

VOLUME 6

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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v. 8-9

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

Anchorage, Alaska

February 8, 1990

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

APPEARANCES:

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P R O C E E D I N G S

(Tape C-3605.)

MR. MADSON: Sorry, Your Honor. I requested this matter be brought up at this time. It's nothing really out of the ordinary. I just want to alert the Court to a couple of things.

One, when we left here yesterday at the end of the day -- I wanted to bring the matter up again to make sure there's no confusion on this point with regard to the Court's order of suppressing only the statement about spilling oil, that was my understanding of the Court's order. Now apparently Mr. Linton may have had some concerns because of this 1245 cutoff, but when I read the order again last night, it appeared to me that the Court was suppressing only that statement and all other evidence could come in, subject to other objections. So with regard to the tape, the objection I made yesterday, I want it to be really clear that I'm not waiving any argument on immunity, that the only objection I was raising was pursuant to the Court's order that this was a new one just on the hearsay.

JUDGE JOHNSTONE: I don't consider that you've waived the immunity issue. I think it's preserved for trial. And I don't consider that by making that part of your opening statement that you've waived it, either.

1 MR. MADSON: Okay, thank you, Your Honor, we were  
2 just a little concerned about that. The other thing I  
3 wanted to bring up is last night, about 7:00 o'clock or so.  
4 I received a copy of the State's motion for Protective  
5 Order Number 4. That deals with the two Coast Guard  
6 personnel from Valdez, the ETC operators. It's my  
7 understanding they were going to testify here today.

8 JUDGE JOHNSTONE: I don't think I've even seen  
9 that protective order, yet.

10 MR. COLE: Your Honor, I had my secretary hand  
11 deliver a copy to I believe it was your law clerk about  
12 4:00

13 JUDGE JOHNSTONE: 4:00 o'clock yesterday  
14 afternoon?

15 MR. COLE: Yesterday afternoon and --

16 JUDGE JOHNSTONE: Well, that's one of the reasons  
17 I haven't seen it because that's about closing time and  
18 it's only 8:20, 8:40 now.

19 MR. COLE: That was assuming (inaudible.)

20 MR. MADSON: Well, it appears to be a serious  
21 motion, Your Honor, so I don't think we can just -- you  
22 know, we have to give it some consideration. And that  
23 consideration I think certainly requires that we be given  
24 some time to respond to it. And that's my only concern now  
25 is if they're here, then we can't cross examine them today

1 until that matter is heard. I don't know where that puts  
2 us in terms of time, in terms of scheduling or witnesses or  
3 anything else, but certainly we feel we need some time to  
4 respond to that.

5 JUDGE JOHNSTONE: I have no idea what the motion  
6 says. I don't know what the witnesses are going to be. I  
7 have no idea what's going on here. These last minute  
8 motions for protective orders, if they do delay, I'll be  
9 very concerned with it, but perhaps they don't mean to  
10 delay the proceedings. Who's your first witness and does  
11 the protective order deal with the first witness, Mr. Cole?

12 MR. COLE: No, the first two witnesses, the first  
13 one is Patricia Caples. The second one is Mr. Radtke. The  
14 third and fourth witnesses are the Coast Guard people.  
15 There are protective orders already outstanding for those,  
16 for the Coast Guard, and there are two protective orders  
17 that need to be taken up before those two, anyway. And we  
18 filed a third one based on the opening statement of the  
19 Defense counsel.

20 We don't know what the Defense is going to be  
21 arguing. We got our first taste of it on Monday and we  
22 filed the protective orders in response to those, his  
23 opening statements.

24 JUDGE JOHNSTONE: Well, see if you can get all the  
25 rest of your protective orders in as soon as possible so

1 that it won't create a delay. I'll go look at the one. I  
2 assume it's in my chambers, Mr. Adams?

3 MR. ADAMS: Yes, Your Honor.

4 JUDGE JOHNSTONE: I'll go look at the protective  
5 order and we can get started with the jury at 9:00 o'clock  
6 on the two witnesses that don't deal with it.

7 MR. MADSON: I just want to make sure the Court  
8 knows that this may pose a problem because, in fairness, I  
9 think we do need a chance to respond.

10 JUDGE JOHNSTONE: Well --

11 MR. MADSON: It may not take that long, but --

12 JUDGE JOHNSTONE: Sure. Well, you've got three  
13 attorneys working on this for one Defendant. The State has  
14 three for the State's case. You can set Mr. Rousseau or  
15 somebody on this paper work and maybe we can be prepared  
16 when the time comes to argue that. If you need more time,  
17 I'll consider the request at that time.

18 So I can gear up, what protective orders need to  
19 be addressed before the witnesses today, so I can start  
20 looking at them?

21 MR. COLE: We have Gordon Taylor and Skip  
22 Blandford testifying today for the Coast Guard. As to  
23 Gordon Taylor, there is a protective order that's been  
24 requested as to a positive finding for marijuana and our  
25 position is set out in the protective order.

1           As to Skip Blandford, there was two, one for the  
2 drinking after the incident and one for the positive  
3 finding of I think it's opiates two, three days after the  
4 grounding of the Exxon Valdez. Our positions are set out  
5 in protective orders there.

6           JUDGE JOHNSTONE: So it's for the blood alcohol or  
7 blood screening tests for Blandford and Taylor?

8           MR. COLE: Yes.

9           JUDGE JOHNSTONE: Okay.

10          MR. COLE: Then there's one other one that I think  
11 we filed and I can't remember. It's the changes by the  
12 Coast Guard and the Coast Guard negligence. The Coast  
13 Guard negligence was filed today, Blandford's negligence,  
14 and that protective order was filed today asking for --

15          JUDGE JOHNSTONE: Today.

16          MR. COLE: Yesterday, I'm sorry, yesterday.

17          JUDGE JOHNSTONE: Okay, so that's the one that was  
18 filed last night at 4:00 o'clock?

19          MR. COLE: Yes.

20          JUDGE JOHNSTONE: Okay, so we have the changes to  
21 the VTS service. We have the Coast Guard negligence theory  
22 that you filed last night at 4:00 o'clock. And we have the  
23 urine and blood samples of Blandford and Taylor. And those  
24 are the outstanding protective orders. And which of those  
25 have to be dealt with today before --



1 MR. COLE: All of them.

2 JUDGE JOHNSTONE: Now the VTS, who's going to  
3 be --

4 MR. COLE: Those two people could potentially be  
5 witnesses for the Defense on -- you know, be subject to  
6 cross examination on those issues by the Defense.

7 JUDGE JOHNSTONE: How long do you expect your  
8 first two witnesses that don't deal with these motions will  
9 take?

10 MR. COLE: I expect that they'll be done around  
11 11:00 o'clock.

12 JUDGE JOHNSTONE: Well, I have 15 minutes now.  
13 Let's talk about the motion for protective order on  
14 Blandford and Taylor's blood and urine --

15 MR. MADSON: Well, it's their motion, Your Honor,  
16 I guess if they want to argue it.

17 JUDGE JOHNSTONE: Do you have a written response?  
18 Did you make a written response to that?

19 MR. MADSON: Yes, we did, Your Honor. It was  
20 filed on February the 6th.

21 JUDGE JOHNSTONE: So that would have been filed  
22 the day before yesterday.

23 MR. MADSON: Correct.

24 JUDGE JOHNSTONE: Did you bring a copy up to  
25 chambers? Because if it was filed, it most likely would

1 not have gotten up to chambers by this time, just a day  
2 later.

3 MR. MADSON: It was our understanding that we did,  
4 Your Honor. We were trying to do that, having separate  
5 copies, but it may not have happened.

6 JUDGE JOHNSTONE: I don't remember seeing a copy  
7 of it. I just see my law clerk going out the door. He can  
8 go check for it. If you would, if you don't have time to  
9 go back to my office, just drop it off in that little slot  
10 there by the double doors if it's after hours. We check  
11 that periodically and any kind of responses, I should get a  
12 courtesy copy because it takes too long to get them  
13 upstairs.

14 MR. MADSON: We're trying to do that.

15 JUDGE JOHNSTONE: Did you?

16 MR. MADSON: Your Honor, we were trying to. I  
17 can't honestly say; the person who delivered it isn't  
18 here. I can't ask him.

19 JUDGE JOHNSTONE: How about the -- I have the  
20 response on the motion for protective order on the vessel  
21 traffic services changes, I have that one. So why don't we  
22 hear that one first? Mr. Cole.

23 MR. COLE: I didn't bring those motions with me,  
24 Your Honor (inaudible).

25 JUDGE JOHNSTONE: Are you prepared to argue, Mr.

1 Cole?

2 MR. COLE: Well, I don't have it in front of me.  
3 I think our position basically is that the Defense has  
4 attempted to show the changes, or would like to show -- at  
5 least through their opening -- the changes that have  
6 occurred to the VTC system in Valdez since the grounding.  
7 Our first basis was that, as a general rule under Evidence  
8 Rule 407, "Evidence of . . ."

9 JUDGE JOHNSTONE: I have that in front of me. I  
10 just wanted to know if you wanted to add anything to your  
11 written -- I have the Evidence Rule 407, there's no need to  
12 read it to me.

13 MR. COLE: The only thing I have to add, Your  
14 Honor, is that this is not a civil negligence case and what  
15 we have here is the Defense, via the Defendants, attempting  
16 to make this into a civil case, into a comparative  
17 negligence type situation by trying to spread out the  
18 blame. And there's a very big distinction between the way  
19 probable cause is handled in civil cases and the way  
20 probable cause is handled in criminal cases.

21 The Court has been confronted with this because  
22 you decided this decision in Kusmire and you were upheld in  
23 that case and that was a significant case on point where  
24 you told -- where you did not allow evidence to go to the  
25 jury of an outside third party's negligence. And that was

1 the claim by the Defendant, that the paramedic had been  
2 negligent in not saving the victim. You specifically held  
3 -- and that was upheld. And there's some very strong  
4 language in the Kusmire decision that we've cited in our  
5 protective order that we filed yesterday as to the watch  
6 stander's negligence. We feel the same thing applies to  
7 attempts to show that the Coast Guard was negligent and,  
8 i.e., they're negligent because, "Look what they've done  
9 since the grounding. Look at all the changes." And the  
10 whole purpose of this line of argument and Mr. Madson's  
11 opening was designed to show that. In criminal law, that  
12 is not the standard; it's not comparative negligence.

13 So in addition to what's been cited in our  
14 protective order, we would refer the Court to its -- the  
15 decision in Kusmire, specifically the language that says it  
16 can never be a superseding intervening cause to fail to  
17 act, that failure to act can never be a superseding cause  
18 in criminal law. And it's very strong language. That's  
19 all I have.

20 JUDGE JOHNSTONE: Okay, your response is covered  
21 in a couple of motions, it sounds like, not just the change  
22 in the vessel transit service. Let's address the vessel  
23 transit service application.

24 MR. MADSON: Well, with regard to that, Your  
25 Honor, there's not much more I want to add that isn't in

1 our opposition. However, I think the State is simply off  
2 on the wrong track. We're not talking about intervening  
3 cause negligence here. What we're talking about is a  
4 standard of mental culpability, recklessness, what did the  
5 captain know, what did he rely on, what was he required to  
6 do.

7           The VTS system is required to be kept on the  
8 bridge of every ship. The captain is required to follow  
9 those rules and regulations. If the rules and regulations  
10 change, isn't the captain entitled to rely on the changes  
11 of those? And if the system is defectively designed, if it  
12 isn't operating properly, isn't that something that comes  
13 into play as far as the captain's negligence is concerned  
14 or his recklessness? It goes to his state of mind. It's  
15 just basically that simple.

16           JUDGE JOHNSTONE: Aren't these changes to the  
17 system changes that were made after the grounding?

18           MR. MADSON: My understanding is there were  
19 changes made before the grounding and there were changes  
20 made, some not terribly big changes, but some changes were  
21 made after the grounding, that's correct.

22           JUDGE JOHNSTONE: But the motion for protective  
23 order is to prevent admissible evidence of changes after  
24 the grounding. It addresses only that and not changes  
25 before.

1 MR. MADSON: Quite frankly, Your Honor, we're not  
2 terribly concerned about changes after. If the State feels  
3 that that's so important, I'm willing to even waive that  
4 argument, I don't think it amounts to anything.

5 JUDGE JOHNSTONE: The motion for protective order  
6 is therefore granted, the one filed 5 February 1990,  
7 entitled Motion for Protective Order, and it addresses  
8 changes to the Prince William Sound vessel traffic service  
9 in response to the Exxon Valdez grounding. Unless I am  
10 interpreting that wrong, I assume what you are intending  
11 prevent is evidence coming in of changes made after the  
12 grounding, is that right, Mr. Cole?

13 MR. COLE: That's correct.

14 JUDGE JOHNSTONE: Motion is granted. David, was  
15 there a response to the motion for protective order  
16 regarding the blood/urine results?

17 MR. : There's a response to one of the  
18 motions. There's one motion called Motion Number 4.

19 JUDGE JOHNSTONE: Yes, there's no response to  
20 that, yet. That's the one filed yesterday.

21 MR. : (Inaudible.)

22 JUDGE JOHNSTONE: Why don't you come on up here?  
23 Maybe you can -- is this the one that's in response to the  
24 blood alcohol? It's filed by Friedman and Rubin. Okay.

25 (Inaudible conversation.)

1 JUDGE JOHNSTONE: Okay, you had Mr. Friedman and  
2 Mr. Rubin prepare the response to the blood alcohol and  
3 that's why you were unaware how it got to me. We have the  
4 original proposed order by the Defendant and now a copy of  
5 the blood alcohol. I'll have to read this opposition. I  
6 just go it, so I'll have to read it before I'm prepared to  
7 hear argument on it. So we have this one and then we have  
8 Motion for Protective Order Number 4.

9 I propose that we go ahead with the witnesses that  
10 we can that don't need resolution of these first and then  
11 take time to resolve these.

12 MR. MADSON: That's fine, no problem.

13 JUDGE JOHNSTONE: Okay, we'll stand at recess.

14 THE CLERK: Please rise. This Court stands at  
15 recess.

16 (Whereupon, at 8:51 a.m., a recess is taken.)

17 (During the recess, State's  
18 Exhibits 75 and 76 were  
19 marked for identification.)

20 (Whereupon, the jury enters the courtroom.)

21 JUDGE JOHNSTONE: Thank you, you may be seated.

22 Ready to call your next witness, Mr. Cole?

23 MR. COLE: Yes, Your Honor.

24 JUDGE JOHNSTONE: You may do so.

25 MR. COLE: Your Honor, at this time, the State

1 will call Ms. Patricia Caples.

2 Whereupon,

3 PATRICIA CAPLES

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

7 THE CLERK: Ma'am, would you please state your  
8 full name and then spell your last name?

9 THE WITNESS: My name is Patricia Caples,  
10 C-a-p-l-e-s.

11 THE CLERK: And your current mailing address?

12 THE WITNESS: Post Office Box 1846, Valdez,  
13 Alaska.

14 THE CLERK: Your current occupation?

15 THE WITNESS: I'm a shipping agent for Alaska  
16 Maritime Agencies.

17 THE CLERK: Thank you.

18 JUDGE JOHNSTONE: All right.

19 DIRECT EXAMINATION

20 BY MR. COLE:

21 Q Ms. Caples, how long have you lived in Valdez?

22 A 34 years.

23 Q And how long have you worked as a shipping agent?

24 A 13 years.

25 Q Has all that time been with the Alaska Maritime



1 Agency?

2 A Yes.

3 Q Would you tell the jury a little bit about what a  
4 shipping agent does?

5 A Okay, my job as a shipping agent is to work on  
6 behalf of the owners of the vessel, handle matters and  
7 requirements that are given to us by the owners or the  
8 operators of the ships and to follow through on  
9 requirements that are given to us by the captain or the  
10 owners of the vessel.

11 Q In the course of carrying out your  
12 responsibilities, do you meet tanker captains coming in and  
13 out of Valdez?

14 A Yes, I do.

15 Q Do you know Captain Hazelwood?

16 A Yes, I do.

17 Q How long have you known him for?

18 A Approximately eight to ten years.

19 Q And would you consider him a friend?

20 A Yes, I would.

21 Q When was the last time you saw him as a tanker  
22 captain?

23 A When the Exxon Valdez sailed from the Port of  
24 Valdez at Berth 5, the evening of the 23d of March.

25 Q Did you see him the night before that evening?

1 A Yes, I did.

2 Q Okay, would you tell the jury about that, the  
3 circumstances surrounding that?

4 A Okay, as an agent, we are required to board the  
5 ship when the ship docks at the berth. As soon as they get  
6 a gangway, we are required to board the vessel and get  
7 times from their port log as to what time they arrived at  
8 the berth, et cetera. We need to touch bases with the  
9 captain and find out what requirements he might have while  
10 the ship is in port and basically that's what we do when we  
11 board on arrival.

12 Q And did you do that that evening?

13 A Yes, I did.

14 Q Do you remember coming in contact with Captain  
15 Hazelwood?

16 A Yes.

17 Q Where would that have been?

18 A It would have been either on the bridge or in his  
19 ship's office, I don't recall exactly where I first saw  
20 him.

21 Q And how long did you talk with him that evening?

22 A I would say approximately 20 minutes, something  
23 like that.

24 Q Did you notice anything out of the ordinary in his  
25 demeanor that night, the 22d?

1 A No, I didn't.

2 Q Tell the jury what type of a person he was to deal  
3 with for business.

4 A Captain Hazelwood is very businesslike, very  
5 professional in his job, easy to talk to and that's  
6 basically how I feel.

7 Q Now what time did you leave the tanker that night?

8 A I don't recall what time it was.

9 Q When was the next time that you saw Captain  
10 Hazelwood?

11 A Prior to the ship sailing on the night of the 23d.

12 Q When did you come aboard the ship that evening?

13 A At approximately 8:00 p.m.

14 Q Where was it located?

15 A At the Alyeska Terminal, Berth 5.

16 Q Why do you go aboard that time?

17 A As an agent, we're also required to board the  
18 vessel prior to sailing to collect more data and get the  
19 times that they deballasted it and loaded, any delays that  
20 they would have and information for the owners, to report  
21 to the owners, and any outstanding requirements that need  
22 to be completed. We pick up mail, touch bases with the  
23 captain on anything that he has for us before the ship  
24 sails.

25 Q Now I'm showing you what's been previously

1 admitted as Plaintiff's Exhibit Number 12. Do you  
2 recognize the second and third pages of that exhibit?

3 A Yes, I do.

4 Q Can you tell the jury what that is?

5 A This is called a Vessel \_\_\_\_\_ report and it  
6 is filled out by the gauger of the vessel who works for a  
7 company called Kaylabret.

8 Q Before you go too far, the people might not be  
9 familiar with what a gauger is. Would you tell -- would  
10 you explain what a gauger is?

11 A Okay. As a gauger, they're required to go and  
12 measure how much water or oil is in each tank on the vessel  
13 and do a report on exactly how much is on board.

14 Q And is that done -- explain the -- who does this?

15 A The gauger who is on duty boards the --

16 Q Who does he work for?

17 A A company called Kaylabret in this case.

18 Q Why doesn't say, for instance, the oil company  
19 have someone that does it themselves?

20 A I don't know.

21 Q And is that one of the things that you would have  
22 picked up that evening?

23 A Yes, I take a copy.

24 Q And where do you -- is it used in the ordinary  
25 course of business and then sent back to Exxon?

1           A     Right, we pick it up prior to sailing when they've  
2 completed the report.

3           Q     Now when you went on board that evening, where did  
4 you go first?

5           A     To the cargo control room.

6           Q     Why did you go there?

7           A     To get my sailing information, to talk to the  
8 chief mate.

9           Q     Is that who you ended up speaking with that  
10 evening, the chief mate?

11          A     That's who I began speaking with.

12          Q     And after speaking with him, where did you go?

13          A     Up to the captain's office, I believe, and then up  
14 to the bridge of the vessel.

15          Q     Why did you go to the captain's office?

16          A     To see the captain.

17          Q     Did you end up seeing him there?

18          A     No.

19          Q     Where did you go from there, again?

20          A     Up to the bridge.

21          Q     Who was up on the bridge when you got there?

22          A     The pilot, Mr. Murphy, Greg Cousins and I believe  
23 maybe one other person, but I don't recall for positive.

24          Q     About what time would that have been?

25          A     Approximately 8:20 to 8:30 p.m.

1 Q What the captain on the bridge?

2 A Not at that time, no.

3 Q What did you do while you were waiting for the  
4 captain?

5 A I spoke with the pilot.

6 Q Just conversation, small talk.

7 A Right.

8 Q How long did you have to wait there on the bridge  
9 before the captain arrived?

10 A Just a couple of minutes before he came in.

11 Q What happened when the captain arrived then?

12 A I spoke with Captain Hazelwood briefly about what  
13 we needed to finish up before I departed the ship.

14 Q And what was that?

15 A Well, all he had outstanding and all I had left to  
16 -- actually, I showed him my port log, as I recall, and  
17 pointed out I think one small delay that the vessel had  
18 while they were in port, so that he was aware I had noted  
19 that, and asked him what he had for me before the ship  
20 sailed and all he had to give me was some mail.

21 Q Where did you have to go for him to give you that  
22 mail?

23 A I went down one deck to his office, the captain's  
24 office.

25 Q And during this time, how far away were you from

1 Captain Hazelwood?

2 Q I would say three, four inches, six inches.

3 A Did you notice any signs that Captain Hazelwood  
4 had been drinking?

5 A No.

6 Q Did you notice anything different about the way  
7 Captain Hazelwood was acting that evening?

8 A I noticed he was in a jolly frame of mind, a good  
9 mood, more at ease than maybe at some other times when I  
10 would visit with him.

11 MR. COLE: If I could just have a minute, Your  
12 Honor.

13 BY MR. COLE: (Resuming)

14 Q Do you remember testifying before the Grand Jury  
15 in this matter?

16 A Yes, I do.

17 Q Would you tell the jury what kind of circumstance  
18 that was? Were you brought into a room there with a number  
19 of people, similar to this?

20 A Yes.

21 Q And you were asked questions about your  
22 observations of Captain Hazelwood?

23 A Yes.

24 Q And do you remember being asked whether or not you  
25 observed any kind of an odor of alcohol about his person?

1           A     Yes, I recall.

2           Q     And you indicated that you hadn't.

3           A     That's correct.

4           Q     Do you remember when you said -- well, let me ask  
5 you this before I ask. Did you notice anything unusual  
6 about Captain Hazelwood's eyes or speech?

7           A     Nothing at all about the speech. As best I can  
8 recall, I noticed the eyes were watering somewhat.

9           Q     And did you notice Captain Hazelwood stumble or  
10 fall or anything?

11           MR. MADSON: I object to that characterization,  
12 Your Honor. If he's trying to refer to Grand Jury  
13 testimony, there's no such reference in there.

14           JUDGE JOHNSTONE: I'm not sure I understand, "Did  
15 you notice a stumble or a fall?" I'm not sure I understand  
16 that.

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

18           JUDGE JOHNSTONE: All right.

19           BY MR. COLE: (Resuming)

20           Q     Did you notice Captain Hazelwood -- did you make  
21 any observations about the way he went down to the cabin  
22 that you thought were unusual?

23           A     When he tried to reach the door to go down one  
24 deck, there was a very slight sway as I best recall. I  
25 wasn't paying real close attention.



1 Q And based upon what you observed and -- what about  
2 his personality that evening? Would you describe -- had it  
3 changed at all from the night before?

4 A No. No, I don't think so. Just that he --

5 Q Based upon what you observed, would your opinion  
6 have been that he might have been drinking that evening?

7 A He may have been, yes.

8 Q Why do you say that?

9 A Well, see, because of his mood is the reason I  
10 thought -- he was more relaxed and I felt he may have had  
11 something to drink.

12 Q Was his mood different than the night before?

13 A He was just more at ease and in a good sense or  
14 humor. Yes, it was. The night before, he was very serious  
15 and --

16 Q Now do you receive any communications from the  
17 tankers when they leave their berths?

18 A Yes, I do.

19 JUDGE JOHNSTONE: Excuse me just a minute. Mr.  
20 Madson, I can hear you just as clear as a bell when you're  
21 whispering that loud and --

22 MR. MADSON: Either my voice is loud, Your Honor,  
23 or your ears are exceptionally good and I'll attribute it  
24 to my voice.

25 JUDGE JOHNSTONE: I assure you, I'm getting hard

1 of hearing in my old age and it's not my ears.

2 MR. MADSON: Maybe that's my problem, too.

3 JUDGE JOHNSTONE: Okay, let's proceed.

4 MR. : (Inaudible.)

5 BY MR. COLE: (Resuming)

6 Q Now we were talking about the communication that's  
7 made. Are you called on the radio after the ship departs?

8 A Yes.

9 Q Tell the jury what type of information you receive  
10 at that time.

11 A Okay, after the ship departs the berth and the  
12 tugs are released, either we call the vessel or the vessel  
13 will call us, either the chief mate, sometimes the captain,  
14 and give us final information, such as the time they pulled  
15 the gangway, because I'm not there at that time, so --  
16 final information that we need for our report.

17 Q About what time did you leave the tanker that  
18 evening?

19 A Approximately 9:00 p.m.

20 Q And what time did you -- did you receive this  
21 radio communication from the Exxon Valdez?

22 A Yes. I don't recall if I made the initial call to  
23 them or they called me directly, but, yes, I did talk to  
24 them.

25 Q What time would that have been?

1 A Approximately between 9:30 and 10:00 p.m.

2 Q And do you remember who told you, who called you,  
3 who you talked with?

4 A Yes.

5 Q Who was that?

6 A Captain Hazelwood.

7 Q Did you have any more conversations with Captain  
8 Hazelwood that evening?

9 A No.

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

11 JUDGE JOHNSTONE: Mr. Madson.

12 CROSS EXAMINATION

13 BY MR. MADSON:

14 Q Ms. Caples, I have just have a few questions for  
15 you. First of all, when you referred to the incident, the  
16 first time you saw Captain Hazelwood was when the ship  
17 arrived into Valdez, correct?

18 A Right.

19 Q Do you know how long he had been at sea?

20 A Approximately six days?

21 Q Do you know what kind of weather the ship may have  
22 encountered or other more or less stressful situations that  
23 it may have encountered?

24 A I know that the weather was not good. I recall  
25 the captain sending a telex saying that.

1           C     You saw the captain soon after the ship arrived,  
2 then, I take it.

3           A     That's correct.

4           Q     He could very well have been tired, somewhat  
5 stressed from that long trip and more serious at that time?

6           A     That's correct.

7           MR. COLE:  Objection, lack of knowledge.

8           JUDGE JOHNSTONE:  Objection overruled.

9           BY MR. MADSON:  (Resuming)

10          C     I believe you said yes, is that correct?

11          A     Yes, that could be.

12          Q     From the times you've talked with Captain  
13 Hazelwood, would you agree that his voice often is rather  
14 soft?

15          A     Yes.

16          C     Deliberate?

17          A     Yes.

18          Q     Now when you saw him the night of the 23d when you  
19 went on board the vessel -- let's back up just a bit -- you  
20 were on there before he arrived, correct, before Captain  
21 Hazelwood arrived?  You were on the ship first.

22          A     I believe.  I did not actually see him come on.  
23 He could have been on board somewhere.

24          Q     I'm sorry, you didn't see him go up the gangway or  
25 anything like that?

1 A Coming on board?

2 Q Coming aboard

3 A No.

4 Q Would you describe to the jury how one gets on  
5 board the Exxon Valdez or how you did that particular  
6 night?

7 A To go the vessel, you need to walk down Berth 5.  
8 It's approximately I think a half a mile. And then you  
9 climb up a gangway that's very steep, I would say 60 steps,  
10 something like that, to go up and back down to get on  
11 deck. Once you're on deck, you go into the house and up  
12 several other stairs or elevator.

13 Q Could you estimate how many stairs you have to  
14 negotiate from say the dock level when you first start  
15 getting onto the ship to the time you finally arrive, say  
16 on the bridge?

17 A Yes, I can, approximately. Over a hundred, maybe  
18 a hundred, thereabouts.

19 Q Fair to say a lot of climbing.

20 A Yes.

21 Q Do you recall what the weather was that particular  
22 night?

23 A Yes, I vaguely recall. I remember it being cold.  
24 I don't know what exactly the temperature was, maybe around  
25 30. And I believe that there was real light snow showers,

1 like it was just beginning to do a real light snow around  
2 that time.

3 Q So when you saw the captain come on board, you  
4 were already on the -- were you on the bridge, talking with  
5 the pilot at that time?

6 A I did not see him actually come on board.

7 Q Okay, I understand that. But then he came in a  
8 door or something --

9 A Right.

10 Q -- is that right?

11 A Yes.

12 Q So he arrived just from outside, apparently from  
13 walking onto the deck.

14 A Right, because he had his coat on.

15 Q The same way you did.

16 A Right.

17 Q Is it fair to say, Ma'am, that his eyes could have  
18 been watery due to just coming in from outside where it was  
19 relatively cold and blustery?

20 A Yes.

21 Q And where did you go when you said you went to his  
22 cabin? Where -- from the bridge to his cabin? Would you  
23 describe how you get there?

24 A Okay, from the bridge, you go out -- you open a  
25 door, go down one deck lower, 13 steps, 12 to 13 steps

1 down, and then you open another door and go around a  
2 hallway area into where his office is located.

3 Q It's still -- except for the vertical distance  
4 between the bridge and one deck lower, it's still  
5 relatively close, is it not?

6 A Yes.

7 Q Basically under the bridge.

8 A Right.

9 Q And was the hallway that you negotiated and the  
10 stairway, was it fairly well lit or was it dark or what  
11 were the lighting conditions at that time?

12 A I would say not well lit.

13 Q The slight sway that you attributed to Captain  
14 Hazelwood as he was opening the door, in your opinion, you  
15 don't attribute that sway to the use of alcohol, is that  
16 correct?

17 A Could you repeat the question?

18 Q The sway, when you said that slight sway when he  
19 opened the door to go outside --

20 A Right.

21 Q -- you don't attribute that to impairment because  
22 of alcohol use, correct?

23 A Correct.

24 Q You said that he was a little more relaxed,  
25 appeared to be more relaxed and in a good mood, right.

1 A Right.

2 Q He had been in town, you knew that, right?

3 A Yes.

4 Q And that could also account for a change in mood,  
5 just having the chance to go ashore and relax a bit?

6 A Yes.

7 Q When you went down to his office, was he  
8 professional and businesslike?

9 A Yes. We didn't have a lot to accomplish, but,  
10 yes, he got the mail gathered and ready for me.

11 Q Lastly, Ma'am -- excuse me, my voice is going  
12 today. But in your opinion, you saw no signs of a use of  
13 alcohol that, in your opinion, would lead you to believe  
14 that he was at all impaired?

15 A No.

16 Q Thank you, I don't have anything else.

17 REDIRECT EXAMINATION

18 BY MR. COLE: (Resuming)

19 Q Ms. Caples, how many times have you been  
20 interviewed about -- by police officers in this case?

21 A By police officers or total interviews?

22 Q By police officers.

23 A Police officers?

24 Q Do you remember?

25 A Maybe four.



1 Q Do you -- in each one of those, you've been asked  
2 whether or not you thought the captain might have been  
3 drinking that evening.

4 A That's correct.

5 Q And you said that you believed that he had.

6 A Right.

7 Q And why is that?

8 A Why did I say that --

9 Q Yes.

10 A -- I thought he may have had something to drink?  
11 Like I say, it was his mood. He was relaxed, at ease.  
12 Just because I've known him for several years and I felt  
13 with him having a different mood, a jolly mood, that  
14 possibly he had had something to drink.

15 Q And when you say he was very professional, would  
16 you say that in your dealings with him, he was a very  
17 precise type of person?

18 A Yes, very precise.

19 Q Was that something that stuck out in your mind,  
20 how precise he was?

21 A Do you mean that night or --

22 Q No, in the past.

23 A Yes.

24 Q Now do you know how Captain Hazelwood came from  
25 the deck up to the bridge?

1 A No, I do not.

2 Q Could he have come from all the steps, on the  
3 internal steps, up to the bridge?

4 A Yes.

5 Q Do you know how he came onto the bridge, itself?  
6 Did he come from the stairway where you go to his chambers  
7 or did he come from outside?

8 A I don't know.

9 MR. COLE: I have nothing further, Judge, thank  
10 you.

11 RE CROSS EXAMINATION

12 BY MR. MADSON: (Resuming)

13 Q Ms. Caples, in all the interviews that you had on  
14 previous occasions by State Police, you never indicated  
15 that Captain Hazelwood was under the influence, is that  
16 correct, or impaired?

17 A Right, I never said he was impaired.

18 Q It was never your opinion.

19 A Right.

20 Q And your opinion is still the same today.

21 A That's correct.

22 Q Thank you, nothing else.

23 JUDGE JOHNSTONE: Anything further?

24 FURTHER REDIRECT EXAMINATION

25 BY MR. COLE: (Resuming)

1 Q What's your definition of impaired, Ms. Caples?  
2 Would you tell the jury what you mean by impaired?

3 A If I felt he was impaired, I would feel that he  
4 would not be able to function routinely.

5 Q What type of things would you expect to see?

6 A If he was impaired?

7 Q Yes.

8 A I would expect to see -- maybe have not a normal  
9 speech, speaking voice, be much slower than normal.

10 Q How about making mistakes in his speech, would  
11 that be something you'd think about?

12 MR. MADSON: Your Honor, I object. It's  
13 speculation and too vague.

14 JUDGE JOHNSTONE: Objection overruled.

15 BY MR. COLE: (Resuming)

16 Q How about making mistakes in his speech, would  
17 that be something you would take notice of if you thought  
18 he --

19 A Possibly, yes.

20 Q How about movements. Do you think that a person  
21 is impaired only if he is stumbling?

22 A No.

23 MR. COLE: Okay, I have nothing further, Judge.

24 MR. MADSON: Just one follow-up question, Your  
25 Honor.

1 JUDGE JOHNSTONE: Okay, that's the last question,  
2 one last question. We're not going to go back and forth  
3 like this more than twice.

4 MR. MADSON: Is that a yes or no?

5 JUDGE JOHNSTONE: Yes, one last question.

6 MR. MADSON: Okay, thank you.

7 FURTHER RECROSS EXAMINATION

8 BY MR. MADSON: (Resuming)

9 Q Ms. Caples, you've never heard Captain Hazelwood  
10 speak to you under a very stressful situation or condition,  
11 is that correct, such as right after a grounding?

12 A Never before, no.

13 JUDGE JOHNSTONE: You're excused.

14 THE WITNESS: Okay. Am I excused? So can I go to  
15 the audience to listen?

16 JUDGE JOHNSTONE: Is he --

17 MR. COLE: I have nothing further for her, Judge.

18 JUDGE JOHNSTONE: Do you have any further need for  
19 this witness?

20 MR. MADSON: We don't expect to call her again,  
21 Your Honor.

22 JUDGE JOHNSTONE: Okay, you can sit in the  
23 audience or you're free to go.

24 THE WITNESS: Okay.

25 JUDGE JOHNSTONE: Call your next witness.

1 MR. COLE: The State, at this time, would call Mr.  
2 Radtke.

3 Whereupon,

4 PAUL RAYMOND RADTKE

5 having been called as a witness by Counsel for the State,  
6 and 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 then spell your last name?

10 THE WITNESS: Paul Raymond Radtke, R-a-d-t-k-e.

11 THE CLERK: And your current mailing address?

12 THE WITNESS: 1832 East Fourth Street, Superior,  
13 Wisconsin 54880.

14 THE CLERK: And your current occupation, sir?

15 THE WITNESS: I'm between jobs right now.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. COLE:

19 Q Mr. Radtke, can you tell the jury what your  
20 position was on March 23d, 1989?

21 A I was sailing as an AB on the Exxon Valdez.

22 Q Let's start with a little bit of background. How  
23 long have you been in the maritime industry?

24 A Well, I grew up working on family owned boats. I  
25 started working as a charter captain in 1978 on small

1 vessels on the Great Lakes. In 1980, I started working as  
2 a mate and engineer designate on board a research vessel on  
3 the Great Lakes. That was for about two years. From  
4 there, I went to Texas Maritime College, part of Texas A&M  
5 University. I was there for three years, where I picked up  
6 my third mate's endorsement. And following graduation, I  
7 worked for EVA District 1 for a short period of time as a  
8 third mate and then I came to work for Exxon in September  
9 of 1987 and I was employed with them until July of this  
10 year.

11 Q What type of licenses do you hold?

12 A I hold a third mate's ocean license and, also, a  
13 captain's license for vessels up to 100 tons for inland  
14 waters and coastal waters.

15 Q And do you have a -- is there a card that you hold  
16 for an AB?

17 A Yes, I hold a Z card that has AB's endorsements on  
18 it and, also, endorsements for working as a wiper in the  
19 engine department.

20 Q What's a wiper in the engine department?

21 A Essentially, low on the totem pole in the engine  
22 room.

23 Q Again, when did you get your third mate's license?

24 A August of '87.

25 Q Now what position did you have, again, when you

1 were on the Exxon Valdez?

2 A Able bodied seaman.

3 Q Why weren't you working -- you had a third  
4 mate's. Is there a reason why you weren't working as a  
5 third mate or is that unusual?

6 A No, it wasn't. I was hired as an AB by Exxon.

7 Q Is it not unusual for able bodied seamen to have  
8 higher licenses?

9 A No.

10 Q When were you assigned to the Exxon Valdez?

11 A I joined the ship on February the 5th of last  
12 year.

13 Q That would have been 1989?

14 A Correct.

15 Q How many trips had you made up to Valdez at that  
16 point on the Exxon Valdez? How many trips did you make on  
17 the Exxon Valdez up to Valdez?

18 A Four, I believe.

19 Q Had you made trips up to Valdez prior to being on  
20 the Exxon Valdez?

21 A Yes.

22 Q Can you give the jury an idea of how many?

23 A Just two, on the Exxon Boston.

24 Q And were you on the bridge at all during the times  
25 that those ships, any of those ships went through Prince

1 William Sound, in or out?

2 A Yes.

3 Q Did you ever use the automatic pilot on any of  
4 those trips in and out of Prince William Sound?

5 MR. MADSON: Objection, Your Honor, relevancy.

6 JUDGE JOHNSTONE: Why don't you approach the bench  
7 for a minute?

8 (The following was said at the bench.)

9 JUDGE JOHNSTONE: Is this person being offered as  
10 an expert?

11 MR. COLE: No, but I think that I'm entitled to  
12 show what the custom is within the community, within the  
13 maritime industry itself. This person has made several  
14 trips (inaudible) whether or not an automatic pilot has  
15 been used, whether or not -- he's not being asked for an  
16 opinion. He's just being asked to state a fact of whether  
17 or not he saw it being used. That's one of the elements of  
18 this case, whether or not it was approved. (Inaudible.)

19 MR. MADSON: Judge, he's going to have to lay a  
20 foundation, a set of circumstances in those voyages.

21 JUDGE JOHNSTONE: Well, an able bodied seaman is  
22 not the person to lay this type of -- to give this kind of  
23 evidence. I'm not saying I will preclude you from  
24 introducing custom or usage or even opinions from other  
25 people who are more qualified, but an AB is not the person



1 to get this kind of testimony from.

2 (The following was said in open court.)

3 JUDGE JOHNSTONE: Objection sustained.

4 BY MR. COLE: (Resuming)

5 Q Would you tell the jury generally what your  
6 responsibilities are as an able bodied seaman?

7 A Well, mainly, we work deck maintenance. We are  
8 watch standers. Although Exxon had some ABs that were  
9 designated as strictly day workers and only stood watches  
10 on arrivals and departures. While we're standing watch, we  
11 may be standing a lookout watch or a whale watch.

12 Q Would you give the jury an idea of what kind of  
13 work schedule you had while on the Exxon Valdez?

14 A I stood the 8:00 to 12:00 watch.

15 Q The jury might not be familiar with how that watch  
16 system is. Would you explain that?

17 A I would be designated watch stander from 8:00 in  
18 the morning until noon and, also, from 8:00 in the evening  
19 until midnight. But we also worked overtime during hours  
20 aside from those hours and, of course, we were always  
21 available to be called out at any other time.

22 Q How many ABs were there on the ship?

23 A Six.

24 Q And how were the watches broken up over the day?

25 A Well, an AB stands a four on-eight off watch

1 rotation and, as I've said before, though, you may decide,  
2 voluntarily, to work overtime during those off hours or you  
3 may be called out at any time for arrivals or departures or  
4 prearrivals or whatever may come up.

5 Q Did you have a partner on the 4:00 to 8:00 shift  
6 with you?

7 A Yes.

8 Q And who would that have been?

9 A Harry Claar.

10 Q Who was the captain of the Exxon Valdez when you  
11 joined? Was it Captain Hazelwood?

12 A No, I've just forgotten his name at the moment.  
13 Captain Stallser, I'm sorry.

14 Q And at some point, did Captain Hazelwood get  
15 assigned to the ship?

16 A Yes.

17 Q How many trips do you remember sailing with  
18 Captain Hazelwood?

19 A Prior to his joining or --

20 Q Yes -- no, after he joined.

21 A I believe two.

22 Q Do you remember coming into port on the evening of  
23 the 22d?

24 A Yes.

25 Q What were your responsibilities that evening?

1           A     Late in the afternoon, I think around 4:00, we  
2 were called out to switch some mooring wires from one side  
3 of the ship to the other. I don't recall, I think it was  
4 from starboard to port. Earlier in the day, we had done  
5 some prearrival work and some orders were changed, so we  
6 had to -- we were called out again late that afternoon to  
7 switch some wires.

8           Q     When you say mooring wires, people might not be  
9 familiar with that.

10          A     Mooring lines. And in the case of this ship, we  
11 used wire instead of like synthetic rope.

12          Q     Is this to -- what is mooring?

13          A     To tie the vessel up alongside the dock.

14          Q     And what else did you -- did you work an 8:00 to  
15 12:00 shift that evening?

16          A     Yes, and then following that prearrival  
17 assignment, I then came on watch at about ten minutes to  
18 8:00 and assumed the bow lookout.

19          Q     And would you have changed, switched, or did you  
20 stay there all the way into port?

21          A     I was on lookout all the way into the dock.

22          Q     And was there anything eventful about that or  
23 uneventful?

24          A     No, it seemed to be a fairly normal arrival.

25          Q     Do you remember approximately what time you got

1 in that evening?

2 A We must have made the dock at about 11:00 o'clock  
3 because we had finished docking, that is tying the ship up,  
4 right at the end of my watch.

5 Q Then it takes about an hour to finish tying it up?

6 A That night, I guess it did.

7 Q What did you do after you got off your ship that  
8 evening?

9 A I probably called home. There's a phone at the  
10 dock. Then I went to bed.

11 Q The next day, did you work the 8:00 to -- your  
12 8:00 to 12:00 shift during the day?

13 A Yes, I did.

14 Q Would you tell the jury what you would have been  
15 doing during that time?

16 A We were standing a cargo watch that morning. We  
17 had snow, so we had some shoveling to do on deck. We  
18 topped off tanks towards the end of that watch, so we were  
19 somewhat busy at that point, as I said, the last hour or so  
20 of the watch.

21 Q What do you mean by top off the tanks?

22 A Well, bringing the cargo up to the top of the  
23 tanks. In other words, finishing a tank off.

24 Q And how do you do that? Do you help the first  
25 mate?

1           A     This ship was a pretty automated ship. That  
2 operation is watched from the cargo control room. The ABs  
3 on deck essentially just make certain that the valves were  
4 in the proper positions, properly closed, as ordered by a  
5 mate.

6           Q     After your shift at noon, did you go into town at  
7 all?

8           A     No.

9           Q     Any reason?

10          A     Well, it was snowing. Earlier that day, I had  
11 wanted to get into town; I had never been into Valdez. But  
12 because the weather was not so good, we decided not to go  
13 in.

14          Q     Were you called out to be a part of the undocking  
15 process that evening?

16          A     I was called out at about 7:30.

17          Q     And what were your responsibilities that evening?

18          A     We were securing the deck for sea at that point.

19          Q     Can you give the jury an idea of what that would  
20 entail?

21          A     Well, there's a lot of equipment that's out on the  
22 deck that might be used for cargo operations that has to be  
23 put in a secure place. Such things as fire equipment  
24 should be put away, anything that could possibly break  
25 loose while we're underway at sea and cause damage to the

1 ship.

2 Q You mentioned fire equipment. Is there smoking  
3 allowed on the tanker?

4 A Not out on deck.

5 Q What did you actually do, what were your  
6 responsibilities when the ship was undocking from Berth 5?

7 A I assumed the station on the stern of the vessel  
8 as we were casting off of all the lines.

9 Q And did, at some point, you leave that and go up  
10 to the bridge?

11 A When we had finished casting off the stern lines,  
12 yes, I assumed my wheel watch.

13 Q And when you say wheel watch, what's that?

14 A Steering the ship. The ship is still in the  
15 process of undocking, even when all the steering lines are  
16 off. At that point, the person that's assigned to steer  
17 the ship goes up to assume his position at the wheel as the  
18 rest of the lines on the ship are being cast off.

19 Q And when you got up there, who was up there that  
20 evening, to the bridge?

21 A The first mate, the pilot and the captain.

22 Q Who steers the vessel until you get there?

23 A Oh, it isn't necessary to steer the vessel at that  
24 point because we're still alongside the dock with at least  
25 the spring lines out, possibly some forward lines.

1 Q Now you came to the bridge. Where did your  
2 partner go?

3 A He's still involved in undocking the ship and  
4 possibly also securing the deck.

5 Q And after you got underway, where did he go?

6 A I can't be sure. A lot of times, in that process  
7 of undocking the ship, the lookout doesn't necessarily go  
8 to the bow immediately. Generally, there's a mate up there  
9 who might be acting as lookout. In the meantime, the AB  
10 assigned to that job might be securing the mooring wires or  
11 other gear on deck, so I don't know.

12 Q At some point, did he go to the bow, then?

13 A Yes.

14 Q Now on your way away from the dock and when the  
15 ship was being steered, who gave the orders for steering?

16 A I was receiving steering orders from the captain,  
17 relayed to the chief mate who is standing at the engine  
18 order telegraph in the wheelhouse.

19 Q Would you tell the jury how that occurs?

20 A As the ship is being cast off, the pilot and  
21 captain have to be out on the wings, just to make sure  
22 everything is going all right from that vantage point. And  
23 on a ship especially of this size, it's a long distance  
24 between the bridge wing and the pilothouse. They're  
25 relaying steering orders and engine orders to the mate or

1 the person that's at the wheel. In order to do that, they  
2 need a radio. And the master relays that order to the mate  
3 who, in turn, is making sure that the helmsman is doing  
4 what that order was.

5 Q So like when you were in that position, Mr.  
6 Kunkel, was he in there with you?

7 A That's correct.

8 Q And he was making sure that you were making the  
9 turning instructions that he was giving you.

10 A Correct.

11 Q Now at some point, was there a change; did Mr.  
12 Kunkel leave the bridge?

13 A Yes, the third mate came up and relieved him.

14 Q And would you tell the jury where -- what time  
15 we're talking about? Where is the vessel at about this  
16 time?

17 A You mean when the first mate is relieved?

18 Q Yes.

19 A We are away from the dock. It could be a time  
20 frame of 15 minutes or more because the third mate has been  
21 down on the deck, again securing the deck. When they're  
22 finished with that, he then comes up to the bridge and  
23 takes the place of the chief mate at the engine order  
24 telegraph.

25 Q Now on this evening, the pilot that took you out,



1 do you remember -- did you recognize him at all?

2 A No, I didn't.

3 Q And what happened on the way out to Middle Rock,  
4 anything eventful? What happened on the way out to Middle  
5 Rock?

6 A I'm sorry, I don't know where Middle Rock is.

7 Q How about Entrance Island?

8 A I'm not --

9 Q Are you familiar with the chart at all?

10 A Well, I would say somewhat.

11 Q Why aren't you familiar with the chart?

12 A I've never been in a position to sail as mate in  
13 and out of Prince William Sound. It's not something that  
14 I've studied because of that.

15 Q Is that kind of a -- is it your responsibility to  
16 know where you are on the chart? ..

17 A No, not as an AB.

18 Q What if you were at the helm and you received an  
19 order from a captain that you thought was incorrect?

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

21 JUDGE JOHNSTONE: Maybe you can establish a little  
22 better foundation for this type of a question, experience,  
23 circumstances. I'm going to sustain the objection, Mr.  
24 Cole.

25 (State's Exhibit 77 was

1 marked for identification.)

2 BY MR. COLE: (Resuming)

3 Q I'd like to talk about the relationship between  
4 yourself and the other members. Who supervises you on the  
5 deck?

6 A I guess you'll have to be a little more specific.

7 Q When you're on the -- yes, I -- who supervises you  
8 when you're at the helm?

9 A The conning officer of the vessel.

10 Q And do you take orders from him and execute the  
11 orders that he gives you?

12 A You may have several officers at one time on the  
13 bridge. You may have a pilot and the captain and a mate.  
14 Any steering orders related from any of those three people  
15 I would respond to. You know, you have the freedom to  
16 question an order. In other words, if you don't understand  
17 an order, you can certainly ask for clarification of  
18 something if you don't understand it. If all of a sudden  
19 some steering order comes from a quarter, from some person  
20 on the bridge that you may not have been used to getting  
21 orders from, you can question those orders.

22 Q What about the type of order itself; can you  
23 question that?

24 A I guess I don't understand that.

25 Q Okay, I'll just go on. When you were going out of

1 the Narrows that evening, where was the pilot?

2 A The pilot was on the bridge at that time.

3 Q And do you remember where, on the bridge, he was?

4 A I was not on the wheelhouse at that point. I  
5 would have been either on my way to the bow as lookout or  
6 at the bow.

7 Q Let's talk about the time when you were at the  
8 helm.

9 A Okay.

10 Q Where was the pilot?

11 A The pilot was either on the bridge wing as we were  
12 departing or in the wheelhouse.

13 Q Did he ever leave?

14 A No.

15 Q What about the captain, where was the captain  
16 while you were at the helm?

17 A The captain was with the pilot, again out on the  
18 wing, also with the pilot in the wheelhouse.

19 Q Did he ever leave?

20 A I became aware that he was gone, yes.

21 Q Who gave you steering orders while the captain was  
22 gone?

23 A The pilot.

24 (State's Exhibit 40 was  
25 marked for identification.)

1 BY MR. COLE: (Resuming)

2 Q I'm showing you what's been marked for  
3 identification as Plaintiff's Exhibit Number 40. Do you  
4 recognize that photograph?

5 A Yes.

6 Q What's the photograph of?

7 A That's the steering console on the Exxon Valdez.

8 Q And is that a fair and accurate representation of  
9 how that looks?

10 A Yes.

11 MR. COLE: I would move for the admission of what  
12 has previously been identified as Plaintiff's Exhibit  
13 Number 40.

14 MR. CHALOS: No objection, Your Honor.

15 JUDGE JOHNSTONE: 40 is admitted.

16 (State's Exhibit 40 was  
17 received in evidence.)

18 BY MR. COLE: (Resuming)

19 Q Now Number 52, is that essentially the same  
20 picture that you see in Exhibit 40?

21 A Yes.

22 Q And is that also a fair and accurate  
23 representation of the steering console.

24 A Yes, it is.

25 MR. COLE: I would move for the admission of

1 what's been identified as Plaintiff's Exhibit Number 52.

2 MR. CHALOS: No objection.

3 JUDGE JOHNSTONE: Admitted.

4 (State's Exhibit 52 was  
5 received in evidence.)

6 BY MR. COLE: (Resuming)

7 Q I'm showing you what's been marked for  
8 identification as Plaintiff's Exhibit Number 53. Do you  
9 recognize that photograph?

10 A That's the bridge of the Exxon Valdez.

11 Q Is it a fair and accurate representation of what  
12 the bridge looks like?

13 A Yes.

14 MR. COLE: I would move for the admission of  
15 what's been identified as Plaintiff's Exhibit Number 53.

16 MR. CHALOS: No objection.

17 JUDGE JOHNSTONE: Admitted.

18 (State's Exhibit 53 was  
19 received in evidence.)

20 BY MR. COLE: (Resuming)

21 Q Now looking at Plaintiff's Exhibit Number 53 and  
22 if I just hold it up, can you give the jury an idea of  
23 where the steering console is?

24 A It's located here which is in the middle, midship,  
25 of the wheelhouse.

1 Q I'm showing you what's been marked for  
2 identification as Plaintiff's Exhibit Number 22. Do you  
3 recognize that?

4 A That's the wheelhouse and chart room of the Exxon  
5 Valdez.

6 Q And does that appear to be a fair and accurate  
7 representation of what that looks like?

8 A Yes, it does.

9 MR. COLE: I would move for the admission of  
10 what's been previously identified as Plaintiff's Exhibit  
11 Number 22.

12 MR. CHALOS: No objection, Your Honor.

13 JUDGE JOHNSTONE: Admitted.

14 (State's Exhibit 22 was  
15 received in evidence.)

16 BY MR. COLE: (Resuming)

17 Q Now, Mr. Radtke, if you would, would you try to  
18 use this stick right here and indicate to the jury where  
19 you would stand if you were at the helm?

20 A On the helm, you'd stand right here in front of  
21 the wheel, or actually I guess it's back of the wheel,  
22 right here.

23 Q And what do you see out in front of you?

24 A Well, there is a space here between the consoles  
25 and the forward windows of the wheelhouse. This space

1 would be about four to six feet across and, of course, it's  
2 all glass windows on the forward side of it.

3 Q So you can see out through the windows and out in  
4 front of the vessel.

5 A Yes.

6 Q Now I'd like to talk a little bit about the  
7 steering console. How difficult is it to turn the wheel on  
8 the steering console?

9 A Well, it's not difficult at all. It's as easy to  
10 turn this wheel as the wheel of any car with power  
11 steering, maybe even a little easier.

12 Q And what happens when you turn that wheel?

13 A Well, that, in turn, engages motors which drive  
14 the rudder of the ship.

15 Q And is there a screen in front of you that's lit  
16 up?

17 A There is.

18 Q Would you give the jury an idea of what is to --  
19 if you can remember -- is on that screen in front of you?

20 A The screen is a computer type screen with  
21 printouts on it. A compass heading is indicated. The rate  
22 of turn of the vessel is indicated. The rudder angle is  
23 also indicated on that console. And, also, I believe there  
24 are certain modes that are listed as to what the current  
25 steering mode of the ship is.

1 C And when you say that, you mean whether it's in  
2 gyro or automatic pilot or whether it's at the helm?

3 A Yes, that's two of the modes that might be listed.

4 Q Now the rudder indicator that you see in front,  
5 would you explain what that looks like? Is there a line  
6 or --

7 A Well, probably the easiest way to describe that  
8 particular rudder indicator is to think of looking at a  
9 ruler on a screen. It's let's say -- and I'm not sure if  
10 I'm exact on this, but --

11 C Well, would you be more comfortable drawing it,  
12 yes or no?

13 A Yes.

14 C Okay.

15 (Witness marks on the photograph.)

16 THE WITNESS: This is not drawn to any sort of  
17 scale here. It's all just -- the actual box that you're  
18 looking at, as I recall, is about nine inches square. One  
19 of the -- zero would be the rudder is amidships.

20 BY MR. COLE: (Resuming)

21 Q Amidship means it's going straight ahead.

22 A Correct. Now there would be two types of  
23 indicators here. One is the ordered rudder angle. In  
24 other words, when you put the wheel over, there's always a  
25 delay period as the rudder swings into that position. So



1 let's say, this is left ten. It might be in ten-degree  
2 increments here, ten, 20, and I believe it went all the way  
3 up to 35 degrees, hard right or hard left being about  
4 35 degrees. And there are also hash marks to indicate five  
5 degrees and then also hash marks to indicate every one  
6 degree between that.

7 Now one indicator -- and I don't remember if it's  
8 above or below -- is a hash mark that indicates the ordered  
9 angle and the other indicator is the actual position of the  
10 rudder. So that one would be moving as you move the wheel  
11 -- or as the rudder was moving, excuse me.

12 Q And the bottom one would be moving as you move the  
13 wheel.

14 A If you move the wheel -- if 20 degrees left rudder  
15 was the given order, you'd move the wheel until one hash  
16 mark hit left 20. The other hash mark indicates the actual  
17 angle of the rudder as it was following it up. So in other  
18 words, you have basically two hash marks to indicate what  
19 your rudder was at.

20 Q But it might take a little bit of time for the one  
21 on top to catch up with the one on the bottom.

22 A That's correct, there's some delay. I might also  
23 add that there's other rudder angle indicators on the  
24 bridge. There's one over the steering station on the  
25 forward bulkhead and I believe there was also one right at

1 the base of the wheel.

2 Q Okay. Well, let me get out another exhibit. I'm  
3 showing you what's been identified as Plaintiff's Exhibit  
4 Number 27. Do you recognize that?

5 A You know, I can't say that I recognize that from  
6 the Valdez. There are so many wheelhouses that have that  
7 equipment on them.

8 Q Do you remember that there are other rudder  
9 indicators besides the ones on the console, though?

10 A Yes.

11 Q Now there's also a rate of turn indicator on this?

12 A That's correct.

13 Q And the last one I think you already talked about  
14 was the heading indicator.

15 A Compass heading, correct.

16 Q Now how can you tell whether or not this ship is  
17 -- is this ship automatic as far as can you put it on  
18 automatic pilot? Could you put this, the Exxon Valdez into  
19 automatic pilot?

20 A I could. I would not, however, do that on my own.  
21 That would be something that would be ordered.

22 Q How can a helmsman determine that the tanker is in  
23 automatic pilot?

24 A Again, on the console in front of the helmsman,  
25 the gyro mode is indicated. That would indicate that she's

1 in automatic pilot.

2 Q What do you mean, the gyro mode is indicated?

3 A Well, it says "gyro" on the screen in front of  
4 you.

5 Q Lit up right in front of you.

6 A It's not that obvious. The letter size that's  
7 printed on this screen is, I don't know, an eighth of an  
8 inch or so, but standard for what you might see on any  
9 computer screen.

10 Q Are there any other places where it's indicated?

11 A Yes, there are lights, there are indicators on the  
12 console to the left of the steering wheel that would be --

13 Q Maybe you could hold up that photograph and show  
14 the jury, give them a little bit of an idea of where that  
15 would be.

16 A There are lights that would indicate the steering  
17 mode here, to the left of the wheel, and they are just  
18 little diodes, maybe again an eighth of an inch lights,  
19 that are either illuminated or not.

20 MR. CHALOS: Your Honor, may we ask the witness to  
21 get closer to the jury so -- I think he's too far away from  
22 them to appreciate what he's saying.

23 JUDGE JOHNSTONE: Counsel approach the bench,  
24 please. Be seated.

25 (The following was said at the bench.)

1 JUDGE JOHNSTONE: Mr. Chalos, this is Mr. Cole's  
2 witness and if you need to have him bring it closer during  
3 your cross examination, you can apply that, but don't apply  
4 it in Mr. Cole's presentation. I think that's improper.

5 (The following was said in open court.)

6 BY MR. COLE: (Resuming)

7 Q Would you tell the jury who orders the tanker to  
8 go on automatic pilot if you're at the helm?

9 A That would be the conning officer.

10 Q And who orders taking it off?

11 A Again, the conning officer.

12 (Tape changed to C-3606.)

13 Q And does an able bodied seaman have any input as  
14 to whether or not the tanker should be put on or off  
15 automatic pilot?

16 A No.

17 Q And who orders the steering commands?

18 A Once again, the conning officer.

19 Q Is the able bodied -- is the helmsman asked his  
20 opinion on what direction to take?

21 A No.

22 Q Have you ever been instructed to take the tanker  
23 in -- place it on automatic pilot or take it off automatic  
24 pilot?

25 A Yes.

1 MR. CHALOS: Objection, Your Honor. I withdraw my  
2 objection.

3 JUDGE JOHNSTONE: Okay, the answer is in.

4 BY MR. COLE: (Resuming)

5 Q And how do you do that, do you remember?

6 A The exact sequence of engaging from hand steering  
7 to automatic pilot I am not certain of at this point. It's  
8 been almost a year since I've done it on a ship.

9 Q Now on the way out that evening while you were at  
10 the helm, do you remember what time you got off the helm?

11 A I was relieved at the wheel at about ten to 11:00.

12 Q So you would have been at the helm, would it be  
13 fair to say, from about 9:30 to ten to 11:00?

14 A Yes.

15 Q Did you place or were you ordered to place the  
16 tanker on automatic pilot during that time?

17 A No.

18 Q Can you give the jury an idea, did you have any --  
19 could you tell what the weather was like while you were at  
20 the helm that evening?

21 A Yes, when we departed the dock, it was snowing  
22 quite heavily and, also, when we were underway from the  
23 dock, inside Valdez Arm, I believe it was still snowing  
24 heavily to moderately heavily.

25 Q The visibility was not -- was it good or --

1           A     I would say it was poor because I recall having to  
2     steer by compass heading, instead of being able to look at  
3     my heading outside for, you know, land formations or  
4     navigational aids.

5           Q     Was the captain on the bridge during this time?

6           A     Yes.

7           Q     And when was this?

8           A     I -- when was he on the bridge?

9           C     Yes.

10          A     Well, I don't recall any specific times. He was  
11     on the bridge when we departed the dock. I recall him  
12     being on the bridge through some radio traffic. We made a  
13     fairly substantial course change. I recall him being with  
14     the pilot at that point. The time frame is difficult for  
15     me to pinpoint.

16          Q     Who were you replaced by that evening at the helm?

17          A     My watch partner, Harry Claar.

18          Q     And when you or your partner replaced one of the  
19     other at the helm, is there an exchange of a certain type  
20     of information that goes on?

21          A     Yes.

22          Q     Would you tell the jury about that?

23          A     You indicate the course that you're steering. It  
24     could also be that you're in the process of steadying up on  
25     a course. You would also want to indicate that to him.

1 Also, how the ship is steering. You never know, given the  
2 loaded condition or the winds or the currents, the ship  
3 always steers differently, so you might fill him in on how  
4 she felt.

5 Q Did you do that that evening?

6 A Yes.

7 Q Did you have any problems steering the vessel that  
8 evening?

9 A Nothing unusual.

10 Q Was it responding to the commands that you were  
11 giving it?

12 A Yes.

13 Q Where did you go after being relieved at the helm?

14 A I went to my cabin to put some cold weather gear  
15 on and then, from there, proceeded to my lookout station on  
16 the bow.

17 Q How did you know to go out to the bow?

18 A That's where the lookout was supposed to be at  
19 that time.

20 Q Now how long does it take to get out to the end of  
21 the bow?

22 A I would say up to five minutes.

23 Q Now I'm showing you what's been marked for  
24 identification as Plaintiff's Exhibit Number 37. Do you  
25 recognize that photograph?

1           A     Yes, that's the deck of the Exxon Valdez as seen  
2 from the fo'c's'le head.

3           Q     Is that an accurate representation of what that  
4 looked like?

5           A     Yes.

6           MR. COLE: I would move for the admittance of what  
7 has previously been identified for identification as  
8 Plaintiff's Exhibit Number 37.

9           MR. CHALOS: No objection.

10          JUDGE JOHNSTONE: Admitted.

11                                 (State's Exhibit 37 was  
12                                 received in evidence.)

13          BY MR. COLE: (Resuming)

14          Q     Now would you point out to the jury from this  
15 photograph where the bridge is?

16          A     The bridge is located at the top of the house.  
17 You can see it just forward of the stack.

18          Q     And it's got all those windows there across the  
19 way?

20          A     That's correct.

21          Q     And I'm showing you what I believe has previously  
22 been admitted as Plaintiff's Exhibit Number 19. Can you  
23 take a look at that and point out for the jury where you  
24 would sit or where you would stand if you were on lookout  
25 on the bow?



1 A Well, right at the very front of the ship.

2 Q A couple of things in the way there?

3 A There are some things in the way behind that  
4 lookout station. There is a ladder way down into the  
5 fo'c's'le and there's mooring winches and also some  
6 ventilator cowls that are located there.

7 Q But essentially you sit out on the end there.

8 A Stand at the very front of the ship, yes, that's  
9 correct.

10 Q Now when you're out there, do you take any  
11 equipment with you?

12 A Generally, a hand-held radio and that is about it.

13 Q Why do you take the radio?

14 A To communicate with the wheelhouse.

15 Q And when you're at the -- what are your  
16 responsibilities at the lookout position?

17 A The lookout is there to watch and listen for any  
18 hazards to navigation, for any other vessels, for aids to  
19 navigation, such as buoys, and your job is to report those  
20 sightings to the wheelhouse.

21 Q Now back in March, do you remember whether or not  
22 you were wearing glasses that evening?

23 A Yes, I was.

24 Q Tell the jury what the weather was like while you  
25 were out on the bow that evening.

1           A     When I arrived at the bow, I think the snow had  
2 pretty much stopped. It was calm, no wind and I don't  
3 recall if the temperature was real, real cold or not.

4           Q     Do you remember seeing any aids to navigation that  
5 evening, lights?

6           A     Yes.

7           Q     And would they have been on the port or starboard  
8 side, do you remember?

9           A     Well, I recall the Valdez Narrows. Outside of  
10 that, I don't recall anything specifically.

11          Q     When did you reach the bow that evening, do you  
12 remember?

13          A     I would estimate anywhere from five minutes to  
14 11:00 until 11:00 o'clock.

15          Q     Now were you asked to do anything after that time  
16 to help?

17          A     Yes, I was called aft to disembark the pilot.

18          Q     Explain to the jury how that occurs, what you did.

19          A     The bow lookout is called aft as the pilot leaves  
20 the ship and that requires the bow lookout to go back down  
21 the deck, about halfway between the bow and the house of  
22 the ship. The pilot disembarks the ship over the rail and  
23 climbs down a pilot ladder and the AB on lookout is there  
24 to assist him and is also there for safety.

25          Q     And did you do that on this evening?

          A     Yes.

1 Q Did anybody else help you?

2 A Yes, the third mate escorted the pilot from the  
3 wheelhouse down to the pilot ladder.

4 Q And what did you do after that?

5 A The third mate and I stowed the pilot ladder.

6 Q Where did you go from there?

7 A From there, I proceeded back to the bow.

8 Q Now that evening while you were on the bow, did  
9 you see any ice?

10 A No, I didn't.

11 Q And what time did you get relieved that evening?

12 A I was called off the bow, again I'm estimating, at  
13 what must have been a quarter to 12:00.

14 Q And how does that happen? Do you receive notice  
15 -- explain to the jury how that happens.

16 A You mean specifically that night or generally?

17 Q Yes, that night.

18 A Okay, that night, Captain Hazelwood called me via  
19 the radio. He first asked me what I thought of the  
20 visibility and I just responded that it was very dark. I  
21 wasn't sure how far ahead of the vessel I might be able to  
22 see, but it was a very dark night and I think I mentioned  
23 seeing I could see the snow on the mountainsides, but,  
24 again, I wasn't sure how far ahead of the vessel I could  
25 see. And then also at that point, he said we would be

1 putting my relief for the next watch on lookout on the  
2 bridgeway.

3 Q Could you see -- you could see the mountains,  
4 though, in front of you or on the sides.

5 A On the side of the vessel, yes.

6 Q Did you leave the bow then?

7 A Yes.

8 Q Where was your replacement at that time?

9 A I don't know.

10 Q Where did you go from there?

11 A From there, I proceeded back to the house. I  
12 entered the house on the main deck, was going up the ladder  
13 where I met my relief who I assumed was on her way either  
14 to the bow or to the bridge wing and at that point, I told  
15 her that she would be on the wing, which I think she  
16 already knew

17 Q What did you do, then, after that?

18 A I took my cold weather gear off and then I went  
19 down to the mess deck and had some dessert and, from there,  
20 I went to my cabin.

21 Q What do you remember happening after that, then?

22 A Well, I was getting ready for bed and there was a  
23 loud grinding noise I guess I would characterize it. It  
24 seemed to move from -- the sound seemed to move from the  
25 bow of the ship and what seemed to me the entire length of

1 the ship. There was some associated vibration, not a lot  
2 of vibration, and the whole -- that whole sequence seemed  
3 to last maybe, oh, six, seven seconds.

4 Q What did you think had happened?

5 A I thought that we had struck ice.

6 Q What did you do after that?

7 A I went to the porthole of my cabin and was looking  
8 out on deck. There was a spotlight being shown from the  
9 bridge wing, down onto the ship and I think I watched that  
10 for just a few moments, a few minutes. And then I went and  
11 opened up my cabin door to see if there was anybody else  
12 out in the passageway and there wasn't. So I closed my  
13 door and figured I'd be hearing from somebody about what  
14 had happened.

15 Q Do you have any recollection as to time?

16 A At what point?

17 Q At this point right here.

18 A No, I don't.

19 Q What happened then?

20 A Well, as I said, I assumed I would be hearing from  
21 somebody as to -- or somebody would be outside or  
22 something. So I thought the best place for me to stay was  
23 right in my cabin until I heard from anybody. And so I  
24 laid down and it didn't seem like it was too much longer  
25 after that that the third mate knocked at my door and told

1 us that -- told me that we were hard aground.

2 Q Did he tell you anything else?

3 A I asked him if we were losing cargo and he said  
4 yes, we were.

5 Q What else did he tell you?

6 A I believe that was it.

7 Q Did you hear any more communication from anybody  
8 that evening from the bridge?

9 A No.

10 Q What did you do after that?

11 A Well, from the manner of the third mate, I knew  
12 things were fairly serious, so I thought I had best try to  
13 get some sleep. I didn't know if I would be called out at  
14 any moment or not and that I had best try to get some  
15 sleep, so I tried to go to sleep.

16 Q And were you able to do that?

17 A No, not much at all.

18 Q What time did you go back on duty, then, the next  
19 day for that -- I guess it was that morning?

20 A I must have gotten up around 6:30. I went to the  
21 cargo control room and the chief mate was fairly busy  
22 working in there. So I was ready to report between 7:00  
23 and 7:30, but I actually did not go to work probably until  
24 the start of my watch at ten to 8:00.

25 Q Did you go to sleep that morning?

1           A     After the grounding.

2           C     Right.

3           A     I may have fallen asleep for short periods of  
4 time, yes.

5           Q     Did you become aware over the next day or two of  
6 any concerns about the ship and the low tides and high  
7 tides?

8           A     Well, the tide was definitely an issue.

9           Q     Why is that?

10          A     Well, it was fairly -- the word was passed that  
11 everybody would just as soon keep the ship on the rocks  
12 than have her come off, so at high tide, we were careful to  
13 watch what was going on as to how much the ship was  
14 working, for example. There was quite a bit of sound as  
15 the ship worked.

16          Q     When you say the ship worked, what do you mean?

17          A     Well, the ship is not necessarily just sitting  
18 there solidly. If damage has been sustained and the tide  
19 is coming up or coming down, that means there's stress  
20 that's being exerted on it and she moves and could also  
21 move because of any winds or currents that we might have  
22 had.

23          Q     What was your concern at high tide?

24          A     Word was passed that, as I said, that we did not  
25 want the ship to come off the rocks, that she could be

1 unstable enough to capsize and then possibly sink.

2 JUDGE JOHNSTONE: Mr. Cole, why don't we take a  
3 break now? We've been at it for an hour and a half.

4 MR. COLE: Sure.

5 JUDGE JOHNSTONE: We'll take about a 15-minute  
6 break now. Ladies and gentlemen, don't discuss this matter  
7 among yourselves or with any other persons. Do not form or  
8 express any opinions.

9 THE CLERK: Please rise. This Court stands  
10 recessed.

11 (Whereupon, the jury leaves the courtroom.)

12 (Whereupon, at 10:30 a.m., a recess was taken.)

13 (Whereupon, the jury enters the courtroom.)

14 JUDGE JOHNSTONE: Okay, Mr. Cole.

15 BY MR. COLE: (Resuming)

16 Q Following the grounding that morning, did you work  
17 your ship from 8:00 to 12:00 that morning?

18 A Yes, that's correct.

19 Q What were you doing during that time?

20 A We were getting ready for the lightering operation  
21 that we had been told was going to take place that morning.

22 Q Who was the captain of the vessel at that time?

23 A Captain Hazelwood.

24 Q How long did he remain captain?

25 A I'm not sure.



1 C Was it through that day?

2 A I'm not sure.

3 Q Now when did you get to Anchorage for this trial?

4 A Last evening.

5 Q And this morning, were you asked to listen to a  
6 tape?

7 A Yes, I was.

8 Q And I'm showing you what's been marked for  
9 identification as Plaintiff's Exhibit Number 77. Do you  
10 recognize that tape?

11 A Yes, I initialed this tape after I listened to it.

12 Q This morning.

13 A Yes.

14 Q And is that your initial that you put on there?

15 A Yes, it is.

16 Q And that would be PRR.

17 A Correct.

18 Q Did you recognize any of the voices on that tape?

19 A Yes.

20 Q Which voices did you -- who did you recognize on  
21 that?

22 A I recognized the third mate's voice, Greg Cousins,  
23 and also Captain Hazelwood's voice.

24 Q Okay. And does Captain Hazelwood have a  
25 distinctive voice on the tape?

1           MR. CHALOS: Your Honor, I'm going to object to  
2 this line of questioning. He's being asked about a  
3 document or a tape that's not in evidence. Unless Mr. Cole  
4 intends to place that in evidence, I would object to any  
5 further questions about the tape.

6           JUDGE JOHNSTONE: He's indicated he recognized  
7 Captain Hazelwood's voice. Was that the purpose of the  
8 next question, anything distinctive about the voice?

9           MR. COLE: It's to -- may I approach the bench,  
10 Your Honor?

11          JUDGE JOHNSTONE: All right.

12          (The following was said at the bench.)

13          MR. COLE: My next witness is going to  
14 authenticate the tape. He is being asked to show the  
15 relevance of it. The relevance (inaudible) that it's  
16 Captain Hazelwood's and which one is Captain Hazelwood's.  
17 That's all I'm establishing through this witness. So with  
18 the next witnesses, they'll authenticate the actual  
19 transmission.

20          JUDGE JOHNSTONE: So he's going to identify the  
21 two voices as the third mate and Captain Hazelwood?

22          MR. COLE: Right.

23          JUDGE JOHNSTONE: You're not planning on playing  
24 the tape through this witness.

25          MR. COLE: No.

1 JUDGE JOHNSTONE: What's the problem.

2 MR. CHALOS: (Inaudible.)

3 (The following was said in open court.)

4 JUDGE JOHNSTONE: All right.

5 BY MR. COLE: (Resuming)

6 Q Does Captain Hazelwood have a distinctive voice on  
7 that tape?

8 A Yes.

9 C Would you just describe to the jury what that is?

10 MR. CHALOS: Your Honor, I'm going to object  
11 again. He's asking the witness about a document or a tape  
12 that's not in evidence at this time.

13 JUDGE JOHNSTONE: Well, I don't know the purpose  
14 of your inquiry here. If it's just to identify the voice,  
15 if that's the only limited purpose that it's coming in for,  
16 I'll let it in.

17 MR. COLE: Yes, it is.

18 JUDGE JOHNSTONE: But if you get into quality of  
19 voice, I will not let that in through this witness at this  
20 time, unless you lay a better foundation.

21 BY MR. COLE: (Resuming)

22 Q When did you hear Mr. Cousins voice on this tape?

23 A At various times.

24 Q Was it in the middle, at the end, or the  
25 beginning?

1           A     Well, when I listened to the tape, it was fast  
2 forwarded to various locations and --

3           Q     Okay, but you heard it then.

4           A     Yes, so I don't know at what point on the tape I  
5 heard his voice.

6           Q     Okay, and did you hear Captain Hazelwood's voice  
7 on there?

8           A     Yes.

9           Q     Was there a person or persons that you didn't  
10 recognize on that tape?

11          A     Yes.

12          Q     I have -- oh, no, I have one other area. What is  
13 Exxon Shipping Company's policy as far as alcohol  
14 possession on board a vessel?

15          A     As I understood it, it was a fireable offense.

16          Q     How about alcohol use?

17          A     On board the vessels? As I understood it, it was  
18 also a fireable offense.

19          Q     How were you made aware of these policies?

20          A     When I was hired by the company, I believe that  
21 was outlined and, also, at various times, ship meetings  
22 would be held. It may come up at a ship meeting. And I  
23 believe the policy was also posted on bulletin boards on  
24 the vessels.

25          Q     Did you have any alcohol on board the Exxon Valdez

1 on March 23d, 1989?

2 A No, I didn't.

3 Q Were you aware of any alcohol on board the Exxon  
4 Valdez on March 23d?

5 A No.

6 MR. COLE: I have nothing further.

7 CROSS EXAMINATION

8 BY MR. CHALOS:

9 Q Good morning, Mr. Radtke. I just want to get one  
10 question out of the way. You said this morning, when you  
11 listened to this tape, the tape was fast forwarded for you  
12 to certain portions?

13 A Yes, that's correct.

14 Q Who did that?

15 A The district attorney.

16 Q And did he say, "I'm going to fast forward to Greg  
17 Cousins' voice right here"?

18 A I'm sorry, it wasn't -- it was the lady.

19 Q Did Ms. Henry say to you, "I'm going to fast  
20 forward to Greg Cousins' voice right here"? No, she did  
21 not.

22 A She just fast forwarded to certain portions of the  
23 tape for you.

24 A Correct.

25 Q Okay. Now you testified that you were on the

1 bridge coming into Valdez the night before, am I correct?

2 A No, I was not on the bridge coming into Valdez. I  
3 was on the bow lookout at that time.

4 Q I see. Were you on the bridge at any time coming  
5 into Valdez on the 22d?

6 A No, I wasn't.

7 Q When you arrived in Valdez, did you assist in the  
8 docking operation?

9 A Yes, I did.

10 Q At that time, were you receiving orders from  
11 Captain Hazelwood?

12 A I don't recall.

13 Q Do you recall seeing Captain Hazelwood on the 22d  
14 at all?

15 A Yes.

16 Q Did you speak with him on the 22d?

17 A I don't believe so.

18 Q Now the -- you spoke a little bit about the job of  
19 loading cargo, do you recall that?

20 A Yes.

21 Q That's the chief mate's function on the Exxon  
22 Valdez, is it not?

23 A That's correct.

24 Q With respect to smoking, smoking is permitted, is  
25 it not, in the living quarters and on the bridge of the

1 ship?

2 A That's correct.

3 Q I'd like to turn to the undocking of the Exxon  
4 Valdez on the 23d. You said you were on the bridge with  
5 the chief mate standing by and the captain and the pilot  
6 were out on the wings, is that correct?

7 A That's correct.

8 Q It's a fact, isn't it, that the chief mate's job  
9 in that instance is to convey the orders to you and to work  
10 the engine telegraph when the ship is maneuvering?

11 A That's correct.

12 Q You were also asked about your knowledge of the  
13 Prince William Sound charts, do you recall that?

14 A Yes.

15 Q And you said you didn't feel, since you were an  
16 AB, that you needed to study those charts.

17 A Correct.

18 Q If you were working as a mate on this ship, would  
19 you have studied the charts?

20 A Absolutely.

21 Q Would you have become familiar with those  
22 charts --

23 A Absolutely.

24 Q -- the hazards to navigation and the aids to  
25 navigation?

1 A Yes.

2 Q Is that a common practice of mates?

3 A Yes.

4 Q Now during the undocking procedure, could you hear  
5 the captain relaying the orders or giving orders?

6 A Yes.

7 Q Captain Hazelwood speaks in a slow, low,  
8 deliberate voice, am I correct?

9 A Yes.

10 Q Was he delivering his orders at this time in that  
11 slow, low, deliberate style that he has?

12 A Yes.

13 Q Did he sound any different during the undocking  
14 procedure, about 9:00 o'clock on the 23d, than you had  
15 known him to sound before?

16 A No, he didn't.

17 Q Were the orders that he was giving clear?

18 A Yes.

19 Q Were they given with the authority that a captain  
20 has on a ship?

21 A Yes.

22 Q Now during that period of time, you also had the  
23 opportunity to observe Captain Hazelwood, did you not?

24 A I saw him, yes.

25 Q You saw him on the bridge?



1 A Yes.

2 Q Did he walk by you?

3 A Yes.

4 Q And did he stand in front of you or in your line  
5 of vision at any time?

6 A Yes.

7 Q Did you see any signs of alcohol impairment?

8 A No.

9 Q Were you close enough to smell the captain's  
10 breath?

11 A I don't believe so.

12 Q Did the captain in any way appear intoxicated to  
13 you?

14 A No, he didn't.

15 Q Now after you undocked, the vessel sailed through  
16 the Port of Valdez and then down through the Narrows, am I  
17 correct?

18 A That's correct.

19 Q And for the majority of that time, you were on the  
20 bridge, were you not?

21 A Yes, I was.

22 Q It's customary, is it not, that in that  
23 circumstance, that sailing through the Port of Valdez and  
24 through the Narrows, that any helm orders you would receive  
25 would come from the pilot?

1 A That's correct.

2 Q I'd like to, for a second, turn to your  
3 description of the rudder indicator. You mentioned that  
4 when you turn the wheel either right or left, the cursor  
5 moves over to the desired course change. For instance, if  
6 you were going to ten degrees, you would turn the wheel and  
7 the cursor would go over to ten degrees. Then,  
8 subsequently, the actual rudder indicator would move to ten  
9 degrees --

10 A Correct.

11 Q -- in a catchup mode. You said there was a slight  
12 delay. How slight is that delay?

13 A From zero to ten degrees, it may take a second to  
14 a second and a half.

15 Q After you left the bridge that particular evening,  
16 you were relieved by Mr. Claar --

17 A That's correct.

18 Q -- you said you went to the bow, am I correct?

19 A That's correct.

20 Q At some point, you received a radio call from  
21 Captain Hazelwood, did you not?

22 A Yes, I did.

23 Q And that's when he told you to go aft and help the  
24 mate disembark the pilot.

25 A Correct.

1 Q In that telephone conversation -- or radio  
2 conversation that you had with Captain Hazelwood, did he  
3 sound any different than he had sounded in the past?

4 A No, he didn't.

5 Q Did he sound in any way impaired?

6 A No, he didn't.

7 Q Subsequent to your returning to the bow after you  
8 disembarked the pilot, you got another radio call from  
9 Captain Hazelwood, did you not?

10 A Correct.

11 Q What time was that?

12 A I can only estimate. I didn't have a watch with  
13 me. I would say it must have been minutes prior to the end  
14 of my watch.

15 Q What time did you walk off the bow that evening?

16 A I would estimate quarter to 12:00.

17 Q In that conversation, what did the captain tell  
18 you?

19 MR. COLE: Object -- well, I withdraw that.

20 THE WITNESS: I believe the initial part of the  
21 conversation was just a brief question, "How does it look  
22 up there?" I don't remember the choice of words exactly,  
23 but I took that to mean how was the visibility.

24 BY MR. CHALOS: (Resuming)

25 Q And you told him that it was dark and it was hard

1 to see from up there.

2 A Yes.

3 Q Would you agree that on this particular night, in  
4 the conditions that you were seeing, that a lookout on the  
5 wing, the bridge wing, would have better visibility, could  
6 see further?

7 MR. COLE: Objection, argumentative, lack of  
8 foundation.

9 JUDGE JOHNSTONE: Objection overruled.

10 THE WITNESS: Could you ask the question again,  
11 please?

12 BY MR. CHALOS: (Resuming)

13 Q Yes. Given the conditions that you were looking  
14 at on that particular evening at the time you spoke with  
15 Captain Hazelwood, would you agree that a lookout on the  
16 bridge wing would have a further distance of visibility  
17 than you had?

18 A I don't believe that it would have been  
19 advantageous or that he would have been able to see that  
20 far ahead of the vessel from the bridge wing, that it would  
21 have made much difference.

22 Q Either way, it wouldn't have made much difference.

23 A I don't believe it would have.

24 Q Okay. Now when you spoke to Captain Hazelwood,  
25 did he sound any different than he had sounded 15, 20

1 minutes before?

2 A No, he didn't.

3 Q Did he sound impaired?

4 A No, he didn't.

5 Q Was he speaking to you in that same slow,  
6 deliberate style of his?

7 A Yes.

8 Q Now you say that you left your watch at about  
9 11:45, it took you about five minutes to walk back to the  
10 house?

11 A That's what I would estimate.

12 Q A couple of minutes to talk to your relief and  
13 tell her what she had to do?

14 A I don't even think it was a couple of minutes,  
15 possibly a minute. And as I said, I believe she already  
16 knew that she was going to the wing.

17 Q Then you went to the galley and had something to  
18 eat --

19 A Correct.

20 Q -- and ultimately went back to your room.

21 A Correct.

22 Q Now you stated that the noise that you heard was a  
23 sort of grinding noise that started at the bow of the  
24 vessel and worked its way back aft, is that correct?

25 A That's correct.

1           C     And that lasted five or seven seconds -- and,  
2 also, you heard some vibrations, I'm sorry.

3           A     Correct.

4           Q     And that whole sequence last five to seven  
5 seconds?

6           A     That's what I would estimate, yes.

7           Q     Prior to hearing that noise, had you heard any  
8 other noise or felt any vibrations at any time?

9           A     No.

10          C     Subsequent to hearing that noise and feeling the  
11 vibrations, did you feel -- did you hear any noise or feel  
12 any vibrations?

13          A     No.

14          C     Now I'd like to ask you --

15               MR. CHALOS: May I approach the witness, Your  
16 Honor?

17               JUDGE JOHNSTONE: Yes.

18               BY MR. CHALOS: (Resuming)

19          Q     I'd like to show you Exhibit Number 40, which is a  
20 picture of the steering console. Would you mind holding  
21 that picture up, if you would, and show the jury exactly  
22 where the indicators are on that console to show you when  
23 the helm is in the gyro mode or automatic mode?

24          A     Okay.

25          Q     Before you answer it --

1 MR. CHALOS: Your Honor, may I ask the witness to  
2 approach the jury so they can see it closer?

3 JUDGE JOHNSTONE: All right. You won't need it  
4 for other exhibits, just this exhibit right now?

5 MR. CHALOS: Just that exhibit.

6 JUDGE JOHNSTONE: Okay, you can just go on up.  
7 Grab the base of that wire. There's a little amplifier.  
8 Do you see the amplifier there? Just carry that as far as  
9 it will go before you run out of cord. You can hook that  
10 on your belt or your pocket.

11 (Witness approaches the jury.)

12 MR. CHALOS: Do you need some help.

13 JUDGE JOHNSTONE: That's as close as he's going to  
14 be able to get with what we have available.

15 THE WITNESS: Okay, you want me to point out the  
16 indicators for hand steering and gyro steering, is that  
17 correct?

18 BY MR. CHALOS: (Resuming)

19 Q Right. First of all, how many such indicators are  
20 there?

21 A Let's start with hand steering. When it's engaged  
22 in the hand steering mode, there is a spring loaded button  
23 to the right of the wheel. When the bridge is dark, that  
24 light is lit up and that button is approximately an inch in  
25 diameter.

1 I believe there's also a dial light to the left of  
2 the wheel, here. That light is, I would say, an eight of  
3 an inch in diameter, that's lit up. And then here, on the  
4 steering -- the CRT, the screen, there are indicators  
5 written either gyro mode or hand mode, as I recall.

6 Q Depending on which one you're on.

7 A Yes. And to my recollection, I believe that is  
8 it.

9 Q While you're standing there, if you were asked to  
10 put a ten-degree right rudder on this vessel, how many  
11 turns of the wheel, the steering wheel, would you have to  
12 make to accomplish that? And I want you to assume that the  
13 ship is laden to 57 feet, traveling at about 11.7 knots.

14 A I would say no more than one complete turn of the  
15 wheel, possibly closer to a half turn of the wheel.

16 Q As a helmsman, would you consider a ten-degree  
17 right rudder command to be a simple command?

18 A Yes.

19 Q Would you consider the task of carrying out that  
20 command to be a simple one?

21 A Yes.

22 Q You may return.

23 (Witness returns to the witness stand.)

24 BY MR. CHALOS: (Resuming)

25 Q Mr. Radtke, you sailed through the Port of Valdez



1 I think you said at least six times, am I correct?

2 A That's correct.

3 Q You were interviewed by several law enforcement  
4 agencies.

5 A That's correct.

6 Q And do you recall in those interviews that you  
7 told the investigative officers that, in your experience,  
8 it is not unusual for a master to leave the bridge while  
9 the vessel is transversing the waters of Prince William  
10 Sound?

11 JUDGE JOHNSTONE: Don't answer the question.

12 MR. COLE: I object on the same basis that Mr.  
13 Chalos objected when I attempted to ask a question in that  
14 respect. This person isn't qualified to testify to that.

15 MR. CHALOS: Your Honor, I'm asking for his  
16 personal knowledge and what he's seen.

17 JUDGE JOHNSTONE: You're asking for what he said  
18 to somebody else is what you're asking, in an interview is  
19 what you're asking.

20 MR. CHALOS: Well, I'll ask him without that  
21 preface, then.

22 MR. COLE: Then I object on the same grounds that  
23 Mr. Chalos objected when I asked about the auto pilot.

24 JUDGE JOHNSTONE: Counsel approach the bench.

25 (The following was said at the bench.)

1 JUDGE JOHNSTONE: He can give his opinion based on  
2 his experience coming in and out of Valdez. He's not  
3 giving his opinion as an expert. However, when you ask him  
4 did he make statements to other people concerning that,  
5 that's hearsay. I'm not going to give you any (inaudible).

6 MR. CHALOS: I'll withdraw the preface.

7 JUDGE JOHNSTONE: Okay, with the objection as to  
8 Valdez is overruled, based on his experience coming in and  
9 out of there.

10 MR. COLE: Can I ask him whether or not he  
11 believes whether or not the vessel was on auto pilot going  
12 in and out of Prince William Sound? That's the question I  
13 asked before and it was sustained.

14 JUDGE JOHNSTONE: Well, I'm going to overrule your  
15 objection now and that's all I'm dealing with now at this  
16 time. Mr. Cole, your objection is overruled.

17 (The following was said in open court.)

18 BY MR. CHALOS: (Resuming)

19 Q Mr. Radtke, on the basis of your experience in  
20 Prince William Sound and the Port of Valdez on these  
21 tankers, are you familiar with the practice of masters  
22 leaving the bridge while the vessel is in Prince William  
23 Sound?

24 A Yes.

25 MR. CHALOS: Your Honor, I have no further

1 questions at this time.

2 JUDGE JOHNSTONE: Mr. Cole.

3 REDIRECT EXAMINATION

4 BY MR. COLE: (Resuming)

5 Q On the basis of your experience traveling in and  
6 out of Prince William Sound, are you familiar with masters  
7 placing the tanker on auto pilot in Prince William Sound?

8 A No, I'm not.

9 Q Does that mean that they do or do not?

10 A I have not seen it done.

11 Q Now when you talked about the masters leaving  
12 Prince William Sound -- leaving the bridge, how long a  
13 period are we talking about? Did you observe masters leave  
14 the bridge?

15 MR. CHALOS: Your Honor, that's a compound  
16 question.

17 JUDGE JOHNSTONE: You can rephrase it to make it a  
18 single question.

19 BY MR. COLE: (Resuming)

20 Q Mr. Chalos asked you about when masters left the  
21 bridge. Would you tell the jury, did you ever see a master  
22 leave the bridge for an hour?

23 A No.

24 Q What type of times did you see the masters leave  
25 the bridge?

1           A     15 minutes.

2           Q     How about -- have you ever encountered ice coming  
3 into Prince William Sound?

4           A     I've been on watch when we have had ice  
5 conditions, yes.

6           Q     Have you ever been at the helm?

7           A     I don't remember.

8           Q     Have you been at the helm during -- were you ever  
9 at the helm in the area of the Port of Valdez?

10          A     Yes.

11          Q     Did captains ever leave the bridge in that area?

12          A     I don't remember that taking place, no.

13          Q     And besides your trip through the Narrows, do you  
14 ever remember a captain leaving the bridge while traveling  
15 in through the Narrows?

16          A     I don't believe so.

17          Q     Now I want to ask you a question, just to clarify  
18 and give you a chance to take a look at this other  
19 diagram. I think you indicated that the light that  
20 indicates that the tanker is in automatic pilot is on the  
21 left side. Would you take a look at this picture and see  
22 if that clarifies where that diode is?

23          A     Okay, this is the spring loaded button for being  
24 in hand steering.

25          Q     Let me --

1           A     Okay, this is the spring loaded button to engage  
2 hand steering.

3           Q     And that says "Helm," right?

4           A     Correct.

5           Q     And that means hand steering.

6           A     Correct.

7           Q     Okay. And where does the diode light up that  
8 tells you it's in helm -- or automatic pilot? Is it on the  
9 left side or the right side?

10          A     I believe it's on the left side.

11          Q     That's fine. If that's where you think it is,  
12 that's fine. What's written up here on the top right  
13 corner?

14          A     In the top right corner, I see "Control power,"  
15 "Pump on," "Auto pilot," "Helm," "Emergency," "Remote  
16 enable," "Remote on."

17          Q     Do you see any indications on the left side of  
18 helm or automatic pilot?

19          A     No, I don't.

20          Q     And when it's written on the -- what do you call  
21 this, the CDR?

22          A     The CRT, it's --

23          Q     CRT. Does it say "Hand mode" or does it say  
24 "Helm," or do you remember?

25          A     I'm afraid I don't remember that.

1 Q That's fine, okay. Have you ever taken any  
2 special training in alcohol detection at all --

3 A No, I haven't.

4 Q -- had any special training in that area?

5 A No, I haven't.

6 Q And would you take the pointer and, if you could,  
7 would you tell the jury where Captain Hazelwood generally  
8 stood when you were at the helm and he was at the bridge?  
9 Was there any place he would generally stand?

10 A No, not generally.

11 Q Okay. Was there any -- was it -- would he walk  
12 around the whole place?

13 A Usually, he would stay -- he did not pace. Some  
14 conning officers pace. Captain Hazelwood did not.  
15 Usually, he would be in one spot and would stay in that  
16 spot for awhile.

17 Q Would it be forward or aft?

18 A Generally forward.

19 Q Up by the windows, on one end or the other?

20 A Yes.

21 Q Is that where the radios are, in that area?

22 A Yes.

23 Q Now when you spoke -- when you saw Captain  
24 Hazelwood that evening, were the lights on or were the  
25 lights off on the bridge?

1 A They were off.

2 Q Why is that?

3 A Well, it's nighttime and the conning officers and  
4 the helmsmen cannot see out -- you want your eyes to be  
5 adjusted to the dark, so that's why you have a darkened  
6 bridge.

7 Q And is it -- how can you see the instruments with  
8 a darkened bridge?

9 A They're lit up.

10 Q How do you have lit up instruments and still  
11 retain your night vision?

12 A Oh, I would say they're illuminated at a level  
13 that's --

14 Q Are they in color?

15 A I'm sorry?

16 Q Are they in color?

17 A Yes.

18 Q What color are they?

19 A Various.

20 Q Now Mr. Chalos asked you how long it would take  
21 for a ship to respond after you gave it a turn of ten  
22 degrees, do you remember that?

23 MR. CHALOS: Objection. Objection, Your Honor,  
24 that's not what I asked.

25 JUDGE JOHNSTONE: I think that what you asked is

1 capable of the interpretation of "respond," but we're  
2 talking about how fast it took the rudder to actually move  
3 I think, so --

4 MR. CHALOS: Right.

5 BY MR. COLE: (Resuming)

6 Q The rudder to move. Do you remember him asking  
7 you that?

8 A Yes.

9 Q Does it make a difference, depending on the size  
10 of the load that the tanker has how fast it responds?

11 A I don't think I'm really qualified to know that.

12 Q When you were speaking with Captain Hazelwood out  
13 on the bow, how were you speaking with him?

14 A Via a hand-held radio.

15 Q And could you tell where he was at the time?

16 A I assumed he was on the wheelhouse.

17 Q You didn't have any chance to observe him there,  
18 though.

19 A No.

20 Q Would you say, in your experience in dealing with  
21 Captain Hazelwood, would you characterize him as a very  
22 precise and professional person?

23 A Yes.

24 MR. CHALOS: Objection, Your Honor, the question  
25 is vague and ambiguous.



1 JUDGE JOHNSTONE: I think it's the kind of opinion  
2 that he can give. Objection overruled.

3 BY MR. COLE: (Resuming)

4 Q And would that include the way he talks and his  
5 tone of voice? Would you characterize his language as  
6 precise or sloppy?

7 MR. CHALOS: Your Honor, I object again.

8 JUDGE JOHNSTONE: Objection overruled.

9 THE WITNESS: I don't recall ever having a command  
10 from him that I didn't understand.

11 BY MR. COLE: (Resuming)

12 Q Now when Ms. Henry asked you to listen to the tape  
13 today, what did she ask you to do? How did she ask you to  
14 identify --

15 A Prior to playing the tape, she said, "You will be  
16 hearing some voices. If you can identify them, identify  
17 them."

18 Q Thank you, I have nothing further.

19 RE CROSS EXAMINATION

20 BY MR. CHALOS: (Resuming)

21 Q Just a few questions, Mr. Radtke. When Captain  
22 Hazelwood called you at about 11:15 or 11:20 to tell you to  
23 come back to help with the pilot, did you have any reason  
24 to doubt that he was on the bridge at that time?

25 A None.

1 Q When he called you at about 11:45 to 11:50 that  
2 evening to ask you about the visibility conditions, did you  
3 have any reason to believe that he was somewhere other than  
4 the bridge?

5 A No.

6 Q Now in response to Mr. Cole's question, you  
7 indicated that on the times or at the times that you were  
8 on the helm coming into Prince William Sound, you didn't  
9 put the vessel on gyro, am I correct?

10 A That's correct.

11 Q That's not to say -- strike that. You can't say  
12 whether other ABs might have had the helm on gyro, is that  
13 correct?

14 MR. COLE: Objection, lack of foundation, lack of  
15 knowledge.

16 MR. CHALOS: That's precisely my question.

17 MR. COLE: Argumentative.

18 JUDGE JOHNSTONE: Objection overruled.

19 THE WITNESS: Could you repeat the question?

20 BY MR. CHALOS: (Resuming)

21 Q Did you understand my question?

22 A Ask it again, please.

23 Q Yes. You don't know whether the vessels that you  
24 were on were put in the gyro mode with some other helmsman  
25 at the wheel.

1 A That's correct.

2 Q Now are you aware of any rules or regulations that  
3 require a captain to be up on the bridge in Prince William  
4 Sound?

5 A No, I'm not.

6 Q Mr. Radtke, have you had the occasion in the past  
7 to observe people who were intoxicated?

8 A I guess I don't know what you mean by "observe."

9 Q Well, to see someone who drank to a point where he  
10 was drunk.

11 A Yes.

12 Q When you saw Captain Hazelwood -- strike that.  
13 And I take it that you're familiar with the signs that they  
14 exhibit when someone is drunk, are you not?

15 A Yes.

16 Q Did you see any such signs on Captain Hazelwood on  
17 the night of the 23d?

18 A No, I didn't.

19 Q Have you had occasion in the past to observe  
20 someone who's been impaired by alcohol?

21 A Yes.

22 Q Are you familiar with the signs of people who are  
23 impaired?

24 A Yes.

25 Q Did you see any such signs on Captain Hazelwood on

1 the night of the 23d?

2 A No, I didn't.

3 Q No further questions, thank you.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. COLE: (Resuming)

6 Q Mr. Radtke, when was the last time that you  
7 confronted a captain and told him that you felt that he was  
8 impaired?

9 MR. CHALOS: Objection, Your Honor. The question  
10 is leading, no foundation and it implies an answer that the  
11 witness hasn't testified to.

12 JUDGE JOHNSTONE: Objection sustained.

13 BY MR. COLE: (Resuming)

14 Q Have you ever done that?

15 A No, I haven't.

16 Q Thank you.

17 JUDGE JOHNSTONE: Okay, you may step down, you're  
18 excused. May the witness be excused from further  
19 participation?

20 MR. COLE: Yes.

21 MR. CHALOS: Yes, no further questions.

22 JUDGE JOHNSTONE: Okay, you're free to leave. You  
23 may call your next witness.

24 MR. COLE: Judge, can we approach the bench?

25 JUDGE JOHNSTONE: Yes.

1 (The following was said at the bench.)

2 MR. COLE: We're getting to the Coast Guard people  
3 now.

4 JUDGE JOHNSTONE: I understand that, but we can  
5 put them on and get them started on the direct and we'll  
6 take care of some of that between direct and cross.

7 MR. COLE: This is the (inaudible).

8 MR. CHALOS: I'll have the written response by  
9 1:15, I'm sorry.

10 JUDGE JOHNSTONE: That's fine. We can get started  
11 and make it to noon.

12 (The following was said in open court.)

13 MR. COLE: At this time, the State will call  
14 Gordon Taylor to the stand.

15 Whereupon,

16 GORDON P. TAYLOR

17 having been called as a witness by Counsel for the State,  
18 and having been duly sworn by the Clerk, was examined and  
19 testified as follows:

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

22 THE WITNESS: Gordon Paul Taylor, T-a-y-l-o-r.

23 THE CLERK: And your current mailing address?

24 THE WITNESS: P.O. Box 1841, Valdez, Alaska.

25 THE CLERK: And your current occupation, sir?

1 THE WITNESS: I work for the Ship Escort Response  
2 Vessel System in Valdez.

3 JUDGE JOHNSTONE: Try and speak up, sir. We've  
4 got the microphone up about as high as it will go. Mr.  
5 Cole.

6 MR. COLE: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. COLE:

9 Q Mr. Taylor, where do you live right now?

10 A Valdez, Alaska.

11 Q How long have you lived there?

12 A Since 1979.

13 Q What brought you to Valdez?

14 A I was stationed there in the Coast Guard.

15 Q And were you transferred?

16 A Yes.

17 Q Where did you come from?

18 A Portsmouth, Virginia.

19 Q When you arrived in Valdez, what did your duties  
20 entail; what was your position?

21 A I was stationed at the Marine Safety Office and I  
22 was a vessel traffic controller and, also, during the time  
23 I was stationed there, I was also a pollution investigator  
24 and a marine inspector.

25 Q Were you an enlisted person at that time?

1 A Yes, I was.

2 Q And how long did you work for the Coast Guard?  
3 How long were you in the Coast Guard?

4 A Ten years.

5 Q When did you get out?

6 A 2 April '84.

7 Q What did you do after you got out of the Coast  
8 Guard?

9 A I took a couple of months off and I worked at a  
10 gas station for a couple of months and I went to work as a  
11 gauger for a third party called Kaylabret. I worked across  
12 the bay, gauging tank vessels.

13 Q At some point, did you go back to working for the  
14 Coast Guard?

15 A Yes, I did, I believe it was in August of 1986. I  
16 went back working as a civilian watch stander in Valdez.

17 Q Where were you actually working then, where in  
18 town?

19 A At the Coast Guard station.

20 Q Can you -- I'm showing you what's previously been  
21 admitted as Plaintiff's Exhibit Number 25. Would you point  
22 to the jury where you were -- that center is that you were  
23 working at?

24 A Yes, it was right here, the Vessel Traffic Center.

25 Q Now what were your responsibilities there at that

1 job?

2 A As a vessel traffic watch stander?

3 Q Yes.

4 A I monitored the transiting of tank vessels,  
5 ferries, tugs throughout Prince William Sound, monitored  
6 their positions via VHF and, when they were close enough,  
7 on radio.

8 Q Would you describe for the jury what equipment you  
9 had available back in March 1989 to do this?

10 A The HF radio located various sites throughout  
11 Prince William Sound and I had a radar system, one of which  
12 was -- one of the radar sites was in Valdez, called the  
13 spit site.

14 Q Can you see it on that map?

15 A Yes, you can. The spit site's right here. You  
16 had to go all the way around Smallwood Harbor to get to it,  
17 but that's the spit site right there. And that site there  
18 took care of the entire -- just the Port of Valdez. And  
19 then another site was located at Potato Point and that's  
20 what we used to monitor the tank vessels through the  
21 Narrows and farther down until they --

22 Q Okay, let me get another diagram out for you to  
23 show the -- can you -- do you recognize that chart?

24 A Yes, I do. Can you show the jury where the other  
25 radar was?



1 Q Okay, right here, at Potato Point, is the other  
2 radar site and this is the first radar site that I referred  
3 to earlier, right here.

4 Q Let's talk a little bit about the communication  
5 system that you had available at that time. You mentioned  
6 VHF?

7 A Yes.

8 C Where were the stations that you had?

9 A Well, we had a station at Valdez, at the Vessel  
10 Traffic Center. We had one there. We had one at Potato  
11 Point, one at Naked Island, one at Cape Hinchinbrook, a  
12 couple of sites, Cape Yagataga. They were used by the  
13 other side, but my main sides were Hinchinbrook, Naked  
14 Island, Potato Point and Valdez.

15 Q And would you explain to the jury how you used the  
16 radar then to track tankers? Let's start with coming into  
17 the Port of Valdez.

18 A Okay. Well, we picked them up on radar wherever  
19 we could, wherever the radar would pick them up, usually  
20 between Busby Island and --

21 Q You might want to -- it would be helpful if you  
22 pointed to those.

23 A Okay, this is about the scope of the radar, Point  
24 Fremantle over to Busby Island, sometimes a little farther  
25 down, sometimes not so far. That's where we started

1 monitoring the tank vessels whenever we could see them.  
2 And as they came up farther, up to here, we started  
3 plotting them about, I don't know, about a mile before they  
4 got to Potato Point and we plotted them through the  
5 Narrows.

6 Q When you say plot them, would you tell the jury  
7 what you mean by that?

8 A Take a range and bearing from Potato Point to the  
9 vessel.

10 Q And would that be done through the use of your  
11 radar?

12 A Yes, it would.

13 Q And when you say a range, what do you mean by  
14 that?

15 A A range, a distance from Potato Point to the  
16 vessel.

17 Q A bearing, what do you mean by that?

18 A A bearing would be -- a bearing from Potato Point  
19 to the vessel in --

20 Q What angle they were?

21 A Yes, what angle they were from Potato Point,  
22 right.

23 Q Degrees.

24 A In degrees.

25 Q And in the top corner of that chart, would you

1 tell the jury what the significance of that portion that's  
2 in between the lines was?

3 A This area here?

4 Q Yes.

5 A This is Valdez Narrows is what it's called. It's  
6 -- as you can see, it gets smaller, comes through there, so  
7 we track them six minutes until they get to the Narrows and  
8 then from the Narrows up to -- through the Narrows, we  
9 track the vessels every three minutes.

10 C Do you do that physically or is that done  
11 automatically?

12 A It's done automatically, but you can also do it  
13 physically.

14 Q At that time, did you do it automatically or with  
15 hands, physically?

16 A Automatically, it was done automatically. You  
17 just watch them go through there, make sure your gear was  
18 working to plot them through there. We didn't do a  
19 physical plot.

20 Q There's a certain line that they were to take?

21 A They have a optimum track line which basically  
22 goes pretty much right up through the center of the  
23 Narrows. And we keep an eye on them. If they go anywhere  
24 -- say they vary 50 yards, right or left, of the track  
25 line, at that time, you might call them up and say, "My

1 radar holds you 50 yards right of optimum track line," or  
2 50 yards left, and they'll verify it and maybe take  
3 correction action if need be.

4 Q Is there a speed limit in there?

5 A Yes, there is. Coming in, when they're not loaded  
6 with oil, the speed limit's 12 knots. Going out, when  
7 they're loaded, it's six knots through the Valdez one-way.  
8 One-way is the Valdez Narrows; we call it the one-way,  
9 zone.

10 C Could you explain to the jury what you mean by  
11 that?

12 A A one-way zone? What it means is that only one  
13 tanker at a time can be in there, in the Valdez Narrows,  
14 from this line to this line. One tanker at a time can go  
15 through there. That's why it's called the one-way zone.

16 C Is there any different procedure for going in,  
17 other than I guess the speed, from coming out for a tanker  
18 leaving the Port of Valdez?

19 A Well, if they're leaving through the Narrows,  
20 they'd have a tug escort, two-tug escort until they get to  
21 Potato Point and then they'd be restricted to six knots,  
22 also.

23 Q Now would you tell the jury what the reporting  
24 requirements are for a tanker that is traveling to Valdez?

25 A Okay, reporting requirements is they'd call you

1 three hours prior to arrival, prior to arrival at Cape  
2 Hinchinbrook. At that time, they'd give you various  
3 information about their vessel, the name of the vessel, the  
4 draft of the vessel, what their position is, when they're  
5 going to arrive at Cape Hinchinbrook, where they're going.

6 Q Where they're going meaning --

7 A Whether they're going to Valdez. You know, it's  
8 pretty much any tank vessel that's coming in there is going  
9 to Valdez, that's pretty much said. There's no place else  
10 to go for them in Prince William Sound. So then they give  
11 other particulars about the vessel, that everything they  
12 have is in operating order, do they have pilotage for  
13 Prince William Sound.

14 Q What does that mean?

15 A Pilotage for Prince William Sound? Have a  
16 licensed deck officer with pilotage for Prince William  
17 Sound, which means that he's taken a test, he knows the  
18 area, he's supposedly the expert on the vessel, on the  
19 area.

20 Q Do you learn where the tanker has come from?

21 A Yes, they've told me their next port and their  
22 last port, also, on that three-hour precall. Then they  
23 give you a call one hour from Cape Hinchinbrook and they  
24 give you pretty much the same stuff again. They give you  
25 their speed, where they're at, when they're going to make

1 Cape Hinchinbrook if the times have changed and that's  
2 about it for the one-hour precall.

3 Then they call you again at Cape Hinchinbrook and  
4 tell you that they made Cape Hinchinbrook, everything's  
5 going fine. They give you an ETA to Naked Island, which is  
6 the next reporting point. And at that time, you'd tell  
7 them any particulars, if there's outbound traffic. You  
8 just usually tell them if there's any other opposing  
9 traffic or any traffic in the system at the three-hour  
10 precall, but you tell them any particulars that would help  
11 them out when they're at Cape Hinchinbrook.

12 Then again, they called you again at Naked Island,  
13 also, and tell you that they're at Naked Island. They'll  
14 give you their ETA to the pilot's station, be it Bligh Reef  
15 for a nonpilotage vessel or Rocky Point for a pilotage  
16 vessel. At that time, you can either -- you get the  
17 weather from them, too, at Cape Hinchinbrook and Naked  
18 Island. Those are two weather reporting stations.

19 And then they call you again when they're at the  
20 pilot station, usually when the pilot's aboard, give you an  
21 ETA to Entrance Island, which is another reporting  
22 station. And at that time, we usually --

23 Q Where's Entrance Island?

24 A Entrance Island is right here. So they call you.  
25 Say like here's Rocky Point right here or they pick the

1 pilot up either down here or up here. And at that time,  
2 we've usually got them acquired on the radar by then, can  
3 see them. And then they give us a call at Entrance Island,  
4 "Roger that," and then they give us a call when they're all  
5 fast to the dock. And that's the reporting procedure  
6 coming in.

7 Q Now during this process, does the watchman write  
8 down the information that he receives?

9 A Yes, he does.

10 Q And is that done at the time that he receives it  
11 from the Exxon Valdez?

12 A Yes, usually as he receives it, you write it down.

13 Q And is that done in the regular course of your  
14 duties as a watchman?

15 A Yes, it is.

16 Q Were you on duty on March 22d, 1989?

17 A Yes, I was.

18 Q What time did you come on duty that day?

19 A My watch schedule for that day was 4:00 to  
20 midnight, so you come on watch at approximately quarter to  
21 4:00, so you can relieve at quarter of.

22 Q And when you came on duty that day, were you  
23 advised that the Exxon Valdez was heading into port?

24 A Yes, I was.

25 Q And who were you advised by at that point?

1           A     I was advised by the person on watch that I was  
2 relieving.

3           Q     And did you see a vessel data sheet that day --

4           A     Yes, I did.

5           Q     -- for the Exxon Valdez?

6           A     Yes, I did.

7           Q     And is that the sheet that you just spoke of where  
8 the information is recorded --

9           A     Yes, it is.

10          Q     -- from the vessel?

11          A     Yes.

12          C     And it's done in the regular course of business,  
13 pursuant to your requirements as a watchman?

14          A     Right.

15          C     I'm showing you what's been marked for  
16 identification as Plaintiff's Exhibit Number 76. Do you  
17 recognize that document?

18          A     Yes, I do.

19          Q     What is that? Why do you recognize that?

20          A     It's a vessel data sheet. On all vessels that  
21 come in, we fill out a vessel data sheet on them.

22          Q     And what is the name of the vessel that  
23 corresponds to that vessel data sheet?

24          A     What do you mean, on this one here?

25          Q     Yes.



1 A This is the data sheet on the Exxon Valdez.

2 Q And what's the date?

3 A The date is 22 March 1989.

4 Q And is that a fair and accurate copy of the actual  
5 vessel data sheet that you filled out?

6 A Yes, it is.

7 MR. COLE: I would move for the admission of what  
8 has previously been identified as Plaintiff's Exhibit  
9 Number 76.

10 MR. MADSON: No objection.

11 JUDGE JOHNSTONE: It's admitted.

12 (State's Exhibit 76 was  
13 received in evidence.)

14 BY MR. COLE: (Resuming)

15 Q And what does it say under Pilotage for that?

16 A Well, there's a Y here, Y meaning yes. Usually,  
17 you don't write down "Yes" and "No" because they're talking  
18 and you're writing this down as they go along, so you try  
19 and just stay with them, so we put down a Y for yes, N for  
20 no. There's a Y there for yes.

21 Q Now that would mean that that vessel was then --  
22 that the pilot boat would be dispatched to Rocky Point.

23 A Yes.

24 Q What time did the Exxon Valdez call in on its  
25 three-hour call?

- 1 A It says here 1438.
- 2 Q Which would be --
- 3 A On the 22d.
- 4 Q In 12-hour time, what's that?
- 5 A Oh, 1438, 2:38.
- 6 Q In the afternoon.
- 7 A In the afternoon.
- 8 Q And what time was its next reporting time?
- 9 A It was at 1630, 4:30, and that was its one-hour
- 10 precall.
- 11 Q And that would have been when you were on duty?
- 12 A Right.
- 13 Q And when was the next time?
- 14 A The next one was at Cape Hinchinbrook at 5:17,
- 15 1717.
- 16 Q Is there another name for the place off Cape
- 17 Hinchinbrook that that point is called?
- 18 A They could say Cape Hinchinbrook. They could say
- 19 Seal Rocks. Usually, it's Cape Hinchinbrook.
- 20 Q Okay. I'm showing you --
- 21 A Okay, another place would be Schooner Rocks, but
- 22 that's really not abeam Cape Hinchinbrook.
- 23 Q Where's Seal Rock, can you point that out?
- 24 A Seal Rocks is right here.
- 25 Q Okay, where's Schooner?

1 A Schooner Rock is right here. Let's see, right  
2 there, Schooner Rock.

3 Q And Cape Hinchinbrook is --

4 A Is right here, this is Cape Hinchinbrook. So they  
5 call when they're abeam Cape Hinchinbrook.

6 Q Now -- and then after being abeam at Cape  
7 Hinchinbrook, did you receive another call from the Exxon  
8 Valdez?

9 A Our next call should have been abeam of Naked  
10 Island, which was at 1830, 6:30.

11 Q Where is Naked Island, for the jury?

12 A Naked Island is right here. It's about halfway  
13 through their journey.

14 Q And where would have been the next call?

15 A The next call would have been when the pilot is  
16 aboard at Rocky Point, which would be up here. That's  
17 Rocky Point.

18 Q And what time was that?

19 A They said they were at Rocky Point 2019, which  
20 would be 8:19 in the evening.

21 Q And what time did the ship dock that evening?

22 A They said they were all fast -- actually, it  
23 doesn't say. Let's see, Entrance Island, 2108. It doesn't  
24 have -- they arrived at 2248, which is 10:48 that evening.

25 Q Now were you working on March 23d, 1989?

1 A Yes, I was.

2 Q Would you tell the jury what shift you were  
3 working that day?

4 A I was also working the 4:00 to midnight shift.

5 Q So you would have been off duty at about 4:00  
6 o'clock.

7 A Yes.

8 Q Did you speak with someone from the Exxon Valdez  
9 that day, that evening?

10 A Yes, I did.

11 Q What time was the -- was there a 30-minute  
12 precall?

13 A Right, 30-minute precall was made at 8:57, 2057.

14 Q What type of information did you receive at that  
15 time?

16 A Well, they usually call up, tell the name of their  
17 vessel, give me their drafts, their destination, when  
18 they're going to arrive at their destination and they'll  
19 tell me they have no impairments and everything is in  
20 order, meaning that everything is the same as when they  
21 came in, everything is ready to sail.

22 Q What about pilotage or nonpilotage?

23 A If they came in and they had pilotage and they  
24 were going to go out and they didn't have pilotage, they'd  
25 let us know. They'd say, "Well, we are no longer a

1 pilotage vessel; we're a nonpilotage vessel." And I would  
2 write that down as such

3 Q And what type of circumstances does that -- how  
4 would that occur?

5 A If the captain who had pilotage left and another  
6 captain had come on who didn't have pilotage, then they  
7 would become a nonpilotage vessel.

8 Q What did you write down on the vessel data sheet  
9 for their outbound leg, whether or not they were pilotage  
10 or nonpilotage?

11 A I put down another Y for yes, they did have  
12 pilotage.

13 Q When you talk to the personnel on the outbound  
14 ship, the 30-minute call, who do you generally talk to?

15 A Generally, I'd say the pilot gives me this  
16 information.

17 Q Now would you tell the jury is there a mechanism  
18 by which your conversations with the tankers are recorded?

19 A Yes, there is, we have a recording system. It's a  
20 reel to reel recording system and it records everything we  
21 say on 13 and 16, Channel 13 and Channel 16 VHF.

22 Q And how -- is that synchronized at all as far as  
23 time?

24 A Yes, it is. It has a time chronometer at the top  
25 of it that feeds that time onto the tape, so that you can

1 go back to a specific time and get what you're looking for.

2 Q Are these recordings done in the normal course of  
3 business in the Coast Guard?

4 A Yes, they are.

5 Q What time did the Exxon Valdez leave, according to  
6 the vessel traffic sheet?

7 A They were underway at 2126, 9:26 that evening, the  
8 23d.

9 C And do you -- when was their next reporting time?

10 A Okay, they got underway at 2126. Their next  
11 reporting time would be at Entrance Island; they gave me a  
12 2215 time that they'd be there, they gave me an ETA. And I  
13 have put down here that they arrived at 2217, 10:17 arrival  
14 at Entrance Island.

15 C Now that evening, did you pass along any ice  
16 reports to the Exxon Valdez?

17 A Yes, I did.

18 Q Would you tell the jury what you told them?

19 A I told them -- what I recall I told them, there  
20 were numerous pieces of ice down off of Point Fremantle.  
21 Do you want me to show you where that's at?

22 Q Yes.

23 A Okay, this is Point Fremantle here.

24 Q Where is that in relationship to Bligh Reef?

25 A It's almost straight across from it. Bligh Reef

1 would be a little farther south, southeast, of Point  
2 Fremantle, but the ice would come out of Columbia Glacier,  
3 Columbia Bay, and head down that way. So I told them that  
4 there were numerous pieces reported from the other outbound  
5 tanker which went through there approximately four hours  
6 before that. That was the ARCO Juneau, I believe.

7 Q And what time do your reports indicate that the  
8 pilot was let go then?

9 A I have down here Rocky Point at 2326, 11:26.  
10 Usually, that's -- I didn't write, "Pilot away," but Rocky  
11 Point and they're a pilotage vessel, so that's the time I  
12 would say that the pilot was away.

13 Q Do you remember having a conversation with a  
14 representative of the Exxon Valdez at that time asking  
15 their heading and speed?

16 A Right at that time, yes, I do. From what I  
17 recall, a person came on the radio and said that they were  
18 going to come up to sea speed and they might call me a  
19 little later, depending on how the ice got -- was down at  
20 that point.

21 Q Did you get another call from that same  
22 individual?

23 A Yes, sir, I did. I believe it was about ten  
24 minutes later, I received a call from the same -- it was  
25 the same voice I heard, saying that, judging by his radar,

1 he saw a lot of ice in the southbound lane and it was  
2 possible that they'd have to deviate over into the  
3 northbound, incoming lane to go around it and I think  
4 that's all I really remember for that. I think shortly  
5 thereafter, he called back and said that he was going to  
6 deviate from the southbound to the northbound and he was  
7 changing course to 200 at 12 knots.

8 Q Now was a course change from 219, which is  
9 presumably the track that they take out of the area, is  
10 that correct, about 219 --

11 A Somewheres in there, yes.

12 Q -- to 200, did that cause you any concern at all?

13 A None at all. When he told me he was going to 200,  
14 I went over to this large chart that we have at the Vessel  
15 Traffic Center. Oh, it's probably seven feet by eight feet  
16 and we have little cards for the tankers and I moved it  
17 down to the Rocky Point area. And then I looked over at  
18 the compass rose, which this is a compass rose here. It  
19 gives you degrees from zero to 360. And I just looked at  
20 it, saw 200, where they were at, and it would have put them  
21 well inside of Bligh Reef, really, at 200, so I wasn't too  
22 concerned.

23 Q Now are there any requirements in the vessel  
24 traffic system as far as reporting leaving the traffic  
25 zones?



1           A     Yes, there is. You're supposed to give it ten  
2 minutes prior to leaving or crossing the lanes, a  
3 ten-minute call to the Traffic Center.

4           Q     How about as far as to leave the zone altogether?

5           A     There was a -- the traffic manual, I believe, says  
6 that all they have to do is just call and let us know their  
7 intentions.

8           Q     Did you ever learn of the Exxon Valdez's  
9 intentions to turn to 180 that evening?

10          A     No, I did not.

11          Q     Did you ever learn of the Exxon Valdez's  
12 intentions to leave the vessel traffic system completely?

13          A     Would you say that over again?

14          Q     Did you ever learn, after the two conversations  
15 you testified to, of the Exxon Valdez's intentions to leave  
16 the vessel traffic zones completely?

17          A     No, he said something --

18                JUDGE JOHNSTONE: Mr. Cole -- I'm sorry, did you  
19 have something else to add to that?

20                THE WITNESS: Oh, he had said something earlier  
21 that, I believe when I was talking to him, that he would --  
22 he might have to and he'd get back to me.

23                JUDGE JOHNSTONE: Mr. Cole, we'll take our lunch  
24 break now. We'll come back at 1:15. Ladies and gentlemen,  
25 don't discuss this matter among yourselves or with any

1 other person. Don't form or express any opinions. I  
2 understand one of the jurors may have a bad back. If you  
3 need to bring a pillow or something like that, feel free to  
4 do so and make yourself comfortable when you're in the jury  
5 box. We'll stand at recess.

6 THE CLERK: Please rise. This Court stands at  
7 recess.

8 (Whereupon, the jury leaves the courtroom.)

9 (Whereupon, at 11:57 a.m., a luncheon recess was  
10 taken.)

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AFTERNOON SESSION

1  
2 (Tape changed to C-3607.)

3 (Whereupon, at 1:22 p.m., proceedings resumed.)

4 JUDGE JOHNSTONE: It was my intention to finish  
5 direct examination of this witness, Mr. Cole. What reasons  
6 can you give me why we need to resolve this issue before  
7 cross?

8 MR. COLE: Because if you rule against me, Judge,  
9 I want to ask him, and if you rule for me, then I don't  
10 have to do that.

11 JUDGE JOHNSTONE: Normally, this is a matter  
12 that's brought up by the Defendant. It's 404(B) type  
13 material, prior wrongs acts. That is applied by the  
14 Defendant for admissibility in a hearing outside the  
15 presence of the jury. Normally, it's not resolved by a  
16 motion for protective order to give the State an advantage  
17 to be able to take the sting out of cross examination.

18 I don't mind doing it. I'd like to get it  
19 resolved. But I understand that the written opposition is  
20 not ready and so it's my intention to proceed with the  
21 direct examination until we get the written opposition.  
22 And that way, the Defendant can have an opportunity to  
23 present its arguments in writing.

24 You just filed the application at 4:00 o'clock  
25 yesterday afternoon on some of it. It seems to me that it

1 would be proper to wait until this Defendant had an  
2 opportunity to respond in writing and I see no reason to  
3 delay the direct examination, based on your reason given.

4 MR. COLE: Well, how about the marijuana, can we  
5 resolve that? They've already responded in writing on  
6 that.

7 JUDGE JOHNSTONE: All right --

8 MR. MADSON: I already respond, Your Honor, with  
9 regard to --

10 JUDGE JOHNSTONE: We might as well get this out of  
11 the way, the marijuana issue out of the way.

12 MR. MADSON: Sure. Your Honor, in spite of what  
13 the State's argument is, we responded in writing as to the  
14 reason it should be offered. And in addition to that, we  
15 think we can go into it to show possible bias or motive to  
16 establish lack of credibility of the witness for the simple  
17 reason that the Alaska courts seem to hold a very broad  
18 view of bias or the establishment of bias or possible  
19 prejudice. And in fact, if there's any possible -- I want  
20 to stress the word "possible" -- crimes, wrongs or whatever  
21 that are still pending or may be pending against a person,  
22 it's certainly allowable to ask the witness if, in fact,  
23 he's concerned about that.

24 JUDGE JOHNSTONE: Okay, why don't we take this  
25 matter up. Mr. Taylor, would you mind leaving the

1 courtroom? We'll take this up outside your presence.

2 (Mr. Taylor leaves the courtroom.)

3 MR. MADSON: In addition, Your Honor, there's one  
4 other argument that I think could be made, but that kind of  
5 goes with the Protective Order Number 4. But even though  
6 we're not talking about that, the fact that drug usage may  
7 be a part of this, I think if we establish by offer of  
8 proof that if this witness were allowed to answer questions  
9 that if he were under the influence, it comes to two  
10 things, first of all, his ability to remember what  
11 happened, his ability to recollect, his ability to do what  
12 his job entails. All these things are subject to proper  
13 cross examination. But, more importantly, if it rises to  
14 the level -- and nobody knows this until they're allowed to  
15 question the witness, you know -- if we're precluded from  
16 even getting into it and all we can do is make an offer of  
17 proof and say, "Well, we can't do it" -- but if it rises to  
18 the level of gross negligence or recklessness, then even  
19 under Kusmire or whatever that decision is --

20 JUDGE JOHNSTONE: Kusmire.

21 MR. MADSON: Kusmire -- it still is allowable if  
22 it can rise to that level, but we have to establish somehow  
23 that it can. We don't know until we're able to cross  
24 examine the witness. We don't know what he's going to say.

25 JUDGE JOHNSTONE: Well, let's establish what you

1 think is happening here. As I understand it, Gordon  
2 Taylor, the VTS watch stander, up until the time he was  
3 relieved by Mr. Blandford, had a test, a urine test on  
4 March 26th, 1989, more than 48 hours after the grounding,  
5 is that correct?

6 MR. MADSON: I don't have the date in front of me,  
7 Your Honor, but I thought it was -- let's see if we can get  
8 that. You don't have the results? I don't have the date  
9 right in front of me.

10 JUDGE JOHNSTONE: Okay. And, also, understand  
11 that -- well, maybe we ought to start on the premise that  
12 you are applying to get into evidence something that would  
13 normally be prohibited, that is his drug ingestion. That's  
14 normally something that's covered by 404 and 403 and it  
15 doesn't come in unless it's shown to be for purposes  
16 permitted under 404(B), generally speaking. And so you  
17 have a threshold burden here to establish that its  
18 probative values outweigh this undue prejudicial effect.  
19 number one. Number two, you've got to show that it's not  
20 offered to show that a person acted in conformity with it.

21 So with that in mind, I think with all the  
22 discovery you've had, you should have knowledge about when  
23 this test was taken.

24 MR. MADSON: Oh, we do, Your Honor.

25 JUDGE JOHNSTONE: You should have knowledge about

1 the results. And so you should be able to make a little  
2 better presentation to me on this.

3 MR. MADSON: I think it was the 26th, Your Honor.  
4 It was a Sunday. Now marijuana we can show later on, if  
5 necessary, does not disappear from the body very rapidly.  
6 In other words, it can stay for some period of time. As a  
7 consequence, it's more than likely that he had consumed or  
8 used marijuana prior to that time.

9 JUDGE JOHNSTONE: We'll have to get to that. I'm  
10 not going to accept your offer at this time. That's a  
11 foundational piece of information that will have to come in  
12 some time prior to the admissibility of any of this type of  
13 material. But as I understand it, the test that was  
14 discovered -- that was taken discovered that he had an  
15 amount of THC, marijuana, which was less than one-tenth the  
16 United States Department of Health and Human Services  
17 guidelines for drug testing in the work place. Now is that  
18 correct?

19 MR. MADSON: I don't know, I don't have that in  
20 front of me, but I have no reason to dispute what the Court  
21 is reading.

22 JUDGE JOHNSTONE: Well, let's assume that it was a  
23 very small amount, close to what's been represented in the  
24 briefing here. What are you trying to show with this  
25 test? What exactly, what probative value does this test

1 result have? What are you trying to show, that Taylor did  
2 what he shouldn't have done? How can you link up that this  
3 would affect his credibility or his job performance? How  
4 are you prepared to do that as foundational material?

5 MR. MADSON: Well, I think we have to ask him,  
6 Your Honor, that's the whole concept here. I don't know  
7 what he would say. He would say -- when was -- you know,  
8 "If you used marijuana, was it affecting your ability or  
9 not?" I think he's the only person that could determine  
10 that. Now I can't stand here and say it did or did not.  
11 We have some reason to believe that the Coast Guard watch  
12 standers weren't watching. I mean that's pretty obvious,  
13 at least not so much in the case of Mr. Taylor. About the  
14 time he left his watch, the Exxon Valdez was more or less  
15 disappearing from their radar screen, at least on the  
16 particular range. But I think it's still fair to say and  
17 ask him whether or not his recollection, his ability to  
18 remember things or what he did that night was in fact the  
19 result of any marijuana usage prior to the time the test  
20 was taken or prior to his getting off his watch, let's put  
21 it that way.

22 JUDGE JOHNSTONE: Is there anything else you wish  
23 to add to your argument?

24 MR. MADSON: Not regarding Mr. Taylor, no.

25 JUDGE JOHNSTONE: Okay, is there anything you wish



1 to add, Mr. Cole?

2 MR. COLE: No.

3 JUDGE JOHNSTONE: Okay, your motion for protective  
4 order is granted as to Mr. Taylor. You haven't given me  
5 enough information to do anything other than to preclude  
6 its admissibility. I have had this presented to me before  
7 in other cases where there's been some expert testimony to  
8 demonstrate what a long abuse of cocaine, for example, does  
9 to a person's memory. Our appellate courts deal with  
10 this. Our appellate courts, for the most part, have  
11 rejected the admissibility of this type of evidence to show  
12 reliability. But you haven't given me any information to  
13 go by. You haven't given me any -- you haven't indicated  
14 anything that Mr. Taylor might say that you dispute and you  
15 can prove that the use of marijuana in small amounts would  
16 tend to affect his credibility. And I don't know what  
17 information is going to be provided that's in dispute here.

18 So I'm going to deny your application on Mr.  
19 Taylor at this time to admit it, if that's what you're  
20 going to be making it on, and I'm going to grant the motion  
21 for protective order.

22 MR. MADSON: There is another topic with regard to  
23 Mr. Taylor, Your Honor, that I became aware of this morning  
24 and I honestly don't know the answer to it. But it very  
25 well might be that he's no longer working as a civilian

1 Coast Guard watch stander because of the marijuana  
2 incident. This leads to a wholly different line of inquiry  
3 and that is possible bias of motive. And I'm not saying  
4 that I know the answer to that, but he indicated that he's  
5 no longer working there and I know the results of that test  
6 and I know the policy and I think we might be -- we should  
7 be allowed to open the door to see whether or not he has a  
8 biased motive or interest in this case, which I think he  
9 certainly may have if, in fact, he has any pending charges  
10 or if he has any resentment towards Captain Hazelwood as a  
11 result which caused him to get fired. You know, there's  
12 all kinds of possible inquiries here.

13 JUDGE JOHNSTONE: Well, I think you're entitled to  
14 inquire as to motive and bias, but that cannot include, at  
15 this time without a prior application or ruling by the  
16 Court, of material that would be covered by 404, which  
17 would be his ingestion of marijuana.

18 MR. MADSON: Okay, I imagine I could go into bias,  
19 but not specifically marijuana, is that correct?

20 JUDGE JOHNSTONE: I would -- if you have any  
21 hesitation, I would get a copy of the rules and I'd look up  
22 404 and it will tell you what you cannot go into. I find  
23 that the inquiry about this marijuana has nil probative  
24 value; I can go that far. Now to the extent that it has  
25 some probative value I can't see, it's far outweighed by

1 its unnecessary invasion into Mr. Taylor's privacy. It's  
2 an unnecessary consumption of time and it introduces a  
3 collateral issue. It's a red herring, in other words, on  
4 the short end. So I'm not going to let you go into the  
5 marijuana in any way with Mr. Taylor.

6 MR. MADSON: I wasn't planning on using the term  
7 "marijuana," Your Honor. I realize I'd stay away from  
8 that.

9 JUDGE JOHNSTONE: Well, THC, drugs, anything like  
10 that at all.

11 MR. MADSON: Oh, of course, of course.

12 JUDGE JOHNSTONE: Do we have an understanding  
13 here? I mean I don't want you to think that I'm limiting  
14 you to just certain words. I don't want anything covered  
15 by 404(B) involved without prior application to the Court.

16 MR. MADSON: No. I would intend to ask him only  
17 in general terms whether or not there is some reason, you  
18 know, why -- if there is any connection, let's say, with  
19 what occurred that particular night. And I don't even know  
20 if he got fired. He might have quit. You know, I'm just  
21 saying that if he does say, "Yes, I was fired," that if  
22 there's any connection without specifically mentioning  
23 that, but just, you know, does he have any possible -- I  
24 think I can get into whether or not he fears any possible  
25 criminal charges as a result or if he had any criminal

1 charges, without going into specifics. And I'd be glad to  
2 have the Court or anyone tell him not to answer with regard  
3 to drug usage or anything like that.

4 JUDGE JOHNSTONE: All I can say is don't surprise  
5 me with the nature of your question. I don't want to  
6 admonish you in front of the jury, so be cautious on how  
7 you address this witness if you're thinking about anything  
8 asking about criminal activity. All right, ready for the  
9 jury now, Mr. Taylor? Okay, let's get the jury in.

10 (Whereupon, the jury enters the courtroom.)

11 JUDGE JOHNSTONE: Ladies and gentlemen, thank you  
12 for your patience. Sometimes we take up matters outside  
13 your presence. I'm trying to do that in the morning hours  
14 and the afternoon hours, but sometimes we take up matters  
15 outside your presence that would normally be -- you'd  
16 normally be in here. Don't speculate on what we're doing  
17 in here. And I try to keep it to a minimum, but sometimes  
18 it's unavoidable, and that's why you're not brought in  
19 right on time. It's because we're doing something, we're  
20 not just sitting around. You may resume.

21 BY MR. COLE: (Resuming)

22 Q Now what time did you get off work on March 23d,  
23 1989?

24 A Between say 11:00, 11:35, 11:45 in the evening.

25 Q When was the last time you saw the Exxon Valdez

1 on your radar?

2 A I couldn't give you a specific time, I can't  
3 recall that, but it was just south of Rocky Point.

4 Q Have you had a chance to listen to a tape of the  
5 conversations that you had with the Exxon Valdez on  
6 March 23d, 1989?

7 A Yes, I have.

8 Q And do you recognize the tape that's in front of  
9 you?

10 A Yes, I do.

11 Q Would you pull that out of its jacket there and  
12 identify the number on the back of that tape?

13 A Exhibit Number 77.

14 Q Do you recognize that particular tape?

15 A I initialed it, yes, I do.

16 Q And is that a fair and accurate representation of  
17 the conversations that you had with the Exxon Valdez from  
18 the time you made contact with it, around 8:30 to quarter  
19 of 9:00, until you left that evening, about quarter to  
20 12:00?

21 A Yes, it is.

22 MR. MADSON: Your Honor, let me interpose an  
23 objection here. May we approach the bench for a second?

24 JUDGE JOHNSTONE: All right.

25 (The following was said at the bench.)

1 MR. MADSON: Your Honor, this may be acceptable as  
2 part of the (inaudible) words that were spoken. However,  
3 if the State is trying to get him to show a difference in  
4 speech patterns or something like that (inaudible) show  
5 that this particular recording is a true and accurate copy  
6 of the original recording.

7 JUDGE JOHNSTONE: I'm not sure I understand,  
8 either. You want to prevent the State from showing if  
9 there's a slurring of words or --

10 MR. MADSON: A slower manner or (inaudible)  
11 because the speed at which the tape is recorded is very  
12 important. That's why we have our expert down there  
13 checking it out right now.

14 JUDGE JOHNSTONE: (Inaudible.) Okay, I'll excuse  
15 the jury on this one.

16 The following was said in open Court.)

17 JUDGE JOHNSTONE: Well, we could have taken this  
18 up, but I didn't know it was going to happen and neither  
19 did Counsel, so we're going to excuse you and take it up  
20 outside your presence. Don't discuss the matter. Don't  
21 discuss anything concerning the case or speculate on what  
22 we're doing and please don't form or express any opinions.  
23 Mr. Purden can give you keys.

24 (The jury leaves the courtroom.)

25 JUDGE JOHNSTONE: Okay, in a side bench

1 conference, Mr. Madson, raised the issue of whether or not  
2 -- okay, in a side bench conference, Mr. Madson raised the  
3 issue of whether or not this tape was going to be offered  
4 to show the demeanor of Captain Hazelwood's speech, in  
5 addition to the truth of the words or the words spoken by  
6 Captain Hazelwood. Mr. Madson raised the issue that it's  
7 important in how a tape is reproduced, there should be some  
8 indication that it's an accurate reproduction and, in the  
9 absence of that, he objects to its authenticity. Do you  
10 wish to be heard, Mr. Cole?

11 MR. COLE: Well, I think that I can ask Mr. Taylor  
12 if it's an accurate reproduction as he remembers it of his  
13 voice and the person that he was speaking to.

14 JUDGE JOHNSTONE: Well, there's an objection and  
15 I'm going to sustain it, unless there's a better foundation  
16 for this because I agree with Mr. Madson that if you offer  
17 it for the demeanor, I think the authenticity of the  
18 reproduction is important and that's a foundational matter.

19 MR. COLE: Well, then I'm going to ask Mr. Taylor  
20 that very question that I just spelled out.

21 JUDGE JOHNSTONE: Go ahead.

22 BY MR. COLE: (Resuming)

23 Q Mr. Taylor --

24 JUDGE JOHNSTONE: And I'll allow voir dire, as  
25 well.

1 BY MR. COLE: (Resuming)

2 Q -- the tape that you heard here, is it an accurate  
3 reproduction of your voice and the voice that you heard  
4 that evening?

5 A To the best of my recollection, yes.

6 JUDGE JOHNSTONE: Mr. Taylor, did you reproduce  
7 this tape?

8 THE WITNESS: No, I did not, sir.

9 JUDGE JOHNSTONE: When's the last time you heard  
10 the original?

11 THE WITNESS: I believe it was just before the  
12 NTSE hearings.

13 JUDGE JOHNSTONE: Is there any difference between  
14 what you heard on this tape and what you heard on the  
15 original, as far as the sound of the voices, the speed at  
16 which you heard the conversations?

17 THE WITNESS: Not that I can detect.

18 JUDGE JOHNSTONE: Okay, anything further.

19 MR. MADSON: Yes.

20 VOIR DIRE EXAMINATION

21 BY MR. MADSON:

22 Q Mr. Taylor, you didn't record this, as you said,  
23 right?

24 A Did not.

25 Q Do you know what kind of equipment it was recorded



1     Q     ?

2           A     No idea.

3           Q     Do you know when it was recorded?

4           A     No.

5           Q     And this was done some -- actually, the original  
6 recording is where at this time, do you know?

7           A     No idea.

8           Q     But do you know if it's still in existence?

9           A     I do not.

10          Q     Do you know from your past experience as a Coast  
11 Guard watch stander what happened to the tapes of vessel  
12 traffic, how long did you keep them and things like that?

13          A     If it's a tape where there's nothing on it that  
14 anybody wishes to hear again after 30 days, it is erased.

15          Q     And you don't know right now if the original is in  
16 existence or it's been erased, is that right?

17          A     That's correct.

18          Q     And you did not have a chance to compare Captain  
19 Hazelwood speaking on that occasion, on that tape, with  
20 other tapes of other times of traffic, in other words, have  
21 a chance to compare them at different times?

22          A     No, I did not compare them.

23          Q     And how many times would you say that you heard  
24 Captain Hazelwood speaking to you over the radio?

25          A     I couldn't tell you. I would -- I only remember

1 this time that we're speaking of here.

2 MR. MADSON: I don't have any other questions,  
3 Your Honor.

4 JUDGE JOHNSTONE: Do you wish any further argument  
5 on the issue?

6 MR. MADSON: Well, I just said, Your Honor, we  
7 have an expert retained in this field because we more or  
8 less anticipated this might come up. And it's our  
9 understanding by way of offer of proof that the expert  
10 witness could testify that the equipment that a copy is  
11 made from is very important, the speed is very important.  
12 As the Court may know, even on small recorders, a slight  
13 variation in tape speed can change and alter things  
14 considerably in the manner of speech, the speed, you know,  
15 how fast you're talking, how slow you're talking. And in  
16 addition -- I've already made my argument on the tape, I  
17 don't want to go more than that on the foundational  
18 aspects.

19 But there's another problem with that and that's  
20 under 404(A). That's a little bit unusual, but what the  
21 State is doing under 404(A) is trying to show evidence of a  
22 character trait or demeanor or something like that, that he  
23 is slow, that he's precise, and here's a time where, you  
24 know, he was not, not in conformity with the usual  
25 character trait.

1 JUDGE JOHNSTONE: This is a relevant character  
2 trait --

3 MR. MADSON: Yes.

4 JUDGE JOHNSTONE: -- and it would be admissible  
5 under our rules.

6 MR. MADSON: I'm sorry to -- go on.

7 JUDGE JOHNSTONE: As to 401, you're objection's  
8 overruled.

9 MR. MADSON: Your Honor, excuse me, but can I just  
10 make a comment on that? The way the rule reads, evidence  
11 could be allowed if it's a relevant trait of the accused's  
12 character which is offered by the accused or rebutted by  
13 the prosecution. That means we have to do it first.  
14 They're getting their cart ahead of the horse here.

15 JUDGE JOHNSTONE: You've done enough DWIs to know  
16 that they take a video of somebody and they show that video  
17 of how that person's demeanor is and this is just a very  
18 small example of that. That objection is frivolous and  
19 it's overruled. As to --

20 MR. MADSON: I'm sorry, I didn't understand that  
21 this is the case. They're going to play this tape to show  
22 that he was drunk, is that the point? I guess that's the  
23 point.

24 JUDGE JOHNSTONE: The demeanor, to show his  
25 demeanor. That's exactly what I think it's being offered

1 for and your objection is overruled. Now as far as the  
2 reproduction, Mr. Cole, how was this tape reproduced, what  
3 kind of equipment, who did the reproduction, where is the  
4 witness to lay that foundation?

5 MR. COLE: I don't know who did the reproduction,  
6 Your Honor. We were sent these tapes by a law firm out of  
7 Los Angeles.

8 MS. HENRY: This next paragraph explains how the  
9 transcript (inaudible).

10 MR. COLE: Here, Your Honor, I'm going to show you  
11 what was provided.

12 (Counsel for State hands document to Counsel for  
13 Defendant.)

14 MR. MADSON: Well, I don't know what this really  
15 means, Your Honor. It doesn't tell me anything about  
16 whether this tape is recorded from the original, who did it  
17 or how or anything else. I don't know who the law firm in  
18 Los Angeles is, but it very well might be a plaintiff's  
19 firm which would have some interest in altering the tape.

20 MR. COLE: Sir, this tape was done by the NTSB and  
21 this was provided along with the transcript, which I have a  
22 copy of, Your Honor, indicating how the tape was made and  
23 when it was made. Now the tape, itself, there were two or  
24 three they seized that were taken down to Juneau was my  
25 understanding where a machine down there recorded it on a

1 cassette tape. The tape that we have we received from Mr.  
2 Linton, to more better explain where we received it from,  
3 but it was taken from a firm in Washington, D.C., who sent  
4 us, my understanding was, a copy from the original tape.

5 JUDGE JOHNSTONE: Okay, this is Exhibit  
6 Number 78. I'm going to admit it for purposes of this  
7 proceeding. It will not go to the jury at this time, but  
8 it will be admitted for purposes of determining the  
9 foundation for the tape.

10 (State's Exhibit 78 was marked  
11 for identification and was  
12 received in evidence.)

13 JUDGE JOHNSTONE: This appears to be a document  
14 that's been prepared by the NTSB and on the bottom of it,  
15 it does say, "The recordings for March 23 and 24, 1989,  
16 were transcribed by Jeanette DeLorge, NTSB Bureau Accident  
17 Investigation. The transcripts were reviewed by L.Z.  
18 Cachurin and R.W. Woody of the Marine Accident Division."  
19 Is there any further argument on the question?

20 MR. MADSON: Your Honor, all that document says is  
21 that someone transcribed it, as I understand it, and I have  
22 a copy of that. And here we're getting into a different  
23 area. Here are the words, okay, but that doesn't show the  
24 demeanor.

25 MR. COLE: I've got a copy of it for the Court,

1 too, of the transcription.

2 JUDGE JOHNSTONE: I'll mark it as 78A and 78A is  
3 admitted for purposes of this proceeding, only, to  
4 establish a foundation for the tape that's not to be shown  
5 to the jury, unless otherwise \_\_\_\_\_.

6 (State's Exhibit 78A was  
7 marked for identification and  
8 received in evidence.)

9 JUDGE JOHNSTONE: Any further argument, Mr. Cole?

10 MR. COLE: No, Your Honor.

11 JUDGE JOHNSTONE: All right, I'm going to allow  
12 the tape in, over objection. I don't think at this time  
13 you've raised a genuine question as to the authenticity of  
14 this duplicate. It is a duplicate. You've been given a  
15 tape and you're going over that, your expert is going over  
16 that. I think I'll let you bring that up in your case in  
17 chief at a later time if you find there's some dispute  
18 concerning it. It doesn't seem like there is a dispute;  
19 you don't know if there is, at least at this time. It's  
20 permitted under Evidence Rule 1001 and 1003. I'm going to  
21 let it in at this time.

22 Are we ready for the jury now or do we need to  
23 take up any other matters concerning this tape before the  
24 jury gets here? You're about to play the tape, are you?

25 MR. COLE: No, there are some other tapes and I

1 have to wait for the next person to come in.

2 JUDGE JOHNSTONE: Okay, let's get the jury in.  
3 Are there places on these tapes where there are large  
4 periods, long periods of time with no communication?

5 MR. COLE: No, we've --

6 JUDGE JOHNSTONE: You've eliminated a lot of the  
7 gaps?

8 MR. COLE: It's a voice activated tape is my  
9 understanding.

10 JUDGE JOHNSTONE: Is that correct, it's a voice  
11 activated tape?

12 THE WITNESS: The one at Valdez that we listen to?

13 JUDGE JOHNSTONE: The one that's in front of you,  
14 the original of the one in front of you, is it a voice  
15 activated tape recording machine?

16 THE WITNESS: I have no idea what this one is.  
17 The one at Valdez runs --

18 JUDGE JOHNSTONE: At Valdez I'm talking about.

19 THE WITNESS: It runs all the time, 24 hours.

20 JUDGE JOHNSTONE: It's not just voice activated,  
21 then?

22 THE WITNESS: It's always running.

23 JUDGE JOHNSTONE: Where did you get that  
24 information, Mr. Cole?

25 MR. COLE: I thought Mr. Linton told me that, Your

1 Honor.

2 MS. HENRY: (Inaudible.)

3 (Whereupon, the jury enters the courtroom.)

4 JUDGE JOHNSTONE: You may proceed.

5 BY MR. COLE: (Resuming)

6 Q Mr. Taylor, you listened to that tape. Do you  
7 recognize your voice on there?

8 A Yes, sir, I do.

9 Q And were you provided a transcript?

10 A Yes, I was.

11 Q And that transcript that you were provided, is  
12 that a fair and accurate copy of the conversation that you  
13 had on that tape?

14 A Yes, it is.

15 Q And the places where that transcript says VTC, is  
16 that you, your voice that's on the --

17 A Yes.

18 Q Did you recognize anyone else's voice on that  
19 tape?

20 A I recognized the pilot's voice when he got  
21 underway.

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

23 CROSS EXAMINATION

24 BY MR. MADSON:

25 Q Mr. Taylor -- excuse me one second, I wasn't quite



1 prepared for this right now. Okay, first of all, you  
2 indicated you now work for the Ship Escort System?

3 A Yes, I did.

4 Q What is that, sir?

5 A We have two vessels that follow the loaded tank  
6 vessels outbound from the terminal to Cape Hinchinbrook,  
7 abeam Cape -- in a line from Cape Hinchinbrook to Seal  
8 Rocks. And, also, if a partially laden tanker came in, we  
9 would be -- we would escort them in from Cape Hinchinbrook  
10 to the terminal.

11 Q Is that a private organization or --

12 A Alyeska is running it right now.

13 Q Alyeska runs it, but you're under contract or  
14 something to someone working for Alyeska, is that right?

15 A Yes, I am, that's right.

16 Q A private firm?

17 A Right.

18 Q Do you work with Mr. Mark Delozier, by any chance?

19 A He works in the same system, but I do not work  
20 with him.

21 Q Now, sir, I'd appreciate if you'd just answer yes  
22 or no, but let me ask you, did the events that occurred on  
23 March the 23d, that night, the grounding of the Exxon  
24 Valdez, have anything at all to do with your no longer  
25 being employed as a civilian Coast Guard watch stander?

A No.

1 C You voluntarily left?

2 A Yes.

3 Q When did you do that, sir?

4 A Oh, let's see, I believe it was in early April,  
5 maybe -- no, it was longer than that, May, I believe it was  
6 May of '89 I left.

7 Q One month after the events of March 23d or so?

8 A Yes, around there.

9 C Let me ask you a little bit about that job, if you  
10 will. Are you normally the only person on duty or is there  
11 two of you at the same time? I mean the job I'm speaking  
12 of, of course, is the VTC control center, watch stander.

13 A At the same job? There's usually just one person  
14 there. There's two people in the room. One person is a  
15 radioman and one person is a VTC watch stander.

16 C And do you alternate jobs at all or did you?

17 A No, sir.

18 Q In other words, you were a watch stander on radar  
19 all the time. The other individual only does the radio.

20 A Right, that's correct.

21 Q And you did this for how long, sir?

22 A Oh, well -- altogether?

23 Q Yes.

24 A You mean my Coast Guard career and such and all  
25 that.

1 Q Yes.

2 A Approximately four years, four and a half.

3 Q How long were you at Valdez, then, doing this job?

4 A Approximately seven years, actually. I was in the  
5 Coast Guard for five years, bouncing back and forth as a  
6 vessel traffic controller. And then when I came back, I  
7 was there for two and a half years, I believe, as a vessel  
8 traffic controller.

9 Q Okay, let's back up and say when you were in the  
10 Coast Guard, you did this same type of job, only you were  
11 actually in the Coast Guard, right?

12 A That's correct.

13 Q Where did you do it?

14 A At Valdez.

15 Q Okay, you never worked as a traffic controller  
16 anywhere --

17 A No, sir.

18 Q -- other than Valdez. I guess the question is  
19 you're in the Coast Guard, you're doing this. Then you get  
20 out of the Coast Guard and, all of a sudden, you're doing  
21 it again, but you're not in the Coast Guard. Can you  
22 explain that to us?

23 A They civilianized the position. I was working as  
24 a gauger at the time for Kaylabret and I was getting tired  
25 of inhaling toxic vapors and a chance for an indoor job. I

1 already knew the job, so I put in for it and I got it,  
2 that's it.

3 Q Okay. So at the time you began working there and  
4 all the time you were working as a watch stander in Valdez,  
5 you were a civilian, you didn't wear a uniform, you didn't  
6 salute anybody or anything like that.

7 A That's correct.

8 Q Now when you began work as a -- would we want to  
9 call it, I guess, a VCT, watch stander, Vessel Control  
10 Center, is that what that --

11 A Vessel Traffic Center.

12 Q Vessel Traffic Center, excuse me. And there's  
13 something else called a VTS, is there not?

14 A Vessel traffic system.

15 Q Would you explain the difference, what these  
16 initials mean?

17 A Well, the vessel traffic system is a system -- the  
18 entire system is a vessel traffic system. The Vessel  
19 Traffic Center is where you work, it's where you work at.  
20 It's a Coast Guard building. They have a place called the  
21 Vessel Traffic Center. That's where the radars are, that's  
22 where the radios are.

23 Q That's the point that you spotted on the map for  
24 us a little earlier, you pointed to it and said, "That's  
25 where I work."

1 A Yes, sir.

2 Q The VTS is the entire system --

3 A Right.

4 Q -- that everyone operates under, right, as far as  
5 tanker tracking is concerned?

6 A Yes.

7 Q What vessels operate on the system and which ones  
8 don't, if you can answer that? I mean how would anybody  
9 know if they're coming in there?

10 A Well, any vessel over 300 gross tons propelled by  
11 machinery, any vessel over 100 gross tons carrying  
12 passengers for hire, any vessel over eight meters in length  
13 towing or pushing any floating dredge or plant, by law, has  
14 to contact the Vessel Traffic, be a player in the vessel  
15 traffic system.

16 Q What training did you have to have before you  
17 became a watch stander? What requirements were necessary  
18 for that job?

19 A They went over the rules of the road with you.  
20 You had to do a test on rules of the road. You have to  
21 fill out chartlets, you know, that you're knowledgeable of  
22 the area, know how to use radio telephone procedures and  
23 they just go over with you, have another person there  
24 monitoring you for approximately 30 days and then they tell  
25 you if you're qualified or not.

1           C     Did you know what type of radar system was used by  
2 the Coast Guard at the Valdez station when you began  
3 working there?

4           A     When I began work there as a civilian?

5           Q     Yes.

6           A     Did I know or do I now know?

7           Q     Do you know now?

8           A     Yes, sir, I believe it was a Raytheon system.

9           C     Do you have any knowledge -- when did the radion  
10 system come into effect, do you know?

11          A     Raytheon -- when was it put in?

12          C     Yes.

13          A     It was put in before I got there. I do not know  
14 exactly when.

15          C     So you don't know what was used prior to that  
16 system being in effect at all, what was there?

17          A     I didn't understand.

18          C     What was used prior to the radion --

19          A     Oh, it was an AIL system, a private system was put  
20 in. And the way I understand it, they put in the Raytheon  
21 system so that Coast Guard people could work on Coast Guard  
22 gear, takes -- puts out another contractor out of --

23          Q     If I understand you correctly, on the prior  
24 system, if something went wrong --

25          A     Private contractors.

1 C -- it would be more expensive to repair.

2 A That's my understanding.

3 Q Let me ask you this, sir.

4 MR. COLE: Your Honor, I'm going to object. I  
5 object to this line of questioning as irrelevant.

6 MR. MADSON: Well, Your Honor, it's extremely  
7 relevant to show what change was made prior to the  
8 grounding in the radar effectiveness and what areas it  
9 covered and what it didn't cover and who knew it.

10 JUDGE JOHNSTONE: It's about time for us to take  
11 up the next motion, it sounds like to me. We're getting  
12 into that area, aren't we, Mr. Madson?

13 MR. MADSON: Well, Your Honor, I could go on and  
14 get him to -- well, no, I really don't think I can.  
15 Everything I'm going to talk about here is going to --

16 JUDGE JOHNSTONE: It sounds to me like you're  
17 getting into that area, the threshold of it at least.

18 (General laughter.)

19 JUDGE JOHNSTONE: Okay, we'll call you back when  
20 we get finished. Don't discuss the case and don't  
21 speculate on what we're doing, please, and don't form or  
22 express any opinions.

23 (Whereupon, the jury leaves the courtroom.)

24 MR. CHALOS: Your Honor, may we approach the  
25 bench?

JUDGE JOHNSTONE: Yes, that won't --

1 MR. MADSON: Well, we won't have to.

2 JUDGE JOHNSTONE: We don't -- come on up, if you  
3 need to. We don't have the jury.

4 (The following was said at the bench.)

5 MR. CHALOS: Your Honor, I'm going to leave here  
6 this afternoon around 4:00 o'clock to go back to New York.  
7 I expect to be back Monday, flying back Sunday night,  
8 because of my wife's condition that I had mentioned to the  
9 Court. I would like to ask for a continuance because we  
10 have two important witnesses, Mr. Cousins and Mr. Kagan.  
11 (Inaudible) unless Mr. Cole (inaudible) so we can schedule.

12 JUDGE JOHNSTONE: Can you assure me you will be  
13 back on Monday?

14 MR. CHALOS: Absolutely. I'll be back Sunday  
15 night.

16 JUDGE JOHNSTONE: What's your position on this  
17 \_\_\_\_\_?

18 MR. CHALOS: I don't have any problem with that.

19 JUDGE JOHNSTONE: Okay. Let's step back. We'll  
20 make it part of the record.

21 (The following was said in open Court.)

22 JUDGE JOHNSTONE: Did you get all that picked up,  
23 do you know?

24 MR. : (Inaudible.)

25 JUDGE JOHNSTONE: Okay, I'm going to excuse you.



1 You can step outside while we take up this next matter.

2 (Mr. Taylor leaves the courtroom.)

3 JUDGE JOHNSTONE: All right, there's an  
4 application to continue the trial after today, made by Mr.  
5 Chalos, and I don't think that there's any reason to keep  
6 this information at a side bench. It's a legitimate  
7 request for legitimate reasons and there's no opposition.  
8 Mr. Chalos, your wife is having a baby, is that correct,  
9 and you want to be relieved of the trial obligation  
10 tomorrow so you can go back to New York and be with her for  
11 this.

12 MR. CHALOS: That's right, Your Honor.

13 JUDGE JOHNSTONE: And Mr. Cole has no objection.  
14 This is something that's been brought to the Court's  
15 attention. I was thinking before that you had enough  
16 attorney power that you could proceed in your absence, but  
17 it looks like you're dividing up these witnesses about  
18 equally and given the complexity and the number of  
19 witnesses, I appreciate Mr. Cole's nonobjection. I'm going  
20 to go ahead and I'll recess the trial after today and I'll  
21 let you go. We'll resume Monday, based on your assurances,  
22 side bench, that you'll be available Monday morning, is  
23 that correct?

24 MR. CHALOS: That's right, Your Honor, and I thank  
25 you very much. I'm sure my wife thanks you as well.

1 (General laughter.)

2 JUDGE JOHNSTONE: Sure. Well, we will continue  
3 the case after today until Monday, so tomorrow will not be  
4 a trial day and I'll advise the jury accordingly.

5 So let's take up the next matter and that is it  
6 seemed to me that you're getting into fault of the  
7 personnel in the VTC. You're getting into, at least, not  
8 them, but also the fault of the radar, the unavailability  
9 of good radar, of failure to recognize a situation that may  
10 have been developing. And are we now getting into that  
11 area we need to address?

12 MR. MADSON: Sure, we are. Your Honor, I'd just  
13 request that before I make more or less an offer of proof  
14 that the Court have an opportunity to read our written  
15 response. I do apologize for the delay. We dictated over  
16 the lunch hour and I did think it was going to be here. It  
17 should be here any time, that's all I can say. But it's --  
18 you know, the State responded in writing. The Court  
19 usually likes it that way and I can certainly argue it.  
20 But having gone to all the trouble to write it, I think it  
21 would be nice if the Court would read it.

22 JUDGE JOHNSTONE: I agree. I agree and I thought  
23 it was going to be ready, too. Let's hear Mr. Cole's  
24 argument, first of all, and add anything you want to your  
25 brief. It's entitled Motion for Protective Order Number 4

1 and as I understand it, you're arguing they cannot show  
2 fault of any of the operators of the VTC or the Coast Guard  
3 or the government, they can't offer that as evidence in  
4 this case, based on Kusmire and other case law.

5 MR. COLE: Your Honor, the things that I would add  
6 is that it appears to me that the Court has, in the past,  
7 and the case law in the past has made a distinction between  
8 civil cases and proximate cause issues and criminal cases  
9 and proximate cause issues.

10 Now in civil cases, I understand that in a  
11 negligence action, one of the important things in the past  
12 used to be contributory negligence and now it's generally a  
13 comparative negligence and the theory is behind,  
14 oftentimes, defenses are, "Look, my guy wasn't totally in  
15 the wrong. There were other people." From the nature of  
16 Mr. Madson's opening, that's exactly what he said, there  
17 were a lot of people that made mistakes, Mr. Kagan, Mr.  
18 Cousins, the Coast Guard, the watch standers. And our  
19 understanding of the law is that that is not the defense in  
20 a criminal matter.

21 You can argue that there are superseding causation  
22 in criminal law, but to just say someone else is negligent  
23 is not sufficient. And common sense evaluation of it is as  
24 follows. A person is driving and they're intoxicated and  
25 they're driving down the road up here, in Alaska, and it's

1 snowy. It snowed out the day before. And he's drunk and  
2 he drives across the lane and hits somebody and hurts them  
3 very bad. He can't come in and argue that the roads were  
4 bad and that the state was negligent in maintaining the  
5 roads and that the state is at fault and that he isn't the  
6 only one that's at fault in a defense of an assault case  
7 where he's charged with recklessly causing the injury to  
8 someone else.

9 And that's the same thing that we have here. We  
10 have actions by Captain Hazelwood going out to Bligh Reef.  
11 And what he is trying to say through his attorneys'  
12 arguments is that the government was negligent by not  
13 having a proper radar system out there, by not watching  
14 him. And, number one --

15 JUDGE JOHNSTONE: And by not notifying him.

16 MR. COLE: By not notifying him, by not keeping  
17 him on the radar. Even though it's Captain Hazelwood who  
18 put his ship in the position of peril, we're supposed to,  
19 the government is supposed to step in and say, "Hey, wait a  
20 minute, come back here," and that's not their job. Not  
21 only is it not their job. The testimony of Gordon Taylor,  
22 and he's already testified, is that he lost the ship with  
23 their radar. And you've heard that already in testimony  
24 that was given in the omnibus hearings.

25 The failure of the Coast Guard to act was never a

1 superseding cause and that was ruled in in your case when  
2 you prevented the Defendant from bringing in evidence that  
3 the paramedics failed to act to save the person that the  
4 Defendant had injured and who ultimately died.

5 JUDGE JOHNSTONE: Do you find any distinction  
6 between the Kusmire case, which was a first degree murder  
7 case where the Defendant I think engaged in some  
8 intentional conduct, and a case where the culpable mental  
9 state is reckless? Do you find any difference between the  
10 two?

11 MR. COLE: No, I don't. I think that the case law  
12 that we cited -- there was one cite to cases about that. I  
13 can't remember where that was. But I feel that the same  
14 thing would happen in a manslaughter. That's why -- or an  
15 assault case, where a person was driving down the road and  
16 complained that the state had not maintained the road well  
17 enough or that the manufacturer of his car should have put  
18 in a different set of brakes. Now if that person could  
19 say, "Look, my brakes failed completely," that would be one  
20 thing. You know, that's what's known as a superseding,  
21 unforeseeable, superseding, intervening cause, "My brakes  
22 failed. They went out. I went through an intersection. I  
23 hit somebody."

24 That's not what we have here. We don't have the  
25 steering mechanism of the Exxon Valdez going out; it was in

1 perfect order. What we have the Defendant doing is saying,  
2 "These people's failure to act should be considered in  
3 determining whether I'm the proximate cause of this case."  
4 And we submit that the case law prevents them from so  
5 arguing.

6 JUDGE JOHNSTONE: What just if the Defendant were  
7 to present evidence in the form of experts, other captains,  
8 who come to the conclusion that -- we know that this vessel  
9 transit system is not a mandatory thing. It provides  
10 information. It's not positive control, like a positive  
11 control of air space -- but, "We have become to rely on it,  
12 we've come to rely on this, and we expect that they're  
13 going to do their job and we would expect they would tell  
14 us about these things." Would that not go to the overall  
15 standard of care or standard of conduct for a captain in  
16 Captain Hazelwood's shoes to determine whether or not he  
17 was reckless or not?

18 MR. COLE: I think that if you could find people  
19 that do that, that might be right. But we've got a pilot  
20 that's already testified, "Do you depend on the VTS  
21 system," and he said absolutely not. But I don't believe  
22 that whether or not they believe that they're being tracked  
23 -- if he says that, if the issue was Captain Hazelwood  
24 actually believed it, I believe that the best way for that  
25 evidence to come in, the most relevant way, is for Captain

1 Hazelwood to be up there and say on the stand, "I was  
2 depending on this system to protect my vessel." But other  
3 than that, I don't believe that it does go to his state of  
4 mind. That's their big argument, state of mind.

5 JUDGE JOHNSTONE: So do I hear you say if there  
6 was foundational testimony later on, such as I just  
7 indicated and you indicated, that there is fault of the  
8 government employees, that would be relevant to show  
9 whether or not Captain Hazelwood was reckless?

10 MR. COLE: I think that Captain Hazelwood would --  
11 well, I guess I just -- can I talk to Ms. Henry for just a  
12 second?

13 (Counsel for the State confer with each other.)

14 JUDGE JOHNSTONE: Why don't we take a break while  
15 you discuss this and why don't you call your associates and  
16 see if that -- you can use the phone right here.

17 MR. MADSON: We'll do that, Your Honor.

18 JUDGE JOHNSTONE: We'll stand at recess.

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

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

22 JUDGE JOHNSTONE: You can retrieve the original  
23 here, Mr. Madson. Mr. Cole, you can have a copy, too. I  
24 just need one, so you can have two and you can have one.

25 We're not filing this, Mr. Madson, since you told

1 me it's in a rough order and you don't want it filed, but  
2 we can use it for purposes of argument, unless you want  
3 this filed.

4 MR. MADSON: Oh, no, we have the original being  
5 done by hand, Your Honor. We live in such a technical  
6 society now that we depend on these complex machines that  
7 seem to let us down when we need them the most. But I can,  
8 as we call it in the trade, kind of wing it.

9 Your Honor, what the State -- when I first read  
10 this, I mean I was quite surprised because, while in the  
11 opening statement, we were talking, I talked in terms of  
12 blame, fault, things like this, the distinction was trying  
13 to be made very clearly that that's totally different than  
14 a criminal case. I thought I made the distinction  
15 extremely carefully.

16 So the issue here -- there's only one sole issue.  
17 It isn't whether the Coast Guard caused this accident or  
18 not. The issue is, up to this point, is whether or not  
19 Captain Hazelwood's state of mind constituted recklessness  
20 or not. And to do that, it's imperative that all the  
21 information that he had available to him, that he had a  
22 right to rely on goes to the question of, first of all, did  
23 he make a conscious decision to disregard a substantial  
24 risk. If he had information that reduced the amount of  
25 risk, in other words, in this situation -- and we expect



1 and we fully expect the evidence will show that all  
2 captains are required to have one of these VTS system books  
3 on their deck, I mean on the bridge, it's a requirement.  
4 And in there, it says, "Radar surveillance system covers  
5 Valdez Island, Valdez Narrows and Port Valdez from Coast  
6 Guard operated radar sites at Potato Point and Valdez  
7 Spit. A continuous radar watch of these areas will be  
8 maintained by the VTC. The course speed and position of  
9 each vessel required to participate in the VTS will be  
10 determined and its track line recorded. This data will be  
11 made available to the master and pilot for use in  
12 navigating the vessel."

13 In addition, there is numerous references in there  
14 on what the Coast Guard is doing, the requirement, for  
15 instance -- and perhaps this is what the Court is somewhat  
16 in a vacuum on because it doesn't have this in evidence,  
17 yet, but the manual, itself, will say that because of the  
18 risk of maritime disasters that the VTS control center must  
19 take every possible precaution to avoid irreversible  
20 damage. They talk about watch conduct standards. They  
21 talk about -- well, don't allow themselves to be  
22 distracted. In other words, they're supposed to be  
23 watching the radar and at times when they don't have to be,  
24 when there's little or no traffic, they can do some other  
25 administrative duties, things like this. But, by and

1 large, they are supposed to be monitoring and the captains  
2 know that.

3           And I think the Court hit on the exact point on  
4 this case and the distinction between this one and the one  
5 cited by the State and that would be the degree of  
6 culpability, comparing intentional acts to recklessness.  
7 There's a vast difference and that was the exact point  
8 here. And the point also is that we do expect -- we more  
9 than expect, we are sure that we can and will bring in  
10 maritime captains that captained tankers in this area that  
11 would say, "Yes, I certainly thought we were being covered  
12 by radar because . . .," here's the real clincher, ". . .  
13 they changed the system." The Coast Guard changed the  
14 radar surveillance coverage from about 1974 and finishing I  
15 think in 197 -- 1987, rather -- '70 -- wait a minute, let  
16 me get this right. I think '84 to '87 is when the  
17 changeover period was occurring. The previous coverage --  
18 and I think this witness and Mr. Blandford will testify to  
19 that -- coverage would extend all the way down to Naked  
20 Island. That's what the captains thought they had.

21           Without anybody knowing that, the coverage was cut  
22 back so covering even to Bligh Reef was intermittent.  
23 Sometimes they had it and sometimes they didn't. But the  
24 point is they didn't tell anybody.

25           So if the captain still thought that he could

1 safely make the turns and navigate and if somehow something  
2 was going wrong and they were going off course, the Coast  
3 Guard had them on radar, was monitoring his progress,  
4 charting his progress and would say, "Wait a minute here,  
5 you're off course. Something's wrong."

6 And I think a little of that testimony came out  
7 today when you heard Mr. Taylor say that, yes, on the VTS  
8 system, if you got off so much, we would radio and say,  
9 "You're a little bit off course in your traffic lane," and  
10 they would usually respond. Now that, of course, is only  
11 done now in the Narrows, nowhere else.

12 But getting back to the main point again is that  
13 we fully expect this witness and the other witness and  
14 everyone to show that they relied upon this system. That's  
15 what it was there for. Now we're not blaming the Coast  
16 Guard. We simply saying that we would -- should be allowed  
17 to be able to use this as far as what his state of mind is  
18 concerned, did he believe that he had a right to rely on  
19 this, was it reasonable and did this lower the degree of  
20 risk that was involved in any decision that was made. I  
21 think the answer is it may or may not. But I think it's  
22 something the jury should be able to hear in order to  
23 evaluate, correctly evaluate the Defendant's state of  
24 mind. Thank you.

25 JUDGE JOHNSTONE: Mr. Cole? And, Mr. Madson, I'm

1 going to -- we're going to record this as part of the  
2 record. It's not a final draft and I'm going to waive some  
3 of the requirements of Rule 11, but this is your offer as a  
4 work product, the Opposition to the Motion for Protective  
5 Order Number 4. I'm going to take it as part of the  
6 record, even though it's rough. I think we need to have  
7 this. Log it in. And some of the technical requirements  
8 are being signed and some of your handwritten things I'll  
9 waive.

10 MR. COLE: Judge, our position is that there is a  
11 distinction that needs to be made between proof as to state  
12 of mind and proof as to causation. Our protective order is  
13 directed toward causation and I think that's what the  
14 Kusmire decision says. Just as the decision that you gave  
15 me, the paramedics -- in the Kusmire case, the paramedics'  
16 negligence does not go to whether Mr. Kusmire intentionally  
17 shot that person or recklessly did.

18 As to the Defendant's attempt to get in this  
19 evidence through state of mind, first of all, what happened  
20 in between 1984 and 1987 is two years before this  
21 incident. And how the radar was two years before is not  
22 relevant in this particular matter. Second, the best  
23 person to talk about what his state of mind was and whether  
24 or not he was relying on it is Captain Hazelwood, himself,  
25 not other people. They cannot come up here and go through

1 it. Sure, they can bring in other tanker captains to talk  
2 about, "Well, I thought that this is the way it was." But  
3 it shouldn't be through these witnesses. And if other  
4 tanker captains want to come in here and say that they  
5 thought they were being covered by radar and they would  
6 leave the bridge, then we'll take that testimony when it  
7 shows up. But that -- we're getting ahead of the ball game  
8 right there by going into it at this point.

9 Our position is state of mind does not apply  
10 because they can't, number one, link up what these  
11 witnesses would say with Captain Hazelwood's knowledge.  
12 And, number two, these aren't the proper people to be  
13 bringing up state of mind of a tanker captain. And, three,  
14 it's just not relevant because what happened in the past  
15 when it was two years earlier is not relevant to show a  
16 situation in 1989.

17 JUDGE JOHNSTONE: Anything further?

18 MR. MADSON: Well, Your Honor, maybe I'm totally  
19 confused, but, this morning, we had the motion on changes  
20 in the VTS system after the grounding, which the Court  
21 ruled on. I got the clear implication that the State was  
22 not requesting a protective order with regard to anything  
23 that happened before that and changes that were made. If  
24 they did, they certainly didn't imply that, nor did they  
25 even move for that. I thought we made it very clear we

1 were talking about afterwards, not before.

2 But, certainly, I think a standard or a known in  
3 an industry is perfectly acceptable in evidence. I mean  
4 when there's a requirement -- it's like the rule or  
5 regulation; we're all supposed to know that. And I think  
6 the implication can be made that there are rules and  
7 regulations, such as the VTS system, and no one is immune  
8 from that. It's on the bridge; it's required to be there.  
9 It's a clear inference that people are supposed to know  
10 that. And, secondly, from the evidence the Court will hear  
11 and already has heard, Captain Hazelwood was responding to  
12 the VTS system. He was calling in. He was doing these  
13 things. It shows he knew what the VTS system was all  
14 about.

15 JUDGE JOHNSTONE: Okay, when this was first  
16 presented to me and reading the Defendant's -- the stress  
17 -- the thrust of it was to show causation, I was under the  
18 impression that the evidence of negligence of the  
19 government employees, if any, including their failure to  
20 warn, to properly observe or the government's failure to  
21 provide a more adequate system, if that was part of the  
22 argument, went to the causation of the grounding, and not  
23 to the state of mind of Captain Hazelwood. In my opinion,  
24 that would be an improper purpose under Kusmire. It would  
25 be showing a negative, that is a failure to act or a

1 failure to do something which would possibly constitute a  
2 superseding cause. But under Kusmire and other appropriate  
3 authority, that would not be admissible to show Captain  
4 Hazelwood was not at fault. It's since come to my  
5 attention that it might have some bearing on culpability,  
6 but not at this stage of the proceedings. You're going to  
7 have to lay a foundation for this type of information. And  
8 I think it comes as a two-edged sword. I don't know what  
9 the evidence is going to be. I don't know what other  
10 experts in the field are going to say, other captains in  
11 command of similar vessels are going to say.

12           What I've heard so far from Captain Murphy, is that  
13 he would not rely on the Coast Guard or the government and  
14 that edge is it may be negligence or evidence of negligence  
15 to so rely on that expectation. I don't know what the --  
16 if Captain Hazelwood is going to take the stand and  
17 indicate he relied on it, whether other experts are going  
18 to say it's something you would rely on, it would give you  
19 -- it would give you an opportunity to go below, for  
20 example, because you could depend on this second set of  
21 eyes. It would maybe allow you to put it on auto pilot,  
22 where you would normally not if you didn't have somebody  
23 that was giving you traffic and radar advisories. It might  
24 give you an opportunity to give the helm over to somebody  
25 who might not otherwise be qualified because you had a

1 backup set of eyes. I don't know what the experts are  
2 going to say.

3 But at this stage of the proceedings, the only  
4 thing I can see it being offered for is causation. I can  
5 only see it being offered to show that the government maybe  
6 was also at fault, too, which is an improper purpose.

7 So any evidence of negligence on the part of the  
8 government at this time through its agents, employees or  
9 other fault of the government in not maintaining or  
10 providing a different kind of radar system, in my opinion,  
11 would be for an improper purpose. It's not probative at  
12 this time on Captain Hazelwood's fault. It would  
13 potentially confuse the jury and be a needless consumption  
14 of time. So I'm going to rule in favor of the motion for a  
15 protective order, without prejudice at a later time, should  
16 the issue become appropriate to relook at it.

17 MR. MADSON: Your Honor, I would think with regard  
18 to the Court's ruling that certainly jury instructions,  
19 proper instructions could cover what they can consider the  
20 evidence for. But I guess the Court is not precluding us  
21 from maybe having to recall these witnesses and bring them  
22 back here again.

23 JUDGE JOHNSTONE: I'm not telling you how to do  
24 your case. I'm saying, at this time, I'm not allowing the  
25 evidence to come in.



1 MR. MADSON: I assume --

2 JUDGE JOHNSTONE: It's solely for the improper  
3 purpose, in my opinion, at this time. And it depends on  
4 the foundational material you can lay for this in the  
5 future. Your offer, so far, I accept it as a good faith  
6 offer. However, it's a little bit ahead of the schedule  
7 and it's not going to come at this stage of the proceeding  
8 and it might not at all, for all I know, I don't know.

9 MR. MADSON: If the Court hears evidence from  
10 other captains that say they rely on this, this system is  
11 commonly done, certainly I think that that stage would be  
12 an appropriate time to renew this, I would imagine. Is  
13 that fair to ask at that time?

14 JUDGE JOHNSTONE: I'm not going to give you a  
15 ruling on that. That's not before the court at this time.

16 MR. MADSON: Well, I guess it helps in knowing how  
17 we're going to plan this, but we'll --

18 JUDGE JOHNSTONE: Well, I know you'd like to know  
19 all the answers in advance and it would be helpful for  
20 everybody, but I don't know the answers and I can't give  
21 you advisory rulings at this time. So are we ready now  
22 with the witness? Let's get the jury back in.

23 MR. MADSON: Well, wait just a minute. He's still  
24 under cross examination, right?

25 MR. : Yes.

1           MR. COLE: Judge, the other issue we have is for  
2 the next witness, Mr. Blandford, and his alcohol and the  
3 opiates.

4           JUDGE JOHNSTONE: Well, are we finished with Mr.  
5 Taylor?

6           MR. MADSON: Well, I'm just trying to decide if  
7 there's any purpose in recalling him, Your Honor, because,  
8 obviously, I wanted to ask him about the VTS system and  
9 what they're supposed to do. If I can't ask him what  
10 they're supposed to do, well, there's no point in asking  
11 any questions.

12           JUDGE JOHNSTONE: I didn't suggest that you can't  
13 ask him what they're supposed to. I said evidence of  
14 fault, evidence of negligence, that they didn't do their  
15 job at this point is offered to show that that was a cause  
16 of the grounding is not admissible on the grounds that it's  
17 an unnecessary consumption of time, it confuses the issues  
18 that are presented to the jury, it's not probative on any  
19 of the elements of this case. Now it's up to you if you  
20 want to cross examine him or not.

21           MR. MADSON: I've tried it as far as I can go,  
22 Your Honor. That's all I can do. He's here.

23           (Whereupon, the jury returns to the courtroom.)

24           JUDGE JOHNSTONE: Thank you for your patience.

25           BY MR. MADSON: (Resuming)

1 C Mr. Taylor, I'm trying to figure out where we left  
2 off, but, by and large, you indicated that as a VTS watch  
3 stander, your duties were to monitor tanker traffic or  
4 certain traffic in Prince William Sound, correct?

5 A That's correct.

6 Q Now you had a manual to go by, did you not,  
7 something called the Prince William Sound Vessel Traffic  
8 Service Manual?

9 A Yes.

10 C You kind of hesitated when you said that. Is  
11 there something about the manual that's unusual or --

12 A Just the way you said it.

13 Q Oh, what did I say that was wrong, sir?

14 A Well, you said Vessel Traffic Service Manual.

15 C Operating Manual?

16 A Okay, the Vessel Traffic System, that's it, that's  
17 the one.

18 Q Okay, it's something you were required to be  
19 familiar with, were you not?

20 A Yes, I was required to be familiar with it.

21 Q And in that, is it not true, sir, that the purpose  
22 or policy of the VTS system was to monitor the traffic in  
23 there, in the Prince William Sound area, in order to  
24 prevent collisions or other maritime accidents?

25 A Yes.

1 Q Did it have any other purpose?

2 A To inform everybody of what's going on, to make  
3 things easier for the people in the system.

4 Q Is it fair to say there were certain things that  
5 could be construed as requirements of tanker vessels under  
6 the system, but, in other respects, it did not control the  
7 navigation of the vessel? In other words, the master had  
8 the right to control the navigation of the vessel in the  
9 manner he thought was best, most safe and prudent?

10 A Yes.

11 Q So in some respects, it's a guideline, is that  
12 fair to say?

13 A Yes.

14 Q For instance, there's nothing in the VTS Manual --  
15 and that's required, a copy is required to be on the bridge  
16 of the ship, is it not?

17 A Yes, it is.

18 Q There's nothing in that manual that you're aware  
19 of that says when a captain can change course, when he  
20 can't change course.

21 A Right.

22 Q Nothing that says when he can go below, when he  
23 can't go below?

24 A That's correct.

25 Q Anything that says when he can put a mate in

1 charge and when he can't?

2 A That's correct, the way I understand it.

3 Q And you also indicated that when the -- the only  
4 question you ask with regard to pilotage is, you said, when  
5 the vessel is off Cape Hinchinbrook, in the inbound land.  
6 The question is simply asked, "Do you have pilotage?"

7 A Right, "Do you have pilotage for Prince William  
8 Sound," yes, that's correct.

9 Q And when outgoing, the same question is asked or  
10 is it sometimes not asked, it's just assumed that because  
11 the vessel went in, it would go out the same way, right?

12 A It's just assumed. It's assumed that they would  
13 tell us if anything was different.

14 Q What would you do if they didn't tell you?

15 A Well, you wouldn't know. After the fact, the  
16 Coast Guard would probably take action against the  
17 master --

18 Q The Coast Guard -- they may or may not do  
19 something --

20 A -- or the vessel, the vessel.

21 Q -- right?

22 A Right, if they know about it, they'll probably do  
23 something about it, I'm sure of that.

24 Q The manual doesn't say anything about where the  
25 pilot -- I mean where the person with endorsement is

1 supposed to be at all times, does it?

2 A Not that I can remember, no.

3 Q Basically, you have someone on board that has  
4 pilotage endorsement.

5 A Right.

6 Q Now you indicated that in leaving the lanes -- now  
7 when I say lanes, if you look at the chart up there, just  
8 again to perhaps illustrate your testimony, the purple  
9 color is the separation zone, is it?

10 A That's correct.

11 Q And so vessels that are going north have to stay  
12 to the right of that zone --

13 A Right.

14 Q -- which would be, I guess, the east, is that  
15 correct?

16 A Right, that's the inbound lanes.

17 Q And vessels coming south would be the west or, on  
18 that chart, the left, right?

19 A Right.

20 Q How wide is this zone in between?

21 A Well, everything's a mile; you get a mile per  
22 lane, a mile for the traffic separation zone, roughly a  
23 mile, say a nautical mile, 2,000 yards, how about that?

24 Q Is it fair to say from your experience, sir, that  
25 leaving the lanes when there was ice encountered was a

1 routine or normal procedure for the vessels?

2 A I would say deviating from the outbound lane, I  
3 would -- I wouldn't say leaving the lanes was a --  
4 deviating from one lane to another was -- I would say that  
5 was normal. I wouldn't say leaving the lanes was, no.

6 Q Well, what would you have done if the vessel said,  
7 "I may have to leave the lanes here to go around ice"? You  
8 wouldn't have done anything, right, just know about it,  
9 right?

10 A Just know about it.

11 Q But you didn't say, "Well, wait, you can't do  
12 that."

13 A No.

14 Q If it was a real dangerous situation in your mind,  
15 in your experience, would you be required to notify your  
16 next superior or --

17 A Yes, I would let them know.

18 Q The night the Exxon Valdez was in radio  
19 communication with the station there, the control center,  
20 you did not at any time make any requests or inform your  
21 superior officer about any maneuvers the vessel was making  
22 which were, in your opinion, dangerous or hazardous?

23 A No, I didn't.

24 Q Were you on duty when the ARCO Juneau came in that  
25 same night?

1           A     Yes. Well, I'd say I believe I was on duty when  
2 they went out. I believe they were coming out, they were  
3 going out. That was four hours earlier, correct.

4           Q     Okay, when did they leave with respect to the  
5 Exxon Valdez?

6           A     Approximately four hours earlier, I believe.

7           Q     And they issued an ice report, did they not?

8           A     Yes, they did.

9           Q     That's part of your job, too, wasn't it --

10          A     Right.

11          Q     -- to get reports and then funnel these back out  
12 to other people?

13          A     Right.

14          Q     And if I recall correctly, you said that the  
15 report came through, they reported ice. Do you know where  
16 -- you said it was off Point Fremantle, I think, extending  
17 down toward Bligh Reef.

18          A     Bligh Reef buoy, right, Bligh Reef.

19          Q     Did they expand on that at all? I mean was it a  
20 large sheet of ice? Was it just more ice than normal or  
21 would did you take it to mean?

22          A     Large concentration I believe is what they used, a  
23 large concentration of ice extending from Point Fremantle  
24 over to Bligh Reef buoy into the southbound lanes and  
25 partially into the northbounds I believe is what they said,



1 so they had to deviate out of their lane into the -- from  
2 the southbound into the northbound lane over by Bligh Reef  
3 and scurry around it.

4 Q Do you recall exactly where it went, sir?

5 A Where the --

6 Q Did you plot it all, did you plot the vessel's  
7 movements?

8 A No, the last I saw was when they told me they were  
9 going to deviate around there. I saw them for a bit on the  
10 radar make their turn and then that was the last I saw of  
11 them until they were -- I didn't see them until they were  
12 back in the lanes and then it was all radio contact after  
13 that.

14 Q Can you show where the vessel made its turn?

15 A Not exactly, I sure couldn't.

16 Q Would you be able to look at a chart and would  
17 that refresh your recollection, a chart that --

18 A Probably not, no.

19 Q It would not.

20 A No.

21 Q But your recollection is it did deviate totally  
22 out of the lanes to go around the ice?

23 A No, not totally out of the lanes. It deviated  
24 from the southbound lane into the northbound lane I believe  
25 is what they told me.

1 C What they told you.

2 A Yes.

3 JUDGE JOHNSTONE: Would Counsel approach the bench  
4 just for a minute, please?

5 (The following was said at the bench.)

6 JUDGE JOHNSTONE: The more I think about this, the  
7 more I think I'm going to let him get into this at this  
8 time on what Mr. Taylor did or did not do, what he saw or  
9 did not see. (Inaudible). You're already into it, to some  
10 extent. This is the area you want to get into, is that  
11 right?

12 MF. MADSON: (Inaudible.)

13 JUDGE JOHNSTONE: Yes, I'm willing to do it this  
14 time, Mr. Cole. I'm willing to let him ask the questions  
15 about what Mr. Taylor saw and didn't see and what his  
16 responsibilities were at this time. And I will resolve the  
17 proximate cause with instructions. It will not be offered  
18 for purposes of showing causation. It's going to be  
19 offered to show who (inaudible). I see a difference  
20 between this and Kusmire. In Kusmire, the idea was  
21 (inaudible), but there was intervening cause. Here,  
22 there's a denial of any recklessness. It's not a  
23 confession in an avoidance situation. It's a situation  
24 where the Defendant is saying, "I didn't do anything  
25 wrong. The government did something wrong," and that's a

1 little different. So we're going to get into at this time  
2 and we can argue a little more articulately at a later time  
3 on the issue of alcohol and stuff like that; we'll get into  
4 that then, but there's no evidence of alcohol and drugs  
5 until we take it up.

6 (The following was said in open Court.)

7 MR. MADSON: Excuse me, Mr. Taylor, one second. I  
8 wonder if you could mark this.

9 (Defendant's Exhibit F was  
10 marked for identification.)

11 MR. MADSON: Your Honor, Mr. Cole and myself have  
12 entered into a stipulation whereby the authenticity of this  
13 chart of the ARCO Juneau would be admitted.

14 MR. COLE: Mr. Madson, I'd like to take this up at  
15 the bench.

16 MR. MADSON: Sure.

17 (The following was said at the bench.)

18 MR. COLE: (Inaudible.)

19 JUDGE JOHNSTONE: Calm down, both of you. Calm  
20 down, both of you. This is not the time to point fingers.

21 MR. COLE: I'm sorry.

22 JUDGE JOHNSTONE: (Inaudible) I told you, "Do not  
23 offer stipulations in front of the jury at any time," to  
24 avoid this very type of thing. Now is there going to be a  
25 stipulation on the authenticity at this time?

1 MR. : (Inaudible.)

2 JUDGE JOHNSTONE: Okay, then there's no  
3 stipulation.

4 MR. MADSON: I'm going to ask him if he recognizes  
5 this.

6 JUDGE JOHNSTONE: That's not the issue. The issue  
7 is the stipulation. There's no stipulation.

8 MR. MADSON: (Inaudible.)

9 JUDGE JOHNSTONE: All he's saying is that he's not  
10 willing to stipulate at this time. You still might be able  
11 to give it to him to authenticate, I don't know.

12 MR. : (Inaudible.)

13 (The following was said in open Court.)

14 JUDGE JOHNSTONE: Ladies and gentlemen, disregard  
15 Mr. Madson's last statement that there's a stipulation  
16 concerning the authenticity of this chart. There is no  
17 such stipulation.

18 BY MR. MADSON: (Resuming)

19 Q Let me hand you what's been marked as Defendant's  
20 Exhibit Number F if I can do it the right way here --

21 A There you go.

22 Q -- and ask you if this would refresh your  
23 recollection as to whether or not that was the course you  
24 remember the ARCO Juneau being on the evening of March  
25 23d. You're shaking your head.

1 A No.

2 Q You don't recognize this as --

3 A I do not recognize that.

4 Q Okay. Had Captain Hazelwood radioed back and  
5 said, "We are definitely leaving the lanes. We're going to  
6 deviate around the ice, changing course to 180," you still  
7 wouldn't have done anything, right?

8 A Probably not, no, I don't think I would have.

9 Q It wasn't that unusual an occurrence that would  
10 raise, elevate the level of concern that you, you know,  
11 would contact somebody or radio back or anything like that?

12 A I would have Rogered what he said and, you know,  
13 probably written it down.

14 C Do you feel, sir, that captains of tanker vessels  
15 have a right to rely on the information you're giving them?

16 MR. COLE: Objection, lack of foundation.

17 JUDGE JOHNSTONE: Objection overruled. You can  
18 answer.

19 THE WITNESS: What's the question again, please?

20 BY MR. MADSON: (Resuming)

21 Q Do you think captains of tanker vessels, such as  
22 the Exxon Valdez, have a right -- is it reasonable to  
23 expect that the captains of those vessels could rely on the  
24 information the Coast Guard VTC Center is giving them  
25 regarding ice or anything else?

1           A     They can only rely on what we give them. You  
2 know, it changes from time to time. But we only give them  
3 what we get.

4           Q     How often do you ever call a vessel and say,  
5 "You're off radar now. I can't see you any more"?

6           A     We don't, really. I've never done it, unless  
7 they've asked, "Do you see me on radar," and then we could  
8 come back with an answer like, "You're off radar right  
9 now. No, I don't see you."

10          Q     Then let's get back to this point, sir. When you  
11 were working there in 1986, was this in the part of the  
12 changeover from one radar system to another?

13          A     Was what?

14          Q     The Center, were they undergoing a change in the  
15 radar?

16          A     When I came back to work in '86, I believe the  
17 change was already completed.

18          Q     Did you work at all with the previous system; were  
19 you familiar with it?

20          A     I worked with it when I was in the Coast Guard as  
21 a petty officer back in '83, '84. I worked with it for  
22 awhile, yes.

23          Q     And where was that?

24          A     That was in Valdez.

25          Q     Just making sure.

1 A Okay.

2 Q Okay, let me ask you this. With regard to the  
3 older system, the one you said that was privately  
4 maintained --

5 A Yes.

6 Q -- what type of range or what type of coverage did  
7 this have with regard to Prince William Sound?

8 A Basically, the same as the Raytheon.

9 Q It did not have coverage down to Naked Island?

10 A No.

11 Q It did not?

12 A You can see Naked Island on a good day. You could  
13 see a blip down there. A person couldn't walk up and look  
14 at a chart and look at that and say, "Gee, that's the  
15 outline of Naked Island." No, you can see a target down  
16 there on a good day if the radar was working perfectly.

17 Q Now you say the coverage at the -- in the earlier,  
18 older type radar only extended perhaps as far as Bligh  
19 Reef?

20 A No, it probably extended a little farther, but  
21 that's the general area where pickup -- you have Bligh  
22 Reef, maybe a little bit south of that, not much farther,  
23 for like picking up a contact and being able to know what  
24 it is.

25 Q Under the Vessel Traffic Center Manual, operating

1 manual, do you recall, sir, whether or not in that manual  
2 it indicates that there's radar coverage in let's say  
3 Valdez Arm?

4 A Say it again, please.

5 Q Does the manual, itself, indicate that there's  
6 coverage in Valdez Arm?

7 A I don't recall.

8 MR. MADSON: Your Honor, I wonder if I could mark  
9 the titles for exhibits at this time. I apologize for the  
10 delay, Your Honor. I wasn't anticipating \_\_\_\_\_.

11 (Defendant's Exhibits G,  
12 H and I were marked for  
13 identification.)

14 (The following was said at the bench.)

15 JUDGE JOHNSTONE: Mr. Madson, I think we're going  
16 to need to establish a better record on this before we go  
17 any further. And, Mr. Cole, you're going to stop shaking  
18 your head. The next time, I'm going to (inaudible.) I'm  
19 going to let the jury go. We're not going to be able to  
20 finish the witness. We're getting into an area now that  
21 needs to be fleshed out a little more before you get too  
22 deep into this and we'll just have Mr. Taylor and Mr.  
23 Blandford come back on Monday.

24 (Tape changed to C-3608.)

25 (The following was said in open Court.)



1 JUDGE JOHNSTONE: Ladies and gentlemen, we're  
2 going to get into an area now that's going to require a  
3 little more attention given outside your presence and I  
4 don't think we're going to be able to finish it in enough  
5 time to give any more meaningful time to the jury trial.  
6 So I'm going to excuse you for the rest of the day. I've  
7 got news. I think it's going to be good news for you. It  
8 depends on how you take it. But we're not going to have a  
9 trial tomorrow because of a medical reason of one of the  
10 people involved here and don't be concerned about what that  
11 is. It's not evident and it should not be taken one way or  
12 the other by you. It's just a decision we've made here to  
13 accommodate some people involved because of medical  
14 reasons.

15 So we will resume on Monday morning at 8:30.  
16 Tomorrow is not a trial day, so you have three days in a  
17 row off. That may give you some time to take care of some  
18 of the affairs that you've been neglecting, I'm sure.  
19 Don't discuss this case with any person and that's real  
20 important. You've got three days and people might start  
21 coming up to you and talking to you, so avoid that and  
22 don't form or express any opinions. And be particularly  
23 mindful of my instructions to avoid media coverage; have it  
24 screened for you.

25 So we'll see you back at 8:30 a.m. on Monday with

1 m, thanks for your patience and please be safe over the  
2 weekend.

3 (The jury leaves the courtroom.)

4 JUDGE JOHNSTONE: Would you close the door for  
5 me? Thank you. You can step outside, thanks very much.  
6 We'll see you back Monday morning, 8:30 a.m. You're under  
7 subpoena, are you not?

8 THE WITNESS: Yes, sir.

9 JUDGE JOHNSTONE: Okay, you're still under  
10 subpoena.

11 (The witness leaves the courtroom.)

12 JUDGE JOHNSTONE: Okay, we're going to have to  
13 flesh out this issue a little more before we have this  
14 witness complete his testimony. I think what I'll do is  
15 expect that tomorrow morning, Counsel can argue some of  
16 this. We'll use that time productively, even though Mr.  
17 Chalos will not be here. It's being handled by Mr.  
18 Madson. Is there any problem with Mr. Madson handling it  
19 in your absence?

20 MR. CHALOS: No, Your Honor.

21 JUDGE JOHNSTONE: Okay, we'll be able to argue  
22 this. As I give it more thought, before we finish with  
23 this witness and have to make the witness come back and  
24 maybe require further foundational testimony, I'm starting  
25 to see a difference between this and the analysis on

1 Kusmire and I don't want to get too deep into it and commit  
2 an error if I can correct it now.

3           What I'm hearing the Defendant's theory is is  
4 that, "We were not reckless and, therefore, we don't have  
5 to get to causation." And Kusmire deals with a case where  
6 somebody got shot in the neck. It was clear that the  
7 person had -- the Defendant shot the victim in the neck.  
8 And his argument was that, "We didn't." It wasn't that,  
9 "We didn't shoot the person." His argument was, "We  
10 weren't the cause of the death." Now there's a difference.

11           In this case, the Defendant seems to be saying,  
12 "We weren't reckless. We didn't create the problem. We  
13 weren't reckless. It was the government that was reckless  
14 and created the problem," maybe analogous to a Perry Mason  
15 type story where the Defendant didn't do it, somebody else  
16 did it. And it goes to one of the elements, that is the  
17 recklessness.

18           And the more I think about it, it seems to me the  
19 more this Defendant should be able to show that they didn't  
20 do this; it was the government that had done it, since  
21 their position is they were not reckless in the first  
22 place.

23           I'm not making a ruling at this time, but I'm  
24 going to let you know I'm reconsidering it, sua sponte, and  
25 giving Counsel an opportunity to brief this matter more

1 thoroughly before I make a final decision. I don't want to  
2 go off half cocked on this and so we'll hear this tomorrow  
3 morning. I expect Counsel to have some case authority for  
4 me, not just Kusmire, but some other case authority, give  
5 me a little better job of briefing than has been done so  
6 far, so we can flesh it out tomorrow.

7           Would 10:00 o'clock be an appropriate time? Would  
8 you be able to get things done by then?

9           MR. MADSON: I think we could, Your Honor. I  
10 would think the law library must open at 8:00 o'clock here  
11 and we have some time yet available today, so --

12           JUDGE JOHNSTONE: Mr. Cole, can you get up to  
13 steam by then? I beg your pardon.

14           MR. COLE: Yes. My only question is am I  
15 addressing the issue of whether the Defendants are saying  
16 they're not reckless at all, period, they have no culpable  
17 conduct, or that they are partially culpable, but not  
18 reckless?

19           JUDGE JOHNSTONE: We're not dealing with causation  
20 here. This evidence is not being offered for causation.  
21 It's being offered to show that the Defendant was not  
22 reckless, as I understand the theory so far, that it was  
23 the government that was reckless, the government recklessly  
24 created this problem. It's not a confession and avoidance  
25 defense I'm hearing, "We were reckless, but we didn't cause

1 it." I'm hearing them say they weren't reckless, the  
2 government was reckless and there was a grounding, but it  
3 was not because of the recklessness of Captain Hazelwood;  
4 it was because of the government's failure to see and warn  
5 and/or provide a radar that was available.

6 Now I'm not saying that that is an appropriate  
7 theory or that it's going to come in, but it seems to me  
8 that we don't necessarily have to wait for that type of  
9 evidence to come in until the Defendant presents its case  
10 because, then, it forces the Defendant possibly to take the  
11 stand when it would not otherwise have to and it might be  
12 infringing on his right to remain silent and that's what  
13 I'm concerned about at this time. So we'll flesh it up  
14 tomorrow at 10:00 o'clock. We stand at recess.

15 THE CLERK: Please rise. This Court stands at  
16 recess.

17 (Whereupon, at 3:28 p.m., proceedings adjourned.)  
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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.



DORIS A. CUTLER

VOLUME 9

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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

Anchorage, Alaska

February 12, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:53 a.m. on February 12, 1990. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

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MARY ANN HENRY, Esq.

Assistant District Attorneys

On behalf of the Defendant:

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C O N T E N T SWITNESSES:

<u>STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Gordon P. Taylor -- Resumed		8	41	48
			52	
Bruce L. Blandford	54	76	109	112
Harry L. Claar II	121	140	149	154
Robert M. Kagan	155	196	208	
Gregory M. Cousins	212			

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E X H I B I T S

	<u>STATE'S</u>	<u>IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2			
3	Number 27	--	168
4	Number 38	--	220
5	Number 42	--	170
6	Number 43	--	219
7	Number 45	--	216
8	Number 49	--	217
9	Number 50	--	218
10	Number 75	41	42
11	Number 79	6	--
12	<u>DEFENDANT'S</u>		
13	I	--	83
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P R O C E E D I N G S

(Tape No. C-3608)

THE COURT: I have a request from the state of Alaska. I got the request by telephone. Mr. Samuel Adams called me on Friday and asked me if I would allow the State to videotape the remainder of the trial.

I told him that I'd like to have him put in writing his request and the reasons for it, and why the media coverage that we have now is not adequate. The gist of his letter, which we will make part of the record in just a moment, is that the State is involved in civil litigation and that there is a general stay of discovery which has been imposed for several months, and that this would be for purpose of perpetuating the testimony of fact witnesses which would be called to testify in the civil case. Virtually all the fact witnesses who testify at this trial are going to be needed for the purpose of pursuing the State's civil claims.

Additionally, he says the Governor's office has requested the trial be videotaped so it may be preserved for the State's archives. The cameras that are set up now by the media are not adequate, because they take pictures of many things, including witnesses, and when they choose to discontinue or interrupt coverage, the Attorney General's office would be unable to recapture the hearing

1 or testimony.

2 He indicated that he talked to Mr. Russo, the  
3 Defendant's attorney, who is opposed to the request, and I  
4 just got a letter this morning by hand delivery -- it has  
5 Mr. Russo's signature on it -- which sets forth his  
6 opposition.

7 Mr. Adams is not here. Do Ms. Henry or Mr. Cole  
8 wish to address this in any way?

9 MR. COLE: Judge, that was a request by the  
10 Civil, and they asked us to file it on their behalf.

11 THE COURT: All right.

12 MR. COLE: We didn't want to, but that's what  
13 they asked us to do, and we aren't taking any position.

14 THE COURT: All right. I don't need to hear  
15 argument on this. It seems to me that the State is asking  
16 for an advantage here that would not be given to the other  
17 parties, and it might be contrary to the spirit of the  
18 general stay of discovery which has been imposed by both  
19 Judge Hall and Judge Hortell.

20 I am going to deny the request. It's not a media  
21 request. It's for the purpose of perpetuating testimony  
22 and since it's been opposed and there doesn't seem to be  
23 any valid reason for it, I'm not going to allow it.

24 But we will make both of these documents part of  
25 the official record in this case, Scott.

1 THE CLERK: Yes, sir.

2 (State's Exhibit 79 was  
3 marked for identification.)

4 THE COURT: Are we ready with the jury now?

5 MR. COLE: Judge, I just want to put one thing on  
6 the record.

7 THE COURT: All right.

8 MR. COLE: When we were coming into the  
9 courthouse today, I took the elevator. There were two  
10 jurors on the elevator. The gentleman that's standing to  
11 my right, running the video camera, turned to me and said,  
12 "Are you going to take up any motions?" I looked at him  
13 and said, "Don't discuss that right now."

14 After we got off the elevator, there were no  
15 other conversations. I walked in and I told him, "Look,  
16 there is a reason why we can't talk to you guys. You put  
17 me in a bad situation. I think I need to go on the  
18 record."

19 I can identify the jurors. There was no other  
20 conversation other than that.

21 THE COURT: That's fine. There doesn't seem to  
22 be any harm done, if that's the case. Use a little better  
23 discretion, if you can, in discussing the case on  
24 elevators. Lots of times during the minutes preceding a  
25 trial, we'll have jurors commingle with other people in the

1 elevator, and it's sometimes difficult to see them. I know  
2 it wasn't intentional.

3 I hope you are ready now with Mr. Taylor?

4 MR. MADSON: Yes, Your Honor, we are.

5 THE COURT: Is Mr. Taylor available?

6 MR. COLE: Yes. I'll step out.

7 THE COURT: All right. Before we do, move the  
8 camera towards the door about two feet and back towards the  
9 wall about a foot. It just was very distracting to the  
10 juror in the corner. So just someplace where you can still  
11 get it -- that looks good, sure. Anyplace in there is  
12 fine. Thanks.

13 Let's bring the jury in.

14 (Whereupon, the jury enters the courtroom.)

15 THE COURT: Can you still get coverage from  
16 there? All right.

17 Mr. Taylor, you may have a seat and attach the  
18 microphone, and you're still under oath, sir.

19 (Pause)

20 THE COURT: Good morning.

21 MR. : Good morning, sir.

22 (Pause)

23 THE COURT: Uh-ho. That's your normal seat,  
24 isn't it?

25 MR. : Yes, sir.

1 THE COURT: It just happened to work out that  
2 way, huh? It's closer --

3 MR. : (Inaudible).

4 THE COURT: Are you all right?

5 MR. : Yes, I'm fine, sir.

6 THE COURT: If you need any kind of break because  
7 of your leg, let me know. We can --

8 MR. : No, sir. \_\_\_\_\_.

9 THE COURT: Thank you for being on time, ladies  
10 and gentlemen. We'll resume the testimony of Mr. Taylor,  
11 who is still under oath.

12 Whereupon,

13 GORDON P. TAYLOR

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

17 CROSS EXAMINATION -- Resumed

18 BY MR. MADSON:

19 Q Good morning, Mr. Taylor.

20 A Good morning.

21 Q A few more questions, to kind of take up where we  
22 left off last week.

23 Let me ask you a little bit about the subject of  
24 radar again. You testified, I believe -- and correct me if  
25 I'm wrong, sir -- that the primary function or purpose of

1 the VTC is to aid and assist in the navigation of vessels  
2 in Prince William Sound and Port Valdez to prevent  
3 groundings and accidents?

4 A Yes, that's true. We give them what information  
5 that we receive from participating vessels in the Traffic  
6 Center -- or in the Traffic System. We pass that on to the  
7 vessels.

8 Q And certainly radar coverage is part of that  
9 ongoing process, or means, to insure that there's no  
10 groundings or collisions, right?

11 A For the area that the radar can handle, yes.

12 Q Let me ask you this, sir. Prior to last  
13 Thursday, did you have any discussions with any Coast Guard  
14 personnel, or Justice Department attorneys, regarding your  
15 testimony here at this trial?

16 MR. COLE: Judge, I object to that on grounds of  
17 relevance. I don't know if he's going into privileged  
18 areas.

19 MR. MADSON: I only asked if there were  
20 discussions, Your Honor. Not what the content of them  
21 were.

22 THE COURT: Objection sustained.

23 BY MR. MADSON: (Resuming)

24 Q With regard to that radar coverage, sir, the  
25 manual, which I think you said you were familiar with

1 because of your job at the time, right? You were familiar  
2 with the VTS manual?

3 A Yes.

4 Q It speaks, does it not, that Valdez arm (?) was  
5 being continuously monitored?

6 A The entire system was being continuously  
7 monitored.

8 Q The area, I was talking about, is being  
9 continuously monitored by radar, according to the manuals.

10 A As best as the radar can do it at a particular  
11 time, yes. That is correct.

12 Q The manual doesn't say, "as best the radar can  
13 do." The manual says, does it not, it is being  
14 continuously monitored, or you are being continuously  
15 monitored in Valdez arm. Does it not?

16 A As best the radar can do, it is continuously  
17 monitored.

18 Q I agree with your -- but I'm only asking you what  
19 you recall the manual itself saying, without your caveat.

20 A Oh, okay. Yes.

21 Q Okay? And that manual is required to be on the  
22 bridge of every vessel that's also required to be part of  
23 the VTS system, right?

24 A Yes.

25 Q So, if someone were on the bridge of a vessel



1 that's required to be part of the system, they pick it up,  
2 it says -- if they read it -- you are being continuously  
3 monitored in Valdez arm by the radar at the VTC center.

4 A If they were to read that, yes, that's what it  
5 would say.

6 Q Now, getting to your point, you're saying that  
7 the radar does not provide continuous coverage in all  
8 situations then, right?

9 A It's possible that it cannot.

10 Q Well, did it provide -- generally provide --  
11 coverage, say, down to Busby Island?

12 A Generally?

13 Q Generally.

14 A Yes. Generally, yes.

15 Q What about Bligh Reef?

16 A That depends on how well the gear's working,  
17 weather conditions and such.

18 Q Can you give the jury any idea about what kind of  
19 percentage of time you could see a tanker, let's see, say  
20 in the vicinity of Bligh Reef between Busby and Bligh Reef?

21 A I couldn't give you a percentage. That would be  
22 speculation on my part.

23 Q Okay. Sometimes it does and sometimes it  
24 doesn't, right?

25 A Right.

1 Q When it doesn't cover that area, is it not true,  
2 sir, that you don't notify the Master of a vessel that's in  
3 the area? You don't tell them, get on the radio and say,  
4 "You are now alongside our radar coverage. We cannot see  
5 you any longer?"

6 A That is correct. I do not tell them.

7 Q When there is coverage in that particular area --  
8 let's say, again, in part of Valdez arm -- and on your  
9 radar you notice that the vessel is straying outside the  
10 designated VTS lanes, would you get on the radio and say,  
11 "you're a little off course. Direct you to take course  
12 back in the lanes?"

13 A No, I would not. I would not direct any vessel  
14 to take any courses because I'm not there. I can't tell  
15 why they're going out of their lanes.

16 My response would be, "My radar shows you out of  
17 the lanes. What are your intentions, or take -- please  
18 take corrective action."

19 Q Have you ever directed a vessel to return to the  
20 lanes when they were outside?

21 A Never directed them.

22 Q You can though, can you not?

23 A Really, I -- I can't. If they were outside the  
24 lanes, then I would call the O/D who would give me the  
25 answer, or would call the Captain of the Port, and then he

1 would tell me what he would like to do, and then I would  
2 come back and say, "By authority of the Captain of the  
3 Port, I am directing you."

4 Q Well, let's back up a little bit. Who's the O/D  
5 you mentioned?

6 A The Officer of the Day, excuse me.

7 Q What was your designation while you were there?  
8 Just watch stander? Is that what they call you?

9 A Yes, sir.

10 Q Where would the O/D normally be?

11 A He would normally be below, not in the Traffic  
12 Center at the time. He would be in the vicinity.

13 Q When you say "below," does that mean one level  
14 down? I mean --

15 A He would be outside. He could be one level  
16 down. He could be a level up.

17 Q And where would the -- and then you said that  
18 would have to go to him and then he'd have to go to  
19 somebody else?

20 A He would go directly to the captain.

21 Q To the Captain of --

22 A -- of the Port, the Captain of the Station.

23 Q Okay. That's the Coast Guard Captain of the  
24 Port, we mean Port Valdez?

25 A Right.

1 Q He's the overall commander?

2 A Right.

3 Q And he could be anywhere, right?

4 A That's true.

5 Q So this could take some time, is that what you're  
6 saying? You'd have to relay all of these orders --

7 A Well, it's not --

8 Q -- up and orders down?

9 A It's not five or six people, it's one other  
10 person who are the eyes and the ears of the commanding  
11 officer and then they would contact him, and usually he's  
12 always in contact, or he tells you where he's going to be.  
13 If he's out of town, then the Executive Officer becomes the  
14 acting Captain of the Port. So there's always somebody  
15 there who I can --

16 Q Whether or not you actually direct him to return  
17 to lanes or not, it's a fact, is it not, that you would at  
18 least notify him that he is not where he's supposed to be?

19 A If I could see him on radar, yeah, I would notify  
20 him.

21 Q You're making an assumption, of course. Yes.

22 A That's all it is, is an assumption.

23 Q Now, on the 23rd of March last year, during the  
24 latter part of your particular watch, say around 11:00  
25 o'clock or thereabouts, was there a -- who else was on duty

1 besides yourself?

2 A I was the only one on duty on my part of the --  
3 on the radar watch, I was the only one on duty.

4 Q The manual says there's supposed to be two people  
5 on duty at all times. Is that correct?

6 A There's two people in the Traffic Center. One of  
7 them is Valdez Radio and the other is Valdez Traffic. So  
8 there were two of us there. The other person's name was  
9 Lowell White.

10 Q And what was his function on this evening?

11 A He was there to -- as Valdez Radio. He responded  
12 to search and rescue. He gave weather broadcasts at  
13 specific times, and he just listened in on the -- on his  
14 part of the radio.

15 Q If I understand correctly, then, he's not the guy  
16 that is on the radio to the vessels. He's just doing some  
17 other kind of radio?

18 A Right. I'm the guy that's on the vessel, on the  
19 radio to the vessel.

20 Q You're on the radio and also on the radar?

21 A That is correct.

22 Q Now, let's assume that a hazardous condition  
23 arises. Then -- is there any changes that occur as far as  
24 how many people are supposed to be there, or are on duty,  
25 if there's, say, a hazardous condition at that time?

1           A     If a hazardous condition came up, I would call  
2 the O/D, who would instantly be there.

3           Q     On this evening at that time -- late, let's say  
4 11:00 o'clock, or 12:00, or somewhere -- do you know where  
5 the O/D was at that time?

6           A     I don't know exactly where he was, no.

7           Q     Was he at the building?

8           A     I don't -- I don't recall. He was close by. I  
9 could have got ahold of him instantaneously. I don't know  
10 if he was in the building.

11          C     I assume you never contacted him on your watch  
12 prior to midnight for any reason involving potential  
13 hazardous condition?

14          A     No.

15          Q     Ice -- I think that you described, from the ARCO  
16 Juneau report, was not a hazardous condition?

17          A     It could be a hazardous condition. At the time  
18 -- it was four hours earlier -- I had -- that was the only  
19 ice report I had, was four hours earlier. So I didn't know  
20 what the ice conditions were at that time.

21                   The ice flows in and out with the tide. By the  
22 time the Exxon Valdez got down there, it was -- it's  
23 possible that there could have been ice clean across the  
24 lanes. There could have been ice in the lanes.

25          Q     Right. The radar you have certainly doesn't pick

1 up ice in that area?

2 A It does not.

3 Q It's not qualified -- capable of doing that kind  
4 of --

5 A No.

6 Q You have to rely on basically people that are  
7 coming through the area?

8 A That is correct.

9 Q Was thee any of the reports from, say, the Motor  
10 Vessel Bartlett on the Ferry System, Alaska Ferry system?

11 A I don't recall them calling me up with any ice  
12 reports. They -- when they come up, I believe they're  
13 coming from Cordova, but they didn't give me any ice  
14 reports, no.

15 Q They normally, when they come up, if there's ice,  
16 they just kind of skirt Bligh Reef, just kind of go by the  
17 edge of Bligh Reef?

18 A I'm really not familiar with their routs. They  
19 come up through that area there. I couldn't tell you the  
20 courses that they come up through.

21 Q When the radar is capable of seeing a vessel, how  
22 accurate would you say it is to a given point? I mean, can  
23 you give me an idea in terms of yards or feet or something  
24 as to where it actually is?

25 A Well, it's supposed to be accurate. I'm not a

1 technician. I plot them, you know. It's what it tells  
2 me. I only have one way of doing it, and that's with the  
3 radar.

4 Q Well --

5 A I don't understand your question.

6 Q Well, I think what my question is that, if it's a  
7 vessel is in a particular position, and you can see it's  
8 outside the lanes, is it outside by a hundred yards? I  
9 mean, from the point where -- a given point. Let's put it  
10 that way.

11 A You can tell fairly close where it's at. Yeah.

12 Q I guess that's my question. What do you mean by  
13 "fairly close?"

14 A Well, with -- within a few hundred yards.

15 Q Going back to my other question about the -- the  
16 motor vessel Bartlett. Do you recall making a statement to  
17 a state investigator, Paul Burke -- this would have been on  
18 April 10, 1989?

19 A I made a lot of statements to a lot of people.  
20 Could you refresh me with that?

21 Q Sure. I don't want to -- I'm not trying to trick  
22 you or anything. I just want to see if you can recall what  
23 you have -- do you remember the question -- down about page  
24 13 -- and there was a Tulia Grimes there, too. Another  
25 state investigator, at the same time -- apparently a



1 woman. Do you remember that?

2 A I talked to hundreds of people.

3 Q Okay. Well, do you remember the question being  
4 asked of you, "Did they tell you" -- now I'm referring to  
5 the motor vessel Bartlett -- "Did they tell you anything  
6 about ice in the lanes?" Do you remember that question?

7 A No, I don't.

8 Q Do you remember your response? I don't  
9 remember. I don't recall. They were coming out of  
10 Cordova. They skirt right around Bligh Reef. So really,  
11 you know, unless the ice is really thick over there, they  
12 do not -- you know, the ice will be over in here. But they  
13 just shoot around Bligh Reef and come on up."

14 Do you recall making that statement?

15 A That's -- they do that from time to time. Yeah.  
16 The Bartlett does that.

17 Q By the way, who was the Officer of the Deck, I  
18 think you called him, on that particular date -- night?

19 A I don't recall.

20 Q How many are there?

21 A Well, it depends. There's usually four or five  
22 that swap off, that stand different night duties.

23 Q There are four to five Officers of the Deck, and  
24 then there are what, four watch standers?

25 A Four -- depending on, you know, incoming -- if

1 the guy's gone, then there's only four. There's five or  
2 six, you know. Usually between four and six watch  
3 standers.

4 Q Now, when you -- let me ask you this. When you  
5 talk about the VTC, the Vessel Control Center, according to  
6 the manual, it is operated like the bridge of a ship, is it  
7 not? Is it as if you're out on a ship, only you're on the  
8 ground, land?

9 A What do you mean by that?

10 Q Well, according to the manual as I read it, sir,  
11 it says the way you operate is just as if you're on a  
12 ship --

13 MR. COLE: I object to Mr. Madson's  
14 characterization of these questions. I think they're an  
15 improper comment.

16 THE COURT: Which part do you object to?

17 MR. MADSON: According to my readings.

18 THE COURT: All right. The form of the question  
19 is the objection, and I'll sustain it, Mr. Madson.

20 (Pause)

21 BY MR. MADSON: (Resuming)

22 Q Let me ask you a few questions in the meantime  
23 here, sir. You indicated earlier that you can not tell a  
24 master of a vessel what course to take. Is that correct?

25 A That is correct.

1 Q The reason for that is, is it not, that you're  
2 not there? You're some distance away. You have radar  
3 sometimes, and say the radar is available. You also have  
4 radio communication. But you can't see what the captain  
5 can see?

6 A That is correct.

7 Q So there has to be, I would assume, a little  
8 flexibility between your ability to do your job and the  
9 captain of a ship to do his?

10 Getting back to my other question --

11 MR. COLE: Is that a question or an answer?

12 MR. MADSON: I don't know.

13 MR. COLE: A statement?

14 BY MR. MADSON: (Resuming)

15 Q Is that correct?

16 A Well, there's a --

17 Q There has to be some flexibility?

18 A Well, what do you mean by flexibility?

19 Q Well, you can't tell him everything that he can  
20 do, right?

21 A No, no.

22 Q But at the same time, your function and your  
23 purpose is to aid and assist to see that he doesn't get  
24 into trouble, that he doesn't ground the vessel, there's no  
25 collision? Right?

1 A That's what we try to do, yes.

2 Q I want to call your attention to the Vessel  
3 Control Manual, Chapter 2, and it's called 2.2, General  
4 Watch Procedures. "The VTC shall, at all times, be  
5 conducted in an efficient, professional manner."

6 MR. COLE: Objection. I object. Is Mr. Madson  
7 asking questions? Is he reading this into evidence? Is he  
8 asking to refresh his recollection?

9 MR. MADSON: I'll do that.

10 THE COURT: Is the document in evidence?

11 MR. COLE: I don't know.

12 MR. MADSON: It is not, Your Honor. At this  
13 time, it is not in evidence.

14 BY MR. MADSON: (Resuming)

15 Q Would you read this paragraph, sir?

16 A Watch conduct standards. The VTC --

17 Q Well, you can just read it to yourself.

18 A Oh, okay. Sure. I'd like to.

19 Q I just want to refresh your recollection.

20 (Pause)

21 Mr. Taylor, when you worked for the Coast Guard  
22 as a civilian employee, you were required to be familiar  
23 with this manual, correct?

24 A Yes.

25 Q Okay. Having read just what you did, can you now

1 answer the question as to whether or not the system at  
2 Control Center should be maintained and function like the  
3 deck of a ship, or bridge of a ship, excuse me?

4 A That's -- that's what they'd like it to be, yes.

5 Q What do you mean they'd like it to be?

6 A Well, they'd like it to be. It's not the bridge  
7 of a ship, obviously.

8 Q Uh-huh. But it should operate in a similar  
9 fashion?

10 A Right.

11 Q And are you on an upper level where you're  
12 physically located in the building, when you work there?

13 A Yes.

14 Q At times you could leave there and go down below,  
15 right?

16 A Yes.

17 Q When the traffic was light and things like this?

18 A Right. Well, when there's no traffic in the  
19 immediate area. If a vessel, say, is in between reporting  
20 points, we could go to the head, run down and get a cup of  
21 coffee, grab some chow, bring it back up.

22 Q There's a galley down below?

23 A Down below, yes.

24 Q Now, if you as a watch stander, were to  
25 determine, or in your mind you think that a vessel was

1 doing something that was in violation of the standards, you  
2 would - you don't have the authority yourself to do  
3 anything about it, but you'd go up one level and report is.

4 Is that correct?

5 A I do not go up -- well, I don't physically go up  
6 level to report it.

7 Q Okay. What I mean, up one level, I mean --

8 A I go to --

9 Q -- in terms of --

10 A -- chain of command.

11 Q Chain of command, right.

12 A Yes.

13 Q And then that person normally, according to the  
14 manual, then, to ask if it's correct or not. What do they  
15 do next if the vessel is doing something that you believe  
16 is incorrect?

17 A Then I'd tell them --

18 Q Radio?

19 A I'd tell them that I believed the vessel is doing  
20 something that is incorrect, and I tell them all the facts  
21 I can. They'll either say, "Tell me what to do," or  
22 they'll say, "I'll be right there." Usually they'll say,  
23 "I'll be right there." They come up, assess the  
24 situation. Make sure that they have all the facts  
25 straight. And then if they can handle it to where they

1 think they can handle it and do the proper thing, then  
2 they'll do that, without contacting the commanding  
3 officer. If they think that they should contact the  
4 commanding officer, they do.

5 Q Would the first step normally be for the Officer  
6 of the Deck to get on the radio, contact the vessel, and  
7 request corrective action? You know, notify him that we  
8 think, "Hey, you're doing something wrong. Change it?"

9 A He might possibly call him up and ask him their  
10 intentions also, just to get more information for himself.  
11 He's the eyes and ears of the commanding officer, you  
12 know. I don't know his -- his job. I only know my job.

13 Q So you don't know what he would do, or what he's  
14 supposed to do?

15 A No.

16 Q Your job is simply to --

17 A Pass on the information.

18 Q -- pass on the information.

19 A And then he makes any deliberations and tells me  
20 what to do.

21 Q But you are, again, familiar with the -- or at  
22 least you were familiar, were you not, with the VTC manual?

23 A Uh-huh.

24 Q Did that include the 1988 supplement?

25 A I don't know.

1 Q Well, let me show you -- this is page 23,  
2 counsel, in the '88 supplement to the manual.

3 Let me just see if this will refresh your  
4 recollection, sir.

5 (Pause)

6 4.3.5. If you could just kind of read that over  
7 to yourself for a minute?

8 (Pause)

9 A You don't want me to read A and B? Just --

10 Q Read as much as you feel necessary to, you know,  
11 refresh your recollection.

12 (Pause)

13 Finished, sir?

14 A Yes.

15 Q Did that -- reading that, give you an opportunity  
16 to refresh your recollection regarding the manual and its  
17 contents and that portion of it?

18 A Yes.

19 Q Does it not, then, indicate that if a vessel is  
20 determined to be in violation that the Master should be  
21 notified promptly and politely advised of the situation,  
22 and corrective action be taken if necessary?

23 A Yes.

24 Q And if it isn't done, there are provisions, are  
25 there not, for citing a master or a pilot for violations of



1 the regulations?

2 A Right.

3 Q You also, were you not, aware that the Coast  
4 Guard, or yourself personally, could be held liable for any  
5 actions that you might take where -- which are beyond the  
6 scope of your authority as a watch stander?

7 A Yes. That's one of the main reasons why I would  
8 call the O/D in immediately if I thought anything was going  
9 wrong.

10 Q Sure. You'd like to have someone of higher  
11 authority, would you not, that would make that decision?

12 A Right.

13 Q In an emergency situation, \_\_\_\_\_ assume --  
14 again, we talk of a hazardous condition or emergency, you  
15 could -- if you didn't tell the vessel what course to  
16 steer, you could at least recommend it, could you not?

17 A I don't know if I'd recommend it. I can just  
18 tell him I recommend that they take corrective action.  
19 That would be a recommendation.

20 Q At the very least, if you -- again, assuming you  
21 had the vessel on radar, a clear, blip on there, and you  
22 saw it was off course and heading towards something, such  
23 as a reef, a shoal, or shore, you would, at the very least,  
24 notify the vessel by radar --

25 A Yes.

1 Q By radio, would you not?

2 A Yes, I would. In a very polite manner.

3 Q If -- polite, but firm?

4 A Yes.

5 Q When you plot -- again, when a vessel leaves the  
6 terminal, at least for a period of time, you actually plot  
7 the course of the vessel, do you not?

8 A We usually start the -- you mean actually plot it  
9 on paper?

10 Q Well, again, I don't know. I'm not --

11 A Okay.

12 Q Explain that to us.

13 A Usually, as soon as the vessel gets underway, we  
14 set up our data logger, which records the course --

15 Q Maybe you'd better explain what that is, if you  
16 can, a data logger.

17 A Okay. A data logger is a machine that records  
18 the course and the speed of the vessel, and it does it at a  
19 specific time. So all you have to do is just punch in the  
20 vessel, acquire the vessel on the radar, and punch in your  
21 data logger, and tell the data logger that you want to do a  
22 six minute plot, or a three minute plot, and every six  
23 minutes or three minutes, it will take down a course and  
24 speed, a range and bearing, from a particular point and  
25 give you the speed of the vessel.

1           When the vessel gets underway, we start that data  
2 logger up, and that's -- usually about a mile before it  
3 gets into the narrows we start to plot, so that the data  
4 logger itself can get itself squared away and get things  
5 working properly. And it logs it every six minutes outside  
6 the narrows. Every three minutes through the narrows, a  
7 data logger will give me this information.

8           I don't manually plot it, but I have that  
9 information there, that historical information, so that if  
10 anything goes wrong, I can go back and I can plot the  
11 vessel now.

12           Q     Excuse me. You say, if anything goes wrong, you  
13 can do what?

14           A     I can go back and -- if anybody -- not if  
15 anything goes wrong, but if anybody wanted to say, "Plot  
16 this vessel for me," then I'd go back to this vessel data  
17 sheet. I'd have the data logger output, piece of -- sheet  
18 of paper, and I'd go back -- I'd manually plot it on there  
19 so that you could look at it and say --

20           Q     So what you're doing with the data logger is not  
21 actually putting on a chart that you can follow the course  
22 of the vessel. Is that right? You could do that --

23           A     Yes.

24           Q     But you aren't doing it, as a matter of course?

25           A     At the time, no.

1 Q Maybe I'm just confused, but what really is the  
2 purpose, then, of doing this, the data logger if you just  
3 -- if somebody asks you, "Where was this vessel at that  
4 time?" say a month or two later, said, you know, "What was  
5 its course?" you can go back and resurrect it, I take it?

6 A That is correct, but --

7 Q Is that it's only purpose?

8 A It's historical data and it's there to -- so that  
9 you can tell where the vessel is at, and have it  
10 documented.

11 Q And that's -- that data logger still exists for  
12 the Exxon Valdez does it --

13 A I would hope so.

14 Q -- for the 23rd?

15 A I would hope so.

16 Q Uh-huh.

17 A I would have no idea, but I would really think  
18 that it is.

19 Q Yeah.

20 When would it end, if you know, as far as the  
21 Exxon Valdez is concerned, this night? Where would the  
22 data logger end? Where you lost it on radar?

23 A Well, I could have run it until then. I don't  
24 believe that I did. I think -- in terms of the data  
25 logger, as soon as it gets through the narrows, I usually

1 give it three or four more plots and then shut the data  
2 logger down, because you've got your information through  
3 the narrows.

4 Q So you're really only interested in the portion  
5 through the narrows, is that right?

6 A That's right.

7 Q But you could, if you had the means and the  
8 capability, you could continue to monitor the progress?

9 A With that data logger, as long as you have a  
10 contact on the scope and you have it acquired, which means  
11 that your radar has acquired it and knows that this contact  
12 is, it will, as far down as it can see, until you lose the  
13 contact, it will keep giving your six-minute position  
14 reports.

15 Q Now with regard to the radar, for people who may  
16 not understand how it works, could you describe it in  
17 layman's terms, you know, how this -- what you look at, and  
18 what you really have to determine the position of a  
19 vessel? Do you think you could do that? Even if you think  
20 you could do a sketch on the board, that would be okay,  
21 too.

22 A I can -- all I would be drawing you is a circle.

23 Q Okay. Can you describe that it looks like, what  
24 you're actually looking at?

25 A It's a -- what I'm actually looking at is a

1 circle, and in this circle, as the sweep goes around, which  
2 -- you have a line that sweeps around. Just keeps going  
3 constantly around the circle. Takes a few seconds to make  
4 a complete sweep. And in that time, it will give you a  
5 graphic outline of outlying areas, of a vessel, of the  
6 shoreline, and it will -- if you can look at the chart and  
7 then look at the radar, it would draw you the same picture.  
8 That's about --

9 Q Now when you see a vessel, is this kind of a  
10 little green blip that you see on the screen?

11 A Green, yellow, whatever color they have up there  
12 at the top, but it is a blip. If it's a long vessel, then  
13 it's elongated, you know. If it's a short vessel, then you  
14 only see your blip.

15 Q Would that depend on which direction you're  
16 looking at, if it's long or short? I mean, if the vessel  
17 is going away from you --

18 A Sometimes yes, sometimes no. The closer it is,  
19 the better the radar works for you.

20 Q How far is Bligh Reef from the VTC? Trips,  
21 statute miles, if you know?

22 A Not off the top of my head, I don't know. I  
23 could roughly say 15, 16 miles.

24 Q Can you determine the position that is the  
25 heading of a vessel at that distance with your radar?

1 A At 15 or 16 miles?

2 Q Uh-huh.

3 A If I can pick them up on the radar, I can  
4 determine their heading.

5 Q Now, with regard to the radar again, is there  
6 different scales you can use?

7 A Yes, there are.

8 Q How can -- would you explain that, sir?

9 A Different scales. What we do is we have like a  
10 1.5 mile scale which just makes the entire screen larger.  
11 You see a smaller area, but it's larger. You have a  
12 three-mile scale, which gives you a three-mile range from  
13 the center of the screen, out to the edge of the screen.  
14 You have a six-mile scale which is the same thing, from the  
15 center of the screen outwards.

16 And it just has -- different radars have  
17 different ranges. 24-mile scale, 48-mile scale. If you've  
18 got a powerful radar. What that does is it gives you a  
19 very small picture, but it's larger. You see more area.

20 Q You cover more area?

21 A Right.

22 Q The radar you had on this particular evening, the  
23 23rd of March, what scales did you have available at that  
24 time?

25 A 1.5, 3, 6, 12, 24, 48 -- if you turn it to 48,

1 you've got a huge picture, but you only -- you only see  
2 about this much of your entire screen, because it's so  
3 small. We rarely use that, never use it.

4 I mean, if the techs are tuning it up, they'll go  
5 up to the 48-mile scale, but I've never used it for  
6 tracking purposes, nor used the 24-mile scale for tracking  
7 purposes. Mainly use the 3, the 6 and the 12.

8 Q 12 is the one that's kind of the limit, you might  
9 say?

10 A Right.

11 Q Capacity of the radar system?

12 A Right.

13 Q Was the radar on this particular night working,  
14 or tuned up as well as you thought it could be?

15 A It was working as well as it did. I'm not a  
16 radar technician. I couldn't really tell you. It would be  
17 just -- I'd be speculating, you know, because I don't  
18 really know.

19 Q You didn't see anything obviously wrong with it?  
20 I mean --

21 A No. No.

22 Q Okay.

23 Now, one of the radar sites is that place called  
24 Potato Point, is it not?

25 A That is correct.



1 Q Do you know how far that is from Bligh Reef?

2 A Ten miles. Thirteen miles. 13.2.

3 Q Uh-huh.

4 Now, lastly then, sir, I want to ask you a few  
5 more questions about the night, and I think you may have  
6 answered this already, but the Arco Juneau did give you an  
7 ice report earlier about --

8 A Approximately four hours earlier, yes.

9 Q Okay. Do you recall the ice report -- what it  
10 said, what the captain or whoever it was said?

11 A I \_\_\_\_\_ the exact -- not verbatim. What he  
12 actually says, there are numerous small pieces extending  
13 across the lanes, or over towards Bligh Reef buoy.

14 Q And the Arco Juneau, to your knowledge, deviated  
15 or went around the ice?

16 A Yes. By then, they were out of the -- they were  
17 off my scope. I saw them turn, make their initial turn to  
18 skirt the ice, and then I lost them off the scope. So I  
19 just took their word for it as to their intentions, what  
20 they were going to do.

21 Q That would be the normal situation if you  
22 couldn't see them on the scope?

23 A Right. Right.

24 Q If the master says, "I'm going to deviate to go  
25 around ice," you assume that's what he's going to do?

1 A That is correct.

2 Q And when you were watching the Exxon Valdez this  
3 evening, you said it disappeared from your radar, your  
4 six-miles scale, at about what point? Where did you lose  
5 it?

6 (TAPE CHANGED TO C-3609)

7 A It says, on the tip of Rocky Point -- between  
8 Rocky and Busby.

9 Q And did you switch to the next scale, the 12-mile  
10 scale?

11 A Yes, sir, I did.

12 Q And did you see it on that scale?

13 A I saw it for about -- it would take a sweep and  
14 the vessel would be there, and it would take four or five  
15 sweeps, and it wouldn't be there, and I totally lost it all  
16 together. So I switched back to the six-mile scale, at  
17 that time the six-mile offset, to ten -- which means that I  
18 can move -- move my radar from the very center of the  
19 screen, I can switch it up, so that I have, instead of six  
20 miles on the six-mile scale, I have approximately ten miles  
21 to see.

22 I switched it over -- I switched it back to the  
23 six-mile scale from the twelve-mile scale because I saw it  
24 on the six-mile scale; I didn't see it on the twelve-mile  
25 scale. So it was pretty obvious that I would switch it

1 back.

2 I still had, on the six-mile scale, approximately  
3 an inch to go on the scope, of which I saw the vessel. I  
4 watched it until it went off the screen, switched back,  
5 still nothing. Switched back to twelve-mile scale. Still  
6 didn't see it.

7 I had the target stretcher on, which -- target  
8 stretcher stretches your target, makes it larger by, say, a  
9 third. It's just easier to see. If you have a small blip,  
10 turn your target stretcher on, it will -- sometimes it will  
11 double in size. It just makes it easier to see. I had the  
12 gain turned all the way up.

13 Q So you were stretching the capacity of your  
14 equipment to its maximum at that scale?

15 A That's right.

16 Q And you said you lost it altogether.

17 A Yeah, after it went off the scale.

18 Q Is weather conditions, sir, is a factor to be  
19 considered in whether you can see a vessel at that range?

20 A That is definitely correct.

21 Q Snow squalls, rain, anything like this?

22 A Anything like that. If you get -- say if I have  
23 a vessel down by Rocky Point, and I have a weather cell, or  
24 a snow squall, move through, you can actually see it on the  
25 radar. You can see it moving in.

1           It will -- you'll have your shoreline going down,  
2 and then as this moves in, you'll see a big, yellow mass  
3 coming across the screen.

4           Usually, if this mass goes into the vessel, you  
5 know, covers the vessel, you're going to lose the vessel  
6 completely. If it's between you and the vessel, you're  
7 probably going to lose -- lose your contact, also. So  
8 weather is a major --

9           Q     Do you recall any squalls or anything on your  
10 screen that you concluded might be interfering with your  
11 ability to track the Exxon Valdez?

12          A     Not off the top of my head I don't. I know --  
13 see, I'm in a dark room. I can't see what the weather is  
14 outside. At that particular time, I don't recall whether I  
15 did or not.

16          Q     Of course, the weather could be different at your  
17 location as opposed to --

18          A     That's very true.

19          Q     -- ten miles away, right?

20          A     Very true.

21          Q     Your -- you get off duty normally, then, at  
22 midnight?

23          A     Quarter 'til.

24          Q     Quarter 'til.

25                 Who replaced you on the 23rd?

1 A Bruce Blandford.

2 Q What time did Mr. Blandford show up to replace  
3 you?

4 A I believe he showed up at approximately --  
5 between 11:30 and 11:35.

6 Q Is it normal that he would show up a little  
7 earlier? Is that normal routine, you come in a little  
8 earlier?

9 A Right.

10 Q Is part of your duties, then, when you go off  
11 duty to explain to the person replacing you what's going  
12 on?

13 A That is correct.

14 Q Did you tell Mr. Blandford that the Exxon Valdez  
15 was outbound?

16 A That's correct.

17 Q Did you tell him any ships were coming in?

18 A Yes, I did.

19 Q What was that?

20 A I told him that there were two ships  
21 approximately an hour out from Cape Hinchinbrook, the  
22 Chevron California and the Arco Alaska, if I remember  
23 correctly. I told him that the Exxon Valdez was outbound;  
24 they were deviating around the ice; they were at 200 12  
25 knots; they'd call us when they got through the ice with an

1 updated ice report and updated ETA to Naked Island.

2 Q And from your experience, sir, if a vessel -- or  
3 if the master says he's going to deviate through the ice,  
4 or wind his way through the ice, that means he's going to  
5 have to make course changes, does it not?

6 A Yes.

7 Q And did you tell Mr. Blandford that you could not  
8 see him any longer on the radar?

9 A That is correct.

10 Q At approximately what time was that, do you know?

11 A Well, it was before 11:45. Between 11:30 and  
12 11:45.

13 Q What time did you leave there, physically leave  
14 the building?

15 A I believe I left about 11:45, 11:46.

16 Q And with the information Mr. Blandford had, then,  
17 he could have gone to the radar and still tried to locate  
18 the Exxon Valdez, if the snow squall or something had  
19 disappeared \_\_\_\_\_ -- it's possible, let's put it that  
20 way? It's possible that he could have seen it?

21 A Yeah, if -- yeah, right If the snow storm moved  
22 through. It's possible. Anything is possible.

23 Q So when you left, in any event, it was off the  
24 screen and you didn't see it anymore?

25 A That is correct.

1 MR. MADSON: Thank you, sir. I don't have any  
2 other questions.

3 REDIRECT EXAMINATION

4 BY MR. COLE:

5 Q Mr. Taylor, I'm showing you what's been marked  
6 for identification as Plaintiff's Exhibit Number 75. Do  
7 you recognize that?

8 A Yes, sir, I do.

9 Q What is that?

10 A It's the Prince William Sound User's Manual for  
11 the Vessel Traffic System.

12 (State's Exhibit 75 was  
13 marked for identification.)

14 BY MR. COLE: (Resuming)

15 Q Okay. Who is required to carry that manual?

16 A All vessels participating in the Traffic System.

17 Q And that would include tanker?

18 A That is correct, sir.

19 Q And is this a fair and accurate copy of the  
20 Vessel Traffic System manual?

21 (Pause)

22 A Yes, sir. That's the one.

23 MR. COLE: I would move for the admission of  
24 what's been identified as Plaintiff's Exhibit Number 75.

25 MR. MADSON: May I see it again, counsel, one

1 second?

2 (Pause)

3 THE COURT: Hearing no objection, it will be  
4 admitted.

5 MR. MADSON: No objection, that's correct. I'm  
6 sorry, sir.

7 THE COURT: It's admitted.

8 (State's Exhibit 75 was  
9 received in evidence.)

10 BY MR. COLE: (Resuming)

11 Q Mr. Taylor, can you read the disclaimer that's on  
12 the first page of that manual?

13 A Out loud, or just to myself?

14 A Yes.

15 A Out loud?

16 It says here: "The mariner is cautioned that  
17 information provided by the Vessel Traffic Center is, to a  
18 large extent, based upon reports of participating vessels  
19 and can be no more accurate than the information received.  
20 The Coast Guard may not know all -- of all hazardous  
21 circumstances within the Vessel Traffic service area.  
22 Unreported hazards may confront the mariner at any time.  
23 Any conflicting circumstances or hazardous conditions  
24 should be reported to the Vessel Traffic Center  
25 immediately."



1 Q Did you -- who has control over the tankers as  
2 far as their navigation when they're in the Vessel Traffic  
3 System?

4 A The captain of the vessel, the vessel.

5 Q Can you give them any orders to turn one way or  
6 the other?

7 A No, I cannot. Not without contacting the Captain  
8 of the Port and having -- I'd have to say by authority of  
9 the Captain of the Port. I can't make any decisions of  
10 that nature on my own.

11 Q Now, Mr. Madson asked you a lot of questions  
12 about warning tankers if they get off course. Can you do  
13 that if you can't see them on the radar?

14 A I have no way of knowing they're off course if I  
15 can't see them on the radar. Once they're off the radar,  
16 then it's totally out of radio contact.

17 Q And do you keep track of the tankers after you  
18 lose them on the radar?

19 A That is correct. With ETAs to their specific  
20 check-in points, and that's the only way we can keep track  
21 of them.

22 Q Give the jury -- I mean, what do you mean by  
23 that? ETAs?

24 A Oh, estimated time of arrivals. If they tell me  
25 that they're going to be at, say, Naked Island at 5:00

1 o'clock, then I'm expecting a call from them at Naked  
2 Island at 5:00 o'clock, and at that time they will give me  
3 another estimated time of arrival at their next check-in  
4 point.

5 Q Do you mentally plot their course in between the  
6 time they call and the time they arrive at the place, just  
7 to keep in your mind where these tankers are generally?

8 A I wouldn't say a mental plot. I keep -- in my  
9 mind, you know that it's going to take approximately an  
10 hour-and-a-half to get down to Naked Island, a couple of  
11 hours after that to get to their next check-in point. If  
12 they don't check in by that specific time, well you start  
13 wondering well, where they're at.

14 And at that time, I'd probably give them a call  
15 asking what's their location? They'll either tell me  
16 they're a little behind time, a little ahead of time, they  
17 forgot, sorry, and give me their next ETA.

18 Q Would you tell the jury -- you have a chart board  
19 in the VTC Center. What's that used for?

20 A The large one, is what you're talking about?  
21 It's approximately seven by eight? It's a -- it's used  
22 just to keep track of the vessels. We have vessel tags,  
23 magnetic vessel tags, of all the vessels that participate,  
24 and as the vessel leaves, we just go up there manually and  
25 just slide them down as they do their check-in points, just

1 slide them down so we know where they're at.

2           So if we have five or six vessels in the system,  
3 it's easy that way. You can just visually look over at a  
4 glance, tell where they're all at -- if you keep it up to  
5 date. And it's a very helpful piece of gear.

6           Q     Now, the accuracy of the radar -- Mr. Madson  
7 asked you some questions about the accuracy of the radar --  
8 does that -- as to where it's located -- does that depend  
9 on how far it is away from your radar?

10          A     I would say yes. The farther away, I think, the  
11 greater degree of inaccuracy. But that - you talk to a  
12 radar tech, he might tell you just the opposite. That's  
13 just what I found over the years.

14          Q     Now, why is that you don't plot after the vessel  
15 leaves the narrows, you don't keep the data plotted?

16          A     Well, basically because we're required to do it  
17 through the narrows, by law. Outside the narrows, it  
18 widens up to a larger area, and we figure that they -- they  
19 can navigate their vessel down through there without --

20          Q     I didn't hear you?

21          A     They figure that they -- we figure that they can  
22 navigate their vessel down through that area --

23          Q     By themselves.

24          A     By themselves, yes.

25          Q     Now, how long have you worked in the VTS Center

1 as a watch stander?

2 A Altogether, approximately seven-and-a-half years.

3 Q Have you ever in the course of that time had a  
4 tanker captain tell you that he was lost and ask you for  
5 where he was?

6 A No. Not that I can recall, no.

7 Q Can you tell the jury why you don't use the 24-  
8 and the 48-mile scale on the radar?

9 A Well, it makes it so small, it makes -- your --  
10 what you're looking at on the screen so small, that -- your  
11 bearing marker which -- it's an electronic bearing marker,  
12 which is a line that goes from your -- say Potato Point  
13 down -- if you laid that on the 24-mile scale, put that  
14 over top of a vessel, you'd totally cover it. It makes it  
15 so small that it doesn't help you at all.

16 So that's why we try and keep them up on the  
17 12-mile scale. We have a better -- a better picture on the  
18 scope.

19 MR. COLE: May I approach the witness, Your  
20 Honor?

21 THE COURT: Yes.

22 (Pause)

23 BY MR. COLE: (Resuming)

24 Q I'm showing you what's been marked for  
25 identification as Plaintiff's Exhibit Number 79. Do you

1 recognize that tape?

2 A Yes, I do.

3 Q Why do you recognize it?

4 A I initialed it.

5 Q And have you listened to that tape?

6 A Yes sir, I have.

7 Q And the taping procedure at the VTC Center, how  
8 is that done?

9 A It's done on a double reel-to-reel tape. It  
10 works 24 hours a day. It's running 24 hours -- it's  
11 running constantly.

12 Q Does it record the messages that you receive and  
13 the messages that you give?

14 A That is correct, on the VHF.

15 Q Channel 13?

16 A Channel 13 and 16.

17 Q And is there a clock on it?

18 A Yes, there is.

19 Q That keeps track of time?

20 A A chronometer.

21 Q And is that done in the regular course of  
22 business, the recording of these conversations?

23 A Yes, it is.

24 Q Have you listened to this tape and does it  
25 provide a fair and accurate representation of the

1 conversations that you had with the Exxon Valdez from the  
2 time the Exxon Valdez left the docks until you went  
3 off-duty that evening?

4 A Yes, sir. I believe it does.

5 Q And the references -- have you read a transcript  
6 of that?

7 A Yes, I did.

8 Q And is that transcript a fair and accurate  
9 representation of the conversation?

10 A Yes, it is.

11 Q And where that says VTC, who's voice is that?

12 A Mine for a good portion of it.

13 Q And that's up to the point where you were on duty  
14 -- or you left?

15 A Right.

16 Q And do you recognize any other voices on that?

17 A I recognize the pilot's.

18 Q Would that have been at the beginning of the --

19 A Yes.

20 Q All right, to the best of your knowledge, are the  
21 times on the transcript accurate also?

22 A Yes.

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

24 RE CROSS EXAMINATION

25 BY MR. MADSON:

1 Q Mr. Taylor, just a few more questions.

2 A Yes, sir.

3 Q The manual, Exhibit Number 75, which I think you  
4 have in front of you there, which you've identified?

5 A Yes, sir.

6 Q Has a Coast Guard disclaimer in it, does it not,  
7 at the beginning?

8 A Yes.

9 Q Okay. Basically, it says, does not, that the  
10 information we are providing you is only as good as we can  
11 get. In other words, if there's an ice report from another  
12 vessel, we're just relaying that information on to you?

13 A That is correct, sir.

14 Q Right?

15 On the other hand, a vessel in the VTS system  
16 doesn't rely on radar from any other vessels, does it?  
17 You're not getting radar reports from other vessels, are  
18 you?

19 A No, not that I -- no.

20 Q The only radar coverage is by the Coast Guard  
21 VTC?

22 A That is correct.

23 Q You also indicated, now, about the authority to  
24 give orders and give directions to captains of tanker  
25 vessels. The narrows is one-way traffic, is it not?

1           A     If there's a vessel coming out -- say it's in the  
2 middle of the narrows -- there's a vessel that's going to  
3 go in, you get on that radio, don't you, and you say, "You  
4 cannot go in there now," or words to that effect? "You are  
5 directed to slow down and do not enter until 0700, or  
6 something like that?"

7           A     Right. I would say that they're not cleared  
8 until the other vessel clears the narrows.

9           Q     So there are certain directions and controls that  
10 you can give a vessel in the VTS system?

11          A     For the one-way zone.

12          Q     And no other?

13          A     Just for the one-way zone, other than that, you  
14 don't tell them what to do.

15          Q     But you can certainly tell them that they are not  
16 where they're supposed to be, right? They're not doing  
17 what they're supposed to be doing.

18          A     Oh, I can tell them that. That's correct.

19          Q     And you can take it -- now, when you say "you" --  
20 you can take it one step higher in the authority scale --

21          A     That's right.

22          Q     -- and that person may do something about it.

23          A     That's right.

24          Q     Exhibit Number 79 you have there in front of you,  
25 sir, I just want to clear up something. Is that the tape



1 of the outbound conversations, or inbound?

2 A Outbound.

3 Q Outbound, okay.

4 And even if you don't have radar contact with a  
5 vessel, you still have radio contact, do you not?

6 A That is correct.

7 Q How far does your radio contact extend?

8 A Well, it extends out -- it extends outside of  
9 Cape Hinchinbrook -- it extends completely through Prince  
10 William Sound. When I say "completely," I mean in the area  
11 of the Vessel Traffic System, and I would say, maybe four  
12 to five hours outside of Cape Hinchinbrook.

13 Q So certainly you have good radar -- radio, excuse  
14 me -- between yourself and vessels, say, in the vicinity of  
15 Bligh Reef?

16 A Yes. Excellent.

17 Q And you could -- you, without radar -- contact the  
18 vessel and say, "How are you coming through the ice?  
19 What's the conditions?" things like this?

20 A That's true. I could do that.

21 Q The Exxon Valdez, between, say, 11:00 o'clock and  
22 the grounding, was the only vessel that you were really --  
23 you really had to monitor, did you not?

24 A Right. Other than the Bartlett that came through  
25 earlier, but right, that's correct.

1 Q Well, is the Bartlett -- is it required to be  
2 part of the VTS too?

3 A Uh-huh. You say monitor -- I mean, I'm still  
4 monitoring the inbound vessels out at Cape Hinchinbrook.

5 Q By radio?

6 A By radio.

7 Q Okay. But by radar, the Exxon Valdez was the  
8 only one that you could even try to monitor?

9 A By radar.

10 Q By radar.

11 A Yes.

12 Q And on the 12-mile scale, for instance, that  
13 doesn't limit you to this 12 miles, does it? You can  
14 actually --

15 A I can offset it to approximately 15 to 18 miles,  
16 yeah.

17 MR. MADSON: Thank you. I don't have any other  
18 questions.

19 MR. COLE: Just two questions.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. COLE:

22 Q Are you encouraged to have conversations with --  
23 well, let me withdraw that.

24 Mr. Madson asked you about conversations that you  
25 can have with a captain about icy conditions. Would you do

1 that?

2 A I call them up and ask them for an ice report  
3 but, you know, at the time I was going to get an ice  
4 report, and updated ETA. We don't call them up and shoot  
5 the breeze or anything like that. It's supposed to be  
6 short and sweet, professional, right to the point, concise,  
7 (inaudible).

8 MR. COLE: Nothing further.

9 THE COURT: You're excused.

10 Any further need for this witness?

11 MR. MADSON: No, Your Honor. No reason to recall  
12 him that I know of.

13 THE COURT: All right. You're excused.

14 THE WITNESS: Thank you.

15 THE COURT: Any further use for the witness?

16 (Inaudible).

17 (The witness was excused at 9:54  
18 a.m.)

19 THE COURT: Call your next witness, please.

20 MR. COLE: Mr. Bruce Blandford.

21 Whereupon,

22 BRUCE L. BLANDFORD

23 called as a witness by counsel for the State of Alaska, and  
24 having been duly sworn by the Clerk, was examined and  
25 testified as follows:

1 THE CLERK: Sir, will you please state your full  
2 name, and spell your last name?

3 THE WITNESS: Bruce Leonard Blandford.  
4 B-l-a-n-d-f-o-r-d.

5 THE CLERK: Your current mailing address?

6 THE WITNESS: Box 789, Valdez.

7 THE CLERK: And your current occupation?

8 THE WITNESS: Pardon?

9 THE CLERK: Your current occupation, sir?

10 THE WITNESS: Department of Transportation, U.S.  
11 Coast Guard Civil Service.

12 DIRECT EXAMINATION

13 BY MR. COLE:

14 Q Mr. Blandford, where do you live?

15 A In Valdez.

16 Q How long have you lived there?

17 A Twelve-and-a-half years.

18 Q And where did you come from before Valdez?

19 A Charlamar (PH), Michigan.

20 Q Since living in Valdez, would you tell the jury  
21 what your job has been?

22 A I came to Valdez initially with the Coast Guard  
23 on active duty. I was assigned there in August, 1977. I  
24 was on hand when the pipeline and terminal and Vessel  
25 Traffic System more or less simultaneously opened for

1 business.

2 I was assigned there as a Vessel Traffic Center  
3 Watch Officer initially, with other collateral duties.  
4 After six to eight months, I took over the duties as the  
5 Vessel Traffic Center supervisor and operations officer.

6 Q How long did you remain in the Coast Guard?

7 A I stayed in the Coast Guard in Valdez until June  
8 30th of 1980.

9 Q And what did you do after that?

10 A For about a year, I had my own charter fishing  
11 business on Valdez, and in approximately June, May or June  
12 of '81, I went to work for the local electric co-op, Top  
13 Value Electric, as a district superintendent.

14 Q And did you at some point join, or start working  
15 again, at the VTC Center?

16 A Right. I had another job in between with Copper  
17 Valley Telephone, running a Radio Shack store down there  
18 for a couple of years, and in 1986, August of 1986, I went  
19 back to work for the Coast Guard as a civil service  
20 employé.

21 Q And what were your responsibilities when you went  
22 back to work in 1986?

23 A The job opening which I had applied for and  
24 subsequently received, was that as a position of a civil  
25 service vessel traffic controller, is the job title, GS-9.

1 Q And would you tell the jury what your  
2 responsibilities were as a vessel traffic controller?

3 A Much the same as those whom I had supervised as  
4 the operations officer in charge of the Vessel Traffic  
5 Center, that \_\_\_\_\_ to be the actual watch stander to  
6 run the minute-to-minute business of the Traffic Center  
7 itself.

8 Q Okay. Would you tell the jury, is this located  
9 in downtown Valdez --

10 A Yes --

11 Q -- the Vessel Traffic Center?

12 A Yes, it is.

13 Q What type of equipment did you have available  
14 there?

15 A We have primarily to operate the Vessel Traffic  
16 System, a communications network, which is connected by  
17 microwave with various VAS/FM radio sites placed throughout  
18 Prince William Sound. We monitor ship and vessel progress  
19 through the use of this communications equipment, and in  
20 areas where we have radar installed, also using radar to  
21 gain visual presentation of the vessel's progress,  
22 particularly Valdez Narrows.

23 Q Where does the -- do you first have contact with  
24 incoming tankers?

25 A According to the regulations, they are to call us

1 three hours prior to their making -- taking arrival at Cape  
2 Hinchinbrook entrance. Depending on the vessel's speed,  
3 generally around 45 miles. They average about 15 knots.

4 Q Forty-five miles from where?

5 A Forty-five miles -- forty-five, fifty.

6 (Pause)

7 Q I'm showing you what has been (inaudible) Exhibit  
8 Number 25. Can you give the jury an idea of where these  
9 tankers are located when they call you three hours early?  
10 Can you see it on that?

11 A Well, generally, most of the traffic will be  
12 arriving from the southeast, coming up from the lower 48,  
13 either California or the Puget Sound area, and they'll be  
14 coming from this direction. Three hours from Cape  
15 Hinchinbrook light, which would be depending on their  
16 speed, somewhere around 45 to 50 miles.

17 Q Can you see 45 or 50 miles from Cape Hinchinbrook  
18 on that chart?

19 A I don't believe so.

20 Q Where is the first place that you generally pick  
21 them up on radar?

22 A Up in Valdez Arm.

23 Q Now, from the time that you make initial contact  
24 with them, the three-hour time, how do you maintain contact  
25 with them until, say, they get to Bligh Reef?

1           A     Okay. According to the regulations, which are  
2 contained in the little pamphlet here, the User's Guide,  
3 their next reporting point is one hour prior to entering  
4 Cape Hinchinbrook, at which they're required to give  
5 related certain other information, and then they confirm,  
6 at that point, that their ETA to Cape Hinchinbrook remains  
7 the same.

8                     Once they arrive at Cape Hinchinbrook they call  
9 again and give us an ETA to a point abeam of Naked Island,  
10 right there. When they arrive at that point, they again  
11 call with an ETA to the pilot's station, and if the vessel  
12 has a federally-licensed pilot on board for this route,  
13 that pilot's station would have been at Rocky Point.

14           Q     And if they don't have a federal pilot aboard,  
15 where is that?

16           A     That would -- Bligh Reef.

17           Q     Now, during this time that they're coming in, can  
18 you see them on the radar, through Hinchinbrook and Naked  
19 Island?

20           A     We can't see -- we can't see them on the radar  
21 any portion of this route up until they arrive  
22 approximately at Bligh Reef.

23           Q     And what type of factors affect whether or not --  
24 where the first point is that you can pick them up?

25           A     Mainly weather and sea conditions. Weather, more



1 than sea conditions.

2 Q How about whether or not the tanker is laden or  
3 unladen?

4 A The unladen tankers coming in at ballast are  
5 riding much higher out of the water, probably presenting  
6 two to three -- excuse me, two to three times the target  
7 area as they would be if they're unladen -- or, excuse me,  
8 as they would if they were laden and loaded down into the  
9 water.

10 Q Now, did you -- were you called -- was your shift  
11 at about 11:45 on March 23, 1989?

12 A Yes.

13 Q Would you tell the jury when you got there that  
14 day, that evening?

15 A As best I recall, I arrived in the Traffic Center  
16 at about 2340.

17 Q Who was there when you arrived at the Vessel  
18 Traffic Center?

19 A Mr. Taylor was the offgoing watch stander whom I  
20 was going to relieve.

21 Q And what did you do when you got there?

22 A He informed me of the pending traffic. He  
23 informed me that -- of course, we -- I looked at the status  
24 board, which is just a big blow-up of this chart, which we  
25 have little magnetic tags we move around to show the

1 position -- the positions of the different vessels.

2 Q What did he tell you about the Exxon Valdez?

3 A He said that he had -- the Exxon Valdez had just  
4 prior to that -- shortly before that had dropped its pilot,  
5 and that he had called recently and said that he was going  
6 to course 200, 12 knots, and entering the southbound lane  
7 in order to avoid ice, which was presumably in the  
8 northbound lane.

9 Oh, excuse me. He was going into the northbound  
10 lane to avoid ice, because there was ice across the  
11 southbound lane and the separation zone, and that he would  
12 call with a new ETA from Naked Island once he was clear of  
13 the ice. He also informed me of the two inbound vessels we  
14 had at the time.

15 Q Did you take a look at the radar that evening  
16 when you got on duty to see if you could see the Exxon  
17 Valdez?

18 A Yes. According to Mr. Taylor, he said that he  
19 had lost contact with the Exxon Valdez --

20 Q When you --

21 A -- on radar --

22 Q Would you explain what you mean by that so the  
23 jury would understand what you understood that to mean?

24 A I understood that to mean that the water  
25 conditions and/or some kind of equipment problems or

1 whatever was affecting the situation at the time. Probably  
2 mostly weather conditions. For that reason, he is no  
3 longer be able to make contacts with the vessel on radar.

4 Q Did you look to see?

5 A Yes, I did. I looked at the scope and I wasn't  
6 picking anything up.

7 Q What did you do, then, after that?

8 A In terms of --

9 Q Well, what did you -- it's eleven --

10 A That watch relief?

11 Q Yeah.

12 A I believe Mr. Taylor actually completed the watch  
13 relief. He gave me the situation on the ice, and he  
14 mentioned that the Arco Juneau had gone out a few hours  
15 before that, and they had done the same -- basically the  
16 same maneuver that the -- that he told me that the Exxon  
17 Valdez was currently conducting, and that they had gone  
18 through there with no problem.

19 And then we discussed what the ice was, and  
20 various aspects of the relief, if \_\_\_\_\_, whether or  
21 not any of the equipment was down -- which at that time it  
22 was. We had some communications sites inoperative. I  
23 believe it was Cape Hinchinbrook, possibly Naked Island,  
24 VHF sites were inoperative.

25 Then, about 2345, he left.

1 Q What did he do after he left?

2 A As best I recall, I set the various pieces of  
3 paper that we keep the watch going on set up in a way that  
4 I like to set them up, so I know where everybody is, or is  
5 going to be, and I got it all pretty well straight in my  
6 mind as to what was happening. And after I had satisfied  
7 myself that I was familiar enough what was going on, I went  
8 downstairs to get a cup of coffee, and I came back up and  
9 checked the -- with the Weather Service, who is right next  
10 door to our traffic center, to see what the current weather  
11 conditions were like, and what the forecast was, and then I  
12 went back into the traffic center. I'm not sure what time  
13 I arrived back in there. It probably took me a total of  
14 five minutes to do that, get the coffee and come back in.

15 Q What did you do then, next?

16 A Well, I'm sure I just sat there for a few  
17 minutes, and then at -- right at midnight, I started my  
18 midnight chore routine.

19 Q Can you explain to the jury what that is?

20 A Okay, we have to -- first of all, on the 24-hour  
21 tape recorder that we use, 40-channel tape recorder, has to  
22 be changed, the tape has to be changed at midnight, the old  
23 one rewound -- or the one that has just finished recording,  
24 it has to be rewound all the way. The heads have to be  
25 cleaned on the machine. You have to pull a used tape

1 that's a month old off the shelf and use an eraser on it, a  
2 bulk tape eraser, erase that and install it on the reel  
3 that you've just removed the present day's -- previous  
4 day's tape from.

5           And at midnight, the other reel starts recording  
6 automatically, so you won't miss anything. One stops, the  
7 other starts.

8           Q     Okay. This 24-hour clock, is this an accurate  
9 clock?

10          A     Yes, it is. We take a time check with WWB every  
11 day and compare it, and if it's more than two or three  
12 seconds off, we make sure it's correct.

13          Q     Did you receive any phone -- any radio  
14 communication that afternoon -- during that time?

15          A     Any radio? No, none whatsoever.

16          Q     When did you get your first communication?

17          A     As far as receiving any communications, while I  
18 was gone, if I had not been there to take a radio call, the  
19 radioman would have answered it for me.

20          Q     He remained in the room when you went to get a  
21 cup of coffee?

22          A     Yes, yes, he did. And if it were something that  
23 he couldn't handle, or something that was pretty important,  
24 we have a system where he could get me back up there right  
25 away, within 30 seconds.

1 Q Did he inform you of anything when you came back  
2 up?

3 A I asked him when I came back if I'd had any  
4 calls. He said no.

5 Q Now, when was the first radio transmission that  
6 you actually received while you were on duty then?

7 A I believe it was a minute 17, I got a call from,  
8 I believe, it was Chevron California, who was inbound at  
9 Hinchinbrook.

10 Q Did you receive a call from the Exxon Valdez  
11 shortly thereafter?

12 A Yes, I did.

13 Q What time was that?

14 A I have it logged in the station log as being  
15 minute 0028. That time was, in fact, when I finished  
16 talking to him -- I looked up and recorded the time. But  
17 when he initially called, according to the time that's  
18 recorded on the tape, was minute 0026 -- and so many  
19 seconds.

20 Q When you say 0026, for people that aren't  
21 familiar with the 24 hour time, what does that mean?

22 A Twenty-six after midnight.

23 Q Now who called you?

24 A The Exxon Valdez.

25 Q And when he called you, what did he say?

1           A     He said that he was hard aground on Bligh Reef  
2 and that he was leaking oil and that he would -- and he --  
3 let me slow down a minute.

4           He said he was hard aground on Bligh Reef and he  
5 gave me a position north of Goose Island, which I didn't  
6 really -- I didn't really comprehend.

7           Q     Where -- would you get that pointer there and  
8 show the jury where Goose Island is?

9           A     Do you have \_\_\_\_\_ chart? The vessel is kind  
10 of small.

11           (Pause)

12          Q     How about that?

13          A     That's better. Okay. This is Goose Island,  
14 right here. And this is Bligh Reef up here. This is about  
15 -- oh, eight to ten miles away. But anyway -- do you want  
16 me to continue?

17          Q     Well, tell me as best you can remember -- and if  
18 you need to refresh your recollection, tell me -- but, as  
19 best you remember, what did the person from the Exxon  
20 Valdez tell you?

21          A     Okay, that he was -- he was hard aground north of  
22 Goose Island on Bligh Reef, and that he was leaking some  
23 oil, and that this was -- he's just reporting that.

24          Q     Now, when you heard where he told you he was,  
25 where did you think that was?

1 A Well, I had a little bit of difficulty --

2 Q Why did you have difficulty?

3 A Because of the differences in position. Was he  
4 down here by Goose Island, or was he up here by Bligh  
5 Reef? So after that, I shifted my radars to try to see if  
6 I could find him anywhere, and of course, I can't see  
7 anything down here by Goose Island. It's in the shadow.  
8 All you can see is through this -- a V-shaped area going  
9 straight down the arm. Anything that's behind this island  
10 here, I wouldn't be able to see.

11 But I noticed a target up in this area that was  
12 way out in the traffic lanes and approximately 90 degrees  
13 to the radar.

14 Q Now, what had the radar been on before -- when  
15 you looked at it first?

16 A Okay. When I came in and relieved Mr. Taylor,  
17 the radar was on the six-mile scale offset to ten miles.

18 Q Did you change it?

19 A Yes, I did.

20 Q When did that happen?

21 A At midnight.

22 Q Okay. And what did you change it to?

23 A I changed it to three-mile scale, to \_\_\_\_\_  
24 range of Middle Rock for the midnight calibration of the  
25 radar.



1 Q Is that something that you go through every  
2 evening on your shift?

3 A Right. It comes right after changing the tapes.

4 Q And did you -- when did you change the radar  
5 after that?

6 A When he called.

7 Q And what did you change it to?

8 A Twelve-mile scale.

9 Q And were you getting a solid fix, or was it  
10 intermittent?

11 A At that time, it was pretty solid.

12 Q And when you say it was - would you again  
13 describe the position of how the ship was laying at that  
14 time?

15 A Okay, it was -- the aspect of the ship was  
16 broadside to the radar, or 90 degrees.

17 Q Maybe if you could use that marker there, right  
18 in front of you? Right in front of you there.

19 A Okay.

20 Q And on the map, or on the chart, excuse me, would  
21 you point out to the jury how the tanker was sitting?

22 A It appeared to be sitting about like this.

23 Q In your experience as a radar person, is it  
24 easier to pick up a tanker when it's sitting broadside to  
25 the radar or when it's sitting lengthwise?

1 A Certainly when it's broadside.

2 Q Why is that?

3 A Because you have more target area.

4 Q After you picked this up -- well, after the  
5 captain or the person told you that they were aground north  
6 of Goose Island, did you respond immediately to him?

7 A Well, it took me a -- well, it seemed like  
8 forever -- but it took like maybe a minute to figure out  
9 what was going on. I asked him, after I saw this contact  
10 area, which is not normally there, I asked him, "Are you  
11 about a mile north of Bligh Reef?" And he said yes.

12 Q And when you say a mile north of Bligh Reef,  
13 could you point out to the jury where you were talking  
14 about?

15 A Okay. This is -- the reef itself is right here.  
16 The ship was right here, and the buoy is right here, off to  
17 the western edge of the reef.

18 Q What went through your mind when you heard this  
19 report?

20 MR. MADSON: Your Honor, I'd object. I think  
21 it's irrelevant.

22 MR. COLE: It goes to his observations and how he  
23 acted after that.

24 THE COURT: The objection is overruled.

25 BY MR. COLE: (Resuming)

1 Q What went through your mind?

2 A I don't exactly recall, but I did a pretty hard  
3 swallow and -- I don't know. I guess the old fighter fight  
4 instinct took in and the adrenalin started pumping and we  
5 really went to general quarters.

6 Q What did you -- what did you do then, after that?

7 A I immediately called the commanding officer.

8 Q And who would that have been at the time?

9 A Commander McCall.

10 Q And what did you tell him?

11 A That the -- this was the big one, the Exxon  
12 Valdez was on the rocks and leaking oil.

13 Q Okay. And who did you call after that?

14 A Lieutenant Commander Falkenstein, and I basically  
15 told him the same thing, and he said -- they both said that  
16 they would be right there, and they were about -- oh, I  
17 would say no longer than five minutes after they were on  
18 the station.

19 Q Now, did you ask the Exxon Valdez for a weather  
20 report?

21 A Yes, I did.

22 Q Why did you do that?

23 A Mostly for the -- to be able to give the weather  
24 to any assisting resources and/or to be able to judge what  
25 kind of resources to send to assist the tanker.

1 Q Did you -- when Commander McCall arrived, what  
2 happened?

3 A When he arrived, he immediately called the ship  
4 and communicated with the master. I just handed him the  
5 radio and he --

6 Q Would you describe for the jury what you did for  
7 the rest of that morning?

8 A Well, it became pretty much a -- if you will, a  
9 search and rescue case. At one -- at the initial phase,  
10 trying to coordinate and getting assistance out to the  
11 tanker. There were various arrangements that had to be  
12 made to try to line up the appropriate size hoses, to  
13 lighter the fuel off -- or, excuse me, the cargo off, the  
14 remaining cargo, and the -- it couldn't have been more than  
15 an hour after the grounding that the phones just really  
16 started ringing off the wall and we only had a very small  
17 watch section, which is normal, and it got to be pretty  
18 much to handle.

19 Q How long did you work that morning?

20 A I stayed until 8:00, which was my regular end of  
21 shift, and then I stayed for an additional four hours to  
22 help out with all the additional volumes of traffic that  
23 were coming in.

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

1 MR. COLE: Sure.

2 THE COURT: Remember my instructions not to  
3 discuss this matter among yourselves or with any other  
4 person and not to form or express any opinions. We'll see  
5 you back (inaudible).

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

8 (A recess was taken from 10:28 a.m. to 10:54  
9 a.m.)

10 THE COURT: Mr. Madson, you needed to take  
11 something up before we resumed the witness?

12 MR. MADSON: Your Honor, yes. I just thought  
13 we'd do it now since the jury was out and we wouldn't have  
14 to interrupt them.

15 Mr. Cole asked Mr. Blandford certain questions  
16 about his state of mind and his observations and things of  
17 this nature. I would ask permission of the Court, then,  
18 based on that to -- on cross-examination to inquire as to  
19 whether or not he had consumed any alcoholic beverages just  
20 before coming to work, while he was there, or consumed any  
21 other nonprescription type drugs \_\_\_\_\_.

22 I think it goes to his powers of observation and  
23 recollection, and I think the door has already been opened  
24 to cross-examine on that point.

25 THE COURT: Mr. Cole?

1 MR. COLE: I think he could ask it anyway,  
2 Judge. No problem.

3 MR. MADSON: Okay. That's all I had, Your Honor.

4 THE COURT: That's not to open the door to a test  
5 result that took place twelve hours later. I think you  
6 understand that.

7 MR. MADSON: Yes, I get that information --

8 THE COURT: You can ask him about his --

9 MR. MADSON: As I told you before, Your Honor, I  
10 did consult with an expert, and he tells me that, based on  
11 the information available -- and that's on the assumption  
12 -- certain assumptions, but that it would be just about  
13 physically impossible to have that kind of a reading that  
14 short a time afterwards \_\_\_\_\_ without drinking prior  
15 to --

16 THE COURT: That may be so, however, the request  
17 you make now doesn't address that, and my ruling only  
18 addresses your inquiry concerning what he had to drink  
19 before, whether he was drinking, whether his judgment was  
20 impaired by alcohol or something of that nature, but not  
21 the test results.

22 MR. MADSON: No.

23 THE COURT: All right.

24 MR. MADSON: But I assume I could ask if he drank  
25 afterwards.

1 THE COURT: Mr. Cole?

2 MR. COLE: I think that --

3 THE COURT: What difference does that make?  
4 What's the relevance if he drank afterwards?

5 MR. MADSON: Well, Your Honor, if I can get the  
6 information, the witness -- that I can relate this to an  
7 expert and have a more of a foundation for the  
8 (inaudible) --

9 THE COURT: No, that's denied. That's denied,  
10 Mr. Madson. You can ask him about things that affected his  
11 ability at the time, but not something that may have  
12 affected his ability afterwards.

13 Let's bring the jury in.

14 (Whereupon, the jury enters the courtroom.)

15 THE COURT: We'll recess at noon, so keep an eye  
16 on the clock.

17 (Pause)

18 MR. COLE: Thank you, Your Honor.

19 BY MR. COLE: (Resuming)

20 Q Mr. Blandford, you mentioned that the radio  
21 sites, a couple of those, were down that evening.

22 A Yes, I did.

23 Q How did that affect the communications system  
24 that evening?

25 A We had diminished communications capabilities

1 with the traffic outside of Cape Hinchinbrook.

2 Q How about inside?

3 A We had probably adequate coverage. We were able  
4 to talk to the people from Cape Hinchinbrook in using the  
5 Potato Point site. All communications that were made with  
6 the -- for instance, the inbound Chevron California, he was  
7 at Cape Hinchinbrook. He read me loud and clear from --  
8 speaking to him from Potato Point.

9 Q Now, the -- first -- do you recognize what's  
10 previously been admitted as Plaintiff's Exhibit Number 75?

11 A Yes, I do.

12 Q What is that?

13 A It's the user's manual that participating vessels  
14 are required to carry aboard.

15 Q And would you read Section 6(c) to the jury?

16 A Okay. 6(c) under VTC, or Vessel Traffic Center  
17 directions.

18 "Under normal circumstances, the VTC" -- Vessel  
19 Traffic Center -- "will exercise no direct control of a  
20 vessel's movements in the VTS" -- Vessel Traffic System --  
21 "area. However when the situation dictates, the Coast  
22 Guard will exert control over vessel movements by invoking  
23 this regulation. The responsibility of the master or pilot  
24 for safe navigation and prudent maneuvering of his vessel  
25 is in no way lessened or relieved by this regulation."



1 Q And do you recognize what's previously -- what's  
2 been identified -- what's been marked for identification as  
3 Plaintiff's Exhibit Number 79?

4 A Yes.

5 Q And why do you recognize that?

6 A It has my name on it.

7 Q And did you listen to that?

8 A Yes, I -- yes, I did.

9 Q And is it a -- except for a weather broadcast, is  
10 it a fair -- except for the time you asked the Exxon Valdez  
11 for the weather, is it a fair and accurate representations  
12 of the conversations you had from the time you came on duty  
13 until approximately 2:00 o'clock that morning?

14 A Yes, it is.

15 Q And have you reviewed a transcript of those  
16 conversations?

17 A Yes, I have.

18 Q And is it a fair and accurate representation of  
19 the conversations on that tape.

20 A Yes it is.

21 Q And the times accurately correspond to the times  
22 these conversations took place?

23 A Yes.

24 Q When the transcript says VTC for the period after  
25 12:00 o'clock, who would that be talking?

1 A That would be myself.

2 Q And is there a way to determine whether or not  
3 another person like the Captain of the Port would -- is he  
4 identified on the tape?

5 A Yes, he is.

6 Q And what is his label?

7 A COTP, I believe.

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

9 CROSS EXAMINATION

10 BY MR. MADSON:

11 Q Good morning, Mr. Blandford.

12 A Good morning.

13 Q Now, you indicated that you were a Coast Guard  
14 watch stander officially in the Coast Guard prior to your  
15 job now as a civilian. Is that correct?

16 A That is correct.

17 Q I may have misunderstood how that works, but what  
18 experience have you had, altogether, with this so-called  
19 VTS system, either in Prince William Sound or elsewhere?

20 A Prior to arriving in Valdez, I served as  
21 an \_\_\_\_\_ deck watch officer on the Coast Guard cutter  
22 Gresham on the East Coast for two years, and I spent two  
23 years as executive officer of the Coast Guard cutter Sundoo  
24 in the Great Lakes. And that was my previous assignment  
25 prior to arriving in Valdez.

1 Q Okay. As an executive officer -- what kind of  
2 rank is that? Are you a first officer, second officer,  
3 third officer? I mean, how does that --

4 A I would be the equivalent of a chief mate on a --

5 Q Right under the captain?

6 A That is correct.

7 Q And when you got to Valdez in 1977, you were  
8 still in the Coast Guard?

9 A That's correct.

10 Q And you were signed in on shore, not on the ship?

11 A That's correct.

12 Q And you were assigned at what's called the VTC  
13 Center, control center, is that right?

14 A Uh-huh.

15 Q What were your duties at that time?

16 A As I said earlier, my primary duty was a vessel  
17 traffic center watch officer. In other words, the O/O/D.

18 Q O/O/D means you're kind of in control, or in  
19 charge of the whole station?

20 A We're in charge of the Vessel Traffic Center, the  
21 operation of it, on a day-by-day basis. Standing watches  
22 one day and three days off, depending on how many people we  
23 had. It was a 24-hour watch, we stayed at the station.  
24 Slept in an O/O/D room and were awakened if there were any  
25 emergency arise, and it was our responsibility to monitor

1 each transit of a tanker through the narrows.

2 Q And you slept right there at the station?

3 A That is correct.

4 Q I mean, was that your quarters, as such, or do  
5 you have a home somewhere else?

6 A No, that was our -- it would be similar to if you  
7 were a fireman and you had a 24-hour duty tour and had to  
8 stay at the firehouse.

9 Q Okay. So certain days you'd have to be there  
10 round the clock?

11 A That's right.

12 Q Now, did you -- you retired from the Coast  
13 Guard. Is that right?

14 A No. I just cut out.

15 Q Okay. Cut out, that means I quit?

16 A Correct.

17 Q When was that, sir?

18 A June 30, 1980.

19 Q You went back to work for the Coast Guard, but as  
20 a civilian, in 1986?

21 A That is correct.

22 Q Is the system there in 1986, was that still the  
23 same as the one you were used to, or functioned the same as  
24 the one you were used to?

25 A Except for --

1 MR. COLE: Your Honor, I would object to that  
2 question.

3 MR. MADSON: I'm not talking about radar, Your  
4 Honor. I'm just talking about the overall function of the  
5 Center.

6 THE COURT: Objection sustained.

7 BY MR. MADSON: (Resuming)

8 Q Well, what was your job when you went back as  
9 opposed to the job you had before? Let me ask you that?

10 A I went back as a watch stander rather than a  
11 watch officer.

12 Q Is that a lower grade job, then?

13 A In other words, I went back doing the job of the  
14 people whom I had previously supervised.

15 Q Only now they were supervising you?

16 A No, it was -- all different people.

17 Q Oh, I see. But essentially, you're still doing  
18 the same thing --

19 A Right.

20 Q -- is it fair to say you spent more time at a  
21 radar console --

22 A Right.

23 Q -- since 1986?

24 A I don't know if it's relevant or not, but when I  
25 originally -- when the job was originally advertised, they

1 were going to hire three vessel traffic controllers and one  
2 supervisor, and I applied for the supervisor job, given my  
3 past experience, and that position was never funded  
4 subsequent to that.

5 Q So you --

6 A So I took one of the controller jobs.

7 Q And you're still doing that job today?

8 A I'm still doing that job today.

9 Q So you certainly are familiar with the VTS  
10 system, are you not?

11 A Yes, I am.

12 Q Are you familiar with the manuals that you are  
13 required to go by?

14 A Yes, I am.

15 Q That's part of your job, is it not?

16 A Correct.

17 MR. MADSON: Your Honor, may I approach the  
18 witness?

19 BY MR. MADSON: (Resuming)

20 Q Let me hand you, sir, what has previously been  
21 marked as Defendant's Exhibit Numbers G and I and ask you  
22 if you recognize either of those documents?

23 A Okay. This -- it's been a long time since I've  
24 seen this one.

25 (Pause)

1 I don't believe this one is any longer in effect.

2 Q Well, let me show you what's been marked I and  
3 ask you if that just merely supplements Exhibit G?

4 A Okay. This is -- if this one supplements?

5 Q Does it replace, but merely supplements, the  
6 other? In other words, in addition to?

7 A No. This -- to my understanding, this replaces  
8 this one.

9 Q When did it take effect, if you know, sir?

10 A This one was 2 November 1988.

11 Q So you're saying that Exhibit I, then, was in  
12 effect on March 23, 1989, as far as you know?

13 A Yes, it was. And this document here --

14 Q Are you referring to G, sir?

15 A Right. Document G, to the best of my  
16 recollection was not even in effect in August of '86 when I  
17 returned to work.

18 Q But --

19 A This one -- this one wasn't either, obviously,  
20 because it's dated 2 November '88, but there was an earlier  
21 edition of this one.

22 Q Okay. When you say "this one," you're referring  
23 to I?

24 A To I, right. This is also an updated user's  
25 manual.

1 Q Okay, now, that's Exhibit Number 75. You say  
2 updated?

3 A Right. As you can see, it's dated 1988.

4 Q Okay.

5 A So it was also updated after August of '86, when  
6 I returned.

7 Q But after August of '86 when you returned until  
8 the incident in question, the document labelled Defendant's  
9 Exhibit I would be the one that was in effect, that you  
10 would have to go by? Is that correct?

11 A Either this or its predecessor.

12 MR. MADSON: Well, Your Honor, at this time, I  
13 would ask that Exhibit Number I be admitted.

14 THE COURT: What is it?

15 MR. MADSON: Is it a VTS operator's manual, Your  
16 Honor (inaudible).

17 THE COURT: Is that what it is, Mr. Blandford?

18 THE WITNESS: It's the Prince William Sound  
19 Vessel Traffic Center Manual.

20 MR. COLE: I have no objection.

21 THE COURT: All right.

22 THE WITNESS: This is an internal --

23 THE COURT: That's I you want to --

24 MR. MADSON: Yes, it's I.

25 THE COURT: All right.



1 THE WITNESS: This is an internal --

2 THE COURT: There's no objection. I is admitted.

3 THE WITNESS: -- publication.

4 (Defendant's Exhibit I was  
5 received in evidence.)

6 BY MR. MADSON: (Resuming)

7 Q I just want to cover this one last time. You  
8 can't say whether or not Exhibit G was in effect and merely  
9 supplemented, or totally replaced? You believe it was  
10 totally replaced?

11 A I believe it was totally replaced. I have not  
12 seen anything resembling this since coming back to work in  
13 '86.

14 Q Okay, but in any event, you are required, are you  
15 not, as part of your job, to be familiar with the manual  
16 itself?

17 A That's correct.

18 Q Of course, the question and purpose of the VTS  
19 system is to prevent groundings and collisions by vessels  
20 in Prince William Sound, is it not?

21 A That's one of the functions.

22 Q And certainly as a watch stander, one of your  
23 duties was to do everything in accordance with the manual  
24 to see that these things don't occur, if possible?

25 A If possible.

1 Q Now you indicated that when a ship is inbound,  
2 you cannot see it in the area of Cape Hinchinbrook,  
3 correct?

4 A That is correct.

5 Q But somewhere in the vicinity of, say, Bligh  
6 Reef, you usually can pick it up on radar?

7 A Depending on conditions, yes. And -- usually.  
8 It really depends a lot on the weather.

9 Q Yeah, a little squall or something can come  
10 through and momentarily knock it off the radar, and a  
11 minute or two you can see it again, right?

12 A To a certain extent, how is equipment is  
13 functioning.

14 Q Would the equipment vary in its capabilities from  
15 day to day?

16 A Well, it's just like your automobile. It needs a  
17 tuneup once in awhile, and parts wear out. In those cases,  
18 you may have some difficulties.

19 Q Did it need a tune up on March 23rd in the  
20 evening hours?

21 A I couldn't say for sure, but I had been relieving  
22 Mr. Taylor for -- I don't know if this is the second or  
23 third night, but it was my function to almost always  
24 believe Mr. Taylor, the way our watch rotation was set up.  
25 And I seem to recall him remarking during the previous few

1 days, or few weeks, that the targets were getting hard to  
2 hold onto.

3 Q In other words, they would go off the screen more  
4 frequently than he thought they should?

5 A He'd be -- lose his capability to track them. In  
6 other words, he could acquire them maybe, but it wouldn't  
7 hold on, which means -- which is the result of diminished  
8 video.

9 Q Well, if you notice something like this, do you  
10 make some kind of a report to someone and say, "Maybe  
11 there's something wrong with the radar?"

12 A Generally. You tell the -- tell the watch  
13 officer \_\_\_\_\_ the O/D at the time.

14 Q Is the radar maintained by Coast Guard personnel  
15 or civilian personnel?

16 A Radar personnel.

17 Q Enlisted in the Coast Guard?

18 A That is correct.

19 Q Now, you indicated that you came on duty at about  
20 2340. That's about 11:40 p.m.?

21 A That's correct.

22 Q What time do you actually start work, when you  
23 officially take over from Mr. Taylor?

24 A Well, whenever he leaves, that's when I start.

25 Q Would you say, sir, that according to the manual

1 in the routine operation of the VTC, it is operated pretty  
2 much like the bridge of a ship, Coast Guard vessel?

3 A Not pretty much. In some ways.

4 Q Doesn't the manual indicate that, as near as  
5 possible, you function like the bridge of a ship?

6 A Well, it says that, but in -- for all practical  
7 purposes, that's not quite true.

8 Q Well, obviously there's a big different, right?

9 A Right.

10 Q Like when you indicated you \_\_\_\_\_ general  
11 quarters, you didn't don a life jacket or something?

12 A No.

13 Q Didn't put the life boats out?

14 A No.

15 Q So, you know, you're on land and a ship is at  
16 sea.

17 A Right.

18 Q But as far as who you report to and this sort of  
19 thing, it's much like a ship's bridge?

20 A Right, the same.

21 Q For instance, when you came in to replace Mr.  
22 Taylor, you in effect turned over -- he turned over the  
23 conn to you, so to speak, correct?

24 A Well, this is where I'm having a hard time  
25 relating, because the O/O/D theoretically would have the

1 conn on a ship, and the O/O/D was at home.

2 Q He was at home?

3 A Uh-huh.

4 Q Who was on duty, then, when you arrived besides  
5 Mr. Taylor?

6 A I'm not -- the radio person.

7 Q And what is his function, sir?

8 A His function is to stand a communications watch  
9 under the call sign of Valdez radio. His functions include  
10 making safety broadcasts, standing by to assist in search  
11 and rescue -- if we were to have a search and rescue case,  
12 he would take that call and ultimately handle that. The  
13 VTC watch stander would probably assist him, as necessary.  
14 He also conducts external communications through message  
15 traffic with various Coast Guard units.

16 Q Do you know what time the O/O/D left the station?

17 A No, I don't.

18 Q The manual requires that you have two watch  
19 standers on duty, at least when ships are going through the  
20 narrows, does it not?

21 A Well, it requires two watch standers on duty and  
22 they are to stay in the traffic center, except for brief  
23 periods to get coffee, head breaks, smoke breaks,  
24 whatever. And at one -- at all times, at least one person  
25 shall remain in the traffic center.

1 Q So if you're not there on this night in question,  
2 the radio operator was there, right?

3 A That is correct.

4 Q And was it the two of you physically in the  
5 building?

6 A In the room.

7 Q In the room.

8 A Yes.

9 Q Well, who else was in the building, if you know,  
10 sir, at that time, between 11 -- let's say when you came on  
11 duty?

12 A I really don't know. There -- the building  
13 houses the single Coast Guard personnel and that's probably  
14 -- and the weather man, who is in the next office. That's  
15 probably all of whom would have been there.

16 Q So when you came on duty, you spoke to Mr. Taylor  
17 and he essentially told you -- let's see. He told you the  
18 Exxon California was coming in -- the Chevron California,  
19 rather, was inbound?

20 A Correct.

21 Q Was still outside of Cape Hinchinbrook at that  
22 time?

23 A That's correct.

24 Q Certainly you had no radar coverage, or anything,  
25 for that ship?

1 A No.

2 Q You wouldn't even attempt to watch it, would you,  
3 on radar?

4 A No. No, it's impossible.

5 Q And he also told you the Exxon Valdez was  
6 outbound?

7 A Right.

8 Q He told you its approximate location when he lost  
9 it on radar.

10 A Right. He told me what time. He either told me  
11 what time he dropped the pilot or I looked at the data  
12 sheet -- I can't remember which -- to see what time he  
13 dropped the pilot. And, as I stated before, that he had  
14 just called not too long ago and had -- had given -- or  
15 stated that he has -- was changing course to 200, at speed  
16 12, and entering the southbound lane to avoid ice, and then  
17 would call again when he was clear of the ice, with a new  
18 ETA for Naked Island and possibly an ice report.

19 Q So essentially \_\_\_\_\_ the Exxon Valdez was  
20 deviating from the southbound lane to go around ice that  
21 would have been reported, right?

22 A That is correct.

23 Q You say, sir, that this was pretty routine?

24 A That was routine.

25 Q And you indicated that a target such as a ship, a

1 ladened \_\_\_\_\_ tanker, would be easier to see if it was  
2 broadside to your radar coverage, by your radar site, let's  
3 put it that way?

4 A That's correct.

5 Q When the Exxon Valdez made a turn at 200, would  
6 this, in effect, have made it more broadside to the Potato  
7 Point radar site?

8 A Not very much.

9 Q Where's Potato Point on here, sir?

10 A Potato Point is right here, and 200 -- of course,  
11 when he's going out on the recommended track, he's  
12 absolutely \_\_\_\_\_. 200 only puts him about like this,  
13 so it's a very slight angle.

14 Q So turned slightly more broadside. Is that fair  
15 to say?

16 A Pardon?

17 Q Slightly more broadside?

18 A Just very slightly.

19 Q Now, looking at a ship like the Exxon Valdez just  
20 from the stern --

21 A Uh-huh.

22 Q It's about 166 feet wide, right?

23 A Right.

24 Q About 80 feet high.

25 A This is, would you say, equivalent to a large



1 building, isn't it?

2 A It's fairly large.

3 Q If you look at it broadside, you still have the  
4 superstructure, that is, the part containing the bridge and  
5 all that, still the same height?

6 A (Inaudible).

7 Q Well, you're nodding your head, sir, and I --

8 A Oh, I'm sorry.

9 Q Was that a yes or a no?

10 A That's correct.

11 Q Okay. And would it be about the same, looking at  
12 it from, let's say, the starboard side as opposed to the  
13 stern?

14 A No.

15 Q Narrower?

16 A No, much wider. Much larger.

17 Q I'm talking only about the superstructure, now.

18 A Oh.

19 Q The part sticking up from the deck.

20 A Oh, well --

21 Q Let me do this, sir, so you won't get confused.

22 A That comparison would be good for over the  
23 horizon.

24 Q Let me show you what has previously been admitted  
25 as Exhibit Number 19, and I wonder if you could illustrate

1 to the jury -- in other words, I asked you earlier, if you  
2 were looking from the stern, this is about 80 feet high,  
3 right?

4 A Uh-huh.

5 Q 166 feet wide?

6 A Right.

7 Q Now, this vessel, would you say is ladened or  
8 unladened, as the picture --

9 A This one is in ballast.

10 Q What does that mean, sir?

11 A That means he has no cargo. He just has ballast  
12 aboard.

13 Q Okay. Now, if you look at the ship from the  
14 side, there's two different colors on the hull.

15 A Right.

16 Q Do you know what that means, if anything?

17 A Well, that's your -- the load line there, and  
18 when he's loaded he's down in the water to where the colors  
19 change, basically.

20 Q So I think, as you said earlier, when it's  
21 ladened its usually harder to see on radar, because it's  
22 lower in the water, right?

23 A That is correct.

24 Q And now, if you're looking at this target,  
25 ladened, as it was going outbound, the water line would be

1 approximately at the color change here?

2 A That is correct.

3 Q And you're still essentially looking at the super  
4 structure. That's the main target, is it not?

5 A It depends.

6 Q But you have a lot less target when the vessel is  
7 down in the -- lower in the water?

8 A That is correct.

9 Q Now, when you spoke to Mr. Taylor and he gave you  
10 this information, and he said he lost it on radar, do you  
11 know what scale it was on at that time?

12 A It was on six mile scale when I came in.

13 Q Did you change the scale after talking with Mr.  
14 Taylor?

15 A Yes, I did.

16 Q First of all, did you attempt to find the vessel  
17 on radar?

18 A No, I didn't.

19 Q What did you change the scale to, then, sir?

20 A Three miles.

21 Q Why?

22 A To calibrate the radar on Middle Rock.

23 Q Certainly on a three-mile scale it would have  
24 been physically impossible, under any circumstances, to see  
25 the Exxon Valdez?

1           A     That's correct.

2           Q     I mean, assuming it was in its present position  
3 and hadn't changed. Now, I think you also said, then, that  
4 -- let me ask you. Do you remember the time Mr. Taylor  
5 actually left the Center?

6           A     As close as I can remember, it was 2345.

7           Q     Fifteen minutes before midnight?

8           A     Correct.

9           Q     And I think then you said you -- well, let me ask  
10 you again. It's easier. What exactly did you do -- if you  
11 could go through that one more time -- what did you do from  
12 the time Taylor left until you got the radio report at  
13 0026?

14 (TAPE CHANGED TO C-3610)

15          A     Okay. After I had familiarized myself with what  
16 was happening on the watch, what the traffic was, what  
17 people were doing, or what they were supposed to be doing,  
18 I went down and got a cup of coffee, checked the weather.  
19 I may have been gone for five minutes, came back up,  
20 probably spent another five minutes just sitting there,  
21 which is mostly what we do, and then at midnight, started  
22 in on the midnight watch routine, which was to change the  
23 tapes, clean the heads, file the tapes, make the midwatch  
24 log entry, which involves checking the radar calibration on  
25 Middle Rock, and then filing the day's traffic and entering

1 that in the various logs that were required at the time.

2 Q Pretty much routine administrative duties?

3 A Right. It took me -- I didn't know for sure at  
4 the time, but it took me probably twelve to fifteen  
5 minutes.

6 Q Then when you left your radar room, if you want  
7 to call it that, and went down below to get a cup of  
8 coffee, I think you said, right?

9 A Right.

10 Q The only person there would be the radio man,  
11 right?

12 A That's right.

13 Q He's not a radar -- qualified to operate radar,  
14 is he?

15 A No.

16 Q But you felt under the circumstances you could  
17 certainly leave him alone, you know, because you were close  
18 by and could be called in an emergency?

19 A Right, and we had no reason to suspect that there  
20 was anything happening out of the ordinary.

21 Q It seemed like everything was routine, right?

22 A That is correct.

23 Q Considering the vessel's location, course, and  
24 everything else?

25 A From the information that we had from him, and

1 the fact we could no longer hold him on radar, it was more  
2 or less -- the next move was his.

3 Q You were waiting for a radio report?

4 A That's right.

5 Q Say at Naked Island?

6 A Well, no. I was waiting for what Mr. Taylor  
7 relayed to me. I expected him to call me when he's cleared  
8 the ice.

9 Q On the other hand, the radio works both ways,  
10 right? You could certainly call if you wanted to?

11 A That's right.

12 Q So is it fair to say, sir, then, that from the  
13 time you arrived at the station until you got the call at  
14 0026, you made no efforts to see if you could actually  
15 visibly see the Exxon Valdez on radar?

16 A No. About the time that I responded to the  
17 Chevron California, advised him of the outbound traffic,  
18 which the only outbound traffic was the Exxon Valdez, and I  
19 repeated his -- essentially what Mr. Taylor had told me to  
20 the Chevron California. Then I began to wonder, where is  
21 he? And it wasn't just a few minutes after that that he  
22 called.

23 Q Okay. But my question was, did you ever put the  
24 scope on the twelve-mile scale or six-mile scale to see if  
25 you could see the Exxon Valdez prior to grounding?

1 A No, not until after he called.

2 Q So the answer is you did not, right? Did not  
3 attempt to see him on radar until after the grounding?

4 A Not until after he called..

5 Q When you did flip it on to the next scale, you  
6 said that you saw him clearly, right?

7 A Well, I saw a target there. I was not sure that  
8 it was him until I called the vessel to verify its  
9 position.

10 Q But you saw something that was just off Bligh  
11 Reef?

12 A That is correct.

13 Q And not only was it something that you could see  
14 so clearly, you could even tell its heading. Is that  
15 right?

16 A Pretty much so. I could tell that he was broad  
17 side to the radar.

18 Q Because it had such a strong spot on the scope,  
19 if you will?

20 A Uh-huh.

21 Q And it's somewhat elongated, was it?

22 A Yes.

23 Q Had you turned that on any earlier, sir, I guess  
24 you don't know whether you would have been able to see him  
25 or not, say ten minutes earlier, fifteen minutes earlier?

1 A I really don't know.

2 Q Had you done so, had you turned it on, do you  
3 know what you would have done if you saw the vessel  
4 apparently too close to Bligh Reef or in an area where you  
5 thought was dangerous or hazardous?

6 MR. COLE: Judge, I object. Can we approach the  
7 Bench?

8 THE COURT: All right.

9 (The following was said at the bench.)

10 MR. COLE: My objection is (inaudible) of the  
11 Coast Guard and my understanding is that's not \_\_\_\_\_  
12 Mr. Madson's addressing. (Inaudible) is not -- it's  
13 a \_\_\_\_\_ issue but I thought \_\_\_\_\_.

14 THE COURT: Okay. The objection is overruled.  
15 You may ask the question.

16 (The following was said in open court.)

17 BY MR. MADSON: (Resuming)

18 Q Mr. Blandford, do you recall that question, sir?

19 A Would you restate it, please?

20 Q Had you turned the radar on sooner, and had you  
21 got a strong, visual contact that indicated to you, with  
22 your experience, that the vessel was in peril, what would  
23 you have done, if anything?

24 A Well, if I would have switched the radar at --  
25 if, number one, I had switched the radar, if number two, I



1 had been able to see him on the radar, and number three, he  
2 appeared to be standing into danger, I probably would have  
3 called him and asked what his intentions were?

4 Q But certainly your function, or one of your  
5 functions, is to prevent groundings and accidents? Is that  
6 not true?

7 A To try to help prevent. We can't absolutely --  
8 we can't prevent anything.

9 Q And accidents happen, right?

10 A That's right.

11 Q Groundings happen?

12 A Our --

13 THE COURT: There's no question.

14 MR. COLE: I object to that and move to strike  
15 Mr. Madson's comment. Unless it's a question.

16 MR. MADSON: I phrased it as a question:  
17 "Groundings happen, right?" with a question mark after it.

18 MR. COLE: I object to the nature of that  
19 question.

20 THE COURT: Objection is sustained, Mr. Madson.  
21 It's argumentative.

22 BY MR. MADSON: (Resuming)

23 Q After you brought your message -- well, first of  
24 all, the message came from the vessel, you said, at 02 --  
25 0026?

1 A Correct.

2 Q You said you noted the clock afterwards, 0028,  
3 which meant it was approximately two minutes, right?

4 A Right.

5 Q Now, the conversation -- you said you reviewed a  
6 transcript earlier of that conversation, sir?

7 A Yes, I have.

8 Q And you listened to the tape, right?

9 A Uh-huh.

10 Q Were the words that were actually spoken to you  
11 at that time -- 0026 -- Yeah, it's Valdez back. Yeah,  
12 should be on your radar there. We're fetched up hard  
13 aground north of Goose Island off Bligh Reef evidently  
14 leaking some oil and we're going to be here for awhile, so  
15 you're notified. Is that correct?

16 A That's essentially it.

17 Q The vessel was off Bligh Reef, was it not?  
18 That's where it was located?

19 A It was --

20 Q On or off, but it --

21 A Yes.

22 Q But it was --

23 A It was on it.

24 Q Yeah.

25 A Technically speaking, he was aground here and

1 Bligh Reef is named right here, but this whole area is  
2 considered Bligh Reef.

3 Q So is it fair to say it's kind of up to  
4 subjective judgment as to whether you're actually on Bligh  
5 Reef or another part of a reef which might be near Bligh  
6 Reef?

7 A That's quite subjective.

8 Q And you said at that point your adrenalin started  
9 kicking in and you were quite excited, right?

10 A Uh-huh.

11 Q Is it fair to say the person on the other end of  
12 that radio transmission might have had his adrenalin kind  
13 of pumped up a little, too?

14 MR. COLE: Objection. Speculation.

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

16 THE COURT: Don't answer the question. It's got  
17 to be speculation and it can't help the finder of fact.

18 BY MR. MADSON: (Resuming)

19 Q Well, it was an exciting time for you, wasn't it?

20 A I wouldn't want to relive it.

21 Q You said something about flight or fight  
22 instinct. What does that mean?

23 A Well, the basic, you know -- when you're -- if --  
24 generally that's applied to when you're cornered, but you  
25 can also apply it to pretty, you know, any cataclysmic

1 event.

2 Q You also said something about, "well, this is the  
3 big one," right?

4 A Uh-huh.

5 Q Does that imply, sir, that you were expecting  
6 something like this to happen?

7 A No, it doesn't. It means that -- if it ever  
8 happens, it's going to be a big one.

9 Q And after it did happen, you realized --

10 A It never was supposed to happen, but --

11 Q It did.

12 A -- it did.

13 Q And of course, you were part of the process, if  
14 you will, or the means to insure that it doesn't happen,  
15 right?

16 A Well -- you say part of the means to insure.  
17 What do you mean?

18 Q You're trying to prevent this. One of your jobs  
19 is to try to prevent it, right?

20 A That's what we're hopefully there for.

21 Q Mr. Cole asked you about the Exhibit Number 75,  
22 the user's manual there. Now, that's the one that goes on  
23 the -- the small one there. As far as you know, that's the  
24 one that vessels are supposed to have on board, correct?

25 A Correct.

1 Q And you have one that you've already identified  
2 as Exhibit Number I, as the user's manual that you operate  
3 under, right?

4 A This is our operating manual. These are our  
5 watch procedures.

6 Q Right. That's what you have at your station --

7 A Right.

8 Q And Exhibit 75 is what --

9 A This is to the public; this is internal.

10 Q When you say this, that's the --

11 A 75 is a public document; this is an internal  
12 document.

13 Q And that's number I?

14 A G.

15 Q G, excuse me.

16 A No -- I got the wrong one.

17 Q I got --

18 A You got --

19 Q (Inaudible) because I have it up here. Let me  
20 get it back to you, sir. I didn't mean to pull a sneaky  
21 there.

22 A Exhibit I is the Traffic Center manual, which is  
23 an internal document used by the Traffic Center to operate  
24 on a daily basis. This is a public document that's to be  
25 on the bridge of the ship of all participating vessels,

1 Number 75.

2 Q Thank you.

3 Do you know who the O/O/D was on duty that night,  
4 sir?

5 A Petty Officer Gonzalez, I believe.

6 Q And do you know whether or not he was on --  
7 actually, physically, at the VTC center when the grounding  
8 occurred?

9 A No. He was at home.

10 Q He was what?

11 A At home.

12 Q According to the manual, wasn't he supposed to be  
13 at the station?

14 A Pardon?

15 Q Was he supposed to be at the station?

16 A They hadn't -- the O/O/Ds had been going home for  
17 quite awhile prior to this at night, leaving at about 2200  
18 at night, I believe.

19 Q Lastly, when you came on duty until the  
20 grounding, the Exxon Valdez was the only ship that was even  
21 arguably under radar surveillance or coverage, was it not?

22 A He was the only within range.

23 Q The only one that you could have watched, had you  
24 chose to do so?

25 A No, not had I chose to do so. He was the only

1 one that was in range if we had been able to watch him.

2 Q And you don't know if you were able or not during  
3 this half-hour period or thereabouts, because you did not  
4 try to do that?

5 A Mr. Taylor -- I had no reason to doubt what Mr.  
6 Taylor had told me. I'd been relieving him for  
7 two-and-a-half years, and if he says we're losing the  
8 targets down there, I have no reason to doubt him.

9 Q Yeah, but the fact --

10 A If the --

11 Q -- remains that when you did turn it on later, he  
12 was there, clear as can be?

13 A That is correct. That was -- that would have  
14 been roughly 45 minutes from when I relieved him.

15 Q And, of course, that radar coverage is subject to  
16 change almost minute by minute because of weather  
17 conditions?

18 A Well, it really depends on the weather. It can  
19 be squally. You can have an overall just blanket type  
20 snowstorm, or little cells or little squalls. But on  
21 several occasions within the past month, I've observed  
22 inbound vessels, thousand-foot tankers in ballast, like  
23 pictured on their picture, and I've had contact with them,  
24 and at times, they have completely disappeared from the  
25 scope in the area between Bligh Reef buoy and Busby Island.

1           And it seems -- I know it seems phenomenal, but in  
2 ballast, the ship's presenting probably three times the  
3 surface area of the ship that's ladened, and even so, at  
4 times, they just disappear. And our radar right now is  
5 just tuned to the max. It's -- it's really putting out.

6           Q     Stretched right to the maximum of its  
7 capabilities?

8           A     I believe -- I believe it is.

9           Q     And this -- what you just described about losing  
10 some of these contacts in ships and ballast, is this  
11 something rather new, a new phenomenon? Or has this been a  
12 routine since you've been (inaudible).

13          A     It's routine.

14          Q     Since '86?

15          A     That's right. There's not a radar made -- it's  
16 my belief there's not a radar made of this type that would  
17 function any better than the one we have.

18          Q     Is it fair to say, sir, when you didn't have him  
19 on radar, or believed he wasn't on radar, and you went  
20 around your normal administrative duties, it's kind of  
21 similar to a situation like out of sight, out of mind? You  
22 weren't really thinking about the Exxon Valdez?

23          A     Well, our duty is to monitor the vessels, and we  
24 have to use the best means available. If we don't have the  
25 radar means available, we always have -- which we consider



1 to be the primary means -- is our radio aspect. And that  
2 -- we're almost positive of having -- unless we have some  
3 kind of calamity, or massive power outages, or whatever,  
4 we'll always have that capability.

5 So that's our number one resource.

6 Q Radio's number one because the range is --

7 A Right.

8 Q -- is extended further, right?

9 A Right. And we know that their limits are -- I  
10 think I'm probably stating a personal belief here, but, you  
11 know, I know there are limits on radar, effectiveness of  
12 radar, from monitoring the traffic and for that reason,  
13 it's been my belief that that was why the focus of this  
14 system has been directed at the narrows, since 1977.

15 Q Since 1977, it's been directed primarily at the  
16 narrows?

17 A Correct.

18 MR. MADSON: Your Honor, could I approach the  
19 bench a second?

20 THE COURT: Yes, sir. Mr. Cole?

21 MR. COLE: Yes, Your Honor.

22 (The following was said at the bench:)

23 MR. MADSON: Your Honor, this raises the whole  
24 thing that the Court \_\_\_\_\_ ruled on earlier  
25 (inaudible) 1977 to '84 \_\_\_\_\_. I think

1 he's \_\_\_\_\_ gave his opinion.

2 THE COURT: Well, he \_\_\_\_\_ give his opinion  
3 that was not even responsive to a question. I'm not going  
4 to let this \_\_\_\_\_ because of the nonresponsive answer.

5 MR. MADSON: Then I ask that it be stricken, Your  
6 Honor.

7 THE COURT: Being nonresponsive, what do you wish  
8 to have stricken?

9 MR. MADSON: Whether it's 1977 onward \_\_\_\_\_  
10 1977.

11 THE COURT: Which specific words?

12 MR. MADSON: I don't remember exactly what he  
13 said in the answer right now, but he said since 1977 it's  
14 been basically the situation as far as radar coverage is  
15 concerned.

16 THE COURT: There was plenty of opportunity to  
17 control your witness when he said, "This is my personal  
18 opinion." You could have stopped him at that time. Your  
19 request is denied.

20 (The following was said in open court:)

21 BY MR. MADSON: (Resuming)

22 Q Mr. Blandford, you just gave opinion which you  
23 said is your personal opinion, right?

24 A Probably. I --

25 Q It may or may not be?

1           A     I would not -- I would not say that would be the  
2 initial opinion of the U.S. Coast Guard.

3           Q     Right. That's yours and not what might be an  
4 official opinion, right?

5           A     Right.

6           Q     Your duties are to maintain a radar watch at all  
7 times, are they not?

8           A     Uh-huh.

9           MR. MADSON: Thank you. I don't have any other  
10 questions.

11                                 REDIRECT EXAMINATION

12           BY MR. COLE:

13           Q     Mr. Blandford, who's in the best position to  
14 navigate a tanker, a tanker captain himself or you sitting  
15 in a small --

16           MR. MADSON: I object, Your Honor. It's a  
17 leading question.

18           THE COURT: Rephrase your question, Mr. Cole.

19           BY MR. COLE: (Resuming)

20           Q     Who is in the best position to navigate a tanker?

21           A     Certainly the master.

22           Q     Why is that?

23           A     Or the person piloting the vessel.

24           Q     Why is that?

25           A     Well, in reference to a VTC with radar coverage,

1 I can only see if we have the vessels -- if we have contact  
2 with these vessels, I can only see him in relation to where  
3 he is with other vessels and/or hazards.

4 I can't see what he can see. If he's 15 miles  
5 away, my representation of his vessel has built in by the  
6 limits of the radar a certain degree of error. I know  
7 approximately where he is, but he being on the vessel with  
8 his own radars, which may or may not be better than mine,  
9 is much closer to the locale and I can't see what he sees.

10 Q Is that why there is that one passage that I  
11 asked you to read to the jury in the systems manual? Is  
12 that why the language is there?

13 A That's correct. I would --

14 MR. MADSON: Your Honor, I'd object to that. I  
15 don't think the witness can answer why the language is  
16 there. Whoever publishes the manual is in a position to  
17 know that.

18 THE COURT: I think the objection sounds like  
19 foundation, and I'll sustain it.

20 BY MR. COLE: (Resuming)

21 Q Now, did you get any calls from the master or  
22 anybody else representing themselves to be the  
23 representative of the Exxon Valdez saying that they were  
24 going to turn to a heading of 180?

25 A No.

1 Q Did you get any calls from the master saying that  
2 he was going to leave the bridge and wanted you to watch  
3 over his tanker?

4 A No.

5 Q You said that -- in response to Mr. Madson's  
6 questions, that you were calibrating -- that about  
7 midnight, you were calibrating the radar at Three Mile  
8 Rock. You placed it on the three-mile radar.

9 A Middle Rock.

10 Q Middle Rock. I'm sorry.

11 Were you looking for the Exxon Valdez at that  
12 time?

13 A No.

14 Q And why not?

15 A Because I had -- I was calibrating the radar.

16 Q Was --

17 A I wasn't looking for him, because he had been  
18 lost, and I had no -- I had no reason to believe that  
19 anything was happening other than what Mr. Taylor had told  
20 me.

21 Q Now, what's been identified as Defendant's  
22 Exhibit I, just to clarify this, this is a manual that is  
23 given to the watch standers, is that correct? And the  
24 personnel in the Coast Guard?

25 A Right. You could call this SOP, if you want to.

1 Q Which means?

2 A Standard Operating Procedure.

3 Q And is that distributed to, say, tanker captains?

4 A No, it isn't.

5 (Pause)

6 MR. COLE: If I could have just one minute, Your

7 Honor.

8 (Pause)

9 I have nothing further.

10 RE-CROSS EXAMINATION

11 BY MR. MADSON:

12 Q Mr. Blandford, just a question or two. Recalling  
13 the question about error on the radar, can you describe  
14 that in somewhat better terms? What are you talking about  
15 when you say error?

16 A Well, generally all radar -- excuse me, radars of  
17 this type have a certain amount inherent error, plus or  
18 minus 2 or 3 percent, or whatever. And if you have that  
19 much error in a bearing at 15 miles, that's quite a bit  
20 larger number than it is plus or minus -- or than that same  
21 error applied down to three miles.

22 Q Maybe I can -- if your target is at three miles,  
23 your error in your radar is still the same, 2 or 3 percent,  
24 right?

25 A Uh-huh.

1 Q But that means that you're -- the target is  
2 actually much closer to where it should be, as opposed to,  
3 say, 12 miles with the same degree of error?

4 A Right. Right. If you have him at ten miles and  
5 your error is 3 percent, obviously you've got -- well, 3  
6 percent of ten miles would be a third of a mile. And --  
7 versus a -- at one mile, it would be, instead of  
8 three-tenths, it would be three-hundredths.

9 Q Now, when you are monitoring radar, and a vessel  
10 is, say, inbound, at, say, Valdez Arm, and and it strays  
11 from the lane, the proper lane, isn't it a fact, sir, that  
12 you would get on the radio and say, "You are outside the  
13 lanes. Please make a correction?"

14 A Where --

15 Q Say he's just inbound. He's supposed to be in  
16 your --

17 A Okay, in your -- in what position?

18 Q Well, let's assume he's in the separation zone,  
19 okay? He's strayed off --

20 A Somewhere --

21 Q Yeah.

22 A -- above Bligh Reef?

23 Q Well, let's say above Bligh Reef.

24 A And he's in the separation zone. You can see him  
25 on your radar and your error is such that you can still

1 determine that he is clearly in the separation zone.

2           Would you not get on the radio and say you are in  
3 an improper position, you're not in a lane, please make the  
4 correction?

5           A     No. I'd probably call him up and say, "What's --  
6 what are your intentions?" It may be -- he may, number  
7 one, not know he's there or have a good reason for being  
8 there.

9           Q     But at least you'd tell him --

10          A     What I would like to know first, why he's there.

11          Q     Because you know that's a place that is not a  
12 proper place for him to be, right.

13          A     Correct.

14          Q     Have you ever directed a vessel to return to the  
15 lane, directed?

16          A     Personally?

17          Q     Yes.

18          A     Not that I can recall.

19          Q     Do you know if other people have done that, other  
20 watch standers have?

21                MR. COLE: Objection. Hearsay.

22                THE COURT: Unless it's based on his personal  
23 knowledge and presence, it would be hearsay, wouldn't it,  
24 Mr. Madson?

25                MR. MADSON: Well, maybe, Your Honor, I would ask



1 this question. Were you physically present when some other  
2 watch stander or O/D has done that?

3 A Not that I recall.

4 Q Now, when you were aware that the Exxon Valdez  
5 was going to -- was on a course of 200, but going to weave  
6 its way through the ice, or deviate through the ice, this  
7 implied to you, did it not, that it would not remain in  
8 that course forever. It was going to have to make a course  
9 change, and weave through the ice.

10 A I didn't really understand it to be weaving.

11 Q Or deviate.

12 A Right. My understanding it would be on a course  
13 of 200 and taking the straight --

14 Q Okay. But do you know what he actually told Mr.  
15 Taylor? I'm speaking of the person on the ship.

16 MR. COLE: Objection, hearsay.

17 THE COURT: Well, that's been opened up by both  
18 sides. I think that's been waived. Go ahead and answer  
19 it.

20 BY MR. MADSON: (Resuming)

21 Q Do you know the exact words that were used by the  
22 person on the ship, the Exxon Valdez, to Mr. Taylor? Do  
23 you know those?

24 A Right.

25 Q Only through what Mr. Taylor told you, right?

1           A     Right, up until I read the -- I listened to the  
2 tape and saw --

3           Q     Well, did Mr. Taylor not tell you that the vessel  
4 was going on that course, but then was going to wind its  
5 way, or weave its way, through the ice?

6           A     I can't recall the exact word, wind or weave, or  
7 -- to make his way through the ice is what I was impressed  
8 with.

9           Q     And if ice is in the way, you have to change one  
10 way or the other to get around it. Is that fair to say?

11          A     Right. Well, we didn't know -- I didn't know if  
12 he was skirting it, or going through it, or --

13          Q     Sure. You weren't there, and you weren't in the  
14 best position to determine what he had to do, right?

15          A     Correct.

16          Q     But you've said that the person on the bridge --

17          A     We couldn't see him, and we couldn't see the ice,  
18 so we're pretty much relying on what he says.

19          Q     Do you ever tell a vessel, radio a vessel, and  
20 tell them that, "You're no longer on radar. We cannot see  
21 you?"

22          A     No.

23                MR. MADSON: Thank you, sir. I don't have any  
24 other questions.

25                THE COURT: Anything further, Mr. Cole?

1 (Pause)

2 MR. COLE: No.

3 THE COURT: All right. You're excused for now.  
4 That completes the examination.

5 We'll take our lunch break now, ladies and  
6 gentlemen. We'll take until about 1:15. Don't discuss  
7 this case among yourselves or with any other person. Do  
8 not form or express any opinions concerning the case.

9 Watch for press badges. If you are inadvertently  
10 exposed to somebody who's wearing a press badge, and they  
11 start to talk, they may not know you're a juror, so just  
12 let them know you're a juror, and just avoid -- avoid that  
13 contact, if you can. They are very responsible, and  
14 they're wearing their press badges at all times in the  
15 building, so that should become obvious to you.

16 We'll see you back after lunch.

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

19 (Whereupon, at 11:55 o'clock a.m., a luncheon  
20 recess was taken.)

21

22

23

24

25

## AFTERNOON SESSION

(1:16 p.m.)

1  
2  
3 THE CLERK: This court is in session.

4 THE COURT: You may be seated.

5 I have a note from a juror which I'll share with  
6 counsel and associate media people. "Would it be possible  
7 to instruct the media to not tape their coverage outside  
8 the elevator doors? When I returned from lunch this  
9 afternoon, KIMO was taping right outside the elevator,  
10 making it hard to avoid the media. I thought about  
11 bringing it to their attention that I was a juror, however  
12 the camera was taping; I did not want to end up on their  
13 tape.

14 "Their conversation, as much as I heard, dealt  
15 with the defense blaming the U.S. Coast Guard. Perhaps it  
16 is not anything of importance, but you did instruct us to  
17 bring it to your attention." Signed by one of the jurors.

18 All I can say is I'd ask the media, those of you  
19 in the back of the one-way glass and the rest of the media,  
20 to use some discretion. I'm not sure exactly where this  
21 took place, but on this floor, there's to be no media  
22 coverage outside the courtroom, and if it was downstairs,  
23 the jurors have to use the tape, and if you rush to  
24 interview people who are getting on board, you may  
25 inadvertently come in contact with jurors.

1 I don't think anybody would want such a jury  
2 taint that would result in us having to declare a mistrial,  
3 and I doubt that would ever happen, but let's nip it in the  
4 bud if it's getting started.

5 As far as their conversation, \_\_\_\_\_ juror  
6 heard something that dealt with the defense blaming the  
7 U.S. Coast Guard. She brought it to my attention, as I  
8 instructed her, and I don't know what else to do about that  
9 except just notify media.

10 Do counsel need to address this any further?

11 MR. MADSON: I don't believe so, Your Honor.

12 THE COURT: Do you need to address it any  
13 further, Mr. --

14 MR. COLE: Could I just have a minute?

15 THE COURT: All right.

16 (Pause)

17 MR. COLE: Does the note indicate whether it was  
18 just the --

19 THE COURT: I read the note to me.

20 MR. COLE: I was trying to figure out whether Mr.  
21 Madson was there and they were interviewing him --

22 MR. MADSON: I was not there --

23 THE COURT: I read the note to you, Mr. Cole. I  
24 read it to you verbatim. Their conversation -- it said the  
25 media was taping and I did not want to be on their tape. I

1 don't now who they were taping, if they were taping Mr.  
2 Madson, the Defendant. Their conversation, as much as I  
3 heard, dealt with the defense blaming the U.S. Coast  
4 Guard. Perhaps this is not anything of importance, but you  
5 did instruct us to bring it to your attention.

6 MR. MADSON: Your Honor, since the question was  
7 asked, I can only say it was none of us. I don't know  
8 anything about it until the Court read that note.

9 THE COURT: All right. I just want to bring it  
10 to the court's attention. We'll mark this, and make it --  
11 we won't mark it; let's make it part of the file, though.

12 Ready for the jury? Ready for the next witness?

13 MR. COLE: Yes.

14 THE COURT: All right. Go get the witness.  
15 We'll bring the jury in.

16 (Whereupon, the jury enters the courtroom.)

17 THE COURT: You may call your next witness, Mr.  
18 Cole.

19 MR. COLE: Your Honor, at this time, the State  
20 would call Mr. Harry Claar to the stand.

21 Whereupon,

22 HARRY L. CLAAR II

23 called as a witness by counsel for the State of Alaska, and  
24 having been duly sworn by the Clerk, was examined and  
25 testified as follows:

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

3 THE WITNESS: Harry LeMoyne (PH) Claar II,  
4 C-l-a-a-r.

5 THE CLERK: And your current mailing address?

6 THE WITNESS: Box 7673 Incline Village, Nevada.

7 THE CLERK: And what is your current occupation?

8 THE WITNESS: Merchant seaman.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. COLE:

12 Q Mr. Claar, how long have you been a Merchant  
13 Seaman?

14 A About 13 years.

15 Q Would you tell the jury what type of licenses you  
16 held, or you hold now?

17 A I have an AB's ticket, unlimited AB's ticket.

18 Q When did you get that?

19 A '77, '78, some time around there.

20 Q And would you give the jury an idea of what type  
21 of jobs you've had in the maritime industry?

22 A I've worked as an AB, a ship's carpenter, a  
23 bo'sun, a bo'sun mate.

24 Q When did you begin working for Exxon?

25 A Two years ago. '88, January '88.

1 Q And what did you hire on as?

2 A AB.

3 Q Did you attend any schools or anything like that,  
4 or training courses with Exxon?

5 A No.

6 Q Are you working towards some now?

7 A No.

8 Q Who are you working for now?

9 A I work for Arco now.

10 Q What are you doing for them?

11 A I'm an AB.

12 Q When did you change?

13 A Just -- the end of November.

14 Q Back in March of 1989, which vessel were you  
15 assigned to?

16 A I was on the Exxon Valdez.

17 Q How long had you been assigned to that vessel?

18 A I spent a total of 90 days on it.

19 Q And did you sail on any other vessels other than  
20 the Exxon Valdez for Exxon?

21 A Yes.

22 Q What vessels would those be, then?

23 A Venetia, the Washington and the Philadelphia.

24 Q And was that engagement on the West Coast or on  
25 the East Coast?



1 A West Coast.

2 Q Can you give the jury an idea of how many trips  
3 you made to Prince William Sound while you were working for  
4 Exxon?

5 A I don't know, a dozen, fifteen.

6 Q And how about on the Exxon Valdez?

7 A I don't -- I don't know. Maybe three.

8 Q Who were the captains aboard the Exxon Valdez  
9 while you were an able-bodied seaman?

10 A When I first went aboard, Captain Stalser (PH)  
11 was there, and then Captain Hazelwood relieved him.

12 Q How long had you been sailing on the Exxon Valdez  
13 when Captain Hazelwood came aboard?

14 A I don't -- I don't remember when he came aboard.

15 Q How long did you sail with him after? Do you  
16 have any idea?

17 A Three weeks, a month. I don't really remember.

18 Q Would you tell the jury a little bit about how  
19 the ABs coordinate their watches, how they coordinated  
20 their watches aboard the Exxon Valdez.

21 A I don't understand exactly what you mean.

22 Q Did you have a partner?

23 A Yes.

24 Q Who would that have been?

25 A Paul Radkey was my watch partner.

1 Q And was he an able-bodied seaman also?

2 A Yes.

3 Q What shift did you work?

4 A We were on the 8:00 to 12:00 watch.

5 Q Would you explain to the jury what that means?

6 A We worked from 8:00 in the morning until  
7 midnight, and from -- or from 8:00 in the morning until  
8 midnight, from 8:00 in the morning until noon.

9 Q Would you give the jury an idea of what your  
10 responsibilities would have been as an able-bodied seaman  
11 while you were say, for instance, out at sea?

12 A During the day it was mostly day work. We just  
13 -- maintenance. And at night, we stood bridge watch  
14 lookout and wheel watches.

15 Q Do you remember being on the Exxon Valdez when it  
16 arrived in Valdez on March 22, 1989?

17 A I don't know what you mean, do I remember it?

18 Q Do you remember being on the Exxon Valdez?

19 A Yes, I remember being there.

20 Q And do you remember what time it arrived in  
21 Valdez that evening.

22 A No, I don't -- don't recall. It seems to me that  
23 it was the end of our watch, though. It was real close to  
24 the end of it.

25 Q Do you remember if you were at the helm or out on

1 the bow?

2 A When we arrived?

3 Q Yes.

4 A I think I was on the -- on the wheel.

5 Q What did you do after the Exxon Valdez had docked  
6 that evening?

7 A I probably went to bed, if it was at the end of  
8 our watch.

9 Q Did you man your shift that next day --

10 A Yes.

11 Q -- the 8:00 to 12:00 shift.

12 What would you have done -- what did you do  
13 during that shift?

14 A Well, we were taking cargo, from what I recall,  
15 and we just stood our regular cargo watches, you know.  
16 Just took owages and sounding the tanks and that sort of  
17 thing.

18 Q And would that have been at the request of who?

19 A That's -- I don't understand what you mean by at  
20 the request of.

21 Q Who would have asked you to do certain things  
22 during that watch?

23 A The mate on watch.

24 Q Who was the mate that oversaw you?

25 A Greg Cousins.

1 Q Now, can you tell the jury what time you were  
2 called out to work that evening?

3 A It was around 7:20 or 7:30.

4 Q Why were you called out prior to your -- was that  
5 prior to your shift?

6 A Yes.

7 Q Why would that have been?

8 A We were leaving, and we had to secure the deck  
9 for sea.

10 Q What were your responsibilities during that  
11 undocking process?

12 A Well, after we secured the deck, I was forward,  
13 and I was the lookout, forward.

14 Q That would have been in -- on the front of the  
15 tanker?

16 A Right.

17 Q And there's a pointer there. Can you indicate on  
18 that picture there to your left where you would have been?  
19 Do you see a pointer up there?

20 A No. I would have been up here.8

21 Q Okay.

22 Can you tell the jury, do you remember what the  
23 weather was like that evening?

24 A It was kind of a slushy sort of rain, or snow, or  
25 whatever you call it.

1 Q Would the -- were there heavy winds or heavy wave  
2 action while you were (inaudible)?

3 A I don't recall that it was wave action.

4 Q Now, on the trip out to the entrance, did you  
5 remain out on the bow?

6 A No. All -- I didn't stay the entire watch up  
7 there.

8 Q When -- about what time would you have -- did you  
9 end your watch?

10 A On the bow?

11 Q On the bow.

12 A 10:30.

13 Q When you're out on the bow, how do you  
14 communicate with the bridge?

15 A With a handheld radio.

16 Q What are your responsibilities when you're out on  
17 the bow?

18 A To watch out for things, report lights, vessels  
19 and --

20 Q Did you report any lights that evening?

21 A Yes.

22 Q Do you remember which one those were?

23 A No.

24 Q What -- did anything eventful happen while you  
25 were -- that you remember while you were out on the bow on

1 the look-out?

2 A No.

3 Q At some point, you indicated that you were  
4 contacted about being relieved on the bow. Where did you  
5 go from there?

6 A I went to the -- down the mess decks and took a  
7 break, changed my clothes, and went to the bridge.

8 Q How long were you there to change your close?

9 A Well, I took a twenty-minute break all totalled.

10 Q Who was on lookout at that time?

11 A While I was on break?

12 Q Yes.

13 A There was no one on the bow.

14 Q Where did you go after you were done with your  
15 break?

16 A I went to the bridge.

17 Q Would you describe for the jury what your -- you  
18 then replaced the helmsmen, is that right?

19 A Right.

20 Q Would you describe for the jury what your  
21 responsibilities as a helmsman were at that time?

22 A Well, to steer the ship on a given course.

23 Q And do you make the decision on where to steer,  
24 or how does that --

25 A No.

1 Q Who gives you -- who makes those decisions?

2 A Well, the mate on watch.

3 Q And if the captain has the conn, who would give  
4 it then?

5 A The captain.

6 Q Would you -- I'd like you to talk just a little  
7 bit and explain to the jury how the vessel is steered.  
8 What type of console does the Exxon -- does the Exxon  
9 Valdez have?

10 A Well, of course, it has a small steering wheel, I  
11 guess you'd call it, and I guess the console is probably as  
12 wide as this, and it has a little video screen.

13 Q What information was on the console video screen?

14 A There's the course, the rudder angle, and the  
15 rate of swing indicator.

16 Q Did you -- do you use those in the course of your  
17 duties as a helmsman?

18 A Yes.

19 Q Where there other course heading indicators that  
20 you could see while you were at the helm?

21 A I don't -- I don't really remember.

22 Q How about were there other indicators, rudder  
23 indicators, rudder angles?

24 A Yes.

25 Q Where would those have been?

1           A     Well, there's -- it's been awhile since I've been  
2 on there, so -- but from what I can recall, there was one  
3 kind of almost dead ahead at the overhead. And if I'm not  
4 mistaken, I think there's one on each wing of the bridge.

5           Q     How do you place the -- did you place the Exxon  
6 Valdez in auto pilot or Iron Mike?

7           A     There's --

8           MR. CHALOS:  Objection, Your Honor.  Foundation.

9           MR. COLE:  I'll lay the foundation.

10          BY MR. COLE:  (Resuming)

11          Q     Could the Exxon Valdez be placed in auto pilot?

12          A     Yes.

13          Q     How do you do that?

14          A     There's a button to push.

15          Q     And would the console tell you whether or not you  
16 were on automatic pilot or in the helm mode?

17          A     Yes.

18          Q     Would you explain to the jury where that  
19 information -- where you could determine that?

20          A     I'm not absolutely certain again, but it seems to  
21 me that there's a little pinpoint red light that comes on,  
22 and there's the course that it's steering kind of pops up  
23 in the corner of this video screen.

24          Q     While you were at the helm, was it your duty to  
25 place the tanker on automatic pilot or not?



1 A Was it my duty to do it?

2 Q Yes.

3 A No.

4 Q Who made that decision?

5 A That I should put it on? The captain did.

6 Q And would it be the same sort or when the  
7 automatic pilot would come off?

8 A Yes, I suppose so.

9 MR. CHALOS: Your Honor, I'd like to object  
10 here. Is Mr. Cole speaking generally, or in this specific  
11 situation?

12 THE COURT: Maybe you can be a little more  
13 specific. I'm having a hard time understanding what you're  
14 talking about there.

15 BY MR. COLE: (Resuming)

16 Q When the vessel is in automatic pilot, could --  
17 what would happen when you turned the wheel?

18 A Nothing.

19 Q When you say nothing, what do you mean? Would  
20 the rudder angles, would the rudder turn --

21 A The wheel -- no.

22 Q When you came on the bridge that evening, who was  
23 up on the bridge?

24 A I saw the pilot and the third mate.

25 Q Would you explain to the jury, is there a

1 procedure whereby you go through when you replace the  
2 helmsman up on the bridge?

3 A Well, just go up -- the helmsman tells you what  
4 course you're steering, and just shout out to whoever  
5 happens to be on the conn that you're relieving the wheel  
6 and repeat the course.

7 Q How about whether or not it's on Iron Mike or  
8 automatic pilot?

9 A Normally, if it would be on the Mike, there  
10 wouldn't be a relief of the helm, unless you were actually  
11 standing there watching it, I guess. I don't recall doing  
12 that.

13 Q When you replaced Mr. Radkey, did the two of you  
14 follow that procedure?

15 A Yes.

16 Q Do you remember what your heading was at that  
17 time?

18 A We were not in the middle of it. At the end of a  
19 course change, we were coming to 219.

20 Q Was the tanker on automatic pilot at that time?

21 A No.

22 Q Was Captain Hazelwood present?

23 A I don't recall that he was.

24 Q And approximately what time did this occur?

25 A At ten minutes to 11:00.

1 Q When you came on the bridge, did you look at any  
2 of the charts or look at the radar?

3 A No.

4 Q Why not?

5 A I was interested in getting to the wheel and  
6 relieving my watch partner, and I don't normally look at  
7 the radar or the charts when I go up on the bridge. It's  
8 not my job.

9 Q When you say it's not your job, the navigation of  
10 the vessel is not your job, is that right?

11 A Right.

12 Q How long were you at the helm before you real --  
13 before Captain Hazelwood came up on the bridge?

14 A I don't know.

15 Q Do you remember the pilot disembarking that  
16 evening?

17 A yes.

18 Q About what time was that?

19 A Around 11:20, 11:25.

20 Q What was the ship's heading at that time?

21 A I believe at that time we were still steering  
22 219.

23 Q Was Captain Hazelwood at the bridge when you --  
24 when the pilot left?

25 A Yes.

1 Q Now, is there a procedure whereby you contact the  
2 next watch to let them know about their shift coming up?

3 A I would call them on the phone.

4 Q And what time do you generally call them?

5 A 11:20.

6 Q And what time do they generally report for the  
7 change of shift?

8 A At ten minutes to the hour.

9 Q Did you do that on that evening?

10 A Yes.

11 Q Who would you have called?

12 A I called Maureen Jones and Bob Kagan.

13 Q What time would that have been?

14 A 11:20.

15 Q Did you call up Mr. LeCain?

16 A No.

17 Q Why not?

18 A Well, normally the mate called is on relief.

19 Q Where was the mate at 11:20?

20 A I think he was out on deck helping with the  
21 pilot.

22 Q What course changes did you make then after the  
23 pilot left the vessel that evening?

24 A It came to 200 and to 180.

25 Q Do you remember when the 200 command was given?

1 A No.

2 Q Do you remember if the third mate was on the  
3 bridge when that was --

4 A I don't remember.

5 Q Do you remember when the second course change was  
6 given?

7 A I don't remember the exact time, no.

8 Q Approximately?

9 A Well, it was close to the end of the watch.

10 Q Were you given any other instructions at the time  
11 about the steering of the vessel after the second command?

12 A I was told to put it on the Mike.

13 Q Who gave you that instruction?

14 A The captain.

15 Q Do you remember how long after you received that  
16 command you were at the helm before being relieved by Mr.  
17 Kagan?

18 A Just several minutes, I suppose. Maybe five  
19 minutes.

20 Q What happened when Mr. Kagan came to the bridge?

21 A I did -- you mean when he relieved me?

22 Q Yeah. When he first came to the bridge.

23 A Well, he came up -- it seemed like he got there a  
24 couple of minutes early, and he had forgotten his jacket,  
25 so he went back to get his jacket, and when he came back, I

1 was just -- I had just steadied it up and put it on the  
2 Mike.

3 Q And when you say "on the Mike," you mean --

4 A On the gyro.

5 Q Yes. Gyro, or automatic pilot?

6 A Right.

7 Q Where was the third mate during this period?

8 A I don't remember whether he was on the bridge or  
9 not. He may have still been down on deck securing the  
10 pilot ladder. He showed up, I suppose, shortly -- around  
11 that time.

12 Q What time did Mr. Kagan replace you that evening?

13 A At ten minutes to 12:00.

14 Q What did you tell him, then, when you -- when he  
15 replaced you?

16 A I told him that I had just steadied it up on 180  
17 and put it on the Mike, and that -- for him to stand for a  
18 few minutes and make sure it was steering a straight  
19 course.

20 Q Did you know where you were in Prince William  
21 Sound at that time?

22 A No.

23 Q Could you see any lights out in front of you?

24 A No.

25 Q When did Maureen Jones come up that evening?

1           A     I believe she came up just a few minutes before  
2 Bob Kagan did.

3           Q     Where did she go?

4           A     To the starboard wing, from what I recall.

5           Q     Would you point out the starboard wing on the  
6 Exxon Valdez?

7           A     Well, right here.

8           Q     After being relieved from duty that evening,  
9 where did you go.

10          A     I just went below.

11          Q     When you say "below," what do you mean?

12          A     I went to the mess decks and got a drink and then  
13 went to the day room and went to my room.

14          Q     When was the first time you were aware that the  
15 Exxon Valdez grounded?

16          A     I was in one of the passageways and I rang the  
17 pumpman, and he said the rig had gone aground.

18          Q     What did you do after that?

19          A     There wasn't anything I could do. I was just  
20 there. I went outside and shined my light over the side to  
21 see if I could see any oil, or smell any oil. I just  
22 stayed up -- I stayed up for several hours after that, just  
23 kind of wandering around.

24          Q     Could you smell the oil then?

25          A     Yes, uh-huh.

1 Q Would you describe for the jury what that looked  
2 like?

3 A Well, it was dark. I mean, I could tell that  
4 there was oil on the water, but I -- it's --

5 Q Could you actually see it coming up?

6 A No. I didn't go up to where the ship  
7 \_\_\_\_\_ . I was aft.

8 Q How did you know that there was oil out there?

9 A Well, I -- it just looked different than water  
10 does.

11 Q Could you smell it?

12 A Yes.

13 Q Was it a strong odor, or --

14 A Yes.

15 Q Did you go back to your room at some point?

16 A Yes.

17 Q Did you receive any instructions while you were  
18 in your room that evening -- or morning, I guess.

19 A No. Greg Cousins came around and said that we  
20 had gone aground and the Coast Guard was coming out.

21 Q Did he give you any further instructions later  
22 on?

23 A No.

24 Q When was that?

25 A I don't know.



1 Q What -- what was Exxon's policy as far as  
2 possession of alcohol on a tanker?

3 A Well, my understanding was that you weren't  
4 supposed to have it?

5 Q And what were the consequences if you were found  
6 in possession?

7 A Well, I suppose you would have been fired for it.

8 Q And how about alcohol use on the tanker?

9 A Well, you weren't supposed to use it, either.

10 Q Did you see Captain Hazelwood at all that  
11 morning, after the grounding?

12 A After the grounding? I saw him the next day.

13 Q When would that have been?

14 A Well, it was probably late in the morning. It  
15 seems -- I'm not certain, but I think it was on my watch  
16 the next -- the next morning.

17 Q That would have been 8:00 to 12:00?

18 A Yes.

19 Q Where would that have been?

20 A Down on deck.

21 Q Did you have any alcohol in your room?

22 A No.

23 Q Where you aware of any alcohol on board the Exxon  
24 Valdez?

25 A No.

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

2 MR. CHALOS: Good afternoon, Mr. Claar.

3 CROSS EXAMINATION

4 BY MR. CHALOS:

5 Q Mr. Claar, you stated that you hold an AB's  
6 ticket?

7 A Right.

8 Q Who issued the AB's ticket?

9 A Coast Guard.

10 Q Does an AB's ticket signify that you're qualified  
11 to steer a vessel, among other duties?

12 A It's supposed to, yes.

13 Q Now, your watch, you said, was the 8:00 to 12:00.

14 A Right.

15 Q Was that Greg Cousins' watch as the third mate?

16 A Yes.

17 Q He was your mate on watch, if you will?

18 A Correct.

19 Q You stated that you received a call sometime  
20 around 10:30 to change watch --

21 A Right.

22 Q -- or to change from the lookout to the bridge?

23 A Right.

24 Q Where did that call come from?

25 A From the bridge.

- 1 Q Who called you? Do you remember?
- 2 A I'm not certain, but I think it was the captain.
- 3 Q You recognized the captain's voice?
- 4 A Yes.
- 5 Q He speaks in a low, slow, deliberate style, does  
6 he not?
- 7 A Right.
- 8 Q Now, when you got up to the bridge at about ten  
9 minutes of 11:00, you said the captain wasn't there, is  
10 that correct?
- 11 A Well, I said I didn't see him.
- 12 Q He could have been off to the side, or on the  
13 wing?
- 14 A Yes.
- 15 Q It could have been -- strike that.  
16 You did see the captain shortly thereafter, did  
17 you not?
- 18 A Yes.
- 19 Q Did the captain speak to you while you were on  
20 the helm in the period that the pilot was on?
- 21 A While the pilot was there?
- 22 Q Yes.
- 23 A I don't recall.
- 24 Q Did you see the captain speaking with the pilot?
- 25 A Yes.

1 Q At some point, the pilot left, is that correct?

2 A Right.

3 Q And the captain gave you an order to come to 200?

4 A Correct.

5 Q When the captain gave you that order, was the  
6 order clear?

7 A Yes.

8 Q Was the captain slurring his words?

9 A I don't think so.

10 Q Did he look to you to be any way impaired?

11 A No.

12 Q Did you smell any alcohol on his breath?

13 A No.

14 Q Now, you had seen the captain the night before as  
15 well, did you not? Coming in into Valdez?

16 A Yes, I guess I was on the bridge with him.

17 Q Was he acting, on this particular night, the same  
18 way he was acting the night before?

19 A Yes.

20 Q Now, at some point, you said the captain gave you  
21 an order to come to 180 and put it on the Mike.

22 A Right.

23 Q Was that order clear?

24 A Yes.

25 Q Now, you mentioned that that order came near the

1 end of your watch, is that correct?

2 A Correct.

3 Q And you also mentioned that when Bob Kagan  
4 relieved you, you were still in the process of steadying  
5 up, is that correct?

6 A No. When Bob relieved me, I had just -- I had  
7 just put it on the Mike when he -- it was like he arrived  
8 simultaneously at that -- when I was putting it on the  
9 Mike.

10 Q Is it fair to say that, if he relieved you at  
11 2350, you had put that -- the wheel, or the helm, on Iron  
12 Mike right around that time?

13 A Yes.

14 Q Now, when Mr. Kagan relieved you, you told him,  
15 "I'm stern 180 and I'm on the Iron Mike." Is that correct?

16 A Right.

17 Q Mr. Cousins was standing right there, was he not?

18 A Yes. He was at the rear.

19 Q And when you shouted out, Mr. Cousins asked you  
20 something, didn't he?

21 A Yes.

22 Q He asked you what was your magnetic heading at  
23 that time?

24 A Right.

25 Q Didn't he?

1 A Correct.

2 Q And you gave him the magnetic heading?

3 A Yes.

4 Q Would you explain to the jury what that was, or  
5 what the magnetic heading is?

6 A To the best of my recollection, it was 155.

7 Q Would you tell them what the magnetic compass is,  
8 as opposed to the gyro compass?

9 A Well, it's just another compass used for steering  
10 the ship. You know, it's to check the gyro and -- it's --  
11 it's not down on the -- you know, in the wheelhouse. It's  
12 up on the top of the wheelhouse. There's a little  
13 periscope you look through and catch it.

14 Q So at the time that you were relieved on watch,  
15 you told Mr. Cousins the course that you were steering on  
16 gyro and the course that you were steering on magnetic?

17 A Correct.

18 Q The captain was standing there at the same time  
19 as well?

20 A Yes.

21 Q Now, after the grounding, you mentioned that you  
22 went down to the mess hall, got yourself something to drink  
23 -- I take it nonalcoholic?

24 A Right.

25 Q Did you have anything to eat?

1 A I don't think so.

2 Q And then you went into the day room?

3 A Uh-huh.

4 Q What did you do in the day room?

5 A I just -- you know, I just kind of wandered  
6 around. It's just -- you know, little nervous energy, just  
7 walking around the ship before I go to bed.

8 Q Now, at some point you felt some vibrations,  
9 didn't you?

10 A Yes.

11 Q And those vibrations lasted about ten, fifteen  
12 seconds?

13 A That's -- yeah, I would suppose. It's hard to  
14 say.

15 Q Prior to feeling those vibrations, did you feel  
16 anything else? I mean, did you feel anything?

17 A No.

18 Q Did you feel any vibrations prior to that?

19 A I don't recall, no.

20 Q Did you feel any vibrations subsequent to the  
21 ten, fifteen second vibrations?

22 A I don't remember that, either.

23 Q Now, you stated in one of your interviews that  
24 the general alarm was not used?

25 A Correct.

1 Q That everyone was told that the vessel was  
2 grounded?

3 A I don't know that everyone was told. I was told.

4 Q That was by Mr. Cousins?

5 A Right.

6 Q And you said that -- well, strike that. Let me  
7 ask you this. You mentioned that alcohol is not permitted  
8 on board these vessels --

9 A Uh-huh.

10 Q -- and that alcohol use is not permitted aboard  
11 the vessel either? That's an Exxon policy?

12 A Yes.

13 Q You're not aware of any policy, Exxon policy,  
14 that prohibits someone from having a drink or two ashore,  
15 do you?

16 A No.

17 Q Now, you've been a helmsman since 1977?

18 A Right.

19 Q As a helmsman, is a 10 degree right rudder  
20 command a simple order?

21 A Yes.

22 Q Putting the ship over like the Exxon Valdez,  
23 let's say loaded to 57 feet and doing about 11.75 knots?  
24 Is the task of putting that ship over 10 degrees, right  
25 rudder, a simple one?



1           A     Yes.

2           MR. CHALOS: I have no further questions at this  
3 time.

4           THE COURT: Before you ask, Mr. Cole, I don't --  
5 I want to hear the difference, if there is any, between a  
6 gyro heading of 180 and a magnetic compass heading of 155.  
7 Is there a difference in those two?

8           THE WITNESS: Well, the magnetic heading is --  
9 yes, there is a difference. The -- you know, there's  
10 magnetic north, and the compass points magnetic north, and  
11 the gyro is a true north.

12          THE COURT: Oh, it's set to true headings, then,  
13 rather than magnetic headings?

14          THE WITNESS: The gyro.

15          THE COURT: All right.

16          THE WITNESS: The magnetic is, of course,  
17 magnetic.

18          THE COURT: And do you know what the difference  
19 between the true and magnetic headings represents?

20          THE WITNESS: I don't understand what you mean by  
21 difference.

22          MR. CHALOS: Your Honor, may we approach the  
23 bench?

24          THE COURT: Sure.

25          (The following was said at the bench:)

1 MR. : Maritime law (inaudible).

2 THE COURT: I understand. I understand what the  
3 variation is. (Inaudible) the jury should hear --

4 MR. : (Inaudible).

5 THE COURT: (Inaudible). I understand the  
6 difference.

7 MR. : (Inaudible).

8 THE COURT: 180 on the gyro is equivalent to 155  
9 magnetic because of a 25 degrees variation.

10 MR. : (Inaudible).

11 (The following was said in open court:)

12 THE COURT: Are you going to get to this in  
13 awhile, Mr. Cole, then?

14 MR. CHALOS: I can ask this witness, if you like,  
15 Your Honor.

16 THE COURT: All right. Go ahead.

17 BY MR. CHALOS: (Resuming)

18 Q Mr. Claar, when I asked you about the magnetic  
19 and gyro compass headings, did you understand that Mr.  
20 Cousins was checking the variation between the two, that  
21 is, what he was steering on gyro as opposed to what was  
22 steering on magnetic?

23 A I -- I still don't quite understand what you mean  
24 by he was checking it. I --

25 Q Well, I know --

1           A     It's just kind of -- it's kind of a normal thing,  
2 that they -- you know, when they change course, they check  
3 the magnetic heading to --

4           Q     They --

5           A     Yeah. They check it against one another.

6           Q     Right. It's a check to make sure that the two  
7 are reading what they should be reading.

8           A     Right.

9           Q     Because the third mate knows what the variation  
10 is between the true and the magnetic north?

11          A     Right. There's a formula to work it out and all  
12 that stuff.

13          Q     I see.

14                MR. CHALOS: Okay. I have no further questions,  
15 Your Honor.

16                               REDIRECT EXAMINATION

17                BY MR. COLE:

18           Q     Now Mr. Chalos asked you about your conversation  
19 at 10:30 when you were relieved and allowed to go on break,  
20 and you answered that that call came from the bridge. How  
21 do you know it came from the bridge?

22           A     Well, they called me on the radio.

23           Q     They called you using what?

24           A     A hand held radio.

25           Q     Can someone take the hand held radio off the

1 bridge?

2 A I suppose they could.

3 Q Are you certain that Captain Hazelwood was the  
4 one that called you?

5 A I'm not absolutely positive.

6 Q Would you say that on -- Mr. Chalos asked you  
7 about Captain Hazelwood's command that evening, did you  
8 hear him speak with the Coast Guard that evening?

9 A Yes.

10 Q And would you say that he was precise that  
11 evening in talking to the Coast Guard?

12 MR. CHALOS: Judge, Your Honor, I don't know what  
13 the word "precise" means.

14 THE COURT: Objection overruled.

15 BY MR. COLE: (Resuming)

16 Q Would you say that he was precise when he spoke  
17 with the Coast Guard that evening?

18 A I don't remember the entire conversation that he  
19 had with the Coast Guard.

20 Q The part that you remember, was he precise?

21 A I'm confused with precise also. What I recall  
22 was the fact that ice was mentioned and that we were going  
23 to go left of the -- or east of shipping channels.

24 Q Do you remember him start to call the tanker he  
25 Exxon Baton Rouge and then change it to the Exxon Valdez?

1 A No.

2 Q How -- where was Captain Hazelwood standing when  
3 you were up on the bridge?

4 A Well, he --

5 Q Or at the helm?

6 A -- forward of the console, and just -- you know.  
7 there was a space there, and he was --

8 Q Was he standing in one place, straight up?

9 A No.

10 Q What was he doing?

11 A No. He was pacing. He paced back and forth, or  
12 looked out the window.

13 Q Did he ever lean against the window?

14 A Yes.

15 Q Was that a normal position for Captain Hazelwood,  
16 or not?

17 A It's pretty normal for captains to talk into the  
18 window.

19 Q How far away from Captain Hazelwood was he -- or  
20 were you?

21 A At the closest point?

22 Q Yes.

23 A Three feet, I guess.

24 Q Now, you've indicated that you placed the vessel  
25 on automatic pilot when Mr. Kagan arrived. Is that when he

1 arrived the first time, or when he arrived the second time?

2 A The second time.

3 Q Do you remember giving a statement to the NTSB?

4 A Yes.

5 Q And that was a time when you were asked to  
6 testify, is that correct?

7 A I don't --

8 Q Do you remember that?

9 A No.

10 Q Do you remember being here last May and being  
11 asked to testify at that time?

12 A Right.

13 (Pause)

14 Q Mr. Chalos asked you about any alcohol  
15 regulations that you were aware of that did not permit  
16 someone from having a drink. Do you know of any alcohol  
17 regulations as far as time periods of when a person cannot  
18 have a drink before coming on board a tanker vessel?

19 A That Exxon has?

20 Q No, the Coast Guard regs.

21 A I'm aware of one now.

22 Q What is that?

23 A I believe it's four hours.

24 Q I don't really know. I'm just aware of a  
25 drinking regulation that you're not supposed to drink four

1 hours prior to coming to work.

2 Q Have you spoken with any Exxon attorneys since  
3 the grounding of the Exxon Valdez?

4 A Yes.

5 Q What did you speak with them about?

6 A About what we're talking about.

7 MR. CHALOS: Your Honor, I think Mr. Cole is  
8 getting into the area of attorney-client privilege.

9 THE COURT: I don't know, but why don't you  
10 approach the bench, counsel.

11 (The following was said at the bench:)

12 THE COURT: Attorney-client privilege. Exxon  
13 attorneys represent this man?

14 MR. : Your Honor, I think (inaudible).

15 THE COURT: \_\_\_\_\_ attorney-client privilege  
16 objection, he didn't make that at all. He made a relevance  
17 objection. I'm going to rule your objection on  
18 attorney-client privilege unless you can establish it.

19 MR. : (Inaudible).

20 THE COURT: Where are you going with this?

21 MR. COLE: I just want to show how many times  
22 he's been talked to show that (inaudible) been spoken to by  
23 Exxon. I think it's (inaudible) in this matter.

24 THE COURT: Objection sustained.

25 (The following was said at the bench:)

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

2 RE-CROSS EXAMINATION

3 BY MR. CHALOS:

4 Q Mr. Claar, you say that you now know about the  
5 four-hour rule. I take it you didn't know about that in  
6 March of 1989?

7 A No.

8 MR. CHALOS: I have no further questions, Your  
9 Honor.

10 THE COURT: You may step down. May this witness  
11 be excused?

12 MR. COLE: Yes.

13 MR. CHALOS: Yes.

14 THE COURT: You're excused from further  
15 participation in this case.

16 (The witness was excused.)

17 THE COURT: You may call your next witness.

18 MR. COLE: Your Honor, at this time, the State  
19 would call Mr. Robert Kagan.

20 Whereupon,

21 ROBERT M. KAGAN

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: Robert M. Kagan, K-a-g-a-n.

3 THE CLERK: And your current mailing address?

4 THE WITNESS: 735 Franklin Avenue, Harahan,  
5 Louisiana. That's H-a-r-a-h-a-n, Louisiana.

6 THE CLERK: Your current occupation?

7 THE COURT: Merchant seaman.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. COLE:

11 Q Mr. Kagan, how long have you been a merchant  
12 seaman?

13 A Fifteen years, almost fifteen years with Exxon.

14 Q Could you give the jury an idea of what type of  
15 positions you've held as a merchant seaman?

16 A I held a messman's job. I held an ordinary's job  
17 and an AB's job.

18 Q Okay. What was the first one that you had?

19 A Messman's job.

20 Q Tell the jury what a messman is.

21 A They're the ones that clean the rooms and serve  
22 the food.

23 Q And an ordinary seaman?

24 A Ordinary seaman is the entry rating for the deck  
25 department.

1 Q And do you have to get a license to be an  
2 ordinary seaman?

3 A No, you don't.

4 Q And how about -- you worked as an able-bodied?

5 A Yes, I did.

6 Q Do you have to get a license for that?

7 A Yes. You have to get an endorsement from the  
8 Coast Guard.

9 Q How do you get one of those?

10 A You have to pass a test.

11 Q What does that test ask you? What type of  
12 questions?

13 A On seamanship and life boats.

14 Q When did you get your AB card?

15 A I got it in 1981.

16 Q And how long did you sail as an AB after that?

17 A I sailed -- I think it was about six months.

18 Q Did you ever sail with Captain Hazelwood before?

19 A Yes, I have.

20 Q Where did you -- when was that?

21 A In 1985.

22 Q What vessel would that have been?

23 A That's the Exxon Yorktown.

24 Q What were you doing then?

25 A I was an able seaman.

1 Q Did you get a chance to see Captain Hazelwood?  
2 Did you take the helm at any time during that period?

3 A Yes, I have.

4 Q Do you know whether or not he evaluated you?

5 A No, he didn't. The chief mate does.

6 Q Have you worked as an able-bodied seaman since  
7 1981?

8 A No, I haven't.

9 Q You say you worked as an able-bodied seaman for  
10 about six months. What did you do after that?

11 A I was an ordinary seaman.

12 Q And when was the last time you worked as an  
13 able-bodied seaman?

14 A 1985.

15 Q And did you continue to work as an able-bodied  
16 seaman then?

17 A No, I haven't.

18 Q When was the next time you became an able-bodied  
19 seaman?

20 A On the -- oh, excuse me. On the -- on the  
21 Valdez.

22 Q Do you remember when you reported to the Exxon  
23 Valdez?

24 A I think it was in January.

25 Q Of 19 --

1 A 1989.

2 Q Where did you -- where did you board?

3 A In San Francisco.

4 Q Did you have a partner at that time?

5 A Yes, I did.

6 Q Who would that have been?

7 A Let's see. John Peacock, I think. I can't  
8 remember.

9 Q Did you end up getting another partner later on?

10 A Yes, I did.

11 Q Who would that have been?

12 A Maureen Jones.

13 Q Would you tell the jury how -- what shift you  
14 worked on?

15 A I worked the mid-watch, the 12:00 to 4:00 watch.  
16 That's 12:00 to midnight until 4:00 in the morning and  
17 12:00 afternoon to -- 12:00 to 4:00 in the afternoon.

18 Q And tell the jury what your responsibilities were  
19 as an AB when the tanker was out at sea?

20 A We painted, we chipped. We done \_\_\_\_\_  
21 -- \_\_\_\_\_ seamanship and our deck duties, splicing  
22 wire, splicing lines.

23 Q Were you responsible for taking the helm at  
24 times?

25 A Yes, I was.

1 Q And what about watch duties? What were your  
2 responsibilities there?

3 A On the bridge?

4 Q Yeah.

5 A Steering, to make sure the -- if you were on the  
6 Mike, to make sure she won't go off-course. Check the  
7 magnetic.

8 (TAPE CHANGED TO C-3611)

9 Q Where did you -- let's say that you're not at the  
10 helm, you're on lookout. Where would you stay -- where are  
11 the places you could stay --

12 A Stand by the helm. I would stand by the conn.

13 Q Did you ever go out on the bow of the tanker and  
14 act as a lookout out there?

15 A Yes, I have.

16 Q Do you remember coming into Valdez on March 22,  
17 1989?

18 A Yes, I did.

19 Q Where -- what did you do from 12:00 until 4:00  
20 that morning?

21 A Well, I did -- I did partly bridge watch and  
22 lookout duties.

23 Q Is that -- do you remember when the Exxon Valdez  
24 docked in Valdez?

25 A I don't remember.

1 Q Do you remember when it left Valdez?

2 A Yes, it did -- yes, I do.

3 Q When did it leave Valdez.

4 A I think it was around 9:00 o'clock at night.

5 Q Would that have been on the 23rd?

6 A Of?

7 Q March?

8 A Yes, it was.

9 Q When did the Exxon Valdez get into Valdez?

10 A I don't even remember.

11 Q Do you remember working on the ship from 12:00 to  
12 4:00 that day, on March 23rd?

13 A Yes, I did.

14 Q What did you do that day?

15 A We -- I think we were topping tanks and I had --  
16 and (inaudible) -- I had the wires, and to make sure the  
17 wires were all secured to the dock.

18 Q The jury might not be familiar with what you mean  
19 by the wires --

20 A They're the \_\_\_\_\_ lines.

21 Q And those hold the tanker to the dock?

22 A Yes, it does.

23 Q How would you check those?

24 A By just hanging on the wire and just see if she  
25 has a lot of tension on it and it's starting to get tight,

1 and tied.

2 Q Did you go into town, to Valdez?

3 A No, I did not.

4 Q How come?

5 A I didn't -- I don't go to town in Valdez.

6 Q Did you make any phonecalls from the dock?

7 A Yes, I did. I called my wife.

8 Q What time did you get called out that evening for  
9 the undocking?

10 A I think it was around 7:30.

11 Q What were your responsibilities?

12 A Well, we were securing everything on the deck for  
13 sea.

14 Q Would you give the jury an idea of what type of  
15 things you would have been doing?

16 A Putting away fire extinguishers and loose gear  
17 that was on the deck, like -- like tools and so on, like  
18 that.

19 Q And how about when the lines were let go? Where  
20 were you about that time?

21 A I was on stern.

22 Q What were your responsibilities then?

23 A Just get the wires in and securing the wires for  
24 sea.

25 Q Who did you work with?

1           A     Let's see. I can't remember. I think Maureen  
2 Jones and -- I think there was another person back there,  
3 too, but I can't remember who it was.

4           Q     Did you have a mate that you reported to?

5           A     Yes, I did.

6           Q     Who would that have been?

7           A     That would have been the second mate.

8           Q     What was his name?

9           A     Bob LeCain.

10          Q     After the ship had -- the lines had been taken in  
11 and secured, where did you go that evening?

12          A     I went -- I went up -- I went up to the mess room  
13 first and got me a cup of coffee and then I went straight  
14 to my room and sat on -- sat on the easy chair.

15                   MR. COLE: Just a minute, Judge.

16                   (Pause)

17                   BY MR. COLE: (Resuming)

18          Q     Did you have anything to eat?

19          A     No, I didn't.

20          Q     Just went straight to your room?

21          A     Yes, I did.

22          Q     Did you sleep then, there?

23          A     Slept on an easy chair, just a cat nap.

24          Q     What time were you scheduled to go to work that  
25 evening?



1 A Ten minutes to 12:00.

2 Q And is there a procedure that you -- that the  
3 AB's follow as far as letting one another know when they're  
4 shift is ending?

5 A Yes, there is.

6 Q Would you tell the jury about that?

7 A Well, they will usually call them on the  
8 telephone and tell them how the weather is and it's time to  
9 get up.

10 Q Did you receive that call that evening?

11 A Yes, I did.

12 Q What did you do when you got it?

13 A Started getting -- I went down below and got a  
14 cup of coffee, and then I came up to my room and put on my  
15 winter gear, and I set my winter gear from -- to go to --  
16 to go to the bridge, but I forgot my coat.

17 Q So you walked up from your room up to the --

18 A Yes, I did.

19 Q And got up there about what time?

20 A I think it was around ten minutes to 12:00, maybe  
21 a little bit before.

22 Q And where did you go then?

23 A And I told -- I told the AB I was relieving, to  
24 stand by for a few minutes so I could go down and get my  
25 coat.

1 Q Who was that, do you know?

2 A Harry Claar.

3 Q What did you do after you told him that?

4 A Then I went down below and got my -- down below  
5 and got my coat.

6 Q And where did you go then?

7 A And then I -- I came up, back up to the bridge.

8 Q Now, what position did you take when you -- when  
9 you came up to the bridge?

10 A On the helm. Beside the ABs, and he told me that  
11 -- he was on the -- that the course he was steering, and he  
12 was on the Iron Mike.

13 Q Do you remember what course that was?

14 A I think it was 180.

15 Q And he told you he was steering Iron Mike?

16 A Yes.

17 Q Why did you go to the helm? Why did you replace  
18 the helm mate?

19 A Well, that's the procedure. We -- I stood by the  
20 helm.

21 Q Who -- where did your partner go?

22 A She went out on the wing of the bridge.

23 MR. COLE: I have to get a couple of exhibits  
24 (inaudible).

25 (Pause)

1 BY MR. COLE: (Resuming)

2 Q Now, I'm showing you what has previously been  
3 admitted as Plaintiff's Exhibit Number 22. Do you  
4 recognize that diagram?

5 A Yes, I do. That's the bridge.

6 Q Can you use this pointer to show the jury where  
7 you would be standing when you were at the helm?

8 A Let's see. Where am I --

9 MR. : Careful with the pointer.

10 THE WITNESS: Okay.

11 I'd be standing right here. At the helm.

12 BY MR. COLE: (Resuming)

13 Q And can you describe for the jury how do you  
14 steer the Exxon Valdez? Was it difficult to steer?

15 A No, it wasn't.

16 Q Can you compare it to driving a car?

17 A No, you can't.

18 Q Okay. Is it easier or harder than turning the  
19 wheel of a car?

20 A It was --

21 MR. CHALOS: Objection, Your Honor. He said he  
22 couldn't compare it to driving a car.

23 THE COURT: He can ask him about turning the  
24 wheel, I suppose. That's your question now?

25 MR. COLE: Yes.

1 THE COURT: It goes to turning the wheel?

2 MR. COLE: It is.

3 BY MR. COLE: (Resuming)

4 Q Can you -- how difficult is it to turn the wheel?

5 A It's not very difficult to turn the wheel,  
6 \_\_\_\_\_ set up your courses. Might be -- you might have  
7 a little bit more turn to it.

8 Q Now, I'm showing you what has previously been  
9 admitted as Plaintiff's Exhibit Number 40. Is that what  
10 you would stand in front of, Mr. Kagan?

11 A Yes, it was.

12 Q How comfortable were you at steering the Exxon  
13 Valdez?

14 A That night, I was very comfortable steering.

15 Q Had you ever expressed any concern to anyone  
16 about -- you didn't feel comfortable about steering?

17 A Well, she was -- she was kind of heavy. She was  
18 -- I was chasing the compass a little bit by -- by  
19 oversteering.

20 Q Would you explain to the jury what that means?  
21 Chasing the compass?

22 A Well, it's -- I would lose -- I would put a  
23 little too much rudder in it, and she would swing the bow  
24 -- the bow would swing a little off course.

25 Q Who did you tell about that?

1           A     I told the second mate that he's -- that I was  
2 chasing -- that I chased the compass one time.

3           Q     And how would you receive orders when the vessel  
4 -- when the conning officer wanted to turn the vessel?

5           A     He would give it to us in degrees, in real orders  
6 in degrees.

7           Q     Okay. Give the jury an example of what an order  
8 that you would hear would be?

9           A     Ten right.

10          Q     And what would that mean?

11          A     That means the rudder indicator -- the rudder  
12 angle would be 10 degrees.

13          Q     Now, when you were steering at the helm, what  
14 instruments would you use to show you, for instance, which  
15 -- what angle the rudder was at?

16          A     The rudder angle indicator.

17          Q     Did you use the one that was on the automatic  
18 pilot?

19          A     No, I didn't. I used the one on the -- on the  
20 overhead.

21          Q     Now, I'm showing you what's been marked for  
22 identification as Plaintiff's Exhibit Number 25. Do you  
23 recognize that?

24          A     They got the swing indicator, but they don't have  
25 the rudder indicator on that -- on that chart.

1 Q Do you recognize this, though?

2 A Yes, I do.

3 Q What's that a photograph of?

4 A That's the forward bulkhead.

5 Q Okay. Of the Exxon Valdez?

6 A yes.

7 Q And is that a fair and accurate picture of what  
8 the forward bulkhead looked like?

9 A Yes, it does.

10 MR. COLE: I move for the admission of what's  
11 been previously identified as Plaintiff's Exhibit Number  
12 25.

13 MR. CHALOS: No objection, Your Honor.

14 THE COURT: It's admitted. Are you sure it's 25?

15 MR. CHALOS: Your Honor --

16 THE COURT: 27 is admitted, not 25.

17 (State's Exhibit 27 was  
18 received in evidence.)

19 MR. CHALOS: Your Honor, I should mention, Mr.  
20 Cole mentioned, while he was standing over here, there  
21 needs to be one change made on one of the instruments.  
22 It's been misidentified -- but we have no objection.

23 THE COURT: All right.

24 BY MR. COLE: (Resuming)

25 Q You didn't use this -- let me set this right

1 here. Did you use those instruments on the forward  
2 bulkhead at all?

3 A Yes, I did. I -- I used the -- this is the  
4 repeater I used, and --

5 Q What did that show you?

6 A That's the compass -- that's the course of the  
7 compass, of the gyro. And I would use -- the rate of turn  
8 indicator.

9 Q Was there another rate of turn indicator that you  
10 liked to use?

11 A I used the figures -- we used that one there.

12 Q Was there another one up on the --

13 A Yes, it was.

14 Q Do you remember where that was?

15 A That was on the -- do you mean the rudder? The  
16 rudder indicator?

17 Q Right.

18 A I used -- there was -- above, on the starboard  
19 side, on the overhead.

20 Q Okay.

21 I'm showing you what has been marked for  
22 identification as Plaintiff's Exhibit Number 42. Do you  
23 recognize that photograph?

24 A Yes, it's right.

25 Q No, but just, do you recognize that photograph?

1 A Yes, I do.

2 Q What's that a photograph of?

3 A That's the radar and the conn and the overhead  
4 rudder indicator.

5 Q Is that on the bridge of the Exxon Valdez?

6 A Yes, it is.

7 Q Is that a fair and accurate representation of  
8 that?

9 A Yes. Yeah. I believe so.

10 MR. CHALOS: No objection.

11 MR. COLE: I move for the admission of what's  
12 been identified as Plaintiff's Exhibit Number 42.

13 MR. CHALOS: No objection.

14 THE COURT: All right.

15 (State's Exhibit 42 was  
16 received in evidence.)

17 BY MR. COLE: (Resuming)

18 Q Can you point to that, Mr. Kagan, and show me  
19 where the other rudder indicator that you used.

20 A Right there.

21 Q That one up on the ceiling?

22 A Yes.

23 Q Would that be -- correspond to number 20?

24 (Pause)

25 Is that about where number -- is that where that



1 is?

2 A Yes, I think so.

3 Q How come you didn't use the instruments on the  
4 console of the steering?

5 A Well, I was -- I was getting confused with it,  
6 and I was advised by the mate not to use it.

7 Q Which mate advised you?

8 A This was another mate that told me not to use it.

9 Q Can you tell the jury how you -- is the Exxon --  
10 was the Exxon Valdez capable of being placed on automatic  
11 pilot?

12 A Yes, it was.

13 Q How did you do that?

14 A Well, I didn't fool with it. The mate fooled  
15 with it.

16 Q Did you know how it worked?

17 A No, I -- I just knew how to take it off. That's  
18 all.

19 Q Who's responsibility was it to place the ship on  
20 automatic pilot or take it off?

21 A I believe it's the mate.

22 Q When you got up to the bridge that evening, at  
23 about 11:50, did you take a look at any of the charts or  
24 the maps?

25 A No, I didn't.

1 Q How come?

2 A I saw my job as -- that's the mate's job.

3 Q What happened then after you took over the helm?

4 What did you -- what happened next?

5 A Well, I -- I went, I checked my gyro, checked the  
6 repeater.

7 Q Why did you do that?

8 A Just to make sure that the Mike wasn't going to  
9 go off course.

10 Q Okay. Which gyro did you check?

11 A I checked the -- I checked the repeater on the --

12 Q About the \_\_\_\_\_ on the forward bulkhead?

13 A Yes, right here.

14 Q Okay.

15 A And I checked the magnetic to make sure the jobs  
16 would be with the board on the forward bulkhead.

17 Q Did you stay at the -- at the front of the -- in  
18 front of the steering console, or did you walk around?

19 A I just -- I walked to get a -- I walked down to  
20 the -- just a little ways out to get an ash tray.

21 Q When you came up the stairs, how did you go to  
22 get to the -- can you show the jury, draw, how you get from  
23 the stairs to the console?

24 A Back of the chart table, and --

25 Q Where's the chart room?

1 A The chart room's right here.

2 Q Is that lit up, or is it dark?

3 A It's a dim light, probably. I didn't even  
4 notice.

5 Q And was it light or dark on the bridge?

6 A It was real dark.

7 Q Now, after you took over the helm, where did you  
8 go? Can you show the jury where you are?

9 A Walked over to the coffee table to get an ash  
10 tray, and I came back, and I put the ash tray right there  
11 on the console.

12 Q Who was up on the bridge when you did this?

13 A Second mate.

14 Q Did you see Captain Hazelwood?

15 A No, I didn't.

16 Q Do you remember him being up on the bridge when  
17 you came up the first time?

18 A I don't even remember. He could have been. He  
19 could have been.

20 Q And after you -- after you got your ashtray, what  
21 happened then?

22 A I stood by the conn.

23 Q And how long did you stand there before -- were  
24 you having to turn at this time at all?

25 A No, I didn't.

1 Q How come?

2 A We were still on the -- on the Mike?

3 Q How long did you stay on Iron Mike?

4 A I don't -- I really don't remember. It was -- I  
5 really don't remember.

6 Q Well, would it have been five minutes, or ten  
7 minutes?

8 MR. CHALOS: Objection, Your Honor. The witness  
9 said he doesn't remember, and I think Mr. Cole is  
10 improperly suggesting an answer that is not -- that he  
11 knows is not correct.

12 THE COURT: Mr. Cole, can you rephrase your  
13 question? It sounds to me like the witness doesn't  
14 remember, but if you can refresh his recollection in some  
15 other way, you can try.

16 BY MR. COLE: (Resuming).

17 Q Can you approximate how long?

18 A I just didn't -- I wasn't looking at a watch or  
19 anything.

20 Q Had -- did Maureen Jones come in? Do you  
21 remember when she came into the --

22 A I -- I really didn't see her come in.

23 Q Where was Mr. Cousins standing when he was up on  
24 the bridge?

25 A He was standing by the radar, and standing by on

1 the -- right on the lefthand side, on the conn there. I  
2 could hear him talking.

3 Q Do you remember him going out on the port wing?

4 A No, I didn't.

5 Q When was the vessel taken off automatic pilot?

6 A I don't remember. It was a little while -- it  
7 was a little while later.

8 Q Who took it off automatic pilot?

9 A Well, we both reached for the button, and he got  
10 -- and Mr. Cousins pressed the button and -- it was off of  
11 -- he turned it off.

12 Q Why did you reach for it at the same time?

13 A Because, as he said, we were going on the -- on  
14 the -- on hand steering.

15 Q Had he given you any steering commands before  
16 that?

17 A No, he didn't.

18 Q When did he give you the first steering command?

19 A I don't remember.

20 Q Do you remember what that steering command was?

21 A Yes, it was. It was ten right.

22 Q How about -- do you remember how long after the  
23 vessel was taken off automatic pilot before he gave his  
24 first command?

25 A No, I don't.

1 Q Where was Mr. Cousins when he gave you that  
2 command?

3 A He was -- he was right beside me.

4 Q Did he tell you anything else besides that?

5 A No, he didn't.

6 Q Did you look at -- did you have the -- the  
7 console lit up at that time?

8 A No, I didn't. I dimmed it.

9 Q How come you dimmed it?

10 A Because it's -- the reflection of the light hit  
11 me in the face.

12 Q Did you use any other instruments to make sure  
13 that you were -- that the vessel was responding to your  
14 command?

15 A Yes, I was using the rudder indicator.

16 Q There's the other picture there in front of you,  
17 right there in front of you.

18 (Pause)

19 A Yes. Using the one overhead.

20 Q You need to point that -- point to the jury, so  
21 the jury can see.

22 And what did you see when you looked at that?

23 A I saw a 10 degree right rudder.

24 Q And could you describe how Mr. Cousins was acting  
25 at that time?

1           A     He just -- after he gave me ten right, he was --  
2 I guess he was silent for a few minutes. Or -- not a few  
3 minutes, for a few -- for a little while.

4           Q     I didn't catch that. He was what?

5           A     He was -- he was silent, and -- he was silent for  
6 -- I don't know how long. He just --

7           Q     He didn't say anything?

8           A     No, he didn't say anything.

9           Q     Do you remember him speaking on the phone, or  
10 anything like that?

11          A     No, I didn't.

12          Q     What were you concentrating on doing this time?

13          A     I was concentrating on the turn. We were -- the  
14 turn of the vessel, 10 degrees right rudder.

15          Q     Did you notice the gyro changing?

16          A     Just a little bit, a couple of degrees to the  
17 right.

18          Q     Mr. Kagan, when the tanker turned, do you  
19 remember what this -- this thing would do?

20          A     That's the repeater, and that will -- that will  
21 click off the \_\_\_\_\_ degrees.

22          Q     How about this thing? Do you remember what that  
23 would do?

24          A     That thing would turn clockwise.

25          Q     Okay. Did it make any difference which way you

1 were turning?

2 A Yes, it did. To the right, it will turn to -- it  
3 will click.

4 Q Click. And if you were turning to your port  
5 side, or your left side, which way would it turn?

6 A It would turn counterclockwise.

7 Q What was the next command you received?

8 A Twenty degrees right rudder.

9 Q And who gave you that command?

10 A Mr. Cousins.

11 Q Where was Captain Hazelwood during this time?

12 A I don't know.

13 Q Did you follow that order?

14 A Yes, I did.

15 Q What instruments did you look at then, to make  
16 sure the vessel was turning?

17 A The rudder indicator.

18 Q Do you ever remember seeing your partner come in,  
19 your -- Maureen Jones, during this time?

20 A No, I didn't.

21 Q Would you describe how Mr. Cousins was acting at  
22 that time, when he gave you the second command?

23 A He was calm.

24 Q How were you feeling?

25 A I was feeling okay



1 Q Do you have any idea of when this was happening  
2 now, after the vessel -- after you had taken over the helm?

3 A No, I don't.

4 Q Where was he standing when he gave you the second  
5 command?

6 A I think he was standing beside me.

7 Q How about the third command? Do you remember  
8 getting a third command?

9 A Yes, I did, and it was a hard right.

10 Q How long after the first command did you get the  
11 second command?

12 A I don't remember.

13 THE COURT: Can you give us an estimate of how  
14 long?

15 THE WITNESS: Maybe about 30 seconds, maybe? I  
16 just can't remember. Maybe 30 seconds or a minute.

17 BY MR. COLE: (Resuming)

18 Q How was Mr. Cousins acting then?

19 A He was acting normal then.

20 Q Do you remember Mr. Cousins saying anything to  
21 you at that time?

22 A No, he didn't.

23 Q Where was he standing when he gave you that  
24 command?

25 A He was standing -- I think he was standing -- he

1 was standing beside me, somewhere.

2 Q Did you turn the tanker hard right?

3 A Yes, I did.

4 Q How many degrees would you have turned the  
5 rudder?

6 A I think it's 35 degrees.

7 Q Did you do it fast, or did you do it slow?

8 A I did it fast.

9 Q How come you did it fast?

10 A Just to make up -- make sure that rudder was  
11 turning.

12 Q Did you think it wasn't turning?

13 A No, I didn't.

14 Q Was the heading changing at all?

15 A Yes, it was.

16 Q Were you watching the --

17 A I was --

18 Q -- gyro repeater?

19 A Yes, I was.

20 Q Okay. Did you -- what is a counter rudder?

21 A A counter rudder is a rudder to -- when you  
22 change -- change the -- change the other direction.

23 Q Why do you give a counter rudder?

24 A When you're ordered to.

25 Q Did you get a counter rudder command? Were you

1 ordered to give a counter --

2 A Yes, I was. It was a hard left.

3 Q Did that ever occur before while you were turning  
4 hard right?

5 A No, it wasn't.

6 Q Did you do a counter rudder command during the  
7 times it was turning ten degrees --

8 A No, I didn't.

9 Q -- twenty degrees hard right?

10 A No, I didn't.

11 Q Do you remember when the Exxon Valdez first hit  
12 ground?

13 A I don't remember.

14 Q Can you estimate how long after you'd been on the  
15 bridge that it occurred, before you hit the ground?

16 A I don't remember. I just -- I didn't have the --  
17 I didn't know what time it was, and so on.

18 Q What did it sound like when you first heard it  
19 hit the ground?

20 A It sounded like a little rattle, a little bump  
21 sensation.

22 Q How long did that last?

23 A I don't remember that, either.

24 Q Where was Captain Hazelwood at this time?

25 A I didn't -- I think he was on the bridge then.

1 Q Did you know he was there?

2 A I didn't know he was there or not.

3 Q Did you see him?

4 A I didn't see him.

5 Q What makes you think he was on the bridge?

6 A I -- I don't even remember if he (inaudible). I

7 don't think he was on the bridge then.

8 Q Where was Mr. Cousins at that time?

9 A He was on the bridge.

10 Q Do you remember where he was?

11 A I don't remember where he was.

12 Q Did Mr. -- did you see Mr. Cousins make a  
13 phonecall?

14 A Yes, I did.

15 Q What did Mr. Cousins do after that?

16 A He -- that was before the hard left.

17 Q Who execu -- when did the hard left turn occur?

18 A Right after -- right after he ordered me to turn  
19 a hard left.

20 Q Had you hit the ground yet?

21 A I don't think so. I don't remember, anyway.

22 It's -- \_\_\_\_\_, I'm getting confused.

23 Q Who made the turn hard left?

24 A Cousins and I. He -- I started on it, I started  
25 making that -- swinging that hard -- hard left, and he

1 grabbed ahold of the wheel and helped me swing it.

2 Q Would you describe his -- how he was acting then?

3 A I think he was kind of panicky then.

4 Q Why do you think that?

5 A I figure he was just kind of excited. He -- I  
6 don't --

7 Q Was it -- do you remember what Mr. Cousins did  
8 after he got off the phone?

9 A After he got off the phone he ordered me a hard  
10 -- ordered me to do a -- execute a hard left.

11 Q And that's when he helped you?

12 A Yes, he did.

13 Q When did you -- when after that -- were you  
14 aground at that time or not?

15 A I don't -- I don't -- I don't remember we were  
16 aground yet, no.

17 Q What happened after the tanker got grounded?  
18 What did you do?

19 A I stood by the -- stood by the conn.

20 Q What did Mr. Cousins do?

21 A I really don't know.

22 Q Do you remember anyone going out on the port  
23 wing?

24 A No, I didn't.

25 Q How about Maureen Jones. Did you see what she

1 did after the grounding?

2 A I think she was still out there.

3 Q At some point, do you remember Captain Hazelwood  
4 returning to the bridge?

5 A Yes, I did.

6 Q Where were you when -- during this time after he  
7 returned to the bridge?

8 A I was on the conn.

9 Q And who would have been on the throttle, or the  
10 teletype -- or telegraph?

11 A I guess it's the third mate.

12 Q Would you show the jury, using your pointer,  
13 where that -- where he would have stood if he were  
14 operating the throttle?

15 A Right here.

16 Q That would be right about number 21 he would  
17 stand?

18 A Yes.

19 Q Do you remember being asked to make some hard  
20 right and hard left turns?

21 A Yes, I did.

22 Q When did that happen?

23 A Probably after the grounding.

24 Q How many times were you asked -- how long did you  
25 stay at the helm?

1 A I stayed until I was relieved by Maureen Jones.

2 Q What time was that?

3 A At ten minutes to 2:00.

4 Q Would you have made all the turns of the Exxon  
5 Valdez from the time of the grounding until you were  
6 relieved?

7 A Yes, I would have.

8 Q How many times did you make turns at -- at the  
9 request of Captain Hazelwood?

10 MR. CHALOS: Your Honor, I object to the word  
11 "turns."

12 THE COURT: This is as good time as any to take a  
13 break. We'll take a break, ladies and gentlemen, for about  
14 ten minutes, fifteen minutes or so. Don't discuss the case  
15 among yourselves, or form or express any opinions, or  
16 discuss it with anybody else. You all can go to your jury  
17 room now. I'll take this matter up outside your presence.

18 (Whereupon, the jury leaves the courtroom.)

19 THE COURT: Make your objection.

20 MR. CHALOS: Yes, Your Honor. I object to the  
21 use of the word "turn." I think what Mr. Cole meant was  
22 turn of the wheel rather than the vessel actually turning.

23 THE COURT: That what you meant, wasn't it? How  
24 many times did you turn the wheel?

25 MR. COLE: Right.

1 THE COURT: All right. That's fine.  
2 Objection sustained as to the form of the  
3 question. You can rephrase it when we come back.

4 MR. COLE: Sure.

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

7 (Whereupon, at recess was taken from 2:45 p.m. to  
8 3:02 p.m.)

9 THE COURT: Did somebody need to bring something  
10 up at this time?

11 MR. : Yes, Your Honor. May we  
12 approach the bench?

13 (The following was said at the bench.)

14 MR. : Judge, something has come to my  
15 attention which I think you may want to make some inquiry  
16 into, and that concerns --

17 THE COURT: (Inaudible) if you want to, since  
18 we're up to. That, or we can take it back there.

19 MR. : (Inaudible) videotape  
20 (inaudible). I'm also told by the Department of Justice  
21 (inaudible) Exxon a well.

22 THE COURT: Is this the videotape \_\_\_\_\_  
23 Exxon? (Inaudible) allowing somebody to take this  
24 (inaudible) videotape, now. Not stenographic?

25 MR. : (Inaudible) witness room which



1 is located \_\_\_\_\_ everything that is going on in the  
2 courtroom, because --

3 THE COURT: \_\_\_\_\_ in the media room you can  
4 hear things -- I mean, in the witness room?

5 MR. : Yes.

6 (Inaudible)

7 MR. : -- talked about this earlier. I  
8 didn't realize our witnesses were staying there.

9 MR. : They're right across from --

10 THE COURT: Right. I didn't realize they were  
11 there.

12 MR. : (Inaudible).

13 THE COURT: All right. I'm assuming that's  
14 correct, so you can change that, from now on, and we'll  
15 recess, and we'll have Scott -- do you know the person who  
16 told you that there's somebody there videotaping  
17 \_\_\_\_\_?

18 MR. : I spoke to the gal who's  
19 videotaping for the Department of Justice. I do not know  
20 (inaudible).

21 THE COURT: Okay. Anybody who's videotaping, I  
22 want them to be brought \_\_\_\_\_ into my chambers.  
23 Scott, call Mr. Russo, and Mr. Cole, you find out who's  
24 videotaping in the media room, and I want them brought into  
25 my chambers right now (inaudible) going on there.

1           Okay. And if you know if anybody else is  
2 videotaping, have them bring -- bring them in, too.

3           (The following was had in open court:)

4           THE COURT: All right. We'll stand in recess for  
5 a couple of minutes to resolve this.

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

8           (Whereupon, a recess was taken from 3:04 p.m. to  
9 3:14 p.m.)

10          THE COURT: You may be seated.

11          What's happened that the media should be aware of  
12 is that there's some nonauthorized people who have been  
13 using the media room in the back I don't make the media  
14 guideline rules. Those are established by the Supreme  
15 Court. But I'm here to enforce them.

16          Unless you have a press pass, unless you've  
17 signed the media request and been approved by the Court,  
18 you're not permitted to use the media courtroom in the  
19 back. There is some video coverage being taken by the  
20 Department of Justice, who has no authority to do that.  
21 There was a commercial reproduction outfit in the back who  
22 has no authority without a press pass.

23          And I would just encourage the media personnel to  
24 consider that this has been permitted to allow media  
25 coverage of this trial. It's not to allow commercial

1 reproductions and sale of that, and if your purpose is to  
2 -- under the auspices of a media request, take video so you  
3 can sell it to the Department of Justice, the state of  
4 Alaska, Exxon or other people who might be involved in the  
5 civil litigation, then you're jeopardizing the media  
6 coverage of this trial for those who honestly wish to  
7 reproduce it for media broadcast.

8           If this persists, I will be -- I don't want to  
9 make threats, but if it persists, I'll have to close down  
10 the media room in the back so I'll know exactly who's  
11 involved in media reproduction here.

12           I would like you to use some good judgment. You  
13 must have a press pass. I've noticed several people do not  
14 wear their press passes. If you don't have a press pass,  
15 then the very thing that happened earlier, the possibility  
16 of jury taint takes place.

17           This is a heavily covered trial, and it's up to  
18 the media to exercise some good judgment here. I would  
19 like to see press passes on everybody. I would appreciate  
20 it if you would have a press pass available before you go  
21 into the media room in the back.

22           If you haven't requested media coverage, please  
23 do so. We have those forms, and I will be happy, if it's  
24 for media purposes, to sign that form, and you can fool  
25 with the service who's handling this -- I believe it's

1 KTUU. They're the ones who seem to be doing this.

2           When KTUU is not available, I will allow somebody  
3 else to do that, but I would like you to have a broadcast  
4 for media purposes, for news purposes, not commercial  
5 reproduction, and if there's going to be an abuse of that,  
6 I'll have to take steps to curtail that, which might  
7 involve curtailing, in general, some media coverage of the  
8 trial. I hope not to do that.

9           Let's bring the jury in.

10           I thank counsel for bringing this to my  
11 attention. I was unaware of that until counsel brought it  
12 to my attention.

13           (Whereupon, the jury enters the courtroom.)

14           THE COURT: Thank you, ladies and gentlemen. You  
15 may continue.

16           BY MR. COLE: (Resuming)

17           Q     Mr. Kagan, when we took our break, we were  
18 talking about what happened after the Exxon Valdez  
19 grounded. Do you remember taking orders to turn the vessel  
20 right and left?

21           A     Yes, I did.

22           Q     Do you remember how many times you were ordered  
23 to turn the vessel right and left?

24           A     I really don't remember.

25           Q     Do you think your memory might be refreshed if

1 you were able to take a look at a course recorder?

2 A No, it won't.

3 Q How long were you at the helm, given -- when  
4 these instructions were being given?

5 A Oh, I don't remember how long.

6 Q What was the purpose of all this, of the hard  
7 right and hard left?

8 A To keep --

9 MR. CHALOS: Objection, Your Honor.

10 MR. COLE: If he knows.

11 THE COURT: If you know what the purpose was.

12 THE WITNESS: No, I wasn't sure.

13 BY MR. COLE: (Resuming)

14 Q What did you think?

15 MR. CHALOS: Judge --

16 THE COURT: He's laying a foundation for what he  
17 thought, but without that, it's not very meaningful.

18 BY MR. COLE: (Resuming)

19 Q Did you -- did --

20 MR. COLE: I just want to think about this one.

21 (Pause)

22 BY MR. COLE: (Resuming)

23 Q Did you hear the Captain talking on the -- to the  
24 Coast Guard?

25 A No, I didn't.

1 Q Did the captain ever talk to you?

2 A Just gave me -- just gave me orders, wheel  
3 orders.

4 Q Based on your experience, what did you think the  
5 captain was trying to do?

6 MR. CHALOS: Objection.

7 MR. COLE: I believe that that's -- he can say,  
8 based on his own experience, what he was trying to do, or  
9 what he thought he was trying to do.

10 MR. CHALOS: Well --

11 THE COURT: I don't know, but I would imagine  
12 this is a fairly unique situation, and unless you can  
13 establish he's got some experience like this, I'm going to  
14 sustain the objection.

15 I mean, I assume this is -- this is after the  
16 vessel has gone aground?

17 MR. COLE: Yes.

18 THE COURT: The objection is sustained, unless  
19 you can tie it up with some experience.

20 BY MR. COLE: (Resuming)

21 Q You don't remember what was going on? Is that  
22 right?

23 A Yes.

24 Q Have you told other people in the past what you  
25 thought was happening?

1 A No, I didn't.

2 Q Do you remember being interviewed by Investigator  
3 Delozier --

4 A Yes.

5 Q -- of the day of the grounding?

6 A Yes.

7 Q Okay. And do you remember telling him what  
8 happened, what you remember happening that -- earlier that  
9 morning?

10 A I can't -- yes, I did. I think I did. Well --

11 Q Do you remember telling him, after grounding, the  
12 master gave commands of left and right rudder in an attempt  
13 to steer off ground?

14 A I might have said that, but I wasn't sure -- I  
15 really wasn't sure what he was doing.

16 Q Okay. Well, do you remember talking to the FBI?

17 A Yes, I have.

18 Q And where -- when was that?

19 A That was right after.

20 Q And do you remember telling them that he --  
21 that's you -- stated that he does not remember additional  
22 rudder commands to try and free the ship after the first  
23 five or ten minutes when the captain did make such an  
24 attempt. Do you remember telling him that?

25 A I really -- the concept of time wasn't -- wasn't

1 in my mind when I was up there. All I was doing was trying  
2 to get -- steer that thing out.

3 Q You were trying to do what?

4 A I was trying to -- I was trying -- I was just  
5 trying to follow orders from the captain.

6 Q And do you remember speaking with the Grand  
7 Jury? Do you remember that you spoke with the Grand --

8 A Yes.

9 Q -- in front of the Grand Jury?

10 A Yes, I did.

11 Q And that was a group of people that sat in front  
12 of you?

13 A That's right.

14 Q And you were asked questions at that by Miss  
15 Henry?

16 A Yes.

17 Q And do you remember telling them, "Yes, I was on  
18 the helm when he came up on the bridge, and that's when he  
19 gave me a couple of wheel commands, to, I guess, rock the  
20 ship off the skoals?" Do you remember giving that answer?

21 A Yes, I did, but I've -- I just -- I said I guess.  
22 I wasn't really sure if he was going to -- what he was  
23 doing.

24 Q Did Captain Hazelwood say anything to you that  
25 evening, that morning, about your job?



1 A He said I did a hell of a job.

2 Q When did you get off work that day?

3 A At 4:00 o'clock in the morning.

4 Q What did you do after you were relieved by Miss  
5 Jones at the helm?

6 A I stood on -- I stood on the bridge until I was  
7 relieved by the 4:00 to 8:00 watch.

8 Q Did you have any idea of how much damage had been  
9 done to the Exxon Valdez?

10 A No, I don't.

11 Q When did you learn?

12 A I learned daylight.

13 Q Tell the jury about that?

14 A It was just a lot of -- just a lot of oil around  
15 the ship. That's -- that's all I could see.

16 Q Were you surprised when you woke up in the  
17 morning?

18 A I was -- I was pretty -- I was very surprised.

19 Q What was Captain Hazel -- no, let me retract  
20 that.

21 You had worked for Exxon for how many years?

22 A Fifteen years.

23 Q What has been their policy towards the possession  
24 of alcohol on board tankers?

25 A They will fire you.

1 Q What about alcohol use on tankers?

2 A They will fire you, too.

3 Q Did you have any alcohol in your possession on  
4 the 23rd of March, 1989?

5 A No, I didn't.

6 Q Did you know of any alcohol that was on board?

7 A No, I didn't.

8 MR. COLE: Judge, I have nothing further.

9 CROSS EXAMINATION

10 BY MR. CHALOS:

11 Q Good afternoon, Mr. Kagan.

12 A Good afternoon.

13 Q Sir, at the time of the grounding, you held the  
14 Coast Guard-issued AB's ticket, able-bodied seaman's  
15 ticket?

16 A Yes, I did.

17 Q You were assigned to the Exxon Valdez by Exxon,  
18 were you not?

19 A Yes, I was.

20 Q I'd like to direct your attention, please, to  
21 2250 when you changed watch?

22 A Yes.

23 Q At that time, you said that Mr. Claar told you  
24 that the vessel was steering 180 and that it was on the  
25 Mike.

1 A Yes.

2 Q Is that correct?

3 A Yes, it was.

4 Q When he gave you that -- that information, did  
5 you repeat it back?

6 A Yes, I did.

7 Q Did you do it in a loud voice?

8 A Yes, I did.

9 Q Was the third mate standing right there?

10 A I didn't see the third mate.

11 Q Did you say 180 on the Iron Mike?

12 A Right.

13 Q Now, do you recall giving a statement to the NTSB  
14 and to the FBI where you said that you took -- you and Mr.  
15 Cousins both reached for the button to take the vessel off  
16 gyro?

17 A Yes.

18 Q And do you remember telling them that you did  
19 that about two or three minutes after you got on the watch?

20 A I didn't -- I don't remember saying that.

21 Q Now, tell us what you did to take this ship off  
22 gyro?

23 A Well, it's usually the -- usually they press a  
24 button and the light goes off on the console.

25 Q Now, you -- go ahead.

1           A     And that's it.

2           Q     And that's all you have to do to take it off

3 gyro, to push a button?

4           A     Yes.

5           Q     Push a button?

6           A     Yes.

7           Q     And did you do that?

8           A     The second mate did it -- I meant third mate did

9 it.

10          Q     Mr. Cousins?

11          A     Yes, Mr. Cousins.

12          Q     And you were standing right there?

13          A     Yes.

14          Q     You saw the light go out?

15          A     Yes, I did.

16          Q     Were you in the helm mode at that time?

17          A     Yes, it was.

18          Q     That means that you were in hand steering?

19          A     Yes.

20          Q     Did anybody put this vessel on gyro after it was

21 taken off?

22          A     No, it wasn't.

23          Q     Before the grounding?

24          A     No, it wasn't.

25          Q     You said that you checked the magnetic compass as

1 well, when you went on watch.

2 A Yes.

3 Q So -- to make sure that it jibed with the gyro  
4 compass?

5 A Yes.

6 Q Did it?

7 A Yes, it did.

8 Q I'd like to ask you about the time that you  
9 chased the compass.

10 A Oh, that was -- that was a long time ago. That  
11 was --

12 Q How long ago was that?

13 A That was maybe my first trip up there.

14 Q In January?

15 A Yes.

16 Q That was on this ship, right, the Exxon Valdez?

17 A Yes, yes, it was.

18 Q And that was with a different captain?

19 A Yes.

20 Q And a different mate?

21 A Yes.

22 Q At that time, when you started chasing the  
23 compass, you started to put right rudder on, and the ship  
24 got away from you and started to go too fast to the right?

25 A Yes.

1 Q Were you yelled at for that?

2 A Yes, I was.

3 Q Who yelled at you?

4 A Second mate.

5 Q As a result of that, were you a little concerned  
6 about letting the ship get away from you when you steered?

7 A Yes, I was.

8 Q Would you say that, then, you were a little timid  
9 about putting too much wheel on, too much wheel on the  
10 ship?

11 A Well, the -- I guess a little bit, but when they  
12 gave me orders to rudder commands, I do it -- what they  
13 say.

14 Q Right. The first command that you got was 10  
15 degree right rudder?

16 A Yes, it was.

17 Q Did you put the wheel to 10 degrees immediately,  
18 or did you sort of ease your way over?

19 A I put immediately to 10 degrees.

20 Q You weren't concerned about the possibility of  
21 oversteering?

22 A No, sir.

23 Q Now, how long did you hold the 10 degree right  
24 rudder?

25 A I really don't remember.

1 Q You said the next command that you were given was  
2 20 degrees right rudder?

3 A That's right.

4 Q Correct? Did you put the wheel over 20 degrees  
5 right rudder immediately --

6 A Yes.

7 Q -- or did you ease it over?

8 A I immediately put it over.

9 Q Tell me what you did to make a 10 degree right  
10 rudder turn? How many times did you turn the wheel?

11 A I could turn it -- you turn it until it gets to  
12 10 degrees.

13 Q And you're watching the rudder indicator?

14 A Yes.

15 Q And did the indicator go to 10 degrees?

16 A Yes, it did.

17 Q And then did the rudder indicator follow that?

18 A Yes, it did.

19 Q Were you watching the rate of turn indicator at  
20 all?

21 A Yes, I was.

22 Q The rate of turn indicator indicates how much the  
23 vessel's heading is changing, isn't that correct?

24 A Yes, right.

25 Q Was the vessel responding to your 10 degree turn?

1 A It was starting into a slow turn.

2 Q Did you expect the vessel to turn faster?

3 A I just remember -- I don't know -- wait a  
4 minute. I think it was -- I think it was doing what it was  
5 supposed to do.

6 Q Now, during this time when you were given the 10  
7 and 20 degree right rudder command, were you ever told to  
8 steer a specific course?

9 A No, I didn't.

10 Q Do you remember telling the NTSB and the FBI that  
11 you were trying to steady up on course 235 or 245?

12 A No, I was -- I did not. I told -- I told them  
13 that we -- the second mate and I discussed it.

14 Q You and the -- you mean the third mate?

15 A Third mate, I mean. I'm sorry.

16 MR. CHALOS: Your Honor, may I approach the  
17 witness?

18 (Pause)

19 MR. COLE: Can we get a page cite on that?

20 MR. CHALOS: Yes. This is the NTSB interview of  
21 March 28, 1989, and I'm on the first page, in the second  
22 paragraph, the last sentence.

23 BY MR. CHALOS: (Resuming)

24 Q It says here, before the hard right rudder order,  
25 he believed he had used some counter rudder to slow the



1 swing as he was preparing to steady on a course of 235 or  
2 245.

3 A The only counter -- the only counter rudder I've  
4 made was when I made a hard left at the reef.

5 Q That's when the third mate made the hard left?

6 A Yes.

7 Q So it's your recollection today that you never  
8 tried to steady up on 245?

9 A No, I didn't.

10 Q And the mate never gave you a course of 245?

11 A No, he did not.

12 Q You don't recall how long you held the 20 degrees  
13 right rudder?

14 A No, I don't.

15 Q Now, you said that Mr. Cousins was calm when he  
16 was giving you the orders. Am I correct?

17 A Yes.

18 Q You said to the NTSB and, I think, to the FBI  
19 that a hard right rudder command is not unusual in Prince  
20 William Sound. Is that right?

21 A Yes.

22 Q That didn't cause you any concern when he gave  
23 that order?

24 A No, it did not.

25 Q Now, before you were given the hard left order,

1 you said you saw the mate on the telephone.

2 A Yes.

3 Q Is it your recollection that Captain Hazelwood  
4 came up shortly after to make the call?

5 A Yes.

6 Q And was it between the time Captain Hazelwood  
7 came up and that telephone call that the hard left was put  
8 on?

9 A Yes.

10 Q Now, when Captain Hazelwood came up on the  
11 bridge, was his first order to you to put the rudder amid  
12 ships?

13 A Yes.

14 Q And was it thereafter some time that he gave you  
15 some additional orders?

16 A Yes.

17 Q Was Captain Hazelwood calm when he was giving you  
18 the orders?

19 A Yes, he was.

20 Q Did he appear in command?

21 A Yes. Yes, sir.

22 Q Was he collected?

23 A I think he was.

24 Q Did he appear to you to be drunk?

25 A No, sir.

1 Q Did he appear to you to be impaired?

2 A No, sir.

3 Q Now, you -- you and Captain Hazelwood didn't have  
4 any conversation other than the commands you got from him,  
5 right?

6 A No, just --

7 Q So you don't know what Captain Hazelwood's  
8 strategy was in giving you the command?

9 A No, I didn't.

10 Q Now, Mr. Cole asked you a series of questions  
11 about what Captain Hazelwood was trying to do?

12 A Yes.

13 Q And he showed you some testimony from the NTSB?

14 A Yes.

15 Q Do you remember meeting with Miss Henry on  
16 Saturday?

17 A Yes, I did.

18 Q And do you remember telling her that you believed  
19 what the captain was trying to do was to keep the vessel on  
20 the reef?

21 A Yes, I was --

22 MR. CHALOS: I think I'm about through, Your  
23 Honor. I just want to check my notes for a second.

24 (Pause)

25 BY MR. CHALOS: (Resuming)

1 Q Now, Mr. Kagan --

2 A Yes.

3 Q When the third mate was giving you orders, on  
4 what side of you was he standing?

5 A I think he was standing on the left hand side of  
6 me, but I can't remember.

7 Q You have a slight problem in your left ear, don't  
8 you?

9 A No, I don't.

10 Q Do you remember taking a medical about a year  
11 ago?

12 A Yes.

13 Q And you were diagnosed as having a problem with  
14 your left ear?

15 A It's not my left. I think it was my right.

16 Q Let me read you --

17 MR. COLE: First of all, I object if he's going  
18 to read it (inaudible) --

19 MR. CHALOS: Well, let me show it. Let me  
20 show --

21 MR. COLE: -- and I'd like to see it first.

22 (Pause)

23 BY MR. CHALOS: (Resuming)

24 Q Let me show you a report dated February 19, 1988,  
25 called an audiological report from Elmwood Ear, Nose and

1 Throat Clinic. I guess that's down in Jefferson,  
2 Louisiana.

3 A Yes.

4 Q Read the second paragraph, and let me ask you if  
5 that refreshes your recollection?

6 (Pause)

7 Okay?

8 A Okay.

9 Q Does that refresh your recollection now, that it  
10 was your left ear?

11 A Well, they said -- he said to my right -- he said  
12 to my right ear.

13 Q He said your right ear was normal?

14 MR. COLE: I object. You ask -- may we approach  
15 the bench?

16 THE COURT: Yes.

17 (The following was said at the bench:)

18 MR. COLE: Judge, \_\_\_\_\_ cannot  
19 say \_\_\_\_\_ best of his recollection (inaudible) ask  
20 does this refresh your recollection. If it doesn't, then  
21 it doesn't.

22 THE COURT: All right. Mr. Chalos, he didn't  
23 indicate he didn't have a good recollection. He answered  
24 your question. Now, if you wish to impeach him, you have  
25 to do it another way. This is hearsay. (Inaudible)

1 somebody up there.

2           If he said, "I don't remember, it's different."  
3 You refresh his recollection. But this is not the kind of  
4 document that's used. So unless you've got somebody who's  
5 willing to testify about it, I'm going to sustain the  
6 objection. He's answered your question.

7           (The following was said in open court.)

8           THE COURT: Objection sustained.

9           MR. CHALOS: Mr. Kagan, I have no further  
10 questions, thank you.

11                               REDIRECT EXAMINATION

12           BY MR. COLE:

13           Q     I've got a couple, Mr. Kagan.

14           A     Okay.

15           Q     When you spoke with Miss Henry on Saturday -- you  
16 remember that conversation?

17           A     Yes.

18           Q     And you were asked what you thought the captain  
19 was trying to do and, as you told Mr. Chalos, you said he  
20 was trying to take it off -- or keep it on the rocks.

21           A     Yes.

22           Q     Do you remember why you told Miss Henry that?

23           A     I wasn't sure what he was doing up there. As far  
24 as my wheel commands, I just follow orders from him.

25           Q     Why did you tell her, though, that you thought

1 that he was trying to keep it on the rocks?

2 A I can't answer that question.

3 Q Try to answer it.

4 A Okay. That's what I thought he was doing, but I  
5 heard later that that's what he tried to do, and there was  
6 no engine -- stern orders from the bell book.

7 Q Is it based on conversations that you had with  
8 other people?

9 A Yes.

10 Q Who were those other people? When did you talk  
11 about this?

12 A Right after -- well, right on the -- after the  
13 grounding.

14 Q And was it significant to you, the amount of  
15 damage that you saw the next day?

16 MR. CHALOS: Objection, Your Honor. There's no  
17 foundation for that question.

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

19 BY MR. COLE: (Resuming)

20 Q Remember waking up the next day and seeing all  
21 the damage?

22 A I just saw the -- I didn't know how much damage  
23 it was, but I saw a lot of oil.

24 Q When you talked with other people about this, has  
25 this been since that time? People that you worked with?

1 A Yes.

2 Q And did anybody express to you their opinion that  
3 you -- about the actions of the captain?

4 MR. CHALOS: Your Honor, I object. The answer  
5 will have to be hearsay.

6 THE COURT: I'm going to overrule the objection.  
7 Under the rules, I don't think it is hearsay. I think it's  
8 used for impeachment purposes in this case. I'm overruling  
9 the objection.

10 THE WITNESS: What was the question again?

11 THE COURT: It's not being offered for the truth  
12 of the matter. It's being offered to explain his  
13 testimony.

14 BY MR. COLE: (Resuming)

15 Q Did the people that you talked with express to  
16 you whether or not they thought it was -- that a captain  
17 would try and take a tanker that had grounded that he would  
18 try and take it off?

19 A No. Not in this situation. That's what I  
20 figured; well, the word was passed that he was going to try  
21 -- the captain was going to try to keep the ship on the  
22 rocks.

23 Q And that was because no one would try and take it  
24 off the rocks?

25 A No, sir.



1 MR. CHALOS: Your Honor, I object to that  
2 question?

3 THE COURT: That's the end of the inquiry on this  
4 area.

5 (Pause)

6 BY MR. COLE: (Resuming)

7 Q Now, Mr. Chalos asked you a number of questions  
8 about what happened after the time that Mr. Cousins called  
9 and when you gave the left -- the counter rudder to the  
10 left. Do you remember those questions?

11 A Yes, I did.

12 Q Did you see Captain Hazelwood on the bridge when  
13 you made that counter turn to the left?

14 A I don't remember. I don't really remember.

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

16 MR. CHALOS: Nothing from us, Your Honor.

17 THE COURT: Can this witness be excused?

18 MR. COLE: Yes, he may.

19 THE COURT: Is there any further need for him?

20 MR. CHALOS: None from us.

21 THE COURT: You're excused from further  
22 participation in this trial.

23 (The witness was excused at  
24 3:45 p.m.)

25 THE COURT: Call your next witness.

1 MR. COLE: Judge, the next witness is Mr.  
2 Cousins. It's going to be extended time. I'm more than  
3 happy to start, but --

4 THE COURT: Why don't you start on him and get  
5 some preliminary matters out of the way?

6 MR. : I have to go downstairs, so I'll  
7 be right back.

8 (Pause)

9 Whereupon,

10 GREGORY COUSINS

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

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

16 THE WITNESS: Gregory T. Cousins. It's Cousins,  
17 C-o-u-s-i-n-s.

18 THE CLERK: And what is your current mailing  
19 address?

20 THE WITNESS: 13966 Fletchers Mill Drive, Tampa,  
21 Florida.

22 THE CLERK: That's Tampa?

23 THE WITNESS: Yes.

24 THE CLERK: And your occupation?

25 THE WITNESS: I'm on fleet reserve with Exxon

1 Shipping Company.

2 THE COURT: Would counsel approach the bench for  
3 a minute, please?

4 (The following was said at the bench:)

5 THE COURT: \_\_\_\_\_ getting tired. I can tell  
6 that. I'd appreciate it, when we're swearing the witness  
7 in, if you could sit back so we can stress the swearing  
8 in. Okay.

9 (The following was said in open court:)

10 DIRECT EXAMINATION

11 BY MR. COLE:

12 Q Now, Mr. Cousins, can you tell the jury how long  
13 you've been in the maritime industry?

14 A Approximately 13 years.

15 Q And can you -- would you explain what positions  
16 you've held those 13 years -- from the beginning?

17 A I started out as an ordinary seaman aboard a NOAA  
18 Fisheries Research vessel. Put in enough time to get an  
19 AB's endorsement. Shortly after I received that  
20 endorsement, I went to work with Exxon Shipping Company.

21 Q How long have you worked for Exxon?

22 A It's been nearly ten years now.

23 Q And have you always worked with them? What  
24 licenses have you acquired since working with Exxon as an  
25 AB?

1 A The last license was a second mate's license.

2 Q Did you -- when did you acquire your third mate's  
3 license?

4 A I believe that was in February of 1986.

5 Q And when did you acquire your second mate's  
6 license?

7 A February of 1989.

8 Q Where have you worked for Exxon? And what -- has  
9 it been primarily petroleum tankers?

10 A Yes, exclusively.

11 Q And has it been on the East Coast and the West  
12 Coast?

13 A Both.

14 Q After you got your third mate's license, did you  
15 immediately begin serving as a third mate?

16 A As I recall, it was about eight months after  
17 receiving the license.

18 Q So that would have been sometime around 1987, the  
19 beginning --

20 A In January of '87.

21 Q Now, does Exxon provide any training for its  
22 mates, third or -- the third mates for ship handling or  
23 anything like that?

24 A No, that would be onboard experience, by  
25 observation and --

1 Q Did you attend -- well, tell the jury how you got  
2 your third and second mate's license?

3 A Through a -- studies at a maritime licensing  
4 school in New Orleans.

5 Q Was it a program where you actually went to  
6 school, or was it a home study program?

7 A It was both. It allowed flexibility in time in  
8 school and materials that you could take with you to study  
9 at home, if need be.

10 Q How did you do it?

11 A I spent time in school and also studied at home.

12 Q Can you give the jury an idea of how many times  
13 you have entered the Prince William Sound on the helm?

14 A On the helm?

15 Q Yeah, at the helm. Or -- I'm sorry. Let me take  
16 that back.

17 How many times have you travelled to Prince  
18 William Sound for your job on a tanker?

19 A Including my AB time?

20 Q Yeah.

21 A Oh, between 26 and 30 times, perhaps.

22 Q And can you give the jury an idea of how many  
23 times you would have been on the bridge of those times, in  
24 and out?

25 A More than half.

1 Q When did you get assigned to the Exxon Valdez?

2 A I don't recall the date right offhand. I believe  
3 my first assignment was in 1987. I'm not -- I'm not real  
4 sure about that. It may have been in the spring of '88.  
5 I'm not sure.

6 Q Can you give the jury an idea of how many terms  
7 you served on the Exxon Valdez?

8 A I had three assignments. The last assignment was  
9 my third.

10 Q I'm going to ask you to identify some of these  
11 exhibits.

12 I'm showing you what has been marked for  
13 identification as Plaintiff's Exhibit Number 45. Do you  
14 recognize that?

15 A That's the course recorder.

16 Q Okay. Is that a fair and accurate picture of the  
17 course recorder on the Exxon Valdez?

18 A Yes.

19 MR. COLE: I would move for the admission of  
20 what's previously been identified as Plaintiff's Exhibit  
21 Number 45.

22 MR. CHALOS: No objection.

23 THE COURT: It's admitted.

24 (State's Exhibit 45 was  
25 received in evidence.)

1 BY MR. COLE: (Resuming)

2 Q And I'm showing you what's been identified as  
3 Plaintiff's Exhibit Number 49. Do you recognize that  
4 exhibit?

5 A Yes. Loran and the SATNAV units.

6 Q And that was on the Exxon Valdez?

7 A Yes.

8 MR. COLE: I would move for the admission of  
9 what's previously been identified as Plaintiff's Exhibit  
10 Number 49.

11 MR. CHALOS: No objection. 49.

12 MR. COLE: 49.

13 THE COURT: 49?

14 MR. COLE: I'm sorry, yes.

15 THE COURT: It's admitted.

16 (State's Exhibit 49 was  
17 received in evidence.)

18 BY MR. COLE: (Resuming)

19 Q And where were these two -- you can look at the  
20 diagram -- where was the course recorder located on the  
21 bridge?

22 A Right here.

23 Q And the SATNAV that you identified, where would  
24 that have been?

25 A I believe that's -- 33 here.

1 Q I'm showing you what has been marked for  
2 identification as Plaintiff's Exhibit Number 50. Do you  
3 recognize that?

4 A That's the RDF.

5 Q Can you explain what the RDF is?

6 A It's a radio direction finder.

7 Q And was that on the Exxon Valdez in the  
8 chartroom?

9 A Yes.

10 MR. COLE: I would move for the admission of  
11 what's previously been identified as Plaintiff's Exhibit  
12 Number 50.

13 MR. CHALOS: No objection.

14 THE COURT: It's admitted.

15 (State's Exhibit 50 was  
16 received in evidence.)

17 BY MR. COLE: (Resuming)

18 Q Where would the RDF have been located?

19 A On this next table.

20 Q I'm showing you what's been marked for  
21 identification as Plaintiff's Exhibit Number 43. Do you  
22 recognize that?

23 A Yes.

24 Q What's that a photograph of?

25 A That's a picture of the chart room.



1 Q Is that a fair and accurate representation of the  
2 chart room?

3 A Yes.

4 MR. COLE: I would move for the admission of  
5 what's previously been identified as Plaintiff's Exhibit  
6 Number 43.

7 MR. CHALOS: No objection.

8 THE COURT: It's admitted.

9 (State's Exhibit 43 was  
10 received in evidence.)

11 BY MR. COLE: (Resuming)

12 Q I'm showing you what's been marked for  
13 identification as Plaintiff's Exhibit Number 39. Do you  
14 recognize that photograph?

15 A Yes.

16 Q What's that a photograph of?

17 A It looks like the starboard bridge wing.

18 Q Okay. On the Exxon Valdez?

19 A On the Exxon Valdez.

20 Q A fair and accurate representation?

21 A Yes.

22 MR. COLE: I would move for the admission of  
23 what's previously been identified as Plaintiff's Exhibit  
24 Number 39.

25 THE COURT: Any objection?

1 MR. CHALOS: No objection.

2 THE COURT: All right. Before you go any  
3 further, are you going to go through all those exhibits?

4 MR. COLE: Yes.

5 THE COURT: all right. We'll take our recess for  
6 the day now.

7 That exhibit is admitted.

8 (State's Exhibit 38 was  
9 received in evidence.)

10 THE COURT: We'll recess until 8:30 tomorrow  
11 morning, ladies and gentlemen. With my discussion not to  
12 discuss the matter among yourselves or with any other  
13 person -- that's a real important instruction, as you can  
14 see. And not to form or express any opinions.

15 So you can be in a position to plan accordingly,  
16 I want to give you a couple of items of information. I  
17 believe next Monday is President's Day. That's a week from  
18 today, and that is a court holiday, I believe. Is that  
19 right, Scott?

20 THE CLERK: Yes, sir.

21 THE COURT: That is a court holiday. We will not  
22 be conducting trial a week from today. So you can start  
23 planning your three-day weekend.

24 Also, we will be starting a new schedule starting  
25 a week from tomorrow, the 20th. That's from 8:30 until

1 1:30. We'll get started promptly at 8:30 in the morning  
2 with the jury. We've been not starting until later, as you  
3 know, so we can take up matters outside your presence, but  
4 I ask you to come here by 8:30 so I'll know you'll be ready  
5 to go by 9:00, so I'll ask you to come in at 8:15 during  
6 those days, so I know we'll be ready to go at 8:30.

7           And, as I see my schedule, that's how we'll be  
8 doing it from now on: 8:30 until 1:30, with no lunch  
9 breaks, but with periodic breaks like we've been taking,  
10 and then you'll be free to go at the end of the day, at  
11 1:30.

12           So that's just for your own information. We'll  
13 see you back tomorrow morning at 8:30.

14           Anything further from counsel?

15           MR.                 : No, Your Honor.

16           MR.                 : No, Your Honor.

17           THE CLERK: We will stand in recess.

18           THE CLERK: Please rise. This court stands in  
19 recess.

20           (Whereupon, at 3:58 p.m., the hearing recessed.)  
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SUPERIOR COURT )  
STATE OF ALASKA ) Case No. 3ANS89-7217  
Case No. 3ANS89-7218

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

  
ALEXANDRA TOMALONIS