Captain Hazelwood was
23 absolutely calm and calmed the whole situation and said,
24 "No. Let's not alarm anybody. That's going to cause undue
25 panic. Let's find out what our situation is here before we

1 do anything else. Notify everybody, but go to their rooms
2 and tell them we're aground and go to their duty stations."

3 And he issued commands immediately, what to do,
4 sending people here. Told him -- told Kunkel to get back
5 down to the engine room and report on what's happening down
6 there, in the engine room, in the tankage room, the
7 control, to find out what they're losing, how much they're
8 losing of their cargo.

9 He wanted to see if the ship was stable or
10 unstable. Run that computer program.

11 You will hear command after command that he gave,
12 and everyone will say that he was calm, cool and collected
13 and in command as a captain should be.

14 The engine commands that were given were
15 recorded, as I've said. The course recorder recorded the
16 vessel movements even after it was on the reef. The State
17 says Captain Hazelwood was reckless because he tried to get
18 this thing off the reef without knowing what's going to
19 happen, and in all likelihood, it was going to collapse or
20 capsized.

21 Ladies and gentlemen, you will hear from experts
22 in this case who have had years of experience, who will
23 analyze all the data, and they will say that what occurred
24 was an excellent job of seamanship, not in trying to get it
25 off the reef, but in stabilizing this vessel on the reef.

1 Just the opposite.

2 In spite of what may have been said, that's what
3 the evidence will show, and one of the most important and
4 most obvious things is that the engine recorder that
5 records full ahead, half ahead, quarter, full
6 speed _____, the one recording it does not have on
7 there is anything astern.

8 This vessel never, never was put into reverse
9 gear, if you will. And the most logical thing from any
10 mariner who will testify in this case, if they were to say,
11 "Here's how it could get off a reef, I would try _____
12 forward, I would try to get off in reverse." That's the
13 most common, usual thing, and this wasn't done. And why it
14 wasn't done is because it shows it was not attempting to
15 get off, but stay on it, until he ascertained what was
16 going on.

17 Commander McCall, the Coast Guard Commander, we
18 expect will testify that even though he's having a
19 conversation with Captain Hazelwood about on or off the
20 reef, or getting off here or something, he understood what
21 was being said. He understood that he wasn't trying to get
22 off the reef, but by the commands he was giving, what he
23 was ascertaining his position and his stability.

24 Extremely important, ladies and gentlemen,
25 because no matter what people want to think, the evidence

1 thinks louder than what you desire, and the evidence in
2 this case is going to show overwhelmingly that this vessel
3 never, ever tried to get off the reef. It was attempted at
4 all times to keep it stable, on the reef.

5 The Coast Guard arrives about 3:00 o'clock,
6 3:30. Captain Hazelwood, by the way, reported this to the
7 Coast Guard. He said in certain words, he said, "We are
8 aground and we're leaking oil." He made that report. It
9 is required by law that he make this report, and he did.

10 The Coast Guard asked some questions and of
11 course, they came out to investigate. It took a little
12 time to get out there, but they did. Mr. Delozier and Mr.
13 Falkenstein will tell you that they arrived somewhere
14 between 3:00 and 3:30 to investigation. That's their job.

15 They arrived on board and of course, it's dark.
16 Oil is coming out at a rapid rate. There are fumes,
17 naturally. They were concerned about the safety of the
18 vessel, very concerned. They were concerned about its
19 stability, the danger to the personnel on the ship. That's
20 their job.

21 Yes, they will say, "Yeah, we smelled alcohol on
22 his breath." But they will also say, "We saw no signs of
23 intoxication." They will also say that, later on, when
24 Trooper Fox comes on board and finds the Moosey beer --
25 this low alcohol beer -- he splashed a little on his hand

1 and goes up to them and says, "Hey, could this be what you
2 smelled?" And both of them say, "Yeah. That certainly
3 could be it. Could be it. Moosey beer."

4 They smelled what they thought was alcohol, but
5 they're going to say he did not stagger. He did not slur
6 his speech. He seemed fully in command. He was calm,
7 cool, collected -- and the clincher, ladies and gentlemen,
8 the Coast Guard personnel had a conversation.

9 They wanted to get a blood alcohol test from the
10 other members of the crew, and they discussed how they were
11 going to do this. And one way they discussed during this
12 was taking Captain Hazelwood off the ship back to Valdez
13 where maybe a breathalyzer test of some sort could be run,
14 or whatever.

15 And they concluded, no. We don't want to do
16 that. We want to leave him here in command because he
17 knows the situation better than anyone else. He knows the
18 vessel better than anybody else. We want him to take
19 charge and stay in charge.

20 I think the evidence, ladies and gentlemen, would
21 show that if they suspected at all Captain Hazelwood was
22 under the influence and his judgment was impaired, that's
23 the last thing in the world the Coast Guard would do. They
24 did it because they saw that obviously alcohol was not a
25 factor in what was happening at that time.

1 Trooper Fox arrives and -- so, this may or may
2 not get a little bit interesting at this point, because
3 Trooper Fox gets on board because he's -- there's a radio
4 call and he comes in. He thinks that there's a wild man on
5 board. That's kind of the report he got. He's got a wild
6 drunk he has to help subdue.

7 So he's totally surprised. He sees Captain
8 Hazelwood, and he will testified when he came on, he saw
9 nothing. The Captain was quiet. He was not intoxicated.
10 he didn't smell anything, and he thought, "Well, what's
11 going on here? You know, what am I supposed to do?"

12 The Coast Guard people, they talked to him, they
13 said, "Well, we want you to -- can you assist us in the
14 blood test? Can you give him a blood test?"

15 And Fox says, "No, I can't. I don't -- I'm not
16 qualified to do that. But I can get people that can do it
17 for you."

18 For whatever reason, the Coast Guard was not
19 interested in this offer, and a further delay occurred.
20 Captain Hazelwood, in the meantime, was going about his
21 business. The ship wasn't going anywhere, but he's still
22 in command and he's still doing various things, using his
23 quarters, he goes back and forth. He's not standing there
24 at all times with the Coast Guard or Trooper Fox.

25 He -- then the -- getting back to Fox and

1 Delozier and Falkenstein again, they have this conversation
2 but, for whatever reason, the Coast Guard decides to do it
3 their way, and we expect the evidence will show that they
4 expect the evidence will show that they consider this to be
5 a Coast Guard matter, not any more state business.

6 And then requested and got some help, they
7 finally learned by coincidence that a Corpsman from
8 Anchorage happened to be there, and was on the way leaving
9 to the airport. They managed to stop Mr. Connors and get
10 him back on board, but, as has already been said now -- and
11 it's readily apparent -- it is some ten hours after the
12 grounding. A lot of time has gone by.

13 Connors comes on board and yes, he takes blood
14 samples and on this point, Captain Hazelwood did not order
15 anyone to take urine samples or blood tests. That is a
16 Coast Guard matter, and they can do that, and they do it on
17 their own, without the captain's orders.

18 The fact that the urine test was not given
19 immediately by Captain Hazelwood, also the Coast Guard will
20 say that you have a right to refuse, if you want. That's
21 by their regulations. In any event, blood samples are
22 finally drawn, very, very late. _____ eleven hours
23 after the fact, they're taken.

24 Then we get into the battle of more experts.
25 What does it mean?

1 Well, the State says that if the blood alcohol
2 content is more than .04, there's a Coast Guard regulation
3 -- not a state law, but a Coast Guard regulation -- that
4 says he is under the influence.

5 Well, ladies and gentlemen, let me just remind
6 you here that Captain Hazelwood is not on trial for a
7 violation of any Coast Guard regulation whatsoever. He is
8 on trial here, and the only pertinent statutes involved on
9 this one would be -- the statute is what we call DWI,
10 driving while intoxicated.

11 That, ladies and gentlemen, requires, under state
12 law, that this figure not be .04. It's immaterial, it's
13 irrelevant, what the Coast Guard thinks is appropriate. It
14 must be, under state law, 10 or greater -- and, in fact,
15 the Judge, we expect, will instruct that you under our
16 implied consent law, what these numbers mean is that the
17 number between .05 percent, up to .10, but not greater than
18 .10, is essentially no inference of anything.

19 It does not infer the person was under the
20 influence, nor does it infer that he was not. It can be
21 taken, along with any other evidence, to show whether the
22 person was, or was not, impaired or under the influence of
23 alcohol.

24 So that's very important. Do not, please, be
25 misled by the Coast Guard or things like that. You are

1 here to try a state case in state court.

2 Well, getting back to the experts again, the
3 alcohol and what it means. There will, in all likelihood,
4 be a number of experts who talk about alcohol, and it isn't
5 really appropriate to do that now, because -- just be aware
6 of that, because this number by itself is going to be
7 essentially meaningless, but you will hear, in all
8 probability, a great deal of testimony about alcohol, how
9 it affects a person, what it does, what these numbers mean,
10 and can you go backwards in time and come up with a
11 different figure, and whether it means anything or not.

12 The whole matter, however, on this issue is, we
13 submit the evidence will show that the numbers mean
14 nothing, because there will not be one person in this case
15 that will testify that, from their personal observations
16 and in their expertise, their knowledge of alcohol and how
17 it affects people, that any command that was given was
18 impaired, the judgment behind that command was impaired by
19 the use of alcohol, that Captain Hazelwood was not in
20 control of his functions, his motor abilities, his thought
21 process, or anything else that would, in fact, show that he
22 was under the influence.

23 This also goes to the issue, then, of
24 recklessness.

25 Before I get into that, though, because that's

1 kind of summing up, and things are going faster than
2 expected here, I want to comment just briefly about one of
3 the last things Mr. Cole mentioned. That was the phone
4 conversation, after the grounding, that occurred between
5 Captain Hazelwood and Mr. Myers, one of the officials of
6 Exxon Shipping Company.

7 Naturally, there was full communication of what
8 happened and why. As Mr. Cole told you that Captain
9 Hazelwood said, "I'm the one at fault. I should have been
10 on the bridge."

11 Ladies and gentlemen, the evidence is going to
12 show that, at no time, did Captain Hazelwood say, or said
13 at any time, that, "I'm not at all to blame here. I am
14 certainly partly to blame, in the blame sense" -- that is,
15 fault. And I want you keep that in mind very, very
16 carefully.

17 What he had told Mr. Myers was, "The third mate
18 was on the wheel, on the helm, on the conn when it
19 happened. I wasn't there. It shouldn't be just his
20 fault. It's also my fault. In hindsight, in retrospect, I
21 should have been there."

22 On that point, ladies and gentlemen, please keep
23 in mind you are here to judge a person as to whether or not
24 he committed a crime, a number of crimes, and on that
25 point, the only one that involves the spilling of oil is

1 negligent discharge of oil. If not for that one, Captain
2 Hazelwood would not be here, for spilling oil. The others
3 have nothing to do with spilling oil.

4 So keep in mind, please, that there is a certain
5 thing called fault, blame, if you will. "It's my fault."
6 "It's his fault." "I wish it hadn't happened."

7 That gets back to what causes accidents, ladies
8 and gentlemen. Keep in mind that the evidence in this
9 case, that we're here to determine whether the proof beyond
10 a reasonable doubt is such that you are totally convinced,
11 convinced to this extent, that a crime was committed. It
12 is not your function to point the finger and say, "There is
13 blame."

14 There are plenty of others that can do that, and
15 there may be plenty of blame to go around. It isn't a
16 question of that.

17 Oddly enough, you will also hear testimony from
18 some witnesses in this case who said, "We've been granted
19 immunity." That is, they've been promised by the state of
20 Alaska that they won't be prosecuted for this case.

21 The only person, then, you are to determine
22 whether they committed a crime or not, again -- and I'm
23 sure the Judge will instruct you on this -- look to others
24 to say whether they are guilty or not guilty, your sole
25 purpose and function is judge the facts in this case, and

1 the law as given to you, and decide whether or not Captain
2 Hazelwood alone -- alone -- bears the brunt of this by
3 being branded, charged and convicted as a criminal.

4 The exact statutes involved here are somewhat
5 important, and I will conclude by touching on these,
6 however briefly. The main one, of course, is the what's
7 called criminal mischief statute. That is, the reckless
8 conduct, recklessly creating a risk of damage to property
9 in excess of \$100,000.00 by widely dangerous means.

10 There is a number of different elements here,
11 that each one of those has to be proven by proof beyond a
12 reasonable doubt.

13 I would submit, ladies and gentlemen, that the
14 most important one here, the one you will find from the
15 evidence does not exist, and that is the term recklessness.
16 That will be defined _____, and you've already heard
17 it from Mr. Cole. But essentially, it means a conscious
18 disregard. You're aware of, and consciously disregard, a
19 substantial risk that a result will occur.

20 Now, that's legalese, but that's pretty much what
21 it means, when you stop to think about it. You are aware
22 of, you know about it, and you consciously disregard it.
23 You're taking a real, known risk, a substantial risk.

24 Now, that's somewhat different from the
25 instruction you're going to hear about what's called

1 criminal negligence, but as far as the one charge of
2 criminal mischief is concerned, it requires what we call a
3 culpable mental state: that is, the mental state of the
4 person charged has to have this reckless disregard,
5 conscious disregard, for a known and substantial risk.

6 That same requirement is also true for the other
7 charge, which is called reckless endangerment. It still
8 requires recklessness, but here, the difference is that you
9 recklessly create a risk of injury, or death, to a person.

10 The evidence in this case will show quite a
11 variety of things that happened. Only one person became
12 very concerned -- Mr. Kunkel. Everyone else, no concern.
13 Concern, yes. But worry, fear? No. They're
14 professionals, doing their job, and they -- evidence will
15 show that going aground is not an uncommon experience. It
16 happens. It's called a maritime accident.

17 On the charge of DWI, the judge will also
18 instruct you not under what's Coast Guard law or
19 regulation. He will charge you under what the state
20 law _____. And on that one, there's going to be
21 probably two theories under which the state is going to
22 claim that Captain Joseph Hazelwood was guilty.

23 One is called the so-called .10 theory, that at
24 the time this occurred, his blood alcohol was .10 percent
25 or greater. The other one is called the under the

1 influence theory. That means, regardless of what the
2 person's blood alcohol is, no matter how high or how low,
3 that his actions, what he did, what people could see, were
4 noticeably affected by alcohol.

5 And if that -- if you stop and think about it, that's
6 kind of obvious, too. That means simply, "I watched him.
7 I saw him. He couldn't operate the motor vehicle. He was
8 weaving over the line" -- things of this nature. He
9 couldn't walk properly. He couldn't do various physical
10 tests properly.

11 That's probably what you're going to hear in this
12 regard. So keep in mind, if you will, that no witness in
13 this case is going to say that Captain Hazelwood was
14 noticeably affected by alcohol.

15 Alcohol, again, had nothing to do with this case,
16 nothing to do with what happened. It's a great issue to go
17 before a jury on, but the facts are, and the evidence will
18 show, that it just isn't there.

19 What is there -- let me get back to one thing. I
20 neglected to mention the negligent discharge charge, the
21 last one, culpability.

22 That's a little different, because it requires a
23 different mental state from recklessness. It's called
24 criminal negligence.

25 If we think about fault, think first in terms of

1 what we call civil blame, or civil fault. That's where a
2 reasonable person did or did not do something -- or a
3 person did or did not do something that a reasonable person
4 would, or would not have done, under the same, or similar,
5 circumstances.

6 Again, a nice legalese definition, but it means,
7 when you go for the intersection in your car, when you
8 reach down to put a cassette tape in, maybe there's an
9 accident, you see. Oh, my gosh. I wish I hadn't done
10 that. That wasn't very good thinking. That's not what a
11 reasonable person would have done in that situation.

12 You take that up another step, and it's a big
13 step, because it requires negligence that is so great that
14 it requires punishment. That's why they call it criminal
15 negligence, and you will be defined -- that will be defined
16 for you also.

17 But it is more than just, "I made a mistake. A
18 reasonable person would not have done that." It is so bad
19 that the law says, "You must be punished that you were so
20 negligent." That's the standard there, and yet this is
21 lower than recklessness.

22 So, ladies and gentlemen, I may or may not have
23 covered everything that you were thinking about or were
24 concerned about after Mr. Cole spoke. I don't believe
25 that's terribly important. You will start hearing the

1 evidence here very soon, and what we say here, of course,
2 is not evidence -- nor will it be long remembered --
3 because it's humanly impossible.

4 But I hope that we have both given you things to
5 look for. I think the lines have been pretty well drawn
6 here from what the state is claiming and what the defense
7 is saying.

8 So with this kind of an opening guidance, if you
9 will, that kind of tells you, "Here's what the book is
10 about." I've got my side and he's got his. Perhaps there
11 are some pages I covered that he didn't, but you're soon
12 about to undertake, listening to the evidence and, by way
13 of a poor analogy, I suppose, reading that book.

14 When you do that, always, always, when you're in
15 the middle of it and things will be confusing, perhaps it
16 is only a guide, it's only an idea. Think back, again, to
17 the table of contents, if you will, which is what is he
18 charged with? Are we talking blame here, or are we talking
19 crime?

20 Go back to that at all times, and keep in mind,
21 then, how the pages are going to unfold, what you're going
22 to hear, what you're going to see, and at the end, then it
23 becomes somewhat clearer that, yes, there were things that
24 went wrong. Maybe -- maybe things could have been done
25 differently. In hindsight, everyone would do something

1 differently.

2 But finally, I would only say, ladies and
3 gentlemen, that in the final analysis, examine the
4 evidence, as you have all sworn to do, and the law as the
5 judge is going to give it to you. Then you will find that
6 the facts are the greatest ally of the Defendant in this
7 case, and they will convince you that he is not guilty of
8 any charge.

9 Thank you.

10 THE COURT: I'm going to recess for a lunch
11 break. I'd like to address counsel as soon as we release
12 the jury for lunch.

13 Ladies and gentlemen, we'll come back at -- why
14 don't you plan to be back in the jury room at 1:30. That
15 will give you an adequate lunch. In the meantime, don't
16 discuss this case among yourselves. Do not form or express
17 an opinion concerning the case. Avoid media sources about
18 it.

19 Many of the media representatives are wearing
20 press badges. I'll make sure they all wear them. If you
21 inadvertently come in contact with them, and you can't get
22 out of their way, like in the elevator, they will not
23 discuss this case, and you should not discuss it either
24 with anybody.

25 We will see you back at 1:30. Have a nice

1 lunch. And Scott will give you a key here to get into your
2 jury room.

3 (Whereupon, the jury leaves the courtroom.)

4 THE COURT: One of the jurors asked if note
5 taking would be permitted. Would there be any objection to
6 allowing them to take notes?

7 Mr. Cole?

8 MR. COLE: No.

9 THE COURT: Mr. Madson?

10 MR. MADSON: No, Your Honor. I assume each juror
11 is presented with a note pad and pencil and can or cannot
12 take notes (inaudible) afterwards.

13 THE COURT: Right. We'll give them a pad and
14 some writing apparatus, and they will be instructed to
15 leave them on the chairs when they take their recesses and
16 when they leave for the evening, to leave them on their
17 chairs, and Mr. Burden will gather them up and make sure
18 they are back the next morning.

19 MR. MADSON: I have no objection to it.

20 THE COURT: All right.

21 Since there are so many representatives of the
22 media present, there exists the possibility of inadvertent
23 contact between media representatives, jurors and
24 witnesses. To minimize this risk, please wear your press
25 badges at any time during your presence in the court

1 building, in any location in the court building, if you're
2 here in part to cover this place.

3 If you've misplaced your badges, just as the
4 clerk for additional badges, and he will give them to you.

5 Is there anything we need to take up before we
6 take our recess?

7 MR. COLE: No, Your Honor.

8 MR. MADSON: No, Your Honor.

9 THE COURT: We will stand in recess.

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

12 (A luncheon recess was taken from 12:19 p.m. to
13 1:33 p.m.)

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1 AFTERNOON SESSION

2 (Whereupon, the jury enters the courtroom.)

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

4 Ladies and gentlemen, you've probably noticed the
5 pads. You may take notes during the trial. Before you
6 take a recess or before you go home for the day, just put
7 the pad on your chair and that's where you'll find them
8 tomorrow morning, and that's where you'll find them each
9 time.10 You may not take them into the jury room and you
11 may not take them outside of the court. So just leave them
12 on the chair when you finish each time and we will have
13 them there for you.14 I understand your chair is not too -- not too
15 comfortable? I understand alternate number 3 hasn't got a
16 very comfortable chair. We'll fix that.

17 MS. : Thank you.

18 THE COURT: All right. At this time, the State
19 may call its first witness.20 MR. COLE: Your Honor, the State will call
21 Lieutenant Stock of the U.S. Coast Guard.22 THE COURT: At this time, counsel, I'm going to
23 invoke the provision of the rule excluding witnesses.

24 (Pause)

25 THE CLERK: Sir, you will find a microphone

1 there. If you will please attach that to your tie or to
2 your shirt and remain standing and raise your right hand.
3 Whereupon,

4 LTCDR. GARY STOCK

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

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

10 THE WITNESS: Lieutenant Commander Gary Don
11 Stock. Last name S-t-o-c-k.

12 THE CLERK: And your current mailing address?

13 THE WITNESS: My -- the office address?

14 THE CLERK: That's fine.

15 THE WITNESS: 222 West 7th, Box 17, Anchorage
16 99513.

17 THE CLERK: And your current occupation, sir?

18 THE WITNESS: U.S. Coast Guard, Senior
19 Investigating Officer, assigned to Marine Safety Office,
20 Anchorage.

21 THE CLERK: Thank you.

22 THE COURT: Mr. Cole?

23 MR. COLE: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. COLE:

1 Q Lieutenant Stock, would you give the jury an idea
2 of what your duties are in your position?

3 A My duties as Senior Investigating Officer at the
4 Marine Safety Office in Anchorage primarily entail
5 coordinating all marine casualty investigations that occur
6 in our zone within western Alaska, which is, for all
7 intents and purposes, all of Alaska with the exception of
8 southeast and Prince William Sound.

9 Q Did you respond to a subpoena from the District
10 Attorney's office to produce certain documents?

11 A Yes, sir, I did.

12 Q And where were these documents being kept?

13 A These documents were kept, and are presently
14 kept, at our office, the Marine Safety Office in the
15 Federal Building here in Anchorage.

16 Q Were these documents used by members of the Coast
17 Guard pursuant to an investigation by the Coast Guard to
18 the grounding of the Exxon Valdez?

19 A The documents were obtained by the Coast Guard.
20 Some were seized. Some were voluntarily given to us by
21 various crew members and/or Exxon officials.

22 Q But it was done pursuant to the investigation?

23 A That is correct.

24 Q And is the Coast Guard authorized under law to
25 conduct such investigations (inaudible)?

1 A Yes, we are. In fact, we are required by law to
2 conduct an investigation.

3 Q And the subpoena requested that you provide
4 copies. Is that what you've provided here today?

5 A That is correct.

6 Q And have you had a chance to look over those
7 documents?

8 A Yes, I did. In fact I prepared them, I believe,
9 last Friday, and had an opportunity to go over the ones
10 that I was told would be here today.

11 (Pause)

12 Q I'm showing you what's been marked as Plaintiff's
13 Exhibit Number 1. Do you recognize that document?

14 A Yes, I do.

15 Q And is this a copy of the original that you kept
16 -- is kept by the Coast Guard?

17 A Actually, it is a copy of a copy of the original
18 that we have in the office. Down in the lower lefthand
19 corner is my signature as certifying it to be a copy. And
20 to the right of that is a similar endorsement by the
21 Investigating Officer, Mr. Delozier, who certified it to be
22 an original.

23 So one could assume, through this chain, that it
24 is a copy of the original.

25 Q And the document -- and I also set some more

1 documents there -- the one on the bottom --

2 (Pause)

3 A Yes.

4 (State's Exhibit 1 was marked
5 for identification.)

6 BY MR. COLE: (Resuming)

7 Q Could you identify what that is?

8 THE COURT: Could we have the exhibit number,
9 please?

10 MR. COLE: Exhibit number --

11 BY MR. COLE: (Resuming)

12 Q This is what has been marked for identification
13 as Exhibit Number 2. Is that correct?

14 A Correct. Yes. This would be a copy of the
15 course recorder on a certain date and a certain time, and
16 there again I certified it to be a copy of a certified copy
17 that was obtained by the Coast Guard.

18 I personally did not see the original, but there,
19 again, the original was seen by Mr. Delozier on 26 March
20 and a copy of that is in our file, and then I made a copy
21 of that. If that can be followed.

22 But that's how that is.

23 (State's Exhibit 2 was marked
24 for identification.)

25 MR. COLE: If I could approach the witness, Your

1 Honor, I'd like to get out another exhibit behind --

2 THE COURT: Right.

3 BY MR. COLE: (Resuming)

4 Q And I'm showing you what has been marked for
5 identification as Plaintiff's Exhibit Number 16. Does that
6 appear to be, except for the specific wording that's been
7 placed on it, a fair and accurate copy of the exhibit that
8 you were asked to bring here?

9 (Pause)

10 A Yes. It's a different section of this, but it
11 appears that the section on here represents a part of this
12 course recorder. It actually picks it up at -- and it --
13 about 06 -- actually, 0610, where this one picks it up at
14 about 0300, but yes, from there on, it appears to be the
15 same.

16 (State's Exhibit 16 was
17 marked for identification.)

18 BY MR. COLE: (Resuming)

19 Q And would you pick up the next one from the
20 bottom and identify that from the record, the
21 identification number on the back, or -- yes.

22 A That's Plaintiff's Exhibit Number 3, and this is
23 an actual true copy. We have the original in our office of
24 the -- it appears to be the bell log from the -- from the
25 engine room, I assume. That's what it appears to me to be.

1 Q And that is a true copy of the original?

2 A Yes, sir. That's correct. We have the original,
3 and I do recall this exhibit. It's the rolled up -- like a
4 cash register receipt type of document.

5 (State's Exhibit 3 was marked
6 for identification.)

7 BY MR. COLE: (Resuming)

8 Q And the next exhibit, number 4, that is sitting
9 next to you, would you identify that for the record?

10 A Yes. That's the tally book from the Exxon Valdez
11 and there again, that's certified to be a true copy. We
12 have the original in our office, and I do recall this
13 document.

14 (Pause)

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

17 BY MR. COLE: (Resuming)

18 Q If you would begin with what's been identified as
19 Plaintiff's Exhibit Number 5, do you recognize that
20 document?

21 A Plaintiff's Exhibit Number 5 is a certified true
22 copy of the official log book of the Exxon Valdez. For a
23 certain voyage normally is what they are for, and there
24 again we have the original of this in our office, and I did
25 personally see the original of this.

1 Even though original is up there in the middle
2 section, that actually just came through in the
3 photocopying process. It is a certified true copy.

4 (State's Exhibit 5 was marked
5 for identification.)

6 BY MR. COLE: (Resuming)

7 Q Now, I believe the next issue is what has been
8 identified as Plaintiff's Exhibit Number 6, as you see on
9 the bottom. Deck log book.

10 A Okay.

11 Q Do you recognize that document?

12 A Yes, I do. There, again, this is a certified
13 true copy of an original that we have at our office at the
14 Federal Building on the Exxon Valdez.

15 Q What is it? The original of what?

16 A It's the original deck log book.

17 Q Thank you.

18 (State's Exhibit 6 was marked
19 for identification.)

20 BY MR. COLE: (Resuming)

21 Q Now, going to what has been identified as
22 Plaintiff's Exhibit Number 7, maneuvering chart?

23 (Pause)

24 A Okay.

25 Q Would you identify that for the record?

1 A Yes. This is a copy of a certified copy again of
2 the maneuvering characteristics of the Exxon Valdez. There
3 again, we do not have the original within our custody, but
4 we have the certified copy of the original, and then I just
5 certified this to be a copy of that.

6 (State's Exhibit 7 was marked
7 for identification.)

8 BY MR. COLE: (Resuming)

9 Q If you would turn to what's been identified as
10 Plaintiff's Exhibit Number 8, the phonecalls?

11 A Yes.

12 Q Would you identify that for the record?

13 A Uh-huh. Okay. Plaintiff's Exhibit Number 8 is a
14 copy of a copy of the traffic analysis via COMSAT. It is
15 essentially the INMARSAT phone conversations from a vessel,
16 from a certain time, I believe, normally. Yes.

17 It looks to be 23 March through -- I believe it's
18 26. It didn't come through very good on the copy. I
19 believe it's either 25 or 26. I can't quite read it.

20 But through a few days. The phone numbers, call
21 duration, date, that kind of thing.

22 Q And is that a true and accurate copy of the copy?

23 A Yes, it is. It's a true copy of the copy that we
24 have. There again, we don't have the original. We have a
25 copy.

1 (State's Exhibit 8 was marked
2 for identification.)

3 BY MR. COLE: (Resuming)

4 Q Would you turn to what has been identified as
5 Plaintiff's Exhibit Number 9, the night order book, the
6 partial? Could you identify that for the record?

7 A Exhibit Number 9 is a night order book. It is a
8 couple of excerpts, actually, from the night order book,
9 which includes the standing orders and a couple of entries
10 from the -- from the book, and that's a copy of a certified
11 copy.

12 There again, we don't hold the original of this,
13 but we have a certified true copy of this document at our
14 office.

15 (State's Exhibit 9 was marked
16 for identification.)

17 BY MR. COLE: (Resuming)

18 Q Would you turn to what has been identified as
19 Plaintiff's Exhibit Number 10 at the bottom, the night
20 order book?

21 A It is the night order book. The -- okay, yeah. I
22 stamped that on the back because, I remember, it was so
23 dark on the front.

24 Here again, this is Exhibit Number 10. This is a
25 certified true copy. We have the original at our office of

1 the book itself, and it's a night order book of the Exxon
2 Valdez.

3 (State's Exhibit 10 was
4 marked for identification.)

5 BY MR. COLE: (Resuming)

6 Q Would you turn, then, to what's been identified
7 as Plaintiff's Exhibit Number 11 and identify that for the
8 record?

9 A Okay. Plaintiff's Exhibit Number 11 is a chart
10 which basically outlines RPM versus speed. A certain RPM
11 will give you a certain speed, and this is a copy of a
12 certified copy, again, and there again, we don't hold the
13 original, but we have a certified copy.

14 (State's Exhibit 11 was
15 marked for identification.)

16 BY MR. COLE: (Resuming).

17 Q Would you then turn to what has been identified
18 as Plaintiff's Exhibit Number 12?

19 A Plaintiff's Exhibit Number 12 is a cargo read out
20 of the Exxon Valdez and it is a copy of a copy and the copy
21 that we had was not actually a certified copy, so I just
22 certified it to be a copy, and that was it. I did not see
23 the original.

24 And I think this was actually provided to us
25 later on, I believe, as I recall.

1 (State's Exhibit 12 was
2 marked for identification.)

3 BY MR. COLE: (Resuming)

4 Q Number 13? Could you identify that for the
5 record?

6 A Number 13 is a certified copy of a copy which
7 outlines the Sea Carrier Initiative Search Guidelines, and
8 I remember reading it, and I believe that it was basically
9 an Exxon policy regarding searches, seizures, that kind of
10 thing, of crew staterooms and things like that.

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

13 BY MR. COLE: (Resuming)

14 Q And what has been identified -- or what has been
15 a number for identification as Plaintiff's Exhibit Number
16 14? Do you recognize that?

17 A Yes, I do. This is a copy that I certified to be
18 a copy of one that we obtained, and it's an Exxon policy
19 out of the organization manual.

20 Q Bridge manual.

21 A Bridge manual.

22 Q Okay.

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

25 BY MR. COLE: (Resuming)

1 Q And finally, what's been identified as
2 Plaintiff's Exhibit Number 15. Do you recognize that?

3 (Pause)

4 A (Inaudible). Yes. This is a certified true
5 copy, and we have the original of this chart, navigational
6 chart 16708 that was obtained from the vessel. And it is
7 an actual copy of the original.

8 (State's Exhibit 15 was
9 marked for identification.

10 MR. COLE: Judge, pursuant to evidence rule
11 803(8)(A), the State would move Exhibit Number -- what has
12 been identified as Exhibit Number 1, the crew list; Exhibit
13 Number 2, the course recorder; Exhibit Number 3, the bell
14 logger; Number 4, the bell log; Number 5, the official log
15 book; Number 6, the deck log book; Number 7, the
16 maneuvering chart; Number 8, the maritime phonecall list;
17 Number 9, the night order book; and Number 10, the night
18 order book; Number 11, the RPM table; Number 12 -- no,
19 excuse me. Not number 12.

20 Number 13, the ship's policy on alcohol
21 use _____. Number 14, the bridge manual. Number 15,
22 the bridge chart, 16708.

23 MR. MADSON: Your Honor, I have no objection to
24 admissibility under the rule, however, I do not agree that
25 they are necessarily admissible on the grounds that of

1 relevancy.

2 So some of them, I would argue are not admissible
3 because they're irrelevant, but they all come within the
4 rule as far as this witness is concerned, and his testimony
5 regarding their authenticity.

6 THE COURT: Mr. Madson, you have no hearsay
7 objection, then, is that correct?

8 MR. MADSON: No hearsay objection, that's
9 correct.

10 THE COURT: But you have a relevancy objection --
11 and which ones do you have a relevancy objection on?

12 MR. MADSON: Well, I think it's going to take
13 some time to do that, Your Honor. It would probably be
14 best out of the presence of the jury, if you want to get
15 into relevance. It's going to take a little while.

16 THE COURT: Which ones do you have a relevancy --
17 which ones don't you have on? Maybe we can resolve it that
18 way?

19 MR. MADSON: 1; 2, with a couple of questions,
20 perhaps, 2 I wouldn't have any objection to. And the same
21 goes for 5 or 6, 5 and 6. 7, 8, 9, 10, 11, 12.

22 13 I would object and 14 I would object. And 15,
23 inasmuch as I think the original is necessary in this
24 case. We have reason to believe there was certain markings
25 made on copies, and maybe that copy. We haven't had a

1 chance to examine that closely, but the original does not.
2 And that would be very important.

3 THE COURT: Maybe I misunderstood. Let's go the
4 other way, then. Which ones do you have an object to? I
5 may have misunderstood.

6 MR. MADSON: 13.

7 THE COURT: 13 and 14, you object to?

8 MR. MADSON: And 14, that's correct.

9 THE COURT: All right. Anything else you object
10 to?

11 MR. MADSON: Pardon me?

12 THE COURT: Anything else you have objection to?

13 MR. MADSON: Perhaps 11, Your Honor. I haven't
14 had time to really look at that closely, though. And like
15 I said, with the perhaps limited objection to number 15.
16 If, in fact, the original is available and we can use it, I
17 think (inaudible).

18 THE COURT: All right. 1, 2, 3 -- was 16
19 offered?

20 MR. COLE: Yes, it should be offered, Your Honor.

21 THE COURT: The chart?

22 MR. COLE: Yes.

23 THE COURT: Any objection to the chart?

24 MR. MADSON: Yes, Your Honor. I do. I object to
25 that.

1 THE COURT: Okay. Well, let's hold off and see
2 which one.

3 4, 5, 6, 7, 8, 9, 10 are admitted. 12 is
4 admitted.

5 Do you intend to use this witness to do anything
6 other than identify?

7 MR. COLE: No.

8 THE COURT: All right. And this is the only
9 foundational testimony you need from this witness?

10 MR. COLE: Yes.

11 THE COURT: All right. There's no hearsay
12 objection to the rest of them, so we will reserve ruling on
13 13, 14 and perhaps 15 and 16, and perhaps 11 -- is that the
14 way I understand it?

15 MR. MADSON: That's correct.

16 THE COURT: All right.

17 (State's Exhibits Number 1,
18 2, 4, 5, 6, 7, 8, 9, 10, and
19 12 were received in
20 evidence.)

21 MR. COLE: I have no further questions.

22 CROSS EXAMINATION

23 BY MR. MADSON:

24 Q Lieutenant Stock, just a couple of questions
25 regarding the exhibits that you've just testified

1 concerning.

2 Calling your attention to Number 5 and Number 6,
3 that is, the official log book and something called the
4 deck log book? Could you tell me, please, what is the
5 difference between those two?

6 A Well -- and this is based on my knowledge.
7 Generally speaking, the deck log book is a rough kept by
8 the vessel and normally maintained by the captain of the
9 vessel, and will have extraneous information in that, and
10 the official log book is an actual Federal requirement to
11 maintain certain things and certain things are entered in
12 there.

13 And in general, the deck log book contains more
14 information than the official log book. There are certain
15 entries that are required in the official log book -- i.e.,
16 fire boat, fire drill, boat drill, testing the navigational
17 equipment before they come into a port. Those type of
18 regulatory requirements are put in the official log book.

19 Q So if I understand correctly, the official log
20 book is one that's required to be kept under Federal law?

21 A That is correct.

22 Q Is that because the Exxon Valdez is sailing under
23 Federal registry?

24 A That would be correct. They are under the
25 Federal

1 Q Now --

2 A -- purview.

3 Q Excuse me. I didn't mean to interrupt you.

4 You also compared Number 2, the copy of the
5 course report --

6 A Yes.

7 Q -- to the chart here, which I believe is Number
8 16. And you said that it is close, but not quite the same.

9 A Well, I was a little bit, I guess confused
10 initially, because I looked at the top of that and the
11 bottom of that, and it didn't coincide with the top. But I
12 -- as I looked at it more closely, I see that that is only
13 a portion of what's on this exhibit.

14 Q When you say "this exhibit," you're talking about
15 what? Number 2?

16 A Yes, correct.

17 Q Okay.

18 In addition, sir, is it not correct that there
19 are no notations on Exhibit 2 that refer to such things as
20 transit narrows, pilot away, grounding, things like that?

21 A That is correct. There are none on the exhibit.

22 Q So --

23 A That's right.

24 Q -- Number 16 has additional items on there?

25 A That is correct. Right. This is strictly a copy

1 of the course recorder from the ship. There are no notes
2 on there, no editorializing, or anything like that. Just
3 strictly a copy of the graph paper, and when with the
4 actual recording of courses.

5 MR. MADSON: I believe that's all I have, sir.
6 Thank you very much.

7 THE COURT: You are excused. You may step down.

8 THE WITNESS: Thank you.

9 THE COURT: Take the microphone off.

10 (The witness was excused at 1:57
11 p.m.)

12 MR. COLE: Your Honor, at this time, the State
13 would call Captain Ed Murphey.

14 THE COURT: Miss Henry, are you going to need the
15 exhibits on the witness's desk? If not, remove them and
16 put them on --

17 MS. HENRY: No, Your Honor (inaudible).

18 THE COURT: -- counter.

19 (Pause)

20 Whereupon,

21 WILLIAM E. MURPHY

22 called as a witness by counsel for the State of Alaska, and
23 having been duly sworn by the Clerk, was examined and
24 testified as follows:

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

1 name. and spell your last name?

2 THE WITNESS: William Edward Murphy, M-u-r-p-h-y.

3 THE CLERK: And your current mailing address,
4 sir?

5 THE WITNESS: Box 597, Palmer, Alaska.

6 THE CLERK: What is your current occupation, sir?

7 THE WITNESS: Excuse me?

8 THE CLERK: What is your current occupation, sir?

9 THE WITNESS: Marine pilot.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. COLE:

13 Q Good afternoon, Mr. Murphy.

14 A Mr. Cole.

15 Q Could you tell us what you do, now?

16 A I'm a Marine pilot.

17 Q How long have you worked in this position?

18 A About 16 years.

19 Q When did you become involved in the Maritime
20 industry?

21 A Oh, in summer vacations in high school I worked
22 on fishing vessels.

23 Q And have you held the various jobs, escalating up
24 the ladder?

25 A Yes, I have. My college education was at a

1 Merchant Marine Academy, and so forth.

2 Q Have you gotten your -- at some point, held an AE
3 license, third mate, second mate --

4 A That's correct, yes.

5 Q Can you tell me how you're different than a
6 Master of a vessel, of a tanker, for instance? Your job?

7 A Well, a Master is hired by the - presumably, the
8 ship owner. He's in charge of the operation of a vessel
9 and he's the commanding officer. When a vessel approaches
10 a port, customarily it takes a local pilot. The local
11 pilot is also an experienced Mariner who usually has a
12 Master's license, but this person has specialized local
13 knowledge of the port or waterway the ship is coming to, or
14 leaving from, and in most cases, is also a ship handling
15 expert.

16 Q Could you tell us a little bit about the south
17 coast of Alaska Pilot's Association? What type of
18 association is this?

19 A Well, it's a state pilot's association much in
20 the same manner as any state pilot group in any of the 23
21 coastal states. The members of the association are
22 self-employed independent contractor pilots who form
23 together in an association to provide a piloting service to
24 industry, pool their income, speak with a common voice, and
25 conduct a piloting business.

1 Q Are you a member of that?

2 A Yes, sir, I am.

3 Q And did you have any involvement in founding that
4 organization?

5 A Yes, I'm a founding member.

6 Q When was that founding?

7 A In 1975, I believe.

8 Q And can you the jury an idea of why it was
9 founded?

10 A Well, at that time there were -- in southwest
11 Alaska, there existed a small pilot group, which I was a
12 member of, called Alaska Marine Pilot's. It's privately
13 held by an individual and for a variety of reasons, the
14 pilots employed by the individual weren't satisfied and so
15 they formed their own group, in the same fashion as other
16 state pilotage groups.

17 Q And did it coincide at all with the building of
18 the pipeline?

19 A No, it didn't. It was previous to the -- well,
20 the pipeline was being constructed at that time, but it was
21 before it came onstream.

22 Q And would you give the jury an idea of the area
23 that this pilot's association covered?

24 A Yes. We pilot vessels from Cape Spencer to
25 Demarkation Point on the Alaska-Canada border, which

1 includes the Acatak, (PH), Icy Bay, Prince William Sound,
2 Resurrection Bay, Cook Inlet, the Kodiak Island Group,
3 Alaska peninsula, Aleutian Islands, and the Bering and
4 Beauford Sea coasts.

5 Q Would you explain what your role has been in the
6 transportation part of the crude as pilot? How did you
7 become involved with that?

8 A Well, before the Trans-Alaska Pipeline came
9 onstream, we've been piloting tankers in Cook Inlet for
10 many years. There are a lot of Cook Inlet crude that's
11 been transported by tanker out of the state. So we were
12 involved in that.

13 And when the Trans-Alaska Pipeline went onstream
14 -- I believe the first ship was in August of 1977 -- we, of
15 course, were there, and we've piloted all those vessels.

16 Q Would you tell the jury what licenses you hold
17 presently?

18 A Yeah. I have a Coast Guard Master's license and
19 I have a pilotage endorsement for the Acatak Icy Bay,
20 Prince William Sound, and western Alaska, any gross tons.
21 And I have a state pilot's license for the same area, any
22 gross tons.

23 Q When you say Prince William Sound, does that mean
24 that from Cape Hinchinbrook all the way into the Alyeska
25 Terminal?

1 A Well, yes. Prince William Sound would be a line
2 across the outer islands, which enclose Prince William
3 Sound. Anything inside of that line is included Prince
4 William Sound. From the ocean entrances of Prince William
5 Sound toward the shore.

6 Q What kind of training did you have to go through
7 to get these licenses?

8 A Well, the normal progression is to -- I graduated
9 from the California Maritime Academy with a third mate's
10 license. I sailed for awhile on a variety of merchant
11 ships, advanced my license. I spent five years in the U.S.
12 Navy, advanced my license.

13 On my vacations from -- when I got out of the
14 service, I returned to sea. On my vacations from sea, I
15 rode with the local pilots here in Alaska and obtained the
16 required observer trips over the -- over the routes in Cook
17 Inlet and this took place over a period of about a year or
18 eighteen months.

19 At that time, I started independent piloting on
20 smaller vessels, and over the years worked my way up to the
21 larger vessels, and during that time, I continued to
22 acquire pilotage endorsements until I was able to get all
23 pilotage for southwest Alaska from Cape Spencer to
24 Demarkation Point.

25 Q Would you give the jury an idea of what type of

1 testing goes on in order to get that pilotage endorsement
2 to Prince William Sound?

3 A Yes. There -- well, there are two kinds of
4 pilotage endorsement. The first is the Coast Guard
5 pilotage endorsement, and that is an endorsement to one's
6 Merchant Mariner's license, and depending upon the -- the
7 Coast Guard district, there are peculiarities in each one,
8 I think.

9 But generally speaking, the Mariner makes a
10 required number of observer trips over the route in
11 question. Those trips are documented. He presents that
12 documentation to the Coast Guard examining office. They
13 check out its accuracy and at that time he, or she, can
14 take the examination. If that examination is successfully
15 passed, the endorsement for the particular area is placed
16 on the license.

17 Q Tell the jury what kind of examination that
18 you're required to take? And what you -- for instance,
19 what would you be required to know?

20 A Well, I can't be totally accurate now. It's been
21 many years since I finished taking those -- those
22 examinations, although I think the requirements are
23 essentially the same.

24 Generally, a chart sketch of the area in question
25 is required.

1 Q You say a chart sketch. What --

2 A Well, the Coast Guard Examining Office provides
3 the testee with an outline of the land masses.

4 Q Like a blank chart?

5 A Yes. Essentially, a blank chart. There's no
6 data on it at all, just an outline of land masses and so
7 forth. You have to draw in the soundings, dangers --
8 usually the ten-fathom curve. Name the major points.
9 Normally, they require the applicant to draw in the course
10 line that would normally be used by ships transitting that
11 particular area, and so forth.

12 And then -- at least it was the case the last
13 exam I took -- you turned the chart sketch over and on the
14 back, you write from memory the full details of all the
15 aids to navigation which appear on that chart.

16 Q When you say aids to navigation, some people
17 might not be familiar with that. Would you explain what
18 you mean by that?

19 A Aids to navigation would be a lighthouse
20 structure, a day marker, a buoy.

21 Q And then you're graded on how accurate --

22 A Well, the way it used to be done, yeah. I think
23 it really depends upon the examiner, the accuracy of the
24 chart sketch that's required. The accuracy of the aids to
25 navigation used to be 100 percent.

1 And then there's a local knowledge examination,
2 generally taken out of sources like the coast pilot, the
3 tide and current tables, and so forth.

4 Q Does a person have to be a pilot of your
5 association to get this type of pilotage endorsement?

6 A No, sir. It's a federal endorsement. Anyone who
7 fulfills the requirements could take the examination.

8 Q That could be a tanker captain, or a first mate
9 or second mate?

10 A Yes, sir.

11 Q Now, in addition to the licenses that you talked
12 about, are there any internal training requirements that
13 are required by the Southwest Alaska Pilot's Association?

14 A There is an additional state license.

15 Q Oh, okay. Would you tell us about that?

16 A Beyond the federal license, yes. The
17 prerequisite to state license is the federal license. If
18 one has a federal license and not the state license, he has
19 to have a certain grade of Merchant Marine license, has to
20 document a certain number of dockings and undockings in the
21 particular area for which he or she is applying.

22 At that time, there's another examination, a
23 written examination, on the particular area and on the
24 Marine Pilot Board Rules and Regulations, master-pilot
25 relationship, ship handling, rules of the road. There's

1 also a physical examination and an oral interview.

2 That's the initial state license. Once a person
3 has jumped those hurdles, to add additional pilotage, it's
4 just a matter of taking the examination for the particular
5 area he wants.

6 Q And you have the state license for the Prince
7 William Sound also?

8 A Yes, sir, I do.

9 Q Now, I think when we left off, we were talking
10 about, were there any additional internal training
11 requirements that you have at the Southwest --

12 A Yes, yes, there are, and this is common in state
13 pilot groups such as ours. We think our requirements are
14 quite stringent. We require all of our people to attend --
15 well, the best ship handling simulators in the world right
16 now is in Grenoble, France and Southampton, England.

17 We have a system of hands-on training, junior
18 pilots, apprentice pilots, ride with more senior pilots
19 extensively. As they progress, they are given more and
20 more responsibility, until they arrive at a point where
21 they pretty much independently are running the vessel to
22 and from its destination under the care of the senior
23 pilot.

24 Once the applicant reaches that point, which,
25 depending on his experience and progress can vary from one

1 year to three years, once he reaches that point, we have a
2 system of three check rides -- we call them check rides.

3 The applicant -- or the trainee, excuse me -- has
4 to satisfy three senior pilots independently, on three
5 independent jobs, different jobs that he's capable of doing
6 the work, and there's a written evaluation -- throughout
7 this process are written evaluations. There's a different
8 written evaluation of his check rides.

9 If they're satisfactory, we then turn loose the
10 new fellow on vessels for which the group of senior pilots
11 feels he's qualified, and he then progresses according to
12 his experience and progress.

13 Q It sounds like it's quite a rigorous program.

14 A Yes, sir. I think it is.

15 Q And it's designed to have very qualified people?

16 A That's correct.

17 Q Do you have to stay current after you get your
18 license?

19 A Well, there's a -- both the Coast Guard and the
20 state have certain currency requirements. I can't tell you
21 exactly what they are now, except at renewal time, you have
22 to document a certain amount of experience to satisfy this.

23 The state has a regulation which requires -- if a
24 person who has been off-duty for, I believe 60 days for a
25 medical reason, he has to have a physical examination and

1 be cleared by a medical doctor to return to piloting duty.

2 On a more practical level, I think a pilot who
3 hasn't been in a place for quite awhile would take pains to
4 transit it a few times with other pilots, or even hire a
5 fishing boat or something to run back and forth, check the
6 soundings and the aids to navigation, and so forth. That,
7 however, would not be required.

8 Q Do you hold any positions of any -- do you hold
9 any positions within the Southwest Alaska Pilots
10 Association?

11 A Yes, sir. I'm the President of the Association.

12 Q Are you associated with any other pilotage board?

13 A Not, now --

14 Q Have you been in the past?

15 A Last July, I completed a term on the Alaska Board
16 of Marine Pilots, where I was the Chairman.

17 Q I'd like to shift gears here for a minute, and
18 would you -- you said before that you had the pilotage
19 endorsement for Prince William Sound.

20 A That's correct.

21 Q And that would be both federal and state?

22 A Yes.

23 Q And the federal comes under Coast Guard
24 regulations?

25 A Correct.

1 Q What do these entitle you to do?

2 A It entitles me to -- which one, the state or the
3 federal?

4 Q Both.

5 A Both. Well, they entitle -- the federal entitles
6 me to serve as pilot on vessels, transitting Prince William
7 Sound on vessels with any gross tons. That would be
8 U.S.-enrolled vessels.

9 The state license entitles me to do the same
10 thing on foreign or U.S. flag-registered vessels.

11 Q People might not be familiar with the term
12 "enrolled" or registered. Could you explain what you mean
13 by "enrolled"?

14 A Yes. An enrolled vessel is a U.S. flag vessel,
15 which is engaged in a coast ride voyage, from one U.S. port
16 to another U.S. port. A --

17 Q Would an example be some -- a tanker that was
18 coming from, say, San Francisco to Valdez?

19 A That would be an example, yes. A registered
20 vessel is a U.S. flag vessel which is in an international
21 voyage. In other words, it's arriving at a U.S. port from
22 a foreign port, or it's departing from a U.S. port bound
23 for a foreign port.

24 Q Would an example of that be a tanker that goes
25 from Valdez to Panama?

1 A Yes, it would.

2 Q Now, are there different types of pilotage
3 endorsements that a person can have, depending on the area
4 that he's in in Prince William Sound?

5 A Yes. To say -- now, again, it's been a long time
6 since I've taken the examination, but newer fellows in the
7 association have recently taken it, so I'm fairly
8 conversant with it.

9 Yes, there -- if, for example, a person hasn't
10 documented the required observer trips in all of Prince
11 William Sound, he can only take the examination for that
12 portion of the Sound in which he has documented trips. And
13 if he passes that examination, his endorsement would be
14 restricted to that part of Prince William Sound for which
15 he had been examined.

16 Q An example -- could an example be from
17 Hinchinbrook to Rocky Point?

18 A Yes. That would be an example.

19 Q Let's talk for a little bit about the -- your
20 station in Valdez. How do you work out of Valdez? Do you
21 live there, or how do you work out?

22 A Well, our main office is in Homer, which is the
23 pilot station for Cook Inlet. We keep four pilots
24 stationed all twelve months of the year in Valdez on a
25 rotating basis. Pilots go over there and put in a two-week

1 rotation, and then they're rotated out, but they're always
2 a minimum of four pilots on station. We have a rented
3 house in town, which is our combination living quarters
4 office, and we have four automobiles to drive from town to
5 the Trans-Alaska Pipeline terminal.

6 We have a pilot's station in the area of Rocky
7 Point, which is -- it's now -- it will be moved shortly,
8 which is 16 miles out of town. There's a mooring there
9 where we keep our pilot books.

10 Q If I could just hold you for a second, we'll step
11 down up on that chart block up there and point --

12 A All right.

13 (Pause)

14 (TAPE CHANGED TO C-3599)

15 MR. COLE: Before I ask any questions, I'm
16 showing you what has been identified as Plaintiff's Exhibit
17 Number 21.

18 BY MR. COLE: (Resuming)

19 Q Do you recognize what this is a chart of?

20 A Yes, I do.

21 Q Could you tell the jury what that is?

22 A That's Valdez, Port of Valdez and Valdez -- chart
23 16707.

24 Q Is that a chart that is used in the maritime
25 industry?

1 A Yes, it is.

2 (State's Exhibit 21 was
3 marked for identification.)

4 MR. COLE: Judge, I would move for the admission
5 of what has been identified as Plaintiff's Exhibit Number
6 21.

7 MR. MADSON: No objection, Your Honor.

8 THE COURT: It is admitted.

9 (State's Exhibit 21 was
10 received in evidence.)

11 BY MR. COLE: (Resuming)

12 Q Could you take the pointer that I handed to you?
13 You were talking about the pilot's station at Rocky Point.
14 Could you give the jury an idea of where that would be?

15 A Well, Rocky Point is just here at the end of the
16 pointer. There's a cove behind Rocky Point where we have a
17 mooring, and we tie our pilot boats up to that mooring.
18 It's about 16 miles from Rocky Point, the Trans-Alaska
19 Pipeline terminal.

20 Q And this is generally the place where the
21 exchange -- you get on, or you get off?

22 A Well, no, no. We're talking about pre-accident.

23 Q Yes.

24 A The pilot station was 2.3 miles north of Busby
25 Island light. Generally, which is pretty much Rocky

1 Point. This is considered the boarding, and -- was
2 considered the boarding and disembarking area. You board
3 vessels and disembark them in this general area. But the
4 pilot boats return -- between pilot runs, they return to
5 their mooring here inside of Rocky Point.

6 Q Can you give the jury an idea of where the
7 tankers on that chart are loaded up with oil, where are
8 they berthed?

9 A Right here at the Trans-Alaska Pipeline terminal
10 in Port Valdez.

11 Q Okay. And the kind of the blow-up in the
12 righthand corner, is that another diagram of that terminal?

13 A That's a larger scale chart of the terminal area.

14 Q Would you identify what the particular berths are
15 that -- tell us where berth number 5 is, for example.

16 A Yes. Going from left to right, berth 5, berth 4,
17 berth 3 and berth 1. There is no berth 2.

18 Q And the oil is contained in the tankers, the tank
19 field that they have up behind the terminal?

20 A Yeah, up on the hill are the storage tanks.

21 Q I notice that on this chart there is a line.
22 Were you asked to draw that line in on this particular --

23 A Yes. I drew that in for you this morning.
24 That's the typical track that I try to stay on to keep
25 ships on navigating from the Trans-Alaska Pipeline terminal

1 out to the Rocky Point pilot station.

2 Q Can we -- why don't we talk a little bit about
3 when we come to a tanker, what you end up doing when you
4 arrive. Let's talk about the outbound _____.

5 A What would you like to know?

6 Q When do you normally get to the tanker?

7 A I normally leave my quarters in Valdez not later
8 than one hour before the ship's scheduled sailing time,
9 which puts me on the ship about 30 minutes prior to
10 scheduled sailing. It's protocol, I normally stop at the
11 Master's cabin and let him know that I'm aboard, perhaps
12 visit with him, and I go to the wheelhouse and tip what
13 they call the tugs, make predeparture checks, and get ready
14 to go.

15 Q Would you give the jury an idea of -- are all oil
16 tankers the same?

17 A No, they're not all --

18 Q Size, maneuvering characteristics and bridge
19 instrumentation, things like that.

20 A No, they're not all the same. They -- there are
21 an awful lot of similarities, of course, but they vary in
22 size, in terms of length, beam, tonnage --

23 Q When you say beam --

24 A -- draft --

25 Q -- what do you mean --

1 A That's the width of the vessel.

2 Q And the draft?

3 A That's how much -- how much of the ship is below
4 the sea surface.

5 Q How do you get acquainted? Is there any kind of
6 procedure that you used to become acquainted once you step
7 onto a ship, maybe, that you haven't been on?

8 A Well, normally if -- I have been on all these
9 ships. The ships that call at the Trans-Alaska Pipeline
10 terminal, almost all of them have been there many times,
11 and I'm pretty familiar with them. On a ship I'm not
12 familiar with, if there's anything that is unusual or that
13 isn't common to other ships, I ask about it.

14 Normally, I ask the Master when I go aboard a
15 ship if everything is working all right, if there are any
16 problems. When I go aboard a ship at the Trans-Alaska
17 Pipeline terminal to sail it, I make certain checks myself
18 to assure myself that things are as they should be.

19 Q Do you have any kind of a checklist that you go
20 through before you head out?

21 A Well, it's -- not something on paper. I have my
22 own personal checklist that I follow.

23 Q Can you give the jury an idea of what type -- of
24 what that is?

25 A Well, normally, I check the weather before

1 leaving my quarters, or I check it on the ship. I check
2 the gyro area, the heading of the gyro compass against the
3 known heading of the dock. I check the --

4 Q Now, some people might not be familiar with some
5 of these terms, so I may have to interject at certain
6 times.

7 A Okay.

8 Q Can you give the jury an idea of what the gyro
9 is?

10 A Well, I think everybody is familiar with the old
11 magnetic compass which points to magnetic north. Magnetic
12 north and true north sometimes vary by quite a lot,
13 depending upon where a ship is in the world. A gyro
14 compass is an electromechanical device which points to true
15 north, the North Pole, if you will, and to this device
16 are _____ the various gyro repeaters about the ship,
17 the steering stand, the compass that's in front of the
18 helmsman, the gyro repeaters around the radars.

19 Q What is a repeater, a gyro --

20 A A repeater is simply that. It just repeats the
21 heading of the main gyro unit, and it can be located --

22 Q It just tell what heading you're headed?

23 A That's right.

24 Q The ship's heading is.

25 How do you compare the gyro repeating headings,

1 say, with the known heading on the dock? Give the jury,
2 just give an example?

3 A Well, I know what the heading, the true heading
4 of the dock is, and so I look at the steering, the gyro
5 repeater on the steering stand to make sure -- to see how
6 much that might vary from the known dock heading. And that
7 gives me an idea what the gyro compass error may be.

8 Now, that's -- that doesn't always indicate the
9 error, because the speed and latitude correctors, various
10 settings on the gyro compass, may not have been adjusted
11 properly. But anyway, leaving the dock, I'll have an idea
12 if there is any gyro error. I check the same thing on the
13 other repeaters and the radars.

14 Q Is there anything else that you check before you
15 leave?

16 A Yes. I ask the mate on watch, or the Master, for
17 the vessels drafts. I ask him if everything is working all
18 right, are there any problems. I check the VHF radios to
19 make sure they're attuned to the frequencies that I want,
20 appropriate frequencies. I pretty much check things over.

21 I normally call the tugs after I've chatted with
22 the Master to see if -- or the mate, to see if the
23 departure is going to be on time. I call the tugs and tell
24 him when we want them, and tell them how I propose to make
25 them up to the ship.

1 Q A docking is something that people might not be
2 familiar with. Can you give the jury some idea of how you
3 use the tugs to help you undock a tanker like this, and
4 what potential problems you have to avoid?

5 A Well, you can use tugs in a variety of ways, and
6 that would depend purely on the vessel in question, where
7 it was berthed, the weather, wind and weather conditions,
8 and so forth. But having said that, normally you put the
9 tugs on the inside of the ship and push it off, or you tie
10 the tugs to the outside of the ship and pull it off. Or a
11 combination of those two means. And you're interested in
12 getting the ship cleanly away from the dock without
13 striking the dock and doing any damage.

14 Q And would you mind now taking the pointer and
15 giving the jury an idea of what type of route you attempt
16 to take out of the port of Valdez?

17 A This is my normal route. I -- leaving the --
18 now, this -- of course, this -- if there's traffic, things
19 can, and probably will, be different. But no traffic,
20 normally steer a course of 300 true in gyro, parallel
21 indexing with the radar, and I change course to 270 to
22 pass -

23 Q I have to stop you there for a minute. What else
24 do you mean by parallel --

25 A Excuse me.

1 Q -- with the radar?

2 A My next course is this one. It's going to be
3 270. And on that course, I want to pass one mile off this
4 point. So I set the cursor, either the mechanical cursor
5 or the electronic cursor on the radar, to point to 270 at
6 one mile off this point. I'm projecting my next course.

7 And when I arrive at a point on this course,
8 where I should turn in order to make good this -- this
9 distance off of the next course. That's what I do. That's
10 parallel indexing.

11 I change course to 270 to pass about a mile off
12 this point. During this time, we're usually accelerating
13 the ship up to -- again, this is good visibility. No
14 traffic -- to a speed of about 12 knots.

15 Somewhere in here you start slowing the ship,
16 because there's a speed limit in the Narrows here for
17 loaded vessels of six knots. You start slowing the ship
18 and change course here to make good a course of 225 through
19 the narrows, to pass approximately four-tenths of a mile
20 off of entrance island light, and about .26 miles off of
21 Middle Rock. Your leading mark here is Potato Point and
22 buoy 11.

23 Change course approaching Entrance Point to make
24 good 208. The following mark is Middle Rock and its
25 light. And change course on Potato Point, passing Potato

1 Point about four-tenths of a mile off -- pick up a new
2 course, make good a course of 219 out here to the old
3 pilot's station near Rocky Point, and enter the vessel
4 traffic lines here.

5 Q You can sit down. I'm just going to ask you some
6 questions about each general area there.

7 You said that you take -- generally you try and
8 speed up to 12 knots in the Port of Valdez except if
9 there's bad weather or traffic. What type of speeds do you
10 use if there's traffic?

11 A That's a general question that can't be answered
12 precisely. It purely depends on circumstances. If there's
13 a lot of traffic and you can't communicate with them, for
14 example, and/or if the visibility is not good, you would
15 probably go at a slower speed.

16 Q Now, do you use any -- the tankers that you're --
17 that you pilot, they have automatic pilot.

18 A Yes, they do.

19 Q And in the maritime industry, that's often
20 referred to as Gyro or Iron Mike. Is that correct?

21 A Correct.

22 Q Do you use that in the Port of Valdez area?

23 A No.

24 Q Why not?

25 A I wouldn't consider it -- I don't consider it

1 prudent seamanship. I mean, an area that sits where the
2 beach is relatively near to be on the Iron Mike in this
3 particular area.

4 Q Now you talked a little bit -- and what I'd like
5 you to do is focus on the blow-up in the left corner
6 there. The dotted lines that go across the Narrows?

7 A These?

8 Q Yes. Can you explain what that -- is there any
9 significance to those dotted lines?

10 A Yes. That describes the limits of the Valdez
11 Narrows one-way traffic area. It's the --

12 Q What does that mean?

13 A Well, it means that if there are more than -- if
14 there's more than one vessel in the Vessel Traffic System
15 -- and now, I'm speaking of vessels which are required to
16 use the Vessel Traffic System. Small vessels aren't.

17 Q We're talking tankers mainly.

18 A Okay. If two tankers, one wants to go out and
19 one wants to come in -- in other words, pass each other --
20 that's not permitted between -- in Valdez Narrows between
21 these two lines. It's a one-way traffic area only. So one
22 of the ships would have to wait until the other clears the
23 area.

24 Q What if there were two going out at the same
25 time?

1 A Well, one would follow the other and would have
2 to keep a prescribed distance astern.

3 Q Are there any speed -- I think you briefly
4 mentioned, but are there any speed requirements in this
5 area?

6 A Yes. For light vessels -- in other words, we're
7 talking tankers now -- for tankers in ballast, without
8 cargo, the speed limit is --

9 Q In ballast?

10 A In ballast, yes. That's a ship that does not
11 have petroleum cargo aboard, and talking about tankers.
12 Their speed limit in the Narrows is 12 knots. Actually,
13 it's between Ton Point and Entrance Island.

14 Outbound, for laden tankers, the speed limit is
15 between Middle Rock and Potato Point, and that limit is six
16 knots.

17 Q Can you give the jury an idea of how wide an area
18 it is at its narrowest point there?

19 A It's about a half-a-mile wide, a quarter of a
20 mile on either side of the ship.

21 Q And at one point, you come within .26 miles, is
22 that what you're saying, of Middle Rock?

23 A Well, the track line, you come -- pass abeam
24 Middle Rock about .26 miles off, and on this -- this little
25 dimple of shoreline, about .25, a quarter-mile off.

1 Q Would you use an automatic pilot in this area?

2 A No.

3 Q Is your progress through from the time you leave
4 the dock monitored at all?

5 A Yes, it is.

6 Q Can you give the jury an idea of what that --

7 A Well, the --

8 Q -- how that occurs?

9 A The Coast Guard Vessel Traffic System has a radar
10 monitoring system. One of the radars is over here on --
11 near town, right by the breakwater, to the small boat
12 harbor. Another one is right here on Potato Point, and the
13 -- that's where the scanners are located. The console
14 units are located in the Vessel Traffic System traffic room
15 in downtown Valdez.

16 Q Now, just finally in this last area, would you
17 explain to the jury what the -- the lanes that we see at
18 the bottom of that diagram -- chart, I guess I should say?

19 A Well, this is the vessel traffic separation
20 scheme. This one I'm pointing to is for north or inbound
21 vessels. The one opposite is for southwest bound,
22 outbound, vessels. And the purple area in between them is
23 called the separation zone, which vessels are supposed to
24 stay out of when they're in -- when they're in the system.

25 Q For the jury, have you -- you were the pilot on

1 the inbound and outbound journeys of the Exxon Valdez on
2 the 22nd and 23rd of March, correct?

3 A That is correct.

4 Q Would you describe for the jury how you would
5 characterize this vessel, as far as maneuverability?

6 A For a vessel of its class, it's a very fine
7 ship. It's -- it has ordinary maneuvering
8 characteristics. It's a good handling vessel.

9 Q How about the state of the art of the navigation
10 equipment that was contained in that vessel?

11 A It's first class.

12 Q Do you remember the number of radars that it had?

13 A I believe two, yes. Two navigation radars and
14 one anticollision system which, at least typically, is
15 slaved off one of those radars.

16 Q I'd like to talk to you now about the inbound
17 route that you took on March 22nd. Do you remember when
18 you got on board the Exxon Valdez that evening?

19 A Well, I'll have to refer to my notes.

20 Q Sure.

21 A Yes, I boarded at 2014 hours.

22 Q And where did you board at?

23 A In the boarding area down here, somewhere between
24 Busby Island and Rocky Point, out here in the traffic
25 lanes.

1 Q Is there a reason that you went to that
2 particular point, versus up further at Bligh Reef, at the
3 point at Bligh Reef?

4 A No. Bligh Reef is down here. It's not on this
5 chart.

6 Q Okay. For the Exxon Valdez, did the -- did the
7 Master have a pilotage endorsement to Rocky Point.

8 A I presume he did. I didn't look at his license.

9 MR. CHALOS: I move to strike that.

10 THE COURT: I'll grant that. The presumption has
11 been struck. Disregard the last answer.

12 BY MR. COLE: (Resuming)

13 Q Did you notice any problems with the Exxon Valdez
14 that evening?

15 A No, I didn't.

16 Q Do you remember when you arrived at Alyeska
17 terminal that evening?

18 A Yes. We -- according to my record, we had first
19 line port side to Alyeska berth 5 at 2245 hours.

20 Q When did you leave that evening?

21 A Again, according to my record, I disembarked the
22 vessel at 2340 hours.

23 Q Did you board the Exxon Valdez again the next
24 evening? That would have been March 23rd?

25 A Yes, I did.

1 Q Do you remember about what time you got there
2 that evening?

3 A According to my log, I boarded at 2020 hours on
4 March 23rd.

5 Q Now, the jury -- for the jury -- can you tell
6 them what time that is --

7 A That's 8:20 p.m.

8 Q In the evening?

9 A Yes.

10 Q Where did you go that evening? First upon
11 boarding the tanker?

12 A I stopped at the Master's cabin and knocked on
13 the door.

14 Q What happened when you knocked on the door?

15 A He -- Captain Hazelwood either wasn't there or he
16 was asleep in his bedroom. I don't know which -- I didn't
17 know which, and I then proceeded to the wheelhouse.

18 Q Who was up on the bridge, or the wheelhouse, that
19 -- when you got there?

20 A One of the mates. I wasn't acquainted with him.
21 I've since found out it was the third mate, was the -- was
22 in the wheelhouse.

23 Q What did you do when you got up to the
24 wheelhouse?

25 A Well, I probably greeted the third mate and I

1 made the departure, predeparture checks that I customarily
2 make, and I think I listened to the weather and had a cup
3 of coffee. I believe I called the tugs, also, along -- I'm
4 not sure about that. I think I did.

5 Q During your predeparture check, did you find any
6 problems?

7 A No.

8 Q Were you told of any problems at that time?

9 A No.

10 Q Now, you mentioned that you did a weather
11 report. Can you give the jury an idea of what the weather
12 was like that evening?

13 A I sure can't remember what the weather report
14 said. I've listened to hundreds of them since then. But
15 as I recall, the visibility was somewhat limited in Port
16 Valdez. I believe the weather was calm.

17 Q Had you heard of any ice reports?

18 A Yes. Yes, I had.

19 Q Would you explain to the jury what you had heard?

20 A Well, prior to leaving my quarters to come to the
21 Exxon Valdez, we monitor the VHF radio channel, which is
22 used by the Vessel Traffic System and the ships to
23 communicate with one another, and I overheard the ARCO
24 Juneau telling the Vessel Traffic System that he'd
25 encountered ice across the -- both the -- I believe he said

1 -- I'm not precise about what he said. He had encountered
2 ice, and he was going to deviate from the outbound traffic
3 lane to avoid the ice.

4 Q Have you encountered ice conditions before in
5 piloting vessels --

6 A Yes.

7 Q -- Prince William Sound?

8 Would you tell the jury, where does the ice come
9 from?

10 A Well, the ice caps from Columbia Glacier.

11 Q And generally how -- is there a way that it flows
12 out from that area?

13 A No. It depends upon the --

14 Q Would it help if you had the other map? I've got
15 another chart there.

16 A Yeah, I think it probably would.

17 Q Okay.

18 MR. COLE: Judge, if I could just step behind
19 here.

20 THE COURT: All right.

21 MR. COLE: Can I get a stick -- no, I have it.

22 BY MR. COLE: (Resuming)

23 Q I'm showing you what's been identified as
24 Plaintiff's Exhibit Number 25. Do you recognize that
25 chart?

1
2 A Yes. That's the chart of Prince William Sound,
3 16700.

4 Q And is that chart used in the navigation that you
5 have out there?

6 A I believe this particular one is a year out of
7 date, but yes.

8 Q It's fairly accurate, though?

9 A Yes.

10 (State's Exhibit 25 was
11 marked for identification.)

12 MR. COLE: We would move for admission of what's
13 been identified as Plaintiff's Exhibit Number 25.

14 MR. MADSON: No objection, Your Honor.

15 THE COURT: It is admitted.

16 (State's Exhibit 25 was
17 received in evidence.)

18 BY MR. COLE: (Resuming)

19 Q Could you use the pointer again to give the jury
20 an idea of -- whoops -- where the ice come from, and where
21 it goes after it goes out of the glacier?

22 A Well, typically the ice caps off Columbia Glacier
23 here up in Columbia Bay and, depending upon a number of
24 factors, none of which can be precisely measured, the ice
25 -- as the ice caps off, it sometimes drifts out of Columbia

1 Bay into, and occasionally across, the lanes of the Vessel
2 Traffic System.

3 Normally, typically, the flow is something like
4 this. Once in awhile it will flow up towards Busby
5 Island. Occasionally, you will see it up as far north as
6 Rocky Point.

7 Q Are there times when it's worse than others?

8 A Yes.

9 Q Can you give the jury an idea -- is there certain
10 seasons at all?

11 A Well, this is a random thing, which can't be
12 forecast, but generally speaking, the worst ice time is
13 probably spring through the autumn.

14 Q Have you ever had to delay a trip, either going
15 in or coming out, because of ice?

16 A Have I? No.

17 Q Have you heard of that happening?

18 A I've heard of -- yes. There have been Masters
19 who, from time to time, have not felt comfortable with the
20 ice information that they had, and they chose to stay in
21 port until daylight.

22 Q Can you give the jury an idea of how many times
23 you've brought tankers through Prince William Sound in icy
24 conditions?

25 A No, I can't. Probably -- I suppose more than a

1 hundred times, until the -- until recently, the pilot
2 station was at Rocky Point, and typically the ships would
3 already have gone through the ice by the time they arrived
4 at the pilot station, and outbound, the pilot would have
5 gotten off at Rocky Point and the ice normally would have
6 been encountered after that.

7 However, I've taken quite a few ships through
8 there, nonpiloted ship.

9 Q Have you ever been asked by a pilot, or by a
10 master, to go out further to Bligh Reef to help him through
11 icy conditions, even though he (inaudible).

12 A That's happened occasionally.

13 Q Do you have any rules, general rules, that you
14 follow in going, navigating through an area with ice?

15 A Through this area?

16 Q Yes.

17 A No, not really. Depending upon the ice and upon
18 the circumstances, the vessel I'm on, and so forth.

19 Q Would it depend on the amount of ice, say, for
20 instance, or --

21 A Sure. It would depend upon the amount of ice; if
22 it was across both lanes; if there -- if it looked like
23 there were some clear paths through the ice. Depend on
24 whether it was night or day, what the visibility conditions
25 were, and so forth.

1 Q What are the risks associated with a tanker going
2 through ice?

3 A I can only give you my opinion. I think -- I
4 think it will vary between some Masters and pilots. The --
5 I think if there were heavy ice, with big growlers and
6 bergy bits, and if a tanker hit one of those at relatively
7 high speed, it could do some damage. If the ice is either
8 avoided or navigated through cautiously, it's no particular
9 problem.

10 Q When you say "navigated through cautiously," what
11 steps can you take to decrease the risk of hitting this
12 ice?

13 A Well, you change course to go around it. You try
14 to never hit a big piece of ice. In fact, you just don't
15 do that, hit a big piece of ice. So you change course, you
16 slow the vessel down.

17 Q How about watches? Is there any particular place
18 where a watch --

19 A Yeah. You can ask that a lookout be stationed
20 forward. Lookouts -- the utility of that is kind of up for
21 grabs. Sometimes lookouts can be a big help, but it would
22 be a pretty rash pilot who depended upon a lookout.

23 Q What type of instruments on the bridge are
24 available to help you see ice?

25 A Well, other than binoculars, if it's clear

1 enough, the radars.

2 Q Can you see the ice on the radars?

3 A Yes. The -- sometimes you can. Sometimes -- in
4 fact, usually, probably, ice makes a pretty good radar
5 return under certain conditions. If it's relatively calm,
6 for example, and the radar's tuned up. If the ice is --
7 that is, if the ice is hardedged and quite large and -- in
8 some cases, the ice seems to be rounded, humpbacked, if you
9 will, and it doesn't make a very good radar target.

10 If there's a high sea state, a lot of sea return,
11 sea clutter, on the radar, it's -- one doesn't want to
12 depend a great deal on seeing ice in his radar.

13 Q If you had a large amount of ice in front of a
14 tanker, would that be, in your opinion, a hazardous
15 condition that would require extraordinary steps?

16 A I don't --

17 Q Safety procedures. Maybe I should say that.

18 A I don't think I would put it in those terms, but
19 I -- we're talking about this area?

20 Q Yes.

21 A No. I would -- I would do as I said, possibly
22 post a lookout up on the bow, if one wasn't posted.
23 Probably slow the ship down and/or change course. It just
24 depends on the circumstances. If I could change course and
25 get around the ice, I'd probably do that.

1 Q How about the use of automatic pilot in a
2 situation like that? Would that be the type of place that
3 you would use the automatic pilot?

4 A No, it wouldn't.

5 Q Why is that?

6 A Well, if you're -- if you're navigating in the
7 area of ice, there are -- normally, as you approach a piece
8 of ice, you're giving the conning -- the conning officer --
9 the pilot in this case -- is giving the quartermaster
10 orders, rudder orders. For example, let's say left 20,
11 which means left 20 degrees rudder, and the quartermaster
12 then responds by turning the helm and giving him left 20
13 degrees rudder, and that's -- the automatic pilot is used
14 to keep a particular course, in most cases.

15 So the use of the automatic pilot wouldn't be
16 appropriate in that circumstance.

17 Q The times that you have maneuvered through ice,
18 have you found it helpful to have the captain on board at
19 those times?

20 A Well, the captain's always on board.

21 Q Well, up on the bridge?

22 A Yeah, sure. An extra set of eyes, absolutely

23 Q Who was the captain of the Exxon Valdez on the
24 evening that you went out and picked it up and came back?

25 A Captain Joe Hazelwood.

1 Q Have you known him for a long time?

2 A I've known him for a number of years, yes.

3 Q Would you consider him a friend of yours?

4 A I would.

5 Q Do you remember when he arrived on the bridge
6 that evening, on the 23rd?

7 A Yes.

8 Q Can you tell the jury when that was?

9 A I sure can't relate it to a time. I had been in
10 the wheelhouse perhaps ten minutes -- and I'm unsure of
11 that -- and he arrived in the wheelhouse.

12 MR. COLE: This is a good place to stop, if you'd
13 like, Judge.

14 THE COURT: All right. Sure. We'll take a break
15 about ten or fifteen minutes.

16 THE COURT: Ladies and gentlemen, remember my
17 instructions not to discuss this matter among yourselves or
18 with any other person, and not to form or express any
19 opinions.

20 If you can identify your pad by putting the
21 number and your name on the back of it when you get a
22 chance -- the number is fine. That's all we need.

23 We'll see you back _____.

24 THE CLERK: Please rise. This court stands in
25 recess subject to call.

1 (Whereupon, the jury leaves the courtroom.)

2 (A recess was taken from 9:15 a.m. to 9:31 a.m.)

3 (Whereupon, the jury enters the courtroom.)

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

5 You may proceed, Mr. Cole.

6 BY MR. COLE: (Resuming)

7 Q Captain Murphy, I think when we left, we were
8 discussing Captain Hazelwood, having known him for a long
9 time. And I asked you, do you know when he arrived on
10 board that evening, the night of the 23rd. Do you remember
11 that?

12 A I can't give you a precise time. I think I'd
13 been on the wheelhouse -- in the wheelhouse -- perhaps ten
14 or fifteen minutes, somewhere in that range, when --

15 Q Had you seen Captain Hazelwood that morning?

16 A Yes. Or that afternoon. That afternoon, anyway.

17 Q How would you -- how did that occur?

18 A Excuse me. When I -- before I disembarked the
19 vessel the evening before, Captain Hazelwood and I had
20 arranged to have lunch together the following day. He said
21 he would -- was going ashore. I believe he said he needed
22 to make some telephone calls from the office of his agent,
23 and that he would telephone me from there, and perhaps we
24 could get together for lunch.

25 And that's what happened, that is what happened.

1 He telephoned me and said he was at his agent's. Would I
2 pick him up?

3 I drove to his agent's, and Captain Hazelwood and
4 two other men were standing in front of the agent's office,
5 and they got in the car, and we drove to a local
6 restaurant.

7 Q Where did you go eat that day?

8 A An establishment called the Pizza Palace in
9 Valdez.

10 MR. COLE: Judge, I'd like to bring out another
11 exhibit.

12 (Pause)

13 BY MR. COLE: (Resuming)

14 Q Now, I'm showing you what's been marked for
15 identification as Plaintiff's Exhibit Number 23. I notice
16 that's kind of crowding you there..

17 Do you recognize that photograph?

18 A Yeah, looks like the eastern portion of Port
19 Valdez.

20 Q Okay. And you've lived in Valdez for a number of
21 years. Is that a fair -- fairly accurate representation of
22 how Valdez looks?

23 A No, I only pilot out of there. I live in Homer,
24 but I spend a lot of time in Valdez. Yes, it is. Uh-huh.

25 (State's Exhibit 23 was

1 marked for identification.)

2 MR. COLE: I would move for admission of that
3 exhibit, Your Honor.

4 MR. MADSON: No objection, Your Honor.

5 THE COURT: Admitted.

6 (State's Exhibit 23 was
7 received in evidence.)

8 BY MR. COLE: (Resuming)

9 Q And, while we're at it, can you point on that
10 where the terminal is, berth 5?

11 A Yes. This is the terminal complex here. Berth 5
12 would be this westernmost berth.

13 Q And could you point on the map to where the Pizza
14 Palace is?

15 A It's about here, just across the street from the
16 small boat harbor.

17 Q And how do you get from the Pizza Palace out to
18 the Alyeska terminal? Do you just follow the --

19 A Well, you'd drive up one of these streets to the
20 main road here, and follow the main road down here to where
21 it intersects the road to the pipeline terminal, and follow
22 that right down, and go through the main gate here.

23 MR. CHALOS: Your Honor, excuse me. Do we have a
24 scale on that, or can we get some sort of idea of what the
25 distances are that we're talking about?

1 MR. COLE: You may proceed, Mr. Cole. I don't
2 know what your request is. This is Mr. Cole's exhibit.
3 It's in evidence, and at this time there is no scale on it.

4 BY MR. COLE: (Resuming)

5 Q Do you remember about what time Captain Hazelwood
6 gave you a call that day?

7 A It was some time during the noon hour. Around
8 12:00 a.m., thereabouts.

9 Q And the four of you went to the Pizza Palace?

10 A Correct.

11 Q What did you do there?

12 A You had lunch.

13 Q And did you just have a -- did you know the other
14 two individuals that were with Captain Hazelwood?

15 A I recognized the chief engineer from my -- I'd
16 seen him previously on other Exxon vessels, I believe. And
17 the other gentleman was introduced to me as the radio
18 electronics officer. I had not met him previously.

19 Q What did you have that after -- at lunchtime that
20 day?

21 A I believe I had iced tea and water.

22 Q And the other individuals who you were sitting
23 with? Do you remember what they had to drink?

24 A Well, the chief and the radio officer each had
25 two beers. I believe Captain Hazelwood also had a -- had

1 iced tea, or perhaps only water. He didn't have any beer.

2 Q Do you -- can you give the jury an idea of how
3 long you stayed there?

4 A I would say within the range of an hour. About
5 an hour. We had lunch and chatted and it was, I suppose,
6 about an hour.

7 Q Did you see anyone else you knew in the
8 restaurant before you left?

9 A Yes. Yes, I did.

10 Q Would you tell the jury who that was?

11 A I believe it was Mr. Bob Arts, who is the Valdez
12 manager for Alaska Maritime Agency.

13 Q And that was the agency where you had gone to
14 pick them up? The --

15 A Well, actually, I hadn't gone to their office.
16 Captain Hazelwood and his party were waiting outside the
17 office, at the front steps.

18 Q Where did you go after lunch?

19 A I dropped Captain Hazelwood and his party off at
20 the -- I can't remember the name of the shop.

21 Q Could you point up there on the map, to give the
22 jury some idea of --

23 A Yeah. It was somewhere in the Valdez market
24 complex, right in this area. A short distance, a couple of
25 blocks from the Pizza Palace. I dropped him off some --

1 right in the parking lot of the Valdez market, and there
2 are several shops along here.

3 Q And is that across from where it's been marked as
4 the Pipeline Club?

5 A Yes. The Pipeline Club is across the street.

6 Q What did you do after you dropped them off?

7 A I went back to my quarters.

8 Q And when did you see Captain Hazelwood next?

9 A I next saw him when he appeared on the bridge of
10 the Exxon Valdez prior to sailing.

11 Q Did you have anything to drink that evening, as
12 far as alcohol?

13 A Absolutely not.

14 Q Why is that?

15 A I -- because I had to go to work --

16 MR. CHALOS: Objection. Your Honor, objection.

17 THE COURT: I don't see how why he didn't have
18 anything to do with this case. Objection is sustained.

19 BY MR. COLE: (Resuming)

20 Q Did -- when the captain came onboard the Exxon
21 Valdez that night, did he talk with a representative from
22 the Alaska Maritime Agency?

23 A Yes. Pat Caples was in the wheelhouse. I think
24 she and I were conversing, and Captain Hazelwood came on
25 the bridge, onto the wheelhouse, and then he and Ms. Caples

1 exchanged greetings, and shortly thereafter they went below
2 -- I presume to the captain's cabin, where they conducted
3 business.

4 Q Do you know what her general purpose of coming
5 onboard is?

6 A Yes. The ships in Valdez who are represented by
7 a local agent have the local agents come onboard just prior
8 to departure. The agents obtain certain information from
9 the chief mate and the master for the shipowners,
10 presumably. It's a routine thing that's customarily done,
11 prior to sailing.

12 Q And how long was Captain Hazelwood gone during
13 that time?

14 A I can't be precise. I would -- somewhere in the
15 range of five to fifteen minutes, I think. That would just
16 be ballpark. Not very long.

17 Q Can you give the jury an idea, to the best you
18 can recollect, what happened that evening as far as the
19 undocking process?

20 Q There was nothing notable about it. It was a
21 routine undocking. Captain Hazelwood and I discussed the
22 undocking, how I proposed to use the tugs, and I asked him
23 if it was okay to take in the gangway, I believe, and he
24 said, "Sure, we're ready to go."

25 And he asked me about ice conditions. He asked

1 me to check with the Vessel Traffic System about ice
2 conditions, and I told him that I had heard on the radio
3 the last ice report, and I told him what it was, and he
4 seemed satisfied.

5 We had some sort of discussion about the
6 undocking evolution. We walked out on the bridge wing, and
7 he relayed orders to his officers, fore and aft, to begin
8 letting the lines go, and they did that, and we undocked
9 routinely.

10 Q Who was on the bridge when you undocked?

11 A I'm unsure precisely who it was. One of the
12 officers. I believe it was the chief officer. I'm not
13 sure. The third mate, I believe, had gone below to untie
14 either forward or aft.

15 Q And where was Captain Hazelwood during the
16 undocking process?

17 A He was out on the bridge wing with me.

18 Q During the time that you saw him on the bridge,
19 did you determine whether you believed he had been drinking
20 that evening?

21 MR. CHALOS: Objection.

22 THE COURT: Grounds.

23 MR. CHALOS: The question implies that this
24 witness could tell whether the captain had been drinking.
25 I think a more proper question is if he noticed anything,

1 or possibly smelled anything.

2 THE COURT: Objection overruled.

3 BY MR. COLE: (Resuming)

4 Q Did you notice any signs that the captain had
5 been drinking that evening?

6 A Well, I -- no, except I smelled something that I
7 associate with the smell of alcohol on his breath.

8 Q Okay. Does that mean that you did notice signs
9 that he had been drinking, or not?

10 A Yes. Well, I don't know -- I'm not trained in
11 such things, but what I smelled on his breath is the smell
12 that I generally associate with the smell of alcohol on a
13 person's breath.

14 Q And when would that have been?

15 A Well, when Captain Hazelwood came in the
16 wheelhouse and greeted the agent, Pat Caples, and myself, I
17 noticed it.

18 Q Now, can you describe the -- I'd like to talk
19 about the trip out to the Narrows. Do you recall, was it
20 anything other than an ordinary out to the Narrows that
21 evening, that you recall?

22 A The only thing out of the ordinary that I can
23 recall -- and this isn't extraordinary at all -- is that my
24 recollection is that the visibility was pretty poor. We
25 had some fog, and I believe that I asked -- I either asked

1 that a lookout be posted forward, or I asked that the
2 lookout forward be instructed to look for Entrance Island
3 light and Rocky Point light. There was that kind of a
4 conversation.

5 MR. COLE: Judge, can I step up and (inaudible).

6 THE COURT: Yes, certainly. You can have leave
7 to approach this witness without requesting it.

8 MR. COLE: Thank you.

9 BY MR. COLE: (Resuming)

10 Q Is the track that you've drawn up there, to the
11 best of your recollection, a fairly accurate track of the
12 way the Exxon Valdez went out that evening?

13 A I -- since it's my customary track, unless there
14 are some unusual traffic conditions, I'm quite sure it's
15 very close to the track the vessel was on.

16 Q And would you tell the jury what's -- to the best
17 of your recollection, speed you travelled when you were in
18 the area of the Port of Valdez?

19 A I really -- I just don't remember. I've been on
20 a lot of ships since then.

21 Q During this time, did you become aware that
22 Captain Hazelwood left the bridge?

23 A Yes. He left the bridge sometime after we left,
24 departed the dock.

25 Q Do you remember what time he left?

1 A I don't remember what time of the day it was. I
2 believe -- probably between 15 and 30 minutes after leaving
3 the dock, I believe the captain left the bridge. Somewhere
4 in that range.

5 Q Did he tell you where he was going?

6 A Not that I recall.

7 Q How long was he gone?

8 A I think he was gone probably between an hour or
9 hour-and-a-half. We were approaching the pilot's station
10 and I told the third mate to call the captain and tell him
11 that I would be getting off in about 15 minutes. He did
12 that, and the captain came to the bridge shortly
13 thereafter.

14 Q I'm not sure I got this, but do your notes
15 indicate when you undocked that evening?

16 A Yes.

17 Q Could you tell the jury when that was?

18 A Sure.

19 (Pause)

20 We rang standby engines at 2054. That normally
21 coincides with the time we start releasing the lines from
22 the dock and at 2112, according to my record, was the last
23 line. That means that the ship is no longer connected to
24 the shore. So 2112 would be last line.

25 Q And for people who are not used to the 24 hour

1 clock, what would 2112 be?

2 A 9:12 p.m.

3 Q And do you -- who was on the radio that evening?

4 Were you or the captain, the VHF?

5 A I believe it was probably me.

6 Q Would you have made the 30 minute precall?

7 A Yes, sir.

8 Q Captain Murphy, I'd like to talk for a minute --
9 you touched on it a little bit earlier. I'd like you to
10 talk for a minute about the relationship that exists
11 between the master and the pilot. Specifically, why are
12 you employed?

13 A Well, a Master is employed -- or excuse me, the
14 pilot is employed to -- I don't know anywhere where the
15 Master/pilot relationship is codified or put in a law
16 book. It's come down through the hundreds, perhaps
17 thousands of years, by custom and tradition.

18 The way it works, normally, is the pilot that
19 goes aboard, he's a professional, as is the Master, and
20 over this segment of the navigational area, he's hired to
21 be pilot. He normally conducts a vessel, takes the conn,
22 exercises navigational control, but always under the
23 authority of the Master.

24 The Master is in ultimate command, and it's a
25 relationship, a professional relationship. If the pilot

1 does something that the Master is not comfortable with, or
2 acts inappropriately, according to the Master's judgment,
3 the Master can, of course, take over again immediately, or
4 tell the pilot to go stand in the corner.

5 But that happens rarely. The pilot conducts the
6 vessel to its destination, the port or waterway.

7 It's a professional relationship during the
8 transit between him -- between him and the master.

9 Q So even though a pilot may have some specialized
10 knowledge, the way I understand it, the captain always has
11 the ultimate command and responsibility?

12 A That's -- to my knowledge, the only place that
13 wouldn't be true is in the Panama Canal, where the U.S.
14 government holds -- is liable for any damages, and that the
15 pilot -- in the Panama Canal, is in charge. That's the
16 only place. That's not true anywhere else, that I know of.

17 Q When Captain Hazelwood left for this period of
18 time, was that unusual?

19 A It's not unusual for Masters to leave the bridge
20 periodically. It wasn't typical, probably, to be gone that
21 long.

22 Q I didn't hear that?

23 A It wasn't typical to be gone from the bridge that
24 long through the Narrows.

25 Q Through the Narrows.

1 Would you have rather have had him there?

2 A Yes.

3 Q Now, the trip through the Narrows required
4 several turns. Did you have any problem with the
5 maneuverability of the tanker through that area?

6 A No. It was a routine transit.

7 Q And what speed did you -- would you have
8 travelled through the one lane, one-way zone?

9 A At six knots or less.

10 Q Once you cleared the Narrows, what heading did
11 you take at that time?

12 A Well, I can't tell you precisely what heading we
13 took initially. We were steering to make good a course of
14 219.

15 Q And what speed would you have been travelling,
16 then, out toward Rocky Point?

17 A On the Exxon Valdez, I can't recall what full
18 ahead is. It's somewhere in the range of 12 to 13 knots.
19 Between 11 and 13 knots, somewhere in there. But remember,
20 it's not like an automobile. When you ring full ahead, it
21 -- you don't get the speed for quite sometime. There's a
22 lot of momentum, a lot of mass to overcome.

23 Q You didn't load up the -- as they call it, load
24 up -- _____ sea speed at that time?

25 A No.

1 Q Now, were you using the radars that evening?

2 A Yes.

3 Q And can you give the jury an idea of -- did you
4 foresee any potential ice problems while you were using the
5 radar that evening?

6 A No, I didn't observe any ice, either visually or
7 by radar. I knew it was there, however, from previous
8 reports.

9 Q And did you place the tanker on automatic pilot
10 that evening at all?

11 A No, sir.

12 Q While you were going out to Rocky Point, did a
13 ship change occur?

14 A A watch change?

15 Q No, a -- yeah, a watch change. I'm sorry.

16 A I don't believe so. Well, not a watch change.

17 The mates on the bridge changed. I --

18 Q Okay. That's what I meant.

19 A Yes.

20 Q Did one go out to the bow and one come -- the one
21 who was on the bow come in?

22 A Well, I don't -- again, I can't recall precisely
23 which mate was up there during that -- I believe it was the
24 chief mate, but I'm not sure. The undocking evolution. It
25 was sometime after undocking. I believe it was Jim Kunkel,

1 the chief mate, was relieved by the third mate, who came
2 up.

3 Q Can you give the jury an idea of how the weather
4 changed, or differed, from the area in the Port of Valdez
5 to the area once you got passed the Narrows?

6 A Well, the fog, or -- I believe it was fog. The
7 limited visibility we'd had in the port lifted in the
8 vicinity of Entrance Island, and the Narrows. I recall,
9 once we were passed Middle Rock at about Entrance Point, I
10 could see the light on Busby Island, which is eight miles
11 away, so we had, at that time, at least, eight miles
12 visibility.

13 Q Is Busby Island off that --

14 A Yes. It's right here.

15 Q So can you give the jury an idea of where you can
16 see the Busby Island lights?

17 A Well, somewhere here in the Narrows. Right
18 around the area of Entrance Point, I believe I could -- I
19 could see Busby Island lights.

20 Q Now, I'd like to talk a little -- you indicated
21 at some point as you were approaching Rocky Point, you had
22 the third mate call down and have the captain -- to have
23 the captain come to the bridge?

24 A Yes, sir.

25 Q I'd like to talk a little bit about how you

1 disembarked from the tanker.

2 Would you tell the jury, give the jury an idea of
3 how that occurred?

4 A Well, the same way as I get aboard, only in
5 reverse. The -- there's a rope ladder with steps fastened
6 to it that's lashed to the ship's railing, or fittings on
7 deck. It's put over the side, and the pilot boat comes
8 along side, and the pilot climbs down that ladder onto his
9 pilot boat and the pilot boat leaves the side of the
10 vessel.

11 Q Are there certain precautions that a Master can
12 take if the weather is rough in this area, to help you?

13 A Oh, yes. When the -- during winter months,
14 there's -- typically in Valdez now, there's a strong
15 easterly wind that sometimes blows for weeks at a time
16 between 30 and 60 knots or more, and it's quite rough.

17 So customarily, inbound, the vessels turn to --
18 inbound to starboard. They have a starboard pilot ladder.
19 That creates a lee, or an area of relative calm, on the
20 downwind side of the vessel.

21 Q Okay. That would be on the starboard side of the
22 vessel?

23 A Uh-huh. And conversely, outbound, the vessel
24 would also have a starboard ladder. It could turn to port
25 to provide a lee, or a calm area, on the starboard side of

1 the ship so the pilot boat could come alongside and the
2 pilot could safely disembark.

3 Q Now, the starboard is the right side, and the
4 port is the left side?

5 A Yes, sir. That's right.

6 Q When the captain came to the bridge that evening,
7 did you have a conversation with him to turn over the conn?

8 A Yes. The normal protocol when one officer turns
9 over the conn to another.

10 Q Turn over the conn. It's a --

11 A Turn over navigational control of the vessel.

12 Q Would you describe the conversation that you had
13 with Captain Hazelwood that evening?

14 A I told him, I think, what course we were
15 steering, what engine order, what the engine order was --
16 in this case, I think it was slow ahead. We would have
17 discussed traffic, if there was any. As I recall, there
18 wasn't.

19 And there was another conversation about the
20 ice. I reminded him that there had been ice reported
21 ahead, or words to that effect. And I can't recall
22 precisely if there was inbound traffic in the Vessel
23 Traffic System. I would have passed that on to him. I
24 don't recall whether or not there was.

25 Q Had you seen any ice up to that point?

1 A Had I? No, I didn't. I had not.

2 Q On the radar or visually?

3 A No.

4 Q Did you observe any indications that the captain
5 had been drinking at that point?

6 A Well, the same smell that's -- as previously.

7 Q And that would have been at approximately what
8 time?

9 A Well, according to my notes, I disembarked at
10 2320, so it would have been, I guess, 2305, 2310, 2315,
11 somewhere in there.

12 (Pause)

13 Q Captain Murphy, I'm showing what's been
14 identified for -- as Exhibit Number 31. Do you recognize
15 that letter?

16 A Yes, I do.

17 Q Okay. What is that a letter of?

18 A Well, it's a letter of --

19 Q I'm sorry. What is that a letter in regards to?

20 A It's a letter of immunity addressed from the
21 District Attorney to my attorney, James Gilmore.

22 Q And does that letter accurately set out the
23 agreement that was reached between my office, the District
24 Attorney's office, and your attorney?

25 A Yes, as far as I know, it does.

1 Q And this agreement was reached at the request of
2 your attorney?

3 A Correct.

4 Q And you entered into this agreement with his
5 consent?

6 A I entered into this agreement at his insistence.

7 Q And did he explain the ramifications of that
8 letter?

9 A Yes, I think so.

10 (State's Exhibit 31 was
11 marked for identification.)

12 MR. COLE: Judge, I would move for the admission
13 of what has been identified as Plaintiff's Exhibit Number
14 31.

15 MR. : No objection.

16 THE COURT: 31 is admitted.

17 (State's Exhibit 31 as
18 received in evidence.)

19 MR. COLE: Judge, could I have just a second?

20 (Pause)

21 BY MR. COLE: (Resuming)

22 Q Did you say anything to Captain Hazelwood at that
23 time that you noticed alcohol on his breath?

24 A Did I say anything to him, at what time, and
25 about what?

1 Q Did you say anything about -- to him at that
2 time, just prior to leaving, about the fact that you had
3 smelled alcohol?

4 A No, I didn't.

5 Q Are you aware of the Coast Guard bottle to
6 throttle regulations?

7 A I am.

8 Q What is that regulation?

9 A They --

10 Q What does it say?

11 A It says that a mariner is not allowed to consume
12 alcohol within four hours of -- I forget the precise
13 language -- within four hours of being on duty, going on
14 duty.

15 Q Who helped you disembark that evening?

16 A The mate on watch escorted me down to the pilot
17 ladder and I believe there was one or two seamen at the
18 pilot ladder when we arrived there.

19 Q And you might have told me this, but did -- can
20 you tell me again, what time you actually disembarked?

21 A According to my record, I disembarked at 2320,
22 11:20 p.m.

23 Q What did you do once you got down to the pilot
24 boat?

25 A Well, I went in the cabin and the pilot boat --

1 excuse me -- pulled away from the side of the ship and
2 returned to its mooring inside Rocky Point.

3 Q Were there any problems with the steering
4 mechanism, or the throttle control, on your journey out
5 from the Port of Valdez to Rocky Point?

6 A On the Exxon Valdez?

7 Q On the Exxon Valdez.

8 A None that I could detect.

9 Q Any navigational problems, or any of the
10 instruments that you worked with that evening that did not
11 operate properly?

12 A Not that I can recall. Everything worked well.

13 Q The ship responded to your commands as you gave
14 them?

15 A Yes, sir.

16 Q Had you gone past the Bligh Reef area, in the
17 past?

18 A Yes.

19 Q And are there warning buoys out in that area?

20 A There's a buoy on Bligh Reef, yes.

21 Q Are you familiar with how long it flashes?

22 A Yes. It's flashing red four seconds.

23 MR. COLE: If I could have one last second, I
24 think I'm done.

25 (Pause)

1 Q Sir, can you tell us how many times you met with
2 the District Attorney before testifying?

3 A I met with Ms. Henry just prior to the Grand Jury
4 and during the Grand Jury, the same day. And I saw Ms.
5 Henry, Mr. Cole, and two other gentlemen yesterday.

6 Q Yesterday.

7 A Yes, sir.

8 Q Were you interviewed at those times?

9 A Yes.

10 Q When -- prior to your going to the Grand Jury,
11 did Ms. Henry interview you?

12 A No, she -- not that I recall. She told me about
13 the Grand Jury protocol and what I could expect, but she
14 didn't -- she didn't interview me, that I can recall. She
15 did interview me in front of the Grand Jury.

16 Q And you did, in fact, testify before the Grand
17 Jury?

18 A Yes, sir.

19 Q How many times have you been interviewed by the
20 state investigators?

21 A I have not counted. I suppose probably about six
22 times, thereabouts -- a combination of attorneys and
23 investigators.

24 Q Were your interviews being taped?

25 A Yes, I believe they were.

1 Q Were notes being made of your interviews?

2 A I don't believe -- the interview yesterday, I
3 don't believe, was being taped. Notes were taken, however.

4 Q Have you ever been interviewed by anyone of
5 Captain Hazelwood's defense team?

6 MR. COLE: Objection. Relevance.

7 THE COURT: The answer is in, but the objection
8 would be sustained.

9 MR. COLE: I'd move to strike that.

10 THE COURT: It's -- disregard the last answer,
11 ladies and gentlemen.

12 BY MR. CHALOS: (Resuming)

13 Q Captain Murphy, I just want to clear up some of
14 the testimony you gave in respect to your -- the licenses
15 that you hold.

16 A Yes.

17 Q The State Pilot's License that you hold for
18 Prince William Sound, does that cover the area between
19 Rocky Point and the Port of Valdez?

20 A Yes, sir.

21 Q And the federal license that you hold covers from
22 Hinchinbrook up to Rocky Point? Is that correct?

23 A Both licenses are all inclusive, all of Prince
24 William Sound, and the areas you described are in Prince
25 William Sound.

1 Q Now, with respect to the federal test, the
2 federal pilotage test that you took --

3 A Yes.

4 Q -- that you described? The only test that you're
5 given is a written test, am I correct?

6 A That is correct.

7 Q In other words, no one takes you out on the
8 vessel -- the Coast Guard doesn't take you out on the
9 vessel to test your ability to navigate, or to handle, or
10 to maneuver a vessel? It just tests your ability to read
11 and write, I take it?

12 A What you say is correct.

13 Q So anyone that's made the requisite number of
14 trips can sit down -- that is, as an observer, without
15 having handled the vessel --

16 A That's correct.

17 Q -- sit down and take the exam?

18 A Yes, sir.

19 Q And it's not a test, or a certification, as to
20 their ability to handle the vessel, is it?

21 A No, sir. It's not.

22 Q Now, when you spoke about this test requiring
23 that you plot depths or fathoms -- is it fathom readings?

24 A Yes.

25 Q You aren't talking about each and every fathom

1 reading in Prince William Sound, were you?

2 A No. I was talking about -- now, this is based on
3 my examination, which is a number of years ago. Quite a
4 number of years ago. At that time -- and I presume this is
5 still the case -- the requirement was to plot the depths
6 along the main ship channels, along the track lines that
7 vessels ordinarily navigated.

8 Q Okay.

9 I'd like to ask you now about the enrollment, as
10 opposed to register, that you spoke about.

11 A Yes.

12 Q You stated that vessels that travel coastlines
13 are usually on enrollment, and vessels that travel from a
14 U.S. port to a foreign port are on register. Is that
15 correct?

16 A That's my understand, yes.

17 Q Are you also familiar with the change in the law
18 that permits dual documentation?

19 A I am familiar with that.

20 Q And would you explain what you understand dual
21 documentation to mean?

22 A Oh, my understanding is not a precise one, but
23 I'll tell you what it is, as best I can. When a vessel
24 wanted to change its document from registry to enrollment,
25 or from enrollment to registry, previously the U.S.

1 Shipping Commissioner, and perhaps even the U.S. Customs,
2 had to -- they either came aboard, or the document was
3 delivered to their offices, and there was some kind of a
4 paper shuffle made there.

5 And I think, in the interests of streamlining
6 this whole process, this dual documentation concept was
7 created by the Coast Guard where the paperwork could be
8 done -- the paperwork, if any, could be done by the Master
9 on board, depending upon what kind of voyage he was
10 embarked upon. That's my understanding.

11 Q Now, is it also your understanding that it was
12 the Master's choice of being either on register or on
13 enrollment, under this dual documentation?

14 A As I understand it, that's true.

15 Q And is it also your understanding that a vessel
16 sailing coastlines, if the Master so declares, could be on
17 register, as opposed to enrollment, under the dual
18 documentation?

19 A I think that is the case. I'm not sure about
20 that.

21 Q And is it also your understanding that a vessel
22 sailing on register in Prince William Sound is not required
23 to have a pilot on board up to Rocky Point?

24 A Would you ask me that one more time, please?

25 A Yes. Is it your understanding that a vessel

1 standing on register in Prince William Sound is not
2 required to have a federal pilot on board until -- well, at
3 any time?

4 A No, that's -- that's not really my
5 understanding. If you want my answer, it's pretty
6 longwinded. There's a whole background to this issue.
7 Shall I go ahead with it?

8 Q Well, go ahead.

9 A As the pipeline was being constructed, I think
10 probably one of the political tradeoffs to enable the
11 project to be completed was that the oil companies, the
12 Coast Guard, agreed that all the tankers, or most all the
13 tankers in Prince William Sound, would have -- their
14 Masters or an officer on board would have federal pilotage
15 for that portion of Prince William Sound from the ocean
16 entrance to the pilot's station at Rocky Point.

17 And, as we talked about previously, in order to
18 get those -- to get that endorsement on one's license, one
19 has to have made observer trips along the route. So I
20 believe it was in April of 1977, ARCO provided the ARCO
21 Fairbanks and the oil companies and the shipping companies
22 sent 40-some-odd of their Masters to Valdez where they
23 embarked on the ARCO Fairbanks, and I and other pilots from
24 our organization made training trips. We ran the ARCO
25 Fairbanks up around Prince William Sound with these Masters

1 as observers so they could get their required observer
2 trips, in order for them to write the pilotage.

3 They did that, and eventually the pipeline came
4 onstream and ships started to arrive. Most of the ships
5 had a Master or officer aboard who did have that pilotage,
6 and he would conduct the vessel up to Rocky Point where one
7 of the state pilots would get aboard.

8 For a variety of reasons, probably vacation,
9 sickness, an unplanned arrival, some few of those ship
10 would show up without a deck officer who had the pilotage
11 endorsement, and in those cases, we pilots would go out to
12 the, to Hinchinbrook entrance, 65 miles from Valdez, the
13 ocean entrance to Prince William Sound and we would board
14 those vessels.

15 We didn't like it. It's the northern gulf of
16 Alaska, with all that implies. It's rough out there and,
17 we think, dangerous, and eventually -- this went on
18 probably fewer than 10 percent of the vessels. Eventually,
19 we lost a pilot boat out there. It hit the side of the
20 ship so hard in rough weather, we had to put on the beach
21 before it sank. It opened the seams, and it was a total
22 loss. A pilot was injured out there.

23 And we pilots complained quite vigorously to the
24 Coast Guard, said this was ridiculous and so forth, and the
25 Coast Guard agreed and they permitted these nonpilotage

1 vessels to come in as far as the Bligh Reef area and embark
2 their pilot there, some eight miles seaward from a normal
3 pilot's station.

4 These can -- these vessels had to meet certain
5 criteria that -- the visibility had to be, I believe,
6 either two or three miles, or they had to report their
7 position to the Coast Guard periodically. There had to be
8 an additional officer on watch, and so forth.

9 So that was the system we have been operating
10 under all these years. Most of the vessels come to Rocky
11 Point. There's an officer on board who has a pilotage.
12 Occasionally, a ship shows up whose officer doesn't have
13 the pilotage. We went out to Bligh Reef and picked them
14 up, and that was true for both registered vessels, enrolled
15 vessels, and the few foreign vessels that call.

16 Q You are aware that in recent years the pilotage
17 regulations have been relaxed, if you will, by Captain of
18 the Port orders, are you not?

19 A Yes.

20 Q Are you aware of any instances where a ship
21 without a pilotage endorsement picked up a pilot north of
22 Bligh Reef in the area of Rocky Point?

23 A I can't -- I can't say for sure. I can say I'm
24 quite sure it's happened. On rare occasions when the
25 winter weather is just so bad in the Bligh Reef area that

1 the pilot boat's icing down so much, we think it's
2 dangerous for the crew and the pilots, or when it's so
3 rough that the pilot risks life and limb to get aboard.

4 On those rare occasions, we may have gotten a
5 waiver from the Coast Guard to bring the ship up to the
6 normal pilot's station at Rocky Point.

7 Q Are you aware of any situations where a pilot
8 disembarks a vessel without pilotage in the area of Rocky
9 Point as opposed to Bligh Reef?

10 A No, unless it would be under the circumstances I
11 just described, and that would be -- that would be where --
12 a case by case basis. I can't precisely say which ships,
13 or how many, but I can say it's probably happened
14 occasionally.

15 MR. CHALOS: Your Honor, is this a good point
16 to _____.

17 THE COURT: Sure.

18 MR. CHALOS: I think so.

19 THE COURT: This ends the trial day. We'll see
20 you all back tomorrow morning at 8:30. We'll try to get
21 started promptly at 9:00, but maybe we can get a little bit
22 earlier start. But if you're back at 8:30, I know we can
23 start at 9:00.

24 And, in the meantime, don't discuss this case
25 among yourselves or with any other person. Don't form or

1 express any opinions. Remember my instructions regarding
2 media sources. We'll see you back tomorrow at 8:30, and be
3 safe.

4 We'll stand in recess.

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

7 (Whereupon, the hearing recessed, to reconvene
8 subject to call.)

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1 VOLUME 6

2 STATE OF ALASKA

3 IN THE SUPERIOR COURT AT ANCHORAGE

4	----- X	:
5	In the Matter of:	:
6	STATE OF ALASKA	: Case No. 3ANS89-7217
7	versus	: Case No. 3ANS89-7218
8	JOSEPH J. HAZELWOOD	:
9	-----	:

10 Anchorage, Alaska

11 February 6, 1990

12 The above-entitled matter came on for trial by
13 jury before the Honorable Karl S. Johnstone, commencing at
14 8:42 a.m. on February 6, 1990. This transcript was
15 prepared from tapes recorded by the Court.

16 APPEARANCES:

17 On behalf of the State:

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19 On behalf of the Defendant:

20 DICK L. MADSON, Esq.

21 MIKE CHALOS, Esq.

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William E. Murphy

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Jerzy Glowacki

68 119 149 157

- - 160 -

Joel A. Roberson

163 193 206 210

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E X H I B I T S

	<u>DEFENDANT'S</u>	<u>IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
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3	A	-	49
4			
5			
6	<u>STATE'S</u>		
7	11		83
8	19	-	72
9	24	-	94
10	26	-	53
11	63	-	167
12	65	-	76
13	66	-	74
14	67	-	82
15	68	-	74
16	72	67	87
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P R O C E E D I N G S

1 (Tape C-3600.)

2 THE CLERK: Court is now in session.

3 JUDGE JOHNSTONE: You may be seated. I have what
4 looks like a State's Motion for Protective Order to prevent
5 evidence of Mr. Murphy's grounding of his charter boat off
6 of Homer. Do we need additional argument, Mr. Cole?

7 MR. COLE: Judge, I only have one thing to add. I
8 have a copy of an interview done with Mr. Murphy on
9 March 27th, 1989. At that time, this was done by an NTSB
10 reporter. At that time, Mr. Murphy indicated that he
11 smelled alcohol on the Captain's breath when he arrived on
12 the bridge and when the master, Captain Hazelwood, arrived
13 back on the deck that evening.

14 Now I'm not sure quite what part of Captain Murphy
15 that Mr. Hazelwood's attorneys are going to attempt to
16 discredit, what part of his testimony they're going to
17 attempt to discredit. I assume it's the alcohol. If
18 that's the case, his story has been the same since he was
19 interviewed the first time. I don't happen to have
20 Investigator Fox's interview with me, but Investigator Fox
21 interviewed him well before the incident when this
22 grounding occurred. And it seems to me that the Defense
23 should -- the case that they've cited, Bill versus Crew,
24 that was a case where there had been a change of story is
25 my understanding. But this case, there's no change of

1 story between what Mr. Murphy has said from the very
2 beginning and what he testified to yesterday. And so,
3 therefore -- in addition to that, Your Honor, I have
4 contacted the Coast Guard and it's been related to me that
5 the grounding incident, itself, has been investigated and
6 the case is closed and Lieutenant Stark is willing to come
7 down and testify to that.

8 In addition to that, I've spoken with Mr. Murphy
9 and he is under the impression that it's a completely
10 separate incident and he has, in no way, any feelings that
11 his testimony in this matter would affect the outcome of
12 that case because he assumed that it was taken care of.

13 JUDGE JOHNSTONE: Let me ask you, is Mr. Murphy
14 under investigation by the State in any way?

15 MR. COLE: No.

16 JUDGE JOHNSTONE: Was he after the grounding?

17 MR. COLE: Not that I'm aware of.

18 JUDGE JOHNSTONE: Okay, and list the prior
19 consistent statements by Mr. Murphy to others before this
20 incident.

21 MR. COLE: Well, the incident occurred on May 5th.

22 JUDGE JOHNSTONE: Okay.

23 MR. COLE: And the two that I have, one of them is
24 the interview summary done by the NTSB officer that's been
25 provided to the Defense.

1 JUDGE JOHNSTONE: Do you have a copy of that
2 statement, then?

3 MR. COLE: Yes.

4 JUDGE JOHNSTONE: Okay, and who else besides the
5 NTSB officer, Fox you said? How about Grand Jury?

6 MR. COLE: Well, Grand Jury -- oh, it's
7 April 28th, so that would have been before May 5th, so that
8 statement was consistent, although I'm not sure, in that
9 statement, whether he talked, whether he was asked when he
10 smelled alcohol on the Captain's breath, whether it was in
11 the time when he came up to the bridge. I don't remember
12 that.

13 JUDGE JOHNSTONE: Well, let's find out. You have
14 the Grand Jury testimony, don't you?

15 MR. COLE: Yes. Okay, he was asked --

16 JUDGE JOHNSTONE: Can you identify the pages?

17 MR. COLE: This is Page Number 53. We have a
18 different page cite than they do. This is from mine.

19 JUDGE JOHNSTONE: Why don't you put it on the
20 podium and they can look over your shoulder on that?

21 MR. COLE: "Now when you were talking to Captain
22 Hazelwood during the times that he was on the bridge, did
23 you notice an odor of alcohol about his person?" "Yes, I
24 did." "Did you notice anything else, anything unusual?
25 Was he having trouble manipulating or speaking?" "No, I

1 noticed nothing, nothing remarkable at all. I noted what I
2 considered to be an odor of alcohol and he didn't seem to
3 me to be impaired at all. He seemed much as he had been at
4 lunch." And it's difficult to tell from my understanding
5 in the context whether he was talking about when he was on
6 the bridge the first time when he boarded or when it was
7 when the Captain came back up to the bridge right before
8 the narrows. It just wasn't specific, the question wasn't
9 specific on that point.

10 JUDGE JOHNSTONE: All right, now, how about the
11 NTSB officer, what does the summary of that testimony or
12 that statement say

13 MR. COLE: The NT officer's summary says, "Shortly
14 after hearing that the master had returned, he arrived on
15 the bridge. The pilot stated that the master acted normal
16 in all respects and appeared the same as when the vessel
17 had arrived the previous day and during lunch that day, but
18 that he smelled alcohol on the Captain's breath." This is
19 on Page 2.

20 Further down, it says, it goes into, "The master
21 arrived on the bridge about five minutes later and that's
22 after he was requested and called by Third Mate Cousins."
23 It goes on to say that, "The pilot stated that the master
24 appeared to be acting normal in all respects, although he
25 still smelled alcohol on the master's breath. He noticed

1 no change in the smell of alcohol on the master's breath
2 from the first time he noticed it."

3 JUDGE JOHNSTONE: Who was that officer?

4 MR. COLE: It doesn't say, Your Honor. It was an
5 interview summary done on March 27th by an official with
6 the National Transportation and Safety Board. It was made
7 an exhibit in the National, NTSB.

8 JUDGE JOHNSTONE: How about Mr. Fox?

9 MR. COLE: Now the two times for Mr. Fox, he asked
10 -- let's see, actually this is Blair? It's not Fox.

11 MS. : It's Investigator Burke.

12 MR. COLE: Burke, Investigator Paul Burke. And
13 he --

14 JUDGE JOHNSTONE: Obviously, was it before the May
15 grounding of Murphy's boat?

16 MR. COLE: It was on April 4th --

17 JUDGE JOHNSTONE: All right.

18 MR. COLE: -- 1989.

19 JUDGE JOHNSTONE: What did he say about the
20 alcohol?

21 MR. COLE: He said, "During that time . . .," --
22 okay, Paul Burke, "During that time, did you have an
23 opportunity to note anything about his physical state,
24 physical characteristics?" "Well, I smelled alcohol on his
25 breath or what smelled to me like alcohol."

JUDGE JOHNSTONE: Is that relating to the time
that

1 Murphy was on the bridge and Captain Hazelwood was on the
2 bridge?

3 MR. COLE: It's relating to the time when they
4 first came on the bridge.

5 JUDGE JOHNSTONE: Okay, any other prior consistent
6 statements, consistent with the testimony regarding the
7 alcohol?

8 MR. COLE: In that same interview, it said -- and
9 they're talking about the second time, so it was dark. "He
10 came up and we visited and then I exchanged the information
11 with him. We were standing pretty close together. I still
12 smelled the alcohol on his breath, but he didn't seem to
13 speak any differently than he had as we were leaving the
14 dock or earlier that day, at lunch."

15 JUDGE JOHNSTONE: All right. Mr. Chalos, I have
16 been assuming that it's the testimony concerning the
17 alcohol that you would like to impeach somehow with this
18 evidence. Is there other testimony?

19 MR. CHALOS: Yes, Your Honor.

20 JUDGE JOHNSTONE: What is the other testimony?

21 MR. CHALOS: We focused on the alcohol here, this
22 morning.

23 JUDGE JOHNSTONE: What other testimony do you wish
24 to impeach?

25 MR. CHALOS: Well, Your Honor, I want to explore

1 what possible shading or prejudice or bias --

2 JUDGE JOHNSTONE: Mr. Chalos, please just answer
3 my question and we'll get to that. Is there any other
4 testimony, other than the alcohol, that you are trying to
5 impeach?

6 MR. CHALOS: Yes, Your Honor, I'm trying to
7 impeach possibly the operation of the vessel, the correct
8 operation of the vessel as a master. I'm trying to impeach
9 the testimony regarding pilotage in that particular area.
10 I don't know how much of the discussions had between
11 Captain Murphy and the State has in any way influenced this
12 testimony in that regard.

13 JUDGE JOHNSTONE: First of all, you disagree that
14 Captain Hazelwood had any alcohol on his breath and you
15 want to impeach that testimony. And you want to impeach
16 the testimony regarding pilotage that he gave? What
17 specifically has he said that you find to be not credible?

18 MR. CHALOS: Well, Your Honor, I don't know --
19 well, we don't believe that the testimony regarding the
20 operation of the vessel by a master, that is that the
21 master has to be on the bridge at certain periods of time,
22 that the area around south of Rock Point is a pilotage
23 area. And we want to know from Captain Murphy what
24 promises he's been made because he didn't discuss that in
25 his prior statements or testimony that he gave before the

1 Grand Jury. We want to know how much of that testimony has
2 been influenced by his grounding and any subsequent
3 promises that may have been made by --

4 JUDGE JOHNSTONE: The grounding took place after
5 the Grand Jury, didn't it?

6 MR. CHALOS: Yes, but there was no discussion --
7 it did, Your Honor. He spoke, I think, on May 1st to the
8 Grand Jury and the grounding took place May 5th. But as I
9 read the Grand Jury testimony, there wasn't the specificity
10 about the pilotage and the operation of the vessel in his
11 discussion before the Grand Jury, as there has been on the
12 stand and that's what I want to explore.

13 JUDGE JOHNSTONE: Okay, do you wish to now address
14 the shading of the testimony you think has occurred with
15 him?

16 MR. CHALOS: Yes, I want to find out, basically,
17 if he's been given any promises or been given any
18 expectations by the State because, basically, when he ran
19 the charter boat aground, he had I think 18 school children
20 on board. The State had just finished charging Captain
21 Hazelwood with reckless endangerment. Conceivably, the
22 same -- that was fresh in their mind -- conceivably, the
23 same charge could have been levied against Captain Murphy.
24 When he ran his boat aground, he had 18 lives, small
25 children, that were in danger. So I want to know if the

1 State made any promises to him, gave him any hope or
2 expectation that if his testimony was favorable that they
3 wouldn't consider prosecuting him.

4 I don't think Mr. Cole can answer that question
5 because he wasn't involved at that time. I think he was
6 being kept separated by Mr. Linton and the rest of the
7 prosecutors, if you will.

8 JUDGE JOHNSTONE: So you wish to introduce
9 evidence of his grounding his charter boat to impeach his
10 credibility regarding his statements about pilotage and,
11 also, his statements about when a master should be on the
12 bridge?

13 MR. CHALOS: And operating the vessel.

14 JUDGE JOHNSTONE: Be specific about "operating the
15 vessel." What is it about his testimony that you wish to
16 impeach, which portion of the testimony?

17 MR. CHALOS: Well, if you recall, Your Honor, he
18 said something to the effect that when transiting narrow
19 areas, when transiting areas that he considered to be
20 dangerous, his opinion was that the master should be on the
21 bridge and he should be there, conning the vessel.

22 What I'm trying to find out is, in his situation,
23 I think he was there when the vessel ran aground. I don't
24 know how much of his testimony in that regard is shaded by
25 the fact that he's trying to distinguish his situation from

1 what happened in this case.

2 JUDGE JOHNSTONE: Okay, anything further?

3 MR. CHALOS: Well, the only reason we wish to
4 introduce evidence of the grounding is to show one of the
5 positions that we've taken in this case is that the
6 groundings occur as a matter of course, it's a part of the
7 Maritime business. If you have a ship and it's running on
8 the water, it's subject to running aground at some point
9 and it happens even to the best of people. And if Captain
10 Murphy is a good pilot and he's a believable pilot and he
11 runs his ship aground, then we believe that testimony in
12 that regard to show that it happens to even the best of
13 mariners is relevant on the issue of recklessness.

14 JUDGE JOHNSTONE: Anything further, Mr. Cole?

15 MR. COLE: The only thing I have to add, Your
16 Honor, I just spoke with Commander Nelson regarding Mr.
17 Murphy's case. Lieutenant Commander Stark confirmed with
18 the captain, the marine safety officer here, in Anchorage,
19 Mr. Murphy's case is closed and they have no intention of
20 prosecuting him. If something were to come up in the
21 future, they can always reopen it. They don't know what
22 could come up in the future, but at this point, that's how
23 the case status is. I don't believe there's any kind of
24 statute of limitations, so if something were to come up --
25 but they have no intention of opening it.

1 JUDGE JOHNSTONE: Do you have any evidence that
2 the State of Alaska has investigated or intended to
3 prosecute this against Mr. Murphy or in any way take any
4 action adverse to Mr. Murphy?

5 MR. CHALOS: Your Honor, I don't have any evidence
6 of that, but that's the purpose of the inquiry.

7 JUDGE JOHNSTONE: Let's take that inquiry up
8 outside the presence of the jury. We'll bring Mr. Murphy
9 in here and we'll find out what he has to say under oath.
10 Whereupon,

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

15 JUDGE JOHNSTONE: Good morning, Mr. Murphy.
16 You're still under oath, sir.

17 THE WITNESS: Good morning, Judge.

18 JUDGE JOHNSTONE: All right, Mr. Chalos, you can
19 make inquiry at this time. Mr. Murphy, we're going to take
20 up a matter outside the presence of the jury to determine
21 its admissibility.

22 CROSS EXAMINATION

23 BY MR. CHALOS:

24 Q Good morning, Captain Murphy.

25 A Good morning, Mr. Chalos.

1 Q I'd like to ask you about the grounding of the
2 Tolcheena.

3 A All right.

4 Q That occurred on May 5th, 1989?

5 A I believe so.

6 Q You were the captain of the boat at the time?

7 A I was operating the boat, yes.

8 Q Were you at the helm at the time?

9 A Yes.

10 Q The vessel ran aground, as I understand, somewhere
11 around Homer.

12 A Yes, the vessel struck an uncharted rock.

13 Q You had some school children on board at that
14 time?

15 A That's correct.

16 Q How many?

17 A 18, I believe. There were 18 passengers, most of
18 whom were school children.

19 Q After the grounding, I understand that you ran the
20 boat onto the beach, is that correct?

21 A Yes, I drove it up on the beach.

22 Q To keep it from sinking?

23 A I don't know if it would have sunk or not, I doubt
24 it. But that was the only prudent thing to do.

25 Q Captain, were you ever questioned about that

1 incident by the district attorney?

2 A No, not that I can recall. There was some
3 discussion about whether or not it would come up, but no
4 particular questioning that I can recall.

5 Q Did the grounding come up in any of your
6 conversations with the district attorney?

7 A Yes, the day before yesterday, Mr. Cole made
8 reference to it, mentioned that it might come up in the
9 trial here. There was some general conversation about it,
10 I believe.

11 Q What specifically was said in that regard?

12 A My recollection of specifics isn't too clear. He
13 mentioned to me that it was possible that the grounding on
14 my charter boat might come up in the trial and there would
15 be a question about its admissibility. And my impression
16 was that he was going to try to persuade the judge that
17 such information wasn't admissible.

18 Q Did he mention to you anything about the grounding
19 being covered by your immunity agreement?

20 A No.

21 Q Did anyone ever mention the immunity agreement to
22 you with respect to the grounding?

23 A No, absolutely not.

24 Q Has the Coast Guard investigated the incident?

25 A As far as I know, they have. I've turned in the

1 appropriate accident reports.

2 Q Did you give any interviews to the Coast Guard?

3 A Yes.

4 Q When did you give such interviews?

5 A It would have been in the month of May, but the
6 date's unclear. I talked to Lieutenant Wilson and perhaps
7 one or two others down at Homer.

8 Q Did that interview take place prior to subsequent
9 interviews that you had with the State?

10 A Well, I've been interviewed by the State before
11 that and after.

12 Q The account of the grounding was reporting in the
13 local papers, was it not?

14 A Yes, it was.

15 Q In your subsequent interviews with the State, did
16 the subject come up?

17 A No. No, it's never come up until the day before
18 yesterday, Mr. Cole mentioned that you might bring it up.

19 Q Do you have any expectations or beliefs that the
20 grounding of the vessel, the Tolcheena, is covered by your
21 immunity agreement granted here?

22 A No, absolutely not. The immunity agreement, as
23 far as -- I believe it's dated before the grounding of my
24 charter boat.

25 MR. CHALOS: Your Honor, I have no further

1 questions of this witness.

2 JUDGE JOHNSTONE: Any questions, Mr. Cole?

3 MR. COLE: Judge, I don't have any questions. I
4 just want to have the Court take notice of an exhibit
5 that's already been put into evidence and that's his
6 immunity agreement and look at the date on that.

7 JUDGE JOHNSTONE: What is the date?

8 MR. COLE: It's April 28th, I believe.

9 JUDGE JOHNSTONE: So it would be difficult for the
10 immunity agreement to cover something that occurred after
11 that. I would imagine that's the inference. Okay,
12 anything further of this witness before we excuse him?

13 MR. CHALOS: Your Honor, I'm satisfied with
14 respect to the first part of our argument dealing with
15 immunity covering this particular incident. However, I
16 would again raise --

17 JUDGE JOHNSTONE: Before you do, are there any
18 questions you have for the witness? I'll excuse him for
19 this argument.

20 MR. CHALOS: Yes, Your Honor, I have just a few
21 more questions.

22 BY MR. CHALOS: (Resuming)

23 Q Captain Murphy, was this the first time that
24 you've grounded?

25 A Yes.

1 Q Would you agree that groundings are ordinary and
2 everyday events in the maritime business?

3 A No. No, absolutely not.

4 Q Would you agree that they occur from time to time?

5 A Certainly.

6 Q And they can occur even to the best of mariners, I
7 take it.

8 A Yes, obviously.

9 MR. CHALOS: Thank you, Captain Murphy.

10 JUDGE JOHNSTONE: All right, you can step
11 outside. Okay, any further argument?

12 MR. CHALOS: Only, Your Honor, to raise again the
13 second part of our argument, which is that we would like to
14 question Captain Murphy about the grounding to show that
15 these things happen and they happen to mariners such as
16 Captain Murphy who's an experienced and competent mariner.

17 JUDGE JOHNSTONE: All right, that's another
18 application. The motion for the protective order went to
19 the idea that you were going to impeach Captain Murphy with
20 some alleged promises that may have been made or some
21 feeling he may have had that he wouldn't be prosecuted if
22 he testified favorably. Now you're asking for admission of
23 it for another purpose, is that correct?

24 MR. CHALOS: Yes, that's right.

25 JUDGE JOHNSTONE: Okay, the State's motion for

1 a protective order is granted. It seems to me that the
2 thrust of Captain Murphy's testimony yesterday went to his
3 testimony that he smelled something associated with alcohol
4 on Captain Hazelwood's breath and that it's clear from what
5 I've heard, and there doesn't seem to be any dispute, that
6 Captain Murphy made those statements before the grounding
7 of his charter vessel. Those would all be prior consistent
8 statements. I think it takes away your argument that he's
9 shading his testimony. And his testimony regarding
10 pilotage and operation of a vessel you wish to impeach is
11 not persuasive. I think that this would be introducing a
12 collateral issue for an improper purpose. It would be
13 potentially confusing to the jury and take unnecessary
14 time. It's probative value is, I think, nil in respect to
15 impeachment of Captain Murphy's testimony. And to the
16 extent that it has probative value, it's outweighed by its
17 undue prejudicial effect, confusion of the issues and
18 consumption of time.

19 Mr. Cole, do you want to address the use of
20 Captain Murphy's testimony that mariners do, even the best
21 of them do ground vessels and he grounded his, which I
22 assume the inference is that if he can, anybody can?

23 MR. COLE: Judge, first of all, I believe that
24 that comes in under 404(B). That's exactly what he's
25 trying to use, except rather than prior -- he's trying to

1 use this as a prior bad act to show that some other people
2 can act in conformity with that.

3 There are some substantial differences between
4 someone who's chartering a boat and someone, a tanker
5 captain who is in charge of a vessel carrying 1.2 or more
6 million barrels of crude oil. In addition to that, there
7 are differences in the fact that there's been no testimony
8 that Captain Murphy was drinking before that, whereas in
9 this case, there is going to be testimony that Captain
10 Hazelwood was drinking. There's no testimony that Captain
11 Murphy left the bridge; in his case, in fact, it's just the
12 opposite. Whereas there will be testimony that Captain
13 Hazelwood left the bridge. There's no testimony that it
14 had been on autopilot. And on top of that, the facts are
15 that this was an uncharted rock and uncharted rocks -- if
16 Captain Hazelwood had hit an uncharted rock, that would
17 have been one thing, but he hit Bligh Reef. It's sitting
18 in the middle of Prince William Sound and every mariner
19 knows it. So there are very different facts and it's not
20 relevant to this case.

21 JUDGE JOHNSTONE: Anything else?

22 MR. COLE: No, Your Honor.

23 JUDGE JOHNSTONE: Okay, I'm going to deny that
24 application, as well. The fact that other mariners may
25 have grounded vessels is not probative on the issues in

1 this case. It's not an expert opinion that will assist the
2 finder of fact. It would open up collateral areas of why
3 other mariners have grounded vessels. I think it would
4 open up a Pandora's box and we're going to shut the lid
5 right now before we get into that one. That application is
6 denied.

7 Anything else before I bring the jury in?

8 MR. CHALOS: No, Your Honor.

9 JUDGE JOHNSTONE: Okay, let's bring the jury in.

10 THE CLERK: We have to get the pads out.

11 JUDGE JOHNSTONE: Okay, we'll take a break just
12 necessary to get the pads out.

13 THE CLERK: Please rise. This Court stands
14 recessed.

15 (Whereupon, at 9:08 a.m., a recess is taken.)

16 (Whereupon, the jury enters the courtroom.)

17 JUDGE JOHNSTONE: Thank you. Ladies and
18 gentlemen, you may be seated. Resume Captain Murphy's
19 testimony at this time. We're on cross examination.

20 MR. CHALOS: Thank you, Your Honor. Good morning,
21 ladies and gentlemen.

22 BY MR. CHALOS: (Resuming)

23 Q Captain Murphy, you are aware, are you not, that
24 in 1985, the Coast Guard submitted proposed rules which
25 were intended to eliminate the pilotage requirement in

1 Prince William Sound, the federal pilotage requirement?

2 MR. COLE: Objection, Your Honor, relevance.

3 JUDGE JOHNSTONE: What year did you say?

4 MR. CHALOS: 1985, Your Honor.

5 JUDGE JOHNSTONE: Objection overruled.

6 THE WITNESS: I have heard discussion to that
7 effect. I have never read any specific proposal by the
8 Coast Guard, personally.

9 BY MR. CHALOS: (Resuming)

10 Q Were you also aware that the Coast Guard, in 1988,
11 again renewed that proposal, proposed rule making to
12 eliminate pilotage in Prince William Sound, south of Rocky
13 Point?

14 A Again, I have heard some discussion about that. I
15 haven't read the Coast Guard's submittal.

16 Q Do you know the reasoning behind the Coast Guard
17 proposals to eliminate pilotage south of Rocky Point?

18 MR. COLE: Objection, Your Honor.

19 JUDGE JOHNSTONE: How about grounds, Mr. Cole?

20 MR. COLE: Relevance, lack of knowledge,
21 speculation.

22 JUDGE JOHNSTONE: I think, based on his testimony,
23 he's indicated he's heard something about it. If you want
24 to ask him what he's heard, you could --

25 MR. CHALOS: Yes, I will, Your Honor.

1 BY MR. CHALOS: (Resuming)

2 Q Can you tell the jury, sir, what you heard about
3 the elimination of pilotage south of Rocky Point?

4 A Well, I heard that it was being considered, that
5 this was something ongoing by the Coast Guard for a number
6 of years. I never read anything specific about it and
7 didn't know whether or not it was true. I presumed if it
8 was true, it was because they no longer saw a need to
9 require ships to have that pilotage endorsement south of
10 Rocky Point. That was my presumption.

11 Q Was that because the Coast Guard considered the
12 area to be not dangerous?

13 MR. COLE: Objection, lack of knowledge,
14 speculation

15 JUDGE JOHNSTONE: He's indicated he presumed
16 that. The objection's sustained.

17 BY MR. CHALOS: (Resuming)

18 Q Let me ask it this way, sir. Have you heard from
19 anyone that the reason behind the Coast Guard's proposed
20 rule making to eliminate pilotage was because they
21 considered the area south of Rocky Point to be not
22 dangerous?

23 MR. COLE: Objection, hearsay, speculation.

24 JUDGE JOHNSTONE: The hearsay objection sounds
25 good to me, unless you can come up with some exception.

1 You're offering it for the proof of the words. Objection
2 sustained.

3 BY MR. CHALOS: (Resuming)

4 Q Captain Murphy, do you consider the area -- prior
5 to this accident, did you consider the area south of Rocky
6 Point to be a dangerous area for navigation?

7 A No, sir, I did not.

8 Q Now just very quickly --

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

11 JUDGE JOHNSTONE: Yes, sir. And you don't need to
12 ask leave for this witness, you can approach freely.

13 BY MR. CHALOS: (Resuming)

14 Q Am I correct that prior to the grounding, your
15 pilot station, the State pilot station was here at Rocky
16 Point?

17 A Yes, in the Rocky Point area.

18 Q Yesterday, you testified that subsequent to the
19 grounding, the pilot station was moved down to the Bligh
20 Reef area here?

21 A Correct.

22 Q How far to the south of the former pilot station
23 is the new pilot station?

24 A I believe it's about ten miles.

25 Q Can you point to --

1 A Correction, 12 miles. It's just there, by my
2 finger, now.

3 Q Right here, at the turn of the VPS.

4 A About a mile south of the turn.

5 Q Was the change in the pilot station, the location
6 of the pilot station done as a matter of statute or
7 regulation?

8 A Initially, the Coast Guard -- after the accident,
9 traffic was halted for a number of days. When it began
10 again, the Coast Guard required us to board and disembark
11 in the Bligh Reef area. At a meeting of the Alaska Board
12 of Marine Pilots in April, the Board of Marine Pilots
13 issued an emergency order which officially changed the
14 pilot station to the point I've just indicated, so that was
15 by emergency regulation. Since then, it's been
16 incorporated under the normal regulatory process.

17 Q Prior to that, the official position of the pilot
18 station as set forth in the Alaska statutes and regulations
19 was at Rocky Point.

20 A Yes, it was in the Rocky Point area.

21 Q Now let me switch gears on you for a second. How
22 many times had you been on the Exxon Valdez prior to the
23 accident?

24 A I don't remember. Not -- a cumulative total on
25 the Exxon Valdez and/or her sister ship, perhaps six

1 times. Both vessels are relatively new to the trade. I
2 don't have an exact recollection. It's in my records
3 somewhere.

4 Q For all intents of purposes, they both handle the
5 same way, do they not?

6 A That's correct.

7 Q On the night of March 23d, were you familiar with
8 the handling characteristics of the Exxon Valdez?

9 A Yes, sir.

10 Q In reading some of your previous statement, I note
11 that you use ten degrees of rudder when you're making
12 course changes, is that correct?

13 A Not always.

14 Q Am I correct that the maximum you use is about ten
15 degrees?

16 A I think what I said was turning from a westerly
17 course into Valdez Narrows, southbound, with a loaded ship,
18 I normally, if I can, limit ruddering of ten degrees, try
19 to avoid getting too much swing on the ship. Of course,
20 that depends upon the circumstances and the ship involved.

21 Q Based on your knowledge of the Valdez's handling
22 characteristics, what kind of heading change, that is a
23 change of the ship's heading, would you expect using ten
24 degrees of rudder over a period of a minute?

25 A What are the wind and the weather conditions?

1 What's the draft? Is the ship loaded?

2 Q Let's say she's at 56 feet, light wind and no
3 current or very little current.

4 A Ten degrees of left rudder for a minute?

5 Q Or right rudder.

6 A Well, pilots don't think in those terms, but --
7 and this is pretty much a guess because we don't think in
8 those terms. For a minute, probably in the range of 40
9 degrees, something like that.

10 Q Are you saying, then, that if one were to be on a
11 course of 180 due south that within two to three minutes,
12 if you use ten degrees of right rudder on the Valdez with a
13 56-foot draft, she would swing from a heading of 180 to due
14 west 270 in a period of two to three minutes?

15 A Well, what speed is she making and what's the
16 ordered engine revolution?

17 Q Let's say she's doing full maneuvering speed, 11.7
18 knots, her revolution is 55.

19 A I think that's fair. I think she'd swing at least
20 that much.

21 Q Now, Captain Murphy, based on your knowledge of
22 the Exxon Valdez's maneuvering characteristics, would an
23 order of ten degrees right rudder, in your opinion, be
24 considered a simple maneuver?

25 A An order from the conning officer of the

1 quartermaster?

2 Q Yes.

3 A Certainly, very simple.

4 Q Just bear with me one second.

5 A Sure.

6 Q Yesterday, you testified that coming out of the
7 Port of Valdez, you started on a course -- did you say 330?

8 A 300.

9 Q 300. That's this course right here.

10 A I testified that that was my normal practice,
11 given no traffic problems. And since it's my normal
12 practice, that's probably what I did on the Exxon Valdez.
13 I can't specifically remember, however.

14 Q Well, assume for the moment that you used -- took
15 this course of 300.

16 A Yes.

17 Q Is it fair to say that on this course, if you made
18 no course change, you would wind up on the land here?

19 A It certainly is.

20 Q And is that also true on this course of 270 to the
21 west? Is it also fair to say that if you make no course
22 change, you'd wind up on this shore here?

23 A Yes, sir, that's fair to say.

24 Q In reading over the information from the ship, I
25 note that at some point here, you were traveling at full
e

1 maneuvering speed. Do you recall that?

2 A I can't specifically recall, but I'm sure that's
3 so, if you've looked over the records.

4 Q Yes. And just so we clear this up, full
5 maneuvering speed is different than full speed on this
6 vessel, am I correct?

7 A Full sea speed?

8 Q Yes.

9 A Yes, it is.

10 Q Full maneuvering speed is about 11.7 knots, do you
11 have that recollection

12 A Yes, I believe it's 55 rpm.

13 Q Right. And full sea speed is something around 16
14 knots.

15 A Something in that range, yes.

16 Q Okay. So at the time that you were in the Port of
17 Valdez during this 270-degree leg, you were traveling at
18 about 11.7 knots at some point, is that your recollection?

19 A Well, the ordered engine speed and the actual
20 speed the ship is making over the ground are sometimes not
21 the same. But if the engine was on full ahead, we were
22 turning for 11.7 knots -- whether or not the ship had
23 actually accelerated to that speed, I don't know. There's
24 a lot of mass there.

25 Q Captain Murphy, would you agree that the fact that

1 you may be traveling in the area of 11 knots on a course
2 that's taking you towards land is not, in itself,
3 dangerous, a dangerous maneuver?

4 A Certainly not.

5 Q It only becomes dangerous if you don't make the
6 correct course change at the point that the change should
7 have been made, is that correct?

8 A That's true.

9 Q Captain Murphy, would you agree that the use or
10 nonuse of the autopilot in any specific area is in the
11 discretion of the master?

12 A That's correct.

13 Q And it's up to the master to decide whether he
14 should use it or not, based on what he knows at that time
15 about his ship, about the automatic pilot itself, about the
16 conditions surrounding the vessel, the condition the vessel
17 is in, would you agree with that?

18 A I think so, yes.

19 Q I'd like to ask you about the vessel traffic
20 system, if I may. You are familiar with the Coast Guard
21 vessel traffic system that's used in Prince William Sound?

22 A Yes, I am.

23 Q And you've been involved with it since 1978 or
24 thereabouts?

25 A Since before that.

1 Q When did you first become involved with it?

2 A Prior to the opening of the TransAlaska pipeline
3 system. I had discussions with the commanding officer and
4 other officers while the Coast Guard was in the process of
5 setting up the system.

6 Q Now on the chart that you have in front of you, as
7 well as the other charts of this area, there is what is
8 called an optimum track line, am I correct?

9 A No, that's a line I've penciled in which I guess
10 approximates what the Coast Guard calls the optimum track
11 line.

12 Q You are familiar with the optimum track line
13 designation by the Coast Guard, are you not?

14 A Yes.

15 Q Could you explain to the jury what that is?

16 A Well, it's something that in the early days of the
17 vessel traffic system, the Coast Guard showed up and said,
18 "This is the track line we think you should be on in Valdez
19 Narrows," and we pilots disagreed in rather strong terms
20 and we said, "No, this is the track line that is more
21 appropriate," and we were able to persuade them that we
22 knew what we were talking about. And they then designated
23 what the pilots normally used as the optimum track line and
24 that was in the first year or two. I really haven't heard
25 any more discussion about the optimum track line since

1 then.

2 Q The optimum track line that we're discussing is
3 generally in the middle of the traffic lanes, the
4 northbound and southbound lanes, am I correct?

5 A No. My understanding of that phrase, optimum
6 track line, is the track through Valdez Narrows, midchannel
7 through Valdez Narrows. That's the optimum track line.

8 Q Was there an optimum track line or the equivalent
9 as you were coming down past the Narrows?

10 A Not that I'm aware of, no.

11 Q What has been your experience in situations where
12 your vessel was slightly off course, away from the track
13 line, but still within the lanes, if you will, the VTS
14 lanes. What has been your experience with receiving calls
15 from the Coast Guard about the fact that you were slightly
16 off course?

17 A Well, in the early days of the TransAlaska
18 pipeline system, the Coast Guard made a lot of --
19 frequently made those kinds of calls. They haven't done
20 that much in recent years, presumably because the pilots
21 are always where they're supposed to be.

22 Q Prior to the accident, did you believe that the
23 Coast Guard was monitoring the movement of vessels on their
24 radars down to Bligh Reef?

25 A I absolutely believed it.

1 Q Captain, I'd like now to turn to the subject of
2 maneuvering around ice. Would you agree that whether the
3 vessel proceeds through the ice or maneuvers around it is
4 in the discretion of the captain?

5 A I would agree.

6 Q Would you also agree that on ships such as the
7 Exxon Valdez, it's more prudent if you can to go around the
8 ice than to proceed through it?

9 A I think if the ice can safely be navigated around
10 that that's the best choice, no doubt about it.

11 Q I take it you're familiar with the routine and
12 practice of tankers deviating completely outside the VTS
13 lanes to get around ice.

14 A I'm familiar with them deviating outside of their
15 particular lanes, but not outside the boundaries of the
16 lanes.

17 Q On this particular night, the 23d, you had heard a
18 report from the ARCO Juneau about ice, did you not?

19 A Yes, sir.

20 Q And do you recall, also, the ARCO Juneau telling
21 the Coast Guard that they were deviating completely out of
22 the lanes to avoid the ice?

23 A No. My recollection is I heard them say that they
24 were deviating out of the southbound lane to avoid ice.

25 Q Has anyone ever told you or have you ever learned

1 that --

2 MR. COLE: Objection, hearsay.

3 JUDGE JOHNSTONE: Finish the question. But don't
4 answer it.

5 MR. CHALOS: Yes, let me rephrase that, Your
6 Honor, maybe I can take care of the objection.

7 BY MR. CHALOS: (Resuming)

8 Q Has it ever come to your knowledge that the ARCO
9 Juneau and a ship called the Brooklyn on that particular
10 date both deviated out of the lanes completely to avoid
11 ice?

12 A Shall I answer, Judge?

13 MR. COLE: I still object, hearsay.

14 JUDGE JOHNSTONE: Before you answer what you
15 heard, let's get the basis of what he knows.

16 MR. CHALOS: That's what I was trying to explore,
17 Your Honor.

18 JUDGE JOHNSTONE: Well, let's get the basis of how
19 he got it. If he got it by hearsay --

20 MR. CHALOS: Well, I don't know what his answer is
21 going to be.

22 JUDGE JOHNSTONE: Ask your question again.

23 MR. CHALOS: Yes, sir.

24 BY MR. CHALOS: (Resuming)

25 Q Captain Murphy, has it come to your knowledge that

1 the ARCO Juneau and the Brooklyn, the two ships that
2 preceded the Exxon Valdez out of Port Valdez on the 23d,
3 both left the shipping lanes completely to avoid ice.

4 JUDGE JOHNSTONE: Don't bias the question. The
5 basis -- the answer is going to result in some sort of a
6 statement based on hearsay, unless he was personally
7 there. Now it's being offered for the truth of it, isn't
8 it, that the vessels did deviate?

9 MR. CHALOS: No, it's only offered as to the
10 previous answer, Your Honor, that Captain Murphy said he is
11 not familiar with ships deviating completely out of the
12 lanes.

13 JUDGE JOHNSTONE: Objection sustained.

14 BY MR. CHALOS: (Resuming)

15 Q Captain Murphy, have you, yourself, deviated with
16 a vessel around ice?

17 A Yes, sir, many times.

18 Q In those instances or in some of those instances,
19 did you proceed at speeds in the area of 11 to 11-1/2
20 knots?

21 A Yes, or faster.

22 Q Or faster. Captain, it's true, is it not, that
23 fully laden tankers or tankers like the Valdez loaded down
24 at 57 feet generally handle better at speeds of ten, 11 or
25 12 knots than they would at slower speeds?

1 A That's generally true.

2 Q And their ability to maneuver and turn is also
3 enhanced by going ten, 11 or 12 knots than it would be at
4 slower speeds?

5 A Well, that's a yes and no answer, Mr. Chalos. If
6 you want me to elaborate, I will.

7 Q Well, let me see if I can rephrase it better so --
8 maybe it was poorly worded. Would you agree that a ship
9 laden to 57 feet, as was the Valdez on this particular
10 evening, traveling at 11, 11-1/2 knots, would tend to
11 handle and turn much better than it would if it was going
12 say at a slower speed?

13 A Probably, unless the vessel was proceeding at the
14 slower speed and then a greater engine rpm was called for,
15 so that the propeller was turning for an ordered speed
16 actually greater than the ship was making.

17 Q But assume that the rpm speed and the vessel speed
18 were the same. Would you agree then with my statement?

19 A I would agree.

20 Q Captain Murphy, I just want to clear one thing up
21 here. Did I understand you correctly yesterday that you
22 would rely on the lookout in maneuvering around ice the
23 least of any other source that you might have available to
24 you, such as other people on the bridge or the radar or
25 other navigational aids?

1 A Yes, that's so. In some cases, the lookout can be
2 a lot of help, but I haven't found them to be generally
3 reliable.

4 Q I believe you said -- I just want to confirm it --
5 that when you were on the Exxon Valdez the night of the
6 23d, you did not encounter any ice.

7 A No, sir, I did not.

8 Q And any information that you had about ice that
9 night had come from a previous report of the ARCO Juneau,
10 is that correct?

11 A Correct.

12 Q Do you know how old that report was?

13 A Approximately. I think I heard that report about
14 an hour before I left my quarters to come to the Exxon
15 Valdez. I arrived on the Exxon Valdez at 2020 hours, so
16 this is pretty much a guess, but I would guess it was
17 between 1900 and 1930 hours that I heard this, somewhere in
18 that range.

19 Q But you don't know how old the report may have
20 been prior to that.

21 A That was a current report. I heard the master of
22 the ARCO Juneau report the ice to the vessel traffic
23 system.

24 Q Has it been your experience that the ice
25 conditions in Prince William Sound can change rapidly from

1 hour to hour sometimes?

2 A Yes.

3 Q Captain Murphy, I'd like to switch now and ask you
4 about the day in Valdez on the 23d.

5 A Yes.

6 Q You stated that you received a telephone call from
7 Captain Hazelwood at about noontime to pick him up for
8 lunch, is that correct

9 A Yes, sir.

10 Q Do you recall what time you arrived at the Ellamar
11 office?

12 A No. My recollection is some time during the noon
13 hour is when Captain Hazelwood called and, shortly after he
14 called, I left and went to the Ellamar office, so it was
15 still somewhere in the range of the noon hour, I believe.

16 Q I believe you previously gave a statement and you
17 said it was somewhere between 12:15 and 12:30, is that
18 correct?

19 A I believe that's probably accurate.

20 Q And then I take it you picked up Captain Hazelwood
21 and you drove over the Pizza Palace.

22 A Yes, sir.

23 Q And you said that your lunch took somewhere around
24 an hour.

25 A That's right.

1 Q Could it have been an hour and 15, 20 minutes?

2 A Certainly.

3 Q I take it that you don't have a recollection of
4 the exact time that you left the Pizza Palace.

5 A No. No, I don't.

6 Q Would you say it was somewhere between 1:30 and
7 2:00 o'clock?

8 MR. COLE: Objection, that's not what the amount
9 that he's added up adds up to.

10 JUDGE JOHNSTONE: I don't understand your
11 objection, Mr. Cole. It's overruled.

12 THE WITNESS: It could be, Mr. Chalos. My
13 recollection of those times are certainly not precise.
14 Captain Hazelwood called me some time during the noon
15 hour. I picked him up and we went and had lunch and it
16 took about an hour to an hour and a half, something like
17 that. So what you state could certainly be the case.

18 BY MR. CHALOS: (Resuming)

19 Q And I believe you testified that after you
20 finished lunch, you had a conversation with Mr. Arts who
21 happened to be in the Pizza Palace at the same time.

22 A As I recall, we were -- I don't know if we were
23 eating our lunch or just finished. We were sitting at the
24 table and Mr. Arts had also dined there and I think he was
25 leaving. He walked over and greeted us and we conversed,

1 the five of us, for a short time.

2 Q And then I take it you went out to your car and
3 drove over to the mall that you testified about.

4 A That's correct.

5 Q And I also take it that, at that point, you
6 exchanged whatever good-byes you had to exchange --

7 A Yes, that's right.

8 Q -- and talked for a couple of minutes, I take it.

9 A I don't really recall. Captain Hazelwood and his
10 party got out there and I returned to my quarters. I'm
11 sure we said, "Goodbye. See you tonight," words to that
12 effect.

13 Q Now Captain Hazelwood had nothing to drink at
14 lunch of an alcoholic nature, is that right?

15 A No, sir, he did not.

16 Q The next time you saw Captain Hazelwood was
17 somewhere around between 8:30 and 9:00 that evening?

18 A Let me look at my personal record again.

19 Q Yes.

20 A Yes, that's right.

21 Q Yesterday, in response to Mr. Cole's question, you
22 stated that you detected what you perceived to be the smell
23 of alcohol on Captain Hazelwood's breath during that period
24 of time, am I correct?

25 A That's correct.

1 Q How close were you to Captain Hazelwood?

2 A Well, the normal distance I guess people stand
3 when they converse with one another, two or three feet,
4 face to face.

5 Q Besides the smell that you perceived to be
6 alcohol, did you see anything that would have indicated to
7 you that Captain Hazelwood was intoxicated?

8 A Absolutely not.

9 Q Did you see anything that would indicate to you
10 that he was impaired?

11 A Not at all.

12 Q Was his speech slurred?

13 A No.

14 Q Were his mannerisms unsteady?

15 A No.

16 Q Was his movements unsteady?

17 A No.

18 Q Were his eyes watery?

19 A Not that I could tell, no.

20 Q Did he have any different mood than he had let's
21 say at lunch?

22 A No, he seemed the same to me.

23 Q Speaking about that, did Captain Hazelwood seem in
24 all respects the same to you as you had seen him at lunch?

25 A Yes, he did.

1 Q And did he seem in all respects the same as you
2 had seen him the night before --

3 A Yes.

4 Q -- when you came in on the Exxon Valdez?

5 A Yes, sir.

6 Q Yesterday, you testified that you spent some time
7 with the Captain discussing the undocking maneuver, do you
8 recall that?

9 A Yes.

10 Q And you offered some opinions and he offered some
11 opinions back to you.

12 A Well, I think the way it went, I believe I told
13 him how I proposed to do the maneuver, which is my custom,
14 and he said "Fine" or indicated that was all right with him
15 or words to that effect and so forth.

16 Q Did you have an opportunity to observe Captain
17 Hazelwood giving orders to his crew at that point?

18 A Yes.

19 Q Were his commands clear?

20 A Certainly.

21 Q Were they correct, based on your experience of
22 these things?

23 A Absolutely.

24 Q Did he seem in command of this vessel?

25 A Oh, absolutely.

1 Q Did you have any doubt about his ability to --
2 strike that -- Captain Murphy, could you tell from the
3 smell that you perceived to be alcohol when Captain
4 Hazelwood had his last drink?

5 A No.

6 Q For all you know, his last drink may have been
7 some time that afternoon, is that correct?

8 A I have no idea when it was.

9 Q I'd like to ask you now about the trip through the
10 Port of Valdez. How many trips would you say you've made
11 through the Port and through the Narrows in your career?

12 A I've never counted them. More than one thousand.

13 Q How many trips have you made with Captain
14 Hazelwood through the Port of Valdez and the Narrows?

15 A I haven't counted those, either. Probably a half
16 dozen to ten, something in that range, maybe a dozen.

17 Q During those trips, Captain Hazelwood had the
18 opportunity to observe your performance, I take it.

19 A Yes, he did.

20 Q And I take it Captain Hazelwood also, in those
21 instances, took the opportunity to observe your abilities.

22 A I'm sure he did.

23 Q Captain Murphy, did you in any way feel
24 incompetent to navigate this vessel through the Port and
25 the Narrows?

1 A No.

2 Q Captain, you're familiar, are you not, with the
3 fact that tanker masters have a lot of paper work to do in
4 this trade?

5 A Yes, I am familiar with that fact.

6 Q Is that true?

7 A Yes, it is true, to the best of my knowledge.

8 Q Do you know if Captain Hazelwood had any reason to
9 believe that you were incapable of bringing the vessel
10 through the Port and the Narrows?

11 MR. COLE: Objection.

12 JUDGE JOHNSTONE: Don't answer the question.

13 MR. COLE: Objection, lack of knowledge,
14 speculation.

15 MR. CHALOS: Your Honor, I'm asking not for
16 Captain Hazelwood's state of mind, but his state of mind.

17 JUDGE JOHNSTONE: Objection sustained.

18 BY MR. CHALOS: (Resuming)

19 Q Captain Murphy, you stated that Captain Hazelwood
20 was off the bridge about an hour or so coming through the
21 Port and the Narrows, is that correct?

22 A I would -- again, my recollection isn't precise.
23 I think somewhere between an hour up to possibly an hour
24 and a half, something in that range.

25 Q Now you don't know, do you, whether Captain

1 Hazelwood may have come up on the bridge and stood in the
2 back of the wheelhouse?

3 A No, I don't.

4 Q And, in fact, he might have very well done that.

5 A That's possible.

6 MR. COLE: Objection, lack of knowledge.

7 JUDGE JOHNSTONE: It's not going to assist the
8 finder of fact what he might have done. Objection
9 sustained. Disregard the answer, ladies and gentlemen.

10 BY MR. CHALOS: (Resuming)

11 Q Captain Murphy, when you left the vessel at about
12 11:25 that evening, I believe you testified that the
13 visibility was about eight miles?

14 A Well, the reason I remember the eight miles is we
15 had come out of rather limited visibility in the Narrows
16 and I could see Busby Island light, which is eight miles
17 away from, about eight miles away from Entrance Island, so
18 at that time, the visibility was at least eight miles.

19 Q Now when Captain Hazelwood came up on the bridge
20 after you had the third mate call him, you testified that
21 you again smelled what you perceived to be alcohol on his
22 breath.

23 A That's correct.

24 Q How close were you two at that time?

25 A Oh, I think we stood an adjacent -- the wheelhouse

1 window is looking forward, so two or three feet.

2 Q Was the smell that you smelled of alcohol at 11:20
3 or 11:15 that evening any different than the smell that you
4 had smelled at let's say 9:00 o'clock that evening?

5 A I detected no difference.

6 Q When Captain Hazelwood came back up on the bridge,
7 did he appear to you to be intoxicated?

8 A No, sir.

9 Q Did he appear to you in any way to be impaired?

10 A No, sir.

11 Q Were his movements steady?

12 A Yes.

13 Q Was his speech slurred?

14 A No.

15 Q Was his mood any different than when you had seen
16 him previously?

17 A Not that it was perceptible to me, no.

18 Q Did he appear to you at 11:15 that evening, just
19 before you got off, to be in the same state as he had been
20 at 9:00 o'clock, as he had been at lunch, as he had been
21 the night before?

22 A Yes, he did.

23 Q Captain Murphy, if you felt that Captain Hazelwood
24 was intoxicated or impaired, would you have stayed on this
25 vessel?

1 A I don't know what I would have done. I've never
2 encountered such a situation. I don't know how I'd handle
3 it. It would be a difficult situation.

4 Q But the fact of the matter is that situation
5 didn't exist on that particular night where you had to make
6 that kind of decision.

7 A No, it never entered my mind. It was a routine
8 transit.

9 Q Now, Captain Murphy, as part of the paper work
10 that you do as a pilot, you sign off on pilot slips, am I
11 correct?

12 A Yes, we fill out a pilotage slip which is signed
13 by the pilot and the master.

14 Q Let me show you what we've marked as Defendant's
15 Exhibit A for identification and ask you is this a copy of
16 the pilot's slip that was signed that night?

17 A Yes, sir, it is.

18 Q Is this your signature right here?

19 A It is.

20 Q Is that Captain Hazelwood's signature right below
21 it?

22 A It is.

23 Q Are you familiar with Captain Hazelwood's
24 signature?

25 A Well, he's signed my pilotage slip on a number of

1 occasions. I'm familiar to that extent.

2 Q Is the signature on this page similar to the
3 signature that he put on your other pilot slips?

4 A I can't remember, Mr. Chalos. I'm sure it is, but
5 I can't state that it is.

6 MR. CHALOS: Your Honor, I offer Exhibit A into
7 evidence.

8 MR. COLE: No objection.

9 JUDGE JOHNSTONE: A is admitted.

10 (Defendant's Exhibit A was
11 received in evidence.)

12 MR. CHALOS: Your Honor, may I have permission to
13 show this to the jury.

14 JUDGE JOHNSTONE: No, we're not going to do that,
15 Mr. Chalos. We're taking notes and that's why I'm letting
16 them take notes, so they can mark these things down.

17 MR. CHALOS: Okay. Captain Murphy, thank you, I
18 have no further questions at this time.

19 JUDGE JOHNSTONE: Mr. Cole.

20 REDIRECT EXAMINATION

21 BY MR. COLE: (Resuming)

22 Q Captain Murphy, you talked a little bit yesterday
23 and today about some of the changes and proposed changes
24 that have gone on in the pilotage area out in Prince
25 William Sound.

1 A Yes.

2 Q Since 1980, has there ever been any change in the
3 pilotage? And when I say pilotage, what is required of a
4 pilotage vessel

5 A Not to my knowledge.

6 Q And what does that require a tanker vessel to have
7 on board during that transit?

8 A It requires a deck officer with the appropriate
9 Prince William Sound pilot's endorsement on his license.

10 Q To go to where?

11 A Well, it depends on where you're talking to,
12 either from Cape Hinchinbrook to Rocky Point and some
13 masters and deck officers have it cleared for the Port of
14 Valdez.

15 Q And on March 23d, where did you get off the Exxon
16 Valdez?

17 A In the area of Rocky Point.

18 Q Why did you do that?

19 A Because that's the pilot station, that was the
20 pilot station.

21 Q And what -- do you know what type of pilotage
22 endorsement Captain Hazelwood had?

23 MR. CHALOS: Objection, Your Honor, asked and
24 answered.

25 JUDGE JOHNSTONE: Go ahead and answer the

1 question. Objection overruled.

2 THE WITNESS: Well, I don't recall looking at
3 Captain Hazelwood's license, but I knew that he had the
4 requisite endorsement.

5 BY MR. COLE: (Resuming)

6 Q From Rocky Point to Hinchinbrook.

7 A Well, he may have had that or perhaps his license
8 reads from the Port of Valdez to Hinchinbrook, I don't
9 know.

10 Q Now you indicated that the area around Bligh Reef
11 is not dangerous, is that correct?

12 A No, I wouldn't put it in those terms. I don't
13 know what you mean. Dangerous relative to what?

14 Q Well, in the course of Mr. Chalos' questions, he
15 asked you whether this area south of Rocky Point was an
16 area you considered dangerous.

17 A A dangerous navigation area.

18 Q Yes.

19 A I said no.

20 Q Okay. I'd like to have you take a look at a
21 couple of these charts. What about -- and I'm showing you
22 what's been identified as Plaintiff's Exhibit Number 25.

23 (State's Exhibit 25 is
24 marked for identification.)

25 BY MR. COLE: (Resuming)

1 Q Now there are some dotted lines that go from Busby
2 Island. Can you tell the jury what those are?

3 A Why don't you point exactly to what you're
4 referring to here on Busby Island? This chart would be
5 better scale.

6 Q Okay, that chart doesn't show it. Let's use this
7 one. I'm showing you what's been identified as Plaintiff's
8 Exhibit Number 26. Do you recognize that?

9 A Yes, sir.

10 Q What's that a chart of?

11 A That's Chart 16708 of of Valdez Port 9.

12 Q An accurate representation of that area?

13 A Yes, sir.

14 MR. COLE: I move for the admission of what's been
15 identified as Plaintiff's Exhibit Number 26.

16 MR. CHALOS: Your Honor, I have no objection, but
17 I'm not sure what the plastic overlays are. I have no
18 objection to the chart, itself. My concern is what the
19 overlays represent.

20 JUDGE JOHNSTONE: Is there an overlay on it.

21 MR. COLE: Yes, so at some point, somebody can
22 draw on it.

23 JUDGE JOHNSTONE: It's just a clear overlay at
24 this time.

25 MR. CHALOS: I have no objection, Your Honor.

1 JUDGE JOHNSTONE: Thank you. 26 is admitted.)

2 (State's Exhibit 26 is
3 received in evidence.)

4 BY MR. COLE: (Resuming)

5 Q Specifically, I'm talking about these dotted lines
6 that run right along here, from Busby down.

7 A Okay.

8 Q What's that?

9 A Well, there's a red sector in Busby Island light.

10 Q What's a red sector mean?

11 A Well, the red sector means if you're in the range
12 of visibility of the red sector, it marks a danger.

13 Q It's a danger. Okay. And if your ship were to
14 pass over that red line, what would you see if you looked
15 out at the lights?

16 A Looked out at what lights. If you were in this
17 sector?

18 Q If you were off Bligh and off Busby.

19 A What's your heading?

20 Q If you're heading south.

21 A I want to be sure what you're asking. If you're
22 in this area with a vessel, what navigation lines do you
23 see?

24 Q Yes, and what color are they?

25 A Well, you look astern at Busby Island and you see

1 a red light and you see the flashing red light on Bligh
2 Reef, as well as Pleasure Island light.

3 Q I'd like you to look at this chart and read Note E
4 on the chart.

5 MR. CHALOS: Objection, Your Honor, the chart
6 speaks for itself.

7 JUDGE JOHNSTONE: Objection overruled.

8 THE WITNESS: It says, "Note E: Caution. During
9 the capping season, Columbia Glacier deposits ice, which
10 may drift into the northern part of Prince William Sound.
11 Mariners are advised to exercise extreme caution and to
12 report all ice sightings to Valdez Traffic on Channel 13."

13 BY MR. COLE: (Resuming)

14 Q Why would they use the words "extreme caution" on
15 that chart?

16 MR. CHALOS: Objection.

17 JUDGE JOHNSTONE: Grounds, grounds?

18 MR. CHALOS: How would this witness know why they
19 use those words? It calls for speculation.

20 JUDGE JOHNSTONE: I think he's qualified to give
21 his opinion on this, based on his experience.

22 THE WITNESS: Well, probably because the
23 information the cartographers have leads them to believe
24 that the capping ice represents some sort of a danger that
25 must be warned against.

1 BY MR. COLE: (Resuming)

2 Q Do you consider ice to be a danger, depending on
3 the type of ice that you encounter?

4 A It can be. It depends upon the circumstances.

5 Q Now you talked a little bit about maneuverability
6 and speed and I guess I'm a little bit confused. If a
7 tanker maneuvers best at 11.7 knots, why don't you run it
8 through the Narrows at 11.7 knots?

9 A Well, there's a speed limit in the Narrows. I
10 believe the rationale for that -- of six knots for loaded
11 vessels and I believe the rationale is if the vessel
12 suffers some kind of a mechanical casualty, steering,
13 engine, whatnot, it would be easier, it would be -- one
14 could recover and get the vessel slowed faster, obviously,
15 if it's going six knots than at 12 and that's the reason
16 for that.

17 Q What about when you're -- well, let me ask you
18 this. When you're in the Port of Valdez and you're heading
19 up to full speed, do you ever load up the program to sea
20 speed?

21 A No, I don't.

22 Q Why not?

23 A Well, because you're going to have to slow down
24 again shortly thereafter to reach a speed limit of six
25 knots to navigate through the Narrows.

1 Q Now you talked about the change of heading, a
2 ten-degree change of heading, and you indicated that was a
3 simple maneuver.

4 A Ten-degree rudder order I believe it was.

5 Q Right. Would you tell the jury how you ask or how
6 you order a course change? Just give them an example.

7 A Well, I could look at the quartermaster and I'll
8 say, "Steer 225." Or if I want to control the rudder that
9 he uses to arrive at that course, I can say, "Left ten," or
10 Left ten degrees rudder." He'll acknowledge my order, put
11 the helm over and I'll check the rudder angle indicator to
12 see that the rudder has been placed at left ten and as the
13 vessel swings, I'll probably take the rudder off and give
14 him a counter order and tell him to steady up, something
15 like that.

16 Q In order to do that, you have to be there and
17 watch him, is that correct?

18 A Sure.

19 Q Now Mr. Chalos talked a little bit about the
20 automatic pilot and said that that's up to the discretion
21 of a tanker captain and you agreed with him on that.

22 A Everything's up to the discretion of the master.
23 He's in charge.

24 Q And he could put a tanker on automatic pilot in
25 the Port of Valdez.

1 A Conceivably, he could. He'd have to take the conn
2 away from me to do that. I wouldn't permit it myself in
3 the Port of Valdez.

4 Q He could do it in the Narrows, if he wanted to.

5 A He could make that order, yes.

6 Q But that doesn't make it prudent.

7 A No.

8 Q You talked a little bit about the VTS system and
9 how you believed you were monitored out of the Port of
10 Valdez.

11 A Yes.

12 Q After you go through the Narrows, do you rely on
13 the Port of Valdez telling you what your location is or do
14 you rely on the instruments that you have on the deck?

15 A On the vessel traffic system? I never rely on the
16 vessel traffic system.

17 Q Why is that?

18 A Because it's my responsibility and not theirs. I
19 have the expertise and they don't. And I haven't always
20 found them a reliable source of information.

21 Q I'd like to talk about the encountering ice
22 situation. Would you describe for the jury how, if you
23 didn't want to go around ice and you wanted to go through
24 it, how would you do that?

25 A Well, I would go through it. It's hard to

1 generalize. It depends upon the size of the ice, the
2 extent of the ice, the ship I'm on, the visibility
3 conditions, the sea state and so forth. But in general
4 terms, probably slow the vessel down and -- if I wasn't
5 able to maneuver around the ice, slow the vessel down and
6 proceed through it at a slow speed.

7 Q And at a slow speed, can you maneuver the vessel
8 by giving it an increase in engine control, like give it a
9 short burst of speed to push the ship around at all, turn
10 the rudders?

11 A You could do that.

12 Q I didn't hear you.

13 A Yes, you can do that.

14 Q And is that an accepted practice in the maritime
15 industry?

16 A I think so.

17 Q You were asked about deviating around ice and you
18 indicated that you had done it at fairly high speeds, 11
19 knots, maybe even more, do you remember that?

20 MR. CHALOS: Objection, Your Honor, to the
21 characterization of 11 knots as being high speed.

22 JUDGE JOHNSTONE: Objections to the form of the
23 question are sustained.

24 BY MR. COLE: (Resuming)

25 Q Do you remember answering the question about --

1 that Mr. Chalos asked about deviating around ice at 11
2 knots?

3 A I remember it.

4 Q And you said that that's common.

5 A Yes.

6 Q Do you remember, in those situations, were you
7 using the automatic pilot?

8 A No.

9 Q Did you leave the bridge when you were doing those
10 things?

11 A No.

12 Q The times that you gave Mr. Chalos, were you
13 looking at your watch that day when you were driving around
14 and going to lunch and coming back?

15 A Golly, I can't remember. It was a luncheon about
16 a year ago. I don't remember if I looked at my watch.

17 Q Now you --

18 MR. COLE: If I could just have a minute, Your
19 Honor. I have just two more areas.

20 BY MR. COLE: (Resuming)

21 Q How many second mates or third mates do you know,
22 personally, that have pilotage endorsement for the Prince
23 William Sound area?

24 A I sure couldn't tell you, Mr. Cole.

25 Q Finally, you indicated that there was nothing

1 different about Captain Hazelwood, other than the odor of
2 alcohol, between the time you saw him on the 22d and the
3 23d.

4 A That's correct.

5 Q And you're saying that there was no change in his
6 voice that you could recognize.

7 A No, there was not.

8 Q He was the same efficient person on the night of
9 the 23d that you had known in the past.

10 A Absolutely.

11 Q That evening when he came on board, what were the
12 lighting conditions, the bridge, on the 23d?

13 A I didn't see Captain Hazelwood come aboard.

14 Q I'm sorry, when he came up on the bridge, let me
15 be more specific.

16 A The lights in the chart room and the wheelhouse
17 were on.

18 Q And when did they get turned off?

19 A I believe just prior to sailing, the sailing out
20 process, some time in there.

21 Q And Captain Hazelwood was on the deck for 15 to 30
22 minutes, as you testified earlier, and the lights were off
23 at that time.

24 A The lights, when the vessel's navigating at night,
25 are always off.

1 Q Why is that?

2 A Because white light impairs night vision.

3 Q I think you were asked this, but I'd just like to
4 clear it up. How many times have you refused to relinquish
5 the conn to a master that you suspected of being
6 intoxicated?

7 A That's not my authority to do. I've never had the
8 occasion to even contemplate such a thing. But if I had,
9 it's not my authority. The master is in charge of the ship
10 and he's the boss in all cases.

11 Q Do you perceive that as being a difficult thing to
12 do if you were ever confronted with it?

13 A I perceive it as being extraordinarily difficult.

14 Q Finally, can you tell the jury how many civil
15 suits you've been named in?

16 A I believe about 103.

17 Q And can you tell the jury why you have been sued?
18 Do you understand why?

19 MR. CHALOS: Your Honor, I object. What's the
20 relevancy of this? Is he trying to impeach Captain Murphy?

21 (The following was said at the bench.)

22 MR. COLE: It goes directly to why he failed to
23 make observations of intoxication because he's being sued
24 because he turned over the conn to somebody that's
25 intoxicated, failure to adequately (inaudible).

1 JUDGE JOHNSTONE: That opens up a new area and I'm
2 afraid to get into it in some depth and I don't think it
3 would go to prove anything. I think it's probative value
4 right now, Mr. Cole, and I'm going to sustain the
5 objection.

6 (The following was said in open court.)

7 JUDGE JOHNSTONE: Objection sustained.

8 MR. COLE: Judge, I have nothing further.

9 RE CROSS EXAMINATION

10 BY MR. CHALOS: (Resuming)

11 Q Just a few questions, Mr. Murphy. You stated in
12 response to Mr. Cole's question that there had been no
13 changes in the pilotage regulations since the beginning.
14 Do you recall that?

15 A I don't think he phrased the question quite like
16 that, but I know what you're talking about.

17 Q Yes. In fact -- and perhaps it was the question
18 that elicited that answer, but the fact of the matter is
19 there have been a lot of changes in the pilotage
20 regulations over the years, haven't there?

21 MR. COLE: Your Honor, I object because Mr. Chalos
22 is using the word "pilotage" in a way that is confusing.
23 He's taking it in a general term and I'm talking
24 specifically about pilotage as far as when a ship is in
25 status of pilotage and I think that's part of what the

1 confusion is.

2 MR. CHALOS: I'm taking it exactly the same way,
3 Your Honor.

4 JUDGE JOHNSTONE: Do you understand the question,
5 then, to be specific?

6 THE WITNESS: No, sir, I don't understand the
7 question.

8 JUDGE JOHNSTONE: Why don't you rephrase your
9 question then?

10 BY MR. CHALOS: (Resuming)

11 Q Well, let me approach it specifically then,
12 Captain Murphy. You are aware, are you not, that by
13 Captain of the Port order as early as 1980, vessels were
14 permitted to transit Prince William Sound during daylight
15 hours without having someone on board with a pilotage
16 endorsement?

17 A Yes, up to Bligh Reef, I am aware of that.

18 Q And you're also aware that in 1986, there was a
19 letter from Ellamar --

20 MR. COLE: Objection, hearsay.

21 JUDGE JOHNSTONE: Would Counsel approach the
22 bench, please?

23 (The following was said at the bench.)

24 JUDGE JOHNSTONE: We might as well nip this in the
25 bud now. Let him finish his question and then make your

1 objection. And facial expressions like grimaces, smiles,
2 shaking of your head, raised eyebrows don't have any place
3 in this and you're both making a very professional
4 presentation. Let's keep it that way.

5 (The following was said in open court.)

6 JUDGE JOHNSTONE: You may ask your question.
7 Don't answer it until --

8 MR. CHALOS: Let me rephrase that, Your Honor.

9 BY MR. CHALOS: (Resuming)

10 Q Captain Murphy, you're also aware, are you not,
11 that in 1986, the pilotage requirements were further
12 relaxed to permit transit in Prince William Sound at night
13 by vessels without having someone with a pilotage
14 endorsement on board?

15 JUDGE JOHNSTONE: Excuse me. Mr. Cole, did you
16 wish to make an objection to that question? If you did, I
17 want to make sure you get it in if you do.

18 MR. COLE: No.

19 JUDGE JOHNSTONE: Okay.

20 THE WITNESS: I'm not aware of the specific
21 order. I know that the rules did change and those vessels
22 were no longer restricted to daylight only.

23 BY MR. CHALOS: (Resuming)

24 Q Captain Murphy, when you say that the regulations
25 regarding nonpilotage vessels was to pick up a pilot at

1 Bligh Reef, can you show us on this chart where exactly
2 we're talking about? Are we talking abeam of Bligh Reef --
3 this is prior to the accident --

4 A Yes.

5 Q -- or somewhere in the vicinity of Bligh Reef?

6 A Right in this area, just in this area after the
7 turn somewhere.

8 Q Okay.

9 A About abeam of Bligh Reef.

10 Q The circle that you're making encompasses an area
11 anywhere from abeam to about a mile north, is that correct?

12 A Thereabouts or perhaps a mile south, but in this
13 general area.

14 (Tape change to C-3601.)

15 BY MR. CHALOS: (Resuming)

16 Q There wasn't a specific stop, say 5th and K
17 Street.

18 A No, no, there wasn't.

19 Q Captain Murphy, in your experience are third
20 mates, second mates, chief mates on these vessels qualified
21 to give helm orders?

22 A Yes.

23 Q Now you said that you would never leave the bridge
24 while on board as a pilot. Is that because you have the
25 conn at that time?

1 A No, I don't think I said that. I was asked if I
2 had ever left the bridge navigating through ice and I said
3 no.

4 Q And the reason for that is because you had the
5 conn at that particular time --

6 A Correct, correct.

7 Q -- is that correct?

8 MR. CHALOS: I have no further questions, Your
9 Honor.

10 MR. COLE: Judge, I have one follow-up question.

11 JUDGE JOHNSTONE: Okay, one.

12 FURTHER REDIRECT EXAMINATION

13 BY MR. COLE: (Resuming)

14 Q All these changes to the Prince William Sound that
15 you described that Mr. Chalos referred to dealt with
16 nonpilotage vessels, is that correct?

17 A That is my understanding.

18 Q And what is a nonpilotage vessel?

19 A A nonpilotage vessel was and perhaps still is a
20 vessel whose master or deck officers don't possess the
21 pilotage endorsement from Cape Hinchinbrook to Rocky Point.

22 Q Thank you.

23 JUDGE JOHNSTONE: All right, you're excused, thank
24 you. Call your next witness.

25 MR. COLE: Yes, Your Honor. At this time, the

1 State calls Jerzy Glowacki to the stand.

2 Judge, Mr. Glowacki was told to be here and he's
3 not outside. He may be next door (inaudible).

4 JUDGE JOHNSTONE: All right, we'll take a break,
5 ladies and gentlemen, about ten minutes or so. Don't
6 discuss this case among yourselves or express any opinions.

7 THE CLERK: Please rise. This Court stands
8 recessed.

9 (Whereupon, the jury leaves the courtroom.)

10 (Whereupon, at 10:16 a.m., a recess is taken.)

11 (During the recess, State's
12 Exhibit 72 was marked for
13 identification.)

14 (Whereupon, the jury enters the courtroom.)

15 JUDGE JOHNSTONE: You may be seated. You may call
16 your next witness, Mr. Cole.

17 MR. COLE: At this time, the State would call
18 Jerzy Glowacki.

19 Whereupon,

20 JERZY GLOWACKI

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

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

1 THE WITNESS: Jerzy Glowacki, G-l-o-w-a-c-k-i.

2 THE CLERK: Spell your last name again, please.

3 THE WITNESS: G-l-o-w-a-c-k-i.

4 THE CLERK: And your current business mailing
5 address?

6 THE WITNESS: Business mailing address is Exxon
7 Shipping Company, in care of NASCO, San Diego, California.

8 THE CLERK: And your current occupation, sir?

9 THE WITNESS: I'm a chief engineer.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. COLE:

13 Q Mr. Glowacki, what was your position on the Exxon
14 Valdez on the night it grounded?

15 A I was the chief engineer.

16 Q Can you tell the jury how long you've worked for
17 Exxon?

18 A About 19-1/2 years.

19 Q What positions have you held with them?

20 A From the very beginning?

21 Q Yes.

22 A When I joined Exxon, I was a third engineer and,
23 subsequently, second, first engineer and chief engineer and
24 I've held several shore positions with them.

25 Q Have you worked for Exxon the entire time you've

1 been in the maritime industry?

2 A I've taken two leaves of absence for the duration
3 of about three months each when I was teaching at the
4 Maritime College in New York.

5 Q Have you received any special training over the
6 years?

7 A From Exxon? Yes, I've attended many courses,
8 professional type courses.

9 Q How long have you worked on the Exxon Valdez?

10 A I was involved with the latter stages of design
11 prior to construction for several months. Then I was a
12 machinery superintendent during the entire construction at
13 NASCO in San Diego. And when she was delivered in December
14 of '86, I was the chief engineer on her.

15 Q Did you retain that position since then, after
16 that? Did you remain the chief engineer up until the
17 grounding?

18 A Yes, I was, yes.

19 Q Would you tell the jury what a chief engineer's
20 responsibilities are?

21 A I'm in charge of -- I'm responsible for main
22 propulsion, all mechanical, electrical systems on the ship.

23 Q What do you mean by main propulsion?

24 A The main engine. In this case on a diesel ship,
25 the main engine and on steam ships, the turbines, the

1 boilers.

2 Q What type of engine power is this, the Exxon
3 Valdez?

4 A It's a Selzar 8 RTA-84, slow speed, directly
5 driven, directly coupled diesel.

6 Q Can you give the jury an idea of the type of
7 horsepower that this diesel engine generates?

8 A It is rated at MCR, which is maximum continuous
9 rating, of 31,400 horsepower. However, at MCR, which is
10 normal continuous rating, which is what the ship normally
11 operates, which is 90 percent of MCR, is 28,000
12 horsepower. And this is what we operate at full sea speed,
13 28,000.

14 Q How many people work for you on the Exxon Valdez?

15 A There are three other engineers, one on _____,
16 MOA and the pump man.

17 Q What were their responsibilities aboard that
18 tanker?

19 A The pump man usually takes care of the assistant
20 mates in port and loading and discharging cargo and, at
21 sea, he works for me in taking care of, maintaining cargo
22 equipment on deck, the pumps associated with cargo. The
23 MOAs, they're on _____ and they work in the engine
24 room doing repairs and assist in operations.

25 Q How do you organize the shifts of the people that

1 work underneath you when you're at sea? Is there a
2 distinction between when you're at sea and when you're at
3 port?

4 A Yes, there is.

5 Q Would you explain the differences to the jury?

6 A The ship has an _____ rating from the
7 American Bureau of Shipping, which means that it's
8 certified to have unattended engine room spaces. So we
9 generally go --

10 Q What does that mean for the jury?

11 A There is no watch stood around the clock when the
12 vessel's at sea in the engine room. So, at sea, the
13 engineers basically work doing maintenance and repair from
14 8:00 to 5:00. After 5:00 o'clock, the engine room is
15 unattended until 8:00 o'clock -- from 5:00 in the afternoon
16 until 8:00 o'clock in the morning, it's unattended. One
17 engineer on a rotating basis is designated duty engineer.
18 Should any alarms occur in the middle of the night, they
19 will go up in his room and then he will proceed down to the
20 engine room to rectify whatever caused the alarm, should an
21 alarm occur. He also has to make rounds, walk-throughs of
22 the engine room prior to retiring for the evening and
23 usually around 6:00 o'clock in the morning.

24 Q What about coming into port?

25 A We stand watches, four on, eight off, so the

1 engine room will be manned. And we set watches prior to
2 arrival until past departure.

3 Q Why the added concern at departures and arrivals?

4 A Because the ship is then operating in restricted
5 waters, as opposed to open sea.

6 Q Where is the engine room in the Exxon Valdez?

7 A It's after Frame 51 and below the main deck.

8 Q I'm showing you what's been marked for
9 identification as Plaintiff's Exhibit Number 19. Do you
10 recognize that?

11 A Yes.

12 Q What is that a picture of?

13 A That's a photo of the Exxon Valdez.

14 Q Is it an accurate photo of the Exxon Valdez?

15 A Yes, I would say so.

16 MR. COLE: I would move for admission of what's
17 been identified as Plaintiff's Exhibit Number 19.

18 MR. MADSON: No objection, Your Honor.

19 JUDGE JOHNSTONE: 19 is admitted.

20 (State's Exhibit 19 was
21 received in evidence.)

22 BY MR. COLE: (Resuming)

23 Q And if I hold this, could you point out to the
24 jury where the engine room is?

25 A From roughly here down.

1 Q And how far back does it go?

2 A This is Frame 51. This is -- the stern is Frame
3 91 and there's a 16-foot space in between frames, so figure
4 it out.

5 Q The whole way, though.

6 A That's correct.

7 Q Would you tell the jury what type of
8 communications, inner ship communications you have in the
9 engine room and the rest of the ship?

10 A We have two phone systems. One is a regular dial
11 type phone system as you would have at home. Then there's
12 a sound powered phone system. And we also have a radio in
13 the engine room with a space station so we can listen to
14 walkie-talkies, have walkie-talkie communication.

15 Q And where is the engine room located, the engine
16 room itself located?

17 A Where I showed you.

18 Q I'm showing you what have been marked for
19 identification Plaintiff's Exhibit Number 66 and
20 Plaintiff's Exhibit Number 68. Do you recognize those two
21 photographs?

22 A Yes, I do.

23 Q What are those photographs of?

24 A Main engine -- engine room console, control
25 console in the engine room control.

1 Q Do they accurately reflect that area?

2 A Yes.

3 MR. COLE: I would move for admission of those two
4 exhibits, 66 and 68.

5 MR. MADSON: No objection to either one.

6 BY MR. COLE: (Resuming)

7 Q I may ask you to point out something here in a
8 second.

9 THE WITNESS: Sure.

10 JUDGE JOHNSTONE: They're admitted.

11 (State's Exhibits 66 and 68
12 were received in evidence.)

13 BY MR. COLE: (Resuming)

14 Q I'd like to talk a little bit about the method by
15 which the engine in this case is run. Is this tanker the
16 same as say an automobile where you turn on a key and the
17 engine starts?

18 A No, hardly.

19 Q Would you explain to the jury how, for instance,
20 you turn on the engine?

21 A The engineers understand that on this ship, which
22 I gather you do, because of the horsepower it generates, is
23 quite large and the engine has to be warmed up prior to
24 starting to certain temperatures.

25 Q How do you warm it up?

1 A The cooling systems within the engine -- one
2 cooling system is for the cylinder _____, the cylinder
3 liners, themselves, and also the pistons are water cooled,
4 so everything has to be a certain temperature prior to
5 starting the engine. We heat that water, the cooling
6 system, prior to starting the engine.

7 Q Then what do you do?

8 A Lubricating oil also has to be brought to a
9 certain temperature. Once the temperatures are within the
10 parameters the manufacturer recommends, then the engine can
11 be started.

12 Q How is that done?

13 A You mean, physically, how is it done or from what
14 locations or --

15 Q Well, is there a system whereby air is injected
16 into the cylinder heads?

17 A Yes, once -- depending on where the controller of
18 the engine is, which could be on the bridge, in the engine
19 room, in the engine control room or at the engine site,
20 locally, high pressure air is admitted to each cylinder in
21 the starting order which gets the crank shaft moving and
22 once a certain rpm is achieved by injection of air, then
23 fuel is admitted and that's when the engine actually
24 starts.

25 Q Now does the propeller turn at that time?

1 A Yes, it does.

2 Q And would the throttle at that time be in a stop
3 or dead ahead -- or what would --

4 A No. In order for the engine to start, this
5 depends on which control your in, bridge control or engine
6 control.

7 Q Let's assume that you're in bridge control.

8 A On the bridge, the engine throttle is telegraphed
9 -- when the handle is moved from stop to any position,
10 ahead or astern, the engine will start.

11 Q I'm showing you what's been marked for
12 identification as Plaintiff's Exhibit Number 65. Do you
13 recognize that?

14 A Yes.

15 Q What's that?

16 A That's the engine control, main engine station.

17 MR. COLE: I would move for admission of what's
18 been marked for identification as Plaintiff's Exhibit
19 Number 65.

20 MR. MADSON: No objection.

21 JUDGE JOHNSTONE: Admitted.

22 (State's Exhibit 65 was
23 received in evidence.)

24 BY MR. COLE: (Resuming)

25 Q Can you point out on the other two photographs

1 where this throttle is?

2 A Right here, also right here.

3 Q Now let's assume that this -- is it proper to use
4 the word throttle for this or teletype or what do you call
5 it?

6 A Engine control.

7 Q Engine control, okay. Let's assume that engine
8 control is in the engine room.

9 A Okay.

10 Q What happens when you move from stop to dead slow
11 ahead?

12 A When the control is in the engine room control
13 position, the left lever is used strictly as a means of
14 communication from the bridge to the engine room which
15 becomes a telegraph.

16 Q Okay.

17 A And if the bridge desires to go let's say dead
18 slow ahead, they will move their telegraph to dead slow
19 ahead or one of the pointers will move to that position.
20 We will move this lever to that position. Then the arrows
21 would be lined up. This, at the same time, indicates to
22 the bridge that we have received their order and would also
23 reverse the cam shaft on the engine to engine to the ahead
24 running position, so it does two things. It communicates,
25 plus sets the engine for them, the direction that you

1 desire.

2 The right lever is a fuel control lever. In order
3 to start the engine, we have to give it fuel.

4 Q Okay. Go ahead.

5 A So assuming we are going to go dead slow ahead,
6 this lever is already in ahead position. I would move this
7 lever to approximately three and a half or four on the
8 scale and hit the start button.

9 Q Okay.

10 A When I hit the start button, the starting air will
11 be admitted to the engine. Once I see the engine starting,
12 firing -- because the fuel lever is already set for fuel
13 admission -- then I can adjust with the fuel lever the
14 speed of the engine, the desired rpm.

15 Q Okay, thank you. That can be controlled either in
16 the engine room or up on the bridge.

17 A What I -- the procedure for starting I just
18 described can only be controlled from the engine room.

19 Q Okay, what about --

20 A That type of starter.

21 Q What about when the tanker is out at sea and the
22 tanker captain wants to go from dead slow ahead to slow
23 ahead?

24 A Are we on bridge control or --

25 Q Bridge control.

1 A He just moves the telegraph; that is the throttle.

2 Q Okay and then it's done automatically.

3 A Correct.

4 Q What about if he wants to go from stop to dead
5 slow ahead and is on bridge control?

6 A He does the same thing, moves the lever to dead
7 slow ahead and the engine will start and will go up to 24
8 rpm which is dead slow ahead.

9 Q And you don't have to do anything at that time.

10 A No, as far as controlling the fuel speed from the
11 engine room, no.

12 Q Would you tell the jury how important it is to
13 have -- what is the importance of rpm in gradual and
14 increased speed?

15 A Well, each vessel is designed -- each engine for
16 each vessel is designed to attain certain speeds at certain
17 revolutions. And the maneuvering ranges, such as dead
18 slow, slow, half and full, are achieved in the design
19 process and to attain certain speeds, you assign certain
20 rpm to those maneuvering speeds and that's where it is.
21 And, also, at the normal continuous power for sea speeds,
22 the full ahead sea speeds, again certain rpm is assigned by
23 design of propeller, the hull, machinery.

24 Q Let's talk about that for a moment. How does this
25 tanker, this vessel get to sea speed from full ahead?

1 A From maneuvering full ahead --

2 Q From maneuvering full ahead.

3 A -- which is 55 revolutions and bridge control.

4 Q Bridge control.

5 A Unlike a turbine ship, a diesel ship, diesel
6 engine has to be speeded up to full power rather slowly
7 because it's a thermal animal, has to thermally stabilize
8 itself. And it is programmed that, on this ship, once you
9 hit a certain button on the bridge, which is low
10 programming up, it will take about 43 minutes to go from
11 55 rpm full maneuvering to full sea speed which is 79.

12 Q And what happens when you want to stop immediately
13 when you're in the loading up program?

14 A You just move the telegraph on the bridge to stop.

15 Q Does that have any effect on how long it takes?

16 A It would -- do you mean when the engine will stop
17 or when the ship will stop?

18 Q No, when the engine will stop.

19 A The engine will stop -- will go to stop almost
20 instantaneously, but the propeller will free wheel for
21 awhile, depending on the ship's speed, the momentum.

22 Q Can the load program up be done from the engine
23 room?

24 A No.

25 Q Where is it done?

1 A From the bridge.

2 Q Generally, who orders that?

3 A The captain or whoever's in charge. It depends on
4 the situation.

5 Q As a general rule, just the common practice on the
6 Exxon Valdez, was the throttle control from the bridge or
7 from the engine room?

8 A Always from the bridge, unless there was some
9 reason for it.

10 Q Can you give the jury an idea of what type of
11 problems you would look for when you're on duty during the
12 days? What type of problems arise?

13 A Well, one generally doesn't go look for problems
14 all the time. Being an automated vessel, there are
15 hundreds of alarm points, sensors and transducers around
16 the engine room that constantly monitor all the vital
17 systems. Our normal routine at sea is primarily preventive
18 maintenance, predicted maintenance and, if something does
19 break, repairing it.

20 Q Are there any instruments in the engine control
21 room that record the engine commands?

22 A Yes, there is.

23 Q What is that?

24 A It's called the bell logger.

25 Q I'm showing you a picture of what has been

1 identified as Plaintiff's Exhibit Number 67. Do you
2 recognize that?

3 A That's the bell logger.

4 MR. COLE: I'd move for admission of what's been
5 identified as Plaintiff's Exhibit Number 67.

6 MR. MADSON: No objection.

7 JUDGE JOHNSTONE: It's admitted.

8 (State's Exhibit 67 was
9 received in evidence.)

10 BY MR. COLE: (Resuming)

11 Q And I'm also showing you what has been identified
12 as Plaintiff's Exhibit Number 3. Do you recognize that?

13 A That's a copy of the hard copy printout from the
14 logger.

15 Q And do you recognize what's been identified as
16 Plaintiff's Exhibit Number 11?

17 A It's a chart of rpm versus propeller slip.

18 Q And is that an accurate copy of the chart that was
19 on the Exxon Valdez?

20 A I would have to say so, yes.

21 MR. COLE: Your Honor, I'm going to move for the
22 admission of what has been identified as Plaintiff's
23 Exhibit Number 11.

24 THE WITNESS: Although I don't know how this chart
25 was attained, whether it's empirical data or what.

1 MR. MADSON: I'd object because of this witness'
2 lack of knowledge of this particular exhibit, Your Honor.

3 JUDGE JOHNSTONE: Mr. Cole.

4 MR. COLE: I think he satisfied that with his --

5 JUDGE JOHNSTONE: Okay, you can go ahead and
6 admit 11.

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

9 BY MR. COLE: (Resuming)

10 Q I'm also going to ask you to take a look at what
11 has been identified as Plaintiff's Exhibit Number 17 and
12 ask you if there is part of this that corresponds with the
13 bell logger in that, what's been identified as Plaintiff's
14 Exhibit Number 3.

15 A It is a copy of this, yes.

16 Q Okay, and is it an accurate copy as you see it?

17 A Yes, it is.

18 MR. COLE: I would move for the admission of what
19 has been identified as Plaintiff's Exhibit Number 17.

20 MR. MADSON: Your Honor, I would have no
21 objection, except for the little comments that are
22 editorialized on there. This witness hasn't identified
23 those. It is not a copy of what's on there, so, you know,
24 in other words, it's a copy of the chart, blown up.

25 JUDGE JOHNSTONE: But the little stick-ons on the

1 side are not on Exhibit 11.

2 MR. MADSON: That's correct, Your Honor.

3 JUDGE JOHNSTONE: Do you intend not tying this up
4 some time with another witness?

5 MR. COLE: Yes, I do. I can wait until that time.

6 JUDGE JOHNSTONE: You'd better do that.

7 MR. COLE: Okay.

8 BY MR. COLE: (Resuming)

9 Q Mr. Glowacki, I'd like to talk a little bit about
10 what the --

11 JUDGE JOHNSTONE: Excuse me. Do you have any
12 objection to the exhibit being used in this manner?

13 MR. MADSON: Well, I do, Your Honor, because of
14 the information that's on there which we take serious issue
15 with or certain kinds of concern.

16 MR. COLE: I can refer to this.

17 JUDGE JOHNSTONE: Okay, Mr. Cole, that has those
18 stick-ons and it's not been admitted, so I think it would
19 be improper to demonstrate to the jury at this time.

20 BY MR. COLE: (Resuming)

21 Q Well, let's look at the bell logger, then. I see
22 that there are certain little notations on the lefthand
23 side. What are those notations, the little arrow.

24 A The chevron, the arrow? Every time the bridge
25 throttle is moved, it becomes an engine order and this

1 little chevron indicates that that's the order.

2 Q Since the jury can't see that, why don't you draw
3 what that looks like up here on this chart?

4 (Witness marks on the chart.)

5 BY MR. COLE: (Resuming)

6 Q So when the jury takes a look at this exhibit and
7 they see that, that mark, that means that an engine order
8 was given.

9 A That's correct.

10 Q Okay. Can you tell what order was given at that
11 time?

12 A Yes.

13 Q How can you tell that?

14 A Next to it is a -- I'll show you.

15 Q Just -- yes, you can write an example up there, if
16 you like.

17 (Witness marks on the chart.)

18 THE WITNESS: It says "BC" which means the engine
19 room is in bridge control. Next to that, it says "Half
20 ahead."

21 BY MR. COLE: (Resuming)

22 Q And what would that mean?

23 A That the engine or the telegraph was moved to half
24 ahead in the bridge control position.

25 Q Okay. What would be above that, then?

1 A "STB," it means the engine is on standby and
2 that's really of no importance here. It's just a button
3 they press, they're on standby.

4 Q And after that, what else is provided?

5 A There's the time of the order and, also, the rpm
6 that the engine is at when the order was given.

7 Q Now is the time in -- is it according to Alaska
8 time or Pacific time or are you aware of what that time is?

9 A Yes, it's in GMT.

10 Q Which is?

11 A Greenwich (mean) time.

12 Q Now after an order is given, is there another
13 response that's recorded in the bell logger?

14 A Yes, the change in rpm, increase in rpm is
15 recorded every five rpm, every change of five rpm and the
16 time of that change is recorded.

17 Q In every one of these little sequences that we
18 see, has there been an order given?

19 A There was an order given here. There was a
20 progression here.

21 Q Would you show the jury what a progression mark
22 looks like?

23 A It's an "at" symbol.

24 Q Okay, why don't you write it up here?

25 (Witness marks on the chart.)

1 BY MR. COLE: (Resuming)

2 Q So whenever you see that, that's a progression
3 mark. And does that mean that the engine is building up?

4 A Well, it means that at this time, the engine was
5 doing such and such an rpm which is higher than the
6 previous one.

7 Q Okay, thank you. Can you give the jury an idea of
8 how big the propeller on the Exxon Valdez is?

9 A It's approximately -- it is 20-1/2 feet in
10 diameter.

11 Q And I'm showing you a picture of what's been
12 marked for identification as Plaintiff's Exhibit
13 Number 72. Do you recognize that?

14 A That's the propeller.

15 MR. COLE: I would move for admission of what's
16 been identified as Plaintiff's Exhibit Number 72.

17 MR. MADSON: No objection.

18 JUDGE JOHNSTONE: Admitted.

19 (State's Exhibit 72 is
20 received in evidence.)

21 BY MR. COLE: (Resuming)

22 Q I'd like to shift gears here a little bit and talk
23 about Wednesday night on March 22d, 1989. Do you remember
24 being in the engine room that evening?

25 A Yes, that's when we came into Valdez.

1 Q Why were you down in the engine room?

2 A I would usually go down in the engine room when
3 we're maneuvering.

4 Q When you say maneuvering, what time -- when did
5 you go down to the engine room that evening?

6 A I don't remember the exact time, but I would say
7 generally I was in the engine room from the time we took
8 arrival at Cape Hinchinbrook to the time we got to Valdez.

9 Q And when the tankers would leave Valdez, how long
10 would you remain --

11 A Until we took departure at Cape Hinchinbrook.

12 Q And that is again to be available in case things
13 happened?

14 A Correct.

15 Q Do you remember when you went to sleep that
16 evening?

17 A Perhaps 1:00 o'clock in the morning, midnight,
18 something of that order.

19 Q Now turning -- how long had you been out at sea at
20 that point?

21 A How long was I assigned to the ship that time?

22 Q Yes, prior to your last vacation.

23 A I had approximately 70 some odd days on board.

24 MR. MADSON: I'm sorry, I didn't hear the answer.
25 I wonder if the witness could repeat it.

1 THE WITNESS: Approximately 70 some odd days.

2 BY MR. COLE: (Resuming)

3 Q And how long a shift do you normally work? I
4 don't mean shifts, but how long a period do you normally
5 work without a vacation?

6 A Well, generally, it's two months on, two months
7 off. Since the senior people are assigned to the ship on a
8 regular basis, we can make arrangements with my counterpart
9 as to when we want to get off within reason.

10 Q And during the 70 days you had been on the ship,
11 when was the last time that you had been ashore?

12 A I was ashore in San Francisco prior to coming to
13 Valdez.

14 Q And how long does it take to get from San
15 Francisco to Valdez?

16 A Generally, five days.

17 Q Did you leave the Exxon Valdez that morning in
18 Valdez?

19 A The morning of --

20 Q March 23d, 1989.

21 A Yes, I did.

22 Q Why did you leave the Exxon Valdez?

23 A I went with the Captain to our agent's office.

24 Q Did you go with anyone else?

25 A The radio officer came with us.

1 Q What's his name?

2 A Joel Roberson.

3 Q What were you wearing that day, do you remember?

4 A A jacket, sweater and pants.

5 Q Did you have a hat on?

6 A No.

7 Q Did you have a beard at the time?

8 A No.

9 Q How about the Captain, do you remember what he was
10 wearing that day?

11 A I believe he was wearing a winter coat.

12 Q Did he have a hat on?

13 A I believe so, yes.

14 Q What kind of a hat did he have on?

15 A I believe it was a beret.

16 Q Do you remember what color?

17 A No, I don't. It was dark.

18 Q Do you remember what color his jacket was?

19 A I believe it was khaki or green.

20 Q Now you said you went to the agent's. Would that
21 be the Alaska Maritime Agent's?

22 A That's correct.

23 Q What did you do while you were there?

24 A I made a few phone calls to our office in Benetia.

25 Q When you left, what time did you think that the

1 ship was sailing again?

2 A When we left the ship? The sailing board was set
3 for I believe 8:00 and 9:00 in the evening.

4 Q 8:00 or 9:00?

5 A 8:00 and 9:00.

6 Q What does that mean?

7 A That means crew to be aboard at 8:00 o'clock, ship
8 to sail at 9:00.

9 Q Now after -- do you remember what time you left
10 the terminal, the Alyeska Terminal, that day, that morning?

11 A I believe it was approximately -- we left the ship
12 approximately 10:30 or so.

13 Q If I showed you a copy of the checkout, would that
14 refresh your recollection as to when you left that day?

15 A I've never seen a checkout of the terminal, but --
16 that's when we left.

17 Q Okay, what time was that?

18 A 10:59.

19 Q Did you go and eat that day?

20 A Yes, we did.

21 Q Where did you go?

22 A To the Pizza Palace.

23 Q And how did you get there?

24 A Pilot Murphy took us there.

25 Q And who was with you when you had lunch that day?

1 A Murphy, Joel Roberson, Captain Hazelwood and
2 myself.

3 Q Do you remember what you had to eat?

4 A I had some sort of salad, I believe.

5 Q And how about to drink?

6 A I had a beer.

7 Q What did the other people have?

8 A I believe Mr. Roberson had a beer, also. The
9 Captain and Mr. Murphy had iced tea.

10 Q Who paid the bill?

11 A I don't recall exactly, but I believe the agent
12 picked it up.

13 Q The agent would have been eating with you or you
14 saw him there that day?

15 A No, he was there with his family, I believe, at
16 another table, but I'm not certain of that.

17 Q Where did you go after lunch?

18 A Murphy drove us back to town.

19 Q And what happened when you got there?

20 A When we got to the center of town, we separated.

21 Q Did you make any arrangements to meet back up?

22 A Yes, we did.

23 Q What was that arrangement?

24 A That we would meet at the Pipeline Club some time
25 later.

1 Q Who suggested that?

2 A I really don't know.

3 Q What time did you intend to get together?

4 A I really don't believe we set a specific time. It
5 could have been in a half an hour, an hour.

6 Q What did you do that afternoon?

7 A A couple of people on the ship asked me to get
8 some papers, newspapers for them, so I decided to look for
9 newspapers.

10 Q And did you do anything else?

11 A No, I walked about town, looking for newspapers.
12 In Valdez, the newspapers are in automatic type boxes
13 outside.

14 Q How long did you walk around for them?

15 A Perhaps between a half an hour to 45 minutes,
16 maybe an hour.

17 Q Did you do anything else then?

18 A No.

19 Q When did you get to the Pipeline Club?

20 A I think maybe shortly before 4:00 o'clock or so.

21 Q What did you do when you got there?

22 A I ordered a drink.

23 Q How did you do that? Did you go up to the bar or
24 did you --

25 A I walked up to the bar.

1 Q I'm asking you to take a look at what's been
2 identified as Plaintiff's Exhibit Number 24.

3 MR. MADSON: May I see that?

4 MR. COLE: Yes.

5 MR. MADSON: No objection.

6 JUDGE JOHNSTONE: No objection to 24?

7 MR. MADSON: No.

8 JUDGE JOHNSTONE: 24 is admitted.

9 (State's Exhibit 24 is
10 received in evidence.)

11 BY MR. COLE: (Resuming)

12 Q If I hold this, would you tell the jury where you
13 came in that afternoon, how you came in?

14 A Which way?

15 Q Yes. Maybe you can point with that stick that you
16 have right in front of you.

17 A I believe through here.

18 Q And where did you order your drinks?

19 A Somewhere here.

20 Q And do you remember where you sat then?

21 A I believe here.

22 Q And what kind of a drink did you have?

23 A I had a gin and tonic.

24 Q Who was the next person to show up?

25 A It was the Captain.

1 Q And that would be Captain Hazelwood?

2 A That's correct.

3 Q When did he show up?

4 A I believe perhaps half an hour after I was there.

5 Q And what did he have to drink?

6 A I believe it was vodka.

7 Q Why do you say that?

8 A Because I didn't order it for him.

9 Q Well, how did you know it was vodka?

10 A Perhaps I saw the bottle, it looked like vodka,
11 like Smirnoff.

12 Q Was it a particular type of vodka, do you
13 remember?

14 A It might have been Smirnoff, yes.

15 Q And was he drinking it mixed or straight?

16 A I believe it was straight.

17 Q When did Mr. Roberson show up?

18 A Perhaps 15 or 20 minutes or so after Captain
19 Hazelwood showed up.

20 Q When Captain Hazelwood got his drink, did he go up
21 to th bar, also, to get it or did somebody get it for him?

22 A I believe he went to the bar. I really don't
23 recall.

24 Q Did he buy you a drink when he came back?

25 A I don't believe so.

1 Q What did Mr. Roberson have to drink?

2 A I believe he had a beer.

3 Q And how did he get that?

4 A I don't recall exactly.

5 Q Did he order a round for you when he got there?

6 A I don't believe any of us ordered a round because
7 we arrived at staggered times.

8 Q How many drinks did you have that afternoon?

9 A I believe I had three drinks.

10 Q Were you counting them?

11 A That's what I seem to recall, that I had three
12 drinks.

13 Q And did you continue to drink gin and tonics that
14 afternoon?

15 A Yes.

16 Q How about the others, were they drinking at the
17 same time you were, the whole time?

18 A During the time that we sat there?

19 Q Yes.

20 A We had something to drink, yes.

21 Q Did you play any of the video games that were
22 there or anything like that?

23 A No, I did not.

24 Q Do you remember being visited by anyone from the
25 Alaska Maritime Agency?

1 A Yes, one of the agents stopped by.

2 Q Who was that?

3 A I don't recall her name. I would know her by
4 sight.

5 Q Would you describe her to the jury?

6 A She was short, perhaps strawberry blond.

7 Q How long was she there?

8 A She chatted with us for maybe five, ten minutes at
9 the most.

10 Q Do you remember what time that was?

11 A Not particularly, no.

12 Q Did you speak with anybody else that evening?

13 A At the Pipeline Club?

14 Q Besides the three of you that --

15 A At the Pipeline Club?

16 Q Right.

17 A No, we did not, I did not.

18 Q Did any of the -- did Captain Hazelwood or Mr.
19 Roberson?

20 A I don't believe so.

21 Q Did you do anything besides talk amongst the three
22 of you while you were there?

23 A No.

24 Q Was it pretty much shop talk?

25 A Some of it, yes.

1 Q What else did you -- what did you talk about?

2 A I really don't recall every facet of our
3 conversation.

4 Q I'm not asking every facet, but give the jury an
5 idea of what type of things you talked about.

6 A As I said, we did some shop talk. One of the
7 things that the Captain and I brought up was the fact that
8 perhaps we might leave by morning, as opposed to in the
9 evening because of the ice. We chatted about that for a
10 little while.

11 Q So he was aware of the icy conditions out in the
12 Prince William Sound at that time.

13 A Yes.

14 Q And he was aware of the possibility that he could
15 wait until the next day.

16 A That would be our prerogative, yes.

17 Q It would be up to the Captain as to whether or not
18 to do that.

19 A Yes.

20 Q . During the time that you were there, did you ever
21 buy a round for the other individuals, Captain Hazelwood
22 or --

23 A As I said before, I really don't recall buying a
24 round or any of us buying a round.

25 Q How many drinks did you see Captain Hazelwood

1 have that evening --

2 A Perhaps two.

3 Q -- at the Pipeline Club?

4 A Perhaps three. I did not count and I really can't
5 tell you.

6 Q Could it have been more than that?

7 A I doubt it.

8 Q How about Mr. Roberson, how many drinks?

9 A On the same order.

10 Q When did you leave the Pipeline Club that evening?

11 A Approximately 7:00 p.m.

12 Q So you were in the Pipeline Club for about three
13 hours.

14 A I was, yes.

15 Q And -- to the best of your recollection, that's
16 how long.

17 A Yes.

18 Q And you had how many drinks?

19 A I believe three drinks.

20 Q Would you tell the jury what kind of bar the
21 Pipeline Club is? Is it a lit bar, dark?

22 A It's -- the lighting is rather subdued. It has a
23 restaurant associated with it.

24 Q When you say subdued, what do you mean, dark or --

25 A It's rather dark.

1 Q At that time, what time did you think you were
2 sailing?

3 A 10:00 o'clock.

4 Q Why did you think it was 10:00 o'clock?

5 A Because while we were at the agent's office, the
6 Captain called the ship or the agent -- or the ship called
7 the agent and that's what we were told, that the ship will
8 -- that the sailing board was moved to 9:00 and 10:00.

9 Q And that was earlier in the afternoon.

10 A That's correct.

11 Q Did you ever call back to find out if that had
12 been changed?

13 A I did not. I did not, no.

14 Q Could you have called back to find out if it had
15 been changed?

16 A Yes, I could have.

17 Q Is it uncommon for sailing times to change during
18 the course of the day?

19 A It's not uncommon, but it is uncommon to move it
20 up, generally. It's very common to move it further, make
21 the sailing later.

22 Q Where did you go after you left the Pipeline Club?

23 A We walked over, back to the Pizza Palace.

24 Q Why did you go there?

25 A I don't know why, but I decided to bring a couple

1 of pizzas back to the ship for the engineers.

2 Q You were hungry.

3 A I was not. I wanted to bring some pizzas for the
4 other engineers on board.

5 Q And who ordered those pizzas?

6 A I did.

7 Q What did Mr. Roberson and Captain Hazelwood do
8 when you did that?

9 A When we arrived at the Pizza Palace, I said I was
10 going to go in to the Pizza Palace to order the pizzas and
11 they went to the -- there's a bar next door. I don't
12 recall the name of it; I don't know the name of it. And I
13 said I would join them there after I ordered the pizza.

14 Q How long did it take to order the pizza?

15 A Perhaps five minutes.

16 Q Was there seating available there?

17 A Where?

18 Q At the Pizza Palace. Could you have sat down
19 there?

20 A Yes.

21 Q And that's the place you had eaten before.

22 A That's correct.

23 Q And you had had things to drink there that
24 afternoon --

25 A Yes.

1 Q -- at lunch.

2 A I had two beers, I did.

3 Q What kind of place was the place next door that
4 Captain Hazelwood and Mr. Roberson were in?

5 A It was a bar.

6 Q Was it a well kept bar? Was it lit, dark? What
7 kind of bar was it?

8 A It's on the dark side.

9 Q Was there a bar, stools set up or pool tables or
10 what was --

11 A Yes, I believe there were some pool tables there.

12 Q Did you have anything to drink there?

13 A When I went back to that place from the pizza
14 parlor, yes, I ordered another gin and tonic.

15 Q What about Captain Hazelwood, did he have anything
16 to drink there?

17 A He had something in front of him, but I wasn't
18 there when he ordered it.

19 Q Well, what did it look like? Was it a glass? Was
20 it a bottle?

21 A It was a glass.

22 Q Was it -- did it have ice in it?

23 A I believe so. I'm not certain.

24 Q What about Mr. Roberson?

25 A I believe he had a beer in front of him.

1 Q How long did you stay there?

2 A After about perhaps 15, 20 minutes, I walked back
3 to the pizza parlor to inquire whether the pizzas were
4 ready and they were.

5 Q They were?

6 A And at the same time as I was paying for the
7 pizzas and taking the pizzas out, I asked whoever was there
8 to call us a cab to go back to the ship.

9 Q What were Captain Hazelwood and Mr. Roberson doing
10 during this?

11 A They remained next door.

12 Q And how long did it take for the cab to get there?

13 A My arranging for the cab and paying for the
14 pizzas, almost -- and the cab arriving, to me, seemed to
15 happen almost simultaneously. That means the cab must have
16 been outside, in the vicinity.

17 Q What did you do then?

18 A I went back to next door and told them that, "The
19 cab is here," and we left.

20 Q Did they finish their drinks there?

21 A I have no -- we just left.

22 Q What time did you get back to the terminal, do you
23 remember?

24 A It was shortly after 8:00 o'clock, I believe.

25 Q If I showed you your security gate register, would

1 that refresh your recollection?

2 A Yes. 2024, 8:24.

3 Q How long did it take to take the cab from the
4 Pizza Palace to the terminal?

5 A It's usually a 20, 25-minute ride.

6 Q And did you pick anybody up on the way?

7 A I believe there was already a person in the cab
8 when we got into the cab.

9 Q So you would have left at about 8:00 o'clock from
10 downtown Valdez, is that about right?

11 A Something on that order, yes.

12 Q How long were you waiting for the pizzas?

13 A As I said, about 20 minutes, I believe.

14 Q And how long did it take to walk from the Pipeline
15 Club to the Pizza Palace?

16 A 20, 25 minutes.

17 Q 20 or 25 minutes to go from the Pipeline Club to
18 the Pizza Palace?

19 A That's what it seems like to me. That's what I
20 recall.

21 Q What did you do when you got back on board the
22 tanker?

23 A I left the pizza -- went to the galley and left
24 the pizzas in the galley. I don't recall whether I put one
25 in the freezer, I might have. And I went back up to my

1 room and decided to change.

2 Q How long were you in your room?

3 A I don't recall, but the first thing I did, I
4 called the first engineer who was in the engine room on
5 watch that I was back on board. And at that time when we
6 came back on board, we found out that the board, sailing
7 board has been moved up one hour, so I asked him were the
8 engines ready to go and I told him I would be down in the
9 engine room when we were ready to go.

10 Q When you found out that the time had been moved up
11 an hour, were you late or on time at that point?

12 A Let's see. We would have been late, yes.

13 Q Could the -- would the vessel have left without
14 you?

15 A No.

16 Q Did you go down to the engine room that evening?

17 A Yes, I did.

18 Q About what time would that have been?

19 A I didn't go down to the engine room until I saw
20 the vessel moving away from the dock.

21 Q What did you do -- did you ever eat pizza or did
22 you ever take it down to --

23 A Yes, I did. On the way down to the engine room, I
24 picked up a pizza and brought it down with me.

25 Q When was the -- you saw Captain Hazelwood when he

1 -- you walked onto the deck with him.

2 A Yes.

3 Q And did you follow him up to the -- his quarters?

4 A Well, our quarters are adjoining, next to each
5 other.

6 Q And that would be on the deck right below the
7 bridge.

8 A That's correct.

9 Q And where did he go -- when did you see him last?

10 A Well, we went up -- I don't recall whether we went
11 up to the main deck, to D deck, where our quarters are,
12 together because I stepped into the galley with the
13 pizzas. And I don't recall whether Captain went through
14 the galley with me and then whether we went up together or
15 whether I stayed in the galley and the Captain went up, I
16 really don't recall.

17 Q When was the next time you saw Captain Hazelwood?

18 A Shortly before dropped the pilot off.

19 Q When you went down to the engine room that
20 evening, were you made aware of any problems?

21 A No.

22 Q If there had been any, would you have been told of
23 them?

24 A Oh, yes.

25 Q Who was on watch when you got down in the engine

1 room?

2 A The first engineer.

3 Q And were there any complications that evening with
4 the docking or undocking process --

5 A No.

6 Q -- from your standpoint?

7 A No, no.

8 Q I'd like to talk about the next time you saw
9 Captain Hazelwood and that was right prior to the pilot
10 being dropped off?

11 A I wouldn't say right prior. It was maybe half an
12 hour to 20 minutes, 15 minutes. I really wasn't keeping
13 track of time, but it was before the pilot was dropped off,
14 yes.

15 Q Where was this? Where did you see him?

16 A On the bridge.

17 Q And that's when you went up to the bridge?

18 A That's correct.

19 Q Did you see him at any other time?

20 A No.

21 Q Did you have any drinks with Captain Hazelwood on
22 board that evening?

23 A No.

24 Q When did you become alert of the grounding
25 problem?

1 A When was I notified or when did I feel that there
2 was something wrong?

3 Q When did you feel there was something wrong, do
4 you remember that?

5 A Shortly after midnight, let's say five after
6 midnight, ten after midnight, something of that order, I
7 heard a noise in the engine room. I was in the control
8 room. The first engineer and the third engineer were on
9 the lowest level of the engine room, so I was in the
10 control room by myself. I heard an unusual noise. I
11 thought it was the turbochargers on the main engine
12 surging. So I left the control room, went over to the
13 turbochargers and listened for perhaps a minute or so,
14 walked around and checked certain things. Then I walked
15 back in the control room and I noticed that the load on the
16 main engine was higher than it should have been for the rpm
17 that's --

18 Q When you say the load on the main engine, would
19 you describe what you mean for the jury?

20 A At certain rpm, the engine should develop some
21 horsepower. And in order to develop that horsepower, a
22 certain amount of fuel should be admitted to it. And
23 there's an indicator on the console which is called the
24 load indicator and that relates to the rpm in the load. So
25 for the particular rpm that were turning at the time, the

1 load indicator was higher than it should have been.

2 Q Do you remember what that rpm was?

3 A I believe it was 64.

4 Q And what would that have indicated to you as far
5 as whether this was or was not in a load up program?

6 A Oh, I knew. We knew that we were load programming
7 up at the time because the bridge had told us that we
8 started to. We started load program up, that would be 20
9 minutes prior to that.

10 Q Who called you and told you that?

11 A I don't -- it was probably the third mate.

12 Q You then received a call telling you what had
13 happened, is that correct, at some point?

14 A Well, you asked me when did I know there was
15 something wrong.

16 Q Right.

17 A The first indication, as I said, was that the
18 engine load did not correspond with the rpm, so I knew
19 there was something wrong, something wasn't as it should be
20 at that time. I also, when I walked back into the control
21 room, I noticed that the deck in the control room didn't
22 feel as it did, as it should have. Then I looked at the
23 inclinometer and we had a two-degree starboard list.

24 Q What's an inclinometer, would you tell the jury
25 what that is?

1 A It's an arced glass tube that's filled with liquid
2 and with a bubble in it, so if you move it, the bubble
3 naturally seeks position and tells you how many degrees --

4 Q Seeks the highest position.

5 A That's correct.

6 Q Kind of like a level?

7 A Correct. And I noticed we had a two-degree
8 starboard list and I knew that we did not leave the dock
9 with a list.

10 Q Did you receive a phone call that --

11 A Very shortly after that, the third mate called
12 down, yes.

13 Q Were you given any instructions at that time?

14 A The third mate said that, "We're going to stop the
15 engine."

16 Q Did you notice that the engine had been shut down
17 prior to that?

18 A No, no.

19 Q You hadn't noticed it being shut off then?

20 A No, it wasn't.

21 Q Why did the third mate say, "We're going
22 to . . .," -- maybe I misunderstood you. You said --

23 A No, I received a call from the third mate perhaps
24 15 after midnight, 20 after midnight or something of that
25 order that, "We're going to stop the engine."

1 Q I'm sorry, I misunderstood you, excuse me. I
2 understood you to say "start"; you said "stop." Were you
3 given any instructions after that?

4 A After the engine was stopped, the Captain called
5 perhaps five minutes later, ten minutes later and said,
6 "We're aground."

7 Q Did that concern you at all?

8 A Of course, it did.

9 Q Why?

10 A Ships aren't meant to run aground. I mean any --

11 Q What happens when an engine room gets punctured?
12 Have you ever -- do you know what happens then?

13 A It floods.

14 Q And what happens to a tanker?

15 A I don't know what circumstances you might be
16 talking about. There could be many different circumstances
17 to which I could answer differently.

18 Q What did you learn after you learned this
19 information from the tanker captain?

20 A Well, when the Captain called me that we were
21 aground, he asked me whether he could still use the
22 engine. I said yes because I -- from the control room and
23 the console and everything that transpired prior to that,
24 even though the engine was loaded higher than it should
25 have been for the rpm before we stopped the engine, there

1 was no indication there was anything wrong with the
2 engine. As soon as I learned that we were aground, by that
3 time, the third engineer, Katherine Haven, was in the
4 engine room, so there was the first engineer, her and
5 myself. As soon as I learned that we were aground, I asked
6 her to go down to the lower engine room and sound all the
7 engine room double bottoms and voids.

8 Q Now tell the jury what that means.

9 A Underneath the engine room is a double bottom.
10 Inside that double bottom are certain engine room tanks
11 and, also, around the main engine lubricating oil sump is a
12 cofferdam.

13 Q What's a cofferdam?

14 A It's a void. It's a space. So I asked her to
15 sound all these tanks to make sure there's no ingress of
16 water into them. Then I asked the first engineer to go
17 down to the engine room and make a thorough round of all
18 the spaces and the machinery in the engine room.

19 Q Why was he -- what was his purpose, what was he
20 looking for?

21 A Whether there was any water leaking in.

22 Q Okay, what else did you have him do?

23 A At that time, I called one of the MOAs down to the
24 engine room and when he came down to the engine room, I
25 asked him to assist the third engineer in sounding the

1 tanks. When she came up -- when they both -- by that time,
2 I believe they both came up, the MOA and the third
3 engineer, and they told me that all the tanks in the engine
4 room were intact. Then I asked her to go down to the pump
5 room and sound the double bottom underneath the pump room.

6 Q Where's the pump room located?

7 A It's forward of the engine room. I asked her to
8 sound the double bottom of the pump room and also the voids
9 underneath the port and starboard slop tanks.

10 Q And the slop tanks sit -- if I could ask you to
11 refer again to this diagram, where do the slop tanks sit?

12 A They're right here.

13 Q And what do they hold?

14 A They're cargo tanks.

15 Q What happened when that -- okay, what happened
16 then?

17 A We found out that the double bottom in the pump
18 room was intact. When they went to open up the sounding
19 tube on the starboard slop tank, the cap blew off and we
20 had a gusher of oil.

21 Q And you were told that?

22 A When she came back, yes.

23 Q When were you made aware that the engine was going
24 to be started again?

25 A The Captain called.

1 Q What did he tell you he wanted to do?

2 A He wanted to start the engines.

3 Q Why?

4 A I didn't ask why.

5 Q He didn't tell you?

6 A Under the circumstances like this, one does not
7 ask questions. People do things for a reason.

8 Q How long did that continue, running the engine
9 ahead?

10 A Approximately an hour.

11 Q And can you look at that bell logger and tell the
12 jury exactly when that started and when it stopped?

13 A I'd have to -- it will take me a little time
14 because with the GMT and all of that.

15 Q If it helps, you might want to refer to that
16 diagram if it will help you pick out the spots in front, in
17 front of you.

18 A It was at 9:35 GMT.

19 Q Can you refer to the bell logger and find that in
20 the bell logger, itself?

21 A There's a stamp over it.

22 Q Oh, so you can't see it.

23 A Yes.

24 Q Okay. Did you see Captain Hazelwood again that
25 morning at any time?

1 A I had been up to the bridge several times during
2 the night.

3 Q Did you see him off the bridge?

4 A During the night after the grounding?

5 Q The morning after the grounding.

6 A Yes, he was back and forth, I believe. When I was
7 up there once, he was making a phone call in the _____.

8 Q Did you see him in his room at all?

9 A I don't recall.

10 Q Do you remember him drinking any alcoholic --
11 seeing him drinking any alcoholic beverages after the
12 grounding?

13 A No, I did not.

14 Q At some point later on, did you test the steering
15 gear of the Exxon Valdez?

16 A We didn't test the steering gear until we
17 refloated the vessel.

18 Q Okay, and how many days later would that have
19 been?

20 A I'd have to say about ten -- I lost track of time
21 because --

22 Q Sure. Give the jury an estimate.

23 A It took us perhaps ten days to refloat the
24 vessel. I don't recall the exact date.

25 Q Was it some time afterward, after you refloated

1 it, though, that you tested the steering gear?

2 A We tested prior to refloating it and the steering
3 gear was used during the tow from Bligh Reef to Naked
4 Island.

5 Q Were there any problems --

6 A No.

7 Q -- with the steering gear? Would you tell the
8 jury what the Exxon policy was for alcohol, as far as
9 drinking and possessing alcohol on a tanker?

10 MR. MADSON: I'd object, Your Honor, it's not
11 relevant, company policy.

12 JUDGE JOHNSTONE: Objection overruled.

13 THE WITNESS: The company policy was that there
14 was not to be any alcohol on board.

15 BY MR. COLE: (Resuming)

16 Q And how about use of alcohol on board?

17 A That goes along with it.

18 Q And what were explained to you to be the
19 consequences if a person was found drinking or using
20 alcohol, possessing alcohol on board a tanker?

21 MR. MADSON: I'd object again on the grounds of
22 relevancy, Your Honor.

23 JUDGE JOHNSTONE: Objection overruled.

24 THE WITNESS: Possible discharge.

25 BY MR. COLE: (Resuming)

1 Q Would that mean termination?

2 A Possibly, yes.

3 Q I'm showing you what's been identified as
4 Plaintiff's Exhibit Number 13, if you would just take some
5 time to look through that whole document and see if you
6 recognize that.

7 JUDGE JOHNSTONE: Which number is that, please?

8 MR. COLE: 13, Your Honor.

9 THE WITNESS: I've never seen this before, no.

10 BY MR. COLE: (Resuming)

11 Q How many drinks, in total, that evening did you
12 have?

13 A I had two beers and perhaps three and a half gin
14 and tonics.

15 Q Now how many times did you see Captain Hazelwood
16 drinking that evening, that afternoon?

17 A There was the time at the Pipeline Club and
18 whatever he had at the bar next to the Pizza Palace.

19 Q Was it your understanding -- who was to be
20 responsible for the navigation of the Exxon Valdez out of
21 Prince William Sound that evening?

22 MR. MADSON: I'd object. I think the question is
23 vague and calls for speculation.

24 JUDGE JOHNSTONE: Maybe you can narrow it down,
25 what portion of Prince William Sound you're referring to.

1 BY MR. COLE: (Resuming)

2 Q Who was going to be the captain of the Exxon
3 Valdez that evening?

4 A The captain of the Exxon Valdez.

5 Q Which was who?

6 A Captain Hazelwood.

7 Q And you understood that you were leaving that
8 evening.

9 A Yes.

10 Q How long have you known Captain Hazelwood?

11 A 22, 23 years, something of that order.

12 Q Did he go to the same school that you did?

13 A Yes, he did.

14 Q And how often have you worked with him in the
15 past?

16 A That was the first time we had sailed together.

17 Q Mr. Glowacki, are you familiar with the crew that
18 was on board the Exxon Valdez on March 23d, 1989?

19 A Yes.

20 Q I'm showing you what's been marked for
21 identification as Plaintiff's Exhibit Number 1. Are those
22 the crew members that were aboard that evening?

23 A Correct.

24 Q And you said that when you first realized there
25 was something wrong on the bridge, you noticed that the

1 load on the main engine was higher than it should have
2 been. Is that consistent with engines that are running
3 ahead, but the tanker not moving?

4 A Yes, it's as if you drove a car up against a wall
5 and then proceeded to see 50 miles an hour on the
6 speedometer with the car not moving, yes.

7 Q Thank you.

8 MR. COLE: I have no further questions, Your
9 Honor.

10 JUDGE JOHNSTONE: Mr. Madson.

11 CROSS EXAMINATION

12 BY MR. MADSON:

13 Q Good morning, Mr. Glowacki.

14 A Good morning.

15 Q I'll try to be as brief as possible and cover a
16 few points here. Mr. Cole asked you a number of questions
17 about, first of all, your duties. As I understood it, you
18 don't stand watch, as they call it in seaman's terms, is
19 that correct?

20 A That's correct.

21 Q Would you explain to the jury what that means, a
22 watch?

23 A A watch in nautical terms is a period of duty for
24 four hours and eight hours off, four hours on.

25 Q Is this just kind of tradition in navigation --

1 A Yes, I believe it's tradition.

2 Q -- I mean in maritime use?

3 A It developed traditionally, yes.

4 Q Now you indicated you don't stand a watch, which
5 means your hours are pretty much your own or you do what
6 you have to do, let's maybe put it that way.

7 A My hours of work are flexible, yes.

8 Q Yes.

9 A But I do work.

10 Q In other words, as the person in charge of the
11 engines, the propulsion system and all that, you feel the
12 responsibility to do whatever is necessary to make sure
13 that job is done correctly.

14 A That's correct.

15 Q Would you say that your duties, then, are somewhat
16 compatible with Captain Hazelwood's on the same vessel?

17 A Yes, very much so.

18 Q He's in charge above deck; you're in charge below
19 deck, is that fair to say?

20 A That's correct.

21 Q At the same time, he has overall command of the
22 ship.

23 A That's correct.

24 Q Now another thing you mentioned was the size of
25 the or at least the horsepower of the engine. You said

1 that the normal operating condition was 28,000 or something
2 like that.

3 A Correct.

4 Q Now this is one single engine, is it not?

5 A That's correct.

6 Q To give the jury a better idea of the size of the
7 engine, can you describe it in some kind of dimensions, how
8 high it is, how long it is, things like that?

9 A Well, the height of the engine is approximately 45
10 feet. The length of the engine is perhaps 70 or 80 feet.
11 The bore of the cylinders is 84 centimeters.

12 Q Can you translate that into inches for us? 2.54
13 centimeters?

14 A Less than three feet.

15 MR. COLE: A little less than what?

16 THE WITNESS: A little less than three feet.

17 BY MR. MADSON: (Resuming)

18 Q That's the diameter of the cylinder.

19 A The diameter of the piston.

20 Q How many cylinders are there on this?

21 A There are eight cylinders. The stroke of the
22 engine is two and a half meters, which would be
23 approximately eight and a half feet.

24 Q In addition to the main propulsion engine, you
25 have other pumps and other assorted equipment, do you not?

1 A Yes.

2 Q You were in charge of all this other equipment?

3 A Yes.

4 Q For instance, for off loading oil, there are
5 pumps, and moving it around from tank to tank and things
6 like this?

7 A That's correct.

8 Q Plus there are generators for generating power on
9 the ship?

10 A That's correct.

11 Q You said after 5:00 o'clock, there's no person on
12 duty in the engine room, it's automated, right?

13 A That's correct.

14 Q At the same time, if something goes wrong, there
15 are numerous alarm systems that will go off and alert you
16 or others, right?

17 A That's correct.

18 Q Now on the night of the 23d of March, the first
19 officer was the one so-called on duty, first engineer?

20 A First engineer, yes.

21 Q What does that mean exactly. She's the one -- I
22 think you said it was a she.

23 A No, the third engineer was a she.

24 Q Okay. On this particular night, the 23d, say
25 before midnight, who was the person on watch, not on watch,

1 but on call, if you will?

2 A No, they're on watch. As I said, we usually start
3 standing watches prior to arrival --

4 Q Excuse me.

5 A -- and prior to arrival at Cape Hinchinbrook, the
6 engineers were on four on-eight off duty.

7 Q You're correct, sir, I forgot. So because you
8 started getting into more strict waters in port, you
9 changed to a watch system.

10 A Yes.

11 Q But you specifically do not go on a particular
12 watch.

13 A That's correct.

14 Q Now as far as the engine room itself is located,
15 when you're down there on the floor, if you will, on the
16 deck containing the engine, how far below the bridge are
17 you? If you can express it like a building, for instance,
18 how many stories, how many feet, things like this?

19 A Well, the main deck is 89 feet above baseline,
20 from the bottom of the ship and the bridge is four decks,
21 five decks above that. And each deck is seven and a half
22 feet.

23 Q So how do you get back and forth? Say you want to
24 go to the bridge from the engine room.

25 A Stairs or the elevator to the D Deck. The

1 elevator goes to D Deck, it doesn't go to the bridge.

2 Q Where is D Deck with respect to the bridge?

3 A D Deck is the immediate deck below the bridge.

4 Q So you could take an elevator directly up there
5 and then go climb one flight of stairs.

6 A One set of stairs, right.

7 Q Is D Deck the same as where your quarters are?

8 A That's correct.

9 Q And the same as the Captain's?

10 A That's correct.

11 Q From that location -- and you said yours are
12 adjoining the Captain's?

13 A That's correct.

14 Q From your location, how long would it take you to
15 get to the bridge?

16 A From my room?

17 Q Yes. Using the stairs in a hurry.

18 A It depends on how fast you go. Ten, 15 seconds
19 maybe.

20 Q So just a very short distance.

21 A Right.

22 Q Now Mr. Cole also asked you some questions about
23 rpm versus speed and maybe I didn't understand it entirely,
24 so I'd like to ask you again about that. For instance, if
25 you start from dead stop, let's say -- and I think you said

1 that on the Exxon Valdez, the commands are always given
2 from the bridge, not the engine room, as far as engine
3 control is concerned.

4 A Yes, that was our practice and that's the practice
5 on any automated ship.

6 Q In other words, you don't have to do it that way,
7 but your practice was to have it on bridge control, rather
8 than engine control, engine room control?

9 A Well, the purpose of having control on the bridge
10 is to control the engine from the bridge.

11 Q Right.

12 A That's the way the ship was built and that's the
13 way we use it.

14 Q Somebody up there could see what he wants to do
15 and he just has to move a lever and he doesn't have to call
16 down to someone down there to follow his orders or
17 commands.

18 A That's correct.

19 Q He can do it instantly. If you start from dead
20 stop, okay, and you put it ahead, so you want to go into
21 program from stop all the way up to full sea speed, which
22 is I think you said 79 rpm, how long would it take that
23 ship, loaded as it was on this particular night, how long
24 would it take to get to full sea speed?

25 A Well, first, you would have to go to full

1 maneuvering, which is 55 revolutions.

2 Q Why would you have to do that?

3 A Because load programming up will not start, unless
4 you're at full ahead maneuvering.

5 Q Okay, let's go from stop, then, up to full
6 maneuvering speed. How long would that take, 55 rpm?

7 A That could be done in a matter of less than a
8 minute.

9 Q And then how long would it take to arrive at that
10 speed, I mean the actual speed?

11 A At 55 revolutions?

12 Q Yes, at 55 rpm.

13 A That's -- it's rather very quick.

14 Q Then I think you said to go, though, from 55 rpm
15 to full sea speed would take 43 minutes.

16 A That's correct.

17 Q Why that length of time, so much longer?

18 A Because you want to stabilize the engine
19 thermally. You want to make a transient, thermal transient
20 as far as the engine is concerned to be as close to a
21 steady state as possible.

22 Q Now just thinking -- well, let me ask you this.
23 How many times have you made the voyage or the transit
24 through Prince William Sound on any tanker?

25 A I have no idea, many, many times.

1 Q How about on the -- were you stationed -- you
2 weren't stationed primarily on the Exxon Valdez or were
3 you?

4 A I was assigned to Exxon Valdez on a regular basis
5 since delivery in '86.

6 Q Okay, and how many transits on the Exxon Valdez
7 would you say you made since that occurred?

8 A Maybe 30.

9 Q Okay. In those, any of those transits -- and I
10 assume all but one were under the command of a different
11 captain, other than Captain Hazelwood.

12 A That's correct.

13 Q What would you normally -- what speed would you
14 normally travel through Prince William Sound in the area
15 south of Rocky Point?

16 A I believe that after you drop the pilot off, we
17 would start speeding up to sea speed.

18 Q As soon as the pilot was dropped off at Rocky
19 Point, you'd start maneuvering up to full sea speed,
20 correct?

21 A Start load programming up, that's correct.

22 Q Now one last question about this engine which --
23 (Tape change to 3602.)

24 BY MR. MADSON: (Resuming)

25 Q -- perhaps the jury doesn't understand. Is there

1 a basic difference between this type of engine and normally
2 what we call a steam engine, something like that?

3 A Yes, it's substantial.

4 Q What substantially is the difference?

5 A Well, this is a motor vessel. It's a
6 reciprocating engine. Steam turbine is a rotating type
7 machinery and the steam turbine driven vessel is not
8 restricted in speeding up as a motor ship is in the time it
9 takes to speed up. One can speed up a steam ship from full
10 ahead to full sea speed in a matter of less than a minute.

11 Q Mr. Cole asked you about the bell logger, which
12 you had a chart in front of you which I think you said was
13 a copy of part of it, right?

14 A Correct.

15 Q Do you have that in front of you? I think it's
16 Exhibit Number 3.

17 A Correct.

18 Q How many pages does that contain, just roughly?
19 Is the number of pages there?

20 A No, maybe ten-plus.

21 Q Okay, what time does it start?

22 A It starts on March 18th at 1824 GMT.

23 Q What time does it change? What's the last entry?

24 A March 25th, midnight.

25 Q Okay, now let's go just to the part where, on the

1 chart there and -- you can use either one, but see where it
2 says, I think, "grounding" on there?

3 A Correct.

4 Q And then it goes to, "Restart engine."

5 MR. COLE: I would object. I don't understand,
6 Mr. Madson won't let me use it and then he --

7 MR. MADSON: Your Honor, I'm not saying that those
8 times are correct. I only want this witness to identify
9 certain things on here without any regard to whether the
10 time is correct or not. I'm just using that as a reference
11 point.

12 JUDGE JOHNSTONE: Mr. Madson, if you're going to
13 use that exhibit and you're going to have the witness
14 testify to it, then you're waiving your objection to it.

15 MR. MADSON: Well, then, I'll withdraw the
16 question, Your Honor, because I'm not doing that.

17 JUDGE JOHNSTONE: Okay.

18 BY MR. MADSON: (Resuming)

19 Q Then, sir, just let me ask you this. Regardless
20 of the time this vessel went aground, first of all, you
21 didn't know it went aground until somebody actually told
22 you, right?

23 A That's correct.

24 Q Now that may be hard to understand, how you could
25 be on a ship that was going at a certain speed and,

1 suddenly, it stops and you don't know it. Can you explain
2 that at all? I mean how does that happen?

3 A The only thing I heard was what I testified to
4 before, what I said about a muffled, rumbling noise, not
5 very pronounced at all. But I did not feel any sensation
6 of stopping or motion, none at all.

7 Q You just noticed, like you said, that the engines
8 were working harder than they should be and something was
9 amiss.

10 A That's correct.

11 Q Now from the time the Captain said -- well, first
12 of all, he said, as I recall, he told you -- the third mate
13 radioed down or called down --

14 A Called down.

15 Q -- said you were aground or at least he told you
16 something about the engines. I forget what you said.

17 A No, the third mate did not inform me that we were
18 aground. The Captain later informed me we were aground
19 when he called later. The third mate called down and said,
20 "We are going to start the engines."

21 Q What time -- and I think you said Captain
22 Hazelwood talked to you and asked you if it was okay to use
23 the engines.

24 A That was in the same phone call when he informed
25 me that we were aground.

1 Q Okay. Did that seem to be an appropriate question
2 to you under the circumstances, you're aground and he asked
3 you, "Can we use the engines?"

4 A Yes.

5 Q I mean that would seem logical to say, you know,
6 "Hey, any damage to the engines?"

7 A That's correct.

8 MR. COLE: Your Honor, I object to Mr. Madson's
9 commentary in the course of his questioning.

10 MR. MADSON: I thought I had phrased it as a
11 question, but I'll withdraw it, if it please.

12 JUDGE JOHNSTONE: Yes, I think you can do better.

13 BY MR. MADSON: (Resuming)

14 Q Anyway, sir, it was an appropriate question under
15 the circumstances.

16 A That's correct.

17 Q Now the engines were shut down for approximately
18 how long?

19 A I'd have to look at the logger.

20 Q Whatever you need to refresh your recollection.

21 A It appears it was about 15 minutes or so.

22 Q And then the request or the order was made to
23 restart the engine, right?

24 A That's correct.

25 Q From the time the engine was restarted, during

1 this period of time, certain commands were made from the
2 bridge, right, which were recorded on this bell logger?

3 A That's correct.

4 Q And you've described those, I think, up on the
5 board, what they mean, correct?

6 A Right.

7 Q Will this engine run in reverse, sir?

8 A It will.

9 Q How does one get it to go into reverse?

10 A From the bridge control or the telegraph position
11 to the stern.

12 Q What does it make the engine do then?

13 A It will make the engine start in a stern
14 direction.

15 Q And, sir, from your -- you've had a chance to look
16 at the recording of the bell logger, have you not?

17 A Yes.

18 Q And you also remember the events, independently,
19 that occurred this night? To your knowledge, sir, or from
20 looking at the bell logger recording, was the engine ever
21 placed in reverse after the grounding?

22 A No, never.

23 JUDGE JOHNSTONE: Mr. Madson, this might be a good
24 time for us to take our lunch break.

25 MR. MADSON: I agree, Your Honor.

1 JUDGE JOHNSTONE: Okay, we'll take a break until
2 1:15, ladies and gentlemen. Don't discuss this case in any
3 fashion with any person, including among yourselves, and
4 don't form or express any opinions. Have a nice lunch.
5 We'll see you back at 1:15.

6 THE CLERK: Please rise. The Court stands at
7 recess.

8 (Whereupon, the jury leaves the courtroom.)

9 (Whereupon, at 11:55 a.m., a luncheon recess was
10 taken.)

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1 were full ahead, full astern, full ahead, full astern, back
2 and forth like that.

3 Q Kind of like rocking a car stuck in a snow bank?

4 A Correct.

5 Q You also indicated, I believe, that your quarters
6 are some distance from the engine room, is that correct?

7 A That's correct.

8 Q And you were not down in the engine room 24 hours
9 a day?

10 A That's correct.

11 Q Is it fair to say, sir, that you rely upon your
12 first officer or second officer much of the time?

13 A Yes, I rely on the assistant engineers, that's
14 correct.

15 Q Now another thing we've talked about this morning
16 a great deal was speed in terms of knots and it occurs that
17 perhaps the jury does not understand what a knot is. Can
18 you translate that into miles per hour, if you would?

19 A A knot is a nautical mile. One knot is one
20 nautical mile per hour. A nautical mile is -- differs from
21 a statute mile because it's 6,080 feet, as opposed to 5,000
22 or whatever a statute mile is.

23 Q So if you say you're going X knots per hour,
24 you're actually going a little faster in terms of statute
25 miles per hour?

1 A That's correct.

2 Q Can you tell us, then, sir, if you were going say
3 11.75 knots per hours, what would that translate into in
4 miles, approximately?

5 A I'd say somewhere around 13 miles per hour.

6 Q 13? Now you also indicated that you believe that
7 the initial grounding, at least when you thought something
8 was wrong, occurred somewhere around ten minutes after
9 12:00.

10 A Approximately, yes.

11 Q Now, you said the LPU was put on the ship right
12 after the pilot was let off --

13 A That's correct.

14 Q -- on this occasion? And that's the low program
15 up.

16 A Correct.

17 Q In the number of transits you've made on the Exxon
18 Valdez without Captain Hazelwood, would you say that was a
19 normal routine, as soon as the pilot was let off the ship,
20 to put it into low program up?

21 A Generally, as soon as the pilot left the vessel,
22 we started speeding up to sea speed, yes.

23 Q And assuming, sir, the LPU was put on at 11:53,
24 some 20 minutes later, you felt something was wrong, that
25 would be consistent with when you believe the grounding

1 occurred?

2 A Correct.

3 Q I'd like to call your attention, then, to the
4 events that occurred on shore that you testified to here,
5 today. First of all, if I understand correctly, when you
6 left the vessel, what time was it you believed you were
7 going to sail that night?

8 A The sailing board was set for 8:00 and 9:00
9 o'clock.

10 Q When you say "sailing board," would you explain
11 that so we understand what that means?

12 A It's a physical board that's placed by the gangway
13 where there's a time that says something to the effect that
14 the vessel will sail on such and such a date and say crew
15 to be on board at such and such a time and the vessel to
16 sail at such and such a time.

17 Q Then as soon as you're -- say you're leaving the
18 ship. So it's probably displayed so that when you walk
19 down the gangplank or gangway, you can see the board there
20 and know what time you should be back, right?

21 A That's correct.

22 Q It apparently came to pass that this changed. You
23 said that the Captain found out from someone who called the
24 ship or called the agent and said it was 10:00 o'clock,
25 instead of 9:00 o'clock.

1 A That's correct.

2 Q Now with regard to your lunch that you had with
3 Captain Hazelwood and Mr. Murphy and I think Mr. Roberson,
4 correct --

5 A Correct.

6 Q From your previous statements that you made, sir,
7 it would look like, it appeared that you were there
8 somewhere around the time 12:30 to 1:30 to maybe even 2:00
9 o'clock, would that be correct?

10 A I thought it was past 2:00, 2:00 or past 2:00.

11 Q When you finished lunch.

12 A When we left, yes.

13 Q Do you recall what anybody had to eat that lunch?

14 A I'm not certain, but I believe the Captain had
15 some sort of a sandwich.

16 Q You're not sure what kind. I think it was a pizza
17 type place that you were at?

18 MR. COLE: Your Honor --

19 JUDGE JOHNSTONE: There's no objection. You may
20 answer.

21 THE WITNESS: I believe it was a sandwich on
22 either French bread or Italian bread or something of a hero
23 type.

24 BY MR. MADSON: (Resuming)

25 Q Do you recall what you had to eat, sir?

1 A It was salads. I believe it was a Greek salad.

2 Q And when you left there, you all kind of just
3 tentatively agreed to meet later at the Pipeline Club,
4 correct?

5 A That's correct.

6 Q And I think you said you probably walked around
7 for perhaps an hour, looking for a paper.

8 A Perhaps that long, yes.

9 Q When you arrived at the Pipeline Club, that would
10 be approximately at around 3:00 o'clock or thereafter?

11 A It was, I would say, before 4:00.

12 Q Okay. Did you recognize any person in there when
13 you arrived, that you knew?

14 A No, I did not.

15 Q About how much time passed before Captain
16 Hazelwood appeared?

17 A I would say a good 20 minutes to a half an hour.

18 Q So this would be approximately 3:30, 4:00 o'clock.

19 A I'd say way past 4:00, maybe 4:20, 4:30.

20 Q Past 4:00, okay. And you had a couple of gin and
21 tonics when you were there, right?

22 A That's correct.

23 Q Roberson arrived half an hour after the Captain or
24 something?

25 A Something of that order, yes.

1 Q One of the things you said you were discussing in
2 response to Mr. Cole's question, was that -- you said you
3 were talking about perhaps waiting until morning because of
4 the ice conditions, waiting to leave.

5 A It was a discussion we had, yes.

6 Q Do you know, Mr. Glowacki, whether or not the
7 berths were all tied up? In other words, if an incoming
8 vessel is coming in and the berths are all tied up, you
9 have to leave so the other incoming vessel can take that
10 spot?

11 A That's the general procedure, yes.

12 Q Do you know if any incoming vessels were coming in
13 that would cause this condition to occur?

14 A I'm not certain, but there were vessels at other
15 berths, I do know that.

16 Q Assuming you had to leave the berth, what could
17 you do, where could you go? Could you anchor just out
18 there in Port Valdez somewhere?

19 A No.

20 Q Where is the anchoring location? Where do they
21 allow the anchoring?

22 A In Prince William Sound.

23 Q Let me ask you this, sir. If it had been decided
24 that the vessel had to leave and anchor, wouldn't it be
25 true that you would still have to go through the ice

1 conditions before you could even reach the place where they
2 could anchor?

3 A That's correct.

4 Q You left the Pipeline Club, as I understand it,
5 around 7:00 o'clock, correct?

6 A As far as I recall, yes.

7 Q And at this time, you still thought the sailing
8 time was around 10:00.

9 A Correct.

10 Q Did you walk over to the Pizza Palace?

11 A That's correct.

12 Q About how far is it from the Pipeline Club to the
13 Pizza Palace?

14 A Perhaps three-quarters of a mile.

15 Q Okay, it would take how long to walk there, ten
16 minutes, 15 minutes?

17 A I'd say it was longer.

18 Q Let me ask you this before we go further. After
19 you left the Pipeline Club, were you impaired or under the
20 influence of alcohol, do you feel?

21 A I don't feel so, no.

22 Q Did you notice Captain Hazelwood to be under the
23 influence or intoxicated when he left the Pipeline Club?

24 A No, sir.

25 Q Did he appear to talk with a clear speech and not

1 slur?

2 A Yes.

3 Q Did he walk all right when you walked down to the
4 Pizza Palace?

5 A I did not notice him in any impaired way, no.

6 Q And you were there for perhaps a half-hour at the
7 most?

8 A At the most. At the most.

9 Q And the Captain may or may not have had an
10 alcoholic beverage while you were there, you're not sure of
11 that.

12 A There was something in front of him, yes.

13 Q But you don't know what it was?

14 A No, I wasn't there when it was ordered.

15 Q After leaving and heading back to the ship in the
16 cab, do you recall eating any of the pizza, any of the
17 group you were with eating some of the pizza?

18 A We might have, but I don't recall specifically.

19 Q When you got back on the ship -- let me ask you
20 this. Before you get there, you go to what's called
21 security, right?

22 A That's correct.

23 Q Would you explain what that involves?

24 A The gate is -- the cab is stopped at the gate.

25 The cab driver collects our ID cards and hands them to the

1 guard. You then have to get out of the cab, go into the
2 security building, go through a metal detector. All the,
3 whatever it is that someone might be carrying is given to
4 the guards and they check it or wish not to check it and
5 they hand it back to you, once you pass the metal detector.

6 Q Would they confiscate -- to your knowledge, would
7 they confiscate your alcoholic beverages if you were
8 carrying them on the ship?

9 A That is the procedure, yes.

10 Q What about if a person is intoxicated, do you know
11 what occurs then?

12 A I don't know what the procedure had been up to the
13 23d of March, but everybody knows that it's been
14 drastically changed since then.

15 MR. COLE: Objection, Your Honor, nonresponsive.

16 THE WITNESS: I didn't finish, I'm sorry.

17 JUDGE JOHNSTONE: Is there any other objection you
18 have, other than that?

19 MR. COLE: It's outside the scope and it goes into
20 the Protective Order.

21 JUDGE JOHNSTONE: Well, I'm not sure I
22 understand --

23 MR. COLE: Well, the application that we made.

24 JUDGE JOHNSTONE: Ask the question again. I
25 didn't catch it that way.

1 BY MR. MADSON: (Resuming)

2 Q Well, Mr. Glowacki, do you know what they're
3 looking for, in other words at the Alyeska security,
4 besides let's say weapons or alcoholic beverages or
5 anything? Are they looking for signs of intoxication, to
6 your knowledge?

7 A Of all the times I've passed the security in the
8 past -- that goes back to when the Alyeska Terminal was
9 opened -- security there has been rather strict and they do
10 confiscate alcohol. You can't bring alcohol in. And I
11 assume the guards -- okay, that's an assumption. But, yes,
12 the guards are quite strict there.

13 Q After you were on the vessel, I think you already
14 described basically what you did. You were conducting some
15 official business when you were on the ship, even though
16 you were not really on watch or on duty, is that fair to
17 say?

18 A It's fair to say, yes.

19 Q You had a natural interest in making sure that
20 everything was all right, the engines were okay.

21 A It was in the realm of my responsibility, yes.

22 Q I think you said you next saw the Captain around
23 9:30 or 10:00 o'clock that evening.

24 A No, it was around 11:30.

25 Q 11:30? I may have written that down wrong, okay.

1 A Prior to the pilot's departure.

2 Q Okay, just some time before the pilot got off at
3 about 11:20 or so, some time prior to that, right?

4 A So it would have been before 11:00 o'clock.

5 Q Did you have a chance to observe the Captain for
6 any length of time when you saw him on that occasion?

7 A When I came up to the bridge, I did speak to the
8 Captain shortly. I might have asked him what time does he
9 anticipate departure will be or something of that nature
10 and we exchanged a few sentences and that was it.

11 Q Did you notice anything unusual about his demeanor
12 or attitude or motor coordination or anything at that time?

13 A No, I did not.

14 Q Was the pilot on the bridge at that time, too?

15 A Yes, he was.

16 Q Were they conversing, Captain Hazelwood and the
17 pilot conversing, did you notice?

18 A I don't believe they were standing next to each
19 other. I believe the pilot was at the center of the
20 bridge. I believe the Captain was off to the side.

21 Q Where did you go after you left the bridge?

22 A I went to my room for several minutes to put the
23 information that I gave the Captain for the departure
24 message into the records that I have to keep and then I
25 went back down to the engine room.

1 Q It's safe to say that nothing unusual occurred
2 until you observed the engines running at a higher load
3 than normal and you discovered you were aground?

4 A Yes, some time passed between then and --

5 Q Everything up to that point, would you say, was
6 routine as far as you knew?

7 A Yes.

8 Q Did you give the Captain any information to send
9 to the Exxon office at all when you were up there on the
10 bridge?

11 A Yes.

12 Q What was that, sir?

13 A Fuel oil on board, diesel oil on board, water on
14 board.

15 Q And was this normally done?

16 A That's a routine, yes.

17 Q After you received the message that the ship was
18 aground -- you said the Captain called and told you that,
19 right?

20 A Right.

21 Q Did his voice sound calm when he said this?

22 A Yes.

23 Q Did he seem to be in command, in control?

24 A Yes.

25 Q When he asked you about the engines, did he seem

1 to be concerned and in control at that time?

2 A Yes, he was.

3 Q When the engines were shut down and then it was
4 requested to restart them again, you indicated in response
5 to Mr. Cole's question, you said you didn't question that
6 order.

7 A No, I did not.

8 Q Why didn't you question that order?

9 A From all the indications that we had in the engine
10 room and, by that time, the first engineer did go down
11 below and make a round of the machinery and there was no
12 indication that there was anything wrong with the engine.
13 I had no indication that would have prevented me from
14 telling the Captain that, "No, you may not use the engine."

15 MR. MADSON: That's pretty much it. I need to see
16 -- can I approach the witness or the bench, Your Honor?
17 Exhibit Number 11 is I believe -- it should be up here
18 someplace.

19 BY MR. MADSON: (Resuming)

20 Q Yes, let me hand you, sir, what's been marked as
21 Number 11. Would you describe what that appears to be?

22 A It says -- it's the propeller slip versus the
23 revolutions chart.

24 Q You indicated that you did not prepare that, nor
25 do you know where it comes from?

1 A I don't believe I prepared it, no. I don't know
2 where it comes from and I don't know whether these figures,
3 as I said before, are based on empirical data or on
4 calculations.

5 Q So you don't know if these figures are even
6 correct.

7 A That's correct.

8 Q You do not know whether they relate to the Exxon
9 Valdez or not.

10 A No, I have no way of knowing.

11 Q Thank you, sir, I have no other questions.

12 JUDGE JOHNSTONE: Counsel approach the bench,
13 please.

14 (The following was said at the bench.)

15 JUDGE JOHNSTONE: I must not have heard
16 correctly. I thought that he testified that Exhibit 11 was
17 for the Exxon Valdez.

18 MR. : That's what I thought I heard him
19 say, too.

20 JUDGE JOHNSTONE: Okay, so that's my mistake. Now
21 are you going to have somebody else lay a foundation for
22 that?

23 MR. COLE: Yes.

24 JUDGE JOHNSTONE: Okay, I'm going to withdraw it
25 from evidence at this time. It's not going to be shown to

1 the jury, in any event.

2 (The following was said in open court.)

3 JUDGE JOHNSTONE: Mr. Cole, redirect?

4 MR. COLE: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. COLE: (Resuming)

7 Q Mr. Glowacki, you hold a license of some sort
8 that's issued by the Coast Guard, is that correct?

9 A That's correct.

10 Q What does that license say on it? What license
11 have you achieved?

12 A It says, "Chief engineer's license for steam and
13 motor vessels of any horsepower."

14 Q Are there any Coast Guard requirements that
15 require you to be in the engine room during the travel
16 through Prince William Sound?

17 A No.

18 Q Now you talked a little bit about situations where
19 you've been aground and you had received full ahead and
20 full astern signals, commands from the bridge, is that
21 correct?

22 A That's correct.

23 Q Where -- what type of ground were you in when you
24 did that?

25 A The occasions that I recall were in the Houston

1 Ship Channel and the Mississippi River.

2 Q In the Mississippi River -- what's at the bottom
3 of the Mississippi River? Is there rock down there or
4 what's the bottom like?

5 A I really don't know.

6 Q What about -- what was the other area, the Houston
7 Channel?

8 A Houston Ship Channel.

9 Q What's at the bottom of the Houston Ship Channel?
10 Is it silt or is it rocks?

11 A I really can't tell you.

12 Q Are those the only two situations where you've
13 been aground, is in the --

14 A As far as I recall, yes.

15 Q -- Houston River -- the Houston Ship -- okay. The
16 people that work under you, are there times when you work
17 on the engine yourself and don't allow other people to help
18 you or just have them help you if something goes wrong.
19 Like say, for instance, the turbines. Did you do most of
20 the work to the -- have you done work on the turbines?

21 A Some of the turbochargers --

22 Q Yes, the turbochargers.

23 A -- in San Francisco, is this what you're referring
24 to?

25 Q Yes.

1 A No, we had an outside contractor and a
2 manufacturer's representative provide labor.

3 Q Okay. Well, are there situations that you've
4 encountered while on the Exxon Valdez where you personally
5 did the work?

6 A I do a lot of work myself, yes.

7 Q And you don't rely on the help of your engineers,
8 but you do it specifically.

9 A I wouldn't say that that's the reason that I do it
10 myself.

11 Q But you have done the work yourself.

12 A I have done work myself, yes.

13 Q Now you also talked about the -- how many times
14 have you been in and out of Prince William Sound?

15 A I don't recall who asked me that question. I said
16 perhaps 30, but, you know, it could be plus or minus many.
17 I don't know.

18 Q From the engine room, can you see what's out in
19 front of the ship?

20 A No. No, sir.

21 Q So you don't know, then, what the conditions are
22 when the orders as far as the throttle --

23 A No.

24 Q -- maneuvering the ship -- and you indicated that
25 it is the general procedure to go up to sea speed coming

1 out of -- after Rocky Point.

2 A That's correct.

3 Q Does that happen all the time?

4 A Generally.

5 Q Does it happen all the time, every time that
6 you've gone out?

7 A No, I can't say it happened every time, no.

8 Q Would it make a difference on what conditions lay
9 ahead?

10 A It certainly would.

11 Q I'm showing you what's been marked for
12 identification as Plaintiff's Exhibit Number 36. Do you
13 recognize that?

14 A That's the sailing board.

15 Q And do you recognize the writing on that?

16 A As to whose writing it was?

17 A No, just what it says --

18 A Yes.

19 Q -- the numbers. Is that an accurate picture of
20 the sailing board?

21 A Yes, it is.

22 MR. COLE: I would move for admission of that.

23 MR. MADSON: Could I just voir dire a second, Your
24 Honor?

25

VOIR DIRE EXAMINATION

1 BY MR. MADSON: (Resuming)

2 Q Mr. Glowacki, is this an accurate reproduction of
3 the sailing board as it was on March 23d?

4 A No, this sailing board is hanging on NASCO's
5 stairs, in NASCO.

6 Q Do you know where it's taken, where this was
7 taken?

8 A I'm sorry?

9 Q Do you know where this photograph was taken, what
10 city, for instance.

11 A San Diego.

12 Q San Diego.

13 MR. COLE: I still move for the admission of that
14 photograph.

15 MR. MADSON: Well, I guess for illustrative
16 purposes -- let me -- could I just ask another question?

17 BY MR. MADSON: (Resuming)

18 Q Does it appear to be the same board, as near as
19 you can tell?

20 A It physically is the same board, it's the ship's
21 board, but whether the writing is the same, the chalk
22 writing is the same as it was on March 23d, no, I don't
23 know.

24 MR. MADSON: Then I would object, Your Honor, it's
25 not an accurate reproduction.

1 JUDGE JOHNSTONE: The witness hasn't laid a
2 foundation for that being the same one, Mr. Cole. What are
3 you offering it for?

4 MR. COLE: Okay, I'll ask him what the date is on
5 that date.

6 BY MR. COLE: (Resuming)

7 Q What is written on the date?

8 A 3/23.

9 Q And what's the writing below say?

10 A "Happy Easter, gang."

11 Q When was Easter?

12 A I really don't recall. I was on the ship.
13 Holidays on the ship don't mean much.

14 MR. COLE: Judge, I'm offering it because that's
15 the -- I mean I -- do you want me to explain? Do you
16 want --

17 JUDGE JOHNSTONE: Well, you'd have to lay a
18 foundation. This witness says he doesn't know if that's
19 the -- he can't authenticate this is what he said and so
20 the objection is sustained.

21 BY MR. COLE: (Resuming)

22 Q You talked about what happens when a tanker is at
23 berth and when it -- and what procedures it has to go
24 through if it doesn't want to leave. Do you remember
25 talking with Mr. Madson about that? Let's say -- let me

1 rephrase it. Mr. Madson asked you what the procedure is if
2 a tanker does not want to proceed out through, out of the
3 Port of Valdez.

4 A I don't believe that was a question.

5 Q What happens when a tanker does not want to
6 proceed out of the Narrows? Can it stay in the Port of
7 Valdez?

8 A I would suppose the captain would either have to
9 talk to the terminal or the Coast Guard or the agents and
10 make some arrangements and clarify the reason why he
11 doesn't wish to leave. But I don't know, I'm not certain
12 about the procedures of that.

13 Q Why did you say that the tanker has to proceed out
14 to anchor point?

15 MR. MADSON: Excuse me, I object, Your Honor. I
16 believe it was anchor point. I don't think I ever
17 mentioned anything about anchor point.

18 JUDGE JOHNSTONE: I haven't heard anything about
19 anchor point. That assumes a statement by this witness
20 that he hasn't made. Why don't you rephrase your question?

21 BY MR. COLE: (Resuming)

22 Q You indicated that the tanker would have to go out
23 of the Narrows, out of the Port of Valdez.

24 A In order to get to a suitable anchorage area, yes.

25 Q And where would that be?

1 A That's in Prince William Sound.

2 Q Where, in Prince William Sound?

3 A I'd have to look at a chart, I really don't know.

4 Q When was the last time that you confronted a
5 tanker captain and told him that you felt he was impaired
6 and not fit to run the ship?

7 A Never, I don't believe.

8 Q What was the lighting like when you left the
9 Pipeline Club, was it dark or was it light?

10 A Outside? It was dark.

11 Q And the lighting in the bar that you were at, next
12 to the Pizza Palace, what was the lighting like in there?

13 A It was on the dark side.

14 Q And the trip from the bar to the terminal, was it
15 light or dark there?

16 A It was already dark.

17 Q Now you indicated that you went through the
18 security at Alyeska security, is that correct?

19 A That's correct.

20 Q Do the guards always check everything that you
21 have?

22 A It has been my experience, yes.

23 Q Have you seen them stop a person in your party and
24 refuse them admittance?

25 A No, I've never seen that, no.

1 Q And you spoke with the Captain on the bridge that
2 evening, prior to the pilot getting off. About what time?

3 A It had to be before 11:00 o'clock.

4 Q Where was the Captain when you spoke to him,
5 specifically, on the bridge?

6 A I believe he was on the port side of the bridge.

7 Q And was he in the front?

8 A Yes.

9 Q Up against the window?

10 A I believe so, yes.

11 Q And you spoke with him.

12 A That's correct.

13 Q And is it your testimony, then, that there were no
14 differences between how he was speaking that evening and
15 when you had seen him say the night before?

16 A I did not feel so, no.

17 MR. COLE: I have nothing further.

18 RE CROSS EXAMINATION

19 BY MR. MADSON: (Resuming)

20 Q Mr. Glowacki, as far as being aground is concerned
21 and your testimony a minute ago in response to Mr. Cole's
22 questions, isn't it true, sir, if you're in a situation
23 where you go from deep water to shallow water, so shallow
24 that the vessel runs aground while going forward that it's
25 logical to go back into the deeper water from whence you

1 came?

2 MR. COLE: Objection,, Your Honor, lack of
3 foundation.

4 JUDGE JOHNSTONE: I think it's argumentative, Mr.
5 Madson, so I'm going to sustain the objection.

6 BY MR. MADSON: (Resuming)

7 Q Well, what would your experience be in that
8 situation, sir, if you go from deeper water to shallow
9 water and run aground, as far as how you move yourself from
10 that situation?

11 MR. COLE: My same objection stands.

12 JUDGE JOHNSTONE: This is a chief engineer. I
13 don't know if this is the right person to ask that
14 question, Mr. Madson.

15 MR. MADSON: Your Honor, he's already answered a
16 number of similar questions. I just want to get into one
17 other area in a very short time here.

18 JUDGE JOHNSTONE: Objection sustained.

19 BY MR. MADSON: (Resuming)

20 Q I take it then, Mr. Glowacki, from your
21 experience, you could not say what would happen to the
22 engines, the propeller, the shaft or anything like that,
23 had Captain Hazelwood attempted to get off the reef by
24 running it forward and getting himself into a worse
25 situation, so to speak.

1 MR. COLE: Objection, lack of foundation.

2 MR. MADSON: I asked if he knows or not, Your
3 Honor.

4 JUDGE JOHNSTONE: I sustain the objection. The
5 worst situation type thing you're talking about is very
6 argumentative, so rephrase your question.

7 BY MR. MADSON: (Resuming)

8 Q While you were down in the engine room after the
9 grounding and you had conversations via the telephone with
10 Captain Hazelwood, did he also issue you any orders
11 regarding the personnel of the --

12 MR. COLE: Objection.

13 BY MR. MADSON: (Resuming)

14 Q -- engine room personnel, what to do?

15 MR. COLE: Objection, outside the scope of
16 redirect.

17 MR. MADSON: Well, Your Honor, we ask permission
18 to recall this witness. I can either wait until then or,
19 technically, it may or may not be outside the scope. I
20 would submit that we covered that situation and Mr. Cole
21 did, too, in his redirect. I think it is not outside the
22 scope, but the question will eventually be asked.

23 JUDGE JOHNSTONE: Okay, Mr. Madson, I'll let you
24 do it this time, but the argument that you'll recall the
25 witness next time, I'll say, "Okay, you can recall the

1 witness," so that won't be a good reason the next time.

2 I'll let you reopen this one time, only.

3 MR. MADSON: That's fine, thank you, Your Honor

4 BY MR. MADSON: (Resuming)

5 Q Do you remember the question, sir?

6 A Yes, Captain Hazelwood asked me if all the people
7 in the engine room are up, whether they know what is going
8 on.

9 Q Did you determine that to be a concern for the
10 safety?

11 A Yes, I would.

12 Q Did that seem an appropriate question, under the
13 circumstances?

14 A It showed concern for the crew, yes. Well, it's
15 the normal professional thing to do, I feel.

16 Q Thank you, sir, I don't have any other questions.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. COLE: (Resuming)

19 Q What time did he say that?

20 A I believe it was already after we restarted the
21 engine.

22 Q Did he ever make other comments about that later
23 on?

24 A Later on, how long?

25 Q Within the next three or four hours?

1 A Yes, he did ask me, "How is everybody doing?"

2 Q Did you get your mustang suits on? Did you have
3 those on?

4 A We did not have mustang suits on board. We had
5 survival suits.

6 Q Did you have your survival suit on?

7 A It's impossible to put those suits on and be on
8 the inside. They're only for abandoning ship. But what we
9 did do is as soon as we found out we were aground, I did --
10 and once the first MOA got down in the engine room, I did
11 -- after he sounded help -- helped to sound all the double
12 bottoms with the third engineer, I did have them go up to
13 all the engineers' rooms and the other MOA's room, bring
14 the survival suits to the top of the engine room and our
15 life preservers in case we had to abandon ship, yes.

16 Q Was that done pursuant to your order?

17 A That's correct.

18 Q Thank you, I have nothing further.

19 JUDGE JOHNSTONE: What's an MOA.

20 THE WITNESS: It's maintenance operations
21 assistance.

22 JUDGE JOHNSTONE: All right, thank you. Finished
23 with the witness?

24 MR. MADSON: Yes, Your Honor.

25 MR. COLE: Yes, Your Honor.

1 JUDGE JOHNSTONE: You're excused. When I say one
2 is excused, that means they're excused, unless you have
3 reason to call them.

4 MR. MADSON: I do want to reserve the right to
5 recall this witness as our witness later on, Your Honor.

6 JUDGE JOHNSTONE: Okay. Is he under subpoena?

7 MR. MADSON: He is.

8 JUDGE JOHNSTONE: Okay, maybe you can contact Mr.
9 Glowacki and give him an idea of when he should appear,
10 without having to just sit around the next three or four
11 weeks.

12 MR. MADSON: Oh, that's correct, Your Honor.

13 JUDGE JOHNSTONE: Okay, you're excused for the
14 day. You may call your next witness.

15 MR. COLE: The State would call Mr. Roberson to
16 the stand at this time.

17 Whereupon,

18 JOEL A. ROBERSON
19 having been called as a witness by Counsel for the State,
20 and having been duly sworn by the Clerk, was examined and
21 testified as follows:

22 THE CLERK: Would you please state your full name
23 and spell your last name?

24 THE WITNESS: Joel Arthur Roberson,
25 R-o-b-e-r-s-o-n.

1 THE CLERK: Your current mailing address?

2 THE WITNESS: 109 Stanley Court, Forney, Texas
3 75126.

4 THE CLERK: Would you spell the town, please?

5 THE WITNESS: F-o-r-n-e-y.

6 THE CLERK: Your current occupation?

7 THE WITNESS: I'm self-employed. I do silk screen
8 printing.

9 THE CLERK: Thank you.

10 JUDGE JOHNSTONE: Mr. Cole.

11 MR. COLE: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. COLE:

14 Q Mr. Roberson, can you tell me how long you worked
15 in the maritime industry?

16 A Approximately 11 years.

17 Q And what positions have you held?

18 A The only positions I've held are radio officer and
19 radio electronics officer.

20 Q Have you received any special training in those?

21 A Yes, I have.

22 Q Can you give the jury an idea of what that
23 training is?

24 A I had training, related training in the U.S.
25 Navy. That was radio man third class. Following the Navy,

1 I went to school for two years, studying electronics, and
2 received an associate's degree. In addition to that, I've
3 attended a number of seminars and courses in electronics
4 put on by various manufacturers.

5 Q Prior to March of 1989, how long had you worked
6 for Exxon Shipping Corporation?

7 A That would have been just about four years at that
8 time.

9 Q And where had you worked primarily before being
10 transferred to the Exxon Valdez?

11 A Primarily, I was assigned to the Exxon Baltimore.

12 Q When did you get assigned to serve on the Exxon
13 Valdez?

14 A I don't remember the exact date. It was late
15 February of '89.

16 Q And had you worked with Captain Hazelwood before?

17 A No, I had not.

18 Q I'd like to talk about your responsibilities as a
19 radio man on board the Exxon Valdez. Would you explain to
20 the jury what your responsibilities were?

21 A Yes. As a radio officer, one of my duties was to
22 maintain a listening watch on 500 kilohertz, which is the
23 international calling and distress frequency. It's a radio
24 telegraph circuit. I would stand that watch a minimum of
25 eight hours a day while the ship was at sea. I would also

1 transmit and receive radio telegrams, both communications
2 relating to shipping business and since the shipboard radio
3 station was open to public correspondence, I would also
4 send and receive telegrams for the crew.

5 In addition to that, I copied weather reports,
6 notices to mariners and also functioned as electronics
7 technician, maintaining and repairing electronics on board
8 the vessel.

9 BY MR. COLE: (Resuming)

10 Q You talked about telegrams and weather reports.
11 How did you receive that information and send it off?

12 A In a number of different ways, either on Morse
13 code. There were some radio telegraph broadcasts, radio
14 teletype, also over satellite communications telex
15 telegraph circuit.

16 Q Would you give the jury an idea of what type of
17 inner ship communication was available on the Exxon Valdez
18 when you were working on it?

19 A There was a dial telephone system aboard the
20 vessel. In addition to that, though, I believe there were
21 other sound powered telephones connecting key areas of the
22 vessel.

23 Q How about the rooms, was the dial telephone system
24 connected to each of the rooms on the vessel?

25 A The majority of the rooms. There was one in my

1 room and I assume there were phones in other rooms.

2 Q Where was your room located?

3 A My room was adjacent to the radio room, which was
4 on D Deck, I believe.

5 Q Would that be right below the bridge?

6 A Yes.

7 Q And where, in relationship to the captain's
8 quarters and the chief engineer's quarters, would you be
9 located?

10 A Directly across the passageway.

11 Q That would be across the hallway.

12 A Right.

13 Q And you had a radio room, itself, and then your
14 own quarters, is that correct?

15 A That's correct.

16 Q And what was next to you, what room was next to
17 you?

18 A There were two passageways on either side of the
19 radio room and my stateroom. There was a pilot's stateroom
20 to the port side. On the starboard side was the ship's
21 office and another stateroom, as well as the slop chest
22 closet.

23 Q I'm showing you what's been marked for
24 identification as Plaintiff's Exhibit Number 63 and 64. Do
25 you recognize those two photographs?

1 A The auto alarm keyer is a device that, when
2 switched on, keys the transmitter, the medium frequency
3 transmitter, generally on 500 kilohertz, so that the signal
4 would activate auto alarms on other ships in the event of
5 an alarm --

6 Q Kind of a distress signal?

7 A Yes, exactly.

8 Q Okay, anything else. Let's see, let's go to this
9 one and, if you could, identify what this panel is right
10 here.

11 A Okay, at the top is a remote console for the radio
12 telephone apparatus that's mounted in the gyro room, I
13 believe. Below that is the satellite communications
14 system, MARISAT.

15 Q Would you tell the jury what the MARISAT
16 communications system is?

17 A It's a satellite communications system that is
18 connected to a network that provides the ship access to
19 international telex networks and, also, into telephone
20 circuitry.

21 Q Now you, in addition to being responsible, it
22 appears, for the communications equipment, were also
23 considered an electronics technician?

24 A Yes.

25 Q Would that position -- would you learn of problems

1 with any of the electronic equipment on board pursuant to
2 that, your responsibilities?

3 A Generally, yes.

4 Q Let's go to Thursday morning, March 23d of this
5 year. Approximately how long had you been on the vessel at
6 that time?

7 A I'd estimate 30 days or so.

8 Q Had you been off the vessel at all during that
9 time?

10 A Yes, I had.

11 Q When was the last time you had gotten off?

12 A I believe that was in San Francisco just prior to,
13 a day or so prior to sailing.

14 Q Sailing to Valdez?

15 A Yes.

16 Q Do you remember getting up that morning?

17 A Not particularly, no.

18 Q What did you do that morning?

19 A As I recall, I was in the radio room, doing some
20 paper work. Specifically, I don't recall what that was.

21 Q What happened after that?

22 A At one point in the morning, Captain Hazelwood
23 came into my room and asked me -- into the radio room and
24 asked me if I would like to join him for lunch ashore and I
25 said yes, that I had some things I was doing and could we

1 go in about ten minutes or so, that would be about as soon
2 as I could get ready. After that, I believe we agreed to
3 meet down at the dock. I went down to the dock. The
4 Captain and Mr. Glowacki weren't there. I made a phone
5 call home to my wife and talked to her for a few minutes.

6 Q Were you concerned at that time about what time
7 you'd be coming back?

8 A No.

9 Q Why not?

10 A Maybe if you could explain your question.

11 Q Well, did you know what time the ship sailed that
12 evening?

13 A No, I didn't pay particular attention to the
14 sailing time.

15 Q Was there a particular reason why you didn't pay
16 attention?

17 A Just as I recall that going ashore with the
18 Captain, I felt safe the ship wouldn't leave before the
19 Captain returned.

20 Q Why did you go into town that morning, other than
21 -- did you have any other purposes besides having lunch?

22 A I wanted to do some shopping, pick up some
23 magazines.

24 Q Where did you go first?

25 A We first went to the offices of the Alaska

1 Maritime Agency in Valdez.

2 Q And what did you do there?

3 A I pretty much sat on the couch in the office and
4 waited. The Captain and Mr. Glowacki, I believe, had some
5 telephone business to conduct.

6 Q Where did you go to eat?

7 A We went to lunch at the Pizza Palace I believe is
8 the name of the place.

9 Q Who is "we"?

10 A Myself, Captain Hazelwood, Chief Glowacki and I
11 believe Mr. Murphy, the pilot.

12 Q Do you remember what you had to eat that day?

13 A Yes, I do, I had a hero sandwich.

14 Q What did you have to drink?

15 A I had Michelob beer.

16 Q What did the others have to drink?

17 A Captain Hazelwood and Mr. Murphy both had iced tea
18 and I believe Mr. Glowacki had a beer.

19 Q Do you know -- how many beers did you have there?

20 A I believe I had two.

21 Q And Mr. Glowacki?

22 A I think he had the same.

23 Q How long did lunch take?

24 A I would only be guessing. It was a fairly lengthy
25 lunch.

1 Q What time did you get done with lunch?

2 A I have no idea.

3 Q Can you tell the jury who paid the bill?

4 A Yes, I believe it was paid by one of the agents, I
5 don't recall his name. He was in the restaurant at the
6 time.

7 Q Did you go any place after you were finished with
8 lunch?

9 A Yes, Mr. Murphy drove us back into Valdez a few
10 blocks away to a supermarket area. We parted company there
11 and I went into a gift shop.

12 Q Do you know where he dropped you off in relation
13 to where the Pipeline Club was?

14 A Yes, it was directly across the street.

15 Q Were there any arrangements for the three of you
16 to meet back up together?

17 A Yes, I recall that we were to meet back at the
18 Pipeline Club.

19 Q Who suggested this?

20 A I can't be sure.

21 Q Did you suggest the Pipeline Club?

22 A No, I don't think so.

23 Q Had you been into Valdez before?

24 A Yes.

25 Q How many times?

1 A Over the years, probably a dozen times.

2 Q What did you do after leaving the two individuals
3 there?

4 A Actually, I walked into the gift shop. Captain
5 Hazelwood also walked into the gift shop. I looked around
6 the store for a period of time. I didn't make any
7 purchases there. I went next door into the supermarket and
8 looked at their magazine selection and purchased two or
9 three. After that, I walked over to the post office and
10 mailed some post cards. After leaving the post office, I
11 walked around for a bit and went into the Pipeline Club.

12 Q Do you remember what time you got to the Pipeline
13 Club?

14 A No, I don't.

15 Q What did you do when you got to the Pipeline Club?

16 A I walked in and Captain Hazelwood and Chief
17 Engineer Glowacki were at a table. I walked over to the
18 table and had a seat.

19 Q I ask you to refer to what's previously admitted
20 as Plaintiff's Exhibit Number 24. Can you point out where
21 you sat, where Captain Hazelwood, Mr. Glowacki were, where
22 you sat?

23 A I'm not sure about the accuracy of the drawing.
24 It would have been at this table, although I thought it was
25 more -- within that vicinity, at any rate.

1 Q How many glasses were in front of Captain
2 Hazelwood and Mr. Glowacki?

3 A I believe there was one glass in front of each of
4 them.

5 Q Did you have anything to drink at the Pipeline
6 Club?

7 A Yes, I did.

8 Q How did you get that? Did you order it or did
9 someone wait on you?

10 A Mr. Glowacki asked me what I would like to drink
11 and I told him I would like a beer.

12 Q And what happened then, did you go up and get the
13 beer or did he?

14 A I don't really recall.

15 Q What was -- what were Mr. Glowacki and Captain
16 Hazelwood drinking?

17 A I don't know, other than it appeared to be clear
18 liquid in a clear glass with ice.

19 Q Can you hold your hand up off the table and give
20 the jury an idea of how large the glass was?

21 A Oh, I'd say maybe four inches tall, four to five
22 inches, something like that.

23 Q Did they appear to be -- let me rephrase that.
24 How many drinks did you have at the Pipeline Club that day?

25 A I'm not sure, I believe at least two beers.

- 1 Q Could it have been more?
- 2 A Yes.
- 3 Q Were you keeping track of the number of drinks you
4 were having?
- 5 A No, I was not.
- 6 Q How about Captain Hazelwood, how many drinks did
7 he have?
- 8 A Other than two, I couldn't say.
- 9 Q Could it have been more than that?
- 10 A Possibly.
- 11 Q And Mr. Glowacki?
- 12 A I would say the same, other than two, I don't
13 know.
- 14 Q Who was paying for the drinks?
- 15 A I'm not sure, I paid for one round of drinks
16 myself. Other than that, I'm not sure who paid what.
- 17 Q When Mr. Glowacki asked you what you were
18 drinking, did he pay for your first beer?
- 19 A I can't say for sure.
- 20 Q Did Captain Hazelwood buy a round?
- 21 A I can't say, I don't recall.
- 22 Q Did you see anybody that you knew at the Pipeline
23 Club that evening?
- 24 A Yes, as a matter of fact, I think there were two
25 ladies that I recognized. One I believe was -- worked at

1 the shipping agency, although I don't recall her name. And
2 there was one other that I recognized, but didn't speak to.

3 Q The woman from the shipping agency, can you give
4 the jury an idea of how long you had been there before she
5 came in?

6 A No, I just would be guessing, I have no idea.

7 Q Who did she speak to?

8 A I believe she spoke briefly with Captain
9 Hazelwood.

10 Q You were there with Captain Hazelwood for about
11 two and a half hours, three hours, is that about right?

12 A I have no idea.

13 Q Well, at the time that you were in the Pipeline
14 Club, that period of time, you never learned what Captain
15 Hazelwood was drinking that whole time?

16 A No.

17 Q And you never learned what Mr. Glowacki was
18 drinking that whole time.

19 A No.

20 Q What were you discussing?

21 A As I recall, we were mainly talking about
22 shipboard routine, just shop, in general.

23 Q Did you mingle with any of the people that were at
24 any of the surrounding tables?

25 A No.

1 Q Did you play any of the video games that were
2 around?

3 A No.

4 Q Pretty much the whole time was just spent amongst
5 yourselves, then?

6 A Yes.

7 Q Do you remember what time you left the bar that
8 evening --

9 A No, I don't.

10 Q -- the Pipeline Club? Where did you go after
11 that?

12 A We walked from the Pipeline Club over to the Pizza
13 Palace.

14 Q And how long did that take?

15 A Again, I don't have any idea. I'd just be
16 guessing.

17 Q How far is it?

18 A A quarter mile, I suppose. That's just a guess.

19 Q What was the weather like that day?

20 A It was snowing, very large, wet snowflakes.

21 Q I want to go back, I want to ask you one more
22 question. The Pipeline Club, would you describe to the
23 jury what kind of establishment that is, the bar?

24 A The Pipeline Club? Well, it's a restaurant and
25 bar. Other than that --

1 Q Is it light or dark inside?

2 A It's fairly dark inside.

3 Q A place where you could have your privacy?

4 A I suppose you could say that, yes.

5 Q What happened when you arrived at the Pizza
6 Palace?

7 A We stepped inside the door. Mr. Glowacki ordered
8 some pizzas. The place was crowded, so after he placed the
9 order, we stepped outside.

10 Q Where did you go after that?

11 A We went into the bar that was adjacent to the
12 Pizza Palace.

13 Q Why did you go into that bar?

14 A Just to get out of the weather.

15 Q Did you drink when you were at the bar next door?

16 A Yes, I did.

17 Q What did you have there?

18 A I believe I had a bourbon and water.

19 Q And Captain Hazelwood, did he have a drink there?

20 A Yes, he did.

21 Q What kind of drink did he have?

22 A I don't know, for sure.

23 Q Because you don't remember or you just don't know
24 what he was drinking?

25 A He asked the bartender what I took for a brand

1 name. The bartender indicated that he didn't have that.

2 Q Brand name of what kind? I mean scotch or vodka
3 or --

4 A I assumed it was vodka. The brand that he called
5 for had a Russian sounding name. I made the association
6 that it was Russian vodka.

7 Q Was he able to get another brand? Well, let me
8 ask you this, was he served another drink?

9 A I believe he was.

10 Q Did he have it in his hand? Did you see him
11 carrying it around?

12 A I don't have a specific memory, no.

13 Q Now would you describe for the jury what kind of
14 establishment that was that you went into? Was it light?
15 Was it a bar?

16 A Yes, it was a bar. It had a large window behind
17 the bar. It was very well lit, a dart board, I believe a
18 pool table and some video machines.

19 Q Is there a long bar running down the side of it or
20 anything?

21 A Not down the side. The bar was -- it would have
22 been parallel to the street outside.

23 Q What did you do when you were inside?

24 A We sat and talked, waited for the pizzas to be
25 cooked.

1 Q How about Mr. Glowacki, did he join you?

2 A Yes.

3 Q And was he drinking?

4 A I believe he was, I don't recall, though, exactly
5 what.

6 Q How many -- how long would you estimate you were
7 at that bar?

8 A Not long, probably 20 minutes to half an hour,
9 something like that.

10 Q How many drinks did you have there?

11 A I believe I had one drink.

12 Q Were you counting then?

13 A Well, I was never counting, but as I recall, I had
14 one drink, yes.

15 Q Could it have been more?

16 A I'm not sure, it could have, I'm not sure.

17 Q How about Captain Hazelwood, how many drinks did
18 he have?

19 A I don't know.

20 Q Could he have had more than one?

21 A I suppose it was possible.

22 Q And Mr. Glowacki, do you remember how many he had?

23 A No, I don't.

24 Q How did you get back to the tanker that evening.

25 A By taxicab.

1 Q Do you remember how long it would have taken you
2 to get back home, back to the terminal?

3 A I would imagine at least half an hour.

4 Q And did you go through security?

5 A Yes.

6 Q Did anyone at security mention the fact that you
7 had been drinking --

8 A No.

9 Q -- or ask you any questions about it?

10 A No.

11 Q And how long had it been, again, since you had
12 left the last bar when you arrived at the security place?

13 A I would estimate probably half an hour. We made a
14 stop along the way. Possibly it could have been longer
15 than that.

16 Q At some point, then, you got on the Exxon Valdez
17 that evening.

18 A Yes.

19 Q Where did you go after you arrived on deck?

20 A I went into the galley area, the officer's mess.
21 I believe I grabbed a soda from the refrigerator and then
22 went up to the radio room.

23 Q What did you do in the radio room after that?

24 A I made some equipment tests. I went outside
25 briefly to see what stage of undocking we were in, what

1 progress we were making and then went back down below to
2 the galley.

3 Q And why did you go to the galley?

4 A The chief engineer brought some pizza back. I
5 went down to get a slice of pizza.

6 Q After that, what did you do?

7 A I went back up to the radio room and then, again,
8 made another trip to outside to check the undocking.

9 Q And that would be outside your room, there's a
10 balcony?

11 A The landing, yes.

12 Q During the trip out of the Port of Valdez, were
13 you ever asked to send any messages by Captain Hazelwood?

14 A No.

15 Q Do you remember the grounding?

16 A Yes.

17 Q Did you see Captain Hazelwood after the undocking,
18 but before the grounding at all?

19 A No.

20 Q When did you become aware that the tanker had
21 grounded?

22 A I didn't know for sure until I overheard him in a
23 MARISAT conversation.

24 Q Did you -- were you asleep at the time?

25 A At the time of the grounding, yes.

1 Q What did you do after you woke up?

2 A I got up. I immediately got dressed. I sensed
3 that it was something very serious. I went to the radio
4 room, looked around. I then went over and looked in the
5 Captain's office and called out "Captain"; there was no
6 response. I went to the chief's room and did the same and
7 there was no one there. Essentially, I was just pacing
8 around, trying to figure out what was going on.

9 Q Did you see any of the crew members going by in
10 the hallway?

11 A No.

12 Q What did you do after that?

13 A I again made trips out to the landing to see if I
14 could see anything. I noticed that the house was starting
15 to fill with vapors, enough to make my eyes water. I
16 noticed the ship was listing, went back into the chief
17 engineer's office and looked out his forward facing
18 porthole and saw lights on deck. There was a stream of oil
19 shooting up into the air from the deck.

20 Q How high was that shooting up?

21 A About to the level where I was standing.

22 Q Do you have any idea of how high that would have
23 been?

24 A 40 to 50 feet.

25 Q How about the smell, were there any odors in the

1 air?

2 A Yes.

3 Q What were those odors?

4 A It was difficult for me to tell. What I suspected
5 was that it was inert gas.

6 Q Did you smell petroleum fumes at all?

7 A It would be difficult for me to distinguish
8 between the two.

9 Q Did you receive a phone call at some point that
10 morning --

11 A Yes.

12 Q -- on the MARISAT?

13 A Yes.

14 Q Do you remember what time that would have been?

15 A No, I don't, I didn't record the time. I don't
16 recall.

17 Q What did you do after receiving that phone call?

18 A As I recall, there was a telephone call from Mr.
19 Paul Myers. He wanted to speak to the Captain and I went
20 up to the bridge and told him he had a phone call. The
21 Captain then came down and spoke on the MARISAT.

22 Q Do you remember how long that would have been?

23 A I'd estimate two or three minutes.

24 Q What happened after that?

25 A Captain Hazelwood asked me to stand by on the

1 circuit, to keep it open.

2 Q Which means you did what?

3 A I stood there, holding the hand set.

4 Q Waiting for someone to talk on the other end?

5 A Yes.

6 Q Do you remember how long you did that for?

7 A No, it was several minutes.

8 Q Did you see the Captain below or on your deck at
9 all over the next several hours, on D Deck?

10 A Yes.

11 Q Did you ever see him drinking during that time?

12 A No, I did not.

13 Q Do you remember a time when the Coast Guard came
14 aboard?

15 A Yes, I do. If we could backtrack just once, you
16 asked me if I had seen him drinking. I did observe him
17 once with a coffee cup.

18 Q Did you see him with anything that you recognized
19 as an alcoholic beverage?

20 A No.

21 Q Would you describe for the jury what happened with
22 the Coast Guard came on board?

23 A I was in the radio room. I heard the elevator
24 doors open and a commotion of people coming down the
25 passageway. The Captain was in the passageway and they met

1 outside the radio room.

2 Q What happened then?

3 A They -- I believe one gentleman asked what the
4 nature of the problem was and I believe Captain Hazelwood
5 said that, "You're looking at it." After that, they went
6 down the passageway in the direction of the latitude
7 bridge.

8 Q Did you continue to work in the radio room, off
9 and on, throughout that next morning, the morning?

10 A Yes.

11 Q And would you just briefly describe for the jury
12 what you were doing during those times?

13 A Pretty much what I was doing was assisting people
14 and establishing a telephone connection over the MARISAT.
15 Whether it was Coast Guard, I believe there was another
16 gentleman, Mr. Lawn, that I placed calls for. That was
17 pretty much the extent of what I was doing. Also, I
18 believe that during that time, there were several incoming
19 calls.

20 Q At some time, did you become aware that the Coast
21 Guard was trying to get someone to come out and take blood,
22 do some blood testing?

23 A Not specifically blood testing, no. I had
24 overheard I believe it was Commander Falkenstein had
25 ordered a technician to come out.

1 Q What type of technician?

2 A I believe he just referred to him as a technician.

3 Q Did you find out at some point that they were
4 interested in determining whether someone of the ship had
5 been drinking alcohol?

6 A Yes, they indicated that, from what I'd overheard,
7 that he had smelled alcohol on Captain Hazelwood's breath.

8 Q And when would that have been? Can you give the
9 jury an idea of when that would have been?

10 A It would only be a guess. It wasn't immediately
11 in the first few minutes after they came aboard.

12 Q Did you notice when the trooper came aboard?

13 A Not when he came aboard, no.

14 Q Do you remember seeing him on board that day --

15 A Yes.

16 Q -- that morning?

17 A Yes, I do.

18 Q Early that morning?

19 A It was that morning. I don't recall the time.

20 Q Do you know why he was there?

21 A No, I didn't.

22 MR. COLE: Can I have this marked?

23 (State's Exhibit 73 was
24 marked for identification.)

25 Q Do you remember what you were wearing when you

1 went to town that day?

2 A Yes, I do.

3 Q Can you tell the jury what that was?

4 A Yes, I was wearing a red pinstripe shirt, a woolen
5 sweater, maroon jacket, jeans and boots.

6 Q And do you remember what Captain Hazelwood was
7 wearing that day?

8 A Partially. He was wearing a dark coat. It was
9 about knee-length or slightly shorter, wearing a green cap.

10 Q Would it have been a cap like this?

11 A Yes.

12 Q Is that the cap he was wearing that day?

13 A Well, it's difficult to tell from this photograph,
14 but it was similar, yes.

15 Q In color or just in nature?

16 A Well, the color was green. The shape appears to
17 be the same, yes.

18 Q Okay. What was the Exxon policy as far as alcohol
19 use or possession on board its tankers?

20 A At that time, there was to be no alcohol aboard
21 the ship or also no alcohol consumption.

22 Q What were the consequences if you violated it?

23 A Termination.

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

25 JUDGE JOHNSTONE: Let's take a little break, about

1 ten or 15 minutes. Remember my instructions not to discuss
2 the matter, not to express any opinions.

3 THE CLERK: Please rise. This Court stands
4 recessed.

5 (Whereupon, at 2:33 p.m., a brief recess was
6 taken.)

7 (Whereupon, the jury leaves the courtroom.)
8 (Tape change to 3603.)

9 JUDGE JOHNSTONE: Do you need to take something
10 up, Mr. Cole?

11 MR. COLE: Yes, Your Honor. We're getting into
12 the stage now where the people are all out of town. We've
13 made arrangements for -- the people that we have available
14 right now -- Mr. Roberson is going to be done today. Mr.
15 Arts, out of Valdez, is here. Jamie Delozier is also
16 here. Mr. Arts has only a three-person office in Valdez.
17 He agreed to come in today, but he said he can't have all
18 of his office members gone for his business in Valdez; he's
19 a shipping agent. So we've arranged for Ms. Caples, who
20 also works with him, to be here tomorrow. She'll be here
21 at 10:30. But we really don't have any other witnesses.

22 Mr. Claar is getting off a ship down in Los
23 Angeles tomorrow. He'll be up here Wednesday night. Mr.
24 Radkey has been on vacation. We haven't been able to get
25 in contact with him. Exxon made arrangements for him to

1 come up tomorrow night. Mr. Taylor, he's the next, another
2 one, he is out on a ship right now and he will be off
3 tomorrow. He will be in town tomorrow night. Mr.
4 Blandford, the next one, he is with the Coast Guard and we
5 made arrangements -- we had to make arrangements with them
6 to replace him at his job. He'll be available on
7 Thursday. Mr. Kagan comes in Thursday night. Mr. Cousins
8 should be coming in shortly thereafter.

9 I just let the Court know this because it's been a
10 very difficult time getting all these witnesses that are in
11 Valdez and around the country here and I wanted to see how
12 the Court wants to handle that tomorrow.

13 JUDGE JOHNSTONE: I'd like you to find some
14 witness to testify tomorrow so we can use the day
15 productively. If you run out of those witnesses, you can
16 give us a list of witnesses. And I think I read some place
17 where you expected over a hundred witnesses and you said
18 this is going to take three weeks. I imagine you can find
19 some witness to come in and fill in. So I don't know what
20 to tell you, Mr. Cole. When you exhaust that effort, then
21 you can let me know, but it sounds to me like you still
22 haven't exhausted all your efforts.

23 MR. COLE: Well, I can just tell you, Judge, that
24 the next ten to 12 witnesses are all out of state witnesses
25 and to put anybody else in between -- first of all, most --

1 I don't have anybody that can go in between. All -- almost
2 every one of my witnesses -- I could bring in Dr. Propst,
3 but we don't have the blood and to bring in the blood
4 people -- we have Lieutenant Stark, who was in the chain of
5 custody; he's in town. But then that would not make sense
6 in the middle of this trial, where we are. Lieutenant
7 Stogsdill's testimony doesn't come in until the very end,
8 there's nothing relevant to this part of the case. I mean
9 we're just -- those the only people we have here, in town.
10 The rest of the people are out of town.

11 JUDGE JOHNSTONE: Of all those witnesses you gave
12 me on the list? There must be two pages of witnesses.

13 MR. COLE: I have the witnesses that I'm going to
14 call and none of them are in town.

15 JUDGE JOHNSTONE: Well, so how long do you think
16 we'll be able to go tomorrow with the witnesses you do have
17 available?

18 MR. COLE: It depends how you would like to go.
19 If you would like to end with Mr. Roberson, we can Mr.
20 Arts, Ms. Delozier and Ms. Caples, three witnesses that I
21 think will go until about noon. I don't foresee us going
22 much longer than that.

23 JUDGE JOHNSTONE: And then, after that, do you
24 need a continuance to get your witnesses?

25 MR. COLE: Yes.

1 JUDGE JOHNSTONE: Okay, is there going to be any
2 problem with that, Counsel?

3 MR. CHALOS: No, Your Honor, I think that would be
4 the appropriate thing to do, too, so we can utilize
5 tomorrow.

6 JUDGE JOHNSTONE: Okay, we'll do that. And it
7 seems to me that maybe we're going a little faster than you
8 expected. I think you estimated two weeks for jury
9 selection and we did complete that a little earlier than
10 you anticipated and I can understand how you might have a
11 difficulty now. Do you anticipate any more difficulties
12 after tomorrow?

13 MR. COLE: No, this is the last one. I've worked
14 with the people at Exxon; they're here. Their people are
15 going to be here. And after that, I don't anticipate any
16 problems for the next two weeks.

17 JUDGE JOHNSTONE: Okay, that's fine, we'll go
18 ahead and take a break tomorrow when you need it. We'll
19 get all the witnesses under our belts that we can tomorrow
20 and, if necessary, we'll recess early tomorrow.

21 MR. COLE: Thank you, Your Honor.

22 JUDGE JOHNSTONE: Are you ready to proceed now?

23 MR. COLE: Yes.

24 JUDGE JOHNSTONE: Okay. Well, bring the jury in.

25 (Whereupon, the jury enters the courtroom.)

1 JUDGE JOHNSTONE: Thank you. Have a seat. Return
2 to the stand, please. Mr. Chalos.

3 CROSS EXAMINATION

4 BY MR. CHALOS:

5 Q Good afternoon, Mr. Roberson. I just want to
6 cover the sequence of events after lunch on the 23d. You
7 say that you were dropped off by Pilot Murphy at some
8 supermarket mall, is that correct?

9 A I don't know that I would call it a mall, but it
10 was a supermarket with a gift shop adjacent, just across
11 the street from the Pipeline.

12 Q Now when you separated, Captain Hazelwood went
13 into the shop and you went somewhere else?

14 A We were both in the shop at the same time.

15 Q Did you walk in together?

16 A I believe so, yes.

17 Q Do you recall about what time that was?

18 A No, I don't.

19 Q What was Captain Hazelwood doing in there, do you
20 recall?

21 A He was looking around at the items and as I was
22 leaving, I believe he was ordering some flowers.

23 Q Did you hear him ordering some flowers?

24 A He was inquiring about the possibility of sending
25 flowers, yes.

1 Q He was talking to the shopkeeper?

2 A Yes.

3 Q Was it a lady shopkeeper?

4 A Yes.

5 Q Thereafter, you left and Captain Hazelwood
6 remained in the shop, is that correct?

7 A That's right.

8 Q And the next time you saw him was at the Pipeline
9 Club?

10 A Yes.

11 Q Now Mr. Cole asked you about how many drinks
12 Captain Hazelwood had and you initially said two drinks and
13 then you said you couldn't say for sure whether it was more
14 than two drinks, is that correct?

15 A I believe that is correct.

16 Q And that is your testimony, that you cannot say
17 for sure whether Captain Hazelwood had more than two drinks
18 that day.

19 A At the Pipeline Club?

20 Q At the Pipeline Club, that is.

21 A That's correct.

22 Q Now you stated that when you returned to the Pizza
23 Palace, you walked to the Pizza Palace, you said, from the
24 Pipeline Club, is that correct?

25 A Yes.

1 Q And the reason that you went into the bar next
2 door was because the pizza place was crowded --

3 A That's correct.

4 Q -- is that your testimony?

5 A Yes.

6 Q And also to get out of the weather --

7 A Right.

8 Q -- while you were waiting for the cab?

9 A Yes.

10 Q Now you recall having one drink yourself, you
11 said, is that correct?

12 A Yes.

13 Q And you recall Captain Hazelwood ordering some
14 drink. It sounded like some brand name, is that correct?

15 A Yes.

16 Q And the bartender told him that he didn't have
17 that particular brand name.

18 A Yes.

19 Q Now you don't know what Captain Hazelwood drank,
20 do you? You don't know if it was alcoholic or nonalcoholic
21 at that point in time.

22 A No, I do not know.

23 Q At some point in time, Mr. Glowacki came into the
24 bar, as well, am I correct?

25 A Yes.

1 Q Did he also -- did he leave thereafter to go next
2 door to order a taxi?

3 A No, I don't believe he did.

4 Q Do you recall going next door to pick up the pizza
5 and then getting into a taxi?

6 A I didn't pick up the pizza myself, no. Other than
7 that, I recall getting into the taxi, yes.

8 Q Do you remember who picked up the pizza?

9 A As we went to the taxi, Chief Glowacki had them.

10 Q Do you remember Chief Glowacki coming into the
11 place that you were at, the place next door to the pizza
12 place, and telling you that the taxi was there and it was
13 time to leave?

14 A No, I don't.

15 Q When you got up to leave to get into the taxi, do
16 you recall whether you had finished the drink that you
17 started?

18 A I recall I did not finish it.

19 Q Do you recall whether Captain Hazelwood had
20 finished his drink?

21 A No, I don't.

22 Q And I take it that you cannot say for sure whether
23 the Captain had more than this one drink at the place next
24 to the pizza place.

25 A No, I cannot.

1 Q Now you said on the way back to the terminal, you
2 made one stop. Do you recall where that was?

3 A It was to pick up another passenger. I believe it
4 was back at the Pipeline Club.

5 Q Do you recall how long you stayed there in picking
6 up this passenger?

7 A Just a few minutes.

8 Q Did you get out of the taxi?

9 A No.

10 Q Did Captain Hazelwood get out of the taxi?

11 A No.

12 Q On the way back to the Alyeska gate, do you recall
13 eating some pizza in the cab?

14 A No.

15 Q Now at the Alyeska gate, can you describe the
16 process that you went through?

17 A Yes. We went just inside the gate. We stepped
18 out of the taxi. I believe all the doors were opened. We
19 went around, behind the cab and into the office area where
20 we went through what appeared to be a metal detector.
21 There was a guard behind the counter. He looked inside our
22 bags. And then we went outside and got back into the taxi.

23 Q Did the guard speak to any of you?

24 A Just other than a greeting, "Good evening," or,
25 "How are you," that sort of thing.

1 Q Now you got back into the cab and the cab drove
2 you to the head of the terminal where the vessel was or the
3 berth where the vessel was?

4 A No, there was a -- he made a stop along the way to
5 let off the passenger that he had picked up there in town.

6 Q He was going to another ship.

7 A Yes.

8 Q And then he drove you down to the area where your
9 ship was?

10 A That's correct.

11 Q When you got out of the taxi, did you have to walk
12 a certain distance to get to the gangway?

13 A Oh, yes.

14 Q Would you tell the jury what a gangway is?

15 A Well, a gangway is the ladder that goes up from
16 the dock onto the ship.

17 Q Was it snowing at this particular time?

18 A I can't be certain.

19 Q Do you recall it being windy?

20 A No, I don't.

21 Q What was the distance from the taxi, where you
22 were dropped off by the taxi to the gangway?

23 A Oh, a couple of hundred yards I would estimate.

24 Q You have to walk onto sort of a catwalk to get
25 onto the ship?

1 A That's correct. It's a roadway that's -- or a
2 bridge that's wide enough for one vehicle.

3 Q Now how many steps did you have to negotiate to
4 get onto the ship that day?

5 A Quite a few. The gangway went several steps up.
6 Then you had to go higher than the level of the main deck
7 and then back down to the main deck.

8 Q So you had to climb up a certain number of steps
9 and back down a certain number of steps.

10 A As far as the number, I would estimate two dozen
11 or so.

12 Q Do you recall anybody stumbling or falling down
13 the steps?

14 A No.

15 Q I'm talking about the group that you were in --

16 A No.

17 Q -- the Captain, the chief engineer.

18 A No.

19 Q Now after the grounding, you stated that you were
20 on D Deck in the radio room, am I correct?

21 A Yes.

22 Q And Mr. Cole asked you if you saw any crew members
23 on D Deck at that particular time, immediately after the
24 grounding and you said that you did not.

25 A That's correct.

1 Q It's true, is it not, that one can get to the
2 bridge, to other decks and into the engine room without
3 having to come up on D Deck at all?

4 A Without passing in front of my office, yes, that's
5 correct. There's an enclosed stairway.

6 Q So you don't know what activity was going on in
7 the passageway. You don't know who was going up to the
8 bridge and who was going down to the bridge and so on and
9 so forth.

10 A Inside that enclosed stairway, no.

11 Q And the only three rooms on D Deck that were
12 occupied were -- on this particular voyage was the
13 Captain's room, the chief's room and your room, is that
14 correct?

15 A As far as staterooms being occupied, yes, that's
16 correct.

17 Q Now what time do you recall the first indication
18 that you had of a grounding?

19 A The first part of the question, I'm not -- what
20 time was it?

21 Q Yes, let me rephrase that, it was badly stated.
22 Do you have any recollection of what time you first became
23 aware of the grounding?

24 A Yes. Well, I was immediately aware that an event
25 was taking place. Now I hadn't, at that point, made a

1 connection that it was indeed a grounding.

2 Q What time did you first become aware of this
3 event, as you say?

4 A It awakened me.

5 Q What time was that, do you recall?

6 A Shortly after midnight, when I got out of bed, I
7 looked at my clock, a digital clock. It said 12:23,
8 although it was running slightly fast.

9 Q How fast?

10 A Five to ten minutes.

11 Q Now you stated that, at some point, you got a
12 telephone call from a Mr. Myers?

13 A That's correct.

14 Q Who is Mr. Myers?

15 A I'm not sure of his title. He's attached to the
16 West Coast Branch Office of Exxon Shipping Company.

17 Q And did Mr. Myers ask you to go up and get Captain
18 Hazelwood?

19 A As I recall, he did, yes.

20 Q And did you, in fact, go up to the bridge?

21 A Yes.

22 Q Did you speak to Captain Hazelwood at that time?

23 A Yes.

24 Q What was Captain Hazelwood doing when you came up
25 to the bridge?

1 A He was at the windows, looking forward at the
2 activities on deck.

3 Q Was he issuing orders at that time?

4 A Not at that time that I recall, no.

5 Q Did you accompany him back down to the radio room?

6 A I delivered the message to him that he had a phone
7 call and immediately turned around and went down below. He
8 followed thereafter.

9 Q Did you have an opportunity to observe Captain
10 Hazelwood in the radio room?

11 A Yes.

12 Q Were the lights on?

13 A Yes.

14 Q How close were you standing to him?

15 A Perhaps as close as two feet.

16 Q Did Captain Hazelwood appear to you to be
17 intoxicated?

18 A No, he did not.

19 Q Did he appear to you to be impaired?

20 A No.

21 Q Did he appear to you to be in command of this
22 vessel?

23 A Yes.

24 Q Was he anxious, panicked, calm? How would you
25 describe his mood?

1 A I would describe him as serious, calm.

2 Q Now you said the conversation with Mr. Myers that
3 Captain Hazelwood had took about two minutes, is that
4 correct?

5 A Just a few minutes, two or three minutes perhaps.

6 Q Did you overhear any of the conversation --

7 A Yes.

8 Q -- on Captain Hazelwood's end?

9 A Yes.

10 Q Obviously, you couldn't hear what Mr. Myers was
11 saying to him.

12 A That's correct.

13 Q What did you hear Captain Hazelwood say to Mr.
14 Myers?

15 MR. COLE: Objection, hearsay.

16 JUDGE JOHNSTONE: It sounds like it's going to be
17 hearsay. I don't know what it is.

18 MR. CHALOS: I'll withdraw the question, Your
19 Honor.

20 BY MR. CHALOS: (Resuming)

21 Q Now you stated at some point, you saw the Captain
22 in the passageway with the Coast Guard, do you recall that?

23 A Yes.

24 Q At what time was that, do you have a recollection?

25 A No, I don't.

1 Q Was it at 3:30 in the morning; was it after that
2 period of time?

3 A I would estimate that it would have been before
4 that.

5 Q Before 3:30.

6 A Around that time, certainly no later.

7 Q And you stated that in response to a question by
8 the Coast Guard as to, "What's the problem here," Captain
9 Hazelwood said, "You're looking at it," is that correct?

10 A Yes.

11 Q Did he say to the Coast Guard, "I'm the problem"?

12 A No.

13 Q Or did he say, in a general way, to the Coast
14 Guard, when they asked him, "What's the problem here,"
15 "You're looking at it."

16 A I don't recall that he made any gestures, just
17 that he said that, "I think you're looking at it."

18 Q Now is it fair to say that in light of the fact
19 that the vessel was aground and I believe you said that you
20 saw oil spewing that you took what Captain Hazelwood to
21 mean was that, "You're looking at the situation"?

22 MR. COLE: Your Honor, I object. It's
23 argumentative and it's speculation.

24 JUDGE JOHNSTONE: Do you wish to be heard?

25 MR. CHALOS: I'll withdraw the question and

1 rephrase it, Your Honor.

2 JUDGE JOHNSTONE: Okay.

3 BY MR. CHALOS: (Resuming)

4 Q Mr. Roberson, when you heard Captain Hazelwood
5 say, "You're looking at the problem," what did you
6 understand it to mean?

7 A I took it to mean that he meant himself.

8 Q Now you had heard from the Coast Guard that they
9 had wanted to do some sort of testing, they wanted a
10 technician to some testing, is that correct?

11 A I overheard the commander saying that the -- he
12 smelled alcohol on his breath, "I want a technician out
13 here."

14 Q He said that on the radio?

15 A Yes.

16 Q Did you tell Captain Hazelwood or anyone else that
17 the Coast Guard was looking to have a technician come out
18 to do some testing?

19 A No, I did not.

20 Q Now you indicated that at some point in time, you
21 saw Captain Hazelwood with a cup of coffee or a coffee cup,
22 am I correct?

23 A Yes.

24 Q You don't know what was in that coffee cup, do
25 you?

1 A No, I don't.

2 Q Now did you have an opportunity to talk to the
3 Coast Guard when they were on board?

4 A I certainly had the opportunity, yes.

5 Q Did you speak to the commander in the radio room
6 at some point?

7 A Just in assisting them in making telephone calls.

8 Q But you did have conversations with them, am I
9 correct?

10 A Yes.

11 Q Did anyone from the Coast Guard say to you, "Mr.
12 Roberson, we smell alcohol on your breath, as well"?

13 A No.

14 Q Did they indicate to you that they wanted to do
15 any tests of you?

16 A No.

17 MR. CHALOS: Your Honor, I have no further
18 questions.

19 JUDGE JOHNSTONE: Mr. Cole.

20 REDIRECT EXAMINATION

21 BY MR. COLE: (Resuming)

22 Q Why didn't you stay at the Pizza Palace when you
23 went there the second time?

24 A As we walked in, we walked inside, the place was
25 crowded.

1 Q Were there other stores in the area?

2 A In that general vicinity, no. This -- well,
3 stores of what type?

4 Q That you could have gone into.

5 A I don't believe so, no.

6 Q But when you went into the one next door, you got
7 a drink as soon as you got in there.

8 A Yes.

9 Q When you were boarding the tanker, do you remember
10 who went first, who went second, who went third?

11 A No, I don't remember the order.

12 Q Do you remember even going on -- do you have a
13 recollection of anybody being in front of you on the way
14 in, onto the tanker?

15 A No.

16 Q So you wouldn't know whether anybody stumbled
17 behind you or not.

18 MR. CHALOS: Objection. The witness said he
19 didn't remember if he was ahead or behind.

20 JUDGE JOHNSTONE: I think it's proper redirect.
21 You raised it in the cross.

22 BY MR. COLE: (Resuming)

23 Q You wouldn't know if somebody stumbled behind you
24 if you don't remember.

25 A That's possible, I suppose, yes.

1 Q Well, do you remember anybody being in front or
2 behind you on the way to the deck?

3 A No, I don't.

4 Q So when Mr. Chalos asked you if anybody stumbled
5 or fell, if you don't remember it, you wouldn't know
6 whether they did or not.

7 A I don't remember anybody stumbling, sir, no.

8 Q Now how many times have you told a captain that
9 you thought he was impaired or intoxicated, not fit to do
10 his duties on board a ship?

11 MR. CHALOS: Objection, Your Honor. It's a
12 leading question and it implies that he has done it in the
13 past or he should have done it. There's no proper
14 foundation.

15 JUDGE JOHNSTONE: Why don't you rephrase your
16 question, Mr. Cole?

17 BY MR. COLE: (Resuming)

18 Q Have you ever told a tanker captain that you were
19 serving under that you thought he was impaired?

20 A Not that I --

21 MR. CHALOS: Objection, same objection, Your
22 Honor.

23 JUDGE JOHNSTONE: Objection overruled.

24 BY MR. COLE: (Resuming)

25 Q I didn't hear you.

1 A No, not that I recall.

2 Q What would happen -- what do you think would
3 happen if you did that and it was later found out that you
4 were wrong? What would happen to your career?

5 MR. CHALOS: Objection, Your Honor, it calls for
6 speculation. I might add that this witness was called by
7 Mr. Cole. I think this is in the nature of impeachment.

8 JUDGE JOHNSTONE: Our rules allow this type of
9 question and the objection is overruled.

10 MR. CHALOS: Again, I renew my objection on the
11 speculation aspect, Your Honor.

12 MR. COLE: I'm just asking as to his feelings.

13 JUDGE JOHNSTONE: He can give his opinion as a lay
14 person to this.

15 BY MR. COLE: (Resuming)

16 Q Would that place you in a difficult position?

17 A It certainly would, I would think.

18 Q Is that something you've thought about in the
19 past?

20 A It may have crossed my mind. I haven't dwelled on
21 it, no.

22 Q And when Mr. Chalos asked you did Captain
23 Hazelwood seem intoxicated, what is your definition of
24 intoxicated? How do you understand that to mean?

25 A A person is having difficulty standing erect,

1 difficulty walking, stumbling or if his speech is slurred.

2 Q How about whether his judgment is impaired, is
3 that something you take into consideration, that you would
4 take into consideration?

5 A I think it would be, yes.

6 MR. COLE: I don't have anything else, Your Honor.

7 MR. CHALOS: Just one or two questions.

8 RE-CROSS EXAMINATION

9 BY MR. CHALOS: (Resuming)

10 Q When you saw Captain Hazelwood after the
11 grounding, in your opinion, was his judgment impaired?

12 MR. COLE: Objection, lack of foundation.

13 JUDGE JOHNSTONE: When did he -- let's get the
14 timing of this.

15 BY MR. CHALOS: (Resuming)

16 Q When he came down to take a phone call from Mr.
17 Myers, you had an opportunity to observe him, did you not?

18 A Yes.

19 Q In your opinion, was his judgment impaired at that
20 point in time?

21 MR. COLE: Same objection. I mean what judgment
22 -- what did he have to base that --

23 MR. CHALOS: Your Honor, I'm following up on Mr.
24 Cole's question about what the definition of intoxication
25 is.

1 JUDGE JOHNSTONE: The witness can answer the
2 question, objection overruled.

3 THE WITNESS: I -- would you repeat the question,
4 please, I'm sorry?

5 BY MR. CHALOS: (Resuming)

6 Q Did you have any reason to believe, when Captain
7 Hazelwood came down to the radio room, that his judgment
8 was impaired?

9 A No, I did not.

10 Q Following up on Mr. Cole's question about having
11 told a tanker captain that he was impaired or intoxicated,
12 you didn't have any reason whatsoever on this particular
13 night to tell Captain Hazelwood that he was impaired or
14 intoxicated, did you?

15 A No, I did not.

16 MR. CHALOS: I have no further questions. Thank
17 you.

18 JUDGE JOHNSTONE: Counsel approach the bench,
19 please.

20 (The following was said at the bench.)

21 JUDGE JOHNSTONE: I didn't ask these questions of
22 the last witness. I was thinking of asking some questions
23 of this witness. Now these are two people who had been on
24 board the ship coming up and I'm thinking of asking
25 questions such as did they have alcohol in their rooms and

1 did they observe alcohol on board that ship on the way out
2 any time or the way in from the last port to Valdez because
3 it seems to me that's going to be an issue, whether or not
4 alcohol was available to Captain Hazelwood at any time. I
5 think those questions are important. Is that going to come
6 up in the future, Mr. Cole, some place?

7 MR. COLE: Not from us, Your Honor. (Inaudible.)

8 JUDGE JOHNSTONE: This witness is under subpoena?

9 MR. COLE: Yes.

10 JUDGE JOHNSTONE: Okay, so he'll be around here
11 tomorrow.

12 MR. COLE: Yes.

13 JUDGE JOHNSTONE: Let's take this matter up
14 outside the presence of the jury. Do you have any other
15 witnesses you're going to call today?

16 MR. COLE: No, Your Honor.

17 JUDGE JOHNSTONE: Okay, so this would be a good
18 time to recess and we can take this matter up outside the
19 presence of the jury and the witness.

20 (The following was said in open court.)

21 JUDGE JOHNSTONE: That completes your testimony
22 for today. However, you may be recalled tomorrow morning,
23 so make yourself available tomorrow morning at
24 9:00 o'clock. Unless you hear otherwise from us, just come
25 to court like you did today and make yourself available.

1 You're excused at this time.

2 We're going to recess a little early today, ladies
3 and gentlemen. There are no further witnesses available.
4 We may recess early tomorrow, also. One of the
5 disadvantages of moving the trial along swiftly is that it
6 catches witnesses unprepared and so we only have I think
7 three witnesses that we can call in tomorrow. We may
8 finish with them a little early. I've been assured by
9 Counsel that we'll have enough witnesses to fill in the
10 trial dates thereafter, but we might recess a little early
11 tomorrow, say around noon or something like that. I'm sure
12 there won't be any complaints from the jury.

13 In the meantime, don't discuss this case among
14 yourselves or with anybody else and don't form or express
15 any opinions concerning the case. And when I say don't
16 discuss the case, you're entitled to tell your friends or
17 family you're on a jury and I think that would be about the
18 extent of it. If you say what jury you're on, you might be
19 inviting comment and I don't think that would be
20 appropriate.

21 If you have any questions concerning your jury
22 service, you can direct them to me in a little note.
23 Somebody said they wanted an electronic oven. I'll talk to
24 the powers that be about that and see what they say. I
25 don't have any problem with that, frankly. You're going to

1 be on this jury for awhile and I'd like to make it as
2 convenient as possible for you.

3 Avoid media information about this case. I think
4 I've given you enough instruction on that; I don't need to
5 repeat that every day, other than just to avoid media
6 coverage. Be safe and we'll see you back tomorrow morning
7 at 8:30.

8 (The jury leaves the courtroom.)

9 JUDGE JOHNSTONE: All right, at a side bench
10 conference, I indicated it seemed like it might be
11 probative to determine whether or not there was alcohol on
12 board the Exxon Valdez and the present witness and the last
13 witness were in a position to indicate whether they had any
14 in their room or whether they observed in the rooms of
15 Captain Hazelwood or Glowacki or Roberson because it seemed
16 to me that these witnesses were going to be released and
17 maybe this would be something that would be important. It
18 would seem to me that it was going to be an issue, and I
19 could be mistaken, that after the blood alcohol does come
20 into evidence, there might be -- if there was no alcohol
21 available to Captain Hazelwood on board the ship, that
22 would tend to show a higher blood alcohol level at the time
23 of the grounding than if there was alcohol and he had
24 ingested some alcohol after the grounding, which would tend
25 to show the reason for it. If neither counsel is

1 interested in that line of inquiry, I'm not going to ask
2 the question, but I wanted to make sure that these
3 witnesses are available to answer those questions if that
4 was going to come up.

5 MR. COLE: Judge, I can tell you what our position
6 is on this. Mr. Roberson, if called to testify back here,
7 would say that about a month prior to this, Captain
8 Hazelwood instructed him to come into what's called the TV
9 room or video room and he said he had confiscated a bottle
10 and wanted to watch -- have these two people watch him
11 destroy it. He then, he has told us, was instructed to go
12 down into this room. They sat there and watched apparently
13 a Jimmy Buffet video. Captain Hazelwood -- there was a
14 bottle produced. It was a clear bottle. He had some
15 orange juice or something like that and there was some
16 poured into his glass. He doesn't remember tasting alcohol
17 in it.

18 The reason I didn't bring it up is because I think
19 it's 404(B) in --

20 JUDGE JOHNSTONE: I'm not referring to something
21 that happened a month before. I'm talking about the --

22 MR. COLE: And that just leads --

23 JUDGE JOHNSTONE: -- the day of the incident, if
24 he observed any alcohol on board the ship the day of the
25 incident.

1 MR. COLE: And that leads me to why I've been
2 cautious. I don't know the answers to those and I'm afraid
3 somebody will say something that's 404(B).

4 JUDGE JOHNSTONE: I'm not going to raise the
5 issue. That's something I thought was probative and if the
6 State doesn't think it's probative and the Defendant would
7 object, there's no reason to deal with it at this point.

8 MR. CHALOS: Your Honor, if I may be heard, we --
9 on reflection, we don't have --

10 JUDGE JOHNSTONE: You might want to think about
11 all this before we come back.

12 MR. CHALOS: Yes, we will, Your Honor.

13 JUDGE JOHNSTONE: We can deal with that tomorrow
14 morning, then. Okay, we'll see you tomorrow morning at
15 8:30, Counsel. And I appreciate you marking exhibits like
16 you have. By the way, you didn't offer 64. I don't know
17 if it's an oversight. If you do intend offering exhibits,
18 offer them at the time you lay the foundation, so we won't
19 have to come back a few days later and --

20 MR. COLE: A couple of things had come up that I
21 wasn't expecting, but, yes, Your Honor, I will.

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

23 THE CLERK: Please rise. The Court stands
24 recessed.


25 (Whereupon, at 3:30 p.m., proceedings adjourned.)

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SUPERIOR COURT)	
)	Case No. 3ANS89-7217
STATE OF ALASKA)	Case No. 3ANS89-7218

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.



DORIS A. CUTLER

VOLUME 7
STATE OF ALASKA
IN THE SUPERIOR COURT AT ANCHORAGE

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

Anchorage, Alaska

February 7, 1990

The above entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 9:00 a.m., on February 7, 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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WITNESSES

DIRECT CROSS REDIRECT

RE CROSS

JOEL A. ROBERSON (Resumed)	4			
ROBERT J. ARTS	6	11	20	23
		(Further)	25	
JANICE L. DELOZIER	26	39	92	
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- - -

E X H I B I T S

STATE'S

FOR IDENTIFICATION IN EVIDENCE

64

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DEFENDANT'S

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P R O C E E D I N G S

(TAPE C-3603)

THE COURT: You may be seated.

Mr. Roberson, you are still under oath.

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

THE COURT: Yes.

(An off the record bench conference was held.)

THE COURT: Mr. Cole, you may reopen with Mr.

Roberson.

Whereupon,

JOEL A. ROBERSON

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

DIRECT EXAMINATION (Resumed)

BY MR. COLE:

Q Mr. Roberson, you have in front of you what has been identified as Plaintiff's Exhibit Number 64. Do you recognize that photograph?

A Yes, I do.

Q And is it a fair and accurate representation of part of the radio room?

A It is at the time that I saw it. The only exception would be some of the notes that appear on the console.

MR. COLE: I would move for admission of what has

1 been identified as Plaintiff's Exhibit Number 64.

2 MR. CHALOS: No objection.

3 THE COURT: It is admitted.

4 (State's Exhibit Number 64 was
5 received in evidence.)

6 BY MR. COLE: (Resuming)

7 Q Mr. Roberson, did you have any alcohol on board the
8 ship on March 23rd --

9 A No, I did not.

10 Q -- 1989?

11 A I'm sorry?

12 Q Did you have any alcohol on board the ship on March
13 23rd, 1989?

14 MR. CHALOS: Objection, your Honor.

15 Is the question did Mr. Roberson personally in his
16 own possession have alcohol or is it generally on the ship.

17 THE COURT: I don't know.

18 BY MR. COLE: (Resuming)

19 Q Personally?

20 A No, I did not.

21 Q Did you know of any alcohol on board the Exxon
22 Valdez on that date?

23 A No, I did not.

24 MR. COLE: I have nothing further, your Honor.

25 MR. CHALOS: No questions, your Honor.

1 THE COURT: You are excused now.

2 MR. COLE: Your Honor, at this time the State would
3 call Mr. Bob Arts.

4 MR. MADSON: Your Honor, while he is coming, I wonder
5 if I could have the Clerk mark these exhibits. I thought he
6 was going to be called later.

7 (Pause.)

8 Whereupon,

9 ROBERT JAMES ARTS
10 called as a witness by counsel for the State of Alaska, and
11 having been duly sworn by the Clerk, was examined and
12 testified as follows:

13 THE CLERK: Sir, would you please state your full
14 name and then spell your last name.

15 THE WITNESS: Robert James Arts, A-R-T-S.

16 THE CLERK: And your current mailing address?

17 THE WITNESS: P. O. Box 1409, Valdez, Alaska 99686.

18 THE CLERK: And your current occupation, sir.

19 THE WITNESS: I am the port manager for Alaska
20 Maritime Agencies in Valdez.

21 THE CLERK: Thank you.

22 THE COURT: All right, Mr. Cole.

23 DIRECT EXAMINATION

24 BY MR. COLE:

25 Q Mr. Arts, can you tell the jury what a port manager

1 is?

2 A I manage a shipping agency of six to seven people.
3 We are an independent agency. We contract our services out to
4 various companies, cruise ship companies, oil companies, you
5 know, various shipping companies that carry various and sundry
6 cargos all over the world. And we essentially are husbanding
7 agents, and I manage the office.

8 Q Can you give the jury an idea of what type of
9 services you provide for these companies?

10 A It depends on the contract that we have with the
11 company, but primarily for oil tankers we have a boarding
12 agent that boards these vessels on arrival. We deliver mail.
13 We handle crew medical problems, crew changes. We keep them
14 advised in changes in port conditions in operational status at
15 the various terminals, Alyeska, the city facilities there and
16 that sort of thing.

17 Q How long have you been in Valdez?

18 A I have lived in Valdez since 1977 -- excuse me,
19 since '75.

20 Q And how long have you been with Alaska Maritime
21 Agency?

22 A Since December of '77.

23 Q Do you know Captain Hazelwood?

24 A Yes, I do.

25 Q How do you know him?

1 A Through our association work-wise.

2 Q How long have you known him?

3 A Oh, gosh, it's -- ten years. I don't know the exact
4 day that -- day and year that we met. But it's been quite a
5 while.

6 Q And is that through his work with Exxon?

7 A Yes.

8 Q And that would be through the tanker trade?

9 A Yes.

10 Q Do you know Captain Ed Murphy?

11 A Yes.

12 Q He has been -- in your association is he has been a
13 pilot?

14 A Yes.

15 Q Do you know Jersey Glowacki?

16 A Yes, I do.

17 Q And how do you know him?

18 A He is the chief engineer for Exxon.

19 Q Did you see Captain Hazelwood on March 23rd, 1989?

20 A Yes, I did.

21 Q Where did you see him that day?

22 A The first time I saw him he came into our office
23 sometime after 11:30 in the morning. He came in to make some
24 phone calls. I believe he came in with the radio officer and
25 also Chief Engineer Glowacki. And made some phone calls,

1 business related, I believe, and was in the office for maybe
2 ten or twenty minutes.

3 Q I didn't hear that again?

4 A He was in the office ten to twenty minutes.

5 Q I have a photograph here. I'd like you to take your
6 time, but could you point out for the jury on this photograph
7 where your office would be located in --

8 A Our's is approximately right here.

9 Q Right about where the AMA is?

10 A Yes. It is in a two story building called the
11 Tatilik Business Center, a log building.

12 Q What time did you see Captain Hazelwood again after
13 he left?

14 A I saw him, oh, approximately a half an hour later, I
15 believe, in the Pizza Palace Restaurant.

16 Q Is that -- why -- what were you doing there?

17 A I took my family out to lunch, and he was there with
18 the radio officer, pilot Ed Murphy, and Chief Engineer
19 Glowacki.

20 Q Did you see them leave that day?

21 A I think I left before they did. They were sitting
22 at a separate table. Before my family and I left I went over
23 and introduced my little girls -- I have a girl a year and a
24 half and two and a half years old, and went over and
25 introduced them and my wife to Captain Hazelwood and exchanged

1 pleasantries and he was very interested in my little girls,
2 and oh, maybe chatted for five minutes or so and then left.
3 And there was some, a little barb saying, you know, a good
4 agent would pick up the tab here or something like that, and I
5 ended up buying them lunch, and I left.

6 Q What time did you leave?

7 A Oh, gosh. 1:30, possibly. I don't know the exact
8 time.

9 Q Do you know the exact time that you left or --

10 A No.

11 Q Could it have been earlier than that?

12 A Possibly.

13 Q What is the procedure if a tanker wants to stay in
14 the port of Valdez because of what it considers may be
15 dangerous conditions out in Prince William Sound?

16 A There isn't any -- to my knowledge, there isn't any
17 hard and fast rules. Things like that are handled on a case
18 by case basis, depending on the condition, depending on the
19 need. There's a lot of factors that are involved. But
20 generally, if there was a condition that a captain felt
21 unsafe, I imagine that he would approach the Captain of the
22 Port, who at that time last year was McCall. Possibly he
23 would involve -- or I am sure he would involve personnel at
24 the Alyeska Terminal, probably the marine supervisor, and make
25 a request that he felt it would be unsafe to sail for whatever

1 reason and he would like to remain alongside the dock for X
2 number of hours. And then the request would be handled that
3 way. And I am sure the marine supervisor would ask his
4 superiors and the Coast Guard, I am sure, would -- it just
5 depends on the request.

6 Q It's possible?

7 A It's possible, uh-huh.

8 MR. COLE: Thank you, Mr. Arts.

9 I have nothing further, your Honor.

10 CROSS EXAMINATION

11 BY MR. MADSON:

12 Q Mr. Arts, good morning.

13 A Good morning.

14 Q You indicated that you saw Captain Hazelwood, oh,
15 approximately 11:30 or so on the morning of the 23rd, correct?

16 A Yeah, that's correct.

17 Q He came in the office to do some ship's business,
18 right?

19 A Uh-huh.

20 Q Is it true, sir, that ship captains such as Captain
21 Hazelwood have a lot of administrative paperwork to do as part
22 of their job.

23 A Absolutely.

24 Q You said that he made some telephone calls but
25 you're unsure of the time that he was there.

1 MR. COLE: I have no objection.

2 THE COURT: Admitted.

3 BY MR. MADSON: (Resuming)

4 Q Now, sir, you indicated then that you -- that they
5 left the office and if I understand you correctly, there was
6 no plan that you were going to meet up with Captain Hazelwood
7 for lunch, it was just coincidence.

8 A That's correct.

9 Q You picked up your family and went there for lunch
10 and you are not sure of the time table.

11 A Uh-huh.

12 Q If the last phone call were made at 11:58, it would
13 presumably be some time after 12:00 o'clock before you went to
14 lunch, right?

15 A Uh-huh.

16 Q Do you recall if Captain Hazelwood and the others
17 left before you did?

18 A I don't recall.

19 Q In any event, while you were at the Pizza Palace,
20 did you sit at, you know, adjoining tables, or across the room
21 or something?

22 A No, we were in a different part of the restaurant,
23 kind of around the corner.

24 Q Did you have any conversation about the time you
25 were leaving or was it just earlier than that?

1 A Could you repeat the question?

2 Q Well, I think you said you left before they did.

3 A Uh-huh.

4 Q Was it when you were just going up to pay the bill
5 or something like when you happened to see them?

6 A I don't remember how they caught my eye. But it was
7 some time after we had finished our meal, I believe, that we
8 went up and said hello, and it was prior to paying the bill.

9 Q You said that you have a little girl that was about
10 two years old at the time?

11 A Yeah.

12 Q And Captain Hazelwood took a liking to her and --

13 A Yeah.

14 Q And you introduced everybody, I presume.

15 A Uh-huh.

16 Q It was just a -- it was a pleasant conversation.

17 A Sure.

18 Q And I think you said, sir, there was some maybe
19 joking around about paying the bill and you ended up paying
20 it, is that right?

21 A Yeah.

22 Q Let me show you what has been marked Exhibit C,
23 Defendant's Exhibit C, and ask you if you recognize that, sir?

24 A It looks like a credit card slip.

25 Q For what?

1 how many berths are there at the terminal there, sir?

2 A At the Alyeska terminal there's four berths.

3 Q There isn't a number two, is that right?

4 A That's correct.

5 Q And if the berths are full -- that is, they are all
6 being occupied by tankers being loaded -- would you agree,
7 sir, there is a certain amount of pressure to get them loaded
8 and get them away if there's incoming traffic to take their
9 place?

10 A Well, certainly there's always that sort of --
11 that's the name of the game. So there is always that kind of
12 pressure.

13 Q And there is only one anchorage allotted for tankers
14 in Prince William Sound, is there not?

15 A There's one anchorage area and that's Knowles Head.

16 Q Now can you describe just briefly where Knowles Head
17 is?

18 A It's on a nautical chart, and as far as miles, I
19 don't know.

20 Q We may be able to help that sir.

21 (Pause.)

22 THE COURT: Mr. Madson, this exhibit here might be
23 blocking some of the view of the jurors.

24 MR. MADSON: You're probably right, your Honor. I
25 think that chart isn't going to show, either. I may have to

1 get another one.

2 BY MR. MADSON: (Resuming)

3 Q Is it on that chart, sir?

4 A Well, it's this area here.

5 Q Okay, it is on there; all right.

6 When you say "this area" can you describe what you're
7 pointing to?

8 A There are boundaries, I believe. It says here on
9 the chart "anchorage area." This is Knowles Head and I
10 believe this is Knowles Head Light here, or Red Head Light,
11 and this is the designated anchorage area according to the
12 Coast Pilot that the Coast Guard designates as the anchorage
13 area for TAPS tankers.

14 Q And that area then, sir, is well south of Rocky
15 Point or Bligh Reef, is that correct?

16 A Uh-huh, that's correct.

17 Q You also know to your own knowledge -- you're the
18 shipping agent for Exxon Company, right?

19 A Yes.

20 Q Shipping company.

21 A Uh-huh.

22 Q You know what their policy is or if they have one
23 regarding any delays in loading and unloading, how they feel
24 about it and what pressure they may exert on captains to make
25 sure they leave when they are supposed to?

1 A I really don't -- don't know.

2 Q Lastly, Mr. Arts, in 1986, did you have a
3 conversation with the Captain of the Port at that time, I
4 think it was Captain -- Commander McCall? I would ask that
5 you answer out loud, sir. We are being recorded.

6 A A conversation regarding?

7 Q Regarding pilotage requirements?

8 MR. COLE: Your Honor.

9 BY MR. MADSON: (Resuming)

10 Q Or changes?

11 A Yes, I did.

12 MR. COLE: I would like to object at this point and
13 approach the bench.

14 THE COURT: All right.

15 (A bench conference was had off the record.)

16 THE COURT: Objection overruled.

17 BY MR. MADSON: (Resuming)

18 Q Mr. Arts, while I am here, let me hand you what's
19 been marked Defendant's Exhibit Number B as in boy. That
20 conversation you indicated you had with Commander McCall, that
21 concerned some changes or modifications in the Coast Guard
22 policy regarding pilotage, did it not, in Prince William
23 Sound?

24 A Yes, it did.

25 Q As a result of that conversation, did you write

1 what's been -- the document there, Exhibit B?

2 A Yes, I did.

3 Q And what was the purpose in doing that, sir?

4 A Well, the purpose in writing this was to make people
5 aware of a change in port policy concerning daylight
6 restrictions.

7 Q And where did you -- what did you do with that after
8 it was written?

9 A Frankly, I don't know. At that time I wasn't the
10 manager of the office and I was really acting under orders of
11 the present manager, and how much of this -- it's been, what,
12 since September of '86 that I wrote this -- how much of this
13 came from the conversation with McCall and how much was added
14 by the manager there, I don't remember, honestly.

15 Q In the normal routine of your business, what would
16 be done with a document such as this?

17 A It would be handed out to the various vessels that
18 we represent and copies passed on to the principles.

19 Q Including captains of tanker vessels of Exxon?

20 A Uh-huh; uh-huh.

21 MR. MADSON: Thank you, sir. I don't have any other
22 questions.

23 I would ask that this document be admitted, your
24 Honor, Exhibit B. Perhaps subject to some later connection,
25 but at least from this point at least I think it is

1 admissible, and if not, we could connect it up later.

2 THE COURT: Any other objection other than what you
3 raised earlier about the sidebar?

4 MR. COLE: No.

5 THE COURT: It is admitted.

6 (Defendant's Exhibit B was
7 admitted in evidence.)

8 REDIRECT EXAMINATION

9 BY MR. COLE:

10 Q Mr. Arts, I would like you to take a look at this
11 exhibit.

12 A Uh-huh.

13 Q What did this exhibit -- what did this memo address?
14 Tankers that had pilotage, in other words, a Federal person --
15 a first mate?

16 MR. MADSON: Your Honor.

17 BY MR. COLE: (Resuming)

18 Q Or a chief mate with a Federal pilotage endorsement
19 or did it address tankers that had no one on board that had a
20 Federal pilotage license?

21 MR. MADSON: Your Honor, I object. There are about
22 three questions. They are all leading. And secondly, it
23 isn't that if a document speaks for itself and he is asking
24 for an interpretation by this witness as to what it means. He
25 is not a tanker captain.

1 THE COURT: Okay, the objection as to leading is
2 overruled. The form of the question, I'll sustain the
3 objection as to the form of the question. You can rephrase
4 your question.

5 BY MR. COLE: (Resuming)

6 Q Does this address pilotage or non-pilotage vessels?

7 A The memo addresses a change in a daylight
8 restriction. It addresses all vessels that call at Alyeska.
9 The point is not to address non-pilage or pilage, it is to
10 talk about a lifting of a daylight restriction and making it
11 more of a visibility question.

12 Q Would you read the first sentence, sir? What does
13 the first sentence say?

14 A It says, effective September 1st, 1986, the U.S.
15 Coast Guard requirement for daylight passage in Prince William
16 Sound for vessels without pilotage has been waived.

17 Q What does that sentence, for vessels without
18 pilotage have been waived, mean?

19 MR. MADSON: I would object, your Honor, unless this
20 witness knows the answer and has the experience and the
21 background. Otherwise the document speaks for itself.

22 THE COURT: Objection overruled.

23 BY MR. COLE: (Resuming)

24 Q What does that -- what does that phrase mean?

25 A Let me read it again.

1 MR. MADSON: Your Honor, I am also going to object.
2 The question is argumentative.

3 THE COURT: Your objection is overruled also.

4 THE WITNESS: Well, it means what it says. That
5 there was a Coast Guard requirement for vessels that did not
6 have pilotage, and that that requirement has been waived.
7 There was a change in that requirement.

8 BY MR. COLE: (Resuming)

9 Q So it only applies to vessels that do not have
10 pilotage, is that right?

11 A Essentially.

12 Q And the next sentence, what does the next sentence
13 say?

14 A The next sentence says, all non-pilotage vessels
15 will be able to transit from Cape Hinchinbrook to the pilot
16 station at all hours, as long as visibility remains at two
17 miles or greater.

18 Q Okay.

19 What does the reference, all non-pilotage vessels,
20 mean?

21 A It means those vessels that do not have pilotage,
22 somebody on board with pilotage.

23 Q And when does it say that this report is to be made?
24 And I am referring to number one on this exhibit.

25 A It says that in the context of that paragraph, all

1 other requirements for vessels in the TAPS trade remain the
2 same. Number one is notify the U.S. Coast Guard three hours
3 prior to arriving Cape Hinchinbrook.

4 Q I see.

5 And what does number three require?

6 A A --

7 Q For non-pilotage vessels?

8 A A bridge navigation team consisting of an extra
9 watch stander under the direction of a deck officer other than
10 the one on watch must report the report the vessels position
11 every ten minutes while navigating from Cape Hinchinbrook to
12 Montague Point.

13 Q This memo did not affect pilotage vessels, did it?

14 A Pilotage -- vessels that had pilotage?

15 Q Pilotage.

16 A Essentially no.

17 MR. COLE: Thank you.

18 MR. MADSON: Are you through?

19 MR. COLE: Yes.

20 **RE CROSS EXAMINATION**

21 **BY MR. MADSON:**

22 Q Mr. Arts, it's a little technical perhaps in
23 explaining all of this --

24 MR. COLE: Objection. Argumentative.

25 THE COURT: Excuse me, Mr. Madson. That's not a

1 proper question.

2 MR. MADSON: I was getting to the question, your
3 Honor.

4 THE COURT: I know. But you started out with a
5 speech, so just ask questions.

6 BY MR. MADSON: (Resuming)

7 Q When you speak of pilotage and non-pilotage, sir,
8 this document in effect says, does it not, that vessels
9 without the pilotage endorsement may -- that vessel may
10 transit Prince William Sound up to the pilot station without
11 having this endorsed pilot on board?

12 A I don't believe that the intent of this letter dealt
13 with that, and I don't think I am really qualified to -- I am
14 not an expert as far as pilotage issues.

15 Q Very good, sir.

16 In fact, it kind of depends on the interpretation of
17 your letter as to what a person thinks they can or cannot do,
18 right?

19 A Possibly.

20 Q Have you ever been a captain, sir?

21 A Nope.

22 Q Do you hold any kind of mariner license at all?

23 A No, I don't.

24 Q Is it a fact, sir, what you were doing was merely
25 passing on information from the Captain of the Port to the

1 Exxon shipping company for their use?

2 A All companies, not just Exxon.

3 Q I'm sorry. What other companies do you --

4 A We represent Mobil and some shipping companies,
5 Maritime Overseas, Amerada Hess.

6 MR. MADSON: Thank you, I don't have any questions.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. COLE:

9 Q Mr. Arts, what authority do you have to change the
10 Coast Guard regulations?

11 A No.

12 MR. COLE: Thank you.

13 THE COURT: You may step down. You are excused.

14 (The witness was excused.)

15 THE COURT: You may call your next witness.

16 MR. COLE: Your Honor, at this time the State would
17 call Janice Delozier.

18 (Pause.)

19 Whereupon,

20 JANICE LYNN DELOZIER

21 called as a witness by counsel for the State of Alaska, and
22 having been duly sworn by the Clerk, was examined and
23 testified as follows:

24 THE CLERK: Ma'am, would you please state your full
25 name and then spell your last name.

1 THE WITNESS: Janice Lynn Delozier, D-E-L-O-Z-I-E-R.

2 THE CLERK: And your current mailing address?

3 THE WITNESS: P. O. Box 1934, Valdez, Alaska.

4 THE CLERK: And your current occupation.

5 THE WITNESS: Day care.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. COLE:

9 Q Mrs. Delozier, where do live?

10 A 155 Valcana, Valdez, Alaska.

11 Q How long have you lived in Valdez?

12 A Three years this summer.

13 Q And what does your husband -- what did your husband
14 do back in 1989?

15 A He has been in the Coast Guard 29 years.

16 Q And yourself, what were you doing last year?

17 A Dental assisting. I have done dental -- excuse me.
18 I have done medical and day care off and on for the last 12
19 years.

20 Q Can you tell me which dentist you worked for last
21 year?

22 A We only had the one in Valdez. It's Dr. Allen
23 Stuart.

24 Q And does Doctor -- would it be Dr. Stuart?

25 A Uh-huh.

1 Q -- keep records of the patients that visit him
2 during the day?

3 A Oh yes, uh-huh; definitely.

4 Q And does it include things like when you go to lunch
5 and when you have time off?

6 A Holidays. When he decides to go hunting. Long,
7 extended breaks. Extra lunch. No lunch. Yes, he does.

8 Q And are the records kept in the regular course of
9 his business?

10 A Uh-huh.

11 Q Are they done by someone who has knowledge of them
12 at the -- fairly close to the time that they occur? The
13 writing in it.

14 A Yes, it would be his wife who would be qualified,
15 himself, me, or the receptionist. Usually he gives the orders
16 as to any marking off of closing dates or holidays, things of
17 this nature.

18 Q Were you working on March 23rd, 1989?

19 A Uh-huh.

20 Q Where -- would you tell the jury what kind of
21 morning it was?

22 A Busy. We had been -- we had been looking at the
23 book, as you do, trying to see how busy you're going to be.
24 We had known for three or four days on that particular day we
25 were going to have an extended two hour lunch due to something

1 him and his wife, I presume, had planned.

2 Q And what time did you take off for lunch that day?

3 A They marked the book from 1:15 until 3:00, because
4 you have to turn the recorder on, get your next file ready.
5 So instead of getting out the door at 1:00, five after, we
6 walked out at twenty after. But the book shows the marking
7 off of fifteen after until 3:00 p.m.

8 (Pause.)

9 Q I am showing you what has been marked for
10 identification as Plaintiff's Exhibit Number 74. Do you
11 recognize that?

12 A Uh-huh.

13 Q What is that?

14 A The day's work. It is your day's work.

15 Approximately how long each patient will take hopefully. What
16 they requested that their needs were, if they can tell you.
17 Like I say, the extended lunch. Showing where it's going to
18 commence. L pointing down to when the Doctor would like us to
19 be back to have the doors open for business again.

20 Q And is that a document regularly kept in the course
21 of your business?

22 A Yes, uh-huh.

23 Q And what was the date -- of the days that were
24 recorded in that way?

25 A March 23rd and March the 24th. And to copy this

1 book -- to copy this page, the book is laying like this, so to
2 put it under the copy machine is why you see the days hand
3 running like this. They are generally not this close
4 attached. But this is the days business right until closing.

5 Q And is that an accurate copy of the business record
6 that was kept --

7 A Right.

8 Q -- at the dentist's office?

9 A The book is in fact still in his office all the way.

10 MR. COLE: I would move for the admission of what has
11 been identified as Plaintiff's Exhibit Number 74.

12 MR. CHALOS: No objection.

13 THE COURT: 74 is admitted.

14 (State's Exhibit Number 74
15 was admitted in evidence.)

16 BY MR. COLE: (Resuming)

17 Q And what time did that indicate again that you went
18 to lunch that day?

19 A We started locking the door and putting the tape
20 together at 1:00. We got out of there about 1:15. Probably
21 walked out, putting on gloves and snow boots, 1:15, 1:20.

22 Q And where did you go from there?

23 A I was having car trouble, transmission problems. It
24 is not infrequent to see me with my dental white uniforms on
25 at the Pipeline. There's a set of coffee drinkers that drink

1 there every day, same location every day. A lot of cribbage
2 games goes on there. So I had a ride let me out --

3 Q Where did you go?

4 A Pipeline.

5 Q The Pipeline Club?

6 A Uh-huh. She let me out right in the parking lot.

7 Q Who did that?

8 A The receptionist.

9 Q I am showing you what has previously been admitted
10 as Plaintiff's Exhibit Number 24. Do you recognize that?

11 A Uh-huh. That is the Pipeline Club.

12 Q Okay. Let me set it right here.

13 If you wouldn't mind just taking that pointer there
14 for a second.

15 Why did you go to the Pipeline Club that day?

16 A Basically to kill two hours. Drink coffee. My best
17 friends own the place, so it is not unusual for her and I to
18 get together, whether I take a full lunch or whether I get ten
19 minutes.

20 Q Where did you go and sit in the Pipeline Club?

21 A The parking being out here, you go in a hallway. As
22 you come right here there is an opening, a doorway that goes
23 into the restrooms, into the kitchen -- into the restaurant
24 and into the kitchen, or you can go straight, passing a little
25 table here, a little table here. The coffee pot would be back

1 up in here. I was sitting right here or right here. That bar
2 stool or this bar stool. High bar stools.

3 Q And were you -- what were you drinking?

4 A Coffee.

5 Q Did you have any alcohol that day?

6 A No, I did not.

7 Q Why didn't you?

8 A Well, I've been -- done the medical field for a few
9 number of years. You don't drink and work. Or I don't drink
10 and work. I can only speak for myself.

11 Q Now, after you had been there for a while, did you
12 notice a gentleman walk up and order a drink?

13 A Yes, I did.

14 Q Would you tell the jury, about how long after you
15 had been there did he show up?

16 A I probably got there, locking the office up like I
17 say, fifteen or twenty after, I got there about 1:30. I would
18 say the person came in fifteen 'til 2:00. I had been there
19 about fifteen minutes when this person entered.

20 Q And would you describe for the jury what he looked
21 like?

22 A The bar -- the bar area that is open right here is
23 called a waitress station. They do not have any kind of help
24 during the day because it's, like I say, a lot of coffee
25 drinkers. The person came in, walked in, stood right in the

1 bar station. I -- he nodded. I made eye contact with him.
2 He just tipped his hat, I guess -- tipped his head, like in
3 friendship or hello. Had a hat on.

4 Q What kind of hat did he have on?

5 A The little bill and the fur. Some people call it a
6 golfer's hat. I have one like it.

7 Q A beret?

8 A Uh-huh.

9 MR. CHALOS: Objection, your Honor.

10 THE WITNESS: It's the same hat that was in the
11 paper. Small hat, pressed down, it wasn't a cowboy hat.

12 THE COURT: Mr. Chalos.

13 MR. CHALOS: Your Honor, there was a question
14 pending. Mr. Cole asked the witness what kind of a hat. The
15 witness was answering a golf cap. And Mr. Cole whispered, a
16 beret. I objection to that kind of question.

17 THE COURT: I don't think he whispered, but I think
18 it is very leading, Mr. Cole, after the witness has said a
19 golf hat for you to say a beret, so avoid that, please.

20 BY MR. COLE: (Resuming)

21 Q I am showing you what has been marked for
22 identification as Plaintiff's Exhibit Number 73. Have you --
23 is that the type of hat that Captain Hazelwood had on?

24 A Exactly.

25 MR. CHALOS: Objection, your Honor.

1 THE COURT: I'd rather than just an objection, if
2 you'll give me a little hint about what it is, I might be able
3 to make a ruling.

4 MR. CHALOS: The question was leading, your Honor.

5 MR. COLE: Foundation, your Honor.

6 THE COURT: Well, when you suggest it's Captain
7 Hazelwood without the witness telling you that's what it is,
8 it is very leading. Objection sustained.

9 BY MR. COLE: (Resuming)

10 Q Well -- describe what that gentleman was wearing.

11 A A coat that was not buttoned, hanging loose beyond
12 the waist. Had a small type hat on, golfer hat, however you
13 want to call it. Beard. Not a full beard, just kind of --
14 not here. Scrubby-like. Kind of baggy under the eyes, or
15 shadowy. They're not puffy looking. Like I say, the coat
16 hung down. It wasn't a waist high coat. It came down
17 probably past the mans pocket, hanging open.

18 Q Do you see that man in the courtroom here today?

19 A Yes, sir, I do.

20 Q Would you identify what he is wearing, for the
21 record.

22 A Pink or red pinstripe shirt under a navy blue coat,
23 three gold buttons, ink pen in hand.

24 MR. COLE: I would ask the record to reflect that she
25 has identified Captain Hazelwood.

1 THE COURT: It does.

2 BY MR COLE: (Resuming)

3 Q And the photograph that you have in front of you, is
4 that an accurate representation of how Captain Hazelwood
5 looked that day?

6 A Yes, sir, it is.

7 MR. COLE: I would move for the admission of what's
8 been identified as Plaintiff's Exhibit --

9 MR. CHALOS: Your Honor, I would like to make an
10 objection at this point. Mr. Cole placed in front of the
11 witness a picture of Captain Hazelwood, described him as
12 Captain Hazelwood, and then asked her to identify Captain
13 Hazelwood. I think the putting of the picture in front of her
14 was suggestive of the answer she gave with respect to
15 identifying Captain Hazelwood here.

16 THE COURT: Objection overruled. The exhibit is
17 admitted.

18 (State's Exhibit Number 73
19 was admitted in evidence.)

20 BY MR. COLE: (Resuming)

21 Q What happened when this gentleman came up to the
22 bar?

23 A After he looked in my direction and nodded, he asked
24 the girl to fix him a vodka on the rocks. He specified a call
25 brand. She went ahead and mixed the drink, sat it in front of

1 him. He said to her that is that -- or that is not what I
2 asked for. She apologized, said he was right. It was not a
3 call brand, it was what bartenders call well pours, which is
4 if you don't specify a brand, they pour what they have on
5 hand. She apologized for not pouring what he had asked for,
6 which was a call brand. She said she would either not charge
7 him or redo the drink. He said it would be fine, he would
8 take it anyway. And he did and he went and sat down at a
9 table.

10 Q Can you show the jury where he went and sat?

11 A Yes, sir. This being the juke box, this is a high
12 top. He was sitting right here.

13 Q Now, was he with anybody at that time?

14 A No, sir.

15 Q Did he later get joined by someone?

16 A Yes, he did.

17 Q Would you tell the jury what happened then?

18 A After he went and took his table, I did not turn
19 around and look, stare. He was just a person. Someone came
20 in a few minutes later, stood in the same bar area, ordered
21 his drink, and turned around and said, and get this gentleman
22 one. Captain Hazelwood announced that he had one, had just
23 got one. The gentleman said okay, then I'll pay for the one
24 he's got. Captain Hazelwood jokingly said, well, I've got
25 one, but if you want to charge the man twice, that's okay.

1 Kind of jokingly. The man took his drink and went and joined
2 Captain Hazelwood.

3 Q Who was he -- who were they talking to? These two
4 gentlemen, were they talking at someone?

5 A The man getting the drink was turned around talking
6 to Hazelwood. Hazelwood was gesturing back to this gentleman
7 ordering the drink.

8 Q Would you describe what this other gentleman looked
9 like?

10 A I think in my original tape I specified that I
11 thought he had a beard. I still think he had a beard, the
12 beard being to me fuller -- which means out more -- than
13 Captain Hazelwood's. I wanted to say taller than, but that
14 was, you know, almost a year ago.

15 Q Do you remember the demeanor of these two gentlemen?
16 How they -- were they quiet? Were they loud?

17 A They were both quiet. Mr. Hazelwood got the drink,
18 went and sat down. The second gentleman, the same nature,
19 except for wanting to get the drink for his friend, and then
20 the guy saying, well, if I can't get him one, I'll pay for
21 one. And they kind of laughed and said, well, let him pay for
22 it, but I have the first drink.

23 Q What did you do while you were there for the rest of
24 the time?

25 A We were planning a dart tournament and cribbage

1 tournaments. Just general -- a lot of people catch you in
2 there and talk about dental. So it is just general talk,
3 gossip. Just dental stuff. Just regular Valdez talk.
4 Nothing in particular, nothing out of the ordinary.

5 Q Did you see either of those two gentlemen buy any
6 more drinks?

7 A Captain Hazelwood...

8 (START TAPE C-3604)

9 A Captain Hazelwood came back up to the bar station.

10 Q Okay. And what happened then?

11 A I want to say he got a round, a round meaning him
12 and his friend. I can't say that. I know he did get another
13 vodka for himself. I can't remember if he got his friend one
14 or not. Seems like he did.

15 Q Do you remember if -- you remember it vodka, though?

16 A Uh-huh. And the girl did pour the right one the
17 second time.

18 Q Do you remember whether there were any more drinks
19 ordered while you were there?

20 A I don't know. We -- I was talking with my friends.
21 I did not watch their table. I didn't have any particular
22 reason to stare or pay attention. I saw the two. Could have
23 been more. I can't say that I saw any more.

24 Q When did you end up leaving?

25 A About fifteen 'til 3:00.

1 Q How come you had to leave?

2 A Had to be back and unlock and turn the recorder off
3 and get all messages -- we tend to get emergency phone calls
4 wanting -- for immediate service as soon as we can get it, so
5 we turn that on, copy the messages. So we had to be back.

6 Q How did you Pipeline Club that evening?

7 A My ride picked me back up.

8 Q Would you show the jury the route you took to leave?

9 A You don't pay for coffee there and you never have,
10 but you always tip. So I left the lady a friend and me and my
11 friend walked right past the same hallway which we came in,
12 straight out.

13 Q And was Captain Hazelwood still there when you left?

14 A Yes, he was. I want to say there was a third person
15 that had joined them by then. I didn't see the third person
16 come in, but according to my memory and what I did say back
17 then, I am almost certain there was a third person sitting
18 there.

19 Q Had you ever seen Captain Hazelwood before that?

20 A Never.

21 Q And when did you realize the significance of what
22 you had seen?

23 A It was on a Thursday. The incident happened Good
24 Friday. Tuesday or Wednesday of the following week.

25 Q And what were you looking at?

1 A An Anchorage paper.

2 Q Was there anybody else there with you when you
3 looked at it?

4 A Uh-huh. The lady that owns that flower shop.

5 Q And what did you say when you looked at the picture?

6 A I'm not even sure if I said anything out loud. She
7 was complaining that the oil spill had really given her a bad
8 Easter Sunday due to the fathers and the husbands and the
9 boyfriends off, being out, doing the job, that a lot of her
10 plants had wilted and gone to waste. And the paper was just
11 there, and I said to her, who is this -- who's this? And she
12 said that's the gentleman off the tanker. And my immediate
13 reaction was, wow, I saw him. Whether I said it out loud or
14 not is -- I can't remember, but I knew that I had seen this
15 man. I knew exactly where I had seen him at.

16 Q Did you tell anybody what you had seen?

17 A I was kind of anxious for my husband to get home
18 from the office. They were doing twelve hour days there and I
19 had told my husband that evening. I didn't think it would be
20 too great of importance.

21 MR. COLE: I have nothing further. Thank you, your
22 Honor.

23 CROSS EXAMINATION

24 BY MR. CHALOS:

25 Q Good morning, Mrs. Delozier.

1 A Good morning.

2 Q Your husband is who, please?

3 A Mark Delozier.

4 Q Mark Delozier is the investigating officer for the
5 Coast Guard on this grounding, was he not?

6 A He was the second person to board the tanker, yes,
7 sir.

8 Q He was one of the first to board the tanker, is that
9 right?

10 A Uh-huh; second one. Uh-huh.

11 Q When did your husband come home after first boarding
12 the tanker?

13 A Late Thanksgiving -- late Easter night.

14 Q Was that Sunday night?

15 A Yes sir, it was.

16 Q And did he tell you I was just on the Exxon Valdez
17 that had run aground?

18 A Uh-huh.

19 Q And did he tell you I suspect the Captain of having
20 drinks?

21 A He mentioned it. Mark doesn't generally talk
22 serious stuff with me or the teenage children that we have.

23 Q But he did mention that he suspected that the
24 Captain may have been drinking.

25 A Right.

1 Q And did he mention to you the Captain's name?

2 A No sir, I had already heard that on the TV set.

3 Q Uh-huh.

4 And I take it that you saw pictures in the newspaper
5 of the incident.

6 A Not until that day. I do not take any paper in that
7 town.

8 Q But you did see it on television.

9 A Uh-huh.

10 Q And they spoke about the Captain's name?

11 A Right.

12 Q When was the next time you discussed the incident
13 with your husband?

14 A As soon as I seen this paper and the man's picture
15 on the Anchorage paper.

16 Q When did you see the picture in the Anchorage paper?

17 A Tuesday or Wednesday following Easter Sunday.

18 Q The day after --

19 A Uh-huh.

20 Q -- or two days after you had the conversation?

21 A Uh-huh; right.

22 Q Did you speak about the grounding with your husband
23 on Monday?

24 THE COURT: You'll have to answer out loud.

25 THE WITNESS: Oh, no sir. I had a regular full day

1 at the dental office. Got home at 6:00. Mark got home after
2 6:00.

3 BY MR. CHALOS: (Resuming)

4 Q Did your husband when he told you that he suspected
5 the captain drinking tell you that he -- that the Coast Guard
6 intended to prosecute the case?

7 A I don't believe he talked it over with me. He
8 generally does not.

9 Q Did you understand that drinking was not allowed on
10 vessels?

11 A Uh-huh; sure did.

12 Q And did you understand that if the captain had been
13 drinking he would be in violation of some regulations?

14 A Uh-huh.

15 Q And did you also understand that it was your
16 husband's job to investigate that and prosecute that
17 violation?

18 A It was part of my husband's job. There were several
19 personnel involved.

20 Q Now, you gave a statement to the State Troopers on
21 March 4th, 1989?

22 A Uh-huh.

23 Q You remember that?

24 A Yes sir, I do.

25 Q Was your -- this was what, about seven, eight days

1 after --

2 A Uh-huh.

3 Q -- you saw Captain Hazelwood, would you say?

4 A Yes sir.

5 Q And was your memory clear about the events of what
6 you saw on the 23rd when you gave the statement?

7 A Yes sir.

8 Q You would agree that your memory was much clearer
9 then than it might be now, would you not?

10 A Uh-huh; yes sir.

11 Q Since you gave the statement you have seen a lot of
12 television programs, you've read a lot in the paper about
13 Captain Hazelwood, etc.

14 A Right.

15 Q Now, when you -- when you gave this statement you
16 were being questioned by a State Trooper and an FBI agent, am
17 I correct?

18 A Right.

19 Q And your husband was present when you were being
20 questioned, was he not?

21 A Uh-huh.

22 Q And as a matter of fact, he interjected several
23 times into your interview, didn't he?

24 A What do you mean by interjected?

25 Q Well, he said a few things while -- you were asked

1 the question, you hesitated on an answer, and your husband
2 jumped in with an answer.

3 A I'm not good at feet or distances, so I do look at
4 my husband when they were asking me how far was Mr. Hazelwood
5 from you, how far was the bar stool from you. I'm not good at
6 that, so yes, he did help me with that.

7 Q Your husband suggested how far he might have been. --

8
9 A Uh-huh. Gussed.

10 Q -- is that correct?

11 A He just helped me guess.

12 Q When -- in your interview you state that you were
13 reluctant to give an interview to the State Trooper, is that
14 correct?

15 A Yes, it is.

16 Q And that you spoke to your husband about it and he
17 told you, go in and tell the State Troopers what you saw, is
18 that right?

19 A He left it totally up to me.

20 Q Uh-huh.

21 Did he make any suggestions to you as to what you
22 should say to the State Troopers?

23 A No, he did not.

24 Q Was there any reason why you were reluctant to speak
25 to the State Troopers?

1 A Well, I think the name Delozier and Delozier would
2 seem kind of fishy to a few people. And my husband does his
3 job and does it very well. I knew, being a normal person,
4 that it would seem kind of funny that Miss Delozier, just
5 exactly what you have somewhat insinuated yourself here today,
6 that's why I was reluctant. Mark never pressured. He said
7 you do what you want to do and you have to live with yourself.

8
9 He never suggested what I saw, what I heard, or what
10 the gentleman ordered and drank.

11 Q You're supportive of your husband, I take it?

12 A In doing the job and doing it thoroughly and justly,
13 yes sir, I am.

14 Q And you are also supportive in Mr. Delozier
15 advancing his career at that time, were you not?

16 A Mr. Delozier had plans and did follow through with
17 those plans of retiring. We had plans to retire November the
18 1 whatever happened in the world, and we did do that. And now
19 he is doing another completely different job.

20 Q Let me ask you this, Mrs. Delozier. Why do you
21 think people would think it was fishy that you come forward
22 with this story --

23 A Human nature. Delozier and Delozier. My husband
24 got quite a bit of publicity during all this.

25 Q Were you jealous?

1 A No, I was not jealous.

2 Q Did you want to get some publicity yourself perhaps?

3 A I didn't want to be involved, one way or the other.

4 And then you're going to get the ever present questions, what
5 were you doing in a bar, you know.

6 Q What were you doing in a bar?

7 A Drinking coffee. I was there five days -- I'm there
8 three days out of five. You can ask anybody in town. Always
9 wearing dental white.

10 Q Do you have any children?

11 A A thirteen year old and a sixteen year old, boy and
12 a girl.

13 Q They come home for lunch?

14 A Un-un.

15 Q They don't come home for lunch.

16 What time do they get home from school?

17 A 3:30.

18 Q And you go in there to the Pipeline Club three, four
19 times a week, to drink coffee?

20 A Uh-huh. Sit with the same people every time I go
21 in.

22 Q And do you go there to ever drink?

23 A Nope.

24 Q You never --

25 A I'm on the dart team now. I'm the captain of --

1 last year I was the captain of a dart team. I resigned from
2 that because it was just too -- trying to keep up with six
3 arguing women was just -- I didn't want to be part of it.

4 Q Uh-huh.

5 And you never go to the Pipeline Club to drink, is
6 that your testimony?

7 A That's not what you asked me.

8 Q Well, do you ever go to the Pipeline Club for
9 drinks?

10 A For dinner, uh-huh. For pizza, uh-huh.

11 Q Were you in the Pipeline Club this evening on the
12 23rd?

13 A My dart team played darts there at 7:30. I got
14 there at fifteen after.

15 Q 7:00?

16 A Uh-huh.

17 Q Was your husband in the bar that night?

18 A No, Mark comes to score keep sometimes. He never
19 comes at the beginning of the game. Usually comes when it is
20 halfway through.

21 Q Uh-huh.

22 Do you remember seeing him that night --

23 A Uh-huh.

24 Q -- in the bar?

25 Was he drinking that night?

1 A I don't know. I am the scorekeeper and the captain.
2 He nodded like, like in good luck, and sit down.

3 Q Where was your husband sitting that night?

4 A Here are the boards. We don't ever use this one on
5 account of the lighting, so we use this board here. The home
6 team -- the away team, the team that we played, gets this
7 table. We try to get as close as we can and one with as much
8 seating arrangement as we can. So we were here, which this
9 wall comes out and the phone is here.

10 Q And where was your husband standing?

11 A Right in here at the bar. I have to come out and
12 stand all the way from my table to recognize him. Sometimes
13 at past dart games he could have been there and me not even --
14 not know it. But here as I stood up to read off the roster
15 for my girls, he is sitting at the bar -- at one of those
16 stools.

17 Q He's keeping score at that bar?

18 A No. He comes as a volunteer, because home team has
19 to provide.

20 Q I see. And you couldn't tell from where you were
21 standing where you just pointed. How far away from your
22 husband were you then?

23 A From here to the jury.

24 Q So would you point where you said you were standing?

25 A Right here is my table. As I stand out in the open

1 here to read the roster, Mark is sitting behind me at one of
2 these stools.

3 Q So the distance that you have pointed out is about
4 fifteen feet, twenty feet?

5 A Yes sir, about that. Twelve to fifteen.

6 Q And from that distance you couldn't see what your
7 husband was drinking you say?

8 A No, or if he was drinking. He generally on my dart
9 night stays home to make sure homework is checked, homework is
10 done, and things are squared away with our two kids before he
11 leaves.

12 Q But on this particular night he was there?

13 A Late. He never leaves with me because you get there
14 too early and there is too much -- there is no sense in him to
15 go with me. There's too much organization to do.

16 Q What time did you leave the bar that night?

17 A Ladies games take a little bit longer than mens. I
18 think our last game was probably around 10:00, quarter after
19 10:00, which is usually how the women's teams run. Some a
20 little longer, some a little shorter.

21 Q And what time did your husband leave?

22 A He left with me.

23 Q At about what time?

24 A About 10:30.

25 Q 10:30?

- 1 A Uh-huh.
- 2 Q Is he on the dart team as well?
- 3 A He was on a mans dart team.
- 4 Q Did he play that evening?
- 5 A No, men do not play on Thursdays at all.
- 6 Q So you got home then about 10:30 --
- 7 A Yes sir.
- 8 Q -- or 11:00 o'clock?
- 9 A Uh-huh.
- 10 Q Right around there.
- 11 A Between 10:30 and 11:00. You have to turn in money,
12 turn in score sheets, seal three or four envelopes for the
13 other captain. That process takes five or ten minutes.
- 14 Q Who drove you to the Pipeline Club?
- 15 A I drove myself.
- 16 Q I'm talking about in the afternoon.
- 17 A At the lunch break?
- 18 Q Yes.
- 19 A Miss Diane, maiden name Shulett, she went back to
20 her name Roden, Diane Roden. She's the receptionist.
- 21 Q Did she come in with you?
- 22 A She came in to let me know that in fact she was
23 there, your ride is here. She had a cup of coffee also. She
24 had been off with her fiance or her boyfriend for lunch.
- 25 Q I think we're getting confused. Let's go back to

1 when you left the dentist's office at 1:00, 1:15 or so.

2 A Uh-huh.

3 Q Miss Roden gave you a ride to the Pipeline Club?

4 A Yes sir.

5 Q And did she go in with you?

6 A No sir, she did not. She went out to her
7 boyfriend's home.

8 Q Now when you came into the Pipeline Club, where did
9 you go?

10 A Walked straight in. This is the hallway.

11 Q Uh-huh.

12 A Spoke to several people coming in out of the cook --
13 the kitchen, the two cooks. Sat right here. The coffee pot
14 is right here. I generally sit here any time I am having
15 coffee. Keeps you out of the way of traffic and other people.

16 Q Did you meet anybody in there?

17 A Friends?

18 Q Yes.

19 A There were several acquaintances there, yes.

20 Q Could you tell us their names please?

21 A Uh-huh. Paul Dusenberry, Dennis Baim, Wanda Crowley
22 or Crowder. Bartender is a long life friend of mine, Lisa
23 Hoots. We talked for dental business for a while. She is
24 having some extensive work done. Planning got it done. Mark
25 Lee -- Mark Lee; he's the proprietor's son.

1 Q I see. Where were these people sitting?

2 A Depending on how the janitor cleans up the night
3 before, there is generally -- counting me, there is generally
4 always four to five bar stools. Counting me, sometimes
5 there's only four. Then the bar station right here where the
6 waitress gets her service, and then two right in here. And
7 you just kind of talk back and forth. It's not generally busy
8 in there that time of day. You have nine or ten coffee
9 drinkers and that's about it.

10 Q I see.

11 And where were you sitting?

12 A Either the second or the third seat. And the last
13 seat is wall. And right next to the wall is the coffee
14 machine itself.

15 Q So you were sitting closest to the coffee machine?

16 A Yes, sir, almost right up against the wall.

17 Q And there was somebody between -- right next to you?

18 A Uh-huh.

19 Q And there was a person around the corner there?

20 A Uh-huh.

21 Q And a person right next to them?

22 A Right.

23 Q Okay.

24 Now, how far away from the station were you in that
25 picture?

1 A Three -- three, three and a half feet.

2 Q Now, you say that you got in there about 1:20 or so?

3 A 1:20, 1:30.

4 Q And about ten minutes later somebody else walked in

5 that you identified as Captain Hazelwood?

6 A About fifteen 'til 2:00, yes sir.

7 Q About a quarter of 2:00?

8 A Uh-huh.

9 Q And this person had a golf cap on?

10 A That's how I describe it. I have one like it.

11 Q It's a hat that has a snap in the front, does it

12 not?

13 A Some of them have a snap, some of them don't,

14 Q When you gave the interview to the State

15 investigator, you told him that the man had a hat with a snap

16 on the front --

17 A Yeah.

18 Q -- is that right?

19 A Maybe a small bill, yes sir.

20 Q You remember that?

21 A Uh-huh.

22 Q And you remember the hat being snapped down?

23 A Looked snapped.

24 Q What was the color of the hat?

25 A Dark. I would say black, dark brown. It was not a

1 light color, it was not white. Probably black.

2 Q When you described this person that you saw to the
3 State investigators, you said that he had a scruffy beard, not
4 a full beard --

5 A Uh-huh.

6 Q -- is that right?

7 And you started to describe it this morning as a
8 beard that sort of came around the chin?

9 A No, no, no. I was just saying it was scruffy. The
10 second man that joined him to me had a fuller, more molded
11 beard. The man I saw, the first man I saw, his was like -- I
12 want to say scratchy, sparse. Was not what I call a full,
13 rounded, molded beard. It was kind of patchy.

14 Q Now you described the man you saw to the State
15 Troopers as being about five foot eight, five foot nine?

16 A Five foot nine, uh-huh.

17 Q Hundred and sixty pounds.

18 A Uh-huh.

19 Q And you also told the State Troopers that that man
20 was about fifty-five years old, didn't you?

21 A Fifty to fifty-five, yes sir.

22 Q Now you say this particular gentleman came up to the
23 bar and ordered some drink?

24 A Uh-huh.

25 Q And the walked to where?

1 A He left the bar, the waitress station, walked
2 through here -- this is open -- and sat at a -- what we call a
3 high top. The juke box and a video game. The video game has
4 now been removed. Sit right here.

5 Q Where exactly did the man sit?

6 A Sit with his back to the juke box, so his face would
7 have been looking out towards the open bar area.

8 Q Were you talking with your friends at this time?

9 A Uh-huh; uh-huh.

10 Q You were engaged in a conversation about your dart
11 team and -- teams, and all that?

12 A Uh-huh.

13 Q And in the course of that you took the time out to
14 notice somebody coming up to order a drink and then walk back
15 about twenty feet, twenty five feet, sit down, and you knew
16 exactly what he was doing, is that right?

17 A No, I didn't take the time. Sir, he came up
18 directly -- nodded at me, came directly into my eyesight. I
19 heard every word he said to Miss Hoots. I heard the brand of
20 vodka he ordered. I did follow and go sit back down, my eyes.
21 I -- in my tape I also specified I did not have any reason to
22 turn around and listen. I was not listening. I did not
23 eavesdrop. I watched him get his drink. I watched him take
24 his table. I did not look back again. The man came in -- the
25 second person came in, three feet away, you hear him order.

1 You hear him say get his friend one. None of this was
2 intentional. This was just, I was there, it was said, I heard
3 it.

4 Q Now, when you spoke with your husband, did he tell
5 you that he had interviewed, prior to that Sunday, the chief
6 mate and the radio officer, and they told him they were in the
7 Pipeline Club that day?

8 A No, he did not tell me that.

9 Q He did not?

10 A No, he did not.

11 Q When the second man came in -- about what time did
12 he come in?

13 A About fifteen to twenty minutes after the first
14 gentleman.

15 Q This would have been about 2:00 o'clock?

16 A About 2:00 o'clock, maybe five after.

17 Q And the second man walked to the same spot that the
18 man that you identified as Captain Hazelwood walked up, and he
19 ordered something?

20 A Yes, he did.

21 Q And you had the opportunity to observe him as you
22 had the first man. You listened to what he said.

23 A Yes, I listened. I mean, there is no way you cannot
24 hear it.

25 Q And you looked at him.

1 A Didn't look at him -- I did not have the eye contact
2 that Mr. Hazelwood made with me. I did not -- the man did not
3 turn and do this. The man walked in -- I saw a side, which is
4 why I was not in my tape a hundred percent sure he had a
5 beard. I am very sure he did, but not a hundred percent sure
6 the second man had a beard.

7 Q How tall was he?

8 A I say in my tape taller than Mr. Hazelwood.

9 Q Taller than the man you identified as Captain
10 Hazelwood?

11 You heard him speak. How was his voice?

12 A Wasn't high pitch, low pitch. I didn't pick up a
13 particular brogue like southern or anything like that.

14 Q You told the investigators that he had a higher
15 pitched voice than the man you identified as Captain
16 Hazelwood, is that right?

17 A Uh-huh.

18 Q Do you remember that now?

19 A And I also said that Hazelwood appeared to be a
20 quiet, meek person. Yes, I did say that.

21 Q And you had never met either man before.

22 A I had never met either man.

23 Q What color hair did the second man have?

24 A Brown.

25 Q Were you able to see anything about his face, any --

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A No sir, I did not. Just the part that sticks in my mind that he had a beard, a more full beard than Mr. Hazelwood. I don't mean like down to here, but I mean more out further.

Q Now you say that you remember these two gentlemen having at least two drinks by the time you left, is that correct?

A I remember Mr. Hazelwood having two. I cannot swear that when he came to get his second drink, that he got his friend another one also. I know he got the second one because the girls said, this time we're going to do it right. Hazelwood kind of pleasantly -- she poured the wrong drink first. But it was vodka. She poured the drink he in fact asked for the second time.

Q During this period of time, were you talking with your friends?

A Uh-huh.

Q Were you engrossed in conversation?

A Not continuous. Not word after word after word after word. Just talking. They'd get quiet, I'd get quiet. Lisa and me were talking about dental. I never looked back to say, oh, wow, they're still here. No, I did not do that.

Q Do you know whether or not there were other people in the bar at this time?

1 A Uh-huh. A group of birthday ladies came in while we
2 were still there, while Mr. Hazelwood was still there.

3 Q Where did they birthday ladies sit?

4 A They spoke to all of us, because like I say, small
5 town, we all know everybody. They are carrying balloons on a
6 stick somewhat like this that say Birthday Girl. They stop.
7 They cut up with Lisa about the girl's birthday. There's four
8 to five of them. They're talking amongst theirselves, where do
9 they want to sit. They finally decide to sit right in here at
10 this table or this table. The girls with their balloons go
11 and take a seat. One girl stays and orders four to five
12 drinks. As the drinks are poured, one girl gets up to come
13 help her carry the four to five drinks.

14 Q How many of these birthday girls were there?

15 A It was just one particular girl's birthday, and some
16 of her friends had congregated to take her out to lunch and
17 get her some funny balloons.

18 Q How many?

19 A I would say four.

20 Q Four girls --

21 A Uh-huh.

22 Q -- all together?

23 A Uh-huh.

24 Q Do you know any of the girls?

25 A I know the birthday person, yes sir.

1 Q What was her name?

2 A Leeann Powers.

3 Q Did you know any of the other girls?

4 A Not by eyesight. I didn't -- Leeann's kind of loud,
5 kind of funny, and it's her birthday, so she was the one that
6 was doing most of the loud talking, cutting up, yelling.

7 Q And was it some other girl that did the ordering of
8 drinks?

9 A Uh-huh.

10 Q What drinks did they order?

11 A Well, I had never tasted it. I am not a liquor
12 drinker. They ordered drinks called "Slippery Nipples."
13 Which I didn't want to say that on the tape either.

14 Q Uh-huh. How many drinks did they have?

15 A I saw them order that round.

16 Q Just one round?

17 A Uh-huh. While I was there, yes, sir. They got
18 there after the second man -- after the second guy came in.
19 Not Mr. Hazelwood, but the second man. I would say that
20 second guy with Mr. Hazelwood had been there twenty minutes.
21 I guess the girls got there at twenty after 2:00.

22 Q When you were asked by the State Trooper to identify
23 these girls and describe them, you weren't able to do that,
24 were you?

25 A I was not asked to describe the girls. I was asked

1 to give names. And Leeann Powers did call me telling me she
2 did not appreciate me giving her name. I was told that my
3 name would be left out of how they got Miss Powers names --
4 Miss Powers name, which in fact it wasn't. I named one
5 person. I did not get asked or get the time or the
6 availability to describe anyone.

7 Q Uh-huh.

8 A I could have if I had been asked. I was not asked.
9 That is on the tape if you care to listen to it.

10 Q Well, I have the transcript right here.

11 Was there anybody else in the bar besides the
12 birthday girls?

13 A And Hazelwood and his friend? I don't think so,
14 sir. I just know the immediate area of the coffee people and
15 the people that are talking with me. I did not get -- the bar
16 even has a dark side to it. Lights are kept pretty much off.
17 I did not even look over in here. During the daytime, you
18 generally have no one here, you generally have no one here,
19 here, here or here. If they have any kind of business other
20 than coffee or restaurant cokes and tea, those people would go
21 to the lit area versus going to the back side where it is kind
22 of empty.

23 Q The place that you said this person that you
24 identified as Captain Hazelwood was sitting was a lit area?

25 A More lit than the rest of the building would be.

1 But it's none of it -- none of it's like daylight bright.
2 They have lights that they adjust according to the bartender's
3 preference.

4 Q Uh-huh.

5 You say that you saw a picture of Captain Hazelwood
6 that Tuesday in the Anchorage daily newspaper.

7 A Uh-huh.

8 Q How did you come by that picture?

9 A How did I come by it?

10 Q Yes.

11 A The lady that owns the flower shop either had one --
12 I didn't look under there -- or she had her own copy sitting
13 right by her cash register, just folded, not messed up, just
14 folded, laying perfectly straight.

15 Q You didn't tell that to the investigators, did you?
16 You told them that the first picture you saw of Captain
17 Hazelwood was a picture that an L.A. Times reporter showed
18 you?

19 A No, sir, I did not; did not. I played the tape at
20 my home this whole weekend --

21 THE COURT: Excuse me; excuse me. Just answer the
22 questions.

23 THE WITNESS: Yes, sir.

24 BY MR. CHALOS: (Resuming)

25 Q Before you came here today you played the tape?

1 A My tape at my home, Friday.

2 Q Why did you do that?

3 A Because I wanted to make sure that I had not told
4 the DA's office one thing and then come up here and say
5 something wrong. And I did mess up one thing on the tape and
6 to my knowledge just the one thing.

7 Q What was that?

8 A I used the word in my tape of a drink poured and
9 given in a shot glass. It was not a shot glass, it was a
10 rocks glass.

11 Q Mrs. Delozier, do you remember saying -- the
12 investigator asked you, would you recognize him again if you
13 saw a picture of him and you said yes. The he asked you, or
14 if you saw him in person, and you said, I had an L.A. Times
15 guy flash it in front of my face. I just -- a blown up
16 picture that I had seen. It was, you know, blow up. Under
17 what circumstances did he show you? You say, the L.A. Times
18 guy? Yeah.

19 MR. COLE: Judge, is he reading this, is he asking
20 her --

21 MR. CHALOS: I am reading what she said to the
22 investigators.

23 BY MR. CHALOS: (Resuming)

24 Q Do you recall the L.A. Times person showing you a
25 picture?

1 A Where in that statement does it say that I was asked
2 if that was the first time I saw a photo of Mr. Hazelwood?

3 Q I don't see that.

4 A Right. It wasn't. They didn't ask me that.

5 Q Ah-hah. So this was another time somebody showed
6 you a photo?

7 THE COURT: Is that a yes or a no?

8 THE WITNESS: Oh, yes, sir.

9 BY MR. CHALOS: (Resuming)

10 Q When did the L. A. Times guy show you a picture of
11 Captain Hazelwood?

12 A Came into the Pipeline, talking to anybody that
13 would look at it him and had a picture, just like this.

14 Q When was that?

15 A After I had been to the Coast Guard and left their
16 office, after I had -- I want to say after. After I had been
17 to Emily's shop, after I had seen the Anchorage paper laying
18 there, that being a Monday or a Tuesday. The gentleman came
19 into the Pipeline Club asking if anyone -- he was like running
20 up and down the open area asking anyone that would look if any
21 of you people ever seen this gentleman.

22 Q Let me see if I have this right. You were with the
23 flower shop lady -- what's her name?

24 A Her first name is Emily, sir. I can't recall her
25 last name.

1 Q Emily Kaiser?

2 A Uh-huh.

3 Q She has the flower shop?

4 A Uh-huh.

5 Q And this was on Monday?

6 A Monday or Tuesday.

7 Q Uh-huh.

8 What did you say when you saw the picture?

9 A I'm not sure, as I said earlier, that I said
10 anything out loud. I just was -- it clicked that I had seen
11 this person. That I knew exactly where I had seen him at.
12 There was no doubting and there no me saying, where did I see
13 him. I knew where I had saw his face.

14 Q And when you saw that picture, did you say to Emily
15 Kaiser, hey, this man was in --

16 A No, I did not.

17 Q -- the Pipeline Club.

18 MR. COLE: Objection. Asked and answered.

19 THE COURT: Objection overruled. You can continue.

20 BY MR. CHALOS: (Resuming)

21 Q Now you say after you saw this picture you ran over
22 to the Coast Guard office?

23 A No, sir, I didn't run over to the Coast Guard
24 office.

25 Q When did you go to the Coast Guard office?

1 A I got off work at 6:00, waiting on my husband to
2 come home, wondering if I should tell him this, wondering if
3 it's of any importance.

4 Q Why did you wonder whether you should tell him or
5 not?

6 A No particular reason.

7 Q He had already told you, didn't he, that the master
8 had been drinking?

9 A I am not even sure he told me that, sir.

10 Q Didn't you just testify that on Sunday --

11 A I think. This is a year ago. And I also said that
12 Mark doesn't generally talk over serious business with me and
13 the two teenagers. He's not that kind of an investigator. I
14 did tell him. I thought it would be like, big deal. Mark
15 said to me, I think that might be something other people would
16 want to hear. Not me, Jamie, not come with me. Other people
17 might want to hear, like the FBI and like the State Trooper
18 that are using my office as a gathering spot.

19 Q And you went over to his office that evening to tell
20 them what?

21 A No, sir, I did not go over to his office that
22 evening. Mark gave me at least a couple of days to think
23 about what I wanted to do. Left it totally up to me.

24 Q What did you say to your husband about the picture
25 that you saw?

1 A That, is fact, this is supposed to be Mr. Hazelwood.
2 Mark said yes. I said --

3 Q Is this that picture you saw?

4 A In the Anchorage Times?

5 Q yes.

6 A Yes, sir, it is.

7 Q And is that the picture you were shown by the L.A.
8 Times reporter?

9 A A blown up scratchy one, yes, it is.

10 Q When did the L.A. Times reporter show you that?

11 A Before -- I don't -- whatever day the 4th was on.
12 That's when I went to Mark's office. Honestly, I can't say if
13 it was the day before, the day after. The L.A. guy -- I said
14 out loud, yes, I've seen that picture. The L.A. guy, man,
15 said would you come and sit in a corner with me, have a
16 coffee, and do an interview. I emphatically flat out said no.

17 Q What was his name?

18 A The L.A. Times man? I don't know, sir. He showed
19 me a calling card to verify that it's who he was. He was
20 staying at the Pipeline Club, I understand, at the motel.

21 Q What did he look like?

22 A Sweatshirt, not a suit. Just a casual sweater,
23 jeans. Casually dressed. Brown hair, parted on the side.
24 That's about it. I would say early 40's.

25 Q How tall?

1 A Six foot, six foot one.

2 Q What did he weigh?

3 A Probably 180, 185. The head bartender emphatically
4 told him to get out. He kind of perceived that I was not
5 going to use that tone with him, but I did tell him to go,
6 period. There was no questions asked.

7 Q Was his name Bill Remple?

8 A I could not tell you, sir.

9 Q He showed you a card, didn't he?

10 A Uh-huh. Had L.A. Times in the corner.

11 Q You didn't look at his name.

12 A No, sir, I did not.

13 Q Now, when you saw this picture, you say -- when did
14 you go to the Coast Guard office?

15 A 4th of April, about 1:30 in the afternoon.

16 Q Is that what you are talking about going to the
17 Coast Guard office to give your interview?

18 A Yes.

19 Q Well then, you obviously had seen the L.A. Times man
20 before that because you speak about him in your interview.

21 A Yes, so that is right.

22 Q Okay.

23 When did you see the L.A. Times man?

24 A Probably -- I saw him -- if I was in Emily's shop --
25 probably it was a day after, no more than two days after I

1 had been in Miss Kaiser's shop and saw the Anchorage Times.

2 Q Uh-huh.

3 When you saw this picture that you identified as
4 Captain Hazelwood, did you speak about that with your friends
5 that were there at the bar that day?

6 A No, sir, I did not.

7 Q You kept it all to yourself?

8 A It's important business. I have been in the
9 military 21 years. You don't go out and do that kind of
10 thing, not if it is going to jeopardize or help or hinder.
11 You don't do that.

12 Q You mean, when you saw this picture, you didn't go
13 in and tell Lisa Hoots, Lisa, I just saw this picture of a guy
14 that was here, do you remember. Anything like that?

15 A The gentleman at the Coast Guard office said have
16 spoke with Lisa about giving testimony, too. I said yes. I
17 asked her didn't she feel like she ought to tell. She refused
18 to take any part of it. She refused to be involved with any
19 shape, form or fashion.

20 Q I thought you said you didn't discuss it with Lisa.

21 A Not until I had talked to the Coast Guard people.

22 Q But in your interview, you say that you spoke to
23 Lisa and she didn't want to take part in this.

24 A Right.

25 Q Right? So you obviously had spoken with her before

1 you went to the Coast Guard office.

2 A Possibly.

3 Q Well, you spoke about it in your interview. Is it
4 possibly or did it happen?

5 A I talk with her every day. I talked -- okay, then I
6 did.

7 Q How about the other fellow, what was his name, Mark?

8 A Mark Lee.

9 Q Mark Lee. Did you speak with him?

10 A No.

11 Q You didn't say to him, hey, you remember that guy
12 that was standing right here, that was Captain Hazelwood.

13 A Mark Lee wasn't in there that long. Mark Lee had a
14 cup of coffee, went upstairs to do accounting for his -- he is
15 second in charge of the business.

16 Q How long was Mark Lee with you that particular day?

17 A Five minutes.

18 Q That's it?

19 A Uh-huh.

20 Q You didn't tell that to the investigators, did you?

21 A They asked me who I saw in the building while having
22 coffee. I named Mark Lee and who he was and his position in
23 the business.

24 Q How about Mr. Dusenbarry? How long was he there?

25 A He was there from the time -- he was in the chair

1 before I got there and was there after I left.

2 Q Uh-huh. Did you discuss this with Mr. Dusenbarry?
3 Did you say, hey, you remember that guy? That was Hazelwood.

4 A I don't think I did, sir. Paul is a heavy drinker -
5 -heavy drinker who would -- I even specified to the second
6 State Trooper who talked to me on January the 30th, that even
7 if he didn't want to, Mr. Du -- even if he didn't want to be
8 dishonest, I don't think Mr. Dusenbarry could put one day's
9 actions in line, because he is a quite heavy drinker. And
10 that is just from personal observations.

11 Q Uh-huh.

12 Who was the third person there?

13 A Sitting with us?

14 Q Uh-huh.

15 A Dennis Baim, B-A-I-M, and Wanda Crowley or Crowder.

16 Q Okay, let's start with Mr. Baim. Did you tell him?

17 A Un-un.

18 Q How come?

19 A Dennis was -- well, I didn't tell Lisa for any
20 particular reason, so there's no how come involved. I am not
21 the town crier.

22 Q Uh-huh.

23 A Dennis went out this -- immediately after to work
24 for the oil spill, was gone extensively. That's what I was
25 told. I don't know for a fact.

1 Q And how about Miss Crowder?

2 A No.

3 Q You didn't speak with her about it either?

4 A No, sir, I did not.

5 Q Where was Miss Crowder sitting?

6 A The first chair past where the open area placing of
7 drinks was at, like three to four stools from me.

8 Q Miss Crowder would have had probably the best view
9 of the Captain. She would have been the closest one.

10 A Uh-huh. She was not there the entire time. Wanda
11 was there a total of twenty minutes.

12 Q Any particular reason why you didn't approach Miss
13 Crowder to verify what you thought was Captain Hazelwood?

14 A Miss Crowder is not the kind of young lady that I
15 would hang out with any way. Spoken to, I will speak back. I
16 don't sit with her, hang out with her, or associate with her
17 for very professional reasons. I would not --

18 Q Because you think she's an air head, right?

19 A No, sir.

20 Q That's what you said to the investigators.

21 A I said Lisa Hoots, I sure did. I did not say Wanda.

22 Q Your husband called her Wicked Wanda.

23 A Uh-huh. Which is another reason why I don't hang
24 out with her. She doesn't have a very good rep.

25 Q I see.

1 But she was in fact the closest person --

2 A Uh-huh.

3 Q -- to this person that you call Captain Hazelwood.

4 A She was in there about ten or fifteen minutes at
5 most. She was not there after Mr. Hazelwood picked up and
6 left with the first drink.

7 Q Before you came here today did you discuss your
8 testimony with your husband?

9 A No, I did not.

10 Q Were you listening to this tape at home on your own?

11 A I listened to it Friday.

12 Q Uh-huh.

13 Was this on your own?

14 A Uh-huh. We have entire copies of all the tapes.

15 Q The what?

16 A We have copies of all tapes.

17 Q What type of tapes?

18 A All of them.

19 Q You have tapes of messages from the ship to --

20 A No, sir, my husband has those. But he has a whole
21 locked up file cabinet full of tapes that he done himself.

22 Q At home?

23 A Uh-huh. He took this tape himself, if I might
24 clarify this, he ran this tape with the acknowledgement of Mr.
25 Burke and Mr. Steel so that things would not be said that I

1 didn't say. This was like for protection of us.

2 Q You were concerned about somebody getting your
3 statement wrong?

4 A I wasn't. I wasn't; Mark was. He was misquoted
5 himself in many, many papers this whole ordeal. So it was
6 like a safety on his part, that what I said would in fact be
7 what I said.

8 Q Mrs. Delozier, are you absolutely certain that the
9 person you identified as Captain Hazelwood from a quarter to
10 2:00 until the time you left at a quarter to 3:00?

11 A Absolutely positive.

12 Q Uh-huh.

13 Incidentally, did you hear these men talking with
14 each other?

15 A No, sir, I did not.

16 Q But you heard someone, this person you identified as
17 Captain Hazelwood, yell up to the other person, is that
18 correct?

19 A He intended for his friend to hear him, and his
20 friend was three feet from me.

21 Q Uh-huh.

22 Did you hear any names spoken? Did anybody call the
23 other by any names?

24 A No, sir, not the word captain, not the word master,
25 not the word Hazelwood, no, sir, no names. I heard no names

1 from either of the --

2 Q And he didn't call the other person by name?

3 A No, sir, he did not.

4 Q Is there a particular reason why you would remember
5 a detail like crow's feet of a person you never met before?

6 A No. I have a strange memory. That is also on the
7 tape. That is why I have been very good at both of my past
8 two medical jobs, is I have a history of a good memory. It's
9 like recall.

10 Q Now you called it a weird memory, didn't you?

11 A Uh-huh.

12 Q Yet when you were talking about a friend of your's
13 whose brother committed suicide right around that time --

14 MR. COLE: Your Honor, I am going to object to this.
15 Relevance.

16 THE COURT: Why don't you come on up here and let's
17 deal with this on the side bench, first of all.

18 (An off the record bench conference was had.)

19 THE COURT: Objection overruled.

20 BY MR. CHALOS: (Resuming)

21 Q Mrs. Delozier, you say that you have this fantastic
22 weird memory --

23 A At times.

24 Q But you were asked -- you were talking in your
25 interview about a friend of your's whose brother committed

1 suicide. Do you remember that?

2 A Uh-huh.

3 Q And you said that you thought she was in there that
4 day as well. But then you couldn't remember whether it was
5 that day or a previous day or a later day, right?

6 A Right. I am not good with hand languages so you'll
7 have to tell me what you want me to answer.

8 Q Okay. Was there a particular reason why you have
9 this fantastic memory but couldn't remember that event?

10 A Just exactly what I said in the tape. I did not
11 want to name her and then turn out it be that she wasn't
12 there. I have coffee at the Pipeline a lot. My face and my
13 white uniform are seen there a lot. It could have in fact
14 been Tuesday the 22nd that Miss Lisman walked up to me crying.
15 It could have in fact been the Wednesday. It could have been
16 Wednesday the 22nd that me and my husband sat on the sofa that
17 evening and said did you hear about the suicide. I, one
18 hundred percent, beyond the shadow of a doubt, cannot say that
19 Nikki Lisman was there.

20 Q I see. You can't remember.

21 A That has nothing to do with how well I remember one
22 incident and not the next.

23 Q And you couldn't remember eight days later whether
24 it was that day or the previous day or some other time?

25 A To put it down on a tape for State evidence, no,

1 sir, I could not.

2 Q Uh-huh.

3 A And you'll notice, that is the only person that I
4 had trouble relating to as being there.

5 (Pause.)

6 Q Miss Delozier, has it ever occurred to you that you
7 might be mistaken in the identity of Captain Hazelwood?

8 A It has occurred to me sir, yes, sir, it has.

9 Q Well, what have you done to verify that the man you
10 saw was Captain Hazelwood?

11 A What have I done?

12 Q Yes, I mean did --

13 A Nothing to verify --

14 Q There were other witnesses in that bar on that
15 particular day, but you didn't talk to any of them to see if
16 their recollection was the same as your's, did you?

17 A No, sir, I didn't. I didn't feel like I had to.

18 Q Well, if you had doubt, wouldn't the logical thing
19 to do would --

20 A When did I say I had doubt?

21 Q -- be to ask the other people who were there with
22 you?

23 A When did I say I had doubt? I know who I saw.

24 Q Uh-huh.

25 A I just said a few minutes ago a hundred percent it

1 was the same man as the picture, the same man sitting to my
2 right.

3 Q And you have no doubt about that at all?

4 A Whatsoever.

5 Q Fine.

6 Or the time that he was in there?

7 A Whatsoever; none. I wouldn't be sitting here under
8 oath if I had those doubts.

9 Q Now you said before you left you thought you saw a
10 third person there?

11 A The back side of a third person, yes, sir.

12 Q But you didn't say that in your statement, did you?

13 A Not on the 4th. On January the 30th when the
14 gentleman was in Valdez, I said -- he said, two, we're talking
15 two people here. I said in that interview possibly --
16 definitely two, possibly three.

17 Q What 30th are you talking about?

18 A 30th of January when the new State Trooper came to
19 my home.

20 MR. CHALOS: Your Honor, may we approach the Bench?

21 THE COURT: I think we'll take a break about now.
22 We've been at it for a while, so we'll take a little recess,
23 about ten or fifteen minutes. I'll take up the matter with
24 counsel outside of your presence. Don't discuss the matter in
25 any fashion and don't form or express any opinions. Mr.

1 Purden will give you a key and we'll call you back after the
2 break.

3 (Whereupon, the jury leaves the Courtroom.)

4 THE COURT: Mr. Chalos?

5 MR. CHALOS: Do you want her to step outside?

6 THE COURT: No, I think we need to find out if there
7 has been another statement taken here. Go ahead.

8 MR. CHALOS: Your Honor, I haven't seen any reports
9 of an investigator interviewing Mrs. Delozier on the 30th. I
10 wanted to get into who this investigator was and whether there
11 were any notes made. But we haven't seen it.

12 THE COURT: But let's make sure what happened.

13 You say you were interviewed on the 30th of January.
14 That would be about a week ago?

15 THE WITNESS: A week ago yesterday, sir.

16 THE COURT: Was it a tape recorded interview or --

17 THE WITNESS: No, sir, it was on a yellow legal pad.

18 THE COURT: Okay. Who was the person that
19 participated in the interview?

20 THE WITNESS: James -- I can't pronounce his last
21 name -- starts with an S, he's a State Trooper.

22 MR. COLE: Stogsdill.

23 THE COURT: Okay. Then he took notes, did he?

24 THE COURT: Yes, sir. I asked him why we were
25 rehashing this, and he said something to the effect -- now

1 once again, he said something to the effect of -- I said I
2 have already done this. I even named the men that I had went
3 through this with and he said something about he was doing it
4 again. He was given the case to redo again, or taking some
5 notes because maybe some of them earlier were taken too soon,
6 or I did not get the gist of it. I just cooperated. I did
7 ask for ID, he did show it to me. It was at my home.

8 THE COURT: Now try to just answer my questions if
9 you can. Did you notice if there was a tape recorder present?

10 THE WITNESS: There was no tape recorder, sir.

11 THE COURT: Did you sign anything?

12 THE WITNESS: No, sir, I did not. That I can
13 remember.

14 THE COURT: Did he read anything back to you after --

15 THE WITNESS: Kind of went over the same things that
16 I had related to the State Trooper and the FBI last April.

17 THE COURT: Anything further.

18 MR. CHALOS: Yes, on this point, your Honor.

19 THE COURT: Go ahead.

20 MR. CHALOS: I wanted to know if her husband was
21 present during this meeting.

22 THE WITNESS: No, sir, my husband was --

23 THE COURT: Anybody else present besides you and
24 Trooper Stogsdill?

25 THE WITNESS: No, sir, there sure were not; no one.

1 MR. CHALOS: And during this interview, did you play
2 back the tape of the previous interview?

3 THE WITNESS: No, sir, I did not.

4 MR. CHALOS: Did he show you a copy of your previous
5 statement?

6 THE WITNESS: Not to me, sir. He had a yellow legal
7 pad that sometimes he would flip back over to his own notes.
8 He did not show me anything typed on white paper, no, sir.

9 MR. CHALOS: Did you have a copy of your statement?

10 THE WITNESS: No, sir, I have never seen a copy of my
11 statement.

12 MR. CHALOS: Your Honor, we call for the production
13 obviously of any notes that might have been made of that
14 interview. We haven't been provided with anything.

15 THE COURT: Mr. Cole?

16 MR. COLE: My understanding is -- I don't know. I
17 assume that it was just witness preparation.

18 THE COURT: Produce the notes.

19 MR. COLE: Okay.

20 THE COURT: I think it is fair that the counsel have
21 these notes before they cross examine this witness.

22 MR. COLE: Okay.

23 THE COURT: So is Stogsdill around someplace? I
24 think I saw him in here yesterday.

25 MR. COLE: He's out getting the next witness who is

1 arriving at 10:30 from Valdez.

2 THE COURT: Okay. We'll take our break and you can
3 get the notes from him now and then we'll just resume cross
4 examination of the witness.

5 THE CLERK: Please rise. This Court stands in
6 recess.

7 (Whereupon, a recess was taken from 10:34 o'clock
8 a.m. until 11:07 o'clock a.m.)

9 (Whereupon, the jury enters the Courtroom.)

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

11 You may resume.

12 MR. CHALOS: Thank you, your Honor.

13 BY MR. CHALOS: (Resuming)

14 Q Mrs. Delozier, do you recall giving an interview to
15 Mr. Stogsdill, the State investigator, on January 30th?

16 A Yes, sir.

17 Q That's about a week ago, you say?

18 A A week ago yesterday.

19 Q Uh-huh.

20 Do you remember the investigator asking you if you
21 had any discussions with Miss Hoots about her identifying
22 Captain Hazelwood?

23 A I told him who the bartender was. I really can't --
24 I don't remember him asking me.

25 Q Do you remember telling him that Lisa didn't know

1 Captain Hazelwood?

2 A No, I don't remember telling him that.

3 Q Well, he has that in his notes. Do you know why he
4 would put that in his notes? And you don't recall speaking to
5 Lisa about whether she recognized the same picture that you
6 saw as being Captain Hazelwood?

7 A No, sir, I don't recall that. I don't recall asking
8 her if she recognized the picture.

9 Q And you told Mr. Stogsdill again that the hat that
10 this person had had a snap in the front, didn't you?

11 A Appeared to be snapped, yes, sir.

12 Q Uh-huh.

13 Now, did you tell Mr. Stogsdill that you arrived --
14 I'm sorry, Mr. Stogsdill -- did you tell him that you got to
15 the Pipeline Club at 12:30 and left at 1:30 to go back to your
16 job?

17 A I did.

18 Q You did?

19 A Uh-huh.

20 Q But that's different that what you testified here
21 today.

22 A Well, I did not -- yes, sir, nine months past the
23 date, I did make that mistake. He did -- in his office Friday
24 he did tell me that before we get to Court we need to clarify
25 this one way or the other which is why I went to my past

1 employer, drug out last year's books, and Xeroxed it, and --

2 Q Last week you remembered it being 12:30 to 1:30, but
3 now it's 1:20 to 2:45, is that right?

4 A When they're not busy at the dental office it is not
5 uncommon to go to lunch at an earlier hour. We don't
6 generally get two hours. Therefore, I made the mistake of
7 saying yes, it was a day that we went an hour earlier. But he
8 did tell me to try to clarify that before we came to Court,
9 which is what I did yesterday morning.

10 Q Did Mr. -- the State investigator tell you that the
11 time 12:30 to 1:30 that you told him was wrong?

12 A He told me we needed to clarify it.

13 Q He told you to go back and clarify it in your mind?

14 A He said that according to my first tape, 4th of
15 April, that in fact stated one time and that I said to him I
16 stated another time. He wanted to get that clear before we
17 started Court proceedings.

18 Q He suggested that to you?

19 A To do it one way or the other.

20 Q Now, you mentioned to the investigator that you went
21 back to the Pipeline Club, and according to his notes, you
22 said Irma Lee actually waited on him that night. What are you
23 talking about, that night?

24 A He asked me -- the investigator asked me, Jamie, you
25 did see him at darts that night. I emphatically corrected

1 that because I did not see him at darts that night.

2 Q Who?

3 A The investigator -- I did not see Mr. Hazelwood, and
4 I wanted the State Trooper to understand that.

5 Q How did you know that Irma Lee actually waited on
6 him that night?

7 A How did I know?

8 Q Right.

9 A Just, the bartender on duty, rumor that he was in
10 the building after the time that I saw him. I know I saw him.
11 I can't speak after fifteen 'til 3:00, sir.

12 Q But you did say to the investigator that you knew
13 that Irma Lee waited on him that night, didn't you?

14 A Yes, I did.

15 Q Did you speak to Irma Lee?

16 A After the oil tanker incident?

17 Q Yeah.

18 A Yes, I did.

19 Q And did you show her the picture that you --

20 A No, I did not, sir. She was approached by several
21 State people.

22 Q Did you discuss your seeing Captain Hazelwood that
23 day with Irma Lee?

24 A No, I did not. And I don't carry a picture of Mr.
25 Hazelwood with me to show to people.

1 Q But you did take the time to talk to Irma Lee and
2 find out what she knew, didn't you?

3 A No, sir, I did not. It was brought to my attention
4 through general public that she was the bartender that was
5 working that night.

6 Q The general public usually approaches you with
7 information?

8 A No, sir. It's a small town. You don't have to ask
9 things. I work at the dental office. I see twenty-two people
10 a day.

11 Q And you speak with a lot of people, no doubt?

12 A No doubt.

13 Q And you told them about how you saw Captain
14 Hazelwood in the bar?

15 A No, sir, I did not. We're talking about Irma Lee.
16 No, sir, I did not tell anyone. I probably spoke with Lisa
17 Hoots. I told my husband. My husband took it upon himself to
18 let me think about it a couple of days as to what I wanted to
19 do with my knowledge. We did not jump in the car and go
20 straight to his office, sir.

21 Q Now you got to the Pipeline Club that evening about
22 7:00 o'clock, you say?

23 A 7:15.

24 Q Uh-huh.

25 And you didn't see Captain Hazelwood in there at

1 7:15?

2 A No, sir, I did not.

3 Q Who's Anita Steinmetz?

4 A She's a local girl that plays darts and works at the
5 local hospital there, the hospital for the handicapped, not
6 the regular hospital.

7 Q She play on your team?

8 A No, sir, she does not.

9 Q She plays on an opposing team?

10 A Yes, sir.

11 Q Uh-huh.

12 Was she there that particular evening?

13 A Her team was the one that we were playing against.

14 Q Did they get there about the same time you got
15 there?

16 A A lot of people go in as much as an hour early and
17 take their practice shots.

18 Q I understand that. But was she there about the same
19 time you were there?

20 A I did not see her when I got there at 7:15.

21 Q She came in later?

22 A I do not know when Anita arrived.

23 Q But you told the investigator that Anita Steinmetz
24 was on the opposing team that night. She was sitting near
25 Hazelwood was sitting. That --

1 A Her table, sir, is the high top --

2 Q Yeah.

3 A -- which I said earlier, the team right here would
4 be here, I would be here, Mr. Hazelwood is there. It is --
5 generally you can tell. Usually her table would be closer.

6 Q And did Anita Steinmetz see Captain Hazelwood?

7 A I do not know if she did or not. She has never told
8 me that she did.

9 Q Well, why did you tell the investigator that she was
10 sitting near Hazelwood?

11 A Nearer than myself, if he was there. I never
12 brought the name Anita Steinmetz up, sir. The investigator
13 did.

14 Q Did you speak to Anita Steinmetz?

15 A No, sir, I did not.

16 Q Now, you told us today that you went to the flower
17 shop on Monday or Tuesday and saw the Anchorage Times.

18 A Right.

19 Q You told the investigator a week ago that it was
20 Saturday.

21 A Or a couple of days later than Saturday. I did tell
22 him Saturday or possibly a couple of days later.

23 Q have you seen a copy of the notes?

24 A Briefly. Have not read it. It was handed to me
25 before they called me in here. First time I have had a chance

1 to look at it. I did not read it. I didn't have time to read
2 it.

3 Q Just now?

4 A Before I came in here. It's folded into my book,
5 just like I put it.

6 Q You were handed a copy of these notes just before
7 you came on the stand?

8 A Yes, sir.

9 Is that not allowed? I said it.

10 THE COURT: Just respond to questions. Don't be
11 volunteering things, please.

12 BY MR. CHALOS: (Resuming)

13 Q Now, I asked if you had any conversations about
14 Captain Hazelwood with Emily Kaiser. Do you recall that?

15 A Uh-huh.

16 Q And you told me you didn't.

17 A Hmm.

18 Q It says here Emily told Jamie about him buying
19 flowers.

20 A After the investigation had started, she said to me
21 that several personnel -- I assume she meant personnel from
22 different facilities -- had asked her about a credit card slip
23 and flowers. I did not go in and say, let's talk about Mr.
24 Hazelwood.

25 Q Now, Mrs. Delozier, I asked you if you had any

1 conversations with Miss --

2 A She had the conversation with me, sir, I didn't --

3 Q Oh, I see. We're making a distinction between you
4 having a conversation and she having a conversation with you,
5 is that right? In other words, if I asked you if you had a
6 conversation, that doesn't take into the possibility that
7 someone may have spoken to you, is that how you understand it?

8 A I wouldn't take it that way. I took it that you
9 were wanting me to say that I talked to all my friends about
10 the picture.

11 Q Did Miss Kaiser tell you -- what did Mrs. Kaiser
12 tell you about the flowers?

13 MR. COLE: Objection; hearsay.

14 THE COURT: Just a second before you answer. What
15 did Mr. Kaiser -- Miss Kaiser say about the flowers, is that
16 your question?

17 MR. CHALOS: The purchasing of the flowers.

18 THE COURT: Sounds like it's hearsay to me.

19 MR. CHALOS: I'll withdraw the question.

20 BY MR. CHALOS: (Resuming)

21 Q What discussions did you have with Mrs. Kaiser about
22 Captain Hazelwood being in her shop?

23 A I believe -- and I use the word believe -- that the
24 State people and possibly some of the Coast Guard personnel
25 were trying to track the chain of events. I do a lot of

1 flower buying and giving with Miss Kaiser. If I remember
2 correctly I believe --

3 MR. CHALOS: Your Honor, I move to strike as non-
4 responsive.

5 BY MR. CHALOS: (Resuming)

6 Q My question was, what specific conversations did you
7 have with Mrs. Kaiser?

8 A I was getting flowers for a Secret Sister which is
9 part of a club for ladies. As I was getting the flowers, I do
10 believe she said to me --

11 MR. COLE: Objection, your Honor. Mr. Chalos'
12 question is vague and calls for hearsay.

13 THE COURT: If you have some exception you're
14 thinking this might come under, if you would draw it to my
15 attention. Otherwise, it sounds like whatever she was told by
16 this other person would be hearsay.

17 MR. CHALOS: Well, let me approach it a different
18 way, your Honor.

19 THE COURT: Okay. Objection sustained.

20 MR. CHALOS: I'll withdraw the question and go on to
21 something else. We can pick it up later.

22 BY MR. CHALOS: (Resuming)

23 Q Now you told Mr. Stogsdill a week ago that you
24 closed the dental office between 12:15 and 2:00 p.m., is that
25 right? Is that right?

1 A No, sir.

2 Q You didn't tell him that?

3 A I think I said we closed at 12:15 which should have
4 been 1:15, and I think I told him we went back to open close
5 to 2:00 o'clock, which in fact should have been close to 3:00
6 o'clock. I had the whole thing off by approximately an hour.

7 Q So as of a week ago you couldn't remember what time
8 you left the dental office and what time you got to the bar
9 and what time you left the bar.

10 A No, sir, after I made the -- no, sir. Not in nine
11 months time. I sure said it wrong, I sure did.

12 MR. CHALOS: Your Honor, I would like to approach the
13 Witness, with your permission.

14 BY MR. CHALOS: (Resuming)

15 Q I would like to show you what we have marked
16 Defendant's Exhibit E for identification, and ask you is this
17 the diagram you drew for the State investigators back in
18 April?

19 A Yes, sir.

20 Q Is that your handwriting?

21 A Yes, sir.

22 Q Is that your signature?

23 A Yes, sir.

24 MR. CHALOS: Your Honor, I move for its admission
25 into evidence.

1 MR. COLE: Nothing.

2 THE COURT: Pardon me?

3 MR. COLE: I have no objection.

4 THE COURT: Thank you. It is admitted.

5 (Defendant's Exhibit E was
6 received in evidence.)

7 BY MR. CHALOS: (Resuming)

8 Q Mrs. Delozier, you are absolutely sure that the
9 person you saw at the Pipeline Club on March 23rd was a male,
10 five foot nine, about a hundred sixty pounds, in his mid-
11 fifties, wearing a snap cap, and was there from about 1:25 to
12 2:45 while you were there. Are you absolutely sure of all
13 that?

14 A Yes, sir.

15 MR. CHALOS: I have no further questions, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. COLE:

18 Q Are you absolutely sure that that person is sitting
19 right here in this Courtroom?

20 A Yes, sir, I am.

21 Q The notes that you received today, when did you get
22 those notes?

23 A Prior to us walking in the door. It was handed to
24 me by yourself today, sir.

25 Q Was that this morning or --

1 A No, sir. As we came back from the adjournment.

2 Q You said that you made a mistake about a shot glass.
3 Would you tell the jury what that was?

4 MR. CHALOS: Objection, your Honor. I don't remember
5 that.

6 THE COURT: Objection overruled. I remember that.

7 THE WITNESS: A shot glass, sir, is generally what an
8 untrained bartender pours the drink with. If you do bourbon
9 and coke, you do a shot of bourbon and the rest coke. I said
10 shot glass in my interview on the 4th.

11 BY MR. COLE: (Resuming)

12 Q When you were referring to what?

13 A To what Mr. Hazelwood ordered and drank.

14 Q Okay.

15 What actually did you see?

16 A There was not a shot glass involved. He drank vodka
17 on the rocks, which Miss Hoots did pour in a rocks glass.

18 Q And do you remember the brand of vodka that he
19 ordered that day? Was it a particular type by name?

20 A What he wanted and did not get the first time?

21 Q Right.

22 A Yes, sir, I do.

23 Q What was that?

24 A Smirnoff.

25 Q And when you spoke with Investigator Stogsdill back

1 in January, when was the last time you had talked to anyone
2 about the facts of this case prior to that?

3 A The 4th of April.

4 Q Did Investigator Stogsdill show you any notes or
5 transcripts or have you listen to a tape before he asked you -

6 -

7 A No, sir, he did not.

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

9 MR. CHALOS: Your Honor, we have no further questions
10 of this witness. I would, for the record, renew my objection
11 to the witness having been shown a picture of Captain
12 Hazelwood before she made the in Court identification. I
13 think by showing the picture, Mr. Cole tainted the in Court
14 identification, and I would move to strike any testimony
15 relating to the in Court identification of Captain Hazelwood.

16 THE COURT: In the future if you are requesting
17 reconsideration of an earlier ruling, as I have told you
18 before, just place it in writing. I have already ruled on
19 that subject. Your application is denied again.

20 You want me to excuse the witness?

21 MR. CHALOS: Yes, I have nothing further.

22 THE COURT: You are excused.

23 (The witness was excused.)

24 MR. COLE: Your Honor, at this time the State would
25 call Gretchen Dunkin.

1 THE COURT: Would counsel approach the bench for a
2 minute, please. Mr. Madson, would you come up please.

3 (An off the record bench conference was had.)

4 Whereupon, GRETCHEN MARIE DUNKIN
5 called as a witness by counsel for the State of Alaska, and
6 having been duly sworn by the Clerk, was examined and
7 testified as follows:

8 THE CLERK: Ma'am, would you please state your full
9 name and then spell your last name?

10 THE WITNESS: Gretchen Marie Dunkin, D-U-N-K-I-N.

11 THE CLERK: And your current mailing address, ma'am?

12 THE WITNESS: Post Office Box 204, Valdez, Alaska.

13 THE CLERK: And your current occupation?

14 THE WITNESS: Administrative assistant for the Alaska
15 Maritime Agencies.

16 THE COURT: You may inquire.

17 DIRECT EXAMINATION

18 BY MR. COLE:

19 Q Miss dunkin, can you tell the jury what your
20 responsibilities are at the Alaska Maritime Agencies?

21 A Basically clerical. I remain in the office from the
22 hours of 8:00 to 4:30 in the afternoon.

23 Q What time do you take lunch?

24 A Between 1:00 and 2:00.

25 Q Do you remember working on March 23rd, 1989?

1 A Yes, I do.

2 Q Did you see Captain Hazelwood that day?

3 A Yes, I did.

4 Q When did he come in to the office?

5 A Well, it was late in the morning, between 11:00 and
6 11:30 maybe.

7 Q And do you remember if he came with other people?

8 A I know there was one other person with him at least.

9 Q Do you remember who that was?

10 A No, I don't.

11 Q What time -- about how long did he stay there?

12 A Until just about noon, I believe.

13 Q And did he say he was going to lunch or do you know
14 what he did after that?

15 A I think while he was there that I received a
16 telephone call from Ed Murphy and I related to Captain
17 Hazelwood that Captain Murphy was going to pick him up. I
18 think had a lunch date.

19 Q Did you end up seeing Captain Hazelwood at all later
20 on in the day?

21 A Yes, I saw him after I got off work at 4:30.

22 Q And where did you see him at?

23 A At the Pipeline Club.

24 Q Do you remember who he was with there?

25 A I think he was with the same gentleman that came

1 into the office with him.

2 Q How did you get to the Pipeline Club that day?

3 A I drove my car from the office.

4 Q Would you have gone directly there?

5 A I did go directly there.

6 Q How long did it take to get to the Pipeline Club?

7 A Well, I don't -- a minute and a half, two minutes.

8 Q And would you tell the jury -- if you could point,
9 there's a diagram there. Could you tell the jury where you saw
10 Captain Hazelwood when you got off work that day?

11 A I came in this doorway here, and I think Captain
12 Hazelwood would have been right here or here, in that area.

13 Q And were there any glasses on the table?

14 A I believe that there were glasses.

15 Q Can you give the jury an idea of how many glasses
16 were in front on the table?

17 A Well, certainly not exactly, but there was probably
18 between two and five. I don't know, they could have been --

19 Q Do you remember how many people were there at the
20 time with him?

21 A I know there were two for sure, but there may have
22 been three.

23 Q Why did you go there?

24 A I went there because upstairs from the Pipeline Club
25 there was a fellow who was preparing our taxes. He has an

1 office up there, and I had either to drop something off or
2 pick something up. And when I pulled into the parking lot I
3 noticed a car that belonged to a friend of mine, and I assumed
4 that that friend was in the bar, and so I went in to say hello
5 to her.

6 Q How long were you there?

7 A Not very long. Three -- three minutes, four
8 minutes.

9 Q And did you talk to Captain Hazelwood?

10 A Yes.

11 Q What did you talk about?

12 A Earlier in the day I -- during the conversation in
13 the office I had mentioned to the Captain that it was my
14 league dart night and when I went into the bar he asked me
15 where my dart team was. And I explained to him that the match
16 didn't begin until 7:30 in the evening and that we weren't
17 playing at the Pipeline Club that night, we were playing
18 across the street.

19 Q And when you were talking with him, were the glasses
20 sorted out across the table or were they in any particular
21 place, the glasses?

22 A I don't remember.

23 Q And then you left the Pipeline Club after that?

24 A Yes.

25 Q Did you end up coming back later?

1 A Not to the Pipeline Club, no.

2 MR. COLE: I have nothing further, your Honor.

3 CROSS EXAMINATION

4 BY MR. MADSON:

5 Q Miss Duncan, you were interviewed by a State
6 Trooper, were you not, with regard to this incident?

7 A Just recently?

8 Q Yeah.

9 A Yeah.

10 Q In any event, ma'am, you said that you left work and
11 -- well, let me back up. Let's go back to the beginning. You
12 said you saw Captain Hazelwood around 11:30 to noon that day?

13 A Uh-huh.

14 Q With some other gentleman?

15 A At least one.

16 Q Do you recall seeing his demeanor, everything at
17 that time?

18 A Yes, I do.

19 Q Is it true ma'am, that you didn't see any
20 indications that he had been drinking or was under the
21 influence of alcohol at that time?

22 A No, there were no indications.

23 Q And you said you got off at what time from work?

24 A 4:30.

25 Q And went over to the Pipeline Club?

1 A Yeah.

2 Q Getting back to your interview with the State
3 Trooper, the recent one, you said you arrived there about
4 4:40, is that approximately correct?

5 A Probably by the time I went upstairs and did
6 whatever I had to do up there it was probably 4:40.

7 Q So about ten minutes to 5:00 you came in the
8 Pipeline Club and you said you saw Captain Hazelwood with at
9 least one other gentleman that you recognized from the noon --
10 or the noontime incident, right?

11 A I believe so.

12 Q And you said there might have been others with him?

13 A There may have been one other person.

14 Q I take it this event wasn't terribly significant or
15 important to cause you to really remember exactly what
16 happened at that time?

17 A No, it wasn't significant at all.

18 Q Now you identified the table that he was sitting at
19 there ma'am, and of course the record doesn't really show
20 which one. On looking at that diagram, there is a bar and it
21 says cash register there, right?

22 A Yes.

23 Q If you go directly downward on that chart, there are
24 two tables almost in a direct line between there and the juke
25 box, correct?

- 1 A The two little tables? These two?
- 2 Q No, the big tables.
- 3 A These two.
- 4 Q Yeah.
- 5 A Okay.
- 6 Q And you pointed to the one nearest the bar, correct?
- 7 A Yes.
- 8 Q That's where they were sitting at?
- 9 A Yes; yes.
- 10 Q Do you remember which chair he was sitting in at
11 all? Where he was facing?
- 12 A Well, I believe he was on this side of the table.
- 13 Q Now when you say this side, that is the side that
14 would be more facing the bar of those chairs, the way they are
15 described there?
- 16 A Well, his left side would have been to the bar. His
17 face would have been towards this wall, I think.
- 18 Q When you say towards the wall, that would be the
19 wall to the right in that diagram, correct?
- 20 A Yes.
- 21 Q Where it says restaurant and kitchen?
- 22 A Correct.
- 23 Q You just have a short conversation, a minute or two?
- 24 A Very short.
- 25 Q Did you get -- I mean, have that conversation within

1 two or three feet of him?

2 A Yes, I think so.

3 Q And let me ask you ma'am, did his demeanor and
4 everything appear to be the same at that time at 4:40 as it
5 did at noon?

6 A Pretty much. He seemed to be relaxed.

7 Q Just appeared to be having a conversation with his
8 friends?

9 A Yes.

10 MR. MADSON: Thank you, ma'am. I don't have any
11 other questions.

12 MR. COLE: Judge, I have nothing further.

13 THE COURT: May the witness be excused?

14 MR. COLE: Yes.

15 MR. MADSON: Yes, your Honor.

16 THE COURT: You are excused. Thank you.

17 (The Witness was excused.)

18 THE COURT: Mr. Cole, have you run out of witnesses
19 for the day?

20 MR. COLE: Yes.

21 THE COURT: Okay.

22 All right, as we indicated earlier, yesterday, ladies
23 and gentlemen, not all the witnesses are available today. But
24 I am told that we will be able to proceed with enough
25 witnesses to fill up the trial days from now on. So we won't

1 be recessing early, I don't expect. In the meantime, I am
2 going to let you go until tomorrow morning at 8:30.

3 Don't discuss this case with any person including
4 among yourselves, and don't form or express any opinions. I
5 think if you think of the reasons behind those instructions it
6 will become real clear why they are given. And please avoid
7 the media, as I have indicated before. Have it screened.

8 I'll see you tomorrow morning. Be safe.

9 (Whereupon, the jury leaves the Courtroom.)

10 THE COURT: Anything else we can take up?

11 MR. LINTON: Your Honor, in the course of the
12 defense's opening statement he made reference to --

13 THE COURT: You're going to have to speak up louder.
14 I have been told on several occasions your voice is so soft we
15 don't make the record sometimes when you speak. And if you
16 want to get behind the podium or get closer to a mike, that
17 might help.

18 All right, Mr. Linton.

19 MR. LINTON: Judge, there is a dispute between the
20 prosecution and the defense as to what under your Honor's
21 ruling may be played of the tape recordings of the
22 transmissions between the Coast Guard station and the Exxon
23 Valdez in the early morning hours of the 24th. The problem
24 came up particularly when -- in opening statements the defense
25 referred to two things. First, the fact that Captain

1 Hazelwood spoke the words that we are aground and leaking some
2 oil. That was the kind of thing which the Court had ruled
3 would not properly be admitted by the State, but the defense
4 raised it in its very opening statement. Normally that would
5 be considered opening the door to the prosecution and
6 introducing that in evidence. That is, having been suppressed
7 once when the defense makes express reference to it,
8 presumably they are doing so in a knowing fashion, recognizing
9 the Court's rule in choosing to insert evidence which they had
10 complained about earlier and now are presumably no longer
11 complaining about --

12 THE COURT: Is there still a dispute about that now
13 at this time, do you know?

14 MR. LINTON: There is. We conferred this morning
15 before -- just before 8:30 or around 8:30.

16 THE COURT: Is that correct, Mr. Madson, is there a
17 dispute even though you made that statement in your opening
18 statement?

19 MR. MADSON: Yes, your Honor. We're not entirely
20 sure, or at least I am not, what exactly the dispute is. I
21 thought Mr. Linton was talking about the conversations between
22 the Exxon Valdez and the -- or rather Commander McCall after
23 the grounding. That's what we were -- I thought we were
24 discussing.

25 THE COURT: Let's take one thing at a time. In your

1 opening statement, you indicated that Captain Hazelwood called
2 and said we're aground and leaking some oil. I remember that
3 and I even put a star along side of it because it rather
4 surprised me since I had suppressed that. Now, is there a
5 dispute as to whether or not that is going to come in evidence
6 at this point?

7 MR. MADSON: I don't have any problem with it at all.
8 We're not waiving our objection, your Honor, but we have made
9 it and the Court ruled on it, and if -- I don't think that
10 it's -- that that statement by itself means anything. Our
11 objection earlier on was to the immunity question, not the
12 context of his statement.

13 THE COURT: Okay. I suppressed that statement. I
14 determined that that was a statement that Captain Hazelwood
15 was immune from that particular statement. My ruling went to
16 events that took place after that that were inevitably to be
17 discovered. And I also ruled that his statement that we're
18 evidently leaking some oil is not admissible, but that his
19 statement that there was a grounding constituted an
20 independent source of the investigation.

21 So the statement you made in opening that Captain
22 Hazelwood called and said we're leaking some oil, appeared to
23 me to be waiving at least to the extent that you made that
24 statement in front of the jury, any objection to that
25 particular statement coming in evidence. Now do you object to

1 that particular statement coming into evidence?

2 MR. MADSON: No, sir. We object to everything that
3 came after that statement.

4 THE COURT: All right. So that resolves that
5 particular statement.

6 MR. LINTON: Judge, then -- I have actually a copy of
7 the transcript so I can refer the Court to the specific point
8 -- the -- the statement we have been referring to appears on
9 the first page of what I handed your Honor. It is marked page
10 18346 of the discovery. The second controversial part appears
11 on a page marked 18350, the final page in the packet.

12 THE COURT: All right.

13 MR. LINTON: That shows that at 1:07 the Captain of
14 the Port, Mr. McCall, Commander McCall, called the Exxon
15 Valdez, and spoke to him about the subject of, among other
16 things, whether the Exxon Valdez was going to stay on or try
17 to get off the reef.

18 That falls after the 12:45 time, but there were
19 points in the pre-trial hearings where the defense sought to
20 treat that as part of the initial report. If you recall, Mr.
21 Friedman, when he had his chart of the things which
22 constituted the original report, claimed that the statement
23 that there had been some trouble with the third mate, was part
24 of the initial report. It is in this communication that
25 Captain Hazelwood, in the fourth entry, e.v., not at the

1 present, ah, Steve, or ah, a little problem here with the
2 third mate, but we're working our way off the reef, was the
3 quotation that was causing the defense to treat that as part
4 of the initial report.

5 However, having listened to Mr. Madson's opening
6 statement, it appears that he wishes to place in evidence the
7 communication between Commander McCall and Captain Hazelwood,
8 which is reflected on page 18350 that is before your Honor.
9 That comes after the cut off time that your Honor had
10 specified and it has now in addition been referred to
11 expressly in opening statement by the defense. Therefore, I
12 would submit that that would properly be played for the jury,
13 too.

14 THE COURT: All right.

15 Mr. Madson, do you recall whether you referred to
16 this in your opening statement?

17 MR. MADSON: I didn't refer to the tape, your Honor.
18 We had no intention of playing the tape.

19 THE COURT: But did you refer to the contents on
20 18350 where Captain Hazelwood referred to attempting to get
21 the vessel off the reef?

22 MR. MADSON: Yes, and what we are going to do there,
23 what I said and I told the jury in my opening -- maybe it
24 didn't come across that clear -- but we intend to call
25 Commander McCall. He is under subpoena right now. And we

1 would ask him these questions of what transpired. But the
2 tape, if it could be used at all, may be for possibly for
3 impeachment. We weren't going to introduce the tape, but we
4 certainly were going to call -- your Honor, I think the Court
5 has to understand one thing here. Because of the Court's
6 ruling, it placed us in a real position here. We still have
7 to defend Captain Hazelwood. And the Court says well, this is
8 all that is really suppressed, as I understood it, was that --
9 basically that statement. So we still have to come across
10 and present a defense as to what happened after the grounding.
11 And one of the main witnesses here was, of course, Commander
12 McCall, who's talking with him, and we believe will testify as
13 to what he understood by those communications. And in fact
14 will state what he believes Captain Hazelwood did, what he was
15 trying to do, which is contrary to State's position. But we
16 weren't trying to use the tape for that.

17 We may have some real problems with that tape. We
18 have -- I think it is being looked at right now. That's the
19 one we were talking about earlier, you know, we raised the
20 Court's attention trying to get somebody to listen to it. But
21 basically we want to use McCall just as a witness.

22 THE COURT: Are you going to ask Commander McCall
23 what Captain Hazelwood told him when they had the
24 communications?

25 MR. MADSON: I think that would be necessary.

1 THE COURT: Now isn't the tape the very best of that
2 evidence --

3 THE COURT: I think it's hearsay.

4 THE COURT: -- of what was said?

5 MR. MADSON: No, your Honor. It's hearsay.

6 THE COURT: Well, there's no question that it -- it
7 may or may not be hearsay if it's an admission -- I mean, this
8 goes to the very root of part of the State's case on what the
9 Captain did after he was on the reef. And the jury is going
10 to be presented the question of whether or not that was
11 reckless to try to take a vessel off the reef that had been
12 holed. And that would constitute an admission, and under our
13 rules, that doesn't constitute hearsay.

14 MR. MADSON: Well, your Honor, just yesterday I think
15 we tried to interdict something on that line and it was ruled
16 to be hearsay, a statement by Captain Hazelwood. So I get a
17 little puzzled as to when it is and when it isn't.

18 THE COURT: Well, Mr. Madson, I would suggest you
19 check the rules out. When you try to introduce a statement of
20 your defendant, it may very well be hearsay under agony and
21 not permitted, but when it comes in by the State it comes in
22 for a different purpose as an admission. Not exculpatory;
23 inculpatory.

24 MR. MADSON: Well, I agree, and it still can be
25 construed as admission whether we introduce it or not. But

1 getting back to that, I still feel that we aren't going to
2 introduce the tape, we never intended to. But I think we are
3 certainly entitled to call Captain McCall as a witness.

4 THE COURT: I don't know if that is the issue here.
5 The question is whether the State can introduce this tape. I
6 think that's the issue. Is that right, Mr. Linton?

7 MR. LINTON: Precisely, your Honor.

8 MR. MADSON: Well, we object to the introduction of
9 that tape.

10 THE COURT: On the grounds of hearsay, is that
11 correct?

12 MR. MADSON: Yes.

13 THE COURT: The objection is overruled. Is there
14 anything else we need to take up?

15 MR. LINTON: Nothing further, your Honor.

16 THE COURT: We'll stand in recess until 8:30
17 tomorrow morning. If you have any matters to take up, we'll
18 take them up at 8:30.

19 THE CLERK: Please rise. This Court stands in recess
20 subject to call.

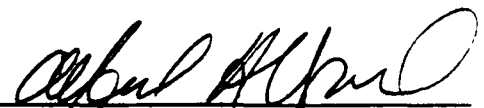
21 (Whereupon, at 11:44 a.m., the trial was recessed.)

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SUPERIOR COURT)
STATE OF ALASKA) Case No. 3ANS89-7217
Case No. 3ANS89-7218

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.


ALFRED H. WARD

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