

***Exxon Valdez* Oil Spill**

State Trial Transcript

Case Number 3AN-89-2533 civil

1994

Volume 1 - Volume 11

Includes State Court Hearing Excerpts

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NOTEBOOK 1

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- (1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT AT ANCHORAGE
 (3) In re:)
 (4))
 (5) EXXON VALDEZ OIL SPILL)
 Case No. 344-89-2533 CI)
 (6) EXCERPT OF TRANSCRIPT OF PROCEEDINGS
 Friday, June 17, 1994
 (7) 9:10 a.m.
 (8) A-P-P-E-A-R-A-N-C-E-S
 (9) Plaintiffs: N. ROBERT STOLL
 Stoll, Stoll, Berns & Lokting
 209 Southwest Oak Street
 Portland, OR 97204
 Ph: 503/227-1600
 (10) TIMOTHY J. PETUNAGIS
 Birch, Horton, Bittner & Chenot
 1127 W. 7th Avenue
 Anchorage, AK 99501
 Ph: 907/276-1550
 (11) CHARLES J. FORTIER
 Fortier & Mikko
 2250 Denali Street, Suite 604
 Anchorage, AK 99503
 Ph: 907/277-4222

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- Defendants: CHARLES P. DIAMOND
 O'Helvey & Myers
 400 South Hope Street
 Los Angeles, CA 90071-2899
 Ph: 213-669-6000
 (1) Transcribed by: Joy S. Brauer, RFR
 Registered Professional Reporter

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- (1) PROCEEDINGS
 (2) THE COURT: We're on the record in
 (3) the Exxon Valdez litigation. Counsel, you called
 (4) yesterday to set up a hearing and I - and I have
 (5) some things I'd like to discuss with you
 (6) independently of that call, so I'm glad you're
 (7) here. What is it that you want?
 (8) MR. STOLL: Your Honor, yesterday
 (9) afternoon, the Ninth Circuit issued an opinion in
 (10) the appeal, an interlocutory appeal plaintiffs have
 (11) filed and we sent a courtesy copy of it to the
 (12) Court, and of course Mr. Diamond had a copy and we
 (13) are concerned because the transcript, the gist of
 (14) the opinion, as the Court can see, was a quotation
 (15) to - supposedly what the Court's view was and
 (16) the - the quotation was an error and I'd like to
 (17) get that straightened out and I'd like to get it
 (18) straightened out exactly where we are with respect
 (19) to this punitive damage matter.
 (20) Let me explain what I mean. Your
 (21) Honor has disagreed from time to time, and has
 (22) agreed on other occasions, with the federal judge
 (23) on various rulings in this litigation. The
 (24) disagreements have been things like Robbins Dry
 (25) Dock and some other issues.

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- (1) This court, early in the case, was
 (2) requested by some parties, not these plaintiffs, to
 (3) certify mandatory punitive damage class and Your
 (4) Honor reviewed the authority and determined that
 (5) you did not have authority to do that. We thought
 (6) that the record was clear in this court -
 (7) THE COURT: Let me just correct you
 (8) here.
 (9) MR. STOLL: All right.
 (10) THE COURT: That's not my
 (11) recollection. I reviewed the motion and decided it
 (12) wasn't appropriate to certify a punitive damage
 (13) class at that time.
 (14) MR. STOLL: All right.
 (15) THE COURT: That's what I did.
 (16) MR. STOLL: Okay. Your Honor, we
 (17) thought the record was clear following Judge
 (18) Holland's indication, original indication and then
 (19) subsequently his order certifying the mandatory
 (20) class that after a mandatory class had been
 (21) certified in federal court that this court did not
 (22) have the power to proceed with the punitive damage
 (23) claim, and if it did have the power to proceed with
 (24) the punitive damage claim, then we wanted to
 (25) proceed with it. And that there's no authority for

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- (1) this court not proceeding with the punitive damage
 (2) claim if it does have that power.
 (3) There's a couple double negatives in
 (4) there, but I think you – maybe I totally confused
 (5) things here, but I think that the point is that the
 (6) defendants cannot have it both ways. On the one
 (7) hand, they can't say well, the – there is no
 (8) injunction or it doesn't have an effect. There's
 (9) not an injunction, there's not a piece of paper
 (10) that is labeled an injunction, but the effect of
 (11) the federal court proceeding with a mandatory
 (12) punitive damage class and a notice to everyone
 (13) saying that you cannot proceed in any other court
 (14) on punitive damages, we believe prevented this
 (15) court or any other court, for that matter, to
 (16) proceed with a – with a punitive damage claim
 (17) until and unless the district court order had been
 (18) vacated, and that is the – that is the crux of the
 (19) matter, and first of all, Your Honor, we have had
 (20) identified here an exhibit, which is portions of
 (21) the transcript and we'd like to offer that
 (22) transcript of the excerpt from the March 25
 (23) hearing.
 (24) THE COURT: You'd like to offer
 (25) it – I've read the transcript. Counsel, have you

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- (1) had an opportunity to check it for accuracy?
 (2) MR. DIAMOND: I have no reason to
 (3) believe it's inaccurate.
 (4) THE COURT: I think it's probably
 (5) accurate. It squares with my recollection of what
 (6) was said.
 (7) MR. STOLL: So Your Honor, the
 (8) next – the next point is that if this court does
 (9) have the authority to proceed in spite of Judge
 (10) Holland's order certifying mandatory class, then we
 (11) have always insisted and wanted to proceed with
 (12) punitive damages, so we wanted – either we want to
 (13) proceed with punitive damages here or we want a
 (14) determination that this court doesn't have the
 (15) authority to proceed with punitive damages because
 (16) of Judge Holland's order, and what the defendants
 (17) are doing is they're getting their cake and eating
 (18) it, too. They're saying that that doesn't prevent
 (19) this court from proceeding, but there's no
 (20) authority for you not to proceed.
 (21) THE COURT: So what are you asking
 (22) me?
 (23) MR. STOLL: I'm asking Your Honor
 (24) for a ruling that – that you feel that you cannot
 (25) proceed once the mandatory punitive damage class is

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- (1) certified, which I think is the law. We've briefed
 (2) this ad nauseum. Or in the alternative, if you
 (3) think that it permits you to – to proceed with a
 (4) punitive damage claim, then we want to proceed with
 (5) the punitive damage case.
 (6) THE COURT: All right. Counsel, do
 (7) you have the – besides the excerpts this exhibit
 (8) has, do you have the full transcript?
 (9) MR. STOLL: Yes. Your Honor.
 (10) THE COURT: Can I see it?
 (11) MR. STOLL: Sure. Unfortunately,
 (12) Your Honor, I – this is a slightly different
 (13) format because the one that you – that is the
 (14) exhibit is a excerpt of the – excerpt of record,
 (15) and those are the only pages I have because it was
 (16) in my Portland office, I had it faxed up here, and
 (17) the other is the complete transcript – or not a
 (18) complete, but it's the relevant sections.
 (19) MR. DIAMOND: Your Honor, before we
 (20) get real far down the road –
 (21) THE COURT: Can I just read this,
 (22) Mr. Diamond –
 (23) MR. DIAMOND: I'm afraid that'll get
 (24) us real far down the road.
 (25) THE COURT: What?

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- (1) MR. DIAMOND: I did not know that
 (2) any application for an order was being made today.
 (3) THE COURT: Oh, you didn't?
 (4) MR. DIAMOND: I feel somewhat like a
 (5) duck out of water.
 (6) THE COURT: I don't blame you.
 (7) MR. DIAMOND: This is not an issue
 (8) that I know very much about, not a chess game that
 (9) I have thus far participated in. If an application
 (10) is going to be made to the Court for an order
 (11) concerning the procedural status of the case that
 (12) may have an effect on the Ninth Circuit appeal, I
 (13) think those on behalf of Exxon who are
 (14) knowledgeable ought to be present. I thought we
 (15) were simply – Mr. Stoll simply wanted to make a
 (16) record that he thought the transcript was in
 (17) error.
 (18) MR. STOLL: I wanted to clarify what
 (19) I thought was clear before as to what the Court was
 (20) doing or had done and was doing, and we – we
 (21) believe that the transcript, and we – we can read
 (22) the entire section, Your Honor, was clear that the
 (23) Court felt as stated on the record that it didn't
 (24) have the ability to proceed after that. Now,
 (25) the – and that's why I advised Mr. Diamond I

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- (1) wanted to get this clarified because if -
 (2) THE COURT: But did you advise him
 (3) before he walked in here?
 (4) MR. STOLL: Yes, I did.
 (5) MR. DIAMOND: Then I - I must have
 (6) been dense yesterday afternoon. I thought Mr.
 (7) Stoll's problem was that as he told me, and I had
 (8) not read the Ninth Circuit decision or order, until
 (9) this moment I have not read this transcript, but he
 (10) told me that the Court ascribed - that the court
 (11) of appeals of the Ninth Circuit ascribed to you
 (12) statements that really do appear or would appear to
 (13) be statements of Mr. Lynch to you, and he simply
 (14) wanted to bring that to the Court's attention and I
 (15) guess seek your agreement that that was the case or
 (16) disagreement that it wasn't, and we can all read
 (17) the transcript and if that's the case, that's fine,
 (18) and if not the case, that's fine, too.
 (19) If he wants you to do something that
 (20) you haven't already done in this case, if he wants
 (21) an order that has not already issued, then I feel a
 (22) little bit disadvantaged because I really don't
 (23) know what's going on.
 (24) THE COURT: I can hear that
 (25) disadvantage, counsel. I'm inclined to go ahead,

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- (1) because this is an issue that draws our attention
 (2) away from things that we should be concentrating
 (3) on, so I'm prepared to do this, and I'm not - I
 (4) can guarantee you that I'm not going to do
 (5) something that forces you to argue something that
 (6) you're not prepared to argue.
 (7) MR. STOLL: Your Honor, I'm just
 (8) trying to get a clarification. I'm not trying to
 (9) raise some new issue. I'm just trying to get a
 (10) clarification of what happened.
 (11) THE COURT: You want an answer to
 (12) the question did I take the punitives out of the
 (13) June 6th trial because I felt I could not go ahead
 (14) with them or because they're - because I felt that
 (15) I should not go ahead with them. Which do you
 (16) want?
 (17) MR. STOLL: I want a statement that
 (18) you could not go ahead with punitives.
 (19) THE COURT: Didn't you ask me or
 (20) somebody asked me for that in the status
 (21) conference, that particular determination; didn't
 (22) you?
 (23) MR. STOLL: I think it was asked in
 (24) that one, you said you didn't have the ability to
 (25) go ahead.

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- (1) THE COURT: Well -
 (2) MR. STOLL: I wasn't at that status
 (3) conference.
 (4) THE COURT: That's not the way I
 (5) read the transcript, counsel. I mean, I don't -
 (6) you read the whole transcript. I don't read it
 (7) that way and I don't remember it that way, either.
 (8) I'll tell you what I did, and I think the
 (9) transcript bears me out, my recollection was and my
 (10) reading of the full transcript as opposed to the
 (11) excerpt you just gave me is that what I decided to
 (12) do was take the punitives out of the June 6th trial
 (13) because of the developments that had occurred in
 (14) the federal court. I made no decision whether I
 (15) could or could not go ahead because of the
 (16) certification.
 (17) What I think I did was I said I
 (18) should not go ahead. Right here in the transcript
 (19) there are passages in the excerpt that you gave me
 (20) that indicate that's true. I said this is a status
 (21) conference, not a motion hearing and to the extent
 (22) what further briefing is necessary, or would be
 (23) beneficial, sure, that's a very good idea, these
 (24) are very serious issues and issues that when I look
 (25) at them don't tell me immediately which position is

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- (1) correct. That was in response to counsel's comment
 (2) which is on this page and which starts on - on -
 (3) in a passage that is not in the excerpt. This is
 (4) what counsel said.
 (5) Now the issue is what does a sister
 (6) court do when its jurisdiction is threatened and
 (7) based upon motion for mandatory punitive request if
 (8) this court concludes that you should continue with
 (9) your jurisdiction, then you have a duty to, and
 (10) that's an issue I think we ought to address very
 (11) carefully and very seriously and perhaps not in a
 (12) status conference.
 (13) So I responded, right, not in a
 (14) status conference. These are very serious issues
 (15) and to the extent that you want to convince me, you
 (16) can convince me later.
 (17) So what I - I mean, my recollection
 (18) of what I did and I believe the transcript on this
 (19) reading bears me out is I said I'll consider going
 (20) ahead with the punitives but I'm not going to
 (21) decide it here and I'm not going to decide whether
 (22) or not I have jurisdiction.
 (23) MR. STOLL: Okay: I misunderstood,
 (24) Your Honor. At the subsequent status conference,
 (25) and I should bring that up, maybe we should just

(1) set this down for a regular - to go through all
 (2) these transcripts; but the subsequent status
 (3) conference then we went ahead, we filed the papers
 (4) indicating that the Court may not have had
 (5) authority to proceed - didn't have authority to
 (6) proceed with punitive damages once the federal
 (7) court had made the - had issued the mandatory
 (8) punitive order. At the time of this March 25th
 (9) hearing, there was no - the final, the
 (10) determination had not yet been made in federal
 (11) court. There hadn't been a final certification
 (12) of - of the punitive class. There was
 (13) subsequently, I think it was on April - I can't
 (14) remember if it's 8th or the 15th, Judge Holland
 (15) issued his final order certifying mandatory class
 (16) and we felt - maybe we need to get the transcript
 (17) of the subsequent hearing. Whether we get it or
 (18) don't get it, we need to get a determination,
 (19) because our position, the plaintiffs' position is
 (20) that if you had the authority to proceed with the
 (21) punitive damage class, then we should be entitled
 (22) to proceed with our claims as part of our case.
 (23) There's been no motion to strike those claims.
 (24) There's been no motion for summary judgments on
 (25) those claims. We're entitled to proceed to trial

(1) and -
 (2) THE COURT: Yes, but not in this
 (3) trial. I mean, your position may be that, but it's
 (4) very clear that what I've said is you're not going
 (5) to do it in this trial.
 (6) MR. PETUMENOS: Judge could I just
 (7) add one thing, the - the reason why, why I was
 (8) concerned that - you must understand the reason
 (9) for the excerpt was that excerpt was quoted by the
 (10) Ninth Circuit.
 (11) THE COURT: I read the - I read the
 (12) order, counsel. I understand that. I think the
 (13) mistake was made. They made a mistake. Lynch is
 (14) the person speaking, but that's really not the
 (15) issue here.
 (16) MR. PETUMENOS: It isn't the issue.
 (17) And the issue - I agree with what the Court's
 (18) interpretation of that transcript is. The problem
 (19) that faces the plaintiffs and the appellants in the
 (20) Ninth Circuit is that those remarks as you can tell
 (21) from the opinion are being taken by the Ninth
 (22) Circuit for the conclusion or for the basis for
 (23) their holding that this court came to a conclusion
 (24) that as a matter of comity, you would take the
 (25) punitives out of the case in the absence of being

(1) ordered to do so and as you pointed out just now,
 (2) no such decision either way was made in that
 (3) conference, in that status conference, and the
 (4) Ninth Circuit has taken Mr. Lynch's remarks as the
 (5) Court's remarks for making a final decision and
 (6) that final decision is being used as a basis for
 (7) denying our appeal, and so however we do it, we -
 (8) we would like to know finally and forthrightly
 (9) whether this court is acting out of comity or
 (10) out - or hasn't decided that issue yet so that we
 (11) can inform the Ninth Circuit, because it appears
 (12) now that the Ninth Circuit, whatever the Court's
 (13) ruling, is relying upon something other than what
 (14) the Court - first of all, relying on Mr. Lynch,
 (15) but beyond that, that entire status conference does
 (16) not support the notion either way of, whether
 (17) comity or an order, there had been an order entered
 (18) took place and the substance of the fault is based
 (19) partly on whether Mr. Lynch said it or the Court
 (20) said it is that the Ninth Circuit's reference to
 (21) that hearing is being used for the motion that this
 (22) court made the determination that comity was what
 (23) it was - was what was requiring it to act the way
 (24) that it was, and my recollection is the same as
 (25) yours which is that you made no such determination

(1) either way in that status conference, and think
 (2) that is what the - what the transcript bears out.
 (3) Mr. Stoll points out in the
 (4) subsequent conference, I asked the Court, are you
 (5) doing this because of court's order, is that the
 (6) reason why we're precluded, and it could be
 (7) clearer, I will grant you it could be clearer, but
 (8) we - we have been operating on the assumption
 (9) that -
 (10) THE COURT: Wait a minute, if the
 (11) question was asked, what was the answer?
 (12) MR. PETUMENOS: Yes, because of the
 (13) court order is what you said.
 (14) THE COURT: Yes, because of -
 (15) MR. PETUMENOS: Because of the
 (16) certification, and that's rather obvious, I
 (17) suppose. You ordered a punitive damages trial
 (18) before the order occurred and the order is the only
 (19) thing that intervened between that and the Court's
 (20) action but there is a further issue which one way
 (21) or the other, if this court says no, I don't - I
 (22) don't feel constrained by the federal order, I'm
 (23) doing this out of comity, out of - no need to, I
 (24) can proceed if I wanted to but I'm not, that has
 (25) implications for our appeal in the Ninth Circuit.

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- (1) If this court says when a mandatory
 (2) class is issued, the other court is required,
 (3) finding of the law that the Court is required to
 (4) step back, required to step back, that has
 (5) implications as well.
 (6) THE COURT: Yes, but I never made
 (7) that determination.
 (8) MR. PETUMENOS: That's correct, but
 (9) the Ninth Circuit has said that you have and that's
 (10) our – that's our consideration – that's an error,
 (11) that's a mistake and the Ninth Circuit has said
 (12) that you have based upon an argument raised by
 (13) Exxon counsel, so –
 (14) THE COURT: I know that, counsel,
 (15) but you know, it seems – it seems a little strange
 (16) for you to be arguing this to me when in fact it's
 (17) the Ninth Circuit you ought to be telling about
 (18) their mistakes if they've made them.
 (19) MR. PETUMENOS: Oh, I – we hope to
 (20) do that very, very shortly. The – you frequently
 (21) ask counsel what do you want from me. Now, what we
 (22) need, though, I think, for the Ninth Circuit to do
 (23) their work from this court is an understanding of
 (24) this court's view of the situation.
 (25) Exxon has argued forcefully in their

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- (1) briefs that you are acting out of comity, which is
 (2) something that you could do in the absence of the
 (3) order, by agreement. Whether the there's authority
 (4) for that or not, that's what they're arguing.
 (5) They're arguing that you're acting out of comity
 (6) and we're arguing in the Ninth Circuit that the –
 (7) that the mandatory class has the effect of an
 (8) injunction.
 (9) Ninth Circuit then is looking to the
 (10) state judge to see what the state court, how the
 (11) state court is reacting to that situation and it
 (12) is – I think albeit made by counsel, I think the
 (13) record is less than clear and we have an obligation
 (14) to our clients to try and clarify the record, if we
 (15) can. That's our request for relief, is this issue
 (16) of whether this order of this court's ruling is
 (17) that the federal court order precludes the court,
 (18) or whether this court is acting on the principles
 (19) of comity. It makes a huge difference.
 (20) THE COURT: I can answer some of
 (21) those questions. One is I don't know whether the
 (22) federal court order precludes me from going ahead
 (23) with the punitives, and I think I left that
 (24) question open, and you know, I mean for good
 (25) reasons it wasn't followed up on, no fault on

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- (1) either side. There are other things to concentrate
 (2) on.
 (3) That gets us to the second issue.
 (4) There were other things to concentrate on and the
 (5) trial, as it developed, as circumstances developed,
 (6) convinced me that I should not try the punitives at
 (7) this stage of the litigation. Doesn't mean that I
 (8) might not decide later on to go ahead with them
 (9) even in the face of the federal ruling, but – but
 (10) it was clear to me that if I wanted to get – if I
 (11) had a trial situation that I had to take control of
 (12) it was what we are supposed to be going to trial on
 (13) on Monday, and not the punitives.
 (14) MR. STOLL: Your Honor, the problem
 (15) we're having – don't mean to argue with the Court,
 (16) but is that you advised us at one time that this is
 (17) one of our in chambers conferences, if the Ninth
 (18) Circuit – and this is at the request of I think
 (19) Mr. Clough or somebody from Exxon, we were talking
 (20) about set overs for this trial, that sort of
 (21) business, and this was one month or maybe two
 (22) months ago, and my recollection is that people were
 (23) giving hypotheticals about what would happen if the
 (24) Ninth Circuit reversed Judge Holland and one of the
 (25) things that Exxon requested was if that happened,

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- (1) they wanted a set-over for at least a month or six
 (2) weeks, I believe they asked for, or maybe it was
 (3) longer than that, but you indicated something about
 (4) you'd give them some time to prepare if that
 (5) happened, and if the punitives came back in as a
 (6) result of the Ninth Circuit reversal. I don't know
 (7) if you –
 (8) THE COURT: Yeah, I remember that.
 (9) I think that's essentially correct.
 (10) MR. STOLL: I'm not saying word for
 (11) word that that was what was said, but that was the
 (12) gist of that happening, and to us, you know, just
 (13) acting in good faith, we took that to mean that if
 (14) this order wasn't outstanding in the federal court,
 (15) this mandatory punitive class order, then we would
 (16) be entitled to proceed with – we would proceed
 (17) with our punitive damage case here. Wouldn't be on
 (18) June – you know, June. It would be sometime in
 (19) late July or August or something like that, but it
 (20) would be within – you made some comment about, I
 (21) want to get this over, it's going to be short,
 (22) short delays, but that would be it.
 (23) And that's – that's where we are
 (24) sort of stymied because again, I think that if you
 (25) have the authority to proceed, then we have always

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(1) wanted to proceed, and I don't - and -
 (2) THE COURT: I know, counsel, but I
 (3) can't tell you more than 15 times in a row. I
 (4) don't know whether I have the authority to
 (5) proceed. I wasn't - I avoided that question in
 (6) the status conference for reasons of efficiency.
 (7) There - I certainly feel a degree of deference to
 (8) any court, any court, another superior court here,
 (9) to take the decision seriously. The decision of
 (10) Judge Holland convinced me that in the setting that
 (11) I was faced with, I should go ahead with a trial
 (12) that did not include the punitives.
 (13) If the Ninth Circuit had reversed
 (14) and said the punitives are back in the state court,
 (15) I would have gone ahead with punitives. I might go
 (16) ahead with punitives in the future if in fact
 (17) someone convinces me that I can say well, I don't
 (18) care if he certified the mandatory class, I can go
 (19) ahead with them any way, but no - that decision
 (20) has never been made and that's the record you're
 (21) left with.
 (22) MR. STOLL: Well, the problem is -
 (23) here's what Exxon's doing, they're certainly not
 (24) arguing before you that you have the authority to
 (25) proceed with a punitive damage trial.

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(1) THE COURT: Well I -
 (2) MR. STOLL: They don't want to see
 (3) it in here.
 (4) THE COURT: Well, I believe that
 (5) there was some mention in their briefing on this
 (6) issue that I couldn't go ahead. They may have -
 (7) they may very well believe that and my answer to
 (8) both of you is, I haven't decided that, whether I
 (9) can or can't.
 (10) MR. STOLL: Because the issue hasn't
 (11) been presented to you?
 (12) THE COURT: No, because I chose not
 (13) to decide it in the context that it was given to
 (14) me. I can't give you - I can't tell you any more
 (15) than that, counsel. The fact is that on appeal in
 (16) the Ninth Circuit, just like everybody else, you're
 (17) stuck with the record you've made and this record
 (18) and my recollection is that I made no determination
 (19) one way or another whether or not I could go ahead
 (20) with punitives.
 (21) MR. STOLL: Your Honor, just trying
 (22) to figure out a way to get this squarely before
 (23) you.
 (24) THE COURT: It's as square as it can
 (25) be under these circumstances, counsel. I mean, I

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(1) could discuss this with you at length. I think
 (2) everything I've said here is consistent. It's
 (3) consistent with my recollection, it's consistent
 (4) with the transcript but I'm not going to repeat it
 (5) another five times.
 (6) Now, are we past that subject?
 (7) MR. STOLL: I guess so, Your Honor.
 (8) THE COURT: I think that to the
 (9) extent that this - the transcript and - and those
 (10) things that were said at that status conference are
 (11) important. It's not just the excerpt that should
 (12) be considered as an exhibit if in fact there's some
 (13) sort of review that should take place, it's the
 (14) entire transcript. So I want the entire transcript
 (15) of the status conference made an exhibit to this
 (16) hearing and -
 (17) MR. STOLL: Your Honor, that's -
 (18) let me just say this clearly. If you look at the
 (19) excerpt of record on appeal was the entire - if
 (20) you look at the page numbers on the - the bottom
 (21) folder.
 (22) THE COURT: I'm not suggesting it
 (23) wasn't. What I'm saying is that if you marked an
 (24) exhibit for this hearing you should mark the whole
 (25) transcript and not an excerpt.

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(1) MR. STOLL: That's fine. That's not
 (2) a problem. We did that on appeal, Your Honor.
 (3) THE COURT: I believe you. So, I
 (4) think both of these things are yours, Mr. Stoll,
 (5) the transcripts. I don't think I need them. The
 (6) entire transcript, though, should be made an
 (7) exhibit for this hearing.
 (8) MR. STOLL: That's fine.
 (9) THE COURT: Okay. Now, can we go
 (10) ahead?
 (11) MR. STOLL: Yeah, I'm just sort of
 (12) thinking.
 (13) (End of excerpt)

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- (1) TRANSCRIBER'S CERTIFICATE
- (2) SUPERIOR COURT)
- (3) : ss.
- (4) STATE OF ALASKA)
- (5) I, JOY S. BRAUER, RPR, do hereby certify:
- (6) That the foregoing pages 1 through 24 contain
- (7) a full, true, and correct transcript of the
- (8) proceedings contained within Audio tape K3758
- (9) provided by the Superior Court, Third Judicial
- (10) District, Anchorage, Alaska; that the transcription
- (11) was performed by me to the best of my knowledge and
- (12) ability.
- (13) That I am a disinterested person to said action.
- (14) IN WITNESS WHEREOF, I have hereunto set my hand
- (15) this 17th day of June, 1994.
- (16)
- (17)
- (18)
- (19)
- (20) Joy S. Brauer, RPR

Look-See Concordance Report

UNIQUE WORDS: 461
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SINGLE FILE CONCORDANCE

CASE SENSITIVE

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3

4 In re:)
5 EXXON VALDEZ OIL SPILL)

6

Case No. 3AN-89-2533 CI

7

8

9 EXCERPT OF TRANSCRIPT OF PROCEEDINGS

10

11

Friday, June 17, 1994
9:10 a.m.

12

13

14 A-P-P-E-A-R-A-N-C-E-S

15 Plaintiffs: N. ROBERT STOLL
16 Stoll, Stoll, Berne & Lokting
17 209 Southwest Oak Street
Portland, OR 97204
Ph: 503/227-1600

18 TIMOTHY J. PETUMENOS
19 Birch, Horton, Bittner & Cherot
1127 W. 7th Avenue
20 Anchorage, AK 99501
Ph: 907/276-1550

21 SAMUEL J. FORTIER
22 Fortier & Mikko
2250 Denali Street, Suite 604
23 Anchorage, AK 99503
Ph: 907/277-4222

24

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Defendants: CHARLES P. DIAMOND
O'Melveny & Myers
400 South Hope Street
Los Angeles, CA 90071-2899
Ph:213-669-6000

Transcribed by: Joy S. Brauer, RPR
Registered Professional Reporter

1 P R O C E E D I N G S

2 THE COURT: We're on the record in
3 the Exxon Valdez litigation. Counsel, you called
4 yesterday to set up a hearing and I -- and I have
5 some things I'd like to discuss with you
6 independently of that call, so I'm glad you're
7 here. What is it that you want?

8 MR. STOLL: Your Honor, yesterday
9 afternoon, the Ninth Circuit issued an opinion in
10 the appeal, an interlocutory appeal plaintiffs have
11 filed and we sent a courtesy copy of it to the
12 Court, and of course Mr. Diamond had a copy and we
13 are concerned because the transcript, the gist of
14 the opinion, as the Court can see, was a quotation
15 to -- supposedly what the Court's view was and
16 the -- the quotation was an error and I'd like to
17 get that straightened out and I'd like to get it
18 straightened out exactly where we are with respect
19 to this punitive damage matter.

20 Let me explain what I mean. Your
21 Honor has disagreed from time to time, and has
22 agreed on other occasions, with the federal judge
23 on various rulings in this litigation. The
24 disagreements have been things like Robbins Dry
25 Dock and some other issues.

1 This court, early in the case, was
2 requested by some parties, not these plaintiffs, to
3 certify mandatory punitive damage class and Your
4 Honor reviewed the authority and determined that
5 you did not have authority to do that. We thought
6 that the record was clear in this court --

7 THE COURT: Let me just correct you
8 here.

9 MR. STOLL: All right.

10 THE COURT: That's not my
11 recollection. I reviewed the motion and decided it
12 wasn't appropriate to certify a punitive damage
13 class at that time.

14 MR. STOLL: All right.

15 THE COURT: That's what I did.

16 MR. STOLL: Okay. Your Honor, we
17 thought the record was clear following Judge
18 Holland's indication, original indication and then
19 subsequently his order certifying the mandatory
20 class that after a mandatory class had been
21 certified in federal court that this court did not
22 have the power to proceed with the punitive damage
23 claim, and if it did have the power to proceed with
24 the punitive damage claim, then we wanted to
25 proceed with it. And that there's no authority for

1 this court not proceeding with the punitive damage
2 claim if it does have that power.

3 There's a couple double negatives in
4 there, but I think you -- maybe I totally confused
5 things here, but I think that the point is that the
6 defendants cannot have it both ways. On the one
7 hand, they can't say well, the -- there is no
8 injunction or it doesn't have an effect. There's
9 not an injunction, there's not a piece of paper
10 that is labeled an injunction, but the effect of
11 the federal court proceeding with a mandatory
12 punitive damage class and a notice to everyone
13 saying that you cannot proceed in any other court
14 on punitive damages, we believe prevented this
15 court or any other court, for that matter, to
16 proceed with a -- with a punitive damage claim
17 until and unless the district court order had been
18 vacated, and that is the -- that is the crux of the
19 matter, and first of all, Your Honor, we have had
20 identified here an exhibit, which is portions of
21 the transcript and we'd like to offer that
22 transcript of the excerpt from the March 25
23 hearing.

24 THE COURT: You'd like to offer
25 it -- I've read the transcript. Counsel, have you

1 had an opportunity to check it for accuracy?

2 MR. DIAMOND: I have no reason to
3 believe it's inaccurate.

4 THE COURT: I think it's probably
5 accurate. It squares with my recollection of what
6 was said.

7 MR. STOLL: So Your Honor, the
8 next -- the next point is that if this court does
9 have the authority to proceed in spite of Judge
10 Holland's order certifying mandatory class, then we
11 have always insisted and wanted to proceed with
12 punitive damages, so we wanted -- either we want to
13 proceed with punitive damages here or we want a
14 determination that this court doesn't have the
15 authority to proceed with punitive damages because
16 of Judge Holland's order, and what the defendants
17 are doing is they're getting their cake and eating
18 it, too. They're saying that that doesn't prevent
19 this court from proceeding, but there's no
20 authority for you not to proceed.

21 THE COURT: So what are you asking
22 me?

23 MR. STOLL: I'm asking Your Honor
24 for a ruling that -- that you feel that you cannot
25 proceed once the mandatory punitive damage class is

1 certified, which I think is the law. We've briefed
2 this ad nauseum. Or in the alternative, if you
3 think that it permits you to -- to proceed with a
4 punitive damage claim, then we want to proceed with
5 the punitive damage case.

6 THE COURT: All right. Counsel, do
7 you have the -- besides the excerpts this exhibit
8 has, do you have the full transcript?

9 MR. STOLL: Yes, Your Honor.

10 THE COURT: Can I see it?

11 MR. STOLL: Sure. Unfortunately,
12 Your Honor, I -- this is a slightly different
13 format because the one that you -- that is the
14 exhibit is a excerpt of the -- excerpt of record,
15 and those are the only pages I have because it was
16 in my Portland office, I had it faxed up here, and
17 the other is the complete transcript -- or not a
18 complete, but it's the relevant sections.

19 MR. DIAMOND: Your Honor, before we
20 get real far down the road --

21 THE COURT: Can I just read this,
22 Mr. Diamond --

23 MR. DIAMOND: I'm afraid that'll get
24 us real far down the road.

25 THE COURT: What?

1 MR. DIAMOND: I did not know that
2 any application for an order was being made today.

3 THE COURT: Oh, you didn't?

4 MR. DIAMOND: I feel somewhat like a
5 duck out of water.

6 THE COURT: I don't blame you.

7 MR. DIAMOND: This is not an issue
8 that I know very much about, not a chess game that
9 I have thus far participated in. If an application
10 is going to be made to the Court for an order
11 concerning the procedural status of the case that
12 may have an effect on the Ninth Circuit appeal, I
13 think those on behalf of Exxon who are
14 knowledgeable ought to be present. I thought we
15 were simply -- Mr. Stoll simply wanted to make a
16 record that he thought the transcript was in
17 error.

18 MR. STOLL: I wanted to clarify what
19 I thought was clear before as to what the Court was
20 doing or had done and was doing, and we -- we
21 believe that the transcript, and we -- we can read
22 the entire section, Your Honor, was clear that the
23 Court felt as stated on the record that it didn't
24 have the ability to proceed after that. Now,
25 the -- and that's why I advised Mr. Diamond I

1 wanted to get this clarified because if --

2 THE COURT: But did you advise him
3 before he walked in here?

4 MR. STOLL: Yes, I did.

5 MR. DIAMOND: Then I -- I must have
6 been dense yesterday afternoon. I thought Mr.
7 Stoll's problem was that as he told me, and I had
8 not read the Ninth Circuit decision or order, until
9 this moment I have not read this transcript, but he
10 told me that the Court ascribed -- that the court
11 of appeals of the Ninth Circuit ascribed to you
12 statements that really do appear or would appear to
13 be statements of Mr. Lynch to you, and he simply
14 wanted to bring that to the Court's attention and I
15 guess seek your agreement that that was the case or
16 disagreement that it wasn't, and we can all read
17 the transcript and if that's the case, that's fine,
18 and if not the case, that's fine, too.

19 If he wants you to do something that
20 you haven't already done in this case, if he wants
21 an order that has not already issued, then I feel a
22 little bit disadvantaged because I really don't
23 know what's going on.

24 THE COURT: I can hear that
25 disadvantage, counsel. I'm inclined to go ahead,

1 because this is an issue that draws our attention
2 away from things that we should be concentrating
3 on, so I'm prepared to do this, and I'm not -- I
4 can guarantee you that I'm not going to do
5 something that forces you to argue something that
6 you're not prepared to argue.

7 MR. STOLL: Your Honor, I'm just
8 trying to get a clarification. I'm not trying to
9 raise some new issue. I'm just trying to get a
10 clarification of what happened.

11 THE COURT: You want an answer to
12 the question did I take the punitives out of the
13 June 6th trial because I felt I could not go ahead
14 with them or because they're -- because I felt that
15 I should not go ahead with them. Which do you
16 want?

17 MR. STOLL: I want a statement that
18 you could not go ahead with punitives.

19 THE COURT: Didn't you ask me or
20 somebody asked me for that in the status
21 conference, that particular determination; didn't
22 you?

23 MR. STOLL: I think it was asked in
24 that one, you said you didn't have the ability to
25 go ahead.

1 THE COURT: Well --

2 MR. STOLL: I wasn't at that status
3 conference.

4 THE COURT: That's not the way I
5 read the transcript, counsel. I mean, I don't --
6 you read the whole transcript. I don't read it
7 that way and I don't remember it that way, either.
8 I'll tell you what I did, and I think the
9 transcript bears me out, my recollection was and my
10 reading of the full transcript as opposed to the
11 excerpt you just gave me is that what I decided to
12 do was take the punitives out of the June 6th trial
13 because of the developments that had occurred in
14 the federal court. I made no decision whether I
15 could or could not go ahead because of the
16 certification.

17 What I think I did was I said I
18 should not go ahead. Right here in the transcript
19 there are passages in the excerpt that you gave me
20 that indicate that's true. I said this is a status
21 conference, not a motion hearing and to the extent
22 that further briefing is necessary, or would be
23 beneficial, sure, that's a very good idea, these
24 are very serious issues and issues that when I look
25 at them don't tell me immediately which position is

1 correct. That was in response to counsel's comment
2 which is on this page and which starts on -- on --
3 in a passage that is not in the excerpt. This is
4 what counsel said.

5 Now the issue is what does a sister
6 court do when its jurisdiction is threatened and
7 based upon motion for mandatory punitive request if
8 this court concludes that you should continue with
9 your jurisdiction, then you have a duty to, and
10 that's an issue I think we ought to address very
11 carefully and very seriously and perhaps not in a
12 status conference.

13 So I responded, right, not in a
14 status conference. These are very serious issues
15 and to the extent that you want to convince me, you
16 can convince me later.

17 So what I -- I mean, my recollection
18 of what I did and I believe the transcript on this
19 reading bears me out is I said I'll consider going
20 ahead with the punitives but I'm not going to
21 decide it here and I'm not going to decide whether
22 or not I have jurisdiction.

23 MR. STOLL: Okay: I misunderstood,
24 Your Honor. At the subsequent status conference,
25 and I should bring that up, maybe we should just

1 set this down for a regular -- to go through all
2 these transcripts, but the subsequent status
3 conference then we went ahead, we filed the papers
4 indicating that the Court may not have had
5 authority to proceed -- didn't have authority to
6 proceed with punitive damages once the federal
7 court had made the -- had issued the mandatory
8 punitive order. At the time of this March 25th
9 hearing, there was no -- the final, the
10 determination had not yet been made in federal
11 court. There hadn't been a final certification
12 of -- of the punitive class. There was
13 subsequently, I think it was on April -- I can't
14 remember if it's 8th or the 15th, Judge Holland
15 issued his final order certifying mandatory class
16 and we felt -- maybe we need to get the transcript
17 of the subsequent hearing. Whether we get it or
18 don't get it, we need to get a determination,
19 because our position, the plaintiffs' position is
20 that if you had the authority to proceed with the
21 punitive damage class, then we should be entitled
22 to proceed with our claims as part of our case.
23 There's been no motion to strike those claims.
24 There's been no motion for summary judgments on
25 those claims. We're entitled to proceed to trial

1 and --

2 THE COURT: Yes, but not in this
3 trial. I mean, your position may be that, but it's
4 very clear that what I've said is you're not going
5 to do it in this trial.

6 MR. PETUMENOS: Judge could I just
7 add one thing, the -- the reason why, why I was
8 concerned that -- you must understand the reason
9 for the excerpt was that excerpt was quoted by the
10 Ninth Circuit.

11 THE COURT: I read the -- I read the
12 order, counsel. I understand that. I think the
13 mistake was made. They made a mistake. Lynch is
14 the person speaking, but that's really not the
15 issue here.

16 MR. PETUMENOS: It isn't the issue.
17 And the issue -- I agree with what the Court's
18 interpretation of that transcript is. The problem
19 that faces the plaintiffs and the appellants in the
20 Ninth Circuit is that those remarks as you can tell
21 from the opinion are being taken by the Ninth
22 Circuit for the conclusion or for the basis for
23 their holding that this court came to a conclusion
24 that as a matter of comity, you would take the
25 punitives out of the case in the absence of being

1 ordered to do so and as you pointed out just now,
2 no such decision either way was made in that
3 conference, in that status conference, and the
4 Ninth Circuit has taken Mr. Lynch's remarks as the
5 Court's remarks for making a final decision and
6 that final decision is being used as a basis for
7 denying our appeal, and so however we do it, we --
8 we would like to know finally and forthrightly
9 whether this court is acting out of comity or
10 out -- or hasn't decided that issue yet so that we
11 can inform the Ninth Circuit, because it appears
12 now that the Ninth Circuit, whatever the Court's
13 ruling, is relying upon something other than what
14 the Court -- first of all, relying on Mr. Lynch,
15 but beyond that, that entire status conference does
16 not support the notion either way of, whether
17 comity or an order, there had been an order entered
18 took place and the substance of the fault is based
19 partly on whether Mr. Lynch said it or the Court
20 said it is that the Ninth Circuit's reference to
21 that hearing is being used for the motion that this
22 court made the determination that comity was what
23 it was -- was what was requiring it to act the way
24 that it was, and my recollection is the same as
25 yours which is that you made no such determination

1 either way in that status conference, and think
2 that is what the -- what the transcript bears out.

3 Mr. Stoll points out in the
4 subsequent conference, I asked the Court, are you
5 doing this because of court's order, is that the
6 reason why we're precluded, and it could be
7 clearer, I will grant you it could be clearer, but
8 we -- we have been operating on the assumption
9 that --

10 THE COURT: Wait a minute, if the
11 question was asked, what was the answer?

12 MR. PETUMENOS: Yes, because of the
13 court order is what you said.

14 THE COURT: Yes, because of --

15 MR. PETUMENOS: Because of the
16 certification, and that's rather obvious, I
17 suppose. You ordered a punitive damages trial
18 before the order occurred and the order is the only
19 thing that intervened between that and the Court's
20 action but there is a further issue which one way
21 or the other, if this court says no, I don't -- I
22 don't feel constrained by the federal order, I'm
23 doing this out of comity, out of -- no need to, I
24 can proceed if I wanted to but I'm not, that has
25 implications for our appeal in the Ninth Circuit.

1 If this court says when a mandatory
2 class is issued, the other court is required,
3 finding of the law that the Court is required to
4 step back, required to step back, that has
5 implications as well.

6 THE COURT: Yes, but I never made
7 that determination.

8 MR. PETUMENOS: That's correct, but
9 the Ninth Circuit has said that you have and that's
10 our -- that's our consideration -- that's an error,
11 that's a mistake and the Ninth Circuit has said
12 that you have based upon an argument raised by
13 Exxon counsel, so --

14 THE COURT: I know that, counsel,
15 but you know, it seems -- it seems a little strange
16 for you to be arguing this to me when in fact it's
17 the Ninth Circuit you ought to be telling about
18 their mistakes if they've made them.

19 MR. PETUMENOS: Oh, I -- we hope to
20 do that very, very shortly. The -- you frequently
21 ask counsel what do you want from me. Now, what we
22 need, though, I think, for the Ninth Circuit to do
23 their work from this court is an understanding of
24 this court's view of the situation.

25 Exxon has argued forcefully in their

1 briefs that you are acting out of comity, which is
2 something that you could do in the absence of the
3 order, by agreement. Whether there's authority
4 for that or not, that's what they're arguing.
5 They're arguing that you're acting out of comity
6 and we're arguing in the Ninth Circuit that the --
7 that the mandatory class has the effect of an
8 injunction.

9 Ninth Circuit then is looking to the
10 state judge to see what the state court, how the
11 state court is reacting to that situation and it
12 is -- I think albeit made by counsel, I think the
13 record is less than clear and we have an obligation
14 to our clients to try and clarify the record, if we
15 can. That's our request for relief, is this issue
16 of whether this order of this court's ruling is
17 that the federal court order precludes the court,
18 or whether this court is acting on the principles
19 of comity. It makes a huge difference.

20 THE COURT: I can answer some of
21 those questions. One is I don't know whether the
22 federal court order precludes me from going ahead
23 with the punitives, and I think I left that
24 question open, and you know, I mean for good
25 reasons it wasn't followed up on, no fault on

1 either side. There are other things to concentrate
2 on.

3 That gets us to the second issue.
4 There were other things to concentrate on and the
5 trial, as it developed, as circumstances developed,
6 convinced me that I should not try the punitives at
7 this stage of the litigation. Doesn't mean that I
8 might not decide later on to go ahead with them
9 even in the face of the federal ruling, but -- but
10 it was clear to me that if I wanted to get -- if I
11 had a trial situation that I had to take control of
12 it was what we are supposed to be going to trial on
13 on Monday, and not the punitives.

14 MR. STOLL: Your Honor, the problem
15 we're having -- don't mean to argue with the Court,
16 but is that you advised us at one time that this is
17 one of our in chambers conferences, if the Ninth
18 Circuit -- and this is at the request of I think
19 Mr. Clough or somebody from Exxon, we were talking
20 about set overs for this trial, that sort of
21 business, and this was one month or maybe two
22 months ago, and my recollection is that people were
23 giving hypotheticals about what would happen if the
24 Ninth Circuit reversed Judge Holland and one of the
25 things that Exxon requested was if that happened,

1 they wanted a set-over for at least a month or six
2 weeks, I believe they asked for, or maybe it was
3 longer than that, but you indicated something about
4 you'd give them some time to prepare if that
5 happened, and if the punitives came back in as a
6 result of the Ninth Circuit reversal. I don't know
7 if you --

8 THE COURT: Yeah, I remember that.
9 I think that's essentially correct.

10 MR. STOLL: I'm not saying word for
11 word that that was what was said, but that was the
12 gist of that happening, and to us, you know, just
13 acting in good faith, we took that to mean that if
14 this order wasn't outstanding in the federal court,
15 this mandatory punitive class order, then we would
16 be entitled to proceed with -- we would proceed
17 with our punitive damage case here. Wouldn't be on
18 June -- you know, June. It would be sometime in
19 late July or August or something like that, but it
20 would be within -- you made some comment about, I
21 want to get this over, it's going to be short,
22 short delays, but that would be it.

23 And that's -- that's where we are
24 sort of stymied because again, I think that if you
25 have the authority to proceed, then we have always

1 wanted to proceed, and I don't -- and --

2 THE COURT: I know, counsel, but I
3 can't tell you more than 15 times in a row. I
4 don't know whether I have the authority to
5 proceed. I wasn't -- I avoided that question in
6 the status conference for reasons of efficiency.
7 There -- I certainly feel a degree of deference to
8 any court, any court, another superior court here,
9 to take the decision seriously. The decision of
10 Judge Holland convinced me that in the setting that
11 I was faced with, I should go ahead with a trial
12 that did not include the punitives.

13 If the Ninth Circuit had reversed
14 and said the punitives are back in the state court,
15 I would have gone ahead with punitives. I might go
16 ahead with punitives in the future if in fact
17 someone convinces me that I can say well, I don't
18 care if he certified the mandatory class, I can go
19 ahead with them any way, but no -- that decision
20 has never been made and that's the record you're
21 left with.

22 MR. STOLL: Well, the problem is --
23 here's what Exxon's doing, they're certainly not
24 arguing before you that you have the authority to
25 proceed with a punitive damage trial.

1 THE COURT: Well I --

2 MR. STOLL: They don't want to see
3 it in here.

4 THE COURT: Well, I believe that
5 there was some mention in their briefing on this
6 issue that I couldn't go ahead. They may have --
7 they may very well believe that and my answer to
8 both of you is, I haven't decided that, whether I
9 can or can't.

10 MR. STOLL: Because the issue hasn't,
11 been presented to you?

12 THE COURT: No, because I chose not
13 to decide it in the context that it was given to
14 me. I can't give you -- I can't tell you any more
15 than that, counsel. The fact is that on appeal in
16 the Ninth Circuit, just like everybody else, you're
17 stuck with the record you've made and this record
18 and my recollection is that I made no determination
19 one way or another whether or not I could go ahead
20 with punitives.

21 MR. STOLL: Your Honor, just trying
22 to figure out a way to get this squarely before
23 you.

24 THE COURT: It's as square as it can
25 be under these circumstances, counsel. I mean, I

1 could discuss this with you at length. I think
2 everything I've said here is consistent. It's
3 consistent with my recollection, it's consistent
4 with the transcript but I'm not going to repeat it
5 another five times.

6 Now, are we past that subject?

7 MR. STOLL: I guess so, Your Honor.

8 THE COURT: I think that to the
9 extent that this -- the transcript and -- and those
10 things that were said at that status conference are
11 important. It's not just the excerpt that should
12 be considered as an exhibit if in fact there's some
13 sort of review that should take place, it's the
14 entire transcript. So I want the entire transcript
15 of the status conference made an exhibit to this
16 hearing and --

17 MR. STOLL: Your Honor, that's --
18 let me just say this clearly. If you look at the
19 excerpt of record on appeal was the entire -- if
20 you look at the page numbers on the -- the bottom
21 folder.

22 THE COURT: I'm not suggesting it
23 wasn't. What I'm saying is that if you marked an
24 exhibit for this hearing you should mark the whole
25 transcript and not an excerpt.

1 MR. STOLL: That's fine. That's not
2 a problem. We did that on appeal, Your Honor.

3 THE COURT: I believe you. So, I
4 think both of these things are yours, Mr. Stoll,
5 the transcripts. I don't think I need them. The
6 entire transcript, though, should be made an
7 exhibit for this hearing.

8 MR. STOLL: That's fine.

9 THE COURT: Okay. Now, can we go
10 ahead?

11 MR. STOLL: Yeah, I'm just sort of
12 thinking.

13 (End of excerpt)

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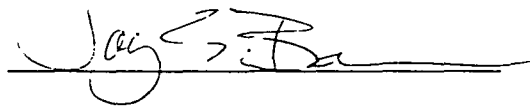
SUPERIOR COURT)
: ss.
STATE OF ALASKA)

I, JOY S. BRAUER, RPR, do hereby certify:

That the foregoing pages 1 through 24 contain
a full, true, and correct transcript of the
proceedings contained within Audio tape K3758
provided by the Superior Court, Third Judicial
District, Anchorage, Alaska; that the transcription,
was performed by me to the best of my knowledge and
ability.

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have hereunto set my hand
this 17th day of June, 1994.



Joy S. Brauer, RPR

Vol. 1 - 1

- (1) IN THE SUPERIOR COURT OF THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT AT ANCHORAGE
 In re:) Case No. 3AN-89-2533 CI
 (5)) Anchorage, Alaska
 The EXXON VALDEZ) Monday, June 20, 1994
 (6)) 10:05 a.m.
- TRANSCRIPT OF PROCEEDINGS
 TRIAL BY JURY AND JURY SELECTION - 1st DAY
 BEFORE THE HONORABLE BRIAN SHORTELL
 (12) VOLUME 1, Pages 1 - 17
 Realtime Transcription

APPEARANCES:

For Plaintiffs:

- (15) N. ROBERT STOLL
 Stoll, Stoll, Berne & Lokting
 (16) 209 Southwest Oak Street
 Portland, OR 97204
 (17) Ph: 503/7-1600
 (18) TIMOTHY J. PETUMENOS
 Birch, Horton, Bittner & Cherot
 (19) 1127 W. 7th Avenue
 Anchorage, AK 99501
 (20) Ph: 907/6-1550
 (21) SAMUEL J. FORTIER
 DAGMAR MIKKO
 (22) Fortier & Mikko
 2250 Denali Street, Suite 604
 (23) Anchorage, AK 99508
 (24) Ph: 907/7-4222

Vol. 1 - 2

- (1) Defendants:
 CHARLES P. DIAMOND
 (2) RANDY OPPENHEIMER
 LINDA SMITH
 (3) O'Melveny & Myers
 400 South Hope Street
 (4) Los Angeles, CA 90071-2559
 Ph: 213/49-6000
 JOHN CLOUGH
 (6) Clough & Associates
 431 North Franklin Street, Suite 202
 (7) Juneau, Alaska 99801
 Ph: 907/46-5777
- Reported by: JOY S. BRAUER, RFR
 (8) Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2250 Denali Street, Suite 1505
 Anchorage, AK 99508
 (11) Ph: 907/258-7100

Vol. 1 - 3

- (1) PROCEEDINGS
 (2) (Call to Order of the Court).
 (3) THE COURT: Good morning.
 (4) Most of you, I think, out there are potential jurors in a
 (5) case involving the Exxon Valdez oil spill litigation. Those of
 (6) you who are on the jury panel, we have to administer an oath to
 (7) you before we begin the statutory qualification phase, so I'd
 (8) like those of you who are on the panel to please stand up. The
 (9) jurors, now, all the jurors.
 (10) THE CLERK: Ladies and gentlemen, would you all raise
 (11) your right hand to receive the oath?
 (12) (The Panel Is Sworn).
 (13) THE COURT: The first thing that I have to do as the
 (14) judge presiding over this case is to make sure that you're
 (15) qualified under the statutes of the State of Alaska. So I'm
 (16) going to ask you two groups of questions. I have a way of
 (17) doing that that makes it more efficient than simply asking you
 (18) individual questions.
 (19) As to the first group, I'm going to assume, unless someone
 (20) raises his or her hand that the answer to these questions is
 (21) all yes. These are questions you've been asked before on
 (22) the - in the forms that you filled out for the court, but I
 (23) have to confirm that for the record. We're being recorded
 (24) here, so this will simply confirm your qualifications for the
 (25) record.

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- (1) I'm going to make a statement now: You are all citizens of
 (2) the United States, residents of the state of Alaska, at least
 (3) 18 years of age, able to read or speak the English language,
 (4) and of sound mind and in possession of your natural faculties.
 (5) That last one always gets a few smiles. Let me tell you what
 (6) it means. It generally means that you don't have any physical
 (7) or mental problems that might cause you not to be able to
 (8) concentrate on a case or to understand evidence or to - to
 (9) participate in the normal jury functions.
 (10) If you have physical problems of your sight or hearing, for
 (11) instance, that might interfere with your service as a juror,
 (12) you will be questioned on those further later on; but for the
 (13) record here, as - since I've seen no hands raised, I'm stating
 (14) for the record that all of the answers for all of the jurors to
 (15) those - those five categories that I've just listed is yes.
 (16) All right. Now, there are two ways you can be disqualified
 (17) under the laws of the State of Alaska from service as a juror
 (18) in a case like this. The first is if you've served as a juror
 (19) within the past year. So counting backwards in time, one year
 (20) from today, if any of you have served as jurors in the state of
 (21) Alaska, you should let me know that now by raising your hand.
 (22) All right, I see no hands raised, so the jury is qualified
 (23) on that question.
 (24) Now, the second one is a little more complicated. If any
 (25) of you have been convicted of a felony crime and you have not

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(1) been unconditionally discharged from the pains and penalties of
 (2) the criminal sentence, then you're disqualified from service as
 (3) a juror in this case.
 (4) A felony crime is a crime that has a potential punishment
 (5) of more than a year in jail. I'll give you an example, couple
 (6) of examples here: Shoplifting is generally a misdemeanor and
 (7) the maximum penalty for shoplifting would be one year, so it
 (8) would not disqualify you from service as jurors. A robbery is
 (9) a felony, though, because when it's charged, it has a potential
 (10) punishment of more than a year in jail. So if, for instance,
 (11) one of you had been convicted of robbery and you were still on
 (12) probation or parole or something like that, then you would be
 (13) disqualified from service as a juror in this case.
 (14) So I'm assuming now that all of you have not been - either
 (15) not been convicted of a felony crime or, if you have been,
 (16) you've been unconditionally discharged.
 (17) Now, I'm not going to make you answer this question in
 (18) front of all of these people if it would embarrass you, but I
 (19) have to ask it for the record, so if it doesn't bother you and
 (20) you can simply raise your hand and the question applies to you,
 (21) you could do so now.
 (22) I see no hands. Now, if you have a question about what
 (23) that question means or you need further definition or you
 (24) simply want to answer it in private, you have to tell the jury
 (25) clerk after this session recesses and I would take that up with

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(1) you further on the record. But for the record now, as to all
 (2) statutory qualifications, each member of this jury panel is
 (3) qualified to serve in this case.
 (4) All right. Now I'm going to - I'm going to read to you a
 (5) brief statement of the case. It's - it's longer than most
 (6) statements of cases that I read to jurors, but it does give you
 (7) an overview of the case. It will set the scene for you and
 (8) sort of let you know what you'll be involved in if you're
 (9) chosen to be a juror in this case.
 (10) Ladies and gentlemen, these introductory remarks are
 (11) intended to serve merely as an introduction to this case. They
 (12) are not a substitute for instructions which I will give you
 (13) after the jury has been selected. Nevertheless, you should
 (14) keep these instructions in mind.
 (15) This case involves claims for damages arising out of the
 (16) Exxon Valdez oil spill. Shortly after midnight on March 24,
 (17) 1989, the Exxon Valdez, a large supertanker bound from
 (18) Valdez,
 (19) Alaska to Long Beach, California, ran aground on Bligh Reef,
 (20) discharging 11 million gallons of North Slope crude oil into
 (21) and onto Prince William Sound, Kodiak Island and other
 (22) geographical areas. This event will be referred throughout
 (23) this trial as the Exxon Valdez oil spill or the, quote, oil
 (24) spill, unquote.
 (25) The parties who bring a lawsuit are called plaintiffs. The
 plaintiffs in this case are several Native corporations, and

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(1) several municipalities. The Native corporations include
 (2) Chugach Alaska Corporation, a regional Native corporation;
 and
 (3) the village corporations of Eyak, Tatitlik, Port Graham,
 (4) Chenega and English Bay. These Native corporations own land
 on
 (5) the shoreline and throughout the general areas of Prince
 (6) William Sound. They seek damages to their land, damages
 (7) associated with archaeology sites and for recovery of certain
 (8) other costs.
 (9) The municipality plaintiffs include Cordova in Prince
 (10) William Sound, and Kodiak Island Borough and the village
 (11) municipalities of Ouzinkie, Port Lions, Larsen Bay and Old
 (12) Harbor on Kodiak Island. All of the municipal plaintiffs, with
 (13) the exception of Cordova, seek damages to their land caused
 by
 (14) the oil spill. Certain of the municipalities also seek damages
 (15) for lost or delayed projects, lost revenues and various
 (16) expenses they claim were associated with responding to the oil
 (17) spill.
 (18) The parties against whom a lawsuit is brought are called
 (19) defendants. In this case, the defendants are Exxon Corporation
 (20) and Exxon Shipping Company, and they will be referred to
 (21) throughout this case as the Exxon defendants or Exxon. For
 (22) purposes of this trial, they may be considered one party.
 (23) The Exxon defendants owned the oil spilled and owned and
 (24) operated the Exxon Valdez at the time of its collision and the
 (25) oil spill. I instruct you that the Exxon defendants are

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(1) legally responsible to compensate plaintiffs for damages
 caused
 (2) by this oil spill. Thus, the jury's role in this trial will
 (3) not be to determine who was at fault; rather, the jury's job
 (4) will be to determine what if any damages were caused to the
 (5) plaintiffs by the discharge of oil from the Exxon Valdez.
 (6) In this trial, we will have twelve jurors and six alternate
 (7) jurors. Before we begin the trial, the law provides for a
 (8) process of selection of jurors based on questioning by the
 (9) lawyers. This is the process that we will begin today and will
 (10) likely last for most of this week. Before the lawyers ask you
 (11) any questions as potential jurors, however, you need to fill
 (12) out a written confidential questionnaire which has been agreed
 (13) upon by me. Because this case is well-known in this
 community,
 (14) it was determined that the filling out - that filling out this
 (15) confidential questionnaire would save a great deal of time for
 (16) you and the Court in determining who may sit as jurors.
 (17) I must emphasize to you that the information you provide in
 (18) this questionnaire is strictly confidential and, after the jury
 (19) selection process, no one will have access to this information
 (20) and copies of the filled-out forms will be destroyed.
 (21) You need to answer these questionnaires carefully, as
 (22) correctly and fully as possible. After you have completed the
 (23) questionnaires, the lawyers will review them and will later
 (24) this week ask you questions about the answers you have given.
 (25) It is very important that each party in this case receive a

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(1) fair trial and if any of you have biases, prejudices, or there
 (2) are other factors which would affect your ability to judge the
 (3) case impartially, please note that on the questionnaire.
 (4) After we conclude my instructions to you here, you will be
 (5) taken downstairs again to the jury assembly room and given the
 (6) jury questionnaire and a pen. Please use the pen you are given
 (7) to fill out the questionnaire. As soon as you fill out the
 (8) questionnaire, you should return it to my jury clerk and she
 (9) will give you a jury number – a juror number. You may then
 (10) leave for today and none of you need to come back tomorrow.
 (11) Those of you with the numbers 1 through 30 should return to
 the
 (12) jury assembly room on Wednesday at 9:00 a.m. and you will be
 (13) here until approximately 2:00 p.m. Wednesday.
 (14) It's unlikely that any of the rest of you will need to
 (15) return Wednesday but you may be contacted tomorrow
 afternoon if
 (16) we need you on Wednesday. Those of you who are not asked
 to
 (17) come in on Wednesday will be called on the phone Wednesday
 (18) afternoon and told whether you will need to come back
 Thursday
 (19) or Friday. So on Wednesday afternoon, you need to be near
 your
 (20) phone. If you do not have a telephone, you should call the
 (21) jury clerk at a number that will be given to you downstairs.
 (22) With the exception of this week when we are selecting a
 (23) jury, your work hours as jurors will normally be from 8:30 a.m.
 (24) to 1:30 p.m. with two breaks, Monday through Friday. It is
 (25) important for you to be here promptly as we cannot begin any

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(1) proceedings until all jurors are present.
 (2) Because of the nature of this case, it is anticipated that
 (3) this trial will last approximately two months.
 (4) If any of you find it necessary to communicate with the
 (5) Court for any reason during the selection process, please
 (6) contact the court clerk.
 (7) During this process, do not talk with anyone about these
 (8) proceedings or about anything having to do with the Exxon
 (9) Valdez oil spill or about anything having to do with any of the
 (10) parties in this case. "Anyone" includes members of your family
 (11) and your friends. You may tell them you are on a panel in this
 (12) case, but do not tell them anything else about it until you
 (13) have been discharged by me. "Anyone" also includes all other
 (14) people in this courtroom, including other potential jurors.
 (15) In addition, do not let anyone talk to you about the case
 (16) or about anyone who has anything to do with it. Please realize
 (17) that in the lobby areas and the elevators of this building
 (18) there are a number of people who may be parties or witnesses
 in
 (19) this lawsuit. If you happen to overhear one of them talking
 (20) about the case, please ignore what they have to say and tell
 (21) them that you are a juror and should not hear anything outside
 (22) of the courtroom. If someone should try to talk to you about
 (23) the case, you should report it to me immediately.
 (24) Do not read any news stories or articles or listen to any
 (25) radio or television reports about the case or about anyone who

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(1) has anything to do with it. Do not do any research or make any
 (2) investigation about the case on your own. All of the legally
 (3) permissible evidence and witnesses that you may consider
 must
 (4) be presented only in court.
 (5) Do not reach any opinions or conclusions about the claims
 (6) or defenses made in this case until you, if you have been
 (7) selected as a jury, have heard all of the evidence presented in
 (8) court and until I have given final instructions to the jury.
 (9) The jury must wait until the end of the trial before reaching
 (10) any opinions or conclusions about the claims or defenses made
 (11) in this lawsuit.
 (12) I would like – I would now like to introduce the attorneys
 (13) for each side who will introduce the other lawyers associated
 (14) with them in this case. If you know any of them, or their
 (15) partners, or have heard anything about any of them, please
 (16) raise your hand after they are introduced.
 (17) Mr. Stoll, for the plaintiffs.
 (18) MR. STOLL: My name is Robert Stoll. I'm a lawyer
 (19) from Portland, Oregon with a firm called Stoll, Stoll, Berne
 (20) and Lokting. I practice with my father and a few other
 (21) lawyers. I'm associated with the firm of Jamin, Ebell, Bolger
 (22) and Gentry in Kodiak representing the municipalities.
 (23) Mr. Petumenos is originally from Nantucket, Massachusetts;
 (24) has lived here for nearly the last 20 years, here and
 (25) Fairbanks. He has three children, one at West High School ,
 here

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(1) and another at Romig Junior High – just giving you this
 (2) information in case any of you know any of them. And he is
 (3) with the firm of Birch, Horton, Bittner and Cherot here in
 (4) Anchorage.
 (5) Mr. Fortier and Mr. Petumenos represent Native
 (6) corporations. Mr. Fortier is a lawyer for a law firm called
 (7) Fortier and Mikko; and his wife and law partner, Dagmar Mikko
 (8) is also here.
 (9) Dagmar, would you –
 (10) They also have – they have two children here in Anchorage,
 (11) one at East High School and one at preschool. And Mr. Fortier
 (12) was raised in Fairbanks and Anchorage.
 (13) There may be other lawyers or assistants that we may have
 (14) that you may see in the courtroom from time to time, but these
 (15) are the principal lawyers.
 (16) Mr. Diamond will introduce the Exxon lawyers and where
 (17) they're from.
 (18) MR. DIAMOND: Your Honor, I didn't bring biographies
 (19) of my co-counsel with me, so I'll introduce them by name only.
 (20) Good morning. My name is Chuck Diamond and I practice law
 (21) with a firm called O'Melveny and Myers, and I have the
 (22) privilege of representing Exxon in this matter.
 (23) With me appearing at counsel table are, from my right, your
 (24) left, first John Clough, who practices with a law firm called
 (25) Clough and Associates down in Juneau.

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- (1) To John's right are two of my partners. First is my
 (2) partner, Randy Oppenheimer, who practices with me.
 (3) And to Randy's right is Linda Smith, who is my partner at
 (4) the bar and my partner in life; she's also my wife.
 (5) We will be joined from time to time by other lawyers who
 (6) may appear before you to discuss certain subjects, question
 (7) certain witnesses, but those of you who have the good fortune
 (8) or misfortune of serving on this jury will see the four of us
 (9) on a day-to-day basis and we look forward to seeing you.
 (10) Thank you.
 (11) THE COURT: Before we recess, I only have one further
 (12) area of inquiry for you, and I don't want to engage in a
 (13) dialogue here. I just want to get you to identify yourselves
 (14) if any of you know any of the people who have just been
 (15) introduced. If you know them, have had a professional
 (16) relationship with their firms, anything like that, we'll
 (17) question you further on this. But we need to know your names
 (18) now so that we can simply follow up on it, and the way I do
 (19) this is I go from the left and from the front, so - so if
 (20) those of you on this side of the room will raise your hands,
 (21) I'll get you to identify yourselves.
 (22) MS. MONETTE: My name's Christine Monette. I own
 (23) Custom Travel Consultants, and I handle Mr. Petumenos' travel
 (24) arrangements and his company's.
 (25) THE COURT: Thank you. Now there was one hand up

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- (1) here. Yes, sir, what's your name?
 (2) Mr. Hickel: I'm Bob Hickel. Mr. Petumenos' law firm
 (3) represents my company.
 (4) THE COURT: They actively represent your company now?
 (5) Mr. Hickel: Yes.
 (6) THE COURT: Sir?
 (7) MR. SABATO: My name is Mike Sabato. I'm a school
 (8) teacher at East High. I've taught, and I know Mr. Fortier and
 (9) his family.
 (10) THE COURT: Did I miss anybody over on this side?
 (11) MR. FIERRO: Andy Fierro. I'm a practicing lawyer
 (12) here in Anchorage I do know three of the plaintiffs' attorneys
 (13) and I believe I know some co-counsel for the defendants.
 (14) THE COURT: Fine. All right, now on the left side of
 (15) the room, have I missed anybody?
 (16) All right, now we'll go to the right side of the room and
 (17) the front part first. I think the third row is the first one.
 (18) Ma'am, your name?
 (19) MS. DOUGHER: My name is Marilyn Dougher. I've had
 (20) some dealings over legal matters with Mr. Petumenos.
 (21) THE COURT: All right. Yes, ma'am, your name?
 (22) MS. JONES: My name is Marie Jones. I'm from Kodiak
 (23) and I know Matt Jamin. He performed a wedding ceremony for
 (24) my daughter.
 (25) THE COURT: Thank you. There was one other. Yes.

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- (1) ma'am?
 (2) MS. CHANDLER: Connie Chandler with SST Travel Schools
 (3) and Alaska Travel Concepts, and Birch Horton Bittner is our
 (4) landlord in Fairbanks.
 (5) THE COURT: Yes, ma'am?
 (6) MS. TAYLOR: My name is Victoria Taylor. I work with
 (7) the Army Corps of Engineers and I have answered several
 (8) inquiries from Birch Horton and Bittner attorneys on various
 (9) matters.
 (10) THE COURT: Anything about this case?
 (11) MS. CHANDLER: No.
 (12) THE COURT: Did I miss anybody on the right side of
 (13) the room? All right now, except for those people who raised
 (14) their hands and gave their names, is there anyone here who
 (15) knows in any way the parties who were - the people who were
 (16) just introduced to you?
 (17) All right, thank you very much. That's just the
 (18) introductory section for the - for the qualification of jurors
 (19) in this case. Now remember, as I read to you, there's a long
 (20) questionnaire that you'll have to fill out now and that means
 (21) you'll have to go back down to the jury room. The
 (22) questionnaire will be provided for you, your numbers will be
 (23) placed on it for identification, and once you have filled out
 (24) that questionnaire, you'll be excused for the day.
 (25) The jury clerk will give you further instructions about

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- (1) further contact that you'll have, because some of you will be
 (2) coming in on Wednesday and some of you will not. So you
 (3) have
 (4) to make sure you understand those instructions very, very well,
 (5) because I'd sure hate to see you coming in here at a time when
 (6) you didn't have to.
 (7) All right, we will now recess and the questionnaires will
 (8) be provided for the jury, and counsel, do you want to see me in
 (9) chambers after this, just -
 (10) MR. STOLL: For a moment, Your Honor.
 (11) THE COURT: All right, you can meet me in chambers.
 (12) (Recess at 10:20 a.m.)

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- (1) STATE OF ALASKA)
- (2) : Reporter's Certificate
- (3) DISTRICT OF ALASKA)
- (6) I, Joy S. Brauer, a Registered Professional
- (7) Reporter and Notary Public;
- (8) DO HERBY CERTIFY:
- (9) That the foregoing transcript contains a true and
- (10) accurate transcription of my shorthand notes of all requested
- (11) matters held in the foregoing captioned case.
- (12) Further, that the transcript was prepared by me
- (13) or under my direction.
- (14) DATED this day
- (15) of , 1994.
- (21) JOY S. BRAUER, RPR
Notary Public for Alaska
- (22) My Commission Expires: 5-10-97

Look-See Concordance Report

UNIQUE WORDS: 608
TOTAL OCCURRENCES: 1,191
NOISE WORDS: 385
TOTAL WORDS IN FILE: 3,509

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S): NOISE.NOI

INCLUDES ALL TEXT OCCURRENCES

IGNORES PURE NUMBERS

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re) Case No. 3AM-89-2533 Civil
) Anchorage, Alaska
 (5) the EXXON VALDEZ) Wednesday June 22, 1994
) 8:50 a.m.
 (6))
 (8) VOLUME 2 Pages 18 through 213
 (10) TRANSCRIPT OF PROCEEDINGS (Continued)
 (11) TRIAL BY JURY- JURY SELECTION
 (12) BEFORE THE HONORABLE BRIAN C. SHORTELL
 (14) Superior Court Judge
 (16) APPEARANCES:
 (17) FOR THE PLAINTIFF:
 M. ROBERT STOLL
 (18) Stoll, Stoll, Berne & Lokting
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUMENOS
 (21) Birch, Morton, Bittner & Cherot
 1127 West Seventh Avenue
 (22) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 (24) Fortier & Mikko
 2550 Denali Street, Suite 604
 (25) Anchorage, AK 99503
 907/277-4222

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FOR THE DEFENDANTS:
 CHARLES P. DIAMOND
 (3) O'Melveny & Myers
 400 South Hope Street
 (4) 213/669-6000
 (5) JOHN F. CLOUGH III
 Clough & Associates
 (6) 431 M. Franklin St., #202
 Juneau, AK 99801
 (7) 907/586-5777
 (8) Reported by:
 (9) KATHERINE L. NOVAK, RPR
 Registered Professional Reporter
 (10) Midnight Sun Court Reporters
 2550 Denali Street, Suite 1505
 (11) Anchorage, Alaska 99503
 907/258-7100

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(1) PROCEEDINGS
 (2) (Call to Order of the Court.)
 (3) THE COURT: Good morning. We're on the record without
 (4) the jury panel present in the Exxon Valdez litigation. We have
 (5) a number of matters to take up before we start the jury
 (6) selection on the record.
 (7) Counsel, I'll do it at your - on your schedule, so what
 (8) did you have to bring up?
 (9) MR. DIAMOND: Your Honor, as we raised with the court
 (10) both last week when we were first advised by the plaintiffs,
 (11) this week and again advised yesterday, we have not received
 (12) expert reports from all the principal plaintiffs' experts. We
 (13) are told they are in the process of submission, and you
 (14) remember when we raised this last week we asked you for a
 (15) reasonable drop-dead date so we could get ready to try this
 (16) case and for some period, reasonable period for the expert
 (17) reports and the commencement of trial.
 (18) We have not gotten Mr. Bush's report. Mr. Bush is their
 (19) principal oiling witness. Oiling is an issue in the case, what
 (20) was oil, what oil still remains. According to what's been told
 (21) to me by plaintiff's counsel and what I understand was
 (22) discussed when Mr. Bush testified this week in federal court,
 (23) Mr. Bush has done 1994 studies; in light of that, he's revising
 (24) all of his findings.
 (25) In addition, their laboratory analysis of Mr. Bush's 1994

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(1) findings will tell us if there is an increase or decrease or no
 (2) amount of change in the subsurface oil. Those have not been
 (3) produced.
 (4) There's a cascading effect because Mr. Bush's analysis is
 (5) something that the plaintiff's chief real estate expert,
 (6) Mr. Mundy utilizes extensively. We've gotten a preview of
 (7) changes to Mr. Mundy's report in the production of his work
 (8) papers. His numbers are changing dramatically. We don't
 know
 (9) exactly what assumptions he's changing, but the numbers do
 (10) change dramatically.
 (11) Finally, we've been advised that Drs. Lobdell and Johnson,
 (12) the two archeology witnesses that are to be called by
 (13) Messrs. Petumenos and Fortier are in the process of revising
 (14) their reports. We have been formally told that they are
 (15) dropping somewhere between 20 and 30 percent of the
 (16) archeological claims they have made in previously published
 (17) reports. Obviously it's very difficult to prepare an opening
 (18) statement and not to speak of opening evidence when we don't
 (19) exactly know what the claims are going to be, we certainly
 (20) don't know how it's going to quantify it. The plaintiffs seem
 (21) to minimize it by numbers change, but without the numbers
 there
 (22) are assumptions that we have to figure out. We have to figure
 (23) out how to deal with them. And I think in fairness we ought to
 (24) be given, as I asked the Court when you set the June 24th
 (25) drop-dead date, we ought to be given some period of time for

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- (1) these materials once they are produced.
- (2) We would propose, if they arrive as scheduled by the end of
- (3) this week, that we be given next to week to look at them, deal
- (4) with them and talk to the experts about them and we can begin
- (5) the actual taking of evidence the following week.
- (6) THE COURT: I believe this relates to you,
- (7) Mr. Petumenos, right?
- (8) MR. PETUMENOS: Mr. Petumenos and Mr. Fortier, but
- (9) I'll address it.
- (10) First of all, Your Honor, there was an exchange of letters
- (11) regarding the May 19, 1994 field trips that Exxon first began
- (12) by approaching us to say that we wanted to come to the field
- (13) and go to the beaches in May of 1994, and wanted us to
- (14) stipulate to a Rule 34 production request for entry upon
- (15) lands.
- (16) We agreed to that request but noted we had a trial coming
- (17) up; we felt that both parties ought to get into the field and
- (18) look at what the beaches look like in the spring, but we didn't
- (19) want it to affect the trial date, scramble some, and deadlines
- (20) for turning things off, if it may be necessary for us to go in
- (21) the field thereafter - and that's not a new topic, it is the
- (22) nature of the beast. You can't, because of weather, tide, snow
- (23) covering, things like that, conduct these investigations until
- (24) the spring breaks, and we did not want to be in the position of
- (25) having to face continuances as a result.

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- (1) When I was in court earlier, I told the Court that I would
- (2) have things served on the defendants by Friday of this week.
- (3) Last night I served the revised exhibits, early on the
- (4) defendants and they have the revised real estate numbers for
- (5) Dr. Mundy which, and reduces the claim.
- (6) That reduction of the claim is a consequence, not of a
- (7) change in methodology, but a change in simply the arithmetic,
- (8) if you will, of the numbers going in, in that the Bush
- (9) report - the oiling report, which counsel is in error; the
- (10) report is submitted and has been submitted for some time - on
- (11) the oiling side of things does have a cascading effect, but it
- (12) doesn't change the methodology. Dr. Mundy simply takes the
- (13) persistence figures and from that comes up with a - as I think
- (14) we discussed in one of the motions in limine, Dr. Mundy
- (15) actually does a temporary loss a rental value methodology over
- (16) time, but to do that, he has to determine how long to take an
- (17) income stream based upon the amount of oiling that the
- (18) scientists tell him.
- (19) What has changed is the amount of oiling which therefore
- (20) reduced the period of time that the income stream was taken.
- (21) The described narrative, which simply describes what he's
- (22) done,
- (23) will be served on them today, and the subsidiary tables and
- (24) documents which are simply reduction in numbers will be
- (25) served
- (1) on them tomorrow. So I have beat the deadline, if you will.
- (2) The archeological notes for my clients were turned over to

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- (1) the Exxon defendants already, and there is simply one table,
- (2) one spreadsheet which contains numbers by site for numbers
- (3) will
- (4) change and which will reduce the claims and which will drop
- (5) claims.
- (6) THE COURT: You are talking about Mundy, Lobdell and
- (7) Johnson now?
- (8) MR. PETUMENOS: Right. The summary amount of
- (9) abbreviation, and those numbers for the most part come down
- (10) or
- (11) are eliminated for the purpose of an hour opening statement. I
- (12) think counsel has what he needs for giving an overview of the
- (13) evidence.
- (14) THE COURT: Tell me something, counsel.
- (15) MR. PETUMENOS: Sure.
- (16) THE COURT: Is anything new coming with regard to
- (17) Mundy?
- (18) MR. PETUMENOS: There is nothing in the way of
- (19) methodology new coming with regard to Mundy. What is
- (20) different
- (21) is the persistent numbers he's using, and the - if you will,
- (22) we had an over-selection issue that lands had to be
- (23) over-selected under the federal law and they were concerned
- (24) about over-selections, and to the extent that we now know
- (25) over-selections are not in the case, we've reduced them or
- (1) taken them out.
- (2) THE COURT: Now, have you delivered everything
- (3) regarding those issues, springing out of Mundy's testimony,

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- (1) that you're going to deliver?
- (2) MR. PETUMENOS: I have delivered all of the trial
- (3) exhibits that I'm going to deliver, so they have all of the
- (4) trial exhibits. Today they will receive the erratas to the
- (5) report that support that, and tomorrow they will receive the
- (6) subsidiary ledgers.
- (7) THE COURT: So what you're telling me is with regard
- (8) to Bush, Lobdell and Johnson and Mundy, any updates, any
- (9) backup
- (10) information that's producible will be produced by tomorrow,
- (11) correct?
- (12) MR. PETUMENOS: Yes.
- (13) MR. FORTIER: And, Your Honor - Sam Fortier. That's
- (14) also true with my clients.
- (15) THE COURT: So the 24th, being the deadline, you are
- (16) going to comply with that, right?
- (17) MR. PETUMENOS: I am. I hope to beat it by a day, is
- (18) my situation.
- (19) THE COURT: Fine.
- (20) Now, counsel, does that resolve your problem?
- (21) MR. DIAMOND: It does not, Your Honor.
- (22) THE COURT: Except for the fact that you want a delay
- (23) in absorbing the information, right, before opening statement?
- (24) MR. DIAMOND: I think with respect to the Native
- (25) corporations, that's all I've been advising is changing, and I
- (1) will accept their representations that that's all they're

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- (1) producing to us.
 (2) I haven't heard anything about Mr. Bush's 1994 field
 (3) analysis which we have been pressing for three weeks. I
 assume
 (4) he's going to testify about what he did in 1994. He was the
 (5) first witness in federal court in phase two of the federal
 (6) court proceedings; I assume he's coming early in this case. It
 (7) would be nice to be able to both understand and hopefully
 (8) impeach his findings. That's the only item that I think that
 (9) I'm aware is forthcoming that Mr. Petumenos has made
 reference.
 (10) THE COURT: Counsel?
 (11) MR. PETUMENOS: My understanding is - and because of
 (12) counsel's representation I want to check this. My
 (13) understanding is he has the Bush report from the 1994 field
 (14) work with the exception of the laboratory work, and the
 (15) laboratory work is simply confirmation that the samples taken
 (16) in the field are North Alaskan or slope crude. The reason
 (17) that's not in his hands is the laboratory is not done and they
 (18) just got the samples down now at the end of the trip.
 (19) THE COURT: When will the samples be done?
 (20) MR. PETUMENOS: I'm not sure I can report that back to
 (21) you probably later today. But I don't think counsel is correct
 (22) that the reports of the scientists in the field, I think they
 (23) were turned over to Exxon some time ago. And I will confirm
 (24) that, because of the representation I want to confirm that
 (25) today, in case I'm in error, but I believe they had that. Now

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- (1) I want to tell the Court when these gentlemen will testify.
 (2) THE COURT: That's fine.
 (3) MR. PETUMENOS: Because I have that.
 (4) With the usual caveats that trials scheduled with witnesses
 (5) are moved about at best. It's my estimate that the Bush
 (6) testimony will not come on until July 8, and the Mundy
 (7) testimony will not come on until July 11 and 12.
 (8) THE COURT: Okay.
 (9) MR. PETUMENOS: Lobdell testimony and the Johnson
 (10) testimony will be approximately July 14 and 15. So obviously
 (11) the plaintiffs resist the request for continuance.
 (12) THE COURT: For what?
 (13) MR. PETUMENOS: Resist the request for opening
 (14) statement.
 (15) THE COURT: Well, counsel, I'm not going to decide
 (16) that question today about the delay in opening statement.
 (17) MR. DIAMOND: Yes.
 (18) THE COURT: Because I want to see what you've got, see
 (19) what you're getting and then come back to me on Friday when
 you
 (20) have the request.
 (21) MR. DIAMOND: I just want to advise the Court that
 (22) with respect to Mr. Stoll's client, what we expect to be filing
 (23) a brief motion this morning concerning the Cordova claim. We
 (24) were produced basic discovery documents yesterday
 amounting to
 (25) 2500 pages in support of a new unreimbursed expense claim
 that

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- (1) was never served us in discovery. We're not asking that the
 (2) trial date be changed at all because of that; just asking that
 (3) that claim be severed and the other issues postponed, but that
 (4) will be delivered this morning.
 (5) THE COURT: Mr. Stoll, you should probably put on the
 (6) record what some of the in-chambers discussions have been.
 (7) I've told the parties that, due to the nature of the
 (8) unreimbursed expenses or labor or claims, that my decision
 was
 (9) to sever those issues and have a trial on them. I gave the
 (10) parties some time to think about that and come back to me and,
 (11) if they wanted a hearing on that issue to tell me, and then -
 (12) MR. STOLL: This is a different matter, Your Honor.
 (13) THE COURT: Well, it may be, but I want to put this on
 (14) the record anyway.
 (15) And I have heard nothing from the parties since, so my
 (16) inclination is firm: Those unreimbursed expenses and
 (17) unreimbursed claims are severed, they are not going to be tried
 (18) in this trial. They will be tried in another trial.
 (19) MR. STOLL: Just a minute, Your Honor. As I
 (20) understand it, the discussions we had in chambers related to -
 (21) they filed a motion to strike our -
 (22) THE COURT: Interrogatories.
 (23) MR. STOLL: - interrogatories, and the items that you
 (24) talked about severing were items that were contained in the
 (25) unreimbursed labor claims that were contained in those

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- (1) supplemental interrogatory answers.
 (2) THE COURT: That's right.
 (3) MR. STOLL: And we're talking about two different
 (4) things here. We understand that ruling, we accept - we don't
 (5) agree with it, but we've accepted it. What he's talking about
 (6) is there are some unreimbursed - there always have been some
 (7) unreimbursed expense items. This is not the same thing. The
 (8) unreimbursed labor was to divert services and, as I've
 (9) indicated and discussed, we talked about either having a 54 (b)
 (10) final judgment on the delivery of service, of taking that up
 (11) and then getting the whole matter resolved, but this is a
 (12) different issue and so I did not understand at any time that
 (13) the Court was going to sever all these other claims of Cordova.
 (14) THE COURT: Well, we'll have to talk about since
 (15) this -
 (16) MR. STOLL: You were saying the subvertant services?
 (17) THE COURT: That's right.
 (18) MR. STOLL: Yeah, I understand that.
 (19) MR. STOLL: He's talking about something different.
 (20) THE COURT: To the extent that there's a motion that's
 (21) going to be filed, I'll deal with the motion as it's filed,
 (22) after it's filed.
 (23) MR. STOLL: I understand.
 (24) THE COURT: But let's go back to the experts, of time
 (25) reports and updates. I don't hear any objection to the solid

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- (1) deadline of the 24th for the deadline of the expert reports and
 (2) backup information. So that's the deadline.
 (3) MR. DIAMOND: Yes. I think we were anticipating that
 (4) that was the deadline when you said it last week as well.
 (5) THE COURT: But the problem is we've discussed a
 (6) number of things in chambers and we perhaps have not put it
 on
 (7) the record, but it's on the record now.
 (8) MR. PETUMENOS: That was on the record. The only
 (9) thing that I'm uncertain about that I have to check is the
 (10) laboratory reports on the fingerprinting, and I will report to
 (11) the Court later today with a call or I'll do it tomorrow.
 (12) MR. DIAMOND: And we'll raise the other subject when
 (13) we receive the reports, I guess Thursday.
 (14) THE COURT: All right.
 (15) You said laboratory reports regarding the fingerprinting.
 (16) What about the laboratory reports regarding the identification
 (17) of the oil?
 (18) MR. PETUMENOS: That's what it is.
 (19) THE COURT: Same thing?
 (20) MR. PETUMENOS: Yeah. The reports on the field work,
 (21) I believe, are already in their hands from '94.
 (22) THE COURT: So that's the one possible exception to
 (23) the 24th, and you have to let them and me know precisely when
 (24) to expect those updates.
 (25) MR. PETUMENOS: Right.

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- (1) MR. DIAMOND: And I'm not certain it's only limited to
 (2) fingerprinting. There are chemical analyses with samples that
 (3) were taken that deal with concentrations and their inditia that
 (4) we expect Mr. Bush will be talking about when he testifies.
 (5) THE COURT: All right. So with regard to whether or
 (6) not I delay the opening statement, the answer is I don't know
 (7) yet, you have to let - if you want something, it's going to
 (8) have to be on the record and it's going to have to be on Friday
 (9) so I can make that decision and give you plenty of notice,
 (10) right?
 (11) Was there anything else?
 (12) MR. STOLL: Your Honor, I'm wondering if they can get
 (13) this resolved later today in terms of when these things are
 (14) going to be filed, whether we couldn't get it resolved, if it's
 (15) possible, before Friday. Because the way this arose was I
 (16) didn't think there was any issue, last week we had worked with
 (17) the 24th date, and we were planning on having the opening
 (18) statements. I made the simple inquiry, how long was his
 (19) opening statement going to be so that I could determine
 whether
 (20) to call my first witness on Monday or Tuesday. And then
 (21) suddenly for the first time we get all this business about the,
 (22) a week delay in the trial, in the beginning of trial. My first
 (23) witness is one of a couple people, and that - either one of
 (24) those people are coming from out of state, and so with that in
 (25) mind I've got to get them a little lee time, so if it's at all

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- (1) possible we can make a determination, either later today or
 (2) tomorrow will certainly be helpful for planning for
 (3) out-of-state information.
 (4) THE COURT: Will you have the information, you need to
 (5) give me the appropriate information you need by Thursday
 (6) afternoon.
 (7) MR. PETUMENOS: What I'm going to suggest is obviously
 (8) work on this problem when I'm out of court and when I have
 (9) completed the deliveries to the defendants, I will notify the
 (10) Court that I'm done, and if it's before Friday, then we can
 (11) take it up, and there's also of course the issue of how quick
 (12) the jury selection is going to go.
 (13) THE COURT: That's true.
 (14) MR. PETUMENOS: If I beat that deadline again on the
 (15) Friday, I will inform the Court that production's in or that I
 (16) know about the laboratory reports and perhaps we can take it
 up
 (17) a little earlier if I finish.
 (18) THE COURT: Try to do it by Thursday Mr. Stoll.
 (19) MR. STOLL: All right. Thank you.
 (20) THE COURT: Was there anything else?
 (21) MR. DIAMOND: No, Your Honor.
 (22) THE COURT: I need to do a couple of things before we
 (23) get the jurors up here.
 (24) One is there was a question raised in chambers about the
 (25) random selection of these jurors. And so I'd like you to

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- (1) understand the random selection process is on the record. The
 (2) clerk does it on the record, draws the name out of a box that's
 (3) been shuffled. One name is drawn, the box is shuffled again,
 (4) another name is drawn; this is the process that I described to
 (5) counsel prior to the time this so-called randomizing was done.
 (6) Counsel had an opportunity to sit in on the selection of these
 (7) jurors and the numbering of the jurors, and counsel, all
 (8) counsel waived their presence; it's true, isn't it?
 (9) MR. STOLL: Yes, Your Honor.
 (10) MR. DIAMOND: We were not present for that, right.
 (11) THE COURT: You said you didn't want to be present,
 (12) right?
 (13) MR. DIAMOND: I'm sure one of our -
 (14) THE COURT: It's my recollection, counsel; my
 (15) recollection in chambers is you didn't want to be present.
 (16) That's correct, isn't it?
 (17) MR. DIAMOND: I believe that's correct.
 (18) MR. PETUMENOS: That is correct, Your Honor.
 (19) THE COURT: So you were not present, but the selection
 (20) process is on the record; no question - one question off the
 (21) record has been raised as to whether or not there has been
 (22) random selection. The answer is yes, there was random
 (23) selection.
 (24) The second answer is yes, you did waive your presence at
 (25) that random selection, but to the extent you have questions you

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- (1) can go to the record because it's on the record; all right?
- (2) MR. DIAMOND: Your Honor, we only raise that because,
- (3) as we went through the questionnaires, there appear to be
- (4) jurors who knew one another and they had back-to-back juror
- (5) numbers; and we weren't suggesting that anybody did something
- (6) that they weren't supposed to do or anything improper was done,
- (7) it was just inference on our part that something was done and
- (8) we wanted to bring it to your attention.
- (9) THE COURT: Those inferences are frequently done by
- (10) trial lawyers, and I'm not saying suspicion is a bad thing in a
- (11) trial lawyer, but the fact is it's taught me something, and
- (12) that is this kind of problem will not be so-called waived in
- (13) chambers; I mean, your presence won't be waived and then a
- (14) question raised in chambers later. To the extent that these
- (15) things have to be aired, they should be aired here in court on
- (16) the record, and that will make our jobs, all of our jobs a lot
- (17) easier.
- (18) Okay. The other thing is about the exhibit procedure.
- (19) There has been some question about what rules would apply,
- (20) whether we would follow the federal method of handling the
- (21) exhibits, are we following the state method. I'm not sure what
- (22) finally was arrived on is the federal method or some mixture of
- (23) the two methods.
- (24) Whatever is decided, though, that has to be clearly defined
- (25) for the parties so there's no subsequent questions about it.

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- (1) And probably it has to be clearly defined on the record so
- (2) that, to the extent that normal state procedures are not
- (3) followed and federal procedures are adopted because the nature
- (4) of this trial and the electronic part of the trial, the
- (5) modernizing of the trial procedure, the parties have to
- (6) understand what the selection procedure is, the exhibit
- (7) procedure is, and you agree to it. Or I have to make a
- (8) decision about anything they don't agree to, and I want do that
- (9) in chambers.
- (10) So to the extent that there's some question about what's
- (11) going to happen, I'm going to tell you this: You can ask my
- (12) clerk, you can figure out what the procedures are, and then at
- (13) some point prior to the time we begin with the first witness
- (14) we'll go on the record, we will see whether or not there are
- (15) any problems that you have with regard to the exhibit
- (16) procedure, we will resolve those problems, and then we'll
- (17) proceed with the trial. Acceptable?
- (18) MR. STOLL: Your Honor, I have one matter.
- (19) THE COURT: About that?
- (20) MR. STOLL: It was about the exhibit, the numbering of
- (21) the exhibits.
- (22) THE COURT: What is it?
- (23) MR. STOLL: Well, this was raised to me by one of our
- (24) paralegals that's in charge of our exhibits yesterday. And it
- (25) had been our understanding, from prior conversations with the

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- (1) Court and counsel, that - and this goes back actually
- (2) months - that we could use the same exhibit sticker if there
- (3) was a federally incorporated exhibit into state - into this
- (4) case, we could use that federal sticker on the exhibit; and
- (5) yesterday - I just want to clarify this because it came as a
- (6) surprise to me - apparently our paralegal that's in charge of
- (7) our exhibits told me that she had been advised that we had to
- (8) resticker all of the exhibits. And the problem is not simply
- (9) with the exhibits, just putting a little sticker on a few
- (10) hundred exhibits, the issue is a lot of these exhibits are on
- (11) CD-ROM, and they've been burned in the CD-ROM with the fed
- (12) exhibit number on them.
- (13) So if we're changing the program here I'd like to know it,
- (14) but we can stop only work going and - but I just want to find
- (15) out from the Court what you're doing.
- (16) THE COURT: All right. Pat, do you need to answer?
- (17) THE CLERK: When I spoke to your paralegals, they were
- (18) to resticker the exhibits with the state number, only of the
- (19) exhibits that had the federal number on it.
- (20) MR. STOLL: That's a change. Because the old thing we
- (21) had talked it to Judge Shortell about in the past, because we
- (22) knew this could be an issue, so a couple of months ago actually
- (23) we brought this up, to use the federal exhibit sticker in this
- (24) court, it's a blue sticker, and it's got the federal number on
- (25) it and so on.

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- (1) THE COURT: Why is it that you couldn't use the
- (2) federal - leave the federal sticker on but put a state exhibit
- (3) sticker, too?
- (4) MR. STOLL: We could do that.
- (5) THE COURT: Won't that solve the problem?
- (6) MR. STOLL: It will as far as the exhibit is
- (7) concerned.
- (8) THE COURT: Hard copy.
- (9) MR. STOLL: The hard copy will. Not as far as the
- (10) CD-ROM is concerned; it's a lot of work.
- (11) THE COURT: It is a lot of work, but it will clarify
- (12) things.
- (13) MR. STOLL: If I may, Your Honor, the number is the
- (14) same. What the parties have done is re-used the same number,
- (15) and if there's an Exhibit 501 that's incorporated by reference
- (16) to the federal case it's 501 in this court also. The only
- (17) difference is that on the little sticker, it's got the federal
- (18) case number on it - I can't remember what the case number is,
- (19) it should be ingrained in my mind by now.
- (20) THE COURT: A-something.
- (21) MR. STOLL: A-something. We don't say the A word
- (22) here. We go places we don't like to go.
- (23) MR. DIAMOND: It will simplify the exhibit process.
- (24) THE COURT: What would?
- (25) MR. DIAMOND: If he used the A-word.

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- (1) THE COURT: Well, I tell you what, I'll try to resolve
 (2) this problem and I'll let you know how I'm going to resolve it,
 (3) but I'm not going to resolve it now.
 (4) MR. STOLL: It will be easier, Your Honor, if we can
 (5) just make a note.
 (6) THE COURT: I understand.
 (7) MR. STOLL: Okay. Thank you.
 (8) THE COURT: That's all I intended to discuss with you
 (9) regarding the exhibits.
 (10) It should be noted that the parties came to chambers
 (11) yesterday to discuss whether some jurors should be excused
 (12) for
 (13) cause. There was only one juror they could agree on and that
 (14) was number 16, Jean Allison, correct?
 (15) MR. STOLL: Unfortunately that's correct, Your Honor.
 (16) MR. DIAMOND: That's correct.
 (17) THE COURT: So I excused Ms. Allison that's excused
 (18) pursuant to the stipulation of the parties.
 (19) MR. DIAMOND: Correct.
 (20) Also, pursuant to an agreement of counsel, we have agreed
 (21) that juror number 95 may be excused.
 (22) THE COURT: What's the name?
 (23) MR. DIAMOND: I'll have that here for you
 (24) momentarily.
 (25) MR. DIAMOND: Renee D. Anderson, with an O.
 (26) THE COURT: What's the cause?

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- (1) MR. DIAMOND: Your Honor, there was an agreement that
 (2) either side would identify to the other any individuals who
 (3) were approached during any kind of pretrial polling or focus
 (4) group work, and we're awaiting total exchange but we know
 (5) juror
 (6) number 95 is one of them. There may be others.
 (7) MR. STOLL: We think there may be one other, Your
 (8) Honor, but we're trying to check the address.
 (9) THE COURT: So I have your agreement that I can simply
 (10) excuse Anderson, is that right?
 (11) MR. STOLL: That's correct.
 (12) MR. DIAMOND: Right.
 (13) THE COURT: I'll do so and have Anderson notified.
 (14) There's another juror, and I don't - it's in the fifties
 (15) somewhere - that called in today and said he - I think it's a
 (16) he, was on the - is or was on the federal jury panel. I
 (17) really don't know the details of that, he just wanted to inform
 (18) us that that was true. But I know that my secretary knows the
 (19) name so I can provide that name for you, and I don't know
 (20) exactly what the facts are, if in fact that juror should be
 (21) excused and maybe you could follow up on that and let me
 (22) know,
 (23) all right?
 (24) MR. DIAMOND: We will.
 (25) THE COURT: Anything else on any of these questions?
 (26) MR. DIAMOND: No, Your Honor.
 (27) THE COURT: Now let's talk about the jury selection

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- (1) when we get the individual jurors in here.
 (2) This jury examination will be conducted by - at least in
 (3) the initial stages, by questioning each individual juror
 (4) outside of the presence of the other jurors. So what I will do
 (5) is I will have ten, ten jurors brought up here and put in the
 (6) next-door jury room. The other jurors will be excused for an
 (7) hour because I see no reason to keep them downstairs in the
 (8) jury room when they won't be used. They will be told to come
 (9) back in an hour, I'd say 10:30 now, and once the ten jurors are
 (10) up here, one of them - the first one will come in the
 (11) courtroom, will seat in that middle chair in front of the
 (12) microphone and will be questioned individually by the parties.
 (13) Each of you have agreed that you will be limited to ten minutes
 (14) apiece, right?
 (15) MR. STOLL: Correct.
 (16) MR. DIAMOND: Right, Your Honor.
 (17) THE COURT: And I think, counsel, unless there is a
 (18) reason, I'm going to hold you to that, so make sure when the
 (19) ten minutes come around you wrap it up. I don't want to have
 (20) to cut you off.
 (21) One question I have for you is, do you want those general
 (22) questions that we normally use and that are on a placard here
 (23) somewhere, do you want the jurors to answer that for the record
 (24) or do you think the questionnaire is sufficient?
 (25) MR. DIAMOND: I think we have the same information in

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- (1) the questionnaire.
 (2) THE COURT: So I will simply establish the juror's
 (3) name for the record, remind the juror that he or she is under
 (4) oath and then allow you to do some supplemental questioning
 (5) which supplements that given in the questionnaire, all right?
 (6) Then to the extent that there might be a challenge for
 (7) cause, you have two methods of doing it: You could, in the
 (8) presence of the juror, simply say, I believe there is a reason
 (9) why this juror should be excused; I can hear you on that, allow
 (10) further questions, and then decide it. Or if you want the
 (11) juror excused, you have to tell me that; I will put the juror
 (12) back in the jury room and you can then make your record.
 (13) Acceptable?
 (14) MR. STOLL: Fine.
 (15) MR. DIAMOND: Yes, Your Honor.
 (16) MR. STOLL: We just say we have a matter for the Court
 (17) or something like that?
 (18) THE COURT: Sure.
 (19) Now, are there any other questions about the procedure?
 (20) MR. DIAMOND: No, I believe we are in sync, that we
 (21) will continue the process until we have 30 who have been
 (22) passed
 (23) for cause, at which time we will begin exercising peremptory.
 (24) MR. STOLL: True.
 (25) THE COURT: So you want to go through 30 of them, not
 (26) just 18, right?

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- (1) MR. STOLL: Well, for cause, I think, yes.
- (2) MR. DIAMOND: Yes. Inasmuch as there are six
- (3) peremptories per side, if we fill the box with 12 plus the six
- (4) alternates and 12 potential peremptories, then we will be
- (5) reasonably assured that we can work from that number.
- (6) THE COURT: So we'll go through 30 of the jurors, get
- (7) 30 passed for cause; then we will begin the peremptory
- (8) procedure, will be out of the presence of the jurors, right?
- (9) MR. DIAMOND: Correct.
- (10) MR. STOLL: Right.
- (11) THE COURT: Okay. The jurors are downstairs and ten
- (12) of them have to be brought up, so that will take - let's just
- (13) be charitable and say it will take ten minutes.
- (14) THE CLERK: Before you go off the record, there is a
- (15) problem with that juror. She's 70, she hasn't slept all
- (16) weekend and she's a wreck. She's number 44, Rose Call.
- (17) THE COURT: Do you have a number 44, counsel, Rose
- (18) Call? She's in the first group.
- (19) THE CLERK: And she's very upset.
- (20) THE COURT: The jury clerk tells us that juror number
- (21) 44, Rose Call has a real problem. She's 70 years old, she's
- (22) nervous, she can't sleep, and, the words of the jury clerk, is
- (23) a wreck.
- (24) MR. DIAMOND: She was one on our list who claimed that
- (25) she had a nervous condition and high blood pressure and

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- (1) indicated that would be reasonable that she wouldn't serve and
- (2) it will be okay to excuse her.
- (3) MR. STOLL: I have no problem with that.
- (4) THE COURT: Okay. I'm going to excuse Ms. Call.
- (5) THE CLERK: Please rise, the Court stands in recess.
- (6) (9:25 a.m. recess taken until 9:43.)
- (7) THE COURT: Counsel, we're ready to begin the jury
- (8) selection process. And I have the questionnaires up here, and
- (9) if I'm not - let's see. Number one is -
- (10) THE CLERK: Mr. Sampson.
- (11) THE COURT: So the first juror to be questioned will
- (12) be Charles Sampson III, right?
- (13) Do you have that?
- (14) MR. DIAMOND: Yes.
- (15) THE COURT: All right. We'll call Mr. Sampson in.
- (16) (Charles Sampson comes in.)
- (17) THE COURT: Mr. Sampson, I'd like to tell you a couple
- (18) of things about this jury selection so you're not totally
- (19) confused about it.
- (20) A Okay.
- (21) THE COURT: First thing you should remember is that
- (22) you're under oath, we put you under oath with the rest of the
- (23) panel on the first day, so everything you say now in response
- (24) to questions will be under oath.
- (25) Second, I want you to know what jury selection is. Jury

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- (1) selection is to try to find out things about that - that
- (2) determine your qualifications as jurors. And the lawyers here
- (3) will be asking you some brief questions. They have a time
- (4) limit of ten minutes on them for each juror. So the most
- (5) you'll be in here on this selection time is 20 minutes, and it
- (6) might be substantially less than that.
- (7) They are taking into account, when they ask you questions,
- (8) those questions that you've answered in this jury
- (9) questionnaire. So they do know something about you so far;
- (10) they just simply want to follow up on it.
- (11) It's a very legitimate part of the jury system that the
- (12) questions are asked of jurors to determine whether or not they
- (13) might have a bias that would affect them or for any other
- (14) reason that might qualify them for jurors, so you shouldn't
- (15) think of this as some sort of intrusive process; it is the best
- (16) way to get an unbiased and impartial jury.
- (17) Do you understand?
- (18) A I understand.
- (19) MR. DIAMOND: Your Honor, would you like us to place a
- (20) copy of the juror's questionnaire in front of him?
- (21) THE COURT: That might not be a bad idea. As the
- (22) jurors come in they probably should be seeing what you're
- (23) referring to, if you have to refer them to specific questions.
- (24) Get them in order and give them the questionnaires in
- (25) order.

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- (1) THE COURT: Mr. Stoll is a lawyer for the plaintiffs,
- (2) and he'll be asking you some questions.
- (3) VOIR DIRE EXAMINATION OF CHARLES SAMPSON
- (4) BY MR. STOLL:
- (5) Q Good morning, Mr. Sampson.
- (6) A Good morning.
- (7) Is this thing on?
- (8) Q I represent the municipalities plaintiffs in this case.
- (9) Is there anything about the nature of this case that causes
- (10) you any pause in terms of thinking that maybe you shouldn't
- (11) serve on this case?
- (12) A No, sir.
- (13) Q And do you think you could be fair to both parties, all
- (14) parties?
- (15) A I feel I can.
- (16) Q And you haven't pre-judged any of the evidence in this
- (17) case?
- (18) A No, I haven't.
- (19) Q You haven't made any determination whether the plaintiffs
- (20) have suffered damages or haven't suffered any damages?
- (21) A Well, I haven't been following the case real actively, so I
- (22) really don't; I really don't.
- (23) Q And sitting on the jury wouldn't cause you any personal
- (24) problems as far as your work, I gather from what you said in
- (25) the questionnaire?

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- (1) A I looked into all that, and I don't see any problem.
 (2) Q And you've lived in - I know you moved up here when you
 (3) were young, you've lived here 25 years. What do you like about
 (4) Alaska?
 (5) A Alaska's unique to me, but it was kind of one of those
 (6) things you're thrown into; you come up in the military with
 (7) your family and my folks split and I stayed up, stayed here. I
 (8) like it here, though.
 (9) Q Great.
 (10) Have you ever been to Prince William Sound?
 (11) A No.
 (12) Q And have you ever been to Kodiak?
 (13) A No.
 (14) Q What type of vacationing do you do in Alaska? I notice in
 (15) here you went to Hawaii if you get out of state?
 (16) A Actually I haven't seen much of Alaska. It's a real shame,
 (17) the tourists see more than I do. I was 17 before I went to
 (18) Eagle River.
 (19) Q And what newspapers do you read?
 (20) A The Daily News, when it was - well, the Times was here,
 (21) too, but we tend to read the Daily News. However, I don't read
 (22) the newspapers; I don't have any time for it.
 (23) Q And you're interested in computers, I notice?
 (24) A Yes, sir.
 (25) Q You'll see a lot of computer stuff around here.

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- (1) You're buying your home?
 (2) A Yes, I am.
 (3) Q And in this case, there are property damage claims brought
 (4) by the various plaintiffs. The fact that you're buying your
 (5) home, that's not going to affect you in any way in making your
 (6) determination of whether or not these plaintiffs have been
 (7) damaged or not damaged, is it?
 (8) A No.
 (9) MR. STOLL: We're very satisfied with the juror.
 (10) THE COURT: Okay.
 (11) VOIR DIRE EXAMINATION OF CHARLES SAMPSON
 (12) BY MR. DIAMOND:
 (13) Q Good morning, Mr. Sampson. My name is Chuck Diamond.
 (14) Were you a baker in the military?
 (15) A No, I worked for a local grocery store here in town.
 (16) Q When you were in the military were you -
 (17) A I wasn't myself in the military, my father was; that's what
 (18) brought us here to Alaska.
 (19) Q I notice you started off as a - as a baker in Safeway and
 (20) then changed careers and then changed back again?
 (21) A (Nods head).
 (22) Q How did that happen?
 (23) A Well, that was back at a time that I was considering
 (24) getting married, things like that; I wasn't getting enough
 (25) hours at the Safeway, so I had an opportunity to switch it a

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- (1) different company, for Roto-Rooter (ph), I knew the owners
 (2) there. There was an opportunity and so I took it. And it
 (3) wasn't until then that I was able to purchase my home and I had
 (4) a full-time job, and then eventually things kind of went
 (5) sour - not sour, but they reduced commissions in that job, so
 (6) by that time Safeway was expanding and I returned back to
 (7) Safeway with a full-time job there.
 (8) Q Do you prefer baking to plumbing?
 (9) A Absolutely.
 (10) Q Do you know whether, if you serve on this jury, your
 (11) employer will continue to pay your salary?
 (12) A Yes.
 (13) Q Do you want to serve on the jury in this case?
 (14) A I'm kind of surprised at how long it's going to take, but I
 (15) don't have any qualms against it, I'll put it that way.
 (16) Q Why do you want to serve?
 (17) A I enjoy participating in the judicial process.
 (18) Q You're not the only one with qualms of about how long it's
 (19) going to take.
 (20) On your questionnaire you said you followed news coverage
 (21) about the Exxon Valdez oil spill, and I think you said largely
 (22) on television; is that right?
 (23) A Yes.
 (24) Q You didn't read very much about it?
 (25) A I don't read the newspapers much.

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- (1) Q What - what do you remember seeing about it, what stays in
 (2) your mind now five years later?
 (3) A Not so much what they say, but I couldn't say what they -
 (4) the video, the oil on the coastline and stuff like that.
 (5) That's what I see in my mind pretty much. But as far as the
 (6) details, not too much because I didn't pay a whole lot of
 (7) attention to that.
 (8) Q When the spill first happened, did you have concerns that
 (9) the oil would be around a long, long time?
 (10) A Well, I didn't really consider how long it would - the
 (11) effect of it would be. I think that it's surprised a lot of
 (12) us. But no, I would have to say no.
 (13) Q In what way are you surprised now? You said it's surprised
 (14) a lot of us, that it's been around as long as it has or it's
 (15) left as quickly as it had?
 (16) A Well, because I guess it started in '89 and here it is '94
 (17) and we're still dealing with the oil and the problems the oil
 (18) had on the land and the water and so on.
 (19) Q In your own mind what problems do you think are still
 (20) ongoing from the spill?
 (21) A Actually, I'm pretty uncertain about that. I can only say
 (22) to what everybody else seems to be complaining about; you
 (23) know,
 (24) that people have suffered some damages, or think they have. I
 (25) really don't know, though.
 (25) Q Do you have any opinions or feelings or suspicions as to

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- (1) whether there is still oil out there on the beaches?
 (2) A I suppose there may be some, but I'm not concerned.
 (3) Q Do you have any feelings or views as to whether, if there
 (4) is any oil, it's hurting anything now?
 (5) A The - perhaps environmentally, but I'm not a scientist. I
 (6) don't know.
 (7) Q One of the big issues that Mr. Stoll and I will be
 (8) disputing during the course of the case is whether and to what
 (9) extent there is still some oil on the shorelines.
 (10) Do you think you can put aside everything that you've read
 (11) and everything that you've heard and everything that people
 (12) have talked to you about and make a judgment solely on what
 (13) hear in this courtroom?
 (14) A I believe I can. Like I said, I'm really not swayed from
 (15) one side or the other, because I don't know enough about the
 (16) case, and even as it was being - you know, from one channel to
 (17) the next bombarded, I guess, on the public; I didn't pay a
 (18) great deal of attention to it. Except right at first, the
 (19) initial news and whatnot.
 (20) Q I notice you had two small children. Any pets at home?
 (21) A No.
 (22) Q You said you haven't been following the news coverage
 (23) about
 (24) all the lawsuits back and forth that have come out of the oil
 (25) spill. Why is that?
 (25) A Well, I guess I'm just really not interested.

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- (1) Q It's a reasonable view to take. There was some reports
 (2) about a verdict that was rendered last week in federal court.
 (3) Did you hear anything about that?
 (4) A No, sir, I didn't.
 (5) Q You told us in your questionnaire, Mr. Sampson, that you
 (6) have a favorable opinion of Native Alaskans; that true? Do you
 (7) remember, you were asked to check a whole lot of boxes?
 (8) A I can't remember. Can I review -
 (9) Q Take a look at question 47.
 (10) A What page is that?
 (11) Q It was question number 47, I think ten or 11.
 (12) You have an even number of "don't know's" and checks?
 (13) A Yeah. I'm trying to remember why I chose that.
 (14) I remember at the time I wrote it, but I don't know why I
 (15) chose that right now. It seems more appropriately that it
 (16) should have been marked even though the column isn't there
 (17) for
 (18) "don't know". I'm kind of in the middle.
 (19) Q You notice we didn't give you a choice right in the
 (20) middle.
 (21) A I know.
 (22) Q That was to make your life difficult.
 (23) A I couldn't adequately, you know, say. I mean to say, I was
 (24) favorable towards something seems to me that I would, you
 (25) know,
 (25) know something about it. But the next choice underneath that
 (25) was unfavorable and that didn't seem fair at the same time, so

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- (1) I just didn't know.
 (2) Q You put a "don't know" for Exxon, though. Was there some
 (3) reason you wrote "don't know" for Exxon but put a check in one
 (4) of the boxes for Natives; did they strike you differently?
 (5) A I think - okay. Please say that again.
 (6) Q Okay. I'm just curious as to why you had an opinion
 (7) slightly of - somewhat favorable about some of these groups,
 (8) both governments, seafood processors, but really didn't have
 (9) an
 (10) opinion about Exxon?
 (11) A Maybe it's because I don't know anybody in the oil
 (12) industry, really. I do know some Native people and perhaps the
 (13) reason that I said somewhat favorable to the Natives is that
 (14) the Native people that I do know, they have succeeded, they
 (15) hold good jobs, you know; things like that. And so that has
 (16) influence on how I feel about the people, the group of people.
 (17) Q If you serve, you'll find out that this case is not between
 (18) Natives on one side or companies on the other. But the Native
 (19) corporations who are dealing - in addition to Mr. Stoll's
 (20) clients, the Municipalities; and I notice you said you didn't
 (21) have a view of Native corporations. Is that correct?
 (22) A That's correct.
 (23) Q For the same reason you just don't know very much about it?
 (24) A I don't know very much about it, really.
 (25) Q You also told us, in response to question number 50, if you
 (25) just flip the page, that you suspect - and I'm looking at -

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- (1) I'm sorry, it's 51-B, you were asked, Do you think that
 (2) everything is back to normal in those areas, referring to the
 (3) areas that were exposed to the oil; and you said no?
 (4) A I said that probably because I feel there perhaps might be
 (5) some long-term environmental recovery effects; but again, it's
 (6) speculation on my part.
 (7) Q We all have speculation coming into a new situation,
 (8) surmise or views based on little.
 (9) Do you think that it's possible for you to leave those
 (10) outside the courtroom and listen to what everybody has to say
 (11) and just make your judgment about questions such as this on
 (12) what you hear from the witness stand?
 (13) A I feel very confident that I can do that.
 (14) Q What kind of computer do you have?
 (15) A I have a 486 PC.
 (16) Q What do you use it for?
 (17) A Keep track of home finance; like call support services,
 (18) talk with other members that use them.
 (19) Q I use mine for games, so -
 (20) MR. DIAMOND: I have nothing further, thank you. This
 (21) witness is acceptable - I'm sorry, juror.
 (22) THE COURT: No further questions, right?
 (23) Mr. Sampson, thank you very much. I'm going to send you
 (24) back into the jury room. I guess you'll just have to stay
 (25) there. We'll take a break in about a hour, and then I'm going

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- (1) to try to get through these ten jurors, and then I'll probably
 (2) either excuse you for the day or give you some further
 (3) instructions, all right? Thank you very much.
 (4) MR. SAMPSON: Thank you.
 (5) THE COURT: Counsel, on the next juror would you
 (6) please get the questionnaire and have it?
 (7) MR. DIAMOND: May I walk to the well -
 (8) THE COURT: Uh-huh.
 (9) MR. CLOUGH: Your Honor, while we're bringing in the
 (10) next juror, can I say something? It's impossible for me to see
 (11) the juror because of the podium. Can the juror sit in the
 (12) witness stand?
 (13) THE COURT: I can't see the juror.
 (14) MR. CLOUGH: Oh.
 (15) MR. PETUMENOS: That podium will move back.
 (16) THE COURT: That's a movable podium.
 (17) MR. PETUMENOS: That will pull back and you should be
 (18) able to see fine.
 (19) THE COURT: If you can put it in between the tables.
 (20) MR. CLOUGH: I think that would be easier for
 (21) everybody.
 (22) MR. STOLL: Can you see all right now, John?
 (23) MR. CLOUGH: Yeah.
 (24) THE COURT: All right. Can you see, counsel?
 (25) MR. CLOUGH: Thank you.

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- (1) MR. STOLL: Your Honor, I was just going to suggest
 (2) something like this, after we're done, they can leave for the
 (3) day.
 (4) THE COURT: I thought about that, too.
 (5) Is that all right, counsel, that I can simply excuse
 (6) Mr. Sampson and tell him that he will be contacted at some
 (7) point during the jury selection?
 (8) MR. DIAMOND: That's fine with us. I suggest we come
 (9) up with some sort of signaling device where we tell you if we
 (10) have any reservations for cause.
 (11) MR. STOLL: We'll say we're going to take something up
 (12) with the Court.
 (13) MR. DIAMOND: I thought you couldn't hear me.
 (14) MR. PETUMENOS: Can I have a moment to confer with
 (15) counsel, please?
 (16) THE COURT: Sure.
 (17) MR. CLOUGH: You're not requiring us to ask the juror
 (18) to leave for cause questions, I'm just trying to make sure, if
 (19) we do have a cause objection, are we required to have the juror
 (20) leave or as things move along -
 (21) THE COURT: You're not required to do that, I gave you
 (22) the option you can do it right here or you can excuse the
 (23) juror.
 (24) MR. CLOUGH: Thank you.
 (25) MR. PETUMENOS: May I have a moment to confer with

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- (1) counsel?
 (2) THE COURT: Yes.
 (3) Actually - I'm going to let Mr. Sampson go right now,
 (4) counsel.
 (5) MR. STOLL: That's fine.
 (6) MR. DIAMOND: Fine
 (7) (Mr. Sampson enters the room.)
 (8) THE COURT: Mr. Sampson, you don't have to sit down.
 (9) I just - I thought, after I gave you those instructions and
 (10) talked with the parties, that there is a better way to deal
 (11) with things that would take less of your time. Since you've
 (12) gone through the initial part of the jury selection and
 (13) answered the questions, we really don't need to have you here
 (14) until later in the selection process, so what I'm going to do
 (15) is I'm just going to simply let you go for the day; you're
 (16) juror one. We will contact you.
 (17) A All right. Later on?
 (18) THE COURT: I want you to understand something now:
 (19) Since you're excused only for the day and you are a potential
 (20) member of this jury, so you have to remember the admonition
 (21) that I gave the jurors on the first day; that is, don't talk
 (22) about this case with anyone, even including other members of
 (23) the jury panel.
 (24) A Okay.
 (25) THE COURT: Don't form or express any opinion on the

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- (1) case, if you are a juror, until it's submitted for
 (2) deliberation. To the extent that anybody asks you what you're
 (3) doing, fine, you can say you're on the jury panel, but do not
 (4) let anybody engage you in a conversation about it. It's a very
 (5) dangerous process. They might voice opinions, they might say
 (6) things that they consider to be facts and those are things that
 (7) you shouldn't be considering.
 (8) A All right.
 (9) THE COURT: Thank you, sir, for your time.
 (10) A Thank you
 (11) (Mr. Sampson leaves the room.)
 (12) THE COURT: I want to ask you one question, counsel. The
 (13) cause process, normally you pass for cause at this point. I'm
 (14) assuming if you don't make a challenge for cause that you're
 (15) passing this juror?
 (16) MR. STOLL: That's correct, Your Honor; we understand.
 (17) MR. DIAMOND: That was the nature of my understanding,
 (18) that we be able to signal you if you have a cause problem to
 (19) raise.
 (20) MR. STOLL: He'll pull on his ear
 (21) (Vern Rollins enters the room.)
 (22) THE COURT: Mr. Rollins, you're the second person
 (23) here to be questioned on your qualifications as jurors. I want
 (24) to remind you that I put all the jury panel members under oath,
 (25) all these questions were answered under oath as was the

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- (1) questionnaire answers that you filled out.
- (2) The questionnaire gives a lot of information about
- (3) yourself; really in essence there's only some brief questions,
- (4) follow-up questions from counsel that I will anticipate will be
- (5) asked here today. And they go into - the plaintiffs ask you
- (6) the questions and then defense asks you the questions.
- (7) Mr. Sampson has already been questioned and I've excused
- (8) him for the day. I will probably do the same thing with you,
- (9) once the questions are answered.
- (10) Please remember that this is an attempt to get as impartial
- (11) and fair a jury as can possibly be gotten and that's why these
- (12) questions are being asked. All right?
- (13) All right, Mr. Fortier?
- (14) MR. FORTIER: Thank you, Your Honor.
- (15) VOIR DIRE EXAMINATION OF VERN ROLLINS
- (16) BY MR. FORTIER:
- (17) Q Hi, Mr. Rollins. My name is Sam Fortier; I represent some
- (18) of the Native corporations in this case.
- (19) What I'd like to do is ask you, first of all, whether or
- (20) not there is anything that gives you, Mr. Rollins, pause about
- (21) serving on a jury in the Exxon case?
- (22) A Not as much as serving - as a juror for Exxon. My only
- (23) problem is I'm a self-employed individual and there's no one to
- (24) run my business while I'd be serving on jury duty of this
- (25) magnitude.

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- (1) Q Mr. Rollins, I did notice that you're self-employed; that's
- (2) what you indicated in your questionnaire?
- (3) A Uh-huh.
- (4) Q What's sort of business is that?
- (5) A It's a distributorship business.
- (6) Q And what sort of distribution?
- (7) A Sporting goods.
- (8) Q I see. You supply different stores around town with
- (9) sporting goods?
- (10) A Yes. Well, out of state. I just got back from Fairbanks
- (11) last week. I go to Fairbanks once a week.
- (12) Q And does distribution also take you to rural areas in the
- (13) state?
- (14) A Part of the time I go to Petersburg, Sitka, Juneau.
- (15) Q Any western places in Alaska?
- (16) A No.
- (17) Q Does it take you down to the Cordova area?
- (18) A I don't travel to Cordova very often; I do business by
- (19) phone there. Same way with Valdez.
- (20) Q Now, besides you in the business, is there anybody else?
- (21) Do you have any employees in your business?
- (22) A I have one partner. Now, he does travel the state; he's in
- (23) Nome right now.
- (24) Q So, Mr. Rollins, in the event that you did serve on the
- (25) jury, would that present an insurmountable hardship?

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- (1) A I'm afraid so.
- (2) Q Why is that?
- (3) A Well, this one guy cannot run the business that we have.
- (4) We are factory representatives also with our distributor for
- (5) several different lines, and they expect us to be promoting
- (6) their lines also, so...
- (7) Q Do you understand that the jury service would be between
- (8) 8:30 and 1:30 every day?
- (9) A No, I didn't know what time it would be.
- (10) Q Did you know that it was between 8:30 and 1:30?
- (11) A No.
- (12) Q Does it make a difference that it's between 8:30 and 1:30?
- (13) A Not really. For example, like I'm scheduled to go outside
- (14) the state on July the 8th and won't return until the 18th.
- (15) Q That's the 8th of what?
- (16) A July.
- (17) Q Is that for a vacation?
- (18) A No.
- (19) Q It's for work?
- (20) A Yes.
- (21) Q Let me just ask you a few questions about the case anyway.
- (22) You indicated in your questionnaire that you have - you
- (23) have read quite a bit about the case?
- (24) A Uh-huh.
- (25) Q Can you tell me what sort of publications you have read

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- (1) concerning the oil spill?
- (2) A Well, primarily the newspapers. Alaska Daily News.
- (3) Q You've lived in Alaska for 18 years?
- (4) A Yes.
- (5) Q Did you read any other newspapers?
- (6) A No, just mainly the Daily News.
- (7) Q If you lived up here for 18 years, there was a Daily News
- (8) and it was also the Times paper?
- (9) A The Times, yes.
- (10) Q When the Times and News were both being published as
- (11) separate newspapers, did you have a choice or preference
- (12) between the two?
- (13) A We had took the Times in the beginning, and then when the
- (14) Times sold it got to be kind of one-sided so we went to the
- (15) Daily News. Now we don't have a choice.
- (16) Q Now, have you formed any opinions about the case?
- (17) A In a way I have, and it's an opinion that I feel, although
- (18) to say the oil company is to blame, they've admitted that.
- (19) I've kind of formed my opinion that they've paid an ample
- (20) amount of money already.
- (21) Q Why do you say that?
- (22) A Well, for the amount of money they spent on the cleanup,
- (23) plus a lot of Native fishermen were employed by the Exxon at
- (24) the time, and I know for a fact that they made more money from
- (25) Exxon than they ever did fishing. So I don't really think they

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- (1) were hurt that bad, in my opinion.
 (2) Q And where did you obtain this opinion?
 (3) A Reading.
 (4) Q You have a friend that works for BP too?
 (5) A Yes.
 (6) Q Do you ever talk with your friend about the Exxon Valdez
 (7) oil spill?
 (8) A Not really, because he's not really in with the oil spill
 (9) or Alyeska; he works for the gather center for BP on the North
 (10) Slope.
 (11) Q Now, based upon your understanding that Natives and boat
 (12) owners have been paid by Exxon, they've been paid a lot,
 would
 (13) it be fair to say that you have formed an opinion, then, about
 (14) damages in this case?
 (15) A I think so, to a point, yes.
 (16) Q And do you think that that opinion, with regard to damages
 (17) in this case, would affect your ability to be fair as a juror?
 (18) A I don't think I can give you a honest opinion knowing what
 (19) I know about it now and the amount of money that some people
 (20) that I know that's made on the cleanup down there and still
 (21) asking for more, I don't think I'd give you a good, honest
 (22) opinion.
 (23) Q Correct me if I'm wrong: You could be fair?
 (24) A In my own mind I don't think I could.
 (25) Q And, correct me if I'm wrong: You could be fair to the

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- (1) aren't you?
 (2) A Yes.
 (3) Q Now, if the evidence shows that Native corporations
 (4) suffered damages to their land on account of the Exxon Valdez
 (5) oil spill, do you think that, based upon your perceptions that
 (6) Natives have been paid money by Exxon and Natives have
 received
 (7) more than their share of land, that you could be fair to Native
 (8) corporations?
 (9) A Well, I feel that their land that they're talking about is
 (10) the beaches and I haven't seen very many Natives out on the
 (11) beach trying to make a living turning over the rocks. Other
 (12) than the beaches of their land, I don't think there was any
 (13) damage whatsoever.
 (14) Q And so, Mr. Rollins, if in the event there were - in the
 (15) event you were placed on the jury, would it be fair to say that
 (16) you would carry your feelings now into the jury?
 (17) A I think so, yes.
 (18) MR. FORTIER: I don't have any further questions.
 (19) MR. STOLL: Can we just take something up with the
 (20) Court now, Your Honor?
 (21) THE COURT: Why don't you approach the bench? I
 (22) wonder if you can approach the bench. I'm going to excuse
 you
 (23) for a minute, Mr. Rollins, to the jury room. I'll bring you
 (24) right back. Thanks.
 (25) A Okay.

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- (1) plaintiffs in the case?
 (2) A I don't think I could be fair to either one. There's been
 (3) too much media exposure to the whole thing, as far as I'm
 (4) concerned.
 (5) Q Now, you've lived in Alaska for, let's, see, 18 years?
 (6) A Yes.
 (7) Q So do you have some feeling for how the community views
 (8) Alaska Natives?
 (9) A Yeah.
 (10) Q How do you think the community views Alaska Natives?
 (11) A Well, I think, in my opinion, the majority of the
 (12) non-Native Alaskans think that the Natives of Alaska have been
 (13) given about enough as far as government, land, and money
 and
 (14) everything else. They seem to want more priorities for
 (15) themselves than the rest of the people of Alaska, as far as I'm
 (16) concerned.
 (17) Q And, Mr. Rollins, do you share that view?
 (18) A Yes, I do.
 (19) Q Now, my clients are Native corporations.
 (20) A Right.
 (21) Q Do you think that Native corporations receive too much
 (22) land?
 (23) A I think they've received more land than they deserve, quite
 (24) frankly.
 (25) Q You're aware that this case involves in part land damages,

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- (1) (Vern Rollins leaves the room.)
 (2) THE COURT: Counsel?
 (3) MR. FORTIER: Your Honor, I'd challenge Mr. Collins
 (4) for cause.
 (5) MR. CLOUGH: Your Honor, I think I'll speak to this
 (6) one. We'd like at least an opportunity to question the juror
 (7) and have an opportunity to question him with some of the
 (8) issues, like is he going to feel comfortable following your
 (9) instructions and can he be fair and impartial.
 (10) THE COURT: Correct me if I'm wrong: It's a waste of
 (11) time.
 (12) MR. CLOUGH: I don't intend to spend a lot of time but
 (13) I think it's worth asking the questions. We haven't had an
 (14) opportunity to ask a question.
 (15) THE COURT: I certainly wouldn't cut you off, but I
 (16) wanted jury selection to be efficient. This juror has clearly
 (17) shown a state of mind that seems to render him incapable of
 (18) being a juror. If you can rehabilitate this juror, I think
 (19) your clients should -
 (20) MR. CLOUGH: Maybe they should do that already.
 (21) THE COURT: - give you a certificate.
 (22) MR. CLOUGH: Your Honor, it's not certificates I ask
 (23) for.
 (24) THE COURT: We don't ask for certificates, counsel,
 (25) but we appreciate if people frequently give them to us.

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- (1) I'll bring him back in. You can ask him the questions.
 (2) MR. CLOUGH: Just a couple, Your Honor.
 (3) (Vern Rollins enters the room.)
 (4) THE COURT: Mr. Rollins, Mr. Clough will have some
 (5) supplemental questions for you.
 (6) A Okay.
 (7) VOIR DIRE EXAMINATION OF VERN ROLLINS
 (8) BY MR. CLOUGH:
 (9) Q Hi, Mr. Rollins. My name is John Clough from Juneau, part
 (10) of your sales territory. I want to follow up on some of the
 (11) things you said – and thank you for your candid and honest
 (12) responses, that's what makes this process work. There are no
 (13) right and wrong answers, I think you understand.
 (14) I wanted to ask you about your questionnaire, the part
 (15) about media exposure.
 (16) A Uh-huh.
 (17) Q Have you been given a copy of that there, sir, your
 (18) questionnaire responses?
 (19) A Yeah.
 (20) Q If you could turn to page 9, please, that's the section you
 (21) might recall that talks about the section on seeing television
 (22) and newspaper articles, and you'll see that you checked a great
 (23) deal and put down hundreds and hundreds of television and
 (24) newspapers reports you've been exposed to.
 (25) Do you see that, sir?

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- (1) A Yes, sir.
 (2) Q Did you tell me what you recall about all the stuff you
 (3) heard in the media?
 (4) A Well, it seems like every time you turn on the media,
 (5) whether it's the TV newspapers or radio, the only thing –
 (6) especially the years it was going hot and heavy on who was at
 (7) fault and the state suing Exxon, and vice versa and everything,
 (8) it seemed like every time you turned on the news on that's all
 (9) you got.
 (10) Q When you say turned the news, on were you looking at
 (11) primarily news reports or did you see newspaper articles?
 (12) A Both.
 (13) Q I notice that you have down here, I guess it was last week
 (14) you saw a particular show on Channel 13, the Turning Point
 (15) program. Do you see that, sir?
 (16) A Yes, I did.
 (17) Q Do you remember that show?
 (18) A Part of it, yes. Until it got to the point where it was
 (19) getting into the oil spill and I said I don't need to see much
 (20) more of it here, I'll just listen to where they was talking
 (21) about the oil spill and the amount of money that's being paid,
 (22) and still money that's out in litigation for commercial
 (23) fishermen, Native corporations and so forth and so on.
 (24) Q And do you remember if it was a show hosted by Ms.
 Sawyer?
 (25) A Sawyer, yes.

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- (1) Q Were you familiar with her?
 (2) A I seen her once a while.
 (3) Q So you knew she was a semi-famous newscaster?
 (4) A Yes.
 (5) Q What do you recall Ms. Sawyer or anybody else on the show
 (6) saying about Exxon?
 (7) A Let's see. One thing I remember on there, it seemed like
 (8) was some of the tapes that had been played about some of
 Exxon
 (9) saying that – I believe it was in this one – that they didn't
 (10) care if the skimmer spilled [sic] a gallon of oil, they wanted
 (11) it out on the job.
 (12) Q Do you remember any pictures that you saw as part of that
 (13) show?
 (14) A No, because I was doing paperwork and watching at the
 same
 (15) time. Finally, I found out it was about the Valdez spill and
 (16) all that and I put something else on. I did hear one
 (17) particular part of it.
 (18) Q And that's the point you turned it off?
 (19) A Yeah.
 (20) Q And you realize you're under oath here today?
 (21) A Yes.
 (22) Q And you meant it when you said you couldn't be fair to
 (23) either side?
 (24) A Right.
 (25) Q Is one of the reasons you said it because of all the media

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- (1) you've been exposed to?
 (2) A That, and I feel that, like I say, the commercial fishermen
 (3) are always looking for something, you know, over and above
 (4) anybody else is entitled to. Most commercial fishermen are not
 (5) full-time fishermen, they are school teachers, they have
 (6) another job; they fish when fishing season is open. And I
 (7) don't think they're entitled to all the stuff that they claim
 (8) that they are, so...
 (9) MR. CLOUGH: Your Honor, I have no further questions.
 (10) THE COURT: All right, counsel.
 (11) MR. CLOUGH: Thank you for your time.
 (12) THE COURT: All right. There is a motion to excuse
 (13) Mr. Rollins, and also in Mr. Rollins' state of mind, in serving
 (14) on this case. I think he thinks so also.
 (15) A I don't think I could be fair either.
 (16) THE COURT: I appreciate the answers, Mr. Rollins.
 (17) I need you to understand something. I need very much to
 (18) have an untainted, unbiased jury here, so when you leave here
 (19) – I'm going to excuse you and you will not be required to
 (20) serve in this case, but when you leave here don't say anything
 (21) to either the people up here or people downstairs on the panel
 (22) about what went on in here, what questions were asked or your
 (23) opinions about any of the process, because it's important that
 (24) they remain untainted.
 (25) Do you understand that?

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- (1) A Yes, sir.
 (2) THE COURT: All right. Thank you very much. You're
 (3) excused.
 (4) A Do you want this?
 (5) THE COURT: Yeah, we'll take it back. You can just
 (6) leave it right there.
 (7) THE CLERK: And the jurors that are excused do have to
 (8) call in under their regular number?
 (9) THE COURT: Since there may be other panels, jury
 (10) panels that you might be a potential juror for, you still have
 (11) to call in under the instructions that were given to you
 (12) before.
 (13) A Sure. No problem.
 (14) Do you want me to wait in the room over here?
 (15) THE COURT: No, you're excused.
 (16) (Vern Rollins leaves the room.)
 (17) MR. CLOUGH: Permission to approach the well, Your
 (18) Honor, and I'll place a new questionnaire up there.
 (19) THE COURT: And, counsel, you don't have to ask me for
 (20) permission every time. I don't do that. I will tell you if
 (21) I'm distracted.
 (22) (Thomas Sweat enters the room.)
 (23) THE COURT: Mr. Sweep [sic]?
 (24) A Yes, sir.
 (25) THE COURT: We're going to go through a brief

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- (1) questioning process with you. You've already filled out some
 (2) questions on the jury questionnaire and that's good because
 (3) the parties know enough about you right now to form some
 (4) tentative opinions. I'd like you to understand that these questions that
 (5) you'll be answering are still under oath. It's the same oath
 (6) that I gave you on the first day of your jury selection
 (7) service. Please don't think that these are intended to be
 (8) unduly intrusive, and if you feel that some of these questions
 (9) intrude your right of privacy, you have a right to say that.
 (10) But it's very important that we get an impartial jury on
 (11) this or any case and that's why we ask you these questions.
 (12) They are under oath and all questions have to be truthful.
 (13) Who's going to ask the questions. Mr. Petumenos?
 (14) MR. PETUMENOS: Yes, Your Honor. Thank you.
 (15) VOIR DIRE EXAMINATION OF THOMAS SWEAT
 (16) BY MR. PETUMENOS:
 (17) Q Good morning, Mr. Sweep. Am I saying your name write?
 (18) A Mr. Sweat.
 (19) THE COURT: I'm sorry. I read it wrong.
 (20) MR. PETUMENOS: I always say it the way the judge
 (21) does.
 (22) BY MR. PETUMENOS.
 (23) Q Would it be fair to say, from looking at your
 (24) questionnaire, Mr. Sweat, that you know a little bit more than
 (25) the average person about the oil spill?

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- (1) A Yeah, I participated in some of the cleanup work, so I
 (2) was - and I worked for Alyeska so I'm - you know, I've heard
 (3) quite a bit about it.
 (4) Q And you worked for Alyeska for the last several years?
 (5) A Directly for Alyeska for the last several years. I've
 (6) actually been a contractor almost continuously since 1974 for
 (7) Alyeska, and I left for about three years altogether in that
 (8) period of time.
 (9) Q And so the other companies that we see in your
 (10) questionnaire were contractors but you still had daily contact
 (11) with Alyeska with them?
 (12) A Yeah, I was working throughout the entire construction
 (13) period of the pipeline and from then on.
 (14) Q I'm picking up from your questionnaire - correct me if I'm
 (15) wrong - you like working for Alyeska and you like the company?
 (16) A Yes, I really do. I don't have any problems with the
 (17) company at all; they've been real good to me.
 (18) Q And after the oil spill happened, you were called to duty
 (19) yourself by Alyeska, weren't you?
 (20) A Yeah, I worked in the communications shop for Alyeska in
 (21) Anchorage, and they needed communications people down
 (22) there
 (23) desperately right after the oil spill, and I was called down
 (24) the next day.
 (25) Q And there was a number of meetings about what was
 (26) happening
 (27) on the oil spill?

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- (1) A Well, there - you know, they had meetings - we were
 (2) involved because we were dealing with communications, but
 (3) discussing what was going on, we were involved in setting up
 (4) the communications out on Reef Island for the oil spill. There
 (5) was meetings discussing the findings, the skin divers'
 (6) findings, the plans for dealing with, you know, containing the
 (7) oil. Stuff along that guideline.
 (8) Q So would it be fair to say you were part of Alyeska's
 (9) response team at least for a little while in the beginning?
 (10) A That's true.
 (11) Q And did you have anything to do with placing the
 (12) communication system on Bligh Island, on Tatitlek?
 (13) A Off Reef Island.
 (14) Q Reef Island, yes.
 (15) A Yeah. Actually, I helped man that for a while; so I ran
 (16) the radios for probably about two days off and on, and helped
 (17) set up the equipment.
 (18) Q And did you have any contact with the Tatitlek Corporation
 (19) about getting permits to do that?
 (20) A No, I had no contact with them at all. I had no
 (21) involvement with them at all.
 (22) Q Do you know if there was any involvement about a permit
 (23) being obtained for that?
 (24) A I don't recall any, no.
 (25) Q Now, in addition to the work that you did on communication,

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- (1) did you receive any briefings about press contact or
 (2) litigation-related matters from the staff at Alyeska?
 (3) A No. We were told basically to refer any press contact to
 (4) our supervisors, and I was just on loan down there so I wasn't
 (5) really closely involved with anything like that.
 (6) Q Did you take a trip to the village of Chenega?
 (7) A No, I didn't. I only took one trip when I was down there,
 (8) and that was on the Alyeska barge - actually it was on the
 (9) ship that provided the crew change to the Alyeska barge that
 (10) was working down at Sawmill Bay at the time. And I was just
 (11) down there briefly but I did take a trip to Sawmill Bay and
 (12) then I returned, and that was the only trip I made besides
 (13) going off to Reef Island.
 (14) Q And you don't recall Sawmill Bay being near Chenega
 (15) village?
 (16) A We got down there, I was supposed to work on the barge.
 We
 (17) were running 12-hour shifts, and when I got down there they
 (18) just recalled the barge; so I went back, I didn't even stay
 (19) down there at all.
 (20) Q Were there lots of discussions between coworkers and
 (21) yourself about how bad the oil spill was, how long the oil was
 (22) going to be around and things of that nature?
 (23) A We were - there was a lot of talk, but we were so busy
 (24) setting up communications and just repairing - repairing
 (25) things, getting things going. And it's been a long time, but,

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- (1) you know, naturally there was a lot of talk among us about it
 (2) and we knew it was real bad and then we figured it would be
 (3) around a long time, but - like I say, it's been a long time.
 (4) I can't recall conversations we had.
 (5) Q All right. In addition to - well, what do you know about
 (6) Alyeska in terms of its participation in this litigation, did
 (7) you read anything about that?
 (8) A To tell you the truth, I don't know that much about their
 (9) direct involvement in this participation. I've read a lot of
 (10) articles over the years - actually I read a lot more right
 (11) after the spill, but lately I haven't really been paying a
 (12) whole lot of attention to it, to tell you the truth.
 (13) Q Well, I was curious in some of the questionnaire questions
 (14) that you've asked - you appear to have formed some opinions,
 (15) for example, about you feel - I think you said - and you have
 (16) the questionnaire there if you need it.
 (17) On page 12 you said that, I feel they're entitled to actual
 (18) expenses and losses, but that they are going to try to get as
 (19) much money out of Exxon as possible.
 (20) Do you remember saying that?
 (21) A Yes, I do. That's just my own opinion of over the years of
 (22) seeing how - I feel that the Native corporations and I feel
 (23) that the municipalities - and I think they're going to try to
 (24) get as much as money as possible. I think that's the natural
 (25) course of the thing when you're up against a company with a lot

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- (1) of money. That's an opinion I developed, I don't know.
 (2) Q I appreciate that. That's the sort of thing we're looking
 (3) to hear when we try to figure out where we are on jurors.
 (4) Can you tell me how you came to hold that opinion?
 (5) Before I ask you that: Do you think it's fair that the
 (6) outcome of a proceeding like this should depend on how much
 (7) money the company has? Is that something that you think is
 (8) right?
 (9) A No, I really don't. Like I say, I feel that, you know,
 (10) there were a lot of losses and - but I think that anything
 (11) above and beyond that should maybe go to - I hate to say
 (12) charities, but going to further help people of Alaska, or maybe
 (13) not go directly to corporations or municipalities, but if there
 (14) is, you know, other money awarded, I would think that it
 (15) should, you know, not be going to people that, as far as I'm
 (16) concerned, don't really deserve it.
 (17) I don't know. I have a hard time answering that.
 (18) Q Okay. Well, I was curious as to how you came about your
 (19) opinion that that happens, that it depends how big the company
 (20) is as to how much money they're awarded. Was it things you
 (21) read in the paper or the press?
 (22) A It's not just dealing with this; it just seems like
 (23) throughout the entire United States that seems to be the
 (24) natural course, and it does seem - you know, I picked up
 (25) things reading articles and stuff; and, you know, there's a lot

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- (1) of lawsuits going on and it seems like that that's generally
 (2) what happens.
 (3) Q And do you feel in general, just as a matter of your
 (4) personal opinion, that's what we're exploring here, that that's
 (5) wrong, that that's not a good result for measuring or for -
 (6) A Oh, I definitely do, yes.
 (7) Q Now, do you think if you came into this - to be in this
 (8) jury and had there were to be requests for a large award as a
 (9) result of the oil spill, do you have any predisposition against
 (10) that because of those feelings that you have developed over
 (11) time?
 (12) A Well, you know, if the large reward was due to losses and
 (13) things like that, then, you know, of course the award should
 (14) depend on - I mean, the size of the award should depend on
 (15) that. But anything above and beyond that, I would tend to shy
 (16) away on.
 (17) Q Do you have an idea in your mind what "above and beyond"
 is
 (18) and how much money you think is due at this time?
 (19) A I don't have any idea how much is due at this time.
 (20) Q But you do - you do have an impression that - are you
 (21) suspicious that people are asking more than they're entitled
 (22) to?
 (23) A I think there is a lot of people using this as an excuse to
 (24) get money out of Exxon; I really do. I think everyone is
 (25) trying - I don't know, I feel that - you know, there is a lot

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- (1) of people that are just trying to get money out that may have
- (2) not even incurred losses. That's just my own feeling of the
- (3) matter.
- (4) Q And you understand that this case involves the cities or
- (5) towns of Seward, Valdez and some of the Native corporations?
- (6) A Yes, sir.
- (7) Q And I assume, does this suspicion that you have directed
- (8) towards any particular plaintiffs or towards all of them in
- (9) general or -
- (10) A I know that, you know, probably most of them have some
- (11) losses, but, you know, without knowing all the details, there
- (12) may - I may be wrong, but I'm sure there are some legitimate
- (13) complaints and there are some losses, but - and of course
- (14) they're entitled to compensation for that, but anything above
- (15) and beyond their losses, I don't know if I'd agree to that.
- (16) Q So your impression I think, is some of the claims that are
- (17) brought are okay but a great many of others you're suspicious
- (18) about; is that a fair statement?
- (19) A I don't know what claims in this case are being brought,
- (20) but if they are being brought against individual fishermen and
- (21) things like this because I would - because actually I know a
- (22) lot of fishermen made out very well during the oil spill and
- (23) actually I don't know all the details on how much losses were
- (24) actually incurred; and without - I think a lot of people are
- (25) trying to take advantage of the situation.

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- (1) Q You also talked about the fact, in your questionnaire, that
- (2) you thought that as a consequence of the spill some of the
- (3) environmental standards and some of the responses of the
- (4) government and so forth towards oil spills in the Prince
- (5) William Sound area have been too strict. Do you remember
- (6) that?
- (7) A Yes, I do. I, naturally working for Alyeska over the
- (8) years, the regulations we are having, basically the easiest way
- (9) to put it is having to jump through so many hoops, and it's
- (10) getting so tremendously expensive to satisfy all the
- (11) environmental requirements that they're imposing against
- (12) Alyeska; it's getting very expensive. Our operating expenses
- (13) are going sky high, and it's just, I feel, that they're being
- (14) really overworking, really overregulated. It's just every time
- (15) you turn around you have new regulators imposing new
- (16) regulations and I think it's out of hand.
- (17) Q So you believe that the government has overreacted to the
- (18) problem?
- (19) A Yes, definitely.
- (20) Q Now, as you can imagine, sitting here representing a
- (21) plaintiff and thinking of you as a potential juror, these
- (22) things are to some concern to the folks on this side of the
- (23) table and I want to see if I can get your candid assessment of
- (24) how you think your exposure to the oil spill, your employment
- (25) at Alyeska, which is: How do you think that's going to affect

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- (1) A Like I say, I would try; if I was on it, I would try, but I
- (2) do think I have a bias, I really do. I just - like you say,
- (3) working for Alyeska, and I naturally - and I'm being impacted
- (4) all the time by the results of it, I think I'm going to
- (5) naturally have some bias but I would try - I would still, you
- (6) know, try and, you know, look at the actual facts and what
- (7) these people and what losses were incurred naturally. My bias
- (8) would not be to give more than people actually deserved or,
- (9) you
- (10) know, actually lost.
- (11) Q Everyone that presumably gets on the jury tries to follow
- (12) the jury instructions. Do you have some concerns or doubt
- (13) that, if you were a juror in this case as opposed to some other
- (14) case that we can name, some case totally unrelated to the
- (15) Alyeska oil spill, that it will be more difficult to follow
- (16) instructions in this case than another case you might be
- (17) selected to serve in?
- (18) A I really don't know. I've never served on a jury before,
- (19) and, you know, like I said I would do my best to follow the
- (20) instructions.
- (21) Q You have some uncertainty about how that would affect you
- (22) in this case as opposed to something you don't know?
- (23) A I think myself I would do a good job of following
- (24) instructions but, I mean subconsciously, I might be affected.
- (25) I don't know. I would like to think not.
- (26) Q All right. Do you have any personal conflicts or

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- (1) commitments in the course of this trial that are of concern to
- (2) you?
- (3) A I've got actually several. One is I work for Alyeska and
- (4) we're undergoing a tremendous reorganization right now, we're
- (5) right in the middle of it, and, you know, working - I work out
- (6) of town for Alyeska and I'm concerned that, you know, I may not
- (7) have a job when I come back if I was on this. I'm not - I
- (8) don't know how it's going to work; they're laying off a lot of
- (9) people and right now they're in the process of designing a new
- (10) organization. I think I'll be a part of that, but I don't
- (11) think [sic] how this would affect it.
- (12) The other concern is, I'm scheduled for a vacation. I'm
- (13) taking my kids down to Disneyland on the 28th and won't be
- (14) back
- (15) until the 12th of July.
- (16) Q What financial plains have you made for that trip?
- (17) A They have - we've already paid for the tickets that are
- (18) none refundable. We've already got a condominium, paid for
- (19) that; it's none refundable. So it would be probably several
- (20) thousands.
- (21) Q Sometimes the Court can assist with the ticket problem, but
- (22) as I understand, you have a condominium that?
- (23) A Yes.
- (24) Q How much is that?
- (25) A Well, actually we have a time share so it's not a
- (26) year-by-year thing. We have used a week of our time share
- (27) down

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- (1) there, and that's already committed, and that would - I don't
 (2) know, our time share that we have rents for about \$300 a night
 (3) for during prime time so...
- (4) Q So you're saying you're going to lose that?
 (5) A Yes.
- (6) Q You won't be out cash; that's the value of it to you?
 (7) A We would lose a week of our vacation time, yes.
- (8) Q Do you have opinions about what the harmful effects of the
 (9) oil spill had been, how long they're going to last, that you
 (10) bring to the courtroom here?
 (11) A My understanding from what I've read is the basic harmful
 (12) effects are going to be caused by the oil that has gone down
 (13) into the sediment, and I don't really, I haven't read any real
 (14) firm studies on if that's going to affect the fish or shellfish
 (15) or whatever. I know that the actual visible effects, the oil
 (16) up on the beaches and everything; I think there is little of
 (17) that left, it's been taken away. So the harm, I think to the
 (18) birds and animals, I think, are going to be minimal here out.
 (19) I think long term there is going to be effect to the fish
 (20) fry, maybe the shellfish, but I don't know. I don't have any
 (21) firm opinion about that. I think there may be some slight
 (22) long-term effects, but I don't think that anybody has really
 (23) proved anything one way or the other yet.
- (24) Q I have a note here for a follow-up question that I think is
 (25) important: You mentioned that you were concerned that there

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- (1) was going to be a reduction in force at Alyeska while you're
 (2) here?
 (3) A Yes, sir.
- (4) Q Will you be thinking about that during the course of your
 (5) jury service to where you think it might distract you or affect
 (6) your service in any way?
 (7) A I can't afford to lose my job, let's put it that way. I
 (8) have two kids at home. My wife works for Alyeska but she's
 (9) almost certain she's going to lose her job, so we've been
 (10) living on two incomes and when she loses her job, I can't
 (11) afford to lose mine, so naturally I'll be thinking of it.
 (12) Right now I'm not even sure that I have a job in the new
 (13) organization. I think I do but they're in the process as we
 (14) speak of actually defining the organization, and I have a good
 (15) chance of being a part of it but I can't afford to be
 (16) unemployed, so naturally I'm thinking about it.
- (17) Q So you're fearful as you sit there that, if you're gone for
 (18) any period of time, that your candidacy on the list or your job
 (19) on the force could be in jeopardy?
 (20) A I don't know. I have no idea what Alyeska's policy is in
 (21) regards to that. And right now we are changing our entire
 (22) management of the company and I don't know how it's all going
 (23) to come out, I really don't. So, yes, I would have fears about
 (24) that, and I do.
- (25) Q Based upon all of that, would you been asking the Court to

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- (1) defer you - would you want to make the affirmative request to
 (2) defer your service to a case that doesn't take as long?
 (3) A I would much rather have it deferred. I would be very
 (4) unhappy to serve on this because of that.
- (5) Q And would you be willing to serve on another jury of a
 (6) shorter duration?
 (7) A Oh, certainly.
- (8) MR. PETUMENOS: Very well, Your Honor. I will have an
 (9) application
 (10) VOIR DIRE EXAMINATION OF THOMAS SWEAT
 (11) BY MR. DIAMOND:
 (12) Q Good morning, Mr. Sweat. My name is Chuck Diamond.
 (13) A Good morning.
 (14) Q I know you're understandably - you're concerned about the
 (15) reorganization. If the Court were to undertake to check with
 (16) your employer, would that provide you with some assurance
 (17) that
 (18) service on this jury wouldn't prejudice your future employment
 (19) with Alyeska?
 (20) A Well, if I had, you know, assurance from Alyeska that I
 (21) would be able to go back into my same job, but understand
 (22) also
 (23) I work out of town, in an out-of-town job and I don't know if
 (24) they would guarantee me you know, the same job that I have. It
 (25) would be - if I had to move into town it would be quite a drop
 (26) in salary and I wouldn't be happy about that.
- (27) Q Sure.

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- (1) Have you talked to any of your supervisors or executives
 (2) over at Alyeska about your impact on your career there for
 (3) serving on a jury here for two months?
 (4) A No, I told - I didn't really want to go into detail. I
 (5) did mention to my direct supervisor that it was a possibility
 (6) and he wasn't very happy about it. But, you know, he basically
 (7) didn't think that - you know, I mean, I couldn't go into
 (8) details but he didn't think that I would be selected. But we
 (9) didn't go into any details at all.
- (10) Q You didn't discuss with him any company policies that may
 (11) be in fact -
 (12) A No.
- (13) Q The time share that you have down in southern California,
 (14) who is that with?
 (15) A Actually the time share I have is with Orange Lake Country
 (16) Club in Florida and we belong to - It's RCI, Resort
 (17) Condominium, Incorporated, where we can trade it to other time
 (18) shares in the United States. And this one that we're going to
 (19) in southern California is called Lawrence Welk Resort. We
 (20) decided to trade because we wanted to take the kids to
 (21) Disneyland this year so we decided to trade down there so we
 (22) could do that.
- (23) Q Have you called anybody at either your time share or
 (24) Lawrence Welk just to ask them what happens if somebody
 (25) unexpectedly gets sick or hospitalized or ends up on a jury?

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- (1) A No, I haven't.
- (2) Q You're a SCATA (ph) operator?
- (3) A SCATA operator.
- (4) Q That's a pipeline control system?
- (5) A Yes, it's pipeline control system. We also handle all the
- (6) communications systems for the pipeline. I do a lot of
- (7) different things: work on copiers, I work on navigational aids
- (8) at the airport. I have numerous responsibilities.
- (9) And that would be one other concern we'd have also, would
- (10) be my navigational aids' responsibility. There is four of us
- (11) up there, and that would - basically that would bring them
- (12) down to only three navigational technicians which would be a
- (13) problem for them because they need two for sight.
- (14) Q You said that you did communications work in the aftermath
- (15) of the Exxon Valdez spill. Did you actually see any oil on the
- (16) water?
- (17) A Yes, I did. Of course we could see it from Reef Island
- (18) coming out of the tanker and as they were off-loading the
- (19) tanker, and I took a boat ride down to Sawmill Bay, and at the
- (20) time there was a tremendous amount of oil on the water as we
- (21) were going through it and you could see it and the smell was
- (22) very overpowering; there was a lot of oil.
- (23) Q One of the issues in this case - one of the many issues in
- (24) this case is going to turn on where the oil ended up, on what
- (25) shorelines, on what parcels, on what areas. Do you think, in

- (1) they had a branch office down there set up at the time and she
- (2) was down there on loan.
- (3) Q Doing clerical work?
- (4) A Yes.
- (5) Q Do you know whether it had any connection with the oil
- (6) spill?
- (7) A Oh, yes. She had mentioned that she was working on the
- (8) spill, involved in that.
- (9) Q Do you know whether any of her subsequent responsibility
- (10) would have been connected in any way to the spill?
- (11) A I have no idea.
- (12) Q Have you ever talked with her about the oil spill?
- (13) A Not really in depth, no. We don't get together and talk a
- (14) lot.
- (15) Q You answered one of Mr. Petumenos' questions by saying
- (16) that
- (17) you - when you saw the amount of oil that you did on the water
- (18) in the summer of '89, that you thought it would be around a
- (19) long time; and then I think you also said you guessed it was -
- (20) probably persisted for two years.
- (21) Another one of the issues that we're going to be talking
- (22) about during the course of the trial - and there are going to
- (23) be lots of witnesses testifying on this subject - is
- (24) persistence of oil. Do you think you could fairly evaluate
- (25) what you hear from the witness stand despite the fact that you
- (26) do have some personal knowledge?

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- (1) making judgments about where the oil ultimately ended up, you
- (2) would be able to rely on the evidence that you hear in the
- (3) courtroom and not on any preconceived notions you may have
- (4) formed out there on the water in 1989?
- (5) A Well, I know somewhat about, you know, the general drift of
- (6) the oil when it was happening because I was in communications
- (7) with a lot of the fishing vessels, we were actually passing
- (8) communications back and forth between the boats and the
- (9) Exxon
- (10) headquarters, so I - you know, I got a general idea of where
- (11) the oil was going to at the time.
- (12) But as to where it ultimately ended up, you know, like I
- (13) say, I do have some ideas about where the oil went because I
- (14) was listening to the boats.
- (15) Q But as to where it ended up, what beaches, what parcels, do
- (16) you think you'd be able to be impartial about that?
- (17) A Certainly. Certainly.
- (18) Q You have a sister that works at ADEC, do you not?
- (19) A Yes, that's correct.
- (20) Q What does she do there?
- (21) A She - as far as I - I'm not sure of her exact position.
- (22) I think she's just a clerk there. She handles paperwork;
- (23) she's been working there quite a while. She's one of two
- (24) clerks in the office here on the Dimond branch, and - in fact,
- (25) I think that she did go down to Valdez right after that also, I
- (26) think she was down there for a short period of time. I think

- (1) A Yeah, if there - you know, witnesses that know what
- (2) they're talking about; I mean, if there's actually oil out
- (3) there and they're testifying to it, certainly. And I - I
- (4) picked up, you know, ideas from the news reports, and just
- (5) talking to people that have been - I know some of the people
- (6) down at Valdez that have been out on boats and stuff and out to
- (7) the different islands, but I'm sure they don't know
- (8) everything. But, yeah, I think I could - you know - you
- (9) know, it's a matter of whether you believe the people that are
- (10) testifying, and I think I could do that.
- (11) Q Let's talk about your view about damage judgments and
- (12) plaintiffs awards and lawsuits and litigation and that kind of
- (13) stuff. I understand that you, like everybody else, comes into
- (14) the courtroom with some feelings and perceptions and views,
- (15) but
- (16) let me ask you a very pointed question.
- (17) If after listening to the evidence in this case you are
- (18) convinced that any one of the Native corporations or the
- (19) municipalities did suffer damage and did suffer damage in an
- (20) amount of whatever it happens to be, would you hesitate in
- (21) voting for a verdict giving them that money back?
- (22) A If they suffered damage I believe they are compensated to
- (23) it. But just giving them a large amount greater than their
- (24) actual damages and losses, I would have a problem with that. I
- (25) mean, a large amount. I mean, I'm just - they probably - I
- (26) would agree to somewhat more, but not just because a
- (27) company is

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- (1) a big company, go through and, you know, just take as much from
 (2) them as you can and agree with that.
 (3) Q Since it made my ears perk up: Somewhat more?
 (4) A I don't know.
 (5) Q I think what the parties are interested in is a juror that
 (6) can sit and listen to the evidence fairly and make a judgment
 (7) as to whether either of these parties were hurt, which really
 (8) is not in dispute, and decide based on the evidence the extent
 (9) of their damages. Do you think you're such a person?
 (10) A Well, I think I could, like I say, decide on the extent of
 (11) their damages. Now, when it comes to actually awarding them a
 (12) lot more than their damages, I have a problem.
 (13) Q I don't think anybody will be asking you to do that in this
 (14) case.
 (15) A I don't think I'd have a problem with it.
 (16) MR. DIAMOND: Your Honor, Mr. Sweat is perfectly fine
 (17) from the jury standpoint.
 (18) VOIR DIRE EXAMINATION OF THOMAS SWEAT
 (19) BY THE COURT:
 (20) Q This is where - the parties have questioned extensively.
 (21) I'd like to know, in view of the fact of all the facts that
 (22) you've given to the parties regarding your opinions and
 (23) surrounding circumstances, do you think you could be a fair
 and
 (24) impartial juror in this case?
 (25) A I think I could. I really do, but as I said, I naturally

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- (1) have some bias towards Exxon, but I think I could look at the
 (2) facts and I think I could, you know, interpret the facts and
 (3) make a decision.
 (4) Q What is the bias against Exxon that you have?
 (5) A I basically - I feel, I guess, sorry for the company. I
 (6) think that they - I think they made a very big effort to come
 (7) in and try to - you know, try to compensate, try and clean up,
 (8) try and do a good job on the oil spill; and I don't know, I
 (9) guess I just tend to just be on their side a little bit. I
 (10) don't know. I don't know.
 (11) Q Now, do you think the fact that you might be on their side
 (12) a little bit would affect you when you determine what the
 (13) extent of damages in this case was; do you think that that bias
 (14) would affect you and would somehow predetermine the way
 you
 (15) would look at the extent of the damages in the case?
 (16) A That's possible, but I would like to think not. But that
 (17) is possible I suppose, sir.
 (18) Q So are you telling me that you can set aside your biases?
 (19) A I think I can, yes.
 (20) Q Now, concerning your personal issues: Your job, the
 (21) possible loss of a job and your vacation, what effect is that
 (22) going to have on your service as a juror?
 (23) A Well, if I have some doubt as to - well, naturally I'm not
 (24) going to be happy about it. I don't think it would - if I did
 (25) get selected I don't think it's going to effect my service as a

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- (1) juror. I'm not going to be happy about it naturally, losing a
 (2) vacation with my children, possibly having a - you know, may
 (3) end up without a job, but that's not going to affect the way I
 (4) decide on a jury, I don't think.
 (5) I would be very unhappy about it, but I'm not going to hold
 (6) it against anybody.
 (7) Q Okay. So correct me if I'm wrong: A month and a half from
 (8) now when you're involved in this trial process, it won't affect
 (9) your service as a juror?
 (10) A It might, Your Honor. It might. I'm saying that I
 (11) would - I don't think that I would hold it against, you know,
 (12) either party. I would be very upset with the court system if I
 (13) lost my job. I wouldn't be real happy about that at all, and
 (14) naturally so. There's - I guess there is a chance, there is a
 (15) change that, like I say, subconsciously I might - it might
 (16) affect me. I guess that's the only thing I can say.
 (17) Q How good a chance is there?
 (18) A I don't know, Your Honor. I have no idea.
 (19) Q You have no way of evaluating that?
 (20) A No. Like I say, I would like to think that it wouldn't.
 (21) Q Okay. I'm going to excuse you. You can go back into the
 (22) jury room. I will probably bring you back here rather
 (23) quickly.
 (24) Thank you very much.
 (25) MR. STOLL: Your Honor, could we have a cautionary

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- (1) instruction to him?
 (2) THE COURT: Oh, yes.
 (3) Mr. Sweat, don't talk to anybody in the jury room about
 (4) what questions were asked or what answers you gave or
 anything
 (5) else about this selection process, all right?
 (6) A All right.
 (7) MR. STOLL: Thank you, Your Honor
 (8) (Thomas Sweat excused.)
 (9) MR. PETUMENOS: Do you want to hear from counsel, do
 (10) you want to hear argument?
 (11) THE COURT: Sure.
 (12) MR. PETUMENOS: I think it's important to separate out
 (13) the two grounds for challenge that I have.
 (14) One of the grounds is under the statute relating to
 (15) referral of service, which is the undue hardship portion that
 (16) the Court asked questions about just here at the end, and I
 (17) would point out to the Court that that standard has to do with
 (18) the juror's own hardship and what the juror can legitimately
 (19) raise, subject to this court's discretion, as to which to
 (20) require of the juror and relates to the juror's concerns, not
 (21) whether the juror can sit fairly. It is more directed towards
 (22) whether there is an improper burden being placed on the juror,
 (23) and while I may have standing only as it may affect the juror's
 (24) service, the Court may take into consideration whether it is a
 (25) proper burden to place upon this juror.

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- (1) On that ground, it seems to me that the juror was clear
 (2) that he is very worried about how things will turn out in this
 (3) reduction of force. It does not seem that the Court can
 (4) provide him with any particular assurance because one will
 (5) never now why one is laid off, whether it was because he was
 (6) here or not, and I think his circumstances are such and his
 (7) risk and what we heard about in the oil industry is very real,
 (8) and for him to serve on a case of shorter duration would be a
 (9) humane thing to do.
 (10) I think also the juror has expressed uncertainty throughout
 (11) his testimony about how he feels about the issues. He's
 (12) basically been all over the lot on the "I think I can do it, I
 (13) think I have biases, I think I'll be in this instance thinking
 (14) about it, and it might affect my service," and he could not
 (15) tell you with any certainty that this concern based upon his
 (16) personal concerns could be laid aside. I think he kept on
 (17) saying that he would like to think that he could do it, he
 (18) hopes he can do it, but he would sure try; but when you asked
 (19) him if he was certain he could, he had a fair amount of
 (20) waffle.
 (21) And I also understand vacation tickets may be solvable by
 (22) the Court, but the condominium down there isn't.
 (23) On the challenge of cause, I think there is a legal ground
 (24) which may make his service on the jury reversible, which is an
 (25) employee of a party that is adverse to the parties here while

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- (1) it is in settlement, it is on appeal; it is being contested by
 (2) Exxon. Alyeska may be back in this court.
 (3) The rule is there, I think, to protect the parties from
 (4) just this sort of thing that we have here, where there is
 (5) enormous loyalty to the case which make the rule rationale
 (6) apparent. I didn't want to ask questions that disclosed or
 (7) talked about matters that are going to be raised in the case,
 (8) but a very big issue in our case of course, as Exxon will
 (9) contend that the efficacy of their treatment was a mitigator in
 (10) their case, that they did a good job, they did all they could;
 (11) and we're going to be contending otherwise. This juror comes
 (12) with one of the things he was certain about was that Exxon had
 (13) done a good job in the treatment, that it was an effective and
 (14) expensive and properly done endeavor, and that is directly -
 (15) goes directly to the heart of some of the contentions in the
 (16) case.
 (17) We don't start this juror with a clean slate or anything
 (18) like a clean slate, and while there were times where he said he
 (19) would try to follow jury instructions, that he thought he could
 (20) set aside his biases, one of the cases we cite in our brief
 (21) says this court must make a credibility finding about the
 (22) degree of certainty, the degree of forcefulness in which the
 (23) juror gives the answer, the amount of waffling that goes on to
 (24) really determine whether there is a bias here, and the magic
 (25) word.

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- (1) And I believe cumulatively with this juror taking all these
 (2) things into account, there has to be some uncertainty about
 (3) this juror to serve and be fair on our side of the case; and
 (4) under the circumstances, therefore, there is a challenge for
 (5) cause on hardship. There is a challenge for cause employee of
 (6) an adverse party in this case and there is a challenge for
 (7) cause for actual potential bias in the case because of the
 (8) exposure he has, the loyalty to his company, the things he has
 (9) seen. And under all of the circumstances, I think a challenge
 (10) for cause is appropriate.
 (11) MR. DIAMOND: Your Honor, I don't know how you reacted
 (12) to Mr. Sweat, but I thought he was being incredibly honest, he
 (13) is obviously not reaching to serve on this jury, it's not
 (14) something he's enamored, yet he answered Mr. Petumenos'
 (15) questions, your questions and my questions informedly, that at
 (16) least as far as his conscious will take him, that he believes
 (17) he can deal with these issues fairly. I don't think anybody
 (18) can quarrel with any juror admitting that on a subconscious
 (19) level biases and prejudices do exist, but very few people admit
 (20) that, and what he told us is that, at least to the extent he
 (21) makes decisions consciously, they will not affect the outcome
 (22) of any decision he makes in serving as a juror on the case.
 (23) If we're going to start knocking off jurors who prefer one
 (24) side over the other despite their professed ability to judge
 (25) the issues fairly, I tell you, we're going to be here an awful

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- (1) long time; because the overwhelming number of this venire
 panel
 (2) have predispositions and they're generally opposed to my
 (3) client. If we're going to deal with the issue fairly, then
 (4) everybody who expresses the view fairly has a favorable view to
 (5) Exxon as claimed to Natives, municipalities and Native
 (6) corporations falls into the same category. I suggest that is
 (7) probably not a reasonable outcome, and particularly on the
 (8) facts of this case it's not a reasonable outcome because this
 (9) man said he could put aside all of his views.
 (10) As to employment, Alyeska is not in this case. They may
 (11) technically be in some case. This witness indicated he had no
 (12) awareness of Alyeska's involvement in this litigation; it
 (13) certainly was one of the things he said would not affect him,
 (14) and I think it's just a hyper technicality that Mr. Petumenos
 (15) is hanging his hat on that Alyeska may be a party somewhere
 and
 (16) as a result Mr. Sweat is statutorily disqualified.
 (17) THE COURT: Well, counsel, I have a question about
 (18) that because there is a case, which I haven't read lately, Noey
 (19) (ph), which says a stockholder's interest in a Native
 (20) corporation can be the basis of a challenge for cause under the
 (21) rule when the corporation is, quote, involved, unquote, in
 (22) litigation.
 (23) Now, I don't know whether that means they were a party or
 (24) whether they were just involved. Clearly Alyeska has been a
 (25) party in this case and Alyeska might be a party, might be a

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- (1) party now, in fact, and considered to be a party, and may be a
 (2) party in the future, correct?
 (3) MR. DIAMOND: Well, not with respect to anything this
 (4) potential juror is going to be asked to judge. I mean, Alyeska
 (5) is not in this courtroom and no one is going to be pointing
 (6) fingers at Alyeska and no one is going to be accusing Alyeska
 (7) of anything, and the outcome of this case is not going to have
 (8) the effect that Alyeska has under the most remote
 (9) circumstances.
 (10) Technically, given the fact we are dealing with a potential
 (11) lay juror, not a legal – any technical juror, put two and two
 (12) together to think it would be his best interest to return one
 (13) verdict or the other because it would adhere to his benefit at
 (14) his place of his employment. I'm happy to consult with our
 (15) experts, our experts dealing with Alyeska jury law. The
 (16) statute talks about a party, and Alyeska is not a party to this
 (17) trial, and I think that disposes of the matter. It may not end
 (18) other inquiries, but to that one I think it probably should.
 (19) On the question of hardship, as we discussed off the record
 (20) in chambers, a lot of people have plans and a lot of people
 (21) have commitments with respect to vacations. I don't think
 (22) we've heard anything from this individual that we won't hear
 (23) from another dozen and a dozen and a half. Airline tickets, I
 (24) believe, can be dealt with, was the Court's view.
 (25) Obviously plans have been made. We have no reason to

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- (1) believe that the airlines will not accommodate Mr. Sweat. He's
 (2) talking about a time-share arrangement with a very large
 (3) corporation, and again, no one agreed, he hasn't made it
 (4) reasonably known as to whether or not he can in fact swap the
 (5) week in late June for a week in early September. You know,
 (6) those are essentially hotels and they are flexible. It may
 (7) turn out that he's got a problem, but we don't know that and no
 (8) one's inquired.
 (9) With respect to his employment, I am – I was struck by his
 (10) candor. He is concerned about the reorganization, but I think
 (11) he told you to the best of his ability and the best that anyone
 (12) could expect him to do, that it would not affect his ability to
 (13) be fair with either party. He's not going to hold it against
 (14) us, he's told us.
 (15) We're assuming that he does have a problem. I asked him
 (16) whether he had talked to any supervisor about it, he had talked
 (17) policy to his supervisor. Alyeska is a large corporation. I
 (18) would be surprised – you probably know better than I – but I
 (19) would be surprised if, as a good corporate citizen of the state
 (20) of Alaska, they don't have a policy of permitting their
 (21) employees to serve on juries.
 (22) But again, we don't know that he has a problem. And I
 (23) think as a minimum before he's excused for cause the Court
 (24) should confirm this is a very real problem. Right now it's a
 (25) hypothetical and it's not one that's going to affect his

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- (1) fairness.
 (2) I can see reasons why Mr. Petumenos would like to see Mr.
 (3) Sweat not serve. He starts out based on his experience and
 (4) exposure saying, you know, I have a bias, and I'm going to feel
 (5) the same way about two-thirds of the people we talked to
 (6) because they're going to have a bias, and it won't be in favor
 (7) of my client, it will be in favor of Mr. Petumenos. But this
 (8) is a fellow who says he can put it aside and I think we should
 (9) give him a opportunity to serve.
 (10) MR. PETUMENOS: One of the exhibits in our case is the
 (11) Alyeska contingency plan which I think is going to be
 (12) introduced by stipulation and counsel will be arguing off that
 (13) document. I'm going to be very uncomfortable arguing some of
 (14) the things with the Alyeska contingency plans, as a gentleman
 (15) attached to Alyeska as this gentleman tends to be.
 (16) THE COURT: Tell me the specifics. What are you going
 (17) to be uncomfortable arguing about the plan?
 (18) MR. PETUMENOS: Well, I'm going to be arguing in part
 (19) that a large amount of the oil deposited into Prince William
 (20) Sound and into sensitive areas that were known to be sensitive
 (21) areas within the contingency plan and known by Alyeska and
 (22) the
 (23) other companies happened because there was no boom
 (24) around the
 (25) ship, and the flow of the oil was very heavy, and was heavy for
 (26) a long time, and the witnesses will cover that. This juror may
 (27) very well feel defensive about that, that Alyeska wasn't out

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- (1) there for more time.
 (2) Representations made by the Natives, by representatives of
 (3) Alyeska about what the Sound was, why it was important to
 (4) them
 (5) and how they should be very careful, and the reasons why. And
 (6) I don't disagree with counsel that this juror was honest; it's
 (7) because this juror was honest that I think we are where we are,
 (8) which is that he expressed an awful lot of uncertainty and just
 (9) basically left us, I think all feeling that he wasn't sure; and
 (10) I think – I don't disagree that he was honest, I think that
 (11) honesty leads us to area of discretion that this court has to
 (12) make sure that we don't have a juror on the panel that
 (13) shouldn't be.
 (14) THE COURT: Counsel, I want to read the Noey case
 (15) again, I have it up here for me to read it. I think it's
 (16) important for me to read it to find out. The party in the case
 (17) was a party actively involved in the litigation, not someone
 (18) just involved in the case, because I think it's important on
 (19) the legal aspect of this motion.
 (20) There are other, I suppose factual and legal questions that
 (21) I have to make a determination on with any discretion, but it
 (22) seems only appropriate that I read the case before I make a
 (23) decision on this motion, so I tell you what I'm going to do –
 (24) this is probably time to take a break anyway. We're going to
 (25) take a fifteen-minute break, come back in here at 11:30, I'll
 (26) give you the decision and then we'll resume the jury

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- (1) selection.
- (2) (Recess taken 11:14 a.m. to 11:31 a.m.)
- (3) THE CLERK: Please be seated.
- (4) THE COURT: All right. Counsel, I have to decide the
- (5) question of whether Mr. Sweat should be a juror in this case.
- (6) I've read the Noey case and it's not really on point here. It
- (7) deals with whether a shareholder has a financial interest in
- (8) the outcome of litigation. That's the reason for the
- (9) challenge, for what the court said was a valid challenge for
- (10) cause for jurors. It was just sort of a general question
- (11) revolving around a change-of-venue issue.
- (12) So it's not - I suppose it's somewhat instructive but it's
- (13) not on point on the issue that I have to decide here. We have
- (14) a challenge for cause here upon a number of biases. One is
- (15) financial hardship, which clearly this juror would suffer if he
- (16) was required to serve in this case for two months.
- (17) On the other hand, under the rule financial hardship isn't
- (18) a stated specific cause. I think it is something that I can
- (19) take into consideration if I chose in my discretion to excuse a
- (20) juror.
- (21) The second issue is, does this juror have a state of mind
- (22) that would cause him to be an inappropriate juror in this
- (23) case. Now, he's admitted his bias. He works for a party in
- (24) this case. Now, the party in this case has settled, but
- (25) nevertheless the party was intimately involved in the very

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- (1) process that is at the heart of this litigation. He said a
- (2) number of things about his bias and he candidly admits his
- (3) bias, he said "I will try" but I think I do have a bias. He
- (4) said "I will try" - that's the second time he said it. He
- (5) said, "I will do my best." He said, "I think I would do a good
- (6) job following the instructions."
- (7) He's admitted that there's - that there is a question,
- (8) though, as to whether or not his bias would affect him in
- (9) making the decisions in this case. There is ample admission to
- (10) indicate both that he has a bias and it might affect him.
- (11) The third question is, is he an employee of a party. It
- (12) may be technical, it may be substantial. I don't have instant
- (13) law at my disposal that tells me what that question would be.
- (14) That would not be a question with any discretion, if he were
- (15) considered to be an employee of a party as that term is used in
- (16) this case. Then I would have - I would have to disqualify
- (17) him. But I don't think I can - I'm not prepared to make that
- (18) as simply a legal question that I should decide, decide that he
- (19) is a party and disqualify him.
- (20) And that throws me back to the discretionary question, does
- (21) the financial hardship and its effect upon his state of mind,
- (22) does the bias that he's clearly admitted, and do all of these
- (23) circumstances that he's described in his jury selection give me
- (24) a solid reason for saying that this motion should be granted.
- (25) And I think they do, on all things considered. He said that if

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- (1) he would be mad at the Court system if he had to serve and
- (2) suffered financial hardship, he would be worried about the loss
- (3) of his job.
- (4) He's got a bias. He thinks he can set it aside. There's
- (5) too much risk here. A month and a half out, I believe that
- (6) it's probably, if he were on this jury that all of these things
- (7) that he's described, including the financial hardship and the
- (8) bias and the opinions that he has about this cleanup process,
- (9) and the opinions that he has about the parties in this case and
- (10) whether or not they should receive compensation, whether they
- (11) should be limited in the amount of compensation they receive,
- (12) his state of mind would affect his service as a juror, I think
- (13) that's probably on the examination, and therefore the motion is
- (14) granted. He will be excused.
- (15) Counsel, how many other employees of Alyeska are there on
- (16) this jury panel?
- (17) MR. DIAMOND: I believe that's the - well, I can't
- (18) answer that because I haven't read through all the
- (19) questionnaires.
- (20) MR. PETUMENOS: May I have a moment?
- (21) MR. STOLL: I don't think they are very many, Your
- (22) Honor.
- (23) THE COURT: Well, I said panel. Maybe I should limit
- (24) it to this group.
- (25) How many are there in this first flight?

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- (1) MR. DIAMOND: I don't think there are any.
- (2) MR. STOLL: No others.
- (3) THE COURT: Okay. Fine. I'm going to bring Mr. Sweat
- (4) in and excuse him and then we'll go on.
- (5) MR. STOLL: And give him the cautionary instruction
- (6) again.
- (7) THE COURT: I definitely will.
- (8) MR. STOLL: Thank you.
- (9) (Thomas Sweat enters the room.)
- (10) THE COURT: Mr. Sweat, when I review whether or not
- (11) jurors should serve in a case I have to take all things they
- (12) say. Now, you have been very honest and I appreciate that,
- (13) and
- (14) my feeling is - and I've told the parties this - that it's
- (15) inappropriate for you to serve as a juror in this case for a
- (16) bundle of reasons, all of which you've described in your
- (17) examination. So I do appreciate your taking the time to come
- (18) down here and be examined and being so honest in your
- (19) answers,
- (20) but I'm going to excuse you from service in this trial.
- (21) Now, that means you're excused from service in this trial,
- (22) but they may need you for jury service in other cases, so you
- (23) have to call in as you were instructed before.
- (24) And remember the admonition I gave you: Please don't talk
- (25) to anybody, particularly this jury panel, about any questions
- (26) that were asked of you. I don't want the panel to be tainted
- (27) in any way. All right?

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- (1) A Yes, Your Honor.
 (2) THE COURT: Thank you very much
 (3) (Thomas Sweat excused.)
 (4) (Iscah Miles enters the room.)
 (5) THE COURT: Ms. Miles. If you'll just sit in that
 (6) chair right there. There's a microphone right in front of you
 (7) and you just pick it up, it gets a better record for us.
 (8) What's your name, ma'am?
 (9) A Iscah Miles.
 (10) THE COURT: We have your jury questionnaire here and
 (11) you're still under oath because you were placed under oath at
 (12) the beginning of the jury selection. The parties are going to
 (13) have some brief supplemental questions of you regarding your
 (14) service as a juror. You have privacy rights that I'll guard,
 (15) so if there's anything that you feel is some matter of privacy,
 (16) you can raise that issue with me and I'll determine what the
 (17) appropriate questions will be. All right?
 (18) A Okay.
 (19) THE COURT: Thank you
 (20) VOIR DIRE EXAMINATION OF ISCAH MILES
 (21) BY MR. STOLL:
 (22) Q Good morning Ms. Miles?
 (23) A Good morning.
 (24) Q I'm Robert Stoll. I'm one of the attorneys for the
 (25) municipalities that is bringing an action against Exxon. I

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- (1) want to ask you some questions that will sort of follow up the
 (2) questions that you've answered in your questionnaire.
 (3) As I understand it, you work for Merrill Lynch?
 (4) A Yes, that's correct.
 (5) Q And do you act as an account executive, or what is -
 (6) A No, I'm the computer operator. I just wire the information
 (7) to the exchange floor.
 (8) Q I see. For your training department?
 (9) A For the training department, yes.
 (10) Q And I noticed that in answer to one of the questions that
 (11) you answered at the very end of - it is question 83 - there
 (12) was a question of, are you a landlord, tenant, employee,
 (13) shareholder, partner, client, agent debtor of any of the
 (14) following; and one of them was any company involved in
 (15) production, exploration, transportation, purchase or sale of
 (16) oil, natural gas or petroleum products. And you put down that
 (17) you were a Merrill Lynch employee.
 (18) Now, how did you relate that to the oil business?
 (19) A Because of the fact that I do send these transactions to
 (20) New York I may come across someone selling or buying
 (21) something,
 (22) but not -
 (23) Q I see. Dealing with an oil stock, you mean?
 (24) A Yes.
 (25) Q I see. You don't have - you're not yourself a shareholder
 (26) or anything of that nature?

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- (1) A No.
 (2) Q Then another question you answered was, Do you think that
 (3) Exxon Corporation has paid enough money as a result of the
 (4) Exxon Valdez oil spill, and you checked the box yes there. And
 (5) I'm just curious to know what you meant by that, or what you're
 (6) thinking was with respect to that?
 (7) A Oh, I just thought it's been in the media long enough and
 (8) that's why I said that.
 (9) Q I'm sorry?
 (10) A It's been in the media long enough.
 (11) Q I see. Okay.
 (12) Did you make any determination that you thought that there
 (13) shouldn't - if there were damages that had not been paid, they
 (14) shouldn't have to pay any more damages?
 (15) A No, I made no determination.
 (16) Q So you've got an open mind on it, as far as that's
 (17) concerned?
 (18) A Yes.
 (19) Q And have you made any evaluation or - let me ask you
 (20) this: Have you made any evaluation about whether the
 (21) damages
 (22) being sought by the Native corporations are unfair or
 (23) unreasonable?
 (24) A No. No evaluation.
 (25) Q Do you have any views on whether the claims of
 (26) municipalities for damages caused by the oil spill are

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- (1) unreasonable or Exxon shouldn't have to pay anything more?
 (2) A No views.
 (3) Q None at all?
 (4) A None at all.
 (5) Q Do you recall where you were when you first heard of the
 (6) Exxon Valdez oil spill?
 (7) A No. Probably watching the news. Yes, more than likely it
 (8) was.
 (9) Q What did you think about the oil spill a few days after the
 (10) spill?
 (11) A Well, after determined how much and how great it was, then
 (12) I wondered how could it have happened, and that's when I
 (13) started reading the news to find out what happened.
 (14) Q And what did you conclude as far as what happened?
 (15) A Not a conclusion, but it was part of just something that
 (16) was not taken care of right away.
 (17) Q And do you have any opinions now about how long the
 (18) effects
 (19) of the spill, how long the persistence would be of the oil that
 (20) spread through Prince William Sound down to Kodiak and the
 (21) peninsula?
 (22) A No.
 (23) Q You don't know - have you ever visited the Prince William
 (24) Sound?
 (25) A No.
 (26) Q Have you ever visited Kodiak?

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- (1) A No.
- (2) Q Do you have any newspapers that you regularly read?
- (3) A The Daily News, Anchorage Daily News, and the Wall Street Journal.
- (4) Q Do you read the editorial pages of either one of those pages?
- (5) A Today?
- (6) Q Today or any day.
- (7) A Sometimes.
- (8) Q And both of them or one of them or --
- (9) A Wall Street.
- (10) Q Do you read the editorial page of the Daily News or the -- they also have the Times on another side of it.
- (11) A No, I haven't read the Times, just the Daily News.
- (12) Q Have you had any dealings with any Native corporations?
- (13) A No.
- (14) Q Do you have any friends or acquaintances that are Alaska Natives?
- (15) A No. I have a coworker that her boyfriend is, but --
- (16) Q That's the extent of it?
- (17) A Uh-huh.
- (18) Q I wouldn't say acquaintance, more or less?
- (19) A Yes.
- (20) Q What do you like about Alaska?
- (21) A Me, my husband loves it, that's the truth. That's why

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- (1) we're here.
- (2) Q What does he love about it?
- (3) A Fishing and hunting of the outdoors. Plus --
- (4) Q Do you go up -- excuse me?
- (5) A Plus the school system for the kids, raising children.
- (6) Q Good school system?
- (7) A Uh-huh.
- (8) Q Do you participate in outdoor activities with your husband?
- (9) A No. I don't fish, I don't hunt. No.
- (10) Q Do you ever go camping together?
- (11) A No.
- (12) Q Now, in your questionnaire you checked, do you own or rent your place of residence?
- (13) A Uh-huh.
- (14) Q And the copy of this, it looks like both rent and own have been checked?
- (15) A We rent right now. We just bought a place and we move into next month.
- (16) Q I see. Is that the first one you had?
- (17) A Second one. We had a condo years ago.
- (18) Q And do you have any opinions as to what goes into determining value of land as opposed to a house or --
- (19) A No.
- (20) Q Is there any difficulty that you think you would incur if you sat on this jury?

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- (1) A I imagine my coworkers wouldn't be too happy for me to leave for two weeks -- two months or more. It would ruin my summer.
- (2) Q Well, in a lawsuit the plaintiffs bring the lawsuit, and so the fact that we have brought this lawsuit, if it ruins your summer, as you put it, are you going to hold that against the plaintiffs in this case? I mean just honest --
- (3) A Me, I imagine it's going to be during the daytime. I'm not going to spend evenings here.
- (4) Q We go from 8:30 to 1:30.
- (5) A That -- no.
- (6) Q Would that interfere very much?
- (7) A That will not.
- (8) Q And does it cause you any difficulties at your job?
- (9) A I don't think so, but I didn't ask them. I was told that they are -- there is a specific amount of time that they would pay for me, but I didn't ask. But I don't think so.
- (10) Q So you're not worried about that?
- (11) A No.
- (12) Q Your husband was a stock broker?
- (13) A With a different firm, right.
- (14) Q Right. Primerica?
- (15) A Primerica, yes.
- (16) Q What does he -- does he sell all kinds of investments or is he limited?

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- (1) A Limited to mutual funds and insurance. Mutual refunds and they refer him to Smith Barney's.
- (2) Q Has he expressed to you any views that he has about the Exxon Valdez litigation?
- (3) A No.
- (4) Q I want to go back to this question that I -- that you checked about Exxon having paid enough, and I'm -- I'm just trying to understand more what you meant by that.
- (5) A I think what I meant was -- well, you know, you've seen it for so long, it's been years and you've seen it in the newspaper and you hear it around your office, just talk, not anything personal; well, I thought, well, it's time to go on to something else.
- (6) Q Right?
- (7) A However, with this in mind, it shouldn't have any effect on whatever decision is made.
- (8) Q You understand this is the first opportunity that these plaintiffs have had to get into court to bring their claim?
- (9) A Yes, I do --
- (10) Q This is not --
- (11) A -- no, it's just --
- (12) Q -- recycling we're not recycling here?
- (13) A No, it's just news that I've been reading; not only on this payment, just on the whole -- just the things that have been current for years and years. When you leave Alaska, that's the

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- (1) first thing you get asked, so you're informed.
- (2) **Q** You know that the Native corporations that are here and the
- (3) municipalities that I represent have not been in court for
- (4) payment before?
- (5) **A** Yes.
- (6) **Q** I forgot to ask you this question: You mentioned in your
- (7) questionnaire that you were - you had some concern about the
- (8) value of Exxon's stock?
- (9) **A** Yes.
- (10) **Q** What did you mean by that?
- (11) **A** I don't know if it was a concern. Did I say concern?
- (12) **Q** Let me - I'll give you it exactly.
- (13) If you have any - this is the question: If you have any
- (14) opinions about how the Exxon Valdez oil spill affected any of
- (15) the following, please describe those opinions where indicated.
- (16) And then one of them is Exxon Corporation, and you said "my
- (17) only opinion has to do with the Exxon stock."
- (18) **A** I don't think it was an opinion; it's just that I worked
- (19) with it and maybe because I follow it every day because of
- (20) what's going on.
- (21) **Q** Right?
- (22) **A** But I don't have a concern of whether it would go up or
- (23) down or whatever happened to it.
- (24) **Q** You're not worried about Exxon folding its tents tomorrow
- (25) as a result of this lawsuit?

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- (1) **A** No, no, I'm not.
- (2) **Q** Now, let me ask you a question about that.
- (3) The Native corporations in this case - I'm not going to
- (4) get into the specific details, but the claim in this case is
- (5) over a hundred million dollars which, you know, is a lot of
- (6) money. Would that - would you worry about the - Exxon
- (7) having
- (8) to - you know, maybe Exxon, would have an adverse effect on
- (9) Exxon?
- (10) **A** Maybe at the beginning, but it would incorporate.
- (11) **Q** You see these companies -
- (12) **A** Yes.
- (13) **Q** - deal with hundred dollars and millions and billions of
- (14) dollars?
- (15) **A** Uh-huh.
- (16) MR. STOLL: Okay. Thank you very much.
- (17) VOIR DIRE EXAMINATION OF ISCAH MILES
- (18) BY MR. CLOUGH:
- (19) **Q** Hello, Ms. Miles. My name is John Clough. Along with
- (20) Mr. Diamond over here I'll be representing Exxon at the trial.
- (21) First of all, thanks for sitting through here, and it's no
- (22) fun asking you styles - or answering personal questions and,
- (23) believe it or not, there can be some nervousness on both sides
- (24) of the question-and-answer thing, so I understand how you feel
- (25) a little bit.
- (26) One of the things that I wanted to ask you to try to get to

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- (1) know you a little bit: I notice you've been in the Air Force
- (2) for a number of years?
- (3) **A** Yes.
- (4) **Q** And what did you do in the Air Force?
- (5) **A** I was in the dental field, medical. And that was '81, I
- (6) got out in '84 - '84. I got out in '84.
- (7) **Q** And I think from your questionnaire you said you had been a
- (8) dental hygienist?
- (9) **A** Yes.
- (10) **Q** I guess that struck my interest because my wife used to be
- (11) a dental hygienist?
- (12) **A** Right.
- (13) **Q** Was there a reason you chose to leave that field?
- (14) **A** Well, when I got out of the military I went - just chose
- (15) another field, but I got out and I stayed home for two years
- (16) and I just went back to school, decided to get into accounting.
- (17) **Q** And where did you go back to school?
- (18) **A** Well, UAA, but it was at that time called Anchorage
- (19) Community College.
- (20) **Q** That's right, back then?
- (21) **A** Uh-huh.
- (22) **Q** And you said you took a couple of years off. Was that -
- (23) did you say you have children?
- (24) **A** I had a son that was born that year.
- (25) **Q** And I just really have a few questions for you following up

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- (1) on your questionnaire.
- (2) You mentioned - and, by the way, we have a copy of your
- (3) questionnaire up there for you, so if there is anything you
- (4) want to refer to, it makes it easier.
- (5) If you recall, there had been a bunch of questions in there
- (6) about following the media and things like that, and you had
- (7) mentioned some things of the media under question 49, you
- (8) were
- (9) asked a question about what lawsuits you recalled, and you had
- (10) put down you remember only last week's verdict?
- (11) **A** Yeah.
- (12) **Q** Can you tell me what you remember about that?
- (13) **A** Last week was - all it said is that they were just
- (14) determining if they were at fault, I guess; Hazelwood and
- (15) someone else was at fault.
- (16) **Q** Is there anything about what you heard about last week's
- (17) verdict that you think would make it difficult for you to serve
- (18) as a juror in this case?
- (19) **A** No.
- (20) **Q** Is there anything that you've learned from your employment
- (21) about Exxon's stock that you think might make it difficult for
- (22) you to serve as a juror in this case?
- (23) **A** No.
- (24) **Q** I don't know if you'll recall this, but during the Judge's
- (25) instruction to you in the beginning when we had everybody in
- (26) the auditorium upstairs, he pointed out that in this case there

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- (1) is not an issue in this case of whether Exxon is responsible
 (2) for the damages, Exxon is responsible and we're here only to
 (3) talk about the amount of damages here. This case is about just
 (4) what is the fair value of actual damages.
 (5) Is there anything about that that makes it difficult for
 (6) you to serve as a juror in that type of case?
 (7) A No, I can't think of any. No.
 (8) Q If you were to find that some of the evidence presented to
 (9) you was a claim for damages that was exaggerated, would you
 be
 (10) able to limit your award to just what you felt was fair under
 (11) the circumstances?
 (12) A I think I - yes.
 (13) Q There are also a bunch of questions on the questionnaire
 (14) and also some here today about corporations. You understand
 (15) that Exxon is a corporation?
 (16) A Yeah.
 (17) Q Do you also understand that the Native corporation
 (18) plaintiffs are suing as corporations, not as individual Native
 (19) Alaskans coming before you?
 (20) A Okay. Now I do.
 (21) Q Is there anything - some people find it difficult to
 (22) decide cases involving just corporations, not real life
 (23) plaintiff as the plaintiffs and defendants. Would there be
 (24) anything about the fact that this case involved corporations on
 (25) both sides that would make it difficult for you to serve as a

- (1) Q But you're prepared to, if called?
 (2) A If - yes.
 (3) MR. CLOUGH: Your Honor, the defense would be pleased
 (4) to have Ms. Miles serve in this action.
 (5) THE COURT: Ms. Miles, thank you very much. I tell
 (6) you what I don't think we'll need you further today, but you
 (7) are still on the jury panel, you are still a perspective juror,
 (8) so I'd like you to understand a couple of things.
 (9) The first is, I'm going to excuse you now for the day. We
 (10) will be in touch with you later about when to come in again.
 (11) You have to remember that this is a jury selection process, and
 (12) that the point, the bottom line of it all is to get the most
 (13) impartial jury we can get. So don't talk to the other jurors
 (14) as you leave about the questions you were asked or any
 (15) impressions you may have gained about the process while you
 (16) were in here. I like to keep those things completely between
 (17) you and the parties and the Court; all right?
 (18) A Okay.
 (19) THE COURT: And since you're still under the duty of a
 (20) potential juror, and so that the others won't be tainted, but
 (21) don't talk about this in any form or express any opinion on it,
 (22) unless if you are selected as a juror and it would be submitted
 (23) to you for deliberation; all right?
 (24) A Okay.
 (25) THE COURT: Thank you.

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- (1) jury?
 (2) A No.
 (3) Q Do you feel that you're going to be able to follow the
 (4) instructions of the law as the judge gives them to you in this
 (5) case?
 (6) A Yes.
 (7) Q And are you prepared to listen to all of the evidence
 (8) that's presented to you?
 (9) A Yes.
 (10) Q One of the things that you may understand about how this
 (11) process is going to work is that the plaintiffs are going to
 (12) present their evidence to you first; in fact, it will be
 (13) probably be several weeks of their evidence before we as the
 (14) defense get to call our own witnesses. Are you prepared to
 (15) keep an open mind throughout the presentation of the
 (16) plaintiff's case until you've had a chance to listen to all the
 (17) evidence on both sides and not make a decision until you've
 (18) heard all the evidence on both sides?
 (19) A Yes.
 (20) Q Are you aware of any reason why you could not serve as a
 (21) fair juror in this case?
 (22) A No.
 (23) Q Would you like to serve as a juror in this case?
 (24) A No, unless I'm asked to. I'm not going to raise my hand
 (25) and say yes, I would like to serve.

- (1) A Do I get to keep this, or does it stay here?
 (2) THE COURT: No, we get to keep that. Thank you.
 (3) (Iscah Miles leaves room.)
 (4) THE COURT: Ma'am, if you would just pick up that
 (5) microphone, please, and just hold it while you're talking?
 (6) A Okay.
 (7) THE COURT: Give your name for the record please?
 (8) A Luella Charmely.
 (9) THE COURT: Ms. Charmely, we have your questionnaire
 (10) and we're going to be asking you some brief supplemental
 (11) questions about the issues that are raised by your jury
 (12) service. Each lawyer - a lawyer for each of the parties will
 (13) do that. In turn, if there are any issues that you think are
 (14) private or you don't want to answer some of the questions,
 (15) you're welcome to ask me and I'll make a ruling on some of
 (16) those issues. That has not been a problem up to now and I
 (17) don't anticipate it will be a problem with you.
 (18) Remember now, you're under oath; I put you under oath the
 (19) first day of jury service. All the answers you give on this
 (20) questionnaire and all the answers you gave are under oath. Do
 (21) you understand?
 (22) A Yes, I do.
 (23) THE COURT: Okay. Mr. Fortier.
 (24) MR. FORTIER: Thank you, Judge.
 (25) VOIR DIRE EXAMINATION OF LUELLA CHARMELY

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- (1) BY MR. FORTIER:
 (2) Ms. Charmely, my name is Sam Fortier. I represent the
 (3) Native corporations in this case. I'll be asking you some
 (4) questions, and then I think that probably Mr. Diamond from the
 (5) Exxon side will be asking you some questions. Let me start out
 (6) with - I note in your questionnaire that you grew up in
 (7) Anchorage?
 (8) A That's correct.
 (9) Q There aren't too many people that grew up in Anchorage in
 (10) the past 20 years or so.
 (11) What high school did you go to?
 (12) A East High.
 (13) Q I note too that you were raised on a homestead for a while,
 (14) or you lived on a homestead?
 (15) A Yes, I lived on a homestead for about 18 months when I was
 (16) about 11, 12, 13 years old.
 (17) Q Out in the Point McKenzie area; is that correct?
 (18) A Correct.
 (19) Q Was that during the wintertime you were out there?
 (20) A Yes.
 (21) Q Did you enjoy it?
 (22) A No.
 (23) Q Why not? Why didn't you?
 (24) A We had very primitive living conditions, no running water
 (25) and wood heat, and it wasn't really that comfortable.

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- (1) Q Do you prefer more the comforts of Anchorage, then, I take
 (2) it?
 (3) A I take it more or less I'm more of a city girl.
 (4) Q Well, I don't blame you.
 (5) Besides your experience at Point McKenzie, living in a
 (6) homestead at Point McKenzie, have you been to other areas of
 (7) Alaska?
 (8) A Well, I have a friend in Kindie Nylak (ph) who has a cabin
 (9) up in the bush up off of Petersville Road, and I go up there
 (10) quite often during the summer and occasionally in the winter,
 (11) and it's also quite primitive but at the same time more
 (12) comfortable than a homestead.
 (13) Q Whereabouts is the cabin in the Kindie Nylak Subdivision?
 (14) A No, it's on Kroto Lake. I don't know if you're familiar
 (15) with that; that's the head waters of - I guess the Deshka,
 (16) something like that. It flows down that direction.
 (17) Q Yeah, I'm somewhat familiar with the area. I got an open
 (18) entry site in there several years ago.
 (19) A Right.
 (20) Q Probably ten, 15 years ago, so I know the general area.
 (21) I note too, Ms. Charmely, that you have a sister-in-law who
 (22) was enrolled - was it Eklutna, Inc.?
 (23) A Yes, that's an Athabascan Indian from Eklutna.
 (24) Q Has she taken you to visit the village?
 (25) A Yes, I've been to the village a number of times.

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- (1) Q Is it your brother that is married to her?
 (2) A Yes.
 (3) Q And do they live in the village?
 (4) A No, she lived in the village for a while they were
 (5) separated. They're actually separated and getting a divorce
 (6) right now, but both of them now live in Anchorage.
 (7) Q When you go out to visit the village of Eklutna, would you
 (8) go to visit any of the cultural sites around the village?
 (9) A Well, I've been through the graveyard probably 20 years or
 (10) so, but I've been up there for picnics and family gatherings,
 (11) that sort of thing.
 (12) Q Is that family gatherings, was with your relatives?
 (13) A My sister-in-law's family.
 (14) Q I see. And that's where they gather is sometimes in the
 (15) old cemetery there or -
 (16) A No, there are picnic areas back in the woods that belong to
 (17) the village and that's usually where they have their
 (18) gatherings.
 (19) Q These are sort of special places that the people that -
 (20) your sister's family goes to, is that right; sister-in-law?
 (21) A Yes, they have a community center, a log cabin where we
 (22) have their meetings and things.
 (23) Q And picnics, too, you were saying?
 (24) A Yes. You know, like for Mothers Day or something like
 (25) that, they usually have a first picnic for the year and

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- (1) sometimes they have pow-wow's and that type of gathering
 (2) there.
 (3) Q And this would be where the whole community gets
 (4) together?
 (5) A Right.
 (6) Q How many of those have you gone to?
 (7) A Oh, you mean community gatherings?
 (8) Q Yes.
 (9) A Only one or two.
 (10) Q And how long were your bother and sister-in-law married?
 (11) Excuse me, Ms. Charmely. Let me tell you that occasionally
 (12) I have to ask you questions that seem horribly personal to you
 (13) perhaps, but it is just our way of trying to find out, get some
 (14) information on you, due to the important position of serving on
 (15) a jury. So if I do tend to ask personal questions from time to
 (16) time, I will - you know, I realize your embarrassment and
 (17) discomfort, but those are just the sort of things that I need
 (18) to ask.
 (19) A Okay.
 (20) Q So could you tell me how long your brother and
 (21) sister-in-law were married?
 (22) A They've been married, I believe, 20 some years as of May.
 (23) Q Have you talked with your brother about why after 20 years
 (24) he's divorcing?
 (25) A Well, they've been separated for a long time and I guess
 they're just now deciding they're not going to get back
 together again.

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- (1) Q Did you get along with your sister-in-law?
 (2) A Fairly well, yes.
 (3) Q I note in your questionnaire that you indicated - your
 (4) questionnaire, by the way, is there in front of you if you want
 (5) to check, I think it's question number 47.
 (6) You indicate that you are less favorably inclined towards
 (7) Native corporations?
 (8) A Well, it's been my experience that they don't handle their
 (9) affairs very well, it seems to me.
 (10) Q And can you tell me what that experience is based on?
 (11) A Mostly just newspaper accounts of the corporations losing
 (12) money and having to turn over their - their daily running of
 (13) their businesses-type things to management corporations; that
 (14) sort of thing.
 (15) Q It's based upon newspaper accounts, then; is that -
 (16) A Yeah, and just, you know, general conversation with other
 (17) people.
 (18) Q Do you have any Native corporations in mind when you say
 (19) that there's general problems with management?
 (20) A Well, I seem to recall several years ago that Bristol Bay
 (21) Native corporation was making headlines for their losses,
 (22) that's the first thing that comes to mind; and then there were
 (23) problems with the North Slope Borough Native Corporation a
 (24) few
 (25) years ago. It's just a general impression; I can't really get
 more specific than that.

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- (1) Q Did you ever talk with your sister-in-law about Eklutna?
 (2) A No, I don't believe so.
 (3) Q Did you ever talk with her about Cook Inlet Region?
 (4) A No, not other than just general things.
 (5) Q Do you know - have you ever heard of a company and
 (6) corporation by the name of Chenega Corporation?
 (7) A No.
 (8) Q Have you ever heard of one by the name of Point Graham
 (9) Corporation?
 (10) A No. I've heard of Port Graham, but not of a corporation.
 (11) Q How did you happen to hear of Point Graham?
 (12) A I think somebody I know went fishing down there sometime.
 (13) Q This was a friend of yours?
 (14) A Possibly, yeah.
 (15) Q Do you know what sort of fishing was done?
 (16) A It may have been a hunting trip. It was just like a
 (17) recreational trip.
 (18) Q Have you ever heard of English Bay Corporation?
 (19) A No.
 (20) Q Have you ever heard of the Tatitlek Corporation?
 (21) A No.
 (22) Q Have you ever heard of Eyak Corporation?
 (23) A No.
 (24) Q And have you ever heard of Chugach Alaska Corporation?
 (25) A Well, Chugach of course is, you know, a very common name;

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- (1) but as a corporation, a Native corporation, no, I've never.
 (2) Q Do you have any understanding of why Native corporations
 (3) were formed, Ms. Charmely?
 (4) A I understand it was part of the Alaska Native Claims Act.
 (5) Q And do you have any understanding of what Natives, Native
 (6) corporations received as part of the Alaska Native Claims Act?
 (7) A Well, I understand that they received land and monies that
 (8) they were going to keep and take care of and administer
 (9) themselves rather than the white government.
 (10) Q Now, based upon what you perceive as being problems with
 (11) management of Native corporations, do you hold any sort of
 (12) feeling towards Native corporations themselves, one way or the
 (13) other?
 (14) A I mean, what type of feelings do you mean? Am I against
 (15) them? That what you mean?
 (16) Q Why don't we start it that way.
 (17) A No, no; I'm not against them at all, I think they have the
 (18) right to administer their own tribal lands and their own
 (19) properties and monies.
 (20) Q Do you know that a Native corporation is different than a
 (21) tribal government? Have you ever heard that?
 (22) A No, I don't believe so.
 (23) Q One reason I ask; a lot of people don't know that, that
 (24) they're different. But I note in your questionnaire, Ms.
 (25) Charmely, again, at Page 11 of your questionnaire, you indicate

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- (1) somewhat unfavorable data towards Native corporations and
 then
 (2) below that towards tribal governments.
 (3) A I guess I was just kind of lumping them together.
 (4) Q You lumped the Native corporation, tribal government
 (5) together then?
 (6) A Yeah. I really don't know anything about tribal
 (7) governments. I have to admit that.
 (8) Q And then on the other side of that, I notice that you put
 (9) in Natives and Exxon Corporation as somewhat favorable?
 (10) A Well, I know too many Natives to be unfavorable toward
 (11) them. I have a certain amount of leaning towards them, and at
 (12) the same time I have a feeling that Exxon may be being treated
 (13) somewhat unfairly.
 (14) Q And why do you think that Exxon might be treated unfairly?
 (15) A They're a big corporation. They have big pockets.
 (16) Q Are there any other reasons why you think Exxon might be
 (17) treated unfairly?
 (18) A No.
 (19) Q Now, based upon what you perceive of Native corporations
 (20) and your somewhat unfavorable view of Native corporations, do
 (21) you think you could be fair as a juror to Native corporations?
 (22) A Yes, I think that if they proved their case I could be fair
 (23) to them.
 (24) Q Do you have any understanding of what the damages that
 the
 (25) oil spill caused to lands, do you have any perception or

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- (1) preconceptions of -
- (2) A I can understand what damage it did to shore lands and
- (3) waterways and that sort of thing.
- (4) Q And so, Ms. Charmely, if a Native corporation was a
- (5) plaintiff in the case and presented damages or presented
- (6) evidence of damages to its lands on account of the oil spill,
- (7) would the fact that you have a perception about the way in
- (8) which Native corporations may be managed affect your ability
- (9) to
- (9) render a decision favorably toward a Native corporation for
- (10) money?
- (11) A That's kind of a complex question. I believe that if they
- (12) could present definite proof of monetary damages, that you
- (13) would have to agree with them.
- (14) Q Would you be at all concerned about what they would do
- (15) with
- (15) the money if you awarded it to them?
- (16) A That wouldn't be any of my business.
- (17) Q So you wouldn't be concerned about that at all?
- (18) A No.
- (19) Q Now, kind of on the other side of things with Exxon
- (20) Corporation, you indicated that you felt that they had been
- (21) treated unfairly?
- (22) A Well, I think to a certain degree - this is when, four,
- (23) five years after the oil spill; and they're still paying.
- (24) Q Now, do you understand that, with regard to the Native
- (25) corporations, this is the first time that we've been able to

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- (1) get into court to present our claim against Exxon?
- (2) A Yes, I understand that.
- (3) Q So, do you think it would be unfair for the Native
- (4) corporations to come into court five years later in order to
- (5) ask a jury to award them damages and make Exxon pay for
- (6) that?
- (6) A Not if they believed that they had damages coming to them.
- (7) Q And do you think that, if the evidence supports such a
- (8) claim for damages, that you could award those damages to the
- (9) Native corporations, even though Exxon may have paid - may
- (10) have paid claims to others in the past?
- (11) A I'm sorry, could you repeat that?
- (12) Q Sure.
- (13) A I kind of got lost there.
- (14) Q You indicated that Exxon - your understanding was that the
- (15) Exxon had paid claims in the past.
- (16) Let me ask it this way: Do you know who Exxon had paid
- (17) claims to in the past?
- (18) A I thought they had paid claims to just about everybody.
- (19) Q And is that based upon having read things in newspapers?
- (20) A It seems like every time you pick up a newspaper there is
- (21) something about Exxon paying another fine or another trial or
- (22) another claim.
- (23) Q Now, would you be able to come into court as a juror and
- (24) set aside what you believe Exxon has paid claims to just about
- (25) everybody in order to listen to claims of the Native

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- (1) corporations?
- (2) A I believe I could listen to their claims and be fair about
- (3) it.
- (4) Q And if there was no evidence that came in that the Native
- (5) corporations ever received any money and claims from Exxon,
- (6) would you - what would you think?
- (7) A Well, as I said, for this particular trial it really
- (8) wouldn't matter if they had received previous claims because
- (9) that wouldn't be what we were deciding, as I understand it, so
- (10) if they were able to prove in this trial that there were
- (11) definite monetary damages then I would feel like they would
- (12) have to be awarded.
- (13) Q Now, what if - as a for instance - part of the evidence
- (14) were to show that you can't always see the oil, but maybe
- (15) it's - there is still lingering effects from the oil? Would
- (16) you be able to award damages under those circumstances?
- (17) A I don't know. I would have to see what the evidence was
- (18) and how compelling it was.
- (19) Q What do you mean by how compelling it was?
- (20) A Well, if they didn't have any concrete proof that the oil
- (21) was still there, and it was still causing damage and there
- (22) would be damaging years to come, how could you know for
- (23) sure
- (23) that it was going to continue to cause damage or that it had
- (24) caused damage.
- (25) Q So you would want to hear the evidence?

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- (1) A Yes.
- (2) Q Now, you indicate in your questionnaire, Ms. Charmely, that
- (3) you've done a lot of reading about the oil spill. I think it's
- (4) at page - or I'm sorry it's at question 36, it appears at page
- (5) 8. I'm sorry, it appears at page 9?
- (6) A Well, as I said, this has been in the news pretty much
- (7) constantly since it began, and it's pretty hard to get away
- (8) from it.
- (9) Q Okay. Let me kind of - do you recall when the Exxon
- (10) Valdez oil spill was?
- (11) A Four or five years ago, I believe.
- (12) Q You indicate that you read a great deal about it. Do you
- (13) see that as one of the columns there?
- (14) A At the time, yes. Everyone was reading about it.
- (15) Q And then number 37, it asks how many articles have you read
- (16) about the Exxon Valdez grounding and the oil spill. And you
- (17) marked three, do you see that?
- (18) A Okay. In question number 36, it says, how much have you
- (19) heard about. Okay. There was a great deal of radio,
- (20) television, and office discussion about it. As for specific
- (21) articles, I remember reading one in People magazine, and I
- (22) remember reading the newspaper a couple of times, so I just
- (23) kind of estimated that I probably finished three articles,
- (24) because after a while I quit reading about it.
- (25) Q When was the last time that you read an article about the

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- (1) Exxon Valdez oil spill, if you recall?
 (2) A Probably just the other day. There were headlines, I would
 (3) read the headlines and that would be about it.
 (4) Q And do you recall what those headlines were about?
 (5) A I believe it was about the federal trial that's going on.
 (6) Q Now, also Ms. Charmely, in your questionnaire you indicate
 (7) that at page - I'm sorry, at page 16, item number 84. The
 (8) question is, It is estimated that the trial of this case will
 (9) take three months. Do you have difficulty in being a juror in
 (10) a case of this duration? And you've marked yes?
 (11) THE COURT: But, counsel, we should - the estimate
 (12) has changed, it's changed to two months now. Now, those
 (13) estimates are just that, estimates, and it could be longer than
 (14) two months, but the question was derived and a different
 (15) estimate, this is a two-month trial in which I believe that's a
 (16) reasonable estimate of the trial time, and you go from 8:30 to
 (17) 1:30, so you're out in the afternoons in this case. All the
 (18) way through the case.
 (19) Go ahead, counsel.
 (20) MR. FORTIER: I'm sorry. Thank you, Your Honor.
 (21) BY MR. FORTIER:
 (22) Q Let me ask the question this way: If the trial were to run
 (23) two months, would that present any difficulty?
 (24) A It wouldn't present a difficulty for me personally. I work
 (25) for the Municipality, but I'm a computer operator, I work the

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- (1) night shift. Our shop is open seven days a week 24 hours a
 (2) day. There are three people on my shift and there's going to
 (3) be - someone is going on vacation shortly for three weeks.
 (4) Therefore, they would have to do a lot of shuffling around to
 (5) cover my shift, since we do weekends; and, as I said, I work
 (6) midnight to 8:30 in the morning and it would be an
 (7) inconvenience for other people in my office as there is going
 (8) to be somebody on vacation on almost every shift from now
 (9) until
 (10) the end of the summer. Every shift would be short-handed
 (11) then.
 (12) THE COURT: Could you tell me something, ma'am? What
 (13) are the shifts, they're midnight to eight?
 (14) A Midnight to 8:30, eight o'clock until 4:30, four o'clock
 (15) until 12:30.
 (16) THE COURT: All right. On occasions where people are
 (17) gone for emergency reasons or things like that, does the
 (18) employer respond by sometimes shifting people around? In
 (19) other
 (20) words, I would not want you to be trying this case after having
 (21) worked eight hours and then coming over to the courtroom.
 (22) A No, that would be pretty much impossible.
 (23) THE COURT: Right. So my expectations would be that
 (24) your employer would adjust to that situation and would take you
 (25) off that shift, if you were working during the time you were on
 (26) this trial, and might put you on another shift, or would see
 (27) what the situation was and adjust to it if you could not be
 (28) there at work. Am I being - am I wrong in my expectations?

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- (1) A No, it could be done. Someone could be shifted to take
 (2) over my shift, at least for the time while other persons were
 (3) on vacation.
 (4) THE COURT: Have you talked to your employer about
 (5) this at all?
 (6) A Well, I talked to him - the person that does most the
 (7) scheduling is getting ready to go on vacation himself, and I
 (8) discussed it with him, and he said it would be pretty
 (9) difficult.
 (10) THE COURT: All right.
 (11) Counsel, I want to do something, because really it would
 (12) just be speculation as to what happens in the workplace or what
 (13) effect it would have on this juror at this point. And since
 (14) we're going to go through the process and then excuse this
 (15) juror and then go on to talking to other jurors, in the event
 (16) that she's not excused from the panel today, all I want her to
 (17) do is go talk to her employer, explain that it's a possibility
 (18) she'll be a juror on this trial, and get the jobs feedback,
 (19) because this is a municipality and I'm sure they have the
 (20) capacity to adjust to this situation; and if they don't, they
 (21) can tell me about it.
 (22) All right? And that should allay all of your concerns.
 (23) MR. FORTIER: So the question, then, is, Your Honor,
 (24) is -
 (25) THE COURT: I don't see any reason for discussing

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- (1) speculative hardship which I think probably won't occur.
 (2) MR. FORTIER: Okay. I understand. Let me move on to
 (3) another area.
 (4) BY MR. FORTIER:
 (5) Q Do you have any - you work for a municipality at this now?
 (6) A Correct.
 (7) Q The Municipality of Anchorage?
 (8) A Correct.
 (9) Q Are you aware that there are also municipalities that are
 (10) plaintiffs in this case, Ms. Charmely?
 (11) A Yes.
 (12) Q And have you ever heard of those municipalities?
 (13) A Kodiak is the only one I recall.
 (14) Q Now, how do you think municipalities are run as a general
 (15) rule?
 (16) A You mean administratively or monetarily?
 (17) Q Administratively, let's go that way.
 (18) A Well, I guess they're basically run like a business. They
 (19) have services and they have people to oversee those services.
 (20) Q Now, in question number 47 - refer you back to that one.
 (21) You indicate a somewhat favorable attitude towards
 (22) municipalities?
 (23) A Well, as I work for a municipality I would have to be
 (24) somewhat favorable towards them.
 (25) Q I'm going to turn to another area and ask you just a couple

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- (1) of general questions, you being a lifelong resident of the
 (2) state, Ms. Charmely.
 (3) Do you have any opinion as to how common or how strong
 (4) anti-Native - or anti-Alaska Native sentiment may be in the
 (5) Municipality of Anchorage, in the city?
 (6) A Do you mean among municipal employees or do you mean in
 the
 (7) general Anchorage area?
 (8) Q Right.
 (9) A I think it's high.
 (10) Q You think it's high?
 (11) A I think it's very high.
 (12) Q Do you think that that same attitude reaches towards Native
 (13) corporations as well?
 (14) A I really couldn't say about that.
 (15) Q Do you have any personal opinion as to whether a Native
 (16) corporation should or should not have received land as part of
 (17) the Alaska Claims Settlement Act?
 (18) A No, I'm afraid I don't.
 (19) Q You have no opinion one way or the other about it?
 (20) A No.
 (21) Q Have you discussed it at all with your sister-in-law, the
 (22) importance of land for Eklutna, Inc.
 (23) A No, not really. She isn't that involved in the Native
 (24) movement. She lives in town, she's a city person, she doesn't
 (25) want to live in the village; and her family has lived a

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- (1) subsistence lifestyle, but she's really not that into it. And
 (2) we haven't discussed - she doesn't own any land of her own
 (3) really, so we haven't discussed that sort of a thing.
 (4) Q And do you have any opinions on the value of land owned by
 (5) Native corporations?
 (6) A No, I don't.
 (7) Q Do you think you could be fair to Native corporations as a
 (8) juror?
 (9) A I think I could be.
 (10) Q And do you think you could be fair to municipalities?
 (11) A Yes.
 (12) Q And do you think you could be fair to Exxon Corporation?
 (13) A Yes.
 (14) MR. FORTIER: I have no further questions.
 (15) THE COURT: Okay.
 (16) VOIR DIRE EXAMINATION OF LUELLA CHARMELY
 (17) BY MR. DIAMOND:
 (18) Q Good morning, Ms. Charmely - I guess it's not morning
 (19) yet.
 (20) Is it Miss or Ms.?
 (21) A Miss.
 (22) Q Did you work a shift this morning?
 (23) A No. Fortunately they let me go last night.
 (24) Q I was going to say, you probably have stronger constitution
 (25) than any of us had. I gather from your questionnaire, and it

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- (1) struck me listening to you answer some of Mr. Fortier's
 (2) questions: You do have legal experience, do you not?
 (3) A I was a legal secretary for seven or eight years.
 (4) Q Here in Anchorage?
 (5) A Yes.
 (6) Q Working for private firms or in the public's eye?
 (7) A It was private firms.
 (8) Q None of us, I take it?
 (9) A No, never heard of any of you.
 (10) Q Do you still have friends in the legal profession; legal
 (11) secretaries or legal assistants or lawyers?
 (12) A No, I've pretty much been out of it for the last 15 years
 (13) or so. I know a couple of lawyers but to say hi on the street,
 (14) that's about all.
 (15) Q I notice that you went back to school sort of midstream; is
 (16) that right?
 (17) A Correct.
 (18) Q What led you to do that?
 (19) A Well, I discovered that I have a certificate as a
 (20) professional secretary, and I discovered that it gave me almost
 (21) half the credits needed for a degree, so I decided, well, I've
 (22) always wanted a degree; I'll go back and get it with these.
 (23) Q And your degree is in computer science?
 (24) A No, it's an associate of arts degree.
 (25) Q Do you know whether your sister-in-law is a shareholder of

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- (1) any Native corporation?
 (2) A I believe she's a shareholder in Eklutna Village
 (3) Corporation even though she doesn't reside in the village. She
 (4) from time to time gets what she calls Native money. Now, I
 (5) don't know if it's Cook Inlet or Eklutna, but she goes to a
 (6) number of potlucks and that sort of thing.
 (7) Q I noted from your questionnaire that you like the outdoors?
 (8) A Yes.
 (9) Q Do you ever get down to the Prince William Sound area?
 (10) A Never.
 (11) Q How about the Kenai?
 (12) A No, not really. Occasionally visiting relatives we'll take
 (13) down there, but I don't like crowds.
 (14) Q How about Kodiak?
 (15) A I've never been there either.
 (16) Q Do you have any pets?
 (17) A I have a cat.
 (18) Q Do you recall - I'm sure you did at the time of the spill
 (19) back in the summer of '89, we were all aggrieved with fairly
 (20) horrible and very disturbing images of dying and suffering
 (21) animals.
 (22) Do you remember seeing those at the time?
 (23) A Yes.
 (24) Q In all likelihood, some of those, or pictures like that may
 (25) be introduced as evidence during the trial in this case. Does

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- (1) that disturb you at all?
 (2) A No.
 (3) Q Do you think it might make you sort of emotionally side
 (4) with one party as opposed to another party?
 (5) A I don't believe so.
 (6) Q Where do you do your fishing and hunting?
 (7) A Mostly I do it at - my friend has a cabin on Kroto Lake.
 (8) MR. DIAMOND: Your Honor, Ms. Charmely is a fine and
 (9) acceptable juror from the standpoint of the defense.
 (10) THE COURT: All right.
 (11) Ms. Charmely, will you do me a favor and check with your
 (12) employer? This jury selection process, as you can tell, takes
 (13) a substantial amount of time, and we're going to be questioning
 (14) a number of other jurors, but you are on the panel and you're a
 (15) potential juror in this case still. So I want you to remember
 (16) a couple of things.
 (17) First, the caution that I gave all the jurors about not
 (18) forming or expressing any opinions or talking with anybody
 (19) about the case. That applies to you because you are a
 (20) potential juror and you may be deliberating on this case. So
 (21) don't talk to anybody about this case, including your fellow
 (22) jurors and don't form or express any opinions on it. If you
 (23) are selected for a juror for your deliberations I want to keep
 (24) this process as free from taint as I possibly can, so when you
 (25) go out of here don't say anything about the questions you were

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- (1) asked or the process you just went through.
 (2) A Okay.
 (3) THE COURT: Ask your employer - in all probability at
 (4) this time we'll be calling you back, and if your employer
 (5) raises questions that you think we ought to know about, you can
 (6) let us know at that time; all right?
 (7) A Okay.
 (8) THE COURT: But I see no reason to keep you here while
 (9) the other jurors are being questioned, and there are a lot of
 (10) them and that may take days. I'll excuse you now and we'll
 (11) call you back when it's time for the final jury selection.
 (12) A Okay.
 (13) THE COURT: Thank you, and thank you.
 (14) A Thank you.
 (15) (Ms. Charmely leaves the room.)
 (16) MR. DIAMOND: Your Honor, did I accuse any other
 (17) lawyer of being long-winded?
 (18) THE COURT: I was going to say something, counsel;
 (19) watch your time. It's ten minutes to a side and I'm starting
 (20) to think that maybe I should step in.
 (21) MR. FORTIER: Your Honor, I noticed it too late. I
 (22) apologize.
 (23) THE COURT: I understand how you can go over time, but
 (24) you have to start watching time. This process is taking too
 (25) long.

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- (1) (Tammy Fisher enters the room.)
 (2) THE COURT: Ma'am, we're going to be asking you some
 (3) questions supplemental to your jury instruction questionnaire.
 (4) These questions are all asked to you under the oath that you
 (5) were given on the first day of jury selection, so both the jury
 (6) questionnaire questions and answers and the answers you give
 (7) now are under oath, they are directed at your qualifications as
 (8) a juror, so if you feel that any of these questions are unduly
 (9) intrusive you're welcome to say that to me and I'll step in and
 (10) see what I can do about it. I don't intend this process to be
 (11) overly intrusive into your private life, and it has not been
 (12) for the other jurors and I'm sure it won't be for you either.
 (13) The parties will give you some brief supplemental questions,
 (14) and then I'll probably excuse you for the day, all right?
 (15) A Okay.
 (16) THE COURT: Oh. Would you give your name for the
 (17) record, please?
 (18) A Tammy Fisher.
 (19) THE COURT: Mr. Petumenos.
 (20) VOIR DIRE EXAMINATION OF TAMMY FISHER
 (21) BY MR. PETUMENOS:
 (22) Q Thank you, Your Honor.
 (23) Ms. Fisher, the first thing I want to ask before we go into
 (24) anything else is one of the things you mentioned in your
 (25) questionnaire was you were worried about your children and how

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- (1) your jury service might affect that. So I wanted to cover that
 (2) first, if we could, because I note from the question that you
 (3) might be worried about it.
 (4) You work at Alaska Radiology?
 (5) A Uh-huh.
 (6) Q And what are your hours there?
 (7) A Eight to five.
 (8) Q And I assume - maybe I shouldn't assume, I should ask
 (9) whether Alaska Radiology has a provision whereby you will be
 (10) paid your wages while you're doing your jury service; do you
 (11) know that for sure?
 (12) A I'm a real new employee, I've only been there three months,
 (13) so she said that by law they're supposed to but since I wasn't
 (14) chosen yet she couldn't tell me if a new employee would be
 (15) different than a long-term employee.
 (16) Q Because one of the things you said, they don't pay a great
 (17) deal for being a juror so unless you get that worked out that's
 (18) going to be a problem for you, but you don't know for sure
 (19) whether or not they're going to pay your wages?
 (20) A Not yet because I haven't been chosen yet.
 (21) Q But if you are chosen will they, do you -
 (22) A I don't know.
 (23) MR. PETUMENOS: Your Honor, I suppose I'd make the
 (24) same applications that we have with the others.
 (25) THE COURT: If you'd just find out it would be

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- (1) pertinent to the decision of whether or not you should serve on
 (2) this case – remember you do get paid a certain sum for your
 (3) jury service, so if they have a compensation plan for you while
 (4) you're a juror, then of course the money we pay will go back to
 (5) them.
 (6) A Okay.
 (7) BY MR. PETUMENOS:
 (8) Q And your children are eight and three?
 (9) A Uh-huh.
 (10) Q And you're a little worried that if you had – if they got
 (11) ill – they're not ill now, are they?
 (12) A No, but my mother couldn't watch them today, my friend's
 (13) out of town, my sister's out of town, so I had to leave them
 (14) this number here if something happened and they needed me
 (15) to
 (16) get them, so that's my only concern.
 (17) Q And that's the sort of arrangement you normally have to
 (18) make with your job?
 (19) A Right. If I needed to take them out of day-care if I
 (20) needed to be there for them, I don't have anybody else but my
 (21) day-care to take care of my kids.
 (22) Q Now, did – I don't even know, did we tell you what your
 (23) hours would be as a jurors, do you know yet?
 (24) A No, no.
 (25) Q If we were to go from 8:30 to 1:30 and have the rest of the
 (26) afternoon or the day to yourself, would that reduce the

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- (1) problem, at least a little, for the purpose of your concern
 (2) about the case, because that is the case. We're going to be
 (3) starting at 8:30 and be done at 1:30 every day and those are
 (4) the hours of court.
 (5) A Okay.
 (6) Q So, I guess as I understand the concern, if you're able to
 (7) work things out with your employer, and you're warning us that
 (8) you have problems with children sometimes and need to take
 (9) care
 (10) of them if they get ill, but that's something you normally deal
 (11) with at work as well?
 (12) A Right. Nothing has happened so far but –
 (13) Q Okay. Good.
 (14) Let's see, you had some – like most people you have read
 (15) about this case before now, and I'd like to ask you a few
 (16) questions about that.
 (17) Do you understand that in this trial we're not going to be
 (18) talking about really whose fault it was or how the ship came to
 (19) be grounded or any of those things; the only issues we're
 (20) dealing with are the quantitative damages of the people in the
 (21) lawsuit.
 (22) With that in mind, do you think, based upon anything that
 (23) you read, that there is any reason you can't be a fair and
 (24) impartial juror?
 (25) A No, not thinking anything that I've read.
 (26) Q Any other reason, any opinions you bring to the courtroom

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- (1) or anything that you can't set aside, and just decide things
 (2) based on what happens in this room and what the judge tells us
 (3) and what the witnesses tell us and so forth?
 (4) A I don't know.
 (5) Q You hesitate a bit. Are you uncertain about that?
 (6) A Yeah, I'm uncertain.
 (7) Q Okay. Could you tell us why?
 (8) A Because I do have opinions about it. I feel very strongly
 (9) a certain way, and I don't know if that's good or bad, but
 (10) that's how I feel.
 (11) Q No, I understand. That's what we're here to find out. And
 (12) are those feelings that you have negative towards one party or
 (13) another here in court today? I mean, are they –
 (14) A I feel strongly for one particularly one way, and I'm sure
 (15) the other party wouldn't agree; you know what I'm saying?
 (16) Since I feel strongly about this way, they wouldn't feel good
 (17) about my decision, I wouldn't think; and if it was the other
 (18) way, same thing.
 (19) Q And who do you think might be in trouble here?
 (20) THE COURT: You have to give your – if you have an
 (21) opinion, you have to tell us what the opinion is so that we can
 (22) determine whether or not you can be impartial.
 (23) A I don't know what you want me to say. Ask me a direct
 (24) question and I'll answer it, I don't want to sit and elaborate
 (25) on something for a half hour that something you might not want

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- (1) to hear, you know.
 (2) Q One of the reason that we're doing this one at a time is so
 (3) other jurors don't hear.
 (4) Let me ask you this: Do you have a problem with Exxon?
 (5) A Yeah.
 (6) Q And as a result of how you feel, do you feel like if you
 (7) got jury instructions and listened to evidence that you
 (8) wouldn't be fair in this case as opposed to a different case,
 (9) you already have your mind made up or could you set some of
 (10) those feelings aside?
 (11) A I think it would be hard to change my mind based on what
 (12) was said and what I heard here.
 (13) Q Have you had any exposure to the oil spill in your personal
 (14) life as opposed to what you read?
 (15) A No.
 (16) Q So it's just your knowledge about the event itself?
 (17) A (Nods head).
 (18) Q Well, only, you know, the extent to which you are able to
 (19) set aside those feelings when you come in, and we can only
 (20) listen to your evaluation of it, and I guess I have to ask an
 (21) open-ended question a little bit and have you tell us really if
 (22) you think you can be a fair juror or whether it would be unfair
 (23) to Exxon to have you on the case?
 (24) A Well, it depends on if – if Exxon is here to fight and say
 (25) they don't feel like any awards or any money should be given to

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- (1) the other side or if they do feel and they're just deciding how
 (2) much, that's what it depends on.
 (3) Q Well, so, if we're - what we're here squawking about the
 (4) amount of money, then, as opposed to whether or not anything
 (5) should be paid at all, that would make a difference to you?
 (6) A Uh-huh.
 (7) Q Well, it's my understanding that that's with respect to the
 (8) land claims, and that - that's exactly where we are, that
 (9) Exxon thinks we are owed something and we think we are owed
 (10) something more. Does that put in the category of something
 (11) that we could have you sit as a juror on?
 (12) A I think they deserve an awful lot. I don't know what an
 (13) awful lot is to Exxon, but I think -
 (14) Q Now, you don't have a number as you sit there now that you
 (15) think has to be a minimal amount or anything like that. So
 (16) when you come to the conclusion that you're going to reach in
 (17) this jury, where are you going to get that information?
 (18) A That would probably depend on everything that I have heard
 (19) throughout.
 (20) Q In the courtroom or elsewhere?
 (21) A Not elsewhere.
 (22) Q In the courtroom here?
 (23) A Yeah.
 (24) Q Okay. And you have some interests, I think, in the areas
 (25) of Homer, Seward and Kenai? You go there sometime?

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- (1) A Yeah, sometime.
 (2) Q Seward is one of the parties in this case. Are you pretty
 (3) familiar with that area of Alaska?
 (4) A Well, I go fishing there. We've got friends there and
 (5) stuff.
 (6) Q Why are you in Alaska? Did you grow up here?
 (7) A I've been here since I was two years old.
 (8) Q And why do you stray?
 (9) A Probably because I never have really been Out, except for
 (10) vacation, you know.
 (11) Q And you feel glad to be home when you get back?
 (12) A Yeah.
 (13) Q Is that the kind of feeling you have?
 (14) A Yeah.
 (15) Q What is it that you feel - if someone were to ask you, if
 (16) someone asks you, What do you like about Alaska, why do you
 (17) live there, what do you find yourself saying?
 (18) A This is going to sound crazy. I don't like hot, hot, hot
 (19) temperatures. I like our summers and winters and I'm used to
 (20) it.
 (21) Q Do you like to go in the wilderness and like to -
 (22) A Oh, yeah.
 (23) Q What kind of activities -
 (24) A Hiking, camping, fishing.
 (25) Q Do you have any idea of the value of the wilderness land,

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- (1) do you think it has value?
 (2) Let me make a suggestion here.
 (3) A You can make one.
 (4) Q And I guess one of the things that I need to pin down is,
 (5) if the trial were to come down to such things as the value of
 (6) land, wilderness land, how much wilderness land is affected by
 (7) the oil spill and putting monetary value to it, do you feel as
 (8) if the best information that you know about would likely come
 (9) from this courtroom as opposed to outside of it?
 (10) A Yeah. I mean, what we heard about Exxon now we're not
 (11) going to hear any more except what I would hear here in this
 (12) courtroom.
 (13) Q And the things that you have heard outside of the
 (14) courtroom, have they been about the land values?
 (15) A No, no.
 (16) Q So you don't come into the courtroom with any information
 (17) about land values or the municipal - what happened to the
 (18) city, what municipal damages might be and the information you
 (19) have has been different than that; am I right?
 (20) A Uh-huh.
 (21) Q So, in view of that, would there be any problem that you're
 (22) basing your entire decision on those issues, the land values
 (23) and maybe some other kind of claims that the municipalities
 (24) brought, solely on the evidence you hear from the witness stand
 (25) and the law as Judge Shortell will tell you? Do you think you

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- (1) can do that?
 (2) A Yeah.
 (3) Q And if the issue of who's at fault it is in the case, if
 (4) we're not deciding who was responsible for how the ship came
 (5) aground ground, does that make it easy?
 (6) A Uh-huh.
 (7) MR. PETUMENOS: Your Honor, I have no further
 (8) questions.
 (9) THE COURT: Okay.
 (10) VOIR DIRE EXAMINATION OF TAMMY FISHER
 (11) BY MR. CLOUGH:
 (12) Q Hi, Ms. Fisher. My name is John Clough, I've from down in
 (13) Juneau. I've been working with Exxon for five years on this
 (14) case; in fact, since the very first day of the spill. So I've
 (15) had a chance to talk to a lot of different people who have a
 (16) lot of views, somewhat sound like yours. Don't hold back, you
 (17) can talk to me about it; I won't be offended, it's part of our
 (18) job, telling - especially be part of our job here because
 (19) that's why we're here, to find out what these things are.
 (20) I'm going to respectfully disagree with Mr. Petumenos about
 (21) something, because we are going to be arguing about whether
 (22) or
 (23) not Exxon should pay for some of these claims and we're going
 (24) to take the position we shouldn't owe them anything at all or
 (25) something very small. How do you react to that?
 (26) A That's lame. I'm sorry, but to me that's lame. That makes

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- (1) no sense at all.
 (2) Q What do you mean by lame?
 (3) A That is ridiculous.
 (4) Q It's okay to explain; it really is.
 (5) A I don't want to make anybody mad.
 (6) Q No, I promise - I guess you won't make me mad, I've heard
 (7) a lot.
 (8) A If you don't pay, who else should pay these people and pay
 (9) for all the damages? Who should, it should be Exxon, and it
 (10) shouldn't be just piddly pennies, it should be an awfully lot.
 (11) Q Now, awful lot was an expression that you used. In fact,
 (12) it was something that you wrote on your questionnaire, on
 (13) question 39 on this point. The question was, you wrote, I do
 (14) believe that all the people affected by the spill do deserve to
 (15) be paid quite a lot of money for all the years they've had to
 (16) adjust their lifestyle.
 (17) Do you remember writing that?
 (18) A Oh, yeah.
 (19) Q Can you explain to me what you meant by that, because we
 (20) just have your written words to go with?
 (21) A I don't know what else you want me to say to that,
 (22) that's -
 (23) Q Well, who were you - when you say quite a lot of money -
 (24) I mean, try to put some parameters on that. What do you mean,
 (25) quite a lot of money?

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- (1) A When you said not a awful lot, won't hardly be anything,
 (2) and that's what I expected. I thought that - I haven't heard
 (3) anywhere, but that's kind of the feeling I got, and I just
 (4) don't agree with it. They're the ones that have suffered; you
 (5) just can't overlook it and go on.
 (6) Q Is it fair to say that your feelings on this issue are
 (7) very, very strong?
 (8) A Yeah.
 (9) Q And closely held?
 (10) A Yep.
 (11) Q And it's important to you?
 (12) A Uh-huh.
 (13) Q You checked that you had seen the Turning Point show that
 (14) was on last week with Dianne (ph) Sawyer. Do you remember
 (15) that?
 (16) A I caught part of it but not all of it.
 (17) Q What part did you see?
 (18) A I don't know. I mean, I hear something from Exxon every
 (19) other week; I don't know.
 (20) Q When you hear something from Exxon every other week,
 (21) what
 (22) do you mean?
 (23) A There's something in the paper, something comes up.
 (24) There's something in the paper almost all the time.
 (25) Q And what do you recall reading in the paper?
 (26) A Mainly now what we're talking about here. Whether they're

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- (1) arguing back and forth, whether they should pay, whether they
 (2) shouldn't pay, you know.
 (3) Q Now, do you have any friends that live outside the state?
 (4) A Couple.
 (5) Q Have any of them ever asked you about the oil spill? Do
 (6) you recall?
 (7) A No.
 (8) Q Do you recall anything about the - are you aware that
 (9) there's another lawsuit going on over in federal court about
 (10) the oil spill?
 (11) A Huh-uh.
 (12) Q I notice that you have here down here somewhere, I believe,
 (13) that you've got friends in Kodiak and Cordova. Who do you
 (14) know
 (15) in Kodiak?
 (16) A My parents have friends there.
 (17) Q And you know these people through your parents?
 (18) A Uh-huh. Since I was real little.
 (19) Q I'm sorry?
 (20) A Since I was very young.
 (21) Q And what do they do down there?
 (22) A They're retired, they're older.
 (23) Q What did they do before they retired?
 (24) A I know the MO, he was a diver.
 (25) Q Anybody else down there that you know?
 (26) A Nope, just them.

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- (1) Q How about over in - how about in Cordova?
 (2) A Just family, friends.
 (3) Q These are friends of your parents or friends -
 (4) A Friends of my parents.
 (5) Q Do you also - you also in part of the question remember
 (6) the part that asked you extremely favorable, somewhat
 (7) favorable
 (8) for all the various quotes involved?
 (9) A Uh-huh.
 (10) Q There is one outfit that you rated extremely unfavorable.
 (11) Do you know who that was?
 (12) A No, but you can refresh my memory.
 (13) Q It was Exxon. Why did you do that?
 (14) A I can't say anything more than what I've already said. I
 (15) can't say it over and over and over again but that's how I feel
 (16) and that's why I marked that.
 (17) Q A little farther down you wrote that you were asked, What
 (18) is your opinion how long the effects of the spill lasted or
 (19) will continue to last. Do you remember what you wrote there?
 (20) A Probably forever, at least until - I mean, my kids will
 (21) still see that.
 (22) Q And you believe that pretty strongly don't you?
 (23) A Yeah, uh-huh.
 (24) Q And you're worried that it may still be out there when your
 (25) kids -
 (26) A Oh, yeah.

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- (1) Q Do you think that everything out there is back to normal?
 (2) A No. I don't know if it ever will be.
 (3) Q And you feel that very strongly as well, don't you?
 (4) A Uh-huh.
 (5) Q Have you ever been out there since the spill?
 (6) A No.
 (7) Q You were asked: Do you think that Exxon Corporation has
 (8) paid enough money as a result of the oil spill. Do you recall
 (9) what you said to that?
 (10) A Pardon?
 (11) Q Do you think Exxon has paid enough money as a result of the
 (12) spill?
 (13) MR. PETUMENOS: Excuse me. May I interrupt?
 (14) THE COURT: Yes.
 (15) MR. PETUMENOS: Your Honor, we don't need to belabor
 (16) this. If Exxon has a challenge for cause, we're not going to
 (17) challenge it.
 (18) THE COURT: Thank you, Ms. Fisher, very much. It's
 (19) clear you should be excused from this case, I think you
 (20) probably agree, so what I'm going to do is I'm going to excuse
 (21) you now.
 (22) I want you to know that the other jury panel members
 (23) haven't been privy to the discussions that have gone on here so
 (24) they haven't heard you voice your opinions, and I've told
 (25) everybody else who's left here, don't talk with the other

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- (1) jurors about what went on here or your impressions on the
 (2) process, and I'm sure you'll follow the process, too; right?
 (3) A Right.
 (4) THE COURT: You're excused. You're not excused from
 (5) jury service because I guess there are other jurors being
 (6) picked during the week, so you have to call in as you were
 (7) instructed, they may call you back and they may not, but you do
 (8) have to maintain the contact with the jury clerk.
 (9) A All right.
 (10) THE COURT: Thanks very much.
 (11) (Tammy Fisher leaves the room.)
 (12) (Susan Wilson enters the room.)
 (13) THE COURT: Ma'am, we have your jury questionnaire
 (14) here. Would you please give your name for the record?
 (15) A Susan Wilson.
 (16) THE COURT: And, Ms. Wilson, these questions were
 (17) taken under oath, the questions you'll now be answering are
 (18) also under oath. They deal with your qualifications as a juror
 (19) and they are not intended to intrude on your private life, so
 (20) if you are uncomfortable with any of the questions please let
 (21) me know so no intrusions take place, all right?
 (22) A Okay.
 (23) THE COURT: Thanks.
 (24) Go ahead, counsel.
 (25) VOIR DIRE EXAMINATION OF SUSAN WILSON

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- (1) BY MR. STOLL:
 (2) Q Ms. Wilson, my name is Bob Stoll, I represent the
 (3) municipalities who were affected by the oil spill, on the
 (4) plaintiff's side of this case.
 (5) I need to ask you a few questions with respect to the
 (6) answers that you filled out in the questionnaire.
 (7) You indicated that there might be some difficulty with you
 (8) sitting on this jury from a time factor?
 (9) A Uh-huh.
 (10) Q The trial in this case, although it's written in the
 (11) questionnaire as three months, is actually estimated now to be
 (12) two months. I realize that's a long period, but it's not quite
 (13) as long as three months.
 (14) A Uh-huh.
 (15) Q Secondly, the Court day is going to be from 8:30 in the
 (16) morning until 1:30 in the afternoon; see, the rest of the day
 (17) or afternoon would be available. Would that still present a
 (18) problem for you?
 (19) A No, that would be okay.
 (20) Q Now, I can't remember this from the questionnaire: Have
 (21) you ever served on a jury before?
 (22) A No.
 (23) Q Have you ever watched a TV shows where there's -
 (24) A Yeah.
 (25) Q - lawyer shows? And you know that there's evidence

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- (1) excluded, kept out of evidence, and there is evidence that's
 (2) material, that's put in evidence, and you see people object -
 (3) A Yes.
 (4) Q - and so on and so forth.
 (5) So in a trial, do you know that a juror is to consider only
 (6) the evidence that is put forth and brought into the courtroom?
 (7) A Yes.
 (8) Q And if you were a juror in a case, whether it was this case
 (9) or some other case, would you be able to limit your
 (10) consideration of the facts or the issues that were involved
 (11) only to the evidence that was presented in the courtroom even
 (12) if you had some information from the outside?
 (13) A Yes.
 (14) Q And Judge Shortell, at the end of this case, will give the
 (15) jurors instructions as to what the applicable law is. Would
 (16) that - would you have any - do you have any preconceived
 (17) ideas about the law or anything like that, you would simply
 (18) follow what Judge Shortell told you the law was, wouldn't you?
 (19) A Yes.
 (20) Q Now, you put down on your questionnaire that you had seen
 (21) the show Turning Point last week?
 (22) A Yes.
 (23) Q That show is not evidence in this case. You would base
 (24) your decision solely on the information that was presented in
 (25) the courtroom, wouldn't you?

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- (1) A Uh-huh.
 (2) Q You wouldn't say, well, I happened to see this show on TV
 (3) and they also show it -
 (4) A No.
 (5) Q - such and such; you would just consider what was
 (6) presented here?
 (7) A Yes.
 (8) Q And you checked the box that said, Indicated closer
 (9) supervision of oil industry, you felt, was needed?
 (10) A Uh-huh.
 (11) Q Now, that's not an issue as far as the amount of damages
 (12) are concerned in this case; you understand that?
 (13) A Yes.
 (14) Q So that wouldn't affect our determination here, would it?
 (15) A No.
 (16) Q And your view that there still may be oil under the rocks
 (17) or toxic remains on the beach, these type of things, these
 (18) are - some of these are going to be issues in this case, but
 (19) you're going to base your decision solely upon what's
 (20) presented
 (21) in the court here?
 (22) A Yes.
 (23) Q You're not going to - any information that you had before
 (24) is not - you're not going to - you wouldn't consider that?
 (25) A No.
 (26) Q Why do you like Alaska?

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- (1) A For a lot of reasons. The mountains, the environment, my
 (2) family lives up here.
 (3) Q Your parents?
 (4) A Yeah. My dad and my stepmom.
 (5) Q Did you grow up in Washington state?
 (6) A I went to grade school here, and all of my other schooling
 (7) there and summers up here.
 (8) Q Do you do a lot of biking and hiking?
 (9) A Uh-huh.
 (10) Q You get all your gear at REI?
 (11) A Yeah.
 (12) Q Is there anything about the nature of this case that you
 (13) think, or any factor that you can think of that you think
 (14) should disqualify you as a juror in this case?
 (15) A No.
 (16) MR. PETUMENOS: Thank you very much.
 (17) THE COURT: One thing, counsel: You mentioned a
 (18) vacation that you had, I see that in the questionnaire.
 (19) "Request that problem be gotten around"?
 (20) A I don't think so. It's something that I've had planned
 (21) since around January and I also have family members that have
 (22) scheduled the dates.
 (23) THE COURT: No. What were you planning to do?
 (24) A Going to Washington state to visit my family that's there.
 (25) THE COURT: I see.

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- (1) MR. STOLL: Could I ask a question?
 (2) THE COURT: Yes.
 (3) MR. STOLL: What were the dates of that?
 (4) A Well, one through nine, or one through eight.
 (5) THE COURT: Go ahead.
 (6) VOIR DIRE EXAMINATION OF SUSAN WILSON
 (7) BY MR. DIAMOND:
 (8) Q Is it Miss or Ms. Wilson?
 (9) A Miss or Ms., it doesn't matter.
 (10) Q I'm Chuck Dimond. I'm one of the lawyers. I introduced
 (11) myself earlier in the auditorium. I'm going to be representing
 (12) Exxon.
 (13) You work at REI, right?
 (14) A Right.
 (15) Q That's an outdoor and sporting good retail outlet?
 (16) A Yes.
 (17) Q What do you do there?
 (18) A I'm an auditor.
 (19) Q What does an auditor do?
 (20) A I audit -
 (21) Q I know what some auditors do.
 (22) A - the daily sales every day and I also respond to the
 (23) letter customers we get in the store and assist the managers or
 (24) anyone else in the store to take care of supplies, that kind of
 (25) thing.

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- (1) Q Are there accounting functions involved in that?
 (2) A Just the daily auditing accounting.
 (3) Q Does that mean checking the register?
 (4) A Making sure that cash and checks balance and the safe and
 (5) the draws that were used the day before.
 (6) Q Do you have any dealings with any of the lawyers that
 (7) represent REI?
 (8) A No.
 (9) Q Do you know who represents REI?
 (10) A No, I don't.
 (11) Q Do you pay the lawyer's billings?
 (12) A No.
 (13) Q Your mom works for - or is it your stepmom works for DNR?
 (14) A Yes.
 (15) Q What does she do there?
 (16) A She works in the public information center as an office
 (17) clerk, I don't know the exact title. And just recently she
 (18) moved downstairs from - she had been working for the director,
 (19) I'm not sure exactly who it was.
 (20) Q Do you know whether she's ever have any responsibility
 (21) having to do with the Exxon Valdez oil spill?
 (22) A I don't think so.
 (23) Q Do you ever talk to her about that?
 (24) A About the spill?
 (25) Q Yeah.

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- (1) A Perhaps briefly. We all sat and watched that show together
 (2) last week.
 (3) Q What was her reaction to it?
 (4) A She didn't really say anything.
 (5) Q Do you have any views about the Department of Natural
 (6) Resources, DNR?
 (7) A No. The only information I have is what she brings home,
 (8) and that's mostly people things, relationship things at work;
 (9) nothing -
 (10) Q Gossip?
 (11) A Yeah.
 (12) Q You told us in your questionnaire that you saw a great deal
 (13) of TV coverage following the spill. What were your impressions
 (14) that you can recall now?
 (15) A I thought it was pretty disturbing, really unfortunate that
 (16) it happened. I suppose the worst part was to see the wildlife
 (17) that was damaged.
 (18) Q Do you have a sense then about how long Alaskans would
 (19) be
 (20) suffering the effects of the Exxon Valdez oil spill?
 (21) A Not exactly.
 (22) Q Do you have fears that it will be a long, long time before
 (23) the catastrophe was behind us?
 (24) A Well, I think it will take a few years to really know what
 (25) the full impact has been and from other spills in other places
 (26) maybe, about how long it stays in the environment.

- (1) program, there were two women scientists out on the beach
 (2) turning over rocks and showing evidence of what you just
 (3) talked
 (4) about?
 (5) A Uh-huh.
 (6) MR. PETUMENOS: I will object to counsel putting
 (7) information about the program into the record and remind the
 (8) juror. I think the appropriate thing is to ask the juror what
 (9) she recalls, not to put statements into the record.
 (10) THE COURT: I may step in at some point, counsel, but
 (11) I haven't reached that point yet, so you can continue.
 (12) MR. DIAMOND: I was just going to ask -
 (13) THE COURT: I think leading is a sufficient way of
 (14) questioning. If I see a problem I'll certainly address it. Go
 (15) ahead.
 (16) BY MR. DIAMOND:
 (17) Q Did you think those two women scientists who were featured
 (18) on the program sounded convincing?
 (19) A It sounded like they knew what they were talking about, if
 (20) that's what you mean.
 (21) Q Yes. Do you remember either of their names?
 (22) A No.
 (23) Q I'm not surprised.
 (24) Do you ordinarily watch Turning Point or did you turn it on
 (25) because of the subject that was being covered?
 (26) A Just occasionally different news magazine shows; not

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- (1) Q Do you have any views now about how long the oil is going
 (2) to exist out there?
 (3) A I kind of feel like I don't have enough information to
 (4) really know how long.
 (5) Q How about the effects of the oil? Do you have any feelings
 (6) about whether wildlife and environment is still harmed by the
 (7) spill?
 (8) A I do think that because of the way some of the cleanup was
 (9) performed, that probably certain organisms in the food chain
 (10) were affected at the very beginning of the food chain and that
 (11) will, you know, affect further down and it may take a while for
 (12) that to recover in certain areas.
 (13) Q That was part of a subject covered by the Turning Point
 (14) program, was it not?
 (15) A Yes.
 (16) Q You remember seeing the pictures of the cleanup workers
 (17) with the high-pressure hoses and the hot-water cleaning?
 (18) A Yeah.
 (19) Q Did you have that opinion before you saw the Turning Point
 (20) program?
 (21) A Not necessarily, but I have always wondered, you know, just
 (22) how clean they got it. I never really saw, other than the
 (23) pictures after they did start cleaning it, what methods had
 (24) been used.
 (25) Q Do you remember there were, I think - on the television

- (1) specifically one all the time.
 (2) Q What was your assessment of whether that program, the
 (3) Dianne Sawyer program last week fairly presented the issues?
 (4) Did you think it was an even-handed portrayal.
 (5) A Not necessarily even. I think that maybe they could have
 (6) had more from the Exxon side of the story and not necessarily
 (7) related to the legal problems right after the spill.
 (8) MR. DIAMOND: Did you think it was a fair portrayal
 (9) with respect to the ongoing environmental effects of the spill?
 (10) A I'm not really sure.
 (11) Q Did you walk away or come away from the program with a
 (12) sense that, in fact, in most places where there was oil, there
 (13) are continuing environmental problems?
 (14) A Yes.
 (15) Q If I were going to try to convince you that that's not so,
 (16) do you think I'd have my work cut out for me?
 (17) A Yes.
 (18) Q Some of the plaintiffs who were represented by counsel
 (19) today, in the view of Exxon in this trial and people will get
 (20) on the stand and say this, were not hurt at all; some of the
 (21) Native corporations were not harmed at all by the oil spill.
 (22) At this time here today, not having heard any evidence, do you
 (23) find that a difficult proposition to accept?
 (24) A That some of the people weren't affected?
 (25) Q Some of the Native corporations, who owned land along

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- (1) Prince William Sound were not hurt at all?
 (2) A And they're the ones seeking damages?
 (3) Q Yes.
 (4) A Yeah, I might have a problem with that.
 (5) Q Why?
 (6) A I would feel that, if they weren't harmed in any way, that
 (7) then there's nothing to be compensated for.
 (8) Q Do you think the fact that they're suing Exxon suggests
 (9) that they probably were hurt in some way?
 (10) A They may believe they were.
 (11) Q What do you think?
 (12) A I guess I would need more information about their
 (13) situation.
 (14) Q You told us on your questionnaire that you had an extremely
 (15) favorable view of Alaskan Natives and Native corporations. I'm
 (16) sorry, we were supposed to put the questionnaire in front of
 (17) you.
 (18) A I have it here.
 (19) Q And I can show you somewhere around 47, question 47, I
 (20) think on page 11. Let's take Natives first.
 (21) Are your views based on the same information with respect
 (22) to both Native and Native corporations? Let me ask it this
 (23) way: Why did you check the box that you have an extremely
 (24) favorable view of Natives in Alaska?
 (25) A I don't have any reason not to have that view.

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- (1) Q You start off everybody - you start off everybody with the
 (2) presumption of - a favorable presumption?
 (3) A Yeah.
 (4) Q Exxon lost a little bit of presumption, according to the
 (5) way you checked the box; you didn't have as favorable view of
 (6) Exxon as you did of the Natives or Native corporations, I
 (7) noted. Why is that?
 (8) A I guess it would reflect - I'm not sure, but the others
 (9) where I checked that possibly they could have had better
 (10) regulations as to - I know now - I think they give
 (11) Breathalyzer tests to the captains before they sail and they
 (12) weren't doing that before, and I don't know what kind of
 (13) regulations they had but it seemed like things were kind of
 (14) loose and the amount of time it took before the oil cleanup
 (15) actually started to happen, I think it should have been
 (16) immediate, but -
 (17) Q You think Exxon didn't really move fast enough and do it
 (18) immediately after the spill?
 (19) A Yeah.
 (20) Q What are your views about Exxon with respect to the
 (21) cleanup?
 (22) A I'm not really sure. I guess they probably tried to do
 (23) what they could or - what they knew how to do at the time.
 (24) Q Do you think it was done in good faith? Some people I have
 (25) heard in Alaska call it a big public relations stunt. Are you

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- (1) of the view that cleanup was largely public relations?
 (2) A No.
 (3) Q Partially?
 (4) A Maybe some of the people who spoke about what was going
 on
 (5) in the news coverage, but not the actual act of cleaning up.
 (6) Q I tend to think of REI as an environmental kind of
 (7) organization, it prides itself in contributing to environmental
 (8) groups and environmental organizations.
 (9) Do you view yourself as sort of philosophically aligned
 (10) with REI in that respect?
 (11) A Yes.
 (12) Q Let me ask you a question that's going to call for a real
 (13) honest answer, and you may have to think about it.
 (14) Do you think, if you spend Monday through Friday with us
 (15) from 8:30 to 1:30 and then go back to the office, do you think
 (16) that some of the people you work with at REI are going to
 (17) expect you to do the right thing in this case and side against
 (18) Exxon?
 (19) A I think I don't care that that will - that they're going
 (20) to be saying those things or expecting them of me.
 (21) Q Correct me if I'm wrong: You'll be under any kind of
 (22) pressure at work?
 (23) A Well everybody seems to have some sort of smart comment
 (24) about it, but I don't - I don't think that it would affect the
 (25) way they react to me or whatever.

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- (1) Q Okay. Nothing further.
 (2) I would like to be heard, though.
 (3) THE COURT: I'll excuse you for just a moment,
 (4) Ms. Wilson.
 (5) (Susan Wilson leaves the room.)
 (6) MR. DIAMOND: Your Honor, the defendants would move to
 (7) strike jury number 47, Ms. Wilson, for cause. The principal
 (8) grounds, and I think this is going to be true with respect to
 (9) many of the people we see here today and tomorrow who saw
 the
 (10) ABC broadcast, she's formed an opinion as to a critical factual
 (11) issue in this case and does not start off with the scales being
 (12) balanced. As to whether there are continuing environmental
 (13) effects in the areas that were oiled by the spill, she quite
 (14) candidly admitted that I would have my work cut out to convince
 (15) her that there were no such effects, and I think in fairness to
 (16) both sides -
 (17) THE COURT: Hold on counsel. That wasn't your
 (18) question. You simply said, Do you think I'll have my work cut
 (19) out for me? You didn't say how.
 (20) MR. DIAMOND: I thought I said "in convincing you".
 (21) THE COURT: I don't think you did.
 (22) MR. DIAMOND: I believe I did.
 (23) THE COURT: That's fine, you can ask that question.
 (24) I'm not trying to cut you off from asking it, I don't think you
 (25) did. There was another question that you did, but you were

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- (1) vague on this one, I think.
 (2) MR. DIAMOND: I'm sorry, I recalled it differently,
 (3) but I had the distinct impression.
 (4) THE COURT: I could be wrong, I could be wrong, too.
 (5) MR. DIAMOND: I had the distinct impression - I'm
 (6) happy to repeat these questions, but I had the distinct
 (7) impression that she had in her own mind that there are
 (8) environmental effects, they are evasive and they will continue
 (9) sometime in the future. And that's not somebody who starts out
 (10) with the scales being even. And I think we're entitled to
 (11) that.
 (12) THE COURT: And that's it, that's the basis of your
 (13) challenge?
 (14) MR. DIAMOND: Yes. That has formed opinions in the
 (15) case.
 (16) THE COURT: Counsel?
 (17) MR. STOLL: Well, Your Honor, I think she was very
 (18) explicit and forthright and you can judge her demeanor. She
 (19) had seen the Turning Point show; she said that she felt - she
 (20) reiterated several times, I gave her plenty of opportunities -
 (21) that she knew that she would make her decision based only
 upon
 (22) the evidence that she heard in the courtroom. You've got the
 (23) largest oil spill in North American history, you've got a
 (24) relatively small community, a large portion of the community
 (25) has heard things about this oil spill. It's been in the

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- (1) newspaper here every day, on the front page every day for the
 (2) last several weeks. If everybody had thought about this oil
 (3) spill is disqualified, we'll never have a jury. This person
 (4) did not say they were biased against Exxon. The issues in this
 (5) case are not who's at fault; the issues are amount of damages.
 (6) She said she would decide based solely upon the testimony
 and
 (7) the evidence and the testimony that's presented, I don't see
 (8) any basis for disqualifying this juror.
 (9) MR. DIAMOND: I forgot to mention one other thing -
 (10) Mr. Stoll may want to respond to this.
 (11) I asked her about the two female scientists who appear on
 (12) the program. One of the two is on the plaintiffs' witness
 (13) list. She is identified as a U.S. Government biologist, and in
 (14) fact, the witness - I'm sorry, the prospective juror, Ms.
 (15) Wilson, indicated that she found those two women credible
 (16) and -
 (17) MR. PETUMENOS: It is incorrect. There was Evelyn
 (18) Brown.
 (19) MR. STOLL: Even if she was on the witness list -
 (20) MR. DIAMOND: To my knowledge, this is the first I've
 (21) ever heard about it and their witness list being stricken.
 (22) THE COURT: You're willing to be bound? She's off the
 (23) witness list.
 (24) MR. PETUMENOS: You can take a look. Mr. Clough may
 (25) have gotten -

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- (1) MR. CLOUGH: Perhaps it was addressed to me. Maybe I
 (2) can address Mr. Petumenos. He said he wouldn't be willing to
 (3) strike -
 (4) THE COURT: They just said they struck the witness,
 (5) counsel. Why should you argue with them?
 (6) MR. CLOUGH: If that's what he's saying, Your Honor,
 (7) I'm sitting down.
 (8) THE COURT: I agree.
 (9) MR. STOLL: Your Honor, even if she's been -
 (10) MR. PETUMENOS: She might testify that the document is
 (11) genuine.
 (12) THE COURT: Oh, counsel. Don't say somebody's been
 (13) stricken if they haven't.
 (14) MR. STOLL: Your Honor, she's a foundation witness.
 (15) Even if she was going to testify about anything, the fact that
 (16) some juror saw a witness, and thought the witness was
 (17) impressive outside of the courtroom does not mean that that
 (18) juror is disqualified from sitting in on this case.
 (19) THE COURT: I don't think the record's adequate
 (20) because I don't think you've asked direct questions, enough
 (21) direct questions relating to your challenge for cause. I think
 (22) it's a legitimate issue, arguable issue from either side, and
 (23) it's a question that would be addressed to my discretion; so
 (24) I'm going to bring her back in and ask her direct questions -
 (25) don't ask her, Do you think I've got my work cut out for me;

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- (1) don't ask a vague question she responds to vaguely. Make
 your
 (2) record and then I'll make the decision.
 (3) MR. DIAMOND: Okay.
 (4) MR. STOLL: Your Honor, I think - am I entitled to
 (5) ask her questions first?
 (6) THE COURT: Yes.
 (7) MR. STOLL: Okay.
 (8) (Susan Wilson enters the room.)
 (9) THE COURT: We have a few more questions for you,
 (10) Ms. Wilson.
 (11) A Okay.
 (12) VOIR DIRE EXAMINATION OF SUSAN WILSON
 (13) BY MR. STOLL:
 (14) Q Ms. Wilson, you said earlier under oath that you would
 (15) consider only the evidence that was presented from the witness
 (16) stand and the exhibits that would be in evidence; do you recall
 (17) that?
 (18) A Yes.
 (19) Q And there was some question raised, Mr. Dimond asked you
 (20) some question about having a heavy burden or him having
 some
 (21) sort of heavy burden to prove his case. Would you also impose
 (22) a heavy burden on the plaintiffs to prove whatever they're
 (23) trying to prove in their case?
 (24) A Yes.
 (25) Q And would you be - put an undue burden, an unreasonable

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- (1) burden, you believe, on Mr. Dimond or on the plaintiff, one
 (2) side or the other in evaluating the evidence, or would you just
 (3) consider the evidence as it was presented by the witness stand
 (4) and the exhibits?
 (5) A The second thing you said.
 (6) Q And you'd follow the judge's instructions?
 (7) A Yes.
 (8) Q You're not, because of watching Turning Point or you having
 (9) an interest in environmental matters, that's not going to put
 (10) a - is that going to put any kind of unreasonable burden on
 (11) Exxon in this trial, do you think?
 (12) A No.
 (13) MR. STOLL: Okay. Thank you very much.
 (14) VOIR DIRE EXAMINATION OF SUSAN WILSON
 (15) BY MR. DIAMOND:
 (16) Q Ms. Wilson, with respect to two - two questions which are
 (17) issues in this case - and we'll be hearing testimony about
 (18) it. I'd like to know what your opinion is going in, if you
 (19) have one.
 (20) The question is, do you think, based on everything you've
 (21) read, based on everything you've seen on television - most
 (22) recently last week - that the beaches, the shorelines that
 (23) were touched by oil, still have oil on them?
 (24) A Yes.
 (25) Q If a witness were to come in and testify on behalf of

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- (1) Exxon, an Exxon expert, that that is not the case and that
 (2) most, if not virtually all of the shorelines don't have oil on
 (3) them, would you be sceptical of that testimony?
 (4) A I have -
 (5) MR. PETUMENOS: I'm objecting to the answer.
 (6) THE COURT: The objection's overruled.
 (7) A Not if there was some kind of proof shown to that effect,
 (8) verbally or whatever.
 (9) BY MR. DIAMOND:
 (10) Q It was simply the expert's opinion, if this was the case,
 (11) based on his research or her research, would you be able to
 (12) accept that as true?
 (13) A Well, it's supposed to be true if they're sitting there,
 (14) so...
 (15) Q Let me hypothetically ask you. Assuming during the course
 (16) of the case you serve as a juror and you get to listen to an
 (17) expert from Exxon who says that - as a practical matter for
 (18) most, if not virtually all of the shorelines, there isn't any
 (19) oil still out there, and you hear from an expert who is
 (20) sponsored by the plaintiffs who says there is, and they are
 (21) equally believable to you; do you think you're more likely to
 (22) go with the views you come into this courtroom with, that there
 (23) is oil on there?
 (24) MR. PETUMENOS: I object to the comment on the
 (25) evidence.

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- (1) THE COURT: Counsel, I believe you have to run into
 (2) that question the fact that there is a burden of proof here.
 (3) If it's equally balanced the question is no, it isn't, because
 (4) it would require a juror to come to a certain conclusion that's
 (5) equally balanced.
 (6) MR. DIAMOND: I will withdraw the question and
 (7) rephrase it.
 (8) BY MR. DIAMOND:
 (9) Q There will be instructions issued to the jurors that serve
 (10) in the case about burdens of proof and the plaintiffs having
 (11) the burden of proof. Assuming it's the case, that you hear
 (12) from two experts that tell you different things and Judge
 (13) Shortell tells you the plaintiffs have the burden of proof, do
 (14) you think you could put aside your views of the presence of oil
 (15) on the shorelines and, if you are not convinced that the
 (16) plaintiffs have met their burden, return a verdict that's in
 (17) favor of Exxon on that question?
 (18) A I guess I got a little lost in that.
 (19) Q It was convoluted and long and I almost swallowed my
 (20) tongue
 (21) giving it so let me try it again.
 (22) What I really want to know is your state of mind sitting
 (23) here today. Do you think that you are able - would you be
 (24) able to put aside your own personal views today, or views that
 (25) you hold today, about whether there is still oil out there -
 (26) A Yes.

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- (1) Q - and evaluate the testimony that you hear from both
 (2) sides?
 (3) A Yes.
 (4) Q Based purely on what they say in the courtroom?
 (5) A Yes.
 (6) Q And if the judge tells you that if you are in doubt, you
 (7) must find for Exxon, do you think you would be prepared to do
 (8) that?
 (9) MR. STOLL: Your Honor, that's not the -
 (10) THE COURT: I won't be telling them that exactly.
 (11) There will be instructions to tell you who has the burden
 (12) of proof in the case, and generally, that burden of proof is
 (13) that the proponent - and that's the plaintiffs in this case -
 (14) in most propositions has to prove that something is more likely
 (15) than not; that means a better than 50 percent chance that what
 (16) they say is true, is true. If it's 51 percent or over 50
 (17) percent, that's the burden that they have.
 (18) All right? Could you follow that instruction?
 (19) A Yes.
 (20) BY MR. DIAMOND:
 (21) Q Let me ask you with respect to another issue that we're
 (22) going to be quarreling about during the course of this trial,
 (23) and that is the environmental effects of any oil that may be
 (24) present. There will be witnesses who I anticipate will be
 (25) called by Exxon to testify that what oil is out there in most

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- (1) if not virtually all instances is not affecting the
 (2) environment.
 (3) Would that be testimony that you could be sceptical of
 (4) sitting here today?
 (5) A Possibly.
 (6) Q Why do you say that?
 (7) A I still feel like I don't have enough information to make
 (8) up my mind on that right now.
 (9) Q I can understand that. It's a confusing question for many
 (10) people. My question was, if somebody testifies to that, the
 (11) absence of environmental effects and you otherwise find the
 (12) person to be believable, do you think you could put aside any
 (13) views or preconceptions that you come into the courtroom with
 (14) and accept the testimony as true?
 (15) A Yes. I said yes.
 (16) MR. DIAMOND: Thank you.
 (17) MR. DIAMOND: Nothing further.
 (18) THE COURT: I'd like to ask you a few questions
 (19) because I want to make sure what your responses really are.
 (20) VOIR DIRE EXAMINATION OF SUSAN WILSON
 (21) BY THE COURT:
 (22) Q I'm going to be instructing the jury during this case and
 (23) at the end of the case on a number of things. One of the
 (24) number of things I'm going to be telling you from beginning to
 (25) end is that information - information gained outside the

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- (1) courtroom - for instance, not in testimony or under oath or by
 (2) virtue of news broadcasts or any other things - is not
 (3) evidence and therefore you can't base factual decisions on
 (4) that.
 (5) Do you understand that?
 (6) A Yes.
 (7) Q I'm also going to be instructing you that the statements
 (8) and arguments of the lawyers are not evidence in the case.
 (9) Do you understand that?
 (10) A Yes.
 (11) Q So what the lawyers have told you here is essentially what
 (12) their positions will be, but it's not the things that you will
 (13) actually base your decisions on. Do you understand that?
 (14) A Yes, uh-huh.
 (15) Q Now, in a case like this which has a number of scientific
 (16) issues in it and other complicated issues, frequently expert
 (17) witnesses testify. They're allowed to give opinion testimony
 (18) where most lay citizens are not allowed to give opinion
 (19) testimony. And these issues are contested, so there will be
 (20) experts on both sides here, and the plaintiffs' experts will
 (21) testify to one conclusion, and the defense experts in all
 (22) probability will testify to other conclusions, contrary
 (23) conclusions. It's your job to make up your mind about what
 (24) experts are right on the point about which they testified.
 (25) Do you understand that?

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- (1) A Yes.
 (2) Q Now, you've seen news broadcasts and you've seen the
 (3) program that was on television last week, and you've appeared
 (4) to have formed some opinions about the environmental effects
 (5) of
 (6) the oil spill based on either your reading or that very news
 (7) broadcast. Am I right or wrong about that?
 (8) A Right.
 (9) Q You understand that the information that you get in news
 (10) broadcasts is not evidence; you can't base a decision in this
 (11) case on that?
 (12) A Yes.
 (13) Q I have to be sure that you won't be doing that very thing,
 (14) that whatever opinions you may have gained in the course of
 (15) the
 (16) pretrial aspects of the case that were not in the courtroom and
 (17) that you heard in the broadcast or paper or anything like that,
 (18) those impressions don't taint your decision in any way, don't
 (19) affect you in such a way that you can't set it aside and only
 (20) make your decision on the information you got in the evidence.
 (21) Are you convinced that you can set aside any impressions
 (22) you may have gained - but from any source outside the
 (23) courtroom - and make your decision fairly to both parties, all
 (24) parties in this case without reference to any biases or
 (25) opinions that you may have walked in here with today?
 (26) A Yes, I believe so.
 (27) Q All right. Do you have any question about that?

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- (1) A No.
 (2) THE COURT: All right. Thank you. I'll excuse you
 (3) for just a moment.
 (4) All right
 (5) (Susan Wilson leaves the room.)
 (6) THE COURT: The challenge for cause is denied,
 (7) counsel.
 (8) MR. DIAMOND: Your Honor, I assume we do have a
 (9) representation that Evelyn Biggs-Brown is not testifying.
 (10) THE COURT: We've had a representation, not testifying
 (11) except as a foundational witness and probably not as a
 (12) foundational - is that correct?
 (13) MR. PETUMENOS: That's correct.
 (14) THE COURT: What's the foundational problem? What is
 (15) it, tell me what it is now?
 (16) MR. PETUMENOS: I'm not even sure there was one of
 (17) those. I'm just trying to - there are herring-related experts
 (18) in the plaintiffs' case and we intend to call one. To the
 (19) extent there are slides or laboratory work that experts rely
 (20) on, one expert relies on from the other, so I was going to
 (21) raise an objection in that regard; but I think since experts
 (22) can relay on hearsay, I doubt that even is an objection.
 (23) That was the only caveat. I left Evelyn Riggs-Brown as an
 (24) expert, or person qualified in any respect.
 (25) MR. DIAMOND: Our objection: She ought not to testify

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- (1) in any respect if this juror is being allowed to sit.
- (2) THE COURT: I think she ought not to be testifying;
- (3) that's my problem. So let's set it up as a presumption. I
- (4) presume she will not be testifying here. I will go to great
- (5) lengths to see that she doesn't. I'll follow the rules of
- (6) evidence, counsel. If you present her, it's your burden to
- (7) show me why she should be presented.
- (8) MR. PETUMENOS: There is one thing I want the court to
- (9) be aware of, if I can, so we don't get lost here.
- (10) We filed a memorandum with you today on pretrial publicity
- (11) and cited some causes to you. The only thing that Evelyn
- (12) Biggs-Brown does in this program is dig in the sand, pick up
- (13) some sediment, put it in the water, and it creates a sheen in
- (14) the water, and talks about that; and that is evidence that this
- (15) jury is going to see directly from a number of expert witnesses
- (16) in the case, and the law is that because she was on that
- (17) snippet of the shore doing that, she's not - it's not a
- (18) disqualification problem. But what I said to you is genuine
- (19) and correct, I am trying to get her out of this case and not
- (20) call her, and I have not heard back from Exxon that they won't
- (21) fuss about the exhibits for Dr. Kusand (ph), who is our herring
- (22) person, and we'll be fine.
- (23) THE COURT: That's fine with me. And how many times
- (24) have I been told that you're trying to get witnesses out of the
- (25) case and how long does it take to get them out of the case,

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- (1) sometimes it's taking months. All I'm telling you is I don't
- (2) see this as a problem because I don't anticipate they will
- (3) testify. To the extent you want her to testify, you have to
- (4) give me plenty of advance notice and you have to use every
- (5) effort you can not to have her testify because I don't want the
- (6) record to be cluttered up with an issue like this which
- (7) shouldn't even be an issue.
- (8) MR. STOLL: We tried to. We send the stipulations but
- (9) the mail doesn't come back, it only goes one way.
- (10) THE COURT: The mail is biased, in other words.
- (11) MR. STOLL: I don't think it's the mail service, Your
- (12) Honor.
- (13) THE COURT: May we talk to the next juror?
- (14) THE CLERK (MARY ANN): Should we bring Sue Wilson back
- (15) in here to excuse her?
- (16) THE COURT: That's all the questions you were going to
- (17) have of this jury, right?
- (18) MR. STOLL: Yes.
- (19) MR. DIAMOND: Yes.
- (20) MR. PETUMENOS: How late are we going today?
- (21) THE COURT: Two, that's what we said, right? I'd like
- (22) to get through these ten, actually.
- (23) (Susan Wilson enters the room.)
- (24) THE COURT: Ms. Wilson, I've determined that you're
- (25) still a potential juror in this case, so you very well may be a

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- (1) final juror in this case; but as I said to the other jurors, I
- (2) see no reason to waste your time while other people are
- (3) questioned. So I'll excuse you for the day until you're told
- (4) to come in again.
- (5) Now, there may be more selection proceedings, more
- (6) questions, but it's over for today. You're free to go, and
- (7) we'll be in contact with you as to when you should come back
- (8) again, all right?
- (9) A All right. What about the time I planned on being gone?
- (10) THE COURT: See, that's - I haven't excused you now,
- (11) so as far as the process is concerned, you may very well be a
- (12) juror in this case during that time.
- (13) A Okay.
- (14) THE COURT: Now, tell me what that does in terms of
- (15) your ability to listen to the evidence and make decisions in
- (16) the case? Does it affect it?
- (17) A No.
- (18) THE COURT: Are you sure?
- (19) A Uh-huh.
- (20) THE COURT: Okay. Thank you.
- (21) (Susan Wilson leaves the room.)
- (22) (David Garganta enters the room.)
- (23) THE COURT: Mr. Garganta?
- (24) A Garganta.
- (25) THE COURT: Mr. Garganta, hold that microphone,

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- (1) please. We get a better record if you just hold it in your
- (2) hand.
- (3) A Okay.
- (4) THE COURT: We have your jury questionnaire here, and
- (5) these questions and the questions you'll be asked now are
- (6) all - the answers are given under oath you understand that?
- (7) A Yes, sir.
- (8) THE COURT: There should be some brief supplemental
- (9) questions given by the lawyers for both sides and then I'll
- (10) probably excuse you for the day, all right?
- (11) A Okay.
- (12) THE COURT: Go ahead, Mr. Fortier
- (13) VOIR DIRE EXAMINATION OF DAVID GARGANTA
- (14) BY MR. FORTIER:
- (15) Q Mr. Garganta, my name is Sam Fortier, I represent the
- (16) Native corporations in this case. Going over your jury
- (17) questionnaire, I notice that you had been a supervisor for the
- (18) Alaska National Guard for 14 years?
- (19) A Actually not 14 years, just recently the last two years
- (20) I've been the supervisor, but I've been with the guard for 14
- (21) years.
- (22) Q And that's always been here in Anchorage?
- (23) A Yes, sir.
- (24) Q Now, you also indicate in your questionnaire that you do
- (25) subsistence hunting?

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- (1) A Yes.
- (2) Q Can you tell me where you do the substance?
- (3) A At the Anilchit (ph) unit 13. Caribou, basically.
- (4) Q You indicated in your questionnaire that you - I'll just
- (5) point out to you, we do have your questionnaire over there on
- (6) the bench. You've got it there with you?
- (7) A I've got it.
- (8) Q You indicate in your questionnaire that you feel somewhat
- (9) favorably towards Exxon as well to the municipalities and the
- (10) Native corporations. I'm referring to, I believe it's question
- (11) 47 on that issue, page 11. In fact, do you have it on the page
- (12) in front of you, Mr. Garganta?
- (13) A Yes, I do.
- (14) Q You indicate that you feel somewhat favorably towards all
- (15) of the groups that are listed there?
- (16) A I'm pretty impartial.
- (17) Q Well, that's what I was going to ask next. Besides your
- (18) subsistence hunting, do you do any other sort of fish and
- (19) game-gathering activities?
- (20) A I'm assistant guide, but I don't know if that counts. It's
- (21) not subsistence or anything.
- (22) Q Where are you a subsistence guide?
- (23) A I'm an assistant guide.
- (24) Q I'm sorry. Are you - where are you an assistant guide?
- (25) A Last year I went to Kodiak and this year down on the

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- (1) peninsula.
- (2) Q That would be the Alaska Peninsula?
- (3) A Alaska Peninsula.
- (4) Q Whereabouts on the Alaska Peninsula?
- (5) A Oh, goodness, it was like that two and a half hours flight
- (6) west on the Iliamna out in the middle of Nuwaak.
- (7) Q Out in the Iiak -
- (8) A More around -
- (9) Q Molchatna side of things, I guess?
- (10) A Right, exactly.
- (11) Q And that was moose hunting?
- (12) A I was bear hunting this past spring.
- (13) Q Okay. Do you know if that was on state or Aleut corporate
- (14) land?
- (15) A I believe it was on state land.
- (16) Q Now in your activities - let me ask you this. Do you also
- (17) go fishing, do you do sports fishing?
- (18) A Yes, I do.
- (19) Q And whereabouts do you sports fish?
- (20) A Anywhere I can get, pretty much. Basically - I haven't
- (21) done a whole lot of fishing here in the last couple years
- (22) because I'm trying to build a cabin and stuff so I don't go
- (23) south, there's too many people, so -
- (24) Q Where are you building your cabin?
- (25) A Do you know where Long Rifle Lodge is up on the Matanuska

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- (1) River?
- (2) Q Uh-huh.
- (3) A Yeah.
- (4) Q On a lake over there?
- (5) A No. Right on the river.
- (6) Q Is that property that you just recently brought?
- (7) A I brought it five years ago.
- (8) Q This is rural property or private property?
- (9) A I guess it was homesteaded by somebody years ago and
- (10) they
- (11) sold it.
- (12) Q Now, did you get an appraisal before you brought the
- (13) property?
- (14) A Yeah, kind of.
- (15) Q And you had somebody give you an opinion of value, or did
- (16) you get an opinion?
- (17) A I've been eyeing it for like ten years and I finally bought
- (18) it.
- (19) Q It was you that decided the opinion of value; is that
- (20) right?
- (21) A That's right.
- (22) Q How did you arrive at a value of it?
- (23) A I like the location and it was six grand an acre, but you
- (24) can't buy that here in town.
- (25) Q So you felt six grand an acre would be pretty reasonable?
- (26) A Oh, yeah.

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- (1) Q This acreage you brought, does it have a stream running
- (2) through it?
- (3) A It's Matanuska. It's right on the frontage of the
- (4) Matanuska River.
- (5) Q But you have to go up a ways to go caribou hunting from
- (6) there?
- (7) A Yeah, basically, across the road. I think it's 13 A. I'm
- (8) in 13 D, the road decides it. 13 A would be where I pretty
- (9) much go hunting.
- (10) Q So that's where there's a wolf pack that hangs out in that
- (11) area, isn't there?
- (12) A I never seen them but I see they run the river, but I don't
- (13) know.
- (14) Q Have you reached any conclusions as to how this case
- (15) should
- (16) be decided, Mr. Garganta?
- (17) A I really don't know a whole lot about this case.
- (18) Q You haven't read much about it?
- (19) A No, I thought it was done with.
- (20) Q And here we are five years later.
- (21) A I thought it was done and over with.
- (22) Q So you haven't - let me ask it this way: Did you know
- (23) that this was the first time that Native corporations have been
- (24) in court in this case?
- (25) A That I know.
- (26) Q Yes.

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- (1) A I mean, Monday I knew. That's the first time I knew.
 (2) Q There's also municipalities as part of this case?
 (3) A Yeah, I got that Monday.
 (4) Q I notice that you have a favorable reaction towards
 (5) municipalities as well?
 (6) A Same thing. I'm right down the middle.
 (7) Q And did you know that this was the first time that the
 (8) municipalities have been able to go to court or to be in court?
 (9) A I did not know that.
 (10) Q Now, do you have any opinions about the value of the land
 (11) that are owned by Native corporations?
 (12) A About the value of it? Is this -
 (13) Q Yeah.
 (14) A I wish I had some.
 (15) Q Other than that, though you don't have -
 (16) A No opinion.
 (17) Q Okay. And do you think you could be fair to all parties to
 (18) this litigation?
 (19) A I feel I could be.
 (20) MR. FORTIER: Thank you, Mr. Garganta.
 (21) A Thank you.
 (22) VOIR DIRE EXAMINATION OF DAVID GARGANTA
 (23) BY MR. CLOUGH:
 (24) Q Hi. I'm John Clough, and I'm one of the guys representing
 (25) Exxon in this. I don't know if you remember the introductions;

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- (1) this is Chuck Diamond that was sort of being the master of
 (2) ceremonies on the defense side.
 (3) Really just a couple of questions since everybody has been
 (4) waiting a long time and things are running a little late: How
 (5) long have you owned the property up by the Long Rifle?
 (6) A Five years.
 (7) Q And do you also own a home here in Anchorage?
 (8) A Yes, sir.
 (9) Q And where's that?
 (10) A It's in between the Old-New Seward Highway, between
 Dimond
 (11) and O'Malley.
 (12) Q You had stated in your questionnaire, Mr. Garganta, that
 (13) you had had a couple of your supervisors over in the guard that
 (14) might have been involved in a lawsuit?
 (15) A Yes.
 (16) Q Do you remember what I'm talking about?
 (17) A They are just commercial fishermen, that's all I know.
 (18) Q Do you know where they do their fishing?
 (19) A Cook Inlet.
 (20) Q Have you talked to them at all about - let me ask you
 (21) this.
 (22) Do you know if they have any claims against Exxon or
 (23) anybody else because of the spill?
 (24) A No, I don't. But they are always talking about fishing,
 (25) price of fishing or something.

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- (1) Q Have they talked to you at all about the oil spill?
 (2) A No, sir.
 (3) Q And have you had any discussions with them about whether
 (4) the oil spill affected fishing at all?
 (5) A Way, way back then. After it happened.
 (6) Q Do you remember anything about those discussions?
 (7) A Just them saying it was going to ruin the fishing for a
 (8) couple of years or something like that.
 (9) Q Now, one of the things that might happen in this cases is
 (10) there will be evidence presented by both sides as to whether
 (11) the oil spill did have effect on this fishery or that fishery.
 (12) Besides your recollection of that talk with those guys back
 (13) then, do you have any other information on that point?
 (14) A No, I don't.
 (15) Q Is that an issue that you think you could be fair to both
 (16) sides on?
 (17) A I feel I could be fair.
 (18) Q Have you formed any opinions as you sit here today whether
 (19) the oil spill has caused any impact on the fisheries in Alaska?
 (20) A No, I haven't.
 (21) Q One of the things I noticed about your form, too, is it
 (22) looks like you haven't had a lot of exposure to the news media
 (23) folks, either. I don't have the exact question in front of
 (24) you.
 (25) You said you didn't recall or hadn't watched of the

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- (1) television coverage about this stuff?
 (2) A Not recently. When it first happened everybody watched it
 (3) but I don't watch TV that often, no.
 (4) Q And have you been reading any articles in the paper about
 (5) the lawsuits?
 (6) A Too long.
 (7) Q The lawsuits or the articles?
 (8) A The article's too long.
 (9) Q Are you aware that there's another case going on over in
 (10) federal court now dealing with the oil spill?
 (11) A No, I'm not.
 (12) Q Do you know that this is a case that's mostly about lands
 (13) owned by the Native corporations or municipal -
 (14) A I took that Monday and I kind of got that.
 (15) Q Right. Have you formed any opinions yet in your mind as to
 (16) whether you think the oil spill has had any - caused any harm
 (17) to lands owned by these Native corporations or municipalities?
 (18) A It might have, I'm really not sure.
 (19) Q Have you ever been sat through a trial as a juror before?
 (20) A No, sir.
 (21) Q Have you ever had to sit in one as a witness or watched in
 (22) court?
 (23) A I was a witness once.
 (24) Q One of the things you might recall of procedure is
 (25) plaintiffs get to put on their case first, and in this case

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- (1) it's going to take them probably several weeks, a while before
 (2) we get to put on any of our witnesses and all our good stuff,
 (3) and the judge will instruct you that you are absolutely not
 (4) able to make up your minds on these issues until you've heard
 (5) the evidence from both sides and heard all the evidence
 (6) presented to you. As you go through listening to the
 (7) plaintiffs' evidence and witnesses and photographs, keep an
 (8) open mind and not make a decision on this case until we've had
 (9) a chance to show you our evidence and basically present the
 (10) other side to you as well.
 (11) A I feel I could do that.
 (12) Q You might also recall the judge told you there's not going
 (13) to be an issue in this case about Exxon disputing liability.
 (14) The question is how much, if any, Exxon should pay for the
 (15) particular claims.
 (16) Do you recall that?
 (17) A Yes, sir.
 (18) Q And one of the things that Exxon may be saying is that in
 (19) certain instances some of the claims being set forth by these
 (20) plaintiffs are exaggerated more than we feel is fair by the
 (21) law. Would you as a juror be able to limit claims just to the
 (22) fair amount of the law as the judge instructs you on it?
 (23) A I'd give it a shot.
 (24) Q Would you be willing to give it your best shot?
 (25) A Yes, sir.

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- (1) Q Are you prepared to follow all the instructions of the law
 (2) as the judge gives them to you?
 (3) A Yes, sir.
 (4) Q And do you feel that you could be a fair and impartial
 (5) juror to both sides? I think the plaintiffs probably already
 (6) asked you that.
 (7) A Yes, I do.
 (8) MR. CLOUGH: Your Honor, we have no objection to -
 (9) Q I've been asked to ask you: Would you like to be on this
 (10) jury?
 (11) A I've never been one. I think I'd probably like to be on
 (12) one.
 (13) Q Is it going to cause you any hardship, being on a trial of
 (14) this length; two months perhaps?
 (15) A It shouldn't.
 (16) Q And you yourself are not a shareholder in any Native
 (17) corporation, are you, sir?
 (18) A No, sir.
 (19) MR. CLOUGH: Your Honor, we have - pass this
 (20) witness - pass this juror, excuse me, for cause.
 (21) Thank you sir.
 (22) THE COURT: Since you've been passed for cause, we
 (23) have a number of other jurors to question, and what I'm going
 (24) to do is excuse you for the day until we call you back. Now
 (25) remember, you're a member of the jury panel meaning you could

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- (1) be on - a jury member on this case and you could follow it all
 (2) the way through deliberations and actually decide the case. So
 (3) it's important that you remember what I said at the beginning
 (4) of the first day, and I'm going to say every day after this,
 (5) and that is: Don't talk about the case with anybody, including
 (6) your fellow jury members or jury panel members, and don't
 form
 (7) or express any opinion on it until it's submitted to you for
 (8) deliberation. And most especially, don't talk to the people
 (9) still in the room about what questions were asked or what the
 (10) process was.
 (11) Okay?
 (12) A Okay.
 (13) THE COURT: I'm going to excuse you - you're not
 (14) excused from service on the jury, I'm just trying to be
 (15) efficient of letting you go until we call you back.
 (16) A Okay.
 (17) THE COURT: Thank you very much, Mr. Garganta.
 (18) (David Garganta leaves the room.)
 (19) MR. PETUMENOS: Before the next juror comes in -
 (20) THE COURT: Hold on; don't bring in the next juror.
 (21) Go ahead.
 (22) MR. PETUMENOS: I was going to warn the court the next
 (23) juror is going to take a lot of time. It appears he knows half
 (24) the Exxon list, so I want to alert you of the hour.
 (25) THE COURT: I wonder if we could skip over and go to

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- (1) the next number, ten then. Would that be acceptable?
 Because
 (2) I don't intend to go beyond - I don't intend to go long after
 (3) two o'clock.
 (4) MR. DIAMOND: I have no objection, but I have the odd
 (5) numbers and Mr. Clough has the even numbers.
 (6) MR. STOLL: The only problem is number ten is a friend
 (7) of number nine. It's one of the instances where the numbers
 (8) happen to come out that way.
 (9) THE COURT: What a coincidence.
 (10) MR. STOLL: But this juror doesn't seem to indicate
 (11) any knowledge of these witnesses, so...
 (12) THE COURT: So can I do ten?
 (13) MR. STOLL: Yeah, you can do ten; your number ten;
 (14) let's do ten.
 (15) MR. DIAMOND: Fine.
 (16) THE COURT: Let's get juror number ten, Sue Foley.
 (17) MR. STOLL: Oh, could I ask a question? Informally at
 (18) one time? This relates to number ten. Informally at one time
 (19) at least counsel talked about having an - after we were into
 (20) this trial about four weeks, having a three-day weekend. And
 (21) the weekend we had talked about at one time was the weekend
 of
 (22) the - you know, I think it's 15th, 16th of July; and this
 (23) juror, this next juror had a problem, potential problem with
 (24) that because of some activity.
 (25) THE COURT: Well, does the problem go away if you give

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- (1) you the weekend.
- (2) MR. STOLL: Does what?
- (3) THE COURT: If I give you the weekend does the problem
- (4) go away.
- (5) MR. STOLL: I think it does.
- (6) MR. DIAMOND: 14th through 17th. I don't have a
- (7) calendar. She says she has a problem with the 14th.
- (8) MR. CLOUGH: It's a Thursday, I believe.
- (9) MR. STOLL: I just wanted to inquire.
- (10) THE COURT: Okay. Go ahead.
- (11) While we're at it, let Mr. Garganta go. Tell him to be
- (12) back at nine o'clock tomorrow morning
- (13) (Sue Foley enters the room.)
- (14) THE COURT: All right. You're Sue Foley?
- (15) A Yes, I am.
- (16) THE COURT: I have your questionnaire and the parties
- (17) have copies of it.
- (18) A Okay.
- (19) THE COURT: Those questions were answered under oath
- (20) and these questions that you're going to be asked are also to
- (21) be answered under oath. You understand that, don't you?
- (22) A I do.
- (23) THE COURT: There are going to be some brief
- (24) questions, and we'll try to get you out of here as quickly
- (25) after two o'clock as we can.

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- (1) A All right, thank you.
- (2) VOIR DIRE EXAMINATION OF SUE FOLEY
- (3) BY MR. STOLL:
- (4) Q Ms. Foley, my name is Bob Stoll. I represent the
- (5) municipalities that are the plaintiffs in this case. I met you
- (6) on Monday - well, not met you -
- (7) A Right. In the group.
- (8) Q And I just have a few questions that I hope won't take too
- (9) much of your time.
- (10) First of all, you mentioned that you have to go to Portland
- (11) on July 14th, 10th?
- (12) A Right. My daughter is going down there to register for
- (13) college, so we are both flying down to get her enrolled in
- (14) school.
- (15) Q Is she going to Portland State or one of the other -
- (16) A Western school.
- (17) Q In Monmouth (ph)?
- (18) A Right.
- (19) Q And when does she register exactly?
- (20) A We've got it register on the 16th.
- (21) Q That Saturday?
- (22) A No. 15th, Friday.
- (23) Q Friday the 15th?
- (24) A Uh-huh.
- (25) Q Is there anything other than that possible conflict, if we

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- (1) had that Friday afternoon - I mean if that Friday was - we
- (2) have court from 8:30 until 1:30, and -
- (3) A Our flight leaves out of here on the 1:00 a.m. on the 14th,
- (4) which would be Thursday morning, and then we come in late
- (5) night
- (6) of the 17th. Fly in late night of the 17th.
- (7) Q I see. So the 14th is Thursday morning; you're going to
- (8) get there a day in advance?
- (9) A Right.
- (10) Q I see. And do you mind me asking what airlines that is?
- (11) A We're going on Alaska Airlines.
- (12) Q I see. So if an arrangement could be made -
- (13) A Well, I also day-care out of my home so I have five
- (14) families that count on me five days, 12 months out of the year.
- (15) Q I see. And you do that throughout the day?
- (16) A Yes, sir. My first child appears at seven a.m. and usually
- (17) the last one don't leave until six or 6:30.
- (18) Q In the evening?
- (19) A Right.
- (20) Q How has it been this week?
- (21) A Well, I've got a set of twin daughters that are 18 and
- (22) they've been juggling shift at work to watch my kids so I can
- (23) be down here.
- (24) Q Wow. I'm impressed.
- (25) Well, Your Honor, I think my questions may pale compare to

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- (1) THE COURT: Are you suggesting a stipulation?
- (2) MR. STOLL: Well, not really stipulating, Your Honor;
- (3) it's a question of how the Court feels about this, because I
- (4) don't want to -
- (5) THE COURT: I feel there's a legitimate question as to
- (6) hardship, that it could be explored and the parties could agree
- (7) on. If you agree, if you stipulate as to the issue, then I
- (8) don't have a problem with your stipulation.
- (9) MR. STOLL: May I have just a moment, Your Honor, to
- (10) talk privately with counsel.
- (11) Your Honor -
- (12) THE COURT: Would you just talk with counsel?
- (13) MR. STOLL: Oh, sure.
- (14) (Off record discussion.)
- (15) MR. STOLL: Your Honor, I think we're all in agreement
- (16) that it's your call basically, and that you can inquire as to,
- (17) you know, the amount of hardship. Nobody wants to put her
- (18) through, you know, undue hardship.
- (19) MR. CLOUGH: As Mr. Petumenos pointed out, that under
- (20) the statute -
- (21) THE COURT: That's fine, counsel. You led me to my
- (22) decision. I mean, how can I disagree with what you just said,
- (23) right? And that's what good lawyers do, they set it up so the
- (24) answer will be what they want, and I'm going to excuse this
- (25) juror, all right? There is no objection from either party,

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(1) right?
 (2) MR. STOLL: Right.
 (3) MR. CLOUGH: (Nods head.)
 (4) THE COURT: You're excused. Thank you very much.
 (5) On a shorter case -
 (6) A On a much shorter case I would love to.
 (7) THE COURT: And that's what I'd like to tell you.
 (8) You're still on the jury panel, not for this case, but
 (9) possibly for other panels. So you need to call in as
 (10) instructed by the jury clerk. Thank you.
 (11) All right, counsel, and I've let Mr. Kimura go because I
 (12) figured if his examination took some time I don't have the
 (13) time, I have a 2:30 schedule matter and I have you at 3:30.
 (14) MR. DIAMOND: Here or in your courtroom.
 (15) THE COURT: We'll use courtroom K. I think the
 (16) selection has been good, counsel, and it's moving along. I
 (17) have no criticism of you, but please try to keep your
 (18) questioning to within the time limits. I've told the jurors to
 (19) come in at nine, as soon as they're here and we're here we'll
 (20) start. I'm going to be efficient as to how I use these jurors'
 (21) time. I don't see any reason now that I have seen the speed
 (22) which jury selection is proceeding, to have the whole bunch of
 (23) them come in at the same time, so I'm going to have some of
 (24) them called - I'll have the first 11 in here at nine o'clock
 (25) and the remainder in at 11. I think that's probably the best

(1) and stipulate them off, I'll probably just say they can go off
 (2) the panel. There's a number 25, Ofelia Day. All I have, the
 (3) information is that she says she needs to be off this panel. I
 (4) don't know why and I haven't looked at the questionnaire, so
 (5) take a look at the questionnaire and see whether or not she
 (6) should be stipulated off. And then there is a man named Paul
 (7) Wichorer who is scheduled to fly out Sunday, he is number 45.
 (8) He may have told you why. It's for a long period of time, I
 (9) see no reason to waste the time to make him come in here even
 (10) though he's on panel number two anyway. If you can stipulate
 (11) to excuse any or all of these jurors, I will not question your
 (12) decisions; all right?
 (13) I'm sorry, Mr. Wichorer is on the first panel so he would
 (14) be scheduled to come in here relatively sooner and I certainly
 (15) is a potential juror.
 (16) MR. STOLL: The ones you've indicated, I have 22, 25
 (17) and 45.
 (18) THE COURT: That's right. So if you can tell me
 (19) tomorrow whether you can stipulate on any of them, I can deal
 (20) with that first thing.
 (21) MR. STOLL: And then we're going to be back here at
 (22) 3:30.
 (23) THE COURT: This afternoon we can do that then.
 (24) Is there anything else today?
 (25) MR. DIAMOND: No.

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(1) we can do.
 (2) MR. DIAMOND: Are we still dealing with these first
 (3) 35?
 (4) THE COURT: Yes, until we exhaust them, I'm not
 (5) intending to call anybody else in.
 (6) MR. STOLL: Your Honor, as far as you're concerned, I
 (7) don't know, maybe they've been discharged, but if you want to
 (8) start at 8:30 -
 (9) THE COURT: I already told them to come in at nine.
 (10) THE COURT: And we'll go to two.
 (11) MR. STOLL: That's fine.
 (12) THE COURT: I'll give you the time you need. I need
 (13) to tell you about a few jurors, this is just information for
 (14) your benefit. One, number 33, Mr. Wallace, has said,
 (15) bisferiously downstairs that it's an extreme financial hardship
 (16) for him to be on this jury, and number 22, Mr. Findorff, says
 (17) the same thing. I've looked at their questionnaires and there
 (18) might be independent reasons why one or the other parties in
 (19) this case might want them off the case. Number 22 is close
 (20) enough so he may be questioned relatively soon, but Mr.
 Wallace
 (21) is fairly far out.
 (22) So what I'm going to do, is I'm going to make sure they
 (23) don't come in and waste their valuable time until it's
 (24) necessary to get them in here. But there may be very
 (25) substantial issues. If you can look at their questionnaires

(1) THE CLERK: Please stand. This court's in recess.
 (2) (Recess at 2:03 p.m.)

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(1) STATE OF ALASKA)

(2) : Reporter's Certificate

(3) DISTRICT OF ALASKA)

(6) I, Katherine L. Novak, RPR a Registered

(7) Professional Reporter and Notary Public;

(8) DO HERBY CERTIFY:

(9) That the foregoing transcript contains a true and

(10) accurate transcription of my shorthand notes of all requested

(11) matters held in the foregoing captioned case.

(12) Further, that the transcript was prepared by me

(13) or under my direction.

(14) DATED this day

(15) of , 1994.

(21) KATHERINE L. NOVAK RPR

Notary Public for Alaska

(22) My Commission Expires: 6-10-97

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re) Case No. 3AN-89-2533 Civil
) Anchorage, Alaska
 (5) the EXXON VALDEZ) Thursday, June 23, 1994
) 9:10 A.M.
 (6))
 (8) VOLUME 3 Pages 214 through 396
 (10) TRANSCRIPT OF PROCEEDINGS
 (11) TRIAL BY JURY - JURY SELECTION (Continuing)
 (13) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge
 (16) APPEARANCES:
 (17) FOR THE PLAINTIFF:
 N. ROBERT STOLL
 (18) Stoll, Stoll, Berne & Lakting
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUMENOS
 (21) Birch, Marton, Bittner & Cherot
 1127 West Seventh Avenue
 (22) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 (24) Fortier & Mikko
 2550 Denali Street, Suite 604
 (25) Anchorage, AK 99503
 907/277-4222

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(1) FOR THE DEFENDANTS:
 CHARLES P. DIAMOND
 (2) M. RANDALL OPPENHEIMER
 LINDA JANE SMITH
 (3) O'Melveny & Myers
 400 South Hope Street
 (4) 213/669-6000
 (5) JOHN F. CLOUGH III
 Clough & Associates
 (6) 431 N. Franklin St., #202
 Juneau, AK 99801
 (7) 907/586-5777
 (8) Reported by:
 JOY S. BRAUER, RPR
 (9) Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99503
 (11) 907/258-7100

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(1) PROCEEDINGS
 (2) THE CLERK: All rise.
 (3) (Call to Order of the Court)
 (4) MR. STOLL: Good morning, Your Honor.
 (5) THE COURT: Good morning.
 (6) MR. STOLL: You asked us last night about these four
 (7) jurors that had hardship, 22, 25, 33 and 45.
 (8) THE COURT: Right.
 (9) MR. STOLL: We are sorry to see some of them go, but
 (10) the plaintiffs will accept. The defendants want to trade with
 (11) us, but we'll accept all four of them.
 (12) THE COURT: You mean you'll allow them all to be
 (13) excused.
 (14) MR. STOLL: But there's some of them - I have to tell
 (15) you candidly, there's some of them we'd like. There's some of
 (16) them they'd like, but we'll do the whole thing or nothing.
 (17) MR. DIAMOND: They want to trade.
 (18) MR. STOLL: No, we don't want to trade. We'll agree
 (19) all four of them go.
 (20) MR. DIAMOND: Your Honor, we don't - I think three of
 (21) the four, perhaps two of the four are claiming hardship because
 (22) they - they are entrepreneurs, they own their own businesses.
 (23) We would prefer not to stipulate that anybody who owns their
 (24) own businesses ought not to serve on the jury because that
 (25) really does distort the cross-section of the people we'll have

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(1) serving. Some of these people probably have a legitimate
 (2) excuse, and I don't want to cherry pick and be accused of
 (3) cherry picking.
 (4) I made choices for the ones favorable to the defense and
 (5) not favorable to the plaintiffs, but I think we are in
 (6) agreement that Mr. Findorff, 22, who is a pro - one would
 (7) think would be a pro defense juror should be excused if in fact
 (8) he's an Exxon stockholder. He put a half checkmark on his
 (9) questionnaire, but not a full checkmark. We called back the
 (10) shareholder relations and we have no record of him, but he may
 (11) own through a mutual fund, he may own - if he owns stock, then
 (12) obviously that's that.
 (13) Mr. Wichorer, 45, is an accountant in a small firm. We'd
 (14) like to talk to him about really how great a hardship it would
 (15) be. I think most of the jurors are presuming it's going to be
 (16) full days and they're not going to get any work done.
 (17) THE COURT: His wasn't a hardship. He was scheduled
 (18) to fly out on something.
 (19) MR. DIAMOND: I guess we probably ought to know why.
 (20) Mr. Wallace owns a gift shop. It's - seems like a one man
 (21) operation, very seasonal, it's number 33. My guess is we'll
 (22) probably end up excusing him if he - if he owns and operates
 (23) his own store and doesn't have help, then I guess he ought to
 (24) be excused.
 (25) 25, Ofelia Day has a handicapped child at home who suffers

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- (1) from seizures, and she says she needs to be home to care for
 (2) that child. I think that one's self-evident, but rather than
 (3) deal with these on a blanket basis, I think it makes more sense
 (4) to deal with them one on one.
 (5) We would like to talk to all the self-employed people, both
 (6) favorable and unfavorable and see whether they really do have
 (7) unremedial hardships. 25, Mrs. Day with a handicapped child
 (8) seems self-evident. She ought to be excused for cause.
 (9) THE COURT: I tried to let you know, counsel, but the
 (10) two top jurors, Wallace and Findorff yesterday were very
 (11) adamant about the situation. Is it simply that you want to see
 (12) them be adamant for you so that you can see that they are
 (13) inappropriate jurors?
 (14) MR. DIAMOND: We're prepared to - well, I think
 (15) Wallace probably has reason to be adamant. Findorff, I
 (16) don't - I don't really know that. He's a 63-year-old man, he
 (17) owns a sheet metal shop, it seems to be a sizable operation.
 (18) He probably has management to take care of things. Do we
 (19) want
 (20) to excuse him without even asking him why? I don't know.
 (21) THE COURT: I'm interested in the efficiency here,
 (22) counsel. If you want to - if you want to question them,
 (23) I'm - I'm good at spectator sports. I'll just sit and watch.
 (24) MR. DIAMOND: We would like to question number 45.
 (25) THE COURT: Number 45, yeah, I tell you what, would
 (26) this be acceptable, for these - which ones of these jurors are

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- (1) here, Day, Wichorer, Findorff and Wallace.
 (2) THE CLERK: I'll call, I can run down and find out
 (3) because I've done both. I'll run back down and see if they're
 (4) still here. Some of them are smoking so they just may be down
 (5) there, still.
 (6) THE COURT: How about this, since these jurors have
 (7) actually asked to get off down there, I'll have them write out
 (8) why they want to get off and I'll share those writings with
 (9) you, and you can make a judgment based on what they say on
 (10) paper; all right? I don't care, I mean, I'll sit here and do
 (11) it, but what I'm trying to do is make the process a little more
 (12) efficient than it has been.
 (13) MR. STOLL: Judge, as far as the plaintiffs are
 (14) concerned, again, we're happy - we'd like to have some of
 (15) these jurors on the jury. You can excuse any or all of them.
 (16) We don't - we're not on this picking business that they are.
 (17) So it's -
 (18) THE COURT: I hear you, but since - since the
 (19) stipulation is not to excuse all of them, and I don't hear a
 (20) stipulation to excuse individuals.
 (21) MR. STOLL: I'll stipulate to any of them, Your Honor.
 (22) THE COURT: How about Day, she's got a child -
 (23) MR. STOLL: She's fine, that's not a problem.
 (24) THE COURT: - at home. I'll excuse her. She's
 (25) gone. The others can give me a reason in writing.

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- (1) MR. DIAMOND: I think we know why Wallace wants out.
 (2) He's the fellow that runs his own shop. We're happy to see him
 (3) go.
 (4) If Mr. Findorff, 22, tells us where he's a stockholder,
 (5) we're happy to see him go, if he writes that down for you.
 (6) That really only leaves Mr. Wichorer, number 45, and we
 (7) would like to know why Mr. Wichorer wants to be excused.
 (8) MR. STOLL: Your Honor, they can do what they want to
 (9) do. I just want to point this out to the Court so the Court
 (10) knows what's going on. The people we are happy to see go
 (11) have
 (12) extreme unfavorable ratings towards Exxon, that's what they
 (13) checked on their questionnaire. The ones they want to
 (14) examine,
 (15) see if they can't hold onto, are the ones that may be a
 (16) shareholder in Exxon and thinks that the environmental laws are
 (17) too restrictive. It's no secret why they're going the way they
 (18) want to, but they can do what they want.
 (19) THE COURT: Stop, counsel, I mean really. Do you
 (20) really think that I want to listen to this? Thank you.
 (21) Now, we have Mr. Kimura, who's next in line, unless you
 (22) want to discuss something else.
 (23) MR. PETUMENOS: I do. I just want to make a report to
 (24) the Court on yesterday's discussion regarding materials to
 (25) Exxon.
 (26) THE COURT: Oh, right, yes.
 (27) MR. PETUMENOS: All of the materials, I think without

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- (1) exception, are either in their hands or will be in their hands
 (2) today shortly. We have some slides to copy through a -
 (3) through a commercial outfit and so forth. They raised in a
 (4) letter to you, which was - I was sort of surprised to see. I
 (5) don't know -
 (6) THE COURT: I have it here.
 (7) MR. PETUMENOS: Okay. They raised a couple of things
 (8) I never heard of or thought of before. One was some notes of
 (9) Mr. Lobdell. I don't know that there are any, but if there
 (10) are, we'll have them to them by Federal Express. I don't think
 (11) they exist, but if they do, we'll get them.
 (12) The only other thing on the list that they haven't already
 (13) got, remember we had a discussion about laboratory reports
 (14) yesterday. Those in fact were already in their hands when I
 (15) was speaking. They had been disclosed to Exxon through the
 (16) federal trial team, and they were moving as fast as they are,
 (17) I'm not always informed, but the laboratory reports were
 (18) disclosed to Exxon through the plaintiffs' federal trial team
 (19) the day before we were speaking.
 (20) That leaves only the prior - something about prior
 (21) publications of Ms. Johnson, and my position on that is that's
 (22) a discovery matter that was talked about a long time ago, no
 (23) motion to compel was filed, this is not something that's come
 (24) up in connection with an exhibit or trial matter. There was no
 (25) motion to compel filed within the time, and I - I don't know

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- (1) what the Court's position is going to be on those sorts of
 (2) things, but the many warehouses full of discovery that have
 (3) been exchanged, if the parties start going back into discovery
 (4) and making discovery demands after the close of discovery
 (5) during trial, this could be a never-ending story.
 (6) THE COURT: All right, tell me what it is that you're
 (7) talking about.
 (8) MR. PETUMENOS: Well, there's something under the
 (9) Laura Johnson witness, and they talk about prior work or
 (10) studies and so forth that she may have done.
 (11) THE COURT: No, prior publications.
 (12) MR. PETUMENOS: Prior publications that she may have
 (13) been involved in. That was part of the discovery protocol and
 (14) so forth. And it is not some new exhibit or modification to an
 (15) exhibit or trial related issue. I'm very concerned about
 (16) opening the door to discovery matters or alleged deficiencies
 (17) in discovery that parties could raise because we've had a
 (18) discovery master for that.
 (19) There was supposed to be a deadline and cutoff for motions
 (20) to compel so that we didn't have to deal with these things mid
 (21) trial, and that one sort of stands out as different from all
 (22) the rest because this is not something that was not brought to
 (23) the attention of the parties before and there wasn't some back
 (24) and forth about. No motion was ever filed before and now it
 (25) rears its head in this letter, and I just don't know what it's

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- (1) doing there. I don't know why that's here. I think it's
 (2) untimely and inappropriate.
 (3) MR. DIAMOND: I don't know the answer to that and I
 (4) will check. I asked for a compilation of all the things that
 (5) we had requested in the immediate past that were promised to
 (6) us
 (7) but had not been forthcoming. I will go back and, at
 (8) Mr. Petumenos' request, check to see whether in fact that's an
 (9) old request and stale, and we're out of luck on or whether in
 (10) fact the promise had been made, and they simply hadn't - oh,
 (11) with respect to the letter that was sent to you, I apologize.
 (12) An in-house associate in my office was supposed to send it to
 (13) Mr. Petumenos and there was confusion and he sent it to you.
 (14) THE COURT: He did send it to Mr. Petumenos, he just
 (15) sent it to me, too.
 (16) MR. DIAMOND: I don't know why you'd be burdened with
 (17) that paper.
 (18) THE COURT: Good, then I don't have to talk about it.
 (19) MR. DIAMOND: We'll review, as soon as we get the real
 (20) estate appraiser's report and those materials you asked that we
 (21) address at some point today, what time we need in order to be
 (22) prepared to deal with that, additional time, if any, we would
 (23) like. Mr. Oppenheimer, as soon as those materials are
 (24) delivered, will review them and try to get our experts on the
 (25) phone. I'd like to be able to schedule something maybe this
 (26) afternoon or tomorrow morning, have him talk to you about that

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- (1) because he's really expert about that.
 (2) THE COURT: We've got something on the calendar, what
 (3) time is it, 3:30?
 (4) MR. STOLL: 3:30, Your Honor.
 (5) THE COURT: Maybe we can do it then.
 (6) Now, may I have Mr. Kimura?
 (7) (Off record discussion between Clerk and Court)
 (8) THE COURT: What I want, any jurors that are here, I
 (9) want them to be - to write down what it is that causes the
 (10) extreme hardship or - and for him, what it is that he's going
 (11) out for and how long.
 (12) THE CLERK: Okay.
 (13) MR. STOLL: Judge, Jurors Wallace and Day have been
 (14) excused; isn't that correct?
 (15) THE COURT: No, Day is and the other three are going
 (16) to give me in writing their reasons. And then I'm going to
 (17) share them with you and do what's appropriate.
 (18) (Mr. Kimura enters)
 (19) THE COURT: Mr. Kimura?
 (20) A Yes.
 (21) THE COURT: How are you this morning?
 (22) A Fine, thank you.
 (23) THE COURT: This is the time that we are going to ask
 (24) you some brief supplemental questions to your questionnaire.
 (25) Remember, I put you and the other jurors under oath on the

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- (1) first day of jury selection, you're still under oath and all of
 (2) the questions here are answered under oath. This should not
 (3) take too long. The parties are limited to ten minutes a side
 (4) to question you, so if you - if you feel that anything that's
 (5) being asked is unduly, you're welcome to say that to me and
 (6) I'll see whether I can do something; okay?
 (7) A Okay.
 (8) THE COURT: Counsel.
 (9) VOIR DIRE EXAMINATION OF ROGER KIMURA
 (10) BY MR. PETUMENOS:
 (11) Q Good morning, Mr. Kimura.
 (12) A Good morning.
 (13) Q I'm Tim Petumenos from Birch Horton Bittner representing
 (14) the Native corporations in the case. Have you heard a great
 (15) deal about this case before coming to court today?
 (16) A I did previous to this, but lately, I haven't heard a lot.
 (17) Q Have you read anything in the paper or seen anything on
 (18) television regarding what's been happening in court recently?
 (19) A Just the Hazelwood part of it.
 (20) Q What do you remember about that?
 (21) A I don't remember a lot about it.
 (22) Q I'm going to ask you a little bit more about what you might
 (23) know about the case or the people that might be in the case.
 (24) One of the things I also want to ask you, though, is you
 (25) mentioned that you own your own accounting firm, CPA?

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- (1) A CPA firm, yes.
 (2) Q Does anyone work for you at the firm?
 (3) A No, I'm just by myself.
 (4) Q All right. Is this about the time that - you do tax work
 (5) or auditing?
 (6) A I do tax work and I do - I've got probably eight or ten
 (7) IRS cases going.
 (8) Q Is this about the time extensions will start coming due?
 (9) A August 15th, but I'm working on some now.
 (10) Q The trial date for court is going to be from 8:30 a.m. to
 (11) 1:30 p.m. every day. Do you feel you'll be able to be a juror
 (12) and maintain your business?
 (13) A I don't think so. I pretty much have to be there most of
 (14) the time.
 (15) Q Okay. Is it the sort of thing that you can move around the
 (16) clock to the later or early evening hours, or is it something
 (17) that you feel would truly interfere?
 (18) A Well, most of my clients and stuff I deal with, IRS, is
 (19) down in the Lower 48, I have to call earlier in the morning,
 (20) so.
 (21) Q You got a time zone problem?
 (22) A Yeah.
 (23) Q Are you - are you asking to be excused from the jury
 (24) because of that?
 (25) A I would like to be, yes.

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- (1) Q And are you willing to serve on another jury if it were of
 (2) a shorter duration than the two months that we're contemplating
 (3) for this trial?
 (4) A Yes.
 (5) Q Of the clients that you have that you have to contact and
 (6) visit with because of the time zone problem, is that a large
 (7) portion of your current practice or a small portion? How can
 (8) you describe that?
 (9) A Probably 20 percent.
 (10) Q Is that a 20 percent - are you worried about losing these
 (11) clients if you're not able to work with them during those
 (12) hours?
 (13) A Possibly, yes.
 (14) Q And are these clients, without revealing their names,
 (15) subject to potential audit or is it a contested matter?
 (16) A Some of them are tax liability contested matters. Others
 (17) are offer and compromises.
 (18) Q How long have you been working on those particular
 (19) matters?
 (20) A I usually have eight to ten on-going all the time.
 (21) Q Are they fairly complex as opposed to being fairly simple
 (22) statements?
 (23) A Yeah, they last probably - some of them last over a year,
 (24) because of the - because the slowness of the system.
 (25) Q Do your clients have a fair amount invested in you and your

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- (1) understanding of the business, of their business?
 (2) A Yeah, most of them are - I been working on for a while.
 (3) Q With respect to this case, I notice that you know a fair
 (4) number of people that were listed on the witness list. You've
 (5) listed Judy Bittner, Steve MacSwain, Mr. Middaugh, Mr. Renfro?
 (6) A Yes.
 (7) Q How well do you know Steve MacSwain?
 (8) A We went to high school together. And I've seen him off and
 (9) on, maybe two or three times a year, just - just casually.
 (10) Q Do you know what connection he has with this case?
 (11) A No, I don't.
 (12) Q Have you ever talked about this case with him?
 (13) A No.
 (14) Q Do you like him?
 (15) A Yeah. He's a pretty nice guy.
 (16) Q If it were to be the case that he were a very important
 (17) witness in this case and you were going to have to weigh his
 (18) testimony against that of other people, do you feel that you
 (19) would be more inclined to believe him above another person
 (20) because of your knowledge of him and acquaintance with him?
 (21) A I'd just have to weigh the facts.
 (22) Q What do you understand Mr. MacSwain does for a living?
 (23) A I thought he was doing something with appraisal and stuff.
 (24) Q This is a land value case. To give you some clue as to
 (25) what he might be doing in the case, and Mr. MacSwain is likely

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- (1) to be one of the more critical witnesses in the case, at least
 (2) from our standpoint. Knowing that, do you think that if you
 (3) were sitting - he's a witness for Exxon, if you were sitting
 (4) at the table here as a plaintiffs' attorney, would you be
 (5) worried about having you as a juror as to whether I'd get a
 (6) fair shot?
 (7) A I just think I'd be fair either way.
 (8) Q How about Mr. Middaugh, how do you know him?
 (9) A My daughters and his daughters swim on the same swim
 (10) team,
 (11) and me being treasurer of the swim club and his wife doing a
 (12) lot of the work on the swim club, we kind of see each other a
 (13) lot.
 (14) Q Do you know what relationship he has to this case?
 (15) A No, I don't.
 (16) Q Have you ever talked with him about it?
 (17) A No.
 (18) Q How about Judy Bittner?
 (19) A I just know him through the - through Bill and Sandy
 (20) Bittner.
 (21) Q How well do you know Bill and Sandy?
 (22) A Fairly well, because we grew up in the same neighborhood,
 (23) going to high school, and our kids were the same age.
 (24) Q Do you socialize with them or visit at their house from
 (25) time to time?
 (26) A We used to a lot more than we do now, because we moved to

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- (1) the south end of Anchorage.
 (2) Q Mr. Bittner, of course, is one of my law partners, and I
 (3) think you know other members of my law firm probably. Do you
 (4) know Hal Horton?
 (5) A Yeah, I think I may have met him.
 (6) Q Do you know Joe Evans?
 (7) A I don't believe I do, but I may have.
 (8) Q Have you had any dealings with our law firm? Have we been
 (9) involved in any matters or have we consulted with you at all?
 (10) A No.
 (11) Q How about Mr. Renfro, how do you know him?
 (12) A I just went to high school with him, also.
 (13) Q Have you discussed his involvement in this case with
 (14) Mr. Renfro?
 (15) A No, I haven't.
 (16) Q I think there was a time when you were - you had a
 (17) restaurant that was the only place in town where you could get
 (18) sushi, as I remember, is that right?
 (19) A Yeah, a long time ago.
 (20) Q Iniko (ph) Gardens?
 (21) A Right.
 (22) Q And when you worked - I seem to recall that there was a
 (23) fire there and it destroyed the business, and it was some sort
 (24) of a difficult time for you, businesswise; is that right?
 (25) A Right, in 1978.

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- (1) Q Were you involved in any sort of litigation out of that
 (2) that gave you any feelings about the court system or the way
 (3) lawyers operate or anything like that, that left you with any
 (4) kind of impression?
 (5) A No, I think everything turned out fine.
 (6) Q Nothing that would - that would come into the courtroom or
 (7) cause you to be - or affect your fairness as a juror?
 (8) A No.
 (9) Q You had mentioned that you thought that the effects of the
 (10) oil spill was likely to last a long time. 20 to 30 years is
 (11) what you said in your questionnaire. Upon what do you base
 (12) that opinion as you come into court today?
 (13) A I just - I don't think that nature's going to be able to
 (14) take care of that situation for that long a time.
 (15) Q Okay. And did you get that from things that you read or
 (16) things that you learned at school or people that you talked
 (17) to? What would be the source of your feeling about that?
 (18) A I think all of the above. I just kind of assumed that,
 (19) that's what I feel like.
 (20) Q If there were to be a controversy about that in the
 (21) courtroom here today, and we were to be litigating that here,
 (22) would you be able to keep an open mind about that issue and
 (23) base your final conclusion about how long the effects of the
 (24) spill are going to last based solely on the evidence that you
 (25) hear in court?

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- (1) A If there are experts that knew more than what I do, yeah,
 (2) I'd kind of weigh the different sides.
 (3) Q And you feel like you can set aside the impressions you
 (4) have coming in and rely solely upon what you hear here in
 (5) court?
 (6) A Probably.
 (7) Q You also indicated that you thought the municipalities were
 (8) hurt by the spill. I'm going to ask you the same question.
 (9) How is it that you come by that impression?
 (10) A Well, I think it's just kind of an effect of, you know,
 (11) everybody losing something down the line and basically, the
 (12) municipality ends up losing taxes or whatever.
 (13) Q So you have a sense that sometimes something like this can
 (14) have a chain reaction effect on other aspects of the economy;
 (15) is that what I'm hearing?
 (16) A Yes.
 (17) Q You also said that you thought Hazelwood was a responsible
 (18) party and Alyeska was partly responsible. You understand that
 (19) in this particular trial, we're not going to be talking about
 (20) Alyeska's responsibility, so you won't have to deal with that.
 (21) Whatever your impressions are about their responsibility, do
 (22) you think you can set those aside and just try the issues that
 (23) we're going to try in this courtroom?
 (24) A Yes.
 (25) Q And you also mentioned that you thought Hazelwood was a

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- (1) responsible party, and as the Judge instructed you at the
 (2) beginning of these - of the jury - in that big room up there,
 (3) the issue in this case is merely the quantification of the
 (4) damages. So you're not going to have to deal with whose fault
 (5) the oil spill was. That issue is outside the scope of this
 (6) trial, so are you going to be able to focus just upon - fairly
 (7) focus just upon those issues relating to damages?
 (8) A Yes.
 (9) THE COURT: Counsel, you're at the end of your time.
 (10) BY MR. PETUMENOS:
 (11) Q Is there any reason you can think of as a final question,
 (12) that you couldn't be a fair juror in this case?
 (13) A No.
 (14) MR. PETUMENOS: Thank you, Your Honor.
 (15) VOIR DIRE EXAMINATION OF ROGER KIMURA
 (16) BY MR. DIAMOND:
 (17) Q Good morning, Mr. Kimura.
 (18) A Good morning.
 (19) Q My name is Chuck Diamond, I introduced myself on Monday
 (20) to
 (21) the assembled multitudes. I'm one of the lawyers representing
 (22) Exxon. I know everybody has more important things to do than
 (23) jury service, but I wanted to talk to you about whether it
 (24) wouldn't really be possible for you to reschedule some of the
 (25) business that you normally do during the morning hours to the
 (26) earlier morning or later afternoon. You said you're on the -

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- (1) on the phone to the IRS down in the Lower 48?
 (2) A A lot of the times, yes.
 (3) Q Is that in fact Washington?
 (4) A Ogden, mainly.
 (5) Q Ogden's two hours, Washington is four hours' time
 (6) difference?
 (7) A Around. Well, Ogden's probably two hours, yeah.
 (8) Q If we were to start court hours at 8:30, as I anticipate we
 (9) are going to, would it be possible for you to take care of some
 (10) of that business between seven and 8:15 or so?
 (11) A I've been spending probably 50 hours a week working. If I
 (12) was in court, then I'd have to spend 50 hours plus the court
 (13) time, plus it probably would put some hardship on my billings
 (14) every month.
 (15) Q I understand it would be a hardship. It's typically a
 (16) hardship for most people, particularly self-employed people,
 (17) but with respect to just your dealings with the IRS, the phone
 (18) dealings, wouldn't it be possible for you to reschedule some of
 (19) those phone calls earlier in the day?
 (20) A I probably could, just a matter of trying to get through to
 (21) them. I mean, I could call them ten times a day and never get
 (22) through, so it just depends.
 (23) Q Have you ever been - I don't think you've ever been a
 (24) party to a civil case. You've never been sued or you've never
 (25) sued anybody in court; have you?

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- (1) A I don't think so.
 (2) Q You've never been sued by one of your accounting clients?
 (3) A No.
 (4) Q Indulge me in an assumption. Let's assume that you were a
 (5) party to a lawsuit. You were a defendant, somebody claimed
 (6) that you had done something improper, and you didn't feel it
 (7) was true, you asked for a jury trial and you wanted a
 (8) representative cross-section of the community, you were sitting
 (9) here instead of there, and there was a prospective juror such
 (10) as yourself who rightfully said that the service on the
 (11) juror - on the jury would impose a hardship, say a
 (12) self-employed person like yourself. Under those
 (13) circumstances,
 (14) if the tables were turned, would you think that it would be
 (15) proper for that prospective juror to put aside his own personal
 (16) interests and try to serve under those circumstances to give
 (17) you a fair cross-section of your community?
 (18) A It all depends on how much of a hardship, I would say.
 (19) MR. DIAMOND: Your Honor, Mr. Kimura - let me ask you
 (20) a few more questions.
 (21) Q Do you do any work for municipalities?
 (22) A No, I don't.
 (23) Q Have you ever, as an accountant?
 (24) A When I was working for Arthur Young and Company I did do
 (25) some.
 (26) Q I'm sorry, when you were working for -

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- (1) A Arthur Young and Company, back in '71 or so.
 (2) Q We have as plaintiffs in this case the cities of Seward and
 (3) Cordova. Stop me if I name anybody who you did work for. We
 (4) used to have Seward. We have Cordova, Larsen Bay, Ouzinkie,
 (5) Old Harbor and Port Lions. Did you do any work on any of
 (6) those?
 (7) A No.
 (8) Q How about Kodiak Island Borough?
 (9) A No.
 (10) Q One of the issues that we're going to be litigating about
 (11) is whether some of these communities suffered out-of-pocket
 (12) losses in connection with things they did because of the oil
 (13) spill. I understand you have some notions that the spill
 (14) probably was not a good thing for many of the affected
 (15) communities. Do you think you would be able to put aside
 (16) those
 (17) preconceived notions and Judge the issues that really are in
 (18) dispute fairly for both sides?
 (19) A I think I could.
 (20) Q You indicated on your questionnaire, and you can take a
 (21) look at it if you'd like, it's question number 47, you had
 (22) somewhat unfavorable views about - about Exxon compared to
 (23) the
 (24) other groups listed on the questionnaire. Can you tell me a
 (25) little bit more about why you view Exxon unfavorably or
 (26) somewhat unfavorably?
 (27) A Well, I don't think there was enough precautions taken on

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- (1) the spill.
 (2) Q How about with respect to the clean up, do you think they
 (3) handled that responsibly?
 (4) A I don't think they did either.
 (5) Q In what way?
 (6) A I think they could have done a better job. I don't think
 (7) the response was quick enough.
 (8) Q Once they did start responding, do you fault Exxon or its
 (9) contractors about the way the clean up was handled?
 (10) A No. I don't.
 (11) Q As I think Mr. Petumenos pointed out, we're not arguing
 (12) about fault here. Exxon has assumed the responsibilities. The
 (13) question is whether these plaintiffs were damaged and, if so,
 (14) how much. Do you think you can commit to us that if you do
 (15) serve as a juror you can put aside any unfavorable feelings you
 (16) have toward Exxon and Judge the issues that are in dispute
 (17) fairly to both sides?
 (18) MR. PETUMENOS: Your Honor, may we approach the
 (19) bench?
 (20) THE COURT: If you can, yes.
 (21) MR. DIAMOND: If we can?
 (22) THE COURT: I'm trying the figure out how you're going
 (23) to get here.
 (24) MR. DIAMOND: I've been barred from walking behind
 (25) their tables.

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- (1) (Bench conference off the record)
 (2) MR. DIAMOND: I don't remember whether I got an answer
 (3) to my question, I don't think I did.
 (4) BY MR. DIAMOND:
 (5) Q The question really was in view of your feelings about
 (6) Exxon not doing enough to avoid the accident and not
 (7) responding
 (8) quickly once - once that it happened. Do you think you can
 (9) commit to both sides to put those views to one side and Judge
 (10) the issues that we're going to try in this case fairly, both
 (11) for the plaintiffs and to the Exxon defendants?
 (12) A I think I probably could.
 (13) MR. DIAMOND: We'd be happy to have Mr. Kimura serve,
 (14) Your Honor.
 (15) THE COURT: Anything further?
 (16) MR. PETUMENOS: Yes, there'll be an application.
 (17) THE COURT: Excuse me?
 (18) MR. PETUMENOS: The plaintiffs have an application to
 (19) the Court.
 (20) THE COURT: I'll send you out for a minute,
 (21) Mr. Kimura. I'm going to bring you right back in.
 (22) (Mr. Kimura leaves)
 (23) MR. PETUMENOS: One of the things that's happening
 (24) here, too, I'm trying very carefully to let neither side be
 (25) prejudice to the juror, I could have stood up in front of the
 (26) jury and said the poor fellow has a hardship and he's going to

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- (1) have a hard time.
 (2) THE COURT: I thought somebody was going to do that,
 (3) I'm really glad nobody did.
 (4) MR. PETUMENOS: I notice each time Exxon passes for
 (5) cause they make a point of saying they think the juror is
 (6) acceptable. I don't know if that's appropriate and would
 (7) object to it. But going to this juror, I think that the juror
 (8) has asked for a deferral. I think he's got good grounds for
 (9) it. I don't think the juror should be handicapped because he
 (10) hasn't done what a lot of jurors do in this situation, which is
 (11) in order to get their handicap or their deferral done, they
 (12) create a picture of bias and prejudice that otherwise wouldn't
 (13) exist. I thought he was extremely honest, extremely
 (14) straightforward and did not try to mix the two and stated his
 (15) answers accurately with respect to his view of the case, which
 (16) is that he really thought he could be a fair juror, but I don't
 (17) think there was any inroad made or any contradiction to the
 (18) fact that this is a very difficult thing for him in his
 (19) business. He's asked for the deferral, which is required by
 (20) the statute. He's agreed to sit on a shorter case or - which
 (21) is also required by the statute, and he's fulfilled the
 (22) statutory obligations and provisions. There was no backing off
 (23) of that. He asked for the excuse.
 (24) I think the facts support the deferral request, and I'm
 (25) hopeful that the fact that he didn't then try to use

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- (1) substantive issues to get off the jury won't inure to his
 (2) detriment. So the reason I think it would be a hardship, I
 (3) think he would be working - actually he would, in fact, work
 (4) extra hours and would, in fact, become fatigued and tired and
 (5) not give the attention to the jury, that he be excused.
 (6) THE COURT: Counsel?
 (7) MR. DIAMOND: Your Honor, I guess you're plagued with
 (8) this all the time in lengthy cases, particularly lengthy
 (9) business cases, but we see it regularly. A two-month trial
 (10) always works a hardship on people, particularly self-employed
 (11) people who have to move things around, juggle things and
 (12) probably work hours they wouldn't be used to working if they
 (13) wanted to avoid any economic consequences of jury service.
 (14) We're not anxious to inconvenience Mr. Kimura and we're not
 (15) anxious to see anybody suffer a very severe financial penalty,
 (16) but he really didn't give us any hard, specifics of real
 (17) problems he's going to face on a day-to-day basis, other than
 (18) he's going to have to make up some time if he wants to be able
 (19) to continue to bill his clients for 50 hours a week.
 (20) He may not be able to do that and his billings may drop
 (21) down to 35 hours a week and there is an economic penalty that
 (22) attaches to that, but on the other hand, this is the nature of
 (23) a business case. We're dealing with accounting and appraisal
 (24) issues. I would submit that the defendants are entitled to a
 (25) fair cross-section which includes people from the business

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- (1) community.
 (2) This is one - Mr. Kimura is from many perspective a mixed
 (3) bag, he's got some anti-Exxon feelings, he's got some
 (4) preconceived notions we're going to deal with, but we'd look to
 (5) have some representation from the business community
 (6) because
 (7) we're going to be dealing with issues of that nature.
 (8) Given the fact that all he can say is 20 percent of his
 (9) business is really stuff he would typically do in the morning,
 (10) couldn't really say that he couldn't reschedule his Lower 48
 (11) telephone calls to an earlier time, probably what we'll find is
 (12) there is some dead time during the jury service that he can use
 (13) to his advantage. I don't think he has made a compelling case
 (14) of hardship such that the defendants in this case should be
 (15) prejudiced by having one of the very few business people
 (16) excluded for cause.
 (17) MR. PETUMENOS: I have one brief statement in reply.
 (18) I don't think that the juror's remark about the 50 hours a week
 (19) was directed towards his need to get that income. I think it
 (20) was directed towards his clients' needs for his assistance, and
 (21) I think that's been taken a little out of context in counsel's
 (22) argument.
 (23) . My recollection of the context was that these people
 (24) need him. They're under scrutiny from the IRS. That's the
 (25) amount of time these clients, that these cases have been
 (26) taking. I didn't get the sense from him that he had to work 50

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(1) hours a week because he wanted the money, but that in fact his
 (2) clients required his assistance, and that's my only point.
 (3) THE COURT: Well, the reason given here is personal
 (4) and business hardship, financial hardship that would be caused
 (5) by jury service. That's absolutely a routine reason given by
 (6) jurors who are examined. It's clear from his examination that
 (7) there's no challenge for bias here, and no other reason, so the
 (8) only reason is, is it enough of a hardship, and there's a
 (9) differing degree or in kind from the hardship that the other
 (10) jurors are going to suffer in this case, to cause me to somehow
 (11) step in and make a discretionary decision to excuse a perfectly
 (12) qualified juror, and I simply see no basis for doing that. I
 (13) don't think it would be good from a policy standpoint to do a
 (14) thing like that, to somehow favor a member of the professional
 (15) community over other people who are suffering financial and
 (16) personal hardships, because he makes a persuasive case
 somehow
 (17) that his clients need contact with the IRS. Just I'm sorry,
 (18) counsel, it just doesn't make any sense to me. I'm going to
 (19) tell him that, too.
 (20) I'm going to bring him in here and I'm going to tell him
 (21) he's still on the panel, and although I recognize that there's
 (22) a legitimate issue of hardship here, it's the kind of hardship
 (23) that I can't recognize because I need to get a fair
 (24) cross-section of the community for my jury.
 (25) All right. Bring Mr. Kimura back in, please.

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(1) (Mr. Kimura enters)
 (2) THE COURT: Mr. Kimura, I recognize there's a fairly
 (3) substantial hardship that you and your clients also could
 (4) suffer if you were on this jury. Sometimes potential jury
 (5) members who - who come in, in a case like this and they hear
 (6) the big two-month words and how long it's going to take, think
 (7) that it's going to totally disrupt their lives. To the extent
 (8) that hardships are caused, I will try to deal with any
 (9) particular hardships you might have, if you're finally selected
 (10) for this jury, by being relatively flexible of a lot of
 (11) things.
 (12) For instance, if you had a very important appointment or
 (13) something that you really had to do, you could tell me about
 (14) that and I would try to work around the problem, and I do that
 (15) routinely for jurors. But I think you'll recognize that -
 (16) that there are a lot of jurors here, in that room and
 (17) downstairs who are waiting to see whether they'll be jurors in
 (18) this case and who are also going to suffer hardship.
 (19) That - if this were a hardship that were somehow different
 (20) in kind or so severe that - that I thought it was different
 (21) from other jurors, I might excuse you. I don't think that,
 (22) though, for cause, that it would be appropriate for me to do
 (23) that now, at this stage of the case. And for the reasons
 (24) you've given.
 (25) So I'm going to leave you on this jury panel. Now that -

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(1) there's a long way to go before we get a final jury in this
 (2) case -
 (3) A Can I add something?
 (4) THE COURT: Yes.
 (5) A I've got on-going clients that I - and stuff like that
 (6) that I do all the time. I'm involved in setting up an
 (7) accounting system now for Round Table Pizza. I mean, it
 (8) just - puts me way behind, and a lot of the stuff I just can't
 (9) put off. And with the IRS, also, I can't just tell them, well,
 (10) you're going to have to wait for this - these papers until I,
 (11) you know, have time to do it.
 (12) THE COURT: I recognize that and I know that other
 (13) jurors have the same kinds of problems. I see this all the
 (14) time, Mr. Kimura, it's just that - this is the for cause
 (15) process. I'm not certain you'll be on this jury at the end of
 (16) this process, but - but the hardship reasons are simply - I
 (17) don't think the situation justifies me excusing you at this
 (18) point and even for the - for the good reasons you've given.
 (19) And therefore, I'm going to leave you on the panel.
 (20) Now, let me explain something about this process. It's
 (21) going to take some time to pick this jury. I'm going to excuse
 (22) you now because the other jurors have to be talked to and
 (23) there's no reason to waste your time. You'll be brought back
 (24) at some time later when we get a better idea of what the pool
 (25) of jurors is and who will finally serve, so that there may be

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(1) some developments later on that would indicate that you will or
 (2) won't be on this jury. You'll get a chance to - to say
 (3) specific things at that time, but I cannot excuse you now. All
 (4) right.
 (5) So now, what I'd like you to do is, you're excused until we
 (6) contact you again.
 (7) A Okay.
 (8) THE COURT: So that means you simply can wait until we
 (9) do call you again; all right?
 (10) A Okay.
 (11) THE COURT: Thank you very much.
 (12) (Mr. Kimura leaves).
 (13) MR. PETUMENOS: Your Honor, having lost an application
 (14) to the Court, my partners have dismissed me and asked me to
 (15) return to the - to the office. If I could be excused, my
 (16) co-counsel will be handling the rest of the voir dire here at
 (17) this time.
 (18) THE COURT: All right.
 (19) MR. STOLL: Shoot the messenger, Your Honor.
 (20) (Ms. Braendel enters)
 (21) THE COURT: Ma'am, could you give your name for the
 (22) record, please?
 (23) A Excuse me, sir?
 (24) THE COURT: Would you give your name for the record,
 (25) please?

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- (1) A Yes, my name is Ella Braendel.
 (2) THE COURT: Ms. Braendel, you understand this
 (3) examination is under oath, just as the jury questionnaire you
 (4) answered is under oath?
 (5) A Yes.
 (6) THE COURT: Counsel.
 (7) MR. FORTIER: Thank you, Your Honor.
 (8) VOIR DIRE EXAMINATION OF ELLA BRAENDEL
 (9) BY MR. FORTIER:
 (10) Q Ms. Braendel, my name is Sam Fortier. Good morning. I
 (11) will be asking you a series of questions today. I represent
 (12) Native corporations in this lawsuit, Mr. Stoll represents
 (13) municipalities in this lawsuit. Together we represent all the
 (14) plaintiffs that are in the court. And Mr. Clough or
 (15) Mr. Diamond to my left will be asking you questions on behalf
 (16) of Exxon.
 (17) Some of the questions I'm going to ask you you might think
 (18) are personal. If you think they're personal, you should direct
 (19) your - you should let the Judge know that and he'll be able to
 (20) do something, perhaps.
 (21) A Okay.
 (22) Q I'll try not to - to invade that sort of privacy, though;
 (23) okay?
 (24) A Okay.
 (25) Q The reason I would have to ask you personal questions or I

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- (1) may ask you questions you think are personal, are only to
 (2) explore certain areas that we think are important to determine
 (3) whether or not you can be fair to all the parties in this
 (4) case.
 (5) Now, can you tell me whether or not you've heard much about
 (6) this case?
 (7) A Yes, I have, back in 1989, but I stopped reading about it
 (8) because I got tired of it.
 (9) Q You stopped reading because you got tired of it?
 (10) A Yes, I did. I got tired of hearing about it.
 (11) Q And that was around 1989 that you stopped reading?
 (12) A 1989, 1990, yes.
 (13) Q Do you remember what you read?
 (14) A I read when it first happened.
 (15) Q You read about the oil spill when it first happened?
 (16) A Yes.
 (17) Q Have you read much about the case in the past few weeks?
 (18) A No, I haven't.
 (19) Q And have you heard much about the case in the past few
 (20) months?
 (21) A I believe about - I read a case where Exxon was found
 (22) liable for damage. I don't know when - how long that was.
 (23) Q Do you remember what you read about it?
 (24) A In Anchorage Daily News.
 (25) Q I'm sorry, I didn't hear you.

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- (1) A Anchorage Daily News.
 (2) Q Oh. And do you remember what you read about it, Ms.
 (3) Braendel?
 (4) A It was when Joe Hazelwood was found guilty, was it?
 (5) Q Do you remember anything more about it?
 (6) A (Shakes head.)
 (7) Q Okay. In this court, Judge Shortell has ruled that Exxon
 (8) is strictly liable without fault for all damages which are
 (9) compensable under Alaska law and that Exxon will be liable to
 (10) pay the Native corporations and the municipalities all
 (11) compensable damages that are proved at trial to have been
 (12) proximately caused by the spill. So what I'd like to know from
 (13) you is whether or not you think you can be fair.
 (14) Let me preface it this way, Ms. Braendel. That was a
 (15) horrible question. The issue in the case is whether or not -
 (16) the issue in the case is solely one of damages, okay, how much,
 (17) if any, does Exxon owe my clients, the Native corporations, and
 (18) Mr. Stoll's clients, the municipalities. The question to you
 (19) is whether or not you think you could be fair in deciding those
 (20) damages?
 (21) A I don't think I'd be too fair, no.
 (22) Q Why not?
 (23) A I've - my personal feeling is that I think Exxon - I
 (24) don't have a very high opinion of Exxon.
 (25) Q That's coming -

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- (1) A I am in favor for the Native corporations, the Native
 (2) people.
 (3) MR. DIAMOND: Could I have that read back, Your Honor,
 (4) I didn't hear.
 (5) THE COURT: Would you say it again, please, ma'am?
 (6) THE WITNESS: I said I wouldn't be fair.
 (7) THE COURT: And the reason?
 (8) THE WITNESS: The reason is that I have already made
 (9) up my mind that, well, Exxon is guilty.
 (10) BY MR. FORTIER:
 (11) Q Okay. Now, Judge Shortell - well, first of all, what
 (12) happens in a trial is you hear evidence from both sides, Ms.
 (13) Braendel. You hear evidence from the plaintiffs, Mr. Stoll's
 (14) clients and my clients, then you hear evidence from - from the
 (15) other -
 (16) A I understand that, sir.
 (17) Q Okay. From Mr. Diamond's clients, and then the Judge
 (18) reads
 (19) you jury instructions, Judge Shortell will read you jury
 (20) instructions, and those jury instructions will tell you how to
 (21) apply the law. You understand all that?
 (22) A Yes, I do.
 (23) Q Now, if Judge Shortell tells you that you're to set aside
 (24) all your biases and you're to follow the laws as he instructs
 (25) you and to be fair to both sides -
 (26) A I will still find it -

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- (1) Q - do you think you could -
- (2) A I still would, yeah.
- (3) THE COURT: You still would, what, ma'am?
- (4) THE WITNESS: I mean, it would take a very strong
- (5) argument to persuade me to believe otherwise. So I mean I
- (6) would give it a fair try, but -
- (7) THE COURT: Do you think you could set your biases
- (8) aside?
- (9) THE WITNESS: I could, yeah.
- (10) THE COURT: You do believe you could set them aside?
- (11) THE WITNESS: I think I could, yes.
- (12) BY MR. FORTIER:
- (13) Q You believe you can set aside -
- (14) A I believe so, yes.
- (15) Q And you believe you could be fair to both sides in the
- (16) case?
- (17) A Yes. I mean, I would try to.
- (18) Q And Ms. Braendel, do you believe that you can follow the
- (19) law as Judge Shortell instructs you to?
- (20) A Yes.
- (21) Q Well, I notice that one of your areas of interest is
- (22) anthropology.
- (23) A Yes.
- (24) Q Can you tell me something about - did you take some
- (25) courses?

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- (1) A I studied one course at University of Alaska Fairbanks. It
- (2) was a requirement for a degree I was working on. I enjoyed it
- (3) very much, yes.
- (4) Q Did you go to the University of Alaska in Fairbanks for a
- (5) while?
- (6) A Yes, yes.
- (7) Q For how long?
- (8) A I was only there for one year.
- (9) Q And did you stay in the dorm up there?
- (10) A Yes.
- (11) Q And I noticed also that you worked for Gray Line of
- (12) Alaska?
- (13) A Yes.
- (14) Q Are you presently unemployed?
- (15) A I am unemployed at the moment.
- (16) Q One of the questions that you answered, Ms. Braendel, was
- (17) question Number 84. Now, that question, when we put it in
- (18) there, things have changed a little bit. It says three months,
- (19) and we're really - we really only anticipate a trial of two
- (20) months at the very most.
- (21) A Yes, I do. I answered that wrong - I mean not wrong, but
- (22) I answered yes the first time, and I answered no at the last
- (23) page.
- (24) Q Okay, I think I follow you.
- (25) A Yeah.

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- (1) Q You say -
- (2) A I meant to say no. I mean, I meant to say yes, I do have a
- (3) problem, because I - I am looking for work. And I think I
- (4) explained that on the last page.
- (5) Q Okay. Well, really, Ms. Braendel, my question goes more
- (6) like this, the trial is only going to be for two months.
- (7) A Two months.
- (8) Q Does that make a difference to you?
- (9) A Yes. Because I am looking for work.
- (10) Q Do you understand it only goes from 8:30 in the morning to
- (11) 1:30 in the afternoon?
- (12) A I didn't understand that, no, I mean, not till now.
- (13) Q Okay, I'm going to represent to you that that's how long it
- (14) will be every day is from 8:30 to 1:30, does that make a
- (15) difference for you?
- (16) A Well, that depends what kind of job I'm going to get. If I
- (17) get a morning job, you know, from eight to five, it might be a
- (18) problem for me, but if I could get one in the afternoon to the
- (19) evening, then I might not.
- (20) Q But Ms. Braendel, right now what you want to do is be able
- (21) to look for a job; right?
- (22) A Right, yes, that is my -
- (23) Q So knowing that you get out at 1:30 in the afternoon, that
- (24) would give you the afternoon still to look for a job, wouldn't
- (25) it?

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- (1) A Yes, yes.
- (2) Q And did you like working for Gray Line?
- (3) A Yes, I did.
- (4) Q That has tour boats going to Prince William Sound, doesn't
- (5) it?
- (6) A Yes.
- (7) Q Did you ever get to go on any of them?
- (8) A Yes, I did. I took that tour, the one that went to the
- (9) Valdez, Prince William Sound.
- (10) Q Where in Prince William Sound?
- (11) A We didn't go where the damage was. We skirt around it,
- (12) several miles, so I didn't get to see any of the damages.
- (13) Q And how long ago was that, Ms. Braendel?
- (14) A That was - I worked there for two years, so 1991 - oh,
- (15) jeez, to 1993, I believe, two seasons.
- (16) Q And when did you take the trip in Prince William Sound?
- (17) A Summer of 1992.
- (18) THE COURT: Counsel, you're at the end of your time.
- (19) MR. FORTIER: I beg your pardon?
- (20) THE COURT: You're at the end of your time.
- (21) MR. FORTIER: Okay.
- (22) BY MR. FORTIER:
- (23) Q One final question, Ms. Braendel. You indicated that you
- (24) do not think everything is back to normal as one of the answers
- (25) to the question. Do you think you can be fair, listen to all

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- (1) the evidence and decide that question solely on the basis of
 (2) the evidence?
 (3) A Yes.
 (4) MR. FORTIER: Thank you. Thank you very much, Ms.
 (5) Braendel, pass for cause.
 (6) VOIR DIRE EXAMINATION OF ELLA BRAENDEL
 (7) BY MR. DIAMOND:
 (8) Q Good morning, Ms. Braendel. My name's Chuck Diamond,
 I'm
 (9) one of the lawyers representing Exxon in this case.
 (10) You answered one of the questions that we asked you on the
 (11) questionnaire about who you viewed favorably and who you
 viewed
 (12) unfavorably and who you viewed somewhat unfavorably. With
 (13) respect to Exxon you said you viewed Exxon somewhat
 (14) unfavorably. Can you tell us why that is?
 (15) A I think my feeling - when it first happened, I felt that
 (16) they were very unfair because they could have done something
 (17) about it, about Joe Hazelwood's drinking problems and they
 did
 (18) not, and so, you know, it showed me lack of character in their
 (19) part.
 (20) Q Any other reasons why you view Exxon unfavorably?
 (21) A No, I don't, except for what happened, 1989.
 (22) Q You said you - you've already made up your mind that Exxon
 (23) is guilty?
 (24) A Yes.
 (25) Q In what way have you made up your mind?

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- (1) MR. FORTIER: Objection, Your Honor, I think that - I
 (2) don't think the record will reflect that.
 (3) THE COURT: That's exactly what she said, counsel.
 (4) That's exactly what she said. The objection's overruled.
 (5) THE WITNESS: Do I answer that?
 (6) THE COURT: Go ahead.
 (7) BY MR. DIAMOND:
 (8) Q We recall you saying you've already made up your mind that
 (9) Exxon is guilty.
 (10) A Yes.
 (11) Q And I really just wanted you to explain for us what you
 (12) meant by that?
 (13) A I just thought that they should have done something about
 (14) the problem in the beginning when they first hear about the
 (15) drinking problem. They could have prevent a lot of damages if
 (16) they just cared. You know.
 (17) Q You have a sense that Exxon just didn't care?
 (18) A I don't think they did, no.
 (19) Q We're going to be talking during the course of this trial
 (20) about what the Native corporations ought to get paid, what the
 (21) municipalities ought to get paid. Do you suspect that your
 (22) feelings that Exxon doesn't care and they didn't do what they
 (23) should have done to stop this -
 (24) A Yes.
 (25) Q - might influence you in reaching a judgment about how

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- (1) much the plaintiffs ought to get paid?
 (2) A Can you repeat the last part of question, please?
 (3) Q Do you think your feelings about Exxon will influence you
 (4) in any way in determining how much the plaintiffs ought to get
 (5) paid?
 (6) A Are you asking - I guess so.
 (7) Q You said in response to one of Mr. Fortier's questions that
 (8) you thought you could set biases aside, and then you stopped
 (9) and you went back and you said, well, I'll try to. Do you have
 (10) a little -
 (11) A I'm not sure.
 (12) Q You're not sure; are you?
 (13) A No, I'm not. I mean -
 (14) Q You think at least at a subconscious level that may be
 (15) going around and might affect your judgment?
 (16) A Right. I mean I would do my best, after hearing both
 (17) arguments, I - I would try my best.
 (18) Q You said in response to question number 51 that you don't
 (19) think everything's back to normal?
 (20) A No.
 (21) Q In what way do you think things are not back to normal?
 (22) A Well, I think it hurt many people like fishermen, people
 (23) who live around the area and animals, and I don't think - you
 (24) know, maybe the numbers of animals are increasing, but my
 main
 (25) concern is more like their health, you know, how good - I

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- (1) don't care about the quantity of fish, I want the quality of
 (2) the fish, is it back to normal in that sense.
 (3) Q You think the animal population, the fish population are
 (4) still suffering from the spill?
 (5) A Yes.
 (6) Q What's that based on?
 (7) A What it's based on?
 (8) Q Yeah. Is it things you've read or television programs
 (9) or -
 (10) A Yes.
 (11) Q Anything particular stick in your mind as being a source of
 (12) that belief?
 (13) A I mean, it would take a long time to get the population
 (14) back in order. I don't think it would happen overnight. I
 (15) don't think five years is long enough, enough to get all those
 (16) animals that were lost to back in health again.
 (17) Q You feel pretty strongly about that?
 (18) A Yes, I do.
 (19) Q There may be some witnesses who testify in this case and
 (20) talk about that issue and testify that in their opinion, at
 (21) least in major portions of Prince William Sound, everything is
 (22) back to normal and the animal population is back to normal.
 (23) Would you have some difficulty believing that?
 (24) A If they have good photographs to show. I mean, if I have
 (25) comparison to before and after photographs, maybe that might

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- (1) be, you know, persuasive.
 (2) Q But it would take pictures to convince you?
 (3) A Well, I have to see it, yes.
 (4) Q Do you want to serve on this jury?
 (5) A Not really.
 (6) Q Why?
 (7) A I think two months is too long for me to tie - tie down to
 (8) this case, and I personally am not too interested in it. I'd
 (9) rather be doing something else with my time for the next two
 (10) months.
 (11) Q If - if we're ogreous here and keep you on the jury panel,
 (12) are you going to still try to find work?
 (13) A Yes.
 (14) Q Do you have any concern that you won't be able to find a
 (15) job because you won't be able to start until jury service is
 (16) over?
 (17) A If I serve on this case, I would still want to work in
 (18) evenings, find some kind of part-time job, because I have to
 (19) survive.
 (20) MR. DIAMOND: No further questions, Your Honor. We
 (21) would like to make a motion.
 (22) THE COURT: I'm going to send you out to the jury room
 (23) and I'll bring you right back in.
 (24) A Thank you.
 (25) (Ella Braendel leaves)

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- (1) MR. DIAMOND: Your Honor, we would move to strike Ms.
 (2) Braendel for cause on the grounds that she's biased and has
 (3) formed opinions in the case already. I don't take as good of
 (4) notes when I'm talking as to when I'm not talking, so I can't
 (5) read them back, but I have a strong recollection that in
 (6) response to my questioning, she - she conceded that she has
 (7) strong doubts in her mind whether she can be fair to both sides
 (8) in view of the passion she feels on the subject, that at least
 (9) as - at a subconscious level, probably more than that, she
 (10) thinks it's going to influence her. When Mr. Fortier was
 (11) questioning her she waffled somewhat, saying first she could
 (12) set her biases aside and then said only that she would try.
 (13) She strikes me a little bit like the juror who you excused,
 (14) for cause yesterday, the Alyeska employee, who fessed up that
 (15) he did have some views and he would try very hard to put them
 (16) aside, but at a subconscious level he really couldn't give us
 (17) any assurances. This is a bit of a stronger case, because in
 (18) her expressed answers she was quite candid in saying she has
 (19) she is troubled about whether she can be fair.
 (20) THE COURT: Thank you, counsel. Anything else?
 (21) MR. DIAMOND: No.
 (22) MR. FORTIER: Your Honor, first of all, I think that
 (23) Ms. Braendel was extremely honest in her responses, said she
 (24) felt that she could put aside and follow the directions of the
 (25) Court. That she would try to do that. All that's required is

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- (1) a good faith statement that she will - she will be fair,
 (2) impartial and follow instructions, and I think that that's what
 (3) she said. She said it several times to me when I asked her. I
 (4) admit I got repetitious on that, she admitted it to you that
 (5) she would.
 (6) She does think, as to liability issues, perhaps, there were
 (7) some concessions, but again, she wasn't specifically - or
 (8) whether or not she had bias wasn't specifically inquired into
 (9) with regard to the issue of damages, and that's what this case
 (10) is all about. So there was no showing that Ms. Braendel would
 (11) be other than able to apply the law and she said she would. If
 (12) she harbors some sort of subconscious, that by itself seems to
 (13) be a contradiction of what she'd be aware of. It's a
 (14) suggestion of counsel. We'd oppose the application.
 (15) THE COURT: Thank you, counsel. I don't need any
 (16) further argument, counsel. The juror has said a number of
 (17) contradictory things. The first thing she said was she didn't
 (18) think she could be fair. She said she doesn't think much of
 (19) Exxon, she's made up her mind Exxon is guilty. She would find
 (20) it hard to set aside her bias, then she said, "Yes, I could be
 (21) fair, I would try to be fair," and then she said, "I'm not sure
 (22) I could be fair." Then she said in response to Mr. Diamond's
 (23) question, "I guess my feelings about Exxon would affect me."
 (24) I suppose this - this is one of those things where you
 (25) could - you could call it a - you could decide which

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- (1) statement she made was true, but I think the bulk of the
 (2) statements she's made are that she would have difficulty being
 (3) impartial in this case. And that's a fair conclusion from what
 (4) she said and, frankly, I think that predominantly, she's told
 (5) us she can't be fair, so the challenge for cause is a good one
 (6) and motion is granted. She'll be excused. Would you bring her
 (7) back in here?
 (8) (Ella Braendel enters)
 (9) THE COURT: Ms. Braendel, I'm going to excuse you from
 (10) service on this case. Now, that doesn't mean that you're
 (11) excused from jury duty, though, because there are other juries
 (12) going on in this building, so what you need to do is stay in
 (13) contact with the jury clerk. They've given you instructions to
 (14) call in; haven't they?
 (15) A Yes, they did.
 (16) THE COURT: Keep calling in. This doesn't excuse you
 (17) from jury service all together, but it does excuse you from
 (18) service in this case.
 (19) A Thank you.
 (20) MR. DIAMOND: Did you want to give her an admonition
 (21) with respect to -
 (22) THE COURT: That's right. I'm sorry, I hadn't done
 (23) that with either one of the jurors this morning. It's
 (24) important that the other jurors not hear anything that went on
 (25) in this room or be affected by it, so don't talk to anybody as

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- (1) you leave about the reasons why you were excused or what was
 (2) said in here; okay? All right?
 (3) THE WITNESS: Okay.
 (4) THE COURT: Thanks very much.
 (5) (Ella Braendel leaves)
 (6) (Off record discussion between Court and Clerk)
 (7) THE COURT: Counsel, I think Mr. Kennedy, the next
 (8) juror, may not have gotten in the rotation and isn't here. Can
 (9) I skip over and go to the next juror?
 (10) MR. CLOUGH: Mr. Clough has no objections.
 (11) THE COURT: I always do that; don't I?
 (12) MR. STOLL: We go to number 13, then?
 (13) THE COURT: I believe so.
 (14) (Roland Blumer enters).
 (15) THE COURT: Could you give your name for the record,
 (16) please?
 (17) A Roland Blumer.
 (18) THE COURT: Blumer is the way you pronounce your name?
 (19) A Yes.
 (20) THE COURT: Mr. Blumer, you're under oath now, I gave
 (21) it to you when we first started this process. Those answers
 (22) you gave on the questionnaire were given under oath, and also
 (23) the questions you'll answer now are under oath. You
 understand
 (24) that; don't you?
 (25) A Yes.

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- (1) THE COURT: Mr. Stoll.
 (2) VOIR DIRE EXAMINATION OF ROLAND BLUMER
 (3) BY MR. STOLL:
 (4) Q Mr. Blumer, my name's Bob Stoll. I introduced myself on
 (5) Monday to you and the others. And I represent the
 (6) municipalities that are suing Exxon in this case.
 (7) Is there anything about the nature of the case that bothers
 (8) you about sitting as a potential juror?
 (9) A Not really, no.
 (10) Q Now, you mentioned that you've got a hockey game in
 Montana
 (11) on August 25th?
 (12) A Yeah, that's when I plan to leave town.
 (13) Q Okay. And - are you - is it scheduled for the 25th or is
 (14) that when you're leaving or -
 (15) A That's when I - that's when I leave. We start September
 (16) 1st.
 (17) Q I see. And are you on a team that is playing in Montana or
 (18) is that a school or -
 (19) A Yes, I'm just playing for a team in Montana.
 (20) Q Pardon me?
 (21) A I'm playing for a team in Montana that recruits players
 (22) from all over the nation.
 (23) Q I see, and so you start work, essentially, on September
 (24) 1st?
 (25) A Yes.

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- (1) Q I see, and would it be a hardship for you to - if you were
 (2) a little - couldn't leave on the 25th of August?
 (3) A Yes, it would.
 (4) Q How would that - you couldn't leave a few days later, if
 (5) that was -
 (6) A If it was just a few days, but you know, if the trial went
 (7) on to October, that would be a problem, because I'm basically
 (8) playing trying to get a scholarship for college.
 (9) Q I understand, but if it went through the month of August,
 (10) though, that would be a little difficult for you, but it
 (11) wouldn't be an extreme hardship?
 (12) A No.
 (13) Q What do you like about Alaska?
 (14) A Probably the beauty of the nature.
 (15) Q Do you go in the out of doors quite a bit?
 (16) A Not too much, but I like to get out and do hiking.
 (17) Q And do you hike mainly around Anchorage or do you go -
 (18) A Yes, mainly Anchorage.
 (19) Q Whereabouts?
 (20) A Flat Top, McHugh Creek, places along there.
 (21) Q Have you spent any time in Montana or any other places in
 (22) the Lower 48?
 (23) A I was in Colorado Springs this past winter playing hockey.
 (24) Our team's moving to Montana, so -
 (25) Q Oh, I see. Now, in your questionnaire, you mention that

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- (1) you - and you've got a copy of it there before you. In
 (2) question 47, you said that you had somewhat unfavorable
 (3) feelings towards Native corporations, Natives and Exxon, and
 (4) I'm just curious to know what - why you felt that way. First
 (5) of all, let's talk about Native corporations.
 (6) A See, on question 47, I, you know, really didn't know what
 (7) to mark, 'cause I put down somewhat unfavorable, but I'm
 (8) basically mutual, because -
 (9) Q You have just no opinion, really?
 (10) A Yeah, so I thought somewhat unfavorable would be more
 (11) closely to that.
 (12) Q And the same thing is true with Natives, do you have a -
 (13) do you have sort of an unfavorably feeling towards Natives, or
 (14) do you feel sort of neutral on -
 (15) A Just neutral.
 (16) Q What about Exxon?
 (17) A Exxon? Neutral.
 (18) Q Now with municipalities you said somewhat favorable. Do
 (19) you know any reason why you differentiated municipalities from
 (20) other -
 (21) A I just - I just think they - they're doing a good job
 (22) around the City of Anchorage.
 (23) Q You're not making - Anchorage in this case is not actually
 (24) a plaintiff in this case.
 (25) A Yes.

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- (1) Q Your feelings towards Anchorage aren't - you're just going
 (2) to evaluate the case based upon the evidence that's presented
 (3) here; aren't you?
 (4) A Yes.
 (5) Q Have you made any predeterminations as - in your own mind
 (6) as to whether people are - have been damaged or not
 (7) damaged or
 (8) they're asking for too much or too little or anything like
 (9) that?
 (10) A No. I don't think anybody's really been damaged, you
 (11) know. It's happened - it happened five years ago. I just
 (12) think they should have recovered by now.
 (13) Q You think the environment should have recovered by now?
 (14) A Yeah, or should be almost fully recovered here soon.
 (15) Q And what do you base that on? Stuff you've read?
 (16) A No, I just base that on the fact that it happened five
 (17) years ago.
 (18) Q And you figure that the environment's going to take care of
 (19) itself, more or less?
 (20) A Yeah.
 (21) Q And if there was evidence that the - you couldn't - may
 (22) not be able to see the oil but it had seeped down into the sand
 (23) and was - had smothered organisms and caused other
 (24) problems,
 (25) and there was a conflict as to whether or not that had
 (26) happened, would it be - would it be a little more difficult
 (27) for somebody to claim damages now, in your mind, because of

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- (1) your - because of your feelings that you already have?
 (2) A It would be a little bit tougher to get -
 (3) Q To prove that case?
 (4) A Yeah.
 (5) Q And so you'd put a little more burden on that - if one
 (6) party has to prove that or was trying to prove that, you'd put
 (7) a little more burden on that party than you otherwise would?
 (8) A Yes.
 (9) Q And you - I notice that in one of your questions, you -
 (10) at 51 triple X, which is on the bottom of page 12 there, you
 (11) said, what, if any, opinion do you have about the
 (12) municipalities or Native corporations suing Exxon for damages
 (13) in connection with the Exxon Valdez oil spill; you wrote they
 (14) just want compensation. What did you mean by that?
 (15) A Well, like - like I said, you know, it's been five years,
 (16) they should have, you know, recovered by now. So I don't
 (17) think - I don't think they lost too much.
 (18) Q You've pretty well - that's pretty well decided in your
 (19) own mind?
 (20) A Yeah. Just based on what I know, just about like the
 (21) commercial fishing down there.
 (22) Q And the same thing would be true with the municipalities
 (23) and the Native corporations?
 (24) A Yes.
 (25) Q And so for those - those entities, for them to try to

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- (1) prove a case that they had been damaged or still were
 (2) damaged
 (3) as a result of that, that would require an extra - extra
 (4) burden, as far as you're concerned?
 (5) A I don't know if it would require an extra burden, but it
 (6) would - you know, they'd have to prove it pretty strongly.
 (7) Q All right. Now, what if the Judge told you that they only
 (8) had to prove that their case was more likely than not, in other
 (9) words, just a little more than 50 percent that it was more
 (10) likely than not that they were damaged, would you be willing to
 (11) live with that or would you say I want - I want a little more
 (12) than the 50 percent, I want - you know, I want 70 percent or,
 (13) you know, some number bigger than that because I have my
 (14) own
 (15) ideas here about -
 (16) A No, more than 50 percent would be good.
 (17) Q So just if it was 50.1 percent, that would be okay, as far
 (18) as you're concerned? If the Judge told you that's all that was
 (19) required, would that be good enough for you?
 (20) A Yes.
 (21) Q So you'd follow the Judge in this?
 (22) A Yes.
 (23) Q And do you think that - do you think that the
 (24) municipalities or the Native corporations are asking for things
 (25) that they - as you sit here right now, just speaking honestly
 (26) and fairly as to how you feel, do you think they're asking for
 (27) something they don't deserve?

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- (1) A No, they - they deserve what they, you know, what they've
 (2) lost, but if they're just trying to get it for a little extra
 (3) money for personal, you know, use or whatever, they don't
 (4) deserve that. But they deserve what they lost for their
 (5) businesses or their homes or land they owned down there.
 (6) Q If they - if they had land down there that was damaged as
 (7) a result of the oil spill and lost value, would you hold it
 (8) against them if they were suing for the decline in that value?
 (9) A No.
 (10) Q You think that's reasonable?
 (11) A Yes.
 (12) Q Even if the value may be higher today than it was then, but
 (13) there was this decline of the value during the period of time
 (14) in between?
 (15) A Yeah, they should get paid for what happened back then.
 (16) Q You don't have any problem - you don't have any problem
 (17) with them coming to court under those circumstances?
 (18) A No.
 (19) Q And if there were - in the municipalities' case, if there
 (20) were bills that the municipalities paid that were oil spill
 (21) that they're seeking recovery for here, do you have any problem
 (22) with them coming to court and trying to seek those kinds of
 (23) damages?
 (24) A No.
 (25) Q Just as long as they're not asking for something extra,

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- (1) above and beyond that?
 (2) A Yes. As long as they're not, you know, just trying to get
 (3) a real excessive amount.
 (4) Q Not trying to get a windfall?
 (5) A Yes.
 (6) Q All right. Now, I think the evidence is going to be that
 (7) the damages that the Native corporations are seeking are
 (8) something in excess of a hundred million dollars. It's a lot
 (9) of money. Most of those damages are land damages. They
 own a
 (10) lot of lands, as you may know.
 (11) Does the size of that, does that shock you? Does it make
 (12) you feel like they're asking for too much, just by - just that
 (13) number?
 (14) A I don't know, because, you know, I don't know what the -
 (15) how much. I don't know exactly how much land was damaged
 or
 (16) the value of the property that was damaged.
 (17) Q If it was hundreds of millions of dollars of land, there
 (18) might be something to that, in other words, as far as you're
 (19) concerned?
 (20) A Yes.
 (21) Q You're just going to keep an open mind?
 (22) A Yes.
 (23) Q And you'll do that for both - both sides?
 (24) A Yes.
 (25) THE COURT: Counsel, you're at the end of your time.

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- (1) MR. STOLL: Thank you, Your Honor.
 (2) VOIR DIRE EXAMINATION OF ROLAND BLUMER
 (3) BY MR. DIAMOND:
 (4) Q Good morning, Mr. Blumer, my name is Chuck Diamond. I
 (5) introduced myself on Monday. I'm one of the lawyers
 (6) representing Exxon.
 (7) You have plans or hopes to go on to college?
 (8) A Yes.
 (9) Q What are you interested in studying?
 (10) A I'm not quite sure, like law, police officer or something.
 (11) Q We hope we won't disabuse you of a legal career if you
 (12) serve on this jury. You said in response to one of the
 (13) questions we asked you that you studied some geology. Can
 you
 (14) tell us about that?
 (15) A Yeah, it was my sophomore year of high school and we
 (16) studied geology and basically just volcanos and - and rocks
 (17) and none - very few of the rocks that we studied were found in
 (18) Alaska.
 (19) Q And you also said you studied or had - that you had some
 (20) specialized knowledge in business, finance and accounting?
 (21) A No, those are just some classes I took in high school.
 (22) Q One of the reasons lawyers are interested in that is just
 (23) to see what kind of knowledge that people bring into the -
 (24) into the courtroom, but as I think Mr. Stoll suggested, what
 (25) both sides are interested in is knowing whether you can put

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- (1) aside things that you think may be true when you come in here
 (2) and fairly Judge this case based solely on the evidence that
 (3) you hear and whatever instructions the Judge gives you. Do
 you
 (4) think you could do that?
 (5) A Yes.
 (6) Q Do you hold any commercial licenses, business licenses?
 (7) A No.
 (8) Q In response to one of the questions, I think it was 51, on
 (9) page 12, 51-B, you were asked whether you thought everything
 (10) was back to normal, and you checked the no box.
 (11) A Well, you know, like I said before, you know, everything,
 (12) it's getting back to normal. I don't know if it's back to
 (13) normal now or, you know, it might still take a couple more
 (14) years, might take ten years.
 (15) Q Okay. That may well be one of the issues in this case. Do
 (16) you think you can, if you're called upon to decide that issue,
 (17) do so based upon what the witnesses say and what the Judge
 (18) instructs you?
 (19) A (Indicating).
 (20) MR. DIAMOND: No further questions, Your Honor, and we
 (21) pass for cause.
 (22) THE COURT: Thank you, Mr. Blumer. Here's the
 (23) situation now. You're still a potential jury, juror, jury
 (24) member, but there are lots of things to go before we get the
 (25) final jury in this case. Since you are a potential jury member

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- (1) and there are going to be lots of other jurors questioned, I
 (2) see no reason to waste your time sitting in that room or
 (3) downstairs, so what I'm going to do now is I'm going to excuse
 (4) you for - for now. And we'll call you back when it comes time
 (5) to refine the selection process, all right.
 (6) While you're gone and when you leave, it's important that
 (7) you understand that - that the reason you're all being
 (8) questioned individually is so that the other jury panel members
 (9) won't somehow get some ideas about what's going on in here,
 (10) what questions are being asked, so it's important that you know
 (11) that you not talk to your fellow jurors, jury members about
 (12) anything that was asked in here or any speculation you might
 (13) have about the reasons why things were asked; do you
 understand
 (14) that?
 (15) A Yes.
 (16) THE COURT: So don't talk to anybody about this case
 (17) and we'll bring you back in here, we'll be in contact with you
 (18) to bring you back in here when it's appropriate; all right?
 (19) A Okay.
 (20) THE COURT: Thanks very much.
 (21) A Thank you.
 (22) (Roland Blumer leaves).
 (23) MR. STOLL: Excuse me, Your Honor, going back then to
 (24) Mr. Kennedy?
 (25) THE COURT: Yes, the next one is Mr. Kennedy.

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- (1) MR. DIAMOND: Your Honor, one procedural matter on the
 (2) theory that what's sauce for the goose should be sauce for the
 (3) gander, I think Mr. Fortier made some misstatements about -
 (4) THE COURT: Hold on. Tell her don't bring the juror
 (5) in.
 (6) MR. DIAMOND: We can do this at -
 (7) THE COURT: No, I want to do it now. All right,
 (8) there's no juror present, go ahead.
 (9) MR. DIAMOND: Mr. Petumenos objected to my
 (10) characterization of Exxon's position in the case, I simply
 (11) wanted to go on record saying that Mr. Fortier's statement to a
 (12) prospective juror that the Court has found Exxon guilty of
 (13) negligence or found Exxon negligent is not the case. I think
 (14) the only finding you've ever made on ruling for summary
 (15) judgment was applicability of 822, the strict liability
 (16) statute, and just as Mr. Petumenos would prefer I be more
 (17) neutral in my presentation, I will accommodate him, I
 (18) respectfully suggest Mr. Fortier be more neutral in the -
 (19) THE COURT: Any response to that?
 (20) MR. STOLL: Yes, Your Honor. He read actually from 16
 (21) and he didn't say anything about negligence.
 (22) THE COURT: I don't remember hearing anything about
 (23) negligence.
 (24) MR. STOLL: I personally - my preference, which I
 (25) suggested to counsel yesterday, was that nobody say anything

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- (1) about that, that Exxon was liable and it wasn't an issue. Now,
 (2) we can do it that way. They wanted to get in this business
 (3) about whether we admit liability. They admit liability after
 (4) judgment was entered and so, you know, we - I don't care, but
 (5) I'm not - we're not going to sit here and listen to them tell
 (6) these jurors that they're accepting responsibility when they
 (7) didn't accept responsibility when we had a judgment against
 (8) them.
 (9) THE COURT: Now, tell me, both of you, you both want
 (10) this process to - well, you want the questions from the other
 (11) side to be neutral; don't you?
 (12) MR. STOLL: Exactly.
 (13) THE COURT: Nod your head, yes, and so do I, so no
 (14) more maneuvering. The issue in this case is damages. That's
 (15) what you can tell them. That's all you should tell them. If
 (16) you start making self-serving statements, argumentative
 (17) statements, I'm going to reprimand you in front of the jury,
 (18) okay, so don't do it.
 (19) (Roy Kennedy enters)
 (20) THE COURT: Mr. Kennedy, that's perfect, take the
 (21) microphone and just hold it. You're going to have some brief
 (22) questions given to you from the parties in this case. Remember
 (23) that your answers are under oath because I put you under oath
 (24) the first day of jury selection, and just like the jury
 (25) questionnaire answers, these are all answers given under oath.

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- (1) A Okay.
 (2) THE COURT: Mr. Stoll.
 (3) VOIR DIRE EXAMINATION OF ROY KENNEDY
 (4) BY MR. STOLL:
 (5) Q Mr. Kennedy, good morning.
 (6) A Good morning.
 (7) Q My name's Bob Stoll, I represent a number of municipalities
 (8) that are suing Exxon in this litigation.
 (9) Have you ever served as a juror before?
 (10) A No.
 (11) Q Have you ever watched any TV shows, so-called lawyer
 (12) shows
 (13) where they have -
 (14) A I try not to.
 (15) Q Good for you. Well, you understand that evidence is
 (16) brought into the courtroom and that people testify and so on on
 (17) the witness stand, and they put on various exhibits and so on,
 (18) that's what the juries consider?
 (19) A Yeah.
 (20) Q Now, the Judge is going to instruct you at the end of the
 (21) case that the only things that you can consider are the
 (22) evidence, the stuff that is in evidence, not some ideas that
 (23) you or I may have about something else. Would you be able to
 (24) follow those instructions?
 (25) A Sure.
 (26) Q And do you think you can be fair to both sides in this

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- (1) case?
 (2) A I think so.
 (3) Q Okay. And what do you like about Alaska?
 (4) A Well, it's not as crowded as most other places, little more
 (5) room to move around in.
 (6) Q I notice from your questionnaire you - you enjoy the
 (7) outdoors quite a bit?
 (8) A Yeah.
 (9) Q And you enjoy the fishing or hunting or both?
 (10) A Both.
 (11) Q And you've been down to - I noticed in the questionnaire
 (12) you've been down to Prince William Sound?
 (13) A Yeah.
 (14) Q And Kodiak and some other areas?
 (15) A Oh, yeah.
 (16) Q And you're going to have - in this trial there's going to
 (17) be testimony as to what damages have occurred in those areas,
 (18) if any, and there'll be a conflict about how serious the spill
 (19) was in those areas. You'll just consider the evidence as you
 (20) hear it in here in the courtroom; is that right?
 (21) A Right, I would.
 (22) Q Well, do you think you - you'll be able to do that, to
 (23) limit your considerations to what's in the courtroom?
 (24) A I don't know. I saw some of it, so that's kind of -
 (25) Q Back in 1989?

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- (1) A Yeah.
- (2) Q And have you been there recently?
- (3) A Couple years ago. About a year and a half ago.
- (4) Q And can you - I don't think anybody disputes what happened
- (5) back in 1989, may not dispute that. Do you think you can
- (6) consider in terms of what long term effects, if any, there is
- (7) going to be from the spill that you would just consider the
- (8) evidence that's presented?
- (9) A Yeah.
- (10) Q Here in the courtroom?
- (11) A Oh, yeah.
- (12) Q And you think you can be fair under those circumstances?
- (13) A Oh, yeah.
- (14) Q You haven't prejudged this case, in other words?
- (15) A No.
- (16) Q When did you leave - I'm going to change subjects here,
- (17) when did you leave Springfield, Oregon?
- (18) A 1958.
- (19) Q And then where did you go from there?
- (20) A I went in the service.
- (21) Q And then when did you - you came up here about 14 years
- (22) ago?
- (23) A 1980, yeah.
- (24) Q Have you conducted any kind of - now in this case, you
- (25) understand, you checked in one of the boxes that you followed

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- (1) the federal court lawsuit against Exxon?
- (2) A Just -
- (3) Q Heard about it?
- (4) A Heard about it in the news, that's it.
- (5) Q And you have written in the box here that Exxon was found
- (6) at fault. You understand that the issue of fault is not an
- (7) issue in this case, it's just an issue of what the damages are?
- (8) A Yeah.
- (9) Q And you put down in another box that you saw that there
- (10) were no positive effects of the oil spill?
- (11) A Yeah.
- (12) Q And that's - is that going to affect you and make you
- (13) biased in terms of evaluating whether the plaintiffs or
- (14) defendants should win in this case, or are you going to just
- (15) consider the evidence as you see it?
- (16) A Consider the evidence.
- (17) MR. STOLL: Thank you very much.
- (18) MR. CLOUGH: Too many papers here, sorry. With all
- (19) the jurors come in, there's lots of notes and I apologize for
- (20) having to refer to mine.
- (21) VOIR DIRE EXAMINATION OF ROY KENNEDY
- (22) BY MR. CLOUGH:
- (23) Q I'm John Clough. I'm from down in Juneau and I, along with
- (24) Chuck Diamond, who I think did the introductions OF the
- (25) courtroom when we were all in the auditorium the other day,

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- (1) we're going to be representing Exxon in this lawsuit.
- (2) Mr. Kennedy, I wanted to start off by asking you about a
- (3) couple things that you told Mr. Stoll. Now, you said you saw
- (4) some of the things in '89. What did you see?
- (5) A Oil.
- (6) Q Where were you?
- (7) A In Valdez. And out on Naked Island and over to
- (8) Hinchinbrook Island.
- (9) Q And what got you down there?
- (10) A Oil.
- (11) Q So -
- (12) A Well, they - I work for FAA. They had to reopen a tower
- (13) and they had to get the communications between there and -
- (14) and
- (14) Cordova, so -
- (15) Q That was because of all the air and helicopter traffic
- (16) going on?
- (17) A Yeah.
- (18) Q And when did you actually go down there?
- (19) A The Monday after the spill.
- (20) Q So you were there right from the beginning?
- (21) A Yeah.
- (22) Q And were you in both Valdez and Cordova?
- (23) A Yes, yeah.
- (24) Q Did you get out to any of the repeater stations or those
- (25) remote communication stations out in the Sound?

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- (1) A I went to Naked Island.
- (2) Q To Naked - and when were you at Naked Island?
- (3) A Probably about two weeks, two weeks after, something like
- (4) that.
- (5) Q How did you get out there?
- (6) A Chopper.
- (7) Q Was it an FAA chopper or one of the Exxon clean up
- choppers
- (8) that took you out?
- (9) A No, it was a - it was a charter chopper. I forget who we
- (10) chartered out on.
- (11) Q Did you guys, in setting up this communicative system,
- (12) coordinate with all of Coast Guard and Exxon that were setting
- (13) up the clean up?
- (14) A No, just - we coordinated with Coast Guard.
- (15) Q And who at the Coast Guard did you work with, if you
- (16) recall?
- (17) A Well -
- (18) Q You don't remember?
- (19) A I don't remember. I just - somebody points northeast in a
- (20) general direction and says, go do it, and that's - I don't -
- (21) wasn't involved with the logistics of it. I mean, I just -
- (22) Q Sure. So they choppered you out to Naked Island, and how
- (23) long did it take you guys to set up the station out there?
- (24) A Getting the stuff in and getting it set up, probably three
- (25) days, something like that, I imagine something like that.

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- (1) Q And they flew you back and forth every day?
 (2) A Yeah.
 (3) Q At that time, was there a lot of oil out in the areas when
 (4) you were there?
 (5) A Oh, yeah, yeah.
 (6) Q What did it look like?
 (7) A Soup.
 (8) Q What did it look like on the shore?
 (9) A A mess.
 (10) Q Did you have an opportunity to actually walk along some of
 (11) the oiled beaches yourself?
 (12) A No, I stayed clear of it.
 (13) Q How close did you get to any of the oil?
 (14) A Maybe - I don't know, hundred feet. I just didn't want to
 (15) get within breathing range of it.
 (16) Q Why was that?
 (17) A Because it - you could smell it. It was - it was bad.
 (18) Q As you're sitting here today, can you sort of mentally take
 (19) yourself back in time to be on Naked Island?
 (20) A Yeah.
 (21) Q Still pretty vivid memories for you?
 (22) A Yeah.
 (23) Q Did you go out to any other places in the Sound other than
 (24) Naked Island?
 (25) A Hinchinbrook.

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- (1) Q And was this for the same thing, to -
 (2) A Yeah.
 (3) Q To set up a station?
 (4) A Set up a relay over to Johnstone Point.
 (5) Q And what was - how many times did you have to go out
 (6) there?
 (7) A Twice. Over to Johnstone.
 (8) Q Again the same deal, they were choppering you back and
 (9) forth?
 (10) A Uh-huh.
 (11) Q On those chopper flights, were you able to - were you
 (12) sitting by a window, could you look out?
 (13) A Yeah.
 (14) Q What would you see on those flights?
 (15) A A lot of activity, a lot of ships, a lot of small boats.
 (16) Q Did you see a lot of oil on the beaches?
 (17) A Yeah.
 (18) Q And as you're sitting here today, can you just sort of go
 (19) back in time and remember what that was like yourself?
 (20) A Oh, yeah.
 (21) Q You understand we have to ask you about this?
 (22) A I know.
 (23) Q Because if anyone's going to serve as a juror, they can't
 (24) rely on their own personal knowledge of the facts, and that's
 (25) why I need to talk to you about this. Did any of the other

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- (1) people from the FAA, other than yourself, go out there to
 (2) these - to Valdez and Hinchinbrook?
 (3) A Yeah.
 (4) Q Are any of those folks people that you're still working
 (5) with today?
 (6) A Yeah.
 (7) Q Who are they?
 (8) A Pete Mallot (ph), Dell Stevens (ph). There was only three
 (9) of us down there, if I remember right.
 (10) Q And I don't - maybe tell me something about what you -
 (11) where do you work today physically, is it at the airport or -
 (12) A No, it's through - about a block this side of the - or on
 (13) West 50th Street, about a block from the airport.
 (14) Q And do Pete and - was it Dusty?
 (15) A Dell.
 (16) Q Dell, sorry. Do they both work in the same office with
 (17) you?
 (18) A It's not an office.
 (19) Q Okay.
 (20) A We - it's a - we're kind of a warehouse where they bring
 (21) the equipment in. And when they get in a job assignment, they
 (22) get the equipment, put it together and go out to an airport and
 (23) put it in.
 (24) Q And do you work with them every day?
 (25) A Practically.

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- (1) Q Those other guys?
 (2) A Well, we may be on different jobs. I mean, we don't work
 (3) on any with a set crew. I mean, we may be in Barrow one week
 (4) and Ketchikan the next week.
 (5) Q Let me rephrase it. Do you see those guys a lot?
 (6) A Oh, yeah, yeah.
 (7) Q I'm looking at your questionnaire here, Mr. Kennedy, and
 (8) one thing I wanted to ask you about was on 47, and let me
 (9) preface it. I'm in Juneau, I'm an Alaskan, I'm proud to be an
 (10) Alaskan, I'm also proud representing Exxon. And it's okay for
 (11) people to talk candidly about their feelings. It says here,
 (12) you checked somewhat unfavorable about Exxon. Tell me why.
 (13) Tell me what you feel about them.
 (14) A Well, just the publicity, I think they brought a lot of
 (15) them onto themselves.
 (16) Q And what do you mean?
 (17) A Well, the delay and it was mass confusion.
 (18) Q What was mass confusion?
 (19) A The spill. I mean, it was -
 (20) Q When you say the spill, do you mean also in the response to
 (21) the spill?
 (22) A And the response and the clean up effort, I mean -
 (23) Q These are the things that you saw yourself when you were
 (24) out there?
 (25) A Yeah, yeah.

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- (1) Q And you really believe it was just mass confusion out there?
- (2) A Yeah.
- (3) Q And that's some of the reason why you have an unfavorable view of Exxon still to this day?
- (4) A Partly, probably.
- (5) MR. CLOUGH: Your Honor, I'm trying to be very observant of your time. I'll be honest, I did not see what moment I started.
- (6) THE COURT: I was just thinking the same thing.
- (7) MR. DIAMOND: I believe 17 minutes before the hour.
- (8) THE COURT: Very good.
- (9) BY MR. CLOUGH:
- (10) Q You said you'd also been out to Kodiak since the spill?
- (11) A Yeah.
- (12) Q What got you out there, sir?
- (13) A Working at Naked Island or Woody Island, Woody Island.
- (14) Q How many times have you been to Kodiak since the spill?
- (15) A Probably three times, something like - three or four times.
- (16) Q Have you seen any evidence of the oil spill out in the Kodiak area?
- (17) A No, I haven't.
- (18) Q Have you talked to any residents of Kodiak about the oil spill?
- (19)
- (20)
- (21)
- (22)
- (23)
- (24)
- (25)

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- (1) A No.
- (2) Q You'd said in your questionnaire also, sir, that you didn't think the areas like Valdez and Kodiak and Johnstone Point were back to normal; do you recall checking that?
- (3) A Uh-huh.
- (4) Q Why do you feel that way?
- (5) A Because I was there before the spill and after the spill and there's still a lot of difference.
- (6) Q What was the most recent time you were out there?
- (7) A Where?
- (8) Q To any of the areas affected by the spill, let's say Prince William Sound?
- (9) A Probably six months ago.
- (10) Q And where were you that time?
- (11) A Cordova.
- (12) Q Have you talked to citizens in Cordova about the spill?
- (13) A Oh, yeah. You can't keep from it.
- (14) Q What did they have to tell you?
- (15) A They're bitter, broke, going broke, no fish, no shrimp, no herring.
- (16) Q Did they blame Exxon for all that?
- (17) A Oh, yeah.
- (18) Q Were they pretty - what did you think, do you think Exxon had something to do with it?
- (19) A I didn't think one way or the other, I just -

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- (1) Q Have you been out to any of the shorelines in Prince William Sound after those trips back in '89 that you referred to?
- (2) A Cordova, yeah. Yeah, I been there on the shoreline in Cordova.
- (3) Q How about other than - was Cordova oiled by the spill; do you know?
- (4) A I don't know.
- (5) Q How about other than Cordova, have you gotten back to any of the other places in Prince William Sound?
- (6) A No, no.
- (7) MR. CLOUGH: Your Honor, I think that is my ten minutes. I'm trying to observe your admonition, and I'd like to thank Mr. Kennedy and have an opportunity to be heard.
- (8) THE COURT: Do what?
- (9) MR. CLOUGH: I'd like to thank Mr. Kennedy for his time and have an opportunity to be heard after he's excused.
- (10) THE COURT: Mr. Kennedy, I'm going to excuse you for just a moment, then I'll bring you right back in.
- (11) (Roy Kennedy leaves)
- (12) MR. CLOUGH: If I may consult with plaintiffs' counsel first, we might save some time, Your Honor.
- (13) MR. CLOUGH: Your Honor, it appears we do need to argue this one.
- (14) THE COURT: All right. Go ahead.
- (15) MR. CLOUGH: The motion I'd like to make, Your Honor, is a motion to strike for cause on the basis of personal knowledge, and I'd like to cite to you the Dalkovski case, which I believe you are aware of, that the test of that is, a juror with any material knowledge of the facts on case in the trial should be excused for cause unless it is beyond question such juror can try the case and return a verdict only on the evidence presented in the courtroom.
- (16) This gentleman was out there at some of the worst times. He talks today about the smell of the oil, he didn't want to approach within more than a hundred feet of the shoreline. Looking out the window of the helicopter, these are his own personal memories of a very important time of his life, any person, about their memories of that.
- (17) My own, I was there during that period of time and I can remember what it was like. I do not think it is possible that this juror, it's beyond question he can set all that knowledge aside, what it was like for him to be on or near a beach, what it was like to see the heavily oiled beach, what it was like to smell the oil. Additionally, he talked about very candidly his opinion, it was mass confusion. Believe it or not, Exxon doesn't believe the spill response was mass confusion. It may appear to Mr. Kennedy as one person, albeit his small role at that period of time, that there are lots of that, but in a firmly held belief based upon his personal knowledge of facts

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- (1) it was mass confusion in terms of the spill response. I do not
 (2) believe the standard has been met, beyond question he can set
 (3) aside his personal knowledge and for that reason we'd like to
 (4) move to strike him for cause.
- (5) MR. STOLL: Your Honor, Mr. Kennedy was forthright in
 (6) his experience, his experience has nothing to do with the issue
 (7) in this case. There's no question that there was a lot of
 (8) people out there, that there was a lot of oil out there, 11
 (9) million gallons. They - there's no issue about that. There's
 (10) no issue that the North Slope crude stinks, smells, and I don't
 (11) think that's an issue. There's going to be photographs not
 (12) only that we have and videos that we have and they have, they
 (13) have as well of clean-up crews all over the place. I mean,
 (14) that's - there's not any question about that. This - this
 (15) juror said that he was going to consider only the evidence that
 (16) was presented in court.
- (17) Counsel has not pointed to one thing that this witness said
 (18) that he's going to consider as evidence, that is on an issue
 (19) that is not in the courtroom, that is contested. There's not
 (20) one thing. This isn't a situation where he said, well, I did
 (21) some experiments and I found that there's persistence and
 Exxon
 (22) denies that there's persistence and we contend that there is
 (23) persistence. He didn't do - there's no record of anything
 (24) close to that.
- (25) He said he was there the few days after the spill and he

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- (1) smelled all this. That's not an issue in the case.
- (2) MR. CLOUGH: One very brief point in response, if I
 (3) might, which I should have pointed out originally and I
 (4) apologize for not. Naked Island is going to be a particular
 (5) point of contention in this case. The plaintiffs have
 (6) submitted maps which their expert Dr. Bush or Mr. Bush will
 (7) testify as to the degree of oiling on Naked Island. We've
 (8) submitted maps which are very different from that regarding the
 (9) degree of oiling in Naked Island. It's one of the most blatant
 (10) examples of a difference between their maps and our maps and
 (11) shoreline oiling, how many miles of shoreline were oiled and to
 (12) what degree was it oiled. That is going to be a major issue in
 (13) this case and Naked Island is actually the place where that
 (14) dispute began.
- (15) MR. STOLL: Well, Your Honor, if they want to - if
 (16) there's a serious issue about this, we can have the juror come
 (17) back in here, but they don't dispute that Naked Island was
 (18) oiled. The question is to what extent Naked Island was oiled,
 (19) and if we want to ask him, you know, is he going to rely upon
 (20) his own personal knowledge or is he going to base it solely
 (21) upon what he observes, he learns in the courtroom.
- (22) THE COURT: So a material issue in this case is the
 (23) extent of oiling on Naked Island and this witness, this juror?
- (24) MR. STOLL: I'm not sure that it is a material issue.
- (25) THE COURT: Just tell me, what's the contest, then?

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- (1) MR. STOLL: Mr. Fortier can explain this.
- (2) MR. FORTIER: Your Honor, I think the context, as I
 (3) understand what Mr. Clough suggested, it's one of mapping.
 Our
 (4) scientists say that the oil was more widespread than their
 (5) scientists say. Our scientists mapped it a certain way than
 (6) their scientist. But, Your Honor, Naked Island is not owned by
 (7) my clients and it's not owned by Mr. Petumenos' clients.
- (8) THE COURT: Why is it an issue in the case?
- (9) MR. STOLL: I don't know why it does, Your Honor.
- (10) MR. CLOUGH: Mr. Bush has testified both in his
 (11) deposition, I don't think he said this in federal court, they
 (12) didn't get into this issue in federal court, but I would be
 (13) very surprised if he would, but Mr. Fortier and Mr. Stoll are
 (14) not going to limit themselves in this very important debate on
 (15) mapping on just pointing to the owned parcels, they're going to
 (16) say, Ladies and Gentlemen of the Jury, you shouldn't believe
 (17) Exxon's map about the oiling on our parcels because let me
 (18) show you about Naked Island and let me tell you why they were
 (19) wrong on Naked Island. This is precisely the debate about
 (20) mapping. We're going to spend a lot of time on it in the
 (21) courtroom and yes, they will point to issues on parcels of land
 (22) outside their parcels to make that argument and yes, they'll
 (23) submit an exhibit which shows Naked Island very different from
 (24) ours.
- (25) THE COURT: Mr. Stoll, does that sound like some words

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- (1) that are going to come out of your mouth?
- (2) MR. STOLL: Doesn't sound like, no, I don't - doesn't
 (3) sound like my witness. I don't know who their witness - I
 (4) mean, there is no question, Your Honor, that there are maps of
 (5) the region that show, their maps show no oiling and we show
 (6) oiling, but Naked Island is not owned by any of the plaintiffs
 (7) in this case, and the fact that they could have - their maps
 (8) are in disagreement with our maps, I mean, that's one of the
 (9) realities of - I mean, that is a reality. But I don't know
 (10) what Naked Island has to do with this case.
- (11) THE COURT: You understand, both of you, counsel, that
 (12) I have to - at this point in the lawsuit, listen to the
 (13) representations made by counsel and make my judgments
 based -
 (14) unless I've seen some - some of the evidence and make my
 (15) judgment on what you lawyers say.
- (16) Now you're saying - that you're going to say something
 (17) different than Mr. Clough says you're going to say. By you, I
 (18) mean everybody on the plaintiffs' side.
- (19) MR. STOLL: I understand.
- (20) THE COURT: If I understand your representations and
 (21) this juror stays on the panel and I find out your
 (22) representations were untrue, what happens? The juror goes;
 (23) right?
- (24) MR. STOLL: Right. I know that.
- (25) MR. CLOUGH: Your Honor, to show you the significance

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- (1) of this, the plaintiffs have already submitted an exhibit, and
 (2) we could bring it in to you, it's what we call the pink maps,
 (3) and it shows all the shorelines throughout Prince William Sound
 (4) where they say essentially our maps are wrong. Naked Island
 is
 (5) virtually encircled in pink. If they're going to make this
 representation, they're going to have to make - change that
 (7) map, not present exhibits to the Court and to the jury which
 (8) raises this issue, and this is exhibits that already exist.
 (9) THE COURT: I'm glad you said that, Mr. Clough,
 (10) because it may be something I want to explore further, but I'm
 (11) certainly not going to do it at length this morning. So what
 (12) I'm going to do is tell you, on the basis of the examination I
 (13) see no - no factual problem here with what the witness does
 (14) that would cause me to disqualify the witness.
 (15) On the other hand, if this Naked Island issue truly is a
 (16) contested issue, it seems to me that you could legitimately
 (17) draw the conclusion that if this witness decided -
 (18) MR. STOLL: The juror.
 (19) THE COURT: I mean this juror, decided that Exxon was
 (20) not telling the truth about Naked Island, then Exxon would not
 (21) be telling the truth about anything else in this case. And
 (22) that, under those circumstances, I would probably excuse the
 (23) juror.
 (24) So you can - you can show me later on why you think this
 (25) is a factual issue that should - should be so important that

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- (1) the juror's personal experiences render him incapable of being
 (2) a juror in this case, and I'll make that decision later. I'll
 (3) reserve that issue.
 (4) For now, except for that, I'll deny the motion.
 (5) MR. STOLL: Thank you, Your Honor.
 (6) MR. DIAMOND: Would you like a -
 (7) THE COURT: You know, counsel, I don't think the issue
 (8) is, is this something the jury is going to decide. The issue
 (9) is, is this something that's going to affect the way this juror
 (10) looks at the credibility of one of the parties. That's a
 (11) different issue.
 (12) THE COURT: Okay. So -
 (13) MR. DIAMOND: Would you like us to address that this
 (14) afternoon when we come back?
 (15) THE COURT: You'll have time, counsel. The speed at
 (16) which this jury selection is going, you'll have time to make
 (17) new maps. I'm going to bring the juror in first.
 (18) (Roy Kennedy enters).
 (19) THE COURT: Mr. Kennedy, you're still on the panel and
 (20) I'm going to excuse you now. I'd like you to understand what
 (21) "still on the panel" means. The jury selection process is
 (22) nowhere near complete and there are lots of other jurors to be
 (23) questioned, and the final determination as to who's on the jury
 (24) can't be made until later on in the case, days from now; all
 (25) right? So what I'm going to do is excuse you, but you have to

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- (1) understand, you're still on the jury panel, so don't talk to
 (2) anybody, including the people out here, about anything that
 was
 (3) said in the courtroom, and don't form or express any opinions
 (4) on the case. We will bring you back, we'll contact you and
 (5) bring you back at the appropriate time; all right? Thank you.
 (6) (Roy Kennedy leaves)
 (7) MR. DIAMOND: Your Honor, when were you planning to
 (8) take your morning break, if at all? I think you have some
 (9) counsel who are interested in that.
 (10) THE COURT: Really? This is an endurance contest,
 (11) counsel, all jury selections are.
 (12) MR. DIAMOND: We pass for cause all the remaining
 (13) jurors, then.
 (14) MR. STOLL: Fine, Your Honor. We'll just continue.
 (15) THE COURT: When do you want to take it?
 (16) MR. STOLL: Any time.
 (17) THE COURT: Give me a time and I'll say yes.
 (18) MR. DIAMOND: Right now would be a fine time.
 (19) THE COURT: Okay. You got it.
 (20) THE CLERK: Please rise.
 (21) (Court recess taken at 11:09 a.m. to 11:35 a.m.)
 (22) THE CLERK: Please rise. This court now resumes its
 (23) session
 (24) (Harold Owen enters)
 (25) THE COURT: Good morning, sir. Would you give your

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- (1) name for the record, please?
 (2) A Harold Lee Owen.
 (3) THE COURT: Mr. Owen, we have your questionnaire here,
 (4) the lawyers have it, too, and they're going to ask you some
 (5) brief supplemental questions. Remember all of these answers
 (6) are given under oath.
 (7) A Yes, sir.
 (8) THE COURT: Mr. Fortier, go ahead.
 (9) MR. FORTIER: Thank you, Judge.
 (10) VOIR DIRE EXAMINATION OF HAROLD OWEN
 (11) BY MR. FORTIER:
 (12) Q Mr. Owen, my name is Sam Fortier. I represent the Native
 (13) corporations in this case. Mr. Stoll is also here, represents
 (14) the municipalities. I will be asking you some questions as the
 (15) Judge indicated concerning your questionnaire. Some of the
 (16) questions I may ask you may appear to you to be personal. If
 (17) they appear to be too personal, I'm sure the Judge will address
 (18) what the issue might be.
 (19) I note that you moved to Alaska in 1986; is that correct?
 (20) A No, sir, December 1987.
 (21) Q Why did you move to Alaska?
 (22) A Military transfer, sir.
 (23) Q Did you request to move up here?
 (24) A Yes, sir.
 (25) Q Why was that?

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- (1) A My father had served in the Aleutian campaign in World War
 (2) II, and he had always talked about traveling up the inside
 (3) passage and what it was like, and I guess kind of instilled a
 (4) desire and want to finally and eventually live and work in
 (5) Alaska, and so now here I am.
 (6) Q Are you still in the military, Mr. Owen?
 (7) A I'm a federal military technician with the Alaska Army
 (8) National Guard.
 (9) Q So I'm not sure what that means. Does that mean you're
 (10) still in the military or -
 (11) A Actually, no, sir, I took early severance last August and
 (12) officially got out of the Army on August 1st of 1993. On the
 (13) 3rd of August 1993, I went to the Army National Guard, started
 (14) out I was a temporary technician and became full-time in
 (15) October of last year.
 (16) Q And you've decided to remain in Alaska, as well?
 (17) A Yes, sir.
 (18) Q So you like Alaska?
 (19) A Very much, sir.
 (20) Q What do you like about Alaska?
 (21) A Probably the independence, the openness, the freedom, the
 (22) landscape, the hunting and fishing opportunities and scenery,
 (23) and probably more than anything, the people, sir.
 (24) Q In the time you've been in Alaska, have you traveled at all
 (25) outside of Anchorage?

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- (1) A Yes, sir, quite a bit.
 (2) Q Where have you been?
 (3) A Well, I've been above the Arctic Circle numerous times,
 (4) I've been on St. Lawrence Island. I've been all through the
 (5) interior and the southeast, so there's not too many places I
 (6) haven't been. I haven't been to the Aleutians very much, so.
 (7) Q On St. Lawrence were you on Gambell or -
 (8) A Yes, sir, Gambell.
 (9) Q Did you stay in the village?
 (10) A Yes, sir.
 (11) Q How long were you there?
 (12) A Little over a week. Done quite a bit of work with the
 (13) Native scouts around the state.
 (14) Q You were training the Native scouts over there Gambell?
 (15) A Yes, sir, evaluation and training both, yes, sir.
 (16) Q Besides Gambell, have you been to any other villages in the
 (17) state?
 (18) A Yes, sir, Tununak is one on the western periphery,
 (19) Sleetmute, Nightmute, Venetie, up above Fairbanks, Sitka,
 (20) Juneau, I could - I could go on and on. A lot of them we just
 (21) land in for a few hours and move on to where we're going for
 (22) our eventual mission.
 (23) Q Were you at Mountain Village, were you - have you ever
 (24) been there?
 (25) A No, sir, I haven't been to Mountain Village.

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- (1) Q In your dealings with the Native people in the villages,
 (2) how do you get along with Native people?
 (3) A I - I very much like going to the villages. In fact, that
 (4) was a job that I thoroughly enjoyed that time in my career.
 (5) Q Why do you like going to the Native villages?
 (6) A Mainly working with the people, learning a little bit
 (7) about, you know, their culture, some of their - get a lot of
 (8) their thoughts and ideas and aspects on life and that sort of
 (9) thing. It's - I don't know, it's just kind of I guess
 (10) culturally rewarding, you might say.
 (11) Q In any of those villages that you traveled to, did you go
 (12) to any of - did anybody ever take you to some of the cultural
 (13) sites?
 (14) A Yes, sir.
 (15) Q In each of the villages?
 (16) A Yes, sir, I have in Venetie, there was a couple things they
 (17) had up there, some - showed us a church and some of the
 (18) tapestry and things they had built there in the center. We
 (19) took a tour of the village one afternoon. I went up there for
 (20) arctic survival school, and when we got done with the course,
 (21) toward the end, they had taken us around the village and
 (22) showed
 (23) us some of the cultural centers and had a potlatch with the
 (24) villagers, it was rather enjoyable.
 (25) Tununak, I've been up on a mountain side, one of - I guess
 (26) more of the - I don't know what you would say it was, an area

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- (1) they had up there, it was kind of a special place, they didn't
 (2) take too many people, and one of the villagers had taken me up
 (3) there and told me a little bit about the history and all. It
 (4) was interesting.
 (5) Q With that special place, did they tell you that they tried
 (6) not to take a lot of people to it?
 (7) A I don't really know, because, you know, it was basically a
 (8) one-on-one working relationship that we had, and we had
 (9) established that over the week I had been there, so.
 (10) Q Now, in Venetie, I'm just going to ask you one question. I
 (11) surveyed Venetie years ago. Did they talk to you at all about
 (12) their mammoth tusks in the river up there?
 (13) A No, sir, not really.
 (14) Q When you were going - when you went to the villages, did
 (15) they talk to you at all about subsistence and the importance of
 (16) subsistence in their culture and -
 (17) A They have, yes, sir.
 (18) Q Did you gain an understanding of the importance of
 (19) subsistence of the native culture?
 (20) A Yes, sir, I - I mean, there's always more to learn, but I
 (21) feel like I have a basic understanding of subsistence. I don't
 (22) know it totally because I'm not dependent upon subsistence.
 (23) Q Mr. Owens, I'd like to shift gears a little bit, just talk
 (24) to you about a couple of answers that you gave in your - in
 (25) your questionnaire. One answer area is at page 11. It's

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- (1) question number 47. You indicated that you felt extremely
 (2) favorable towards the municipalities. Do you see that?
 (3) A Oh, 47?
 (4) Q Page 11.
 (5) A Oh, okay.
 (6) Q It's the top one.
 (7) A Okay.
 (8) Q Why do you feel extremely favorable towards the
 (9) municipalities?
 (10) A You're saying why - why do I favor local government of
 (11) municipalities.
 (12) Q No, I'm just wondering why you checked that as extremely
 (13) favorable?
 (14) A That's kind of the basis for our government and laws and
 (15) things that we have to live by, was kind of the reason I went
 (16) favorable to that. That's kind of the basis of why we're all
 (17) here. We have to have some guidelines to live by.
 (18) Q And the other groups, all your other checkmarks are
 (19) somewhat favorable?
 (20) A Yes, sir.
 (21) Q Including Exxon?
 (22) A Yes, sir.
 (23) Q Why did you check the somewhat favorable for all the other
 (24) groups?
 (25) A It's just kind of a middle of the road, you know.

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- (1) Q You don't feel more strongly or less strongly?
 (2) A No, sir, no, sir, because -
 (3) Q And then I'd like to refer your attention to page 12, it's
 (4) number 51. Number 51XXX, there's a question under there,
 (5) number A says, what opinion, if any, do you have about the
 (6) municipalities or Native corporations suing Exxon for damages,
 (7) and continues on, and you didn't - you didn't fill anything
 (8) in. Do you have any opinion about the municipalities or Native
 (9) corporations suing Exxon?
 (10) A I don't really know enough about it, sir. That's the
 (11) reason I answered the question that way.
 (12) Q So you really haven't formed any opinion, opinions at all
 (13) about this case?
 (14) A No, sir, like - I mean, I'm not a biologist by any means
 (15) or a Native down there in Kodiak, so if I knew more about it,
 (16) maybe I could form an opinion, but -
 (17) Q Okay. You note, Mr. Owens, that you have been sports
 (18) fishing in Prince William Sound, that's also on page 12?
 (19) A Sports and commercial fishing.
 (20) Q Now, were you there after the spill?
 (21) A Yes, sir.
 (22) Q And whereabouts were you?
 (23) A The vicinity of the Naked Island area off Columbia
 (24) Glacier.
 (25) Q Did you - did you see anything around Naked Island?

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- (1) A No, sir. Everything was normal, to me.
 (2) Q Now, if you were to hear that - oh, well, I'll - let me
 (3) withdraw that.
 (4) Have you been any other areas in Prince William Sound?
 (5) Since the spill?
 (6) A If you have a map, I can show you where all I've been.
 (7) Q You've been out of Whittier?
 (8) A Yes, sir.
 (9) Q Do you know if you've been over as far as Chenega,
 Chenega
 (10) Bay?
 (11) A Like I say, if you lay a map there I'll show you where all
 (12) I've been.
 (13) Q I'm sorry, I won't ask you any more questions about that.
 (14) Would you be able to - based upon what you saw or didn't see
 (15) around the Naked Island area, would you be able to set aside
 (16) your observations, whatever they might be, listen to the facts
 (17) of this case, and judge the facts solely upon the evidence?
 (18) A Yes, sir.
 (19) Q And you don't have any feelings one way or the other
 (20) about - about Exxon itself, either; is that correct?
 (21) A Could you say the question again, please?
 (22) Q Do you have any feelings one way or the other about Exxon?
 (23) A No, sir.
 (24) Q I notice that you have been involved in military justice,
 (25) Mr. Owens?

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- (1) A Yes, sir.
 (2) Q And that's been as an officer, you've overseen certain
 (3) court marshals?
 (4) A Yes, sir - well, no, I have not overseen court marshals,
 (5) so to speak.
 (6) Q You've participated in them?
 (7) A No, sir.
 (8) Q There was a reference, something to administered the Code
 (9) of Military Justice?
 (10) A Yes, sir, as a company commander I have administered
 (11) punishment to the soldiers in my command for wrongdoings
 and I
 (12) have served - I have served as the prosecutor in reduction
 (13) boards.
 (14) Q Yeah, I don't know too much about the Code of Military
 (15) Justice. This is a civil case and so the - the burden of
 (16) proof - the burden of proof, of course, would be a
 (17) preponderance of the evidence, 50 - over 50 percent; do you
 (18) understand that?
 (19) A (Nods head)
 (20) Q In your questionnaire, you have friends, let's see,
 (21) Mr. Caulkins (ph), who is an Exxon employee?
 (22) A He's a neighbor, yes, sir.
 (23) Q Have you talked with Mr. Caulkins at all about the case?
 (24) A No, sir.
 (25) Q Has Mr. Caulkins talked to you at all about how Exxon

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- (1) views - views the matters?
 (2) A No, sir.
 (3) Q Views the oil spill or anything like that?
 (4) A We try to leave work at work, and things at home you do at
 (5) home.
 (6) MR. FORTIER: I have no further questions, I thank you
 (7) very much. Mr. Owens, pass for cause.
 (8) VOIR DIRE EXAMINATION OF HAROLD OWENS
 (9) BY MR. CLOUGH:
 (10) Q Hi, Mr. Owen, I'm John Clough from down in Juneau. This is
 (11) Chuck Diamond. He and I are going to be - and some other
 (12) lawyers as well will be defending Exxon in this case. I want
 (13) to ask you a couple questions briefly about your 12 years with
 (14) the United States Army, sir, if I could.
 (15) A Yes.
 (16) Q What rank did you obtain while you were in the Army?
 (17) A Captain.
 (18) Q And I notice that you had down you're part of the infantry?
 (19) A I still am, yes.
 (20) Q And which branch of the infantry was that? Armor,
 (21) artillery?
 (22) A No, you have it confused. The branch of service is United
 (23) States Army, the branch of the Army is infantry.
 (24) Q Infantry. I notice, sir, that you are wearing a hearing
 (25) aid?

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- (1) A Yes.
 (2) Q Are you able to hear me as I'm speaking to you now?
 (3) A Yes, sir.
 (4) Q Were you able to hear Mr. Fortier's -
 (5) A Yes, sir.
 (6) Q Do you think that the hearing aid is going to cause you any
 (7) difficulty if you were to sit as a juror?
 (8) A No, sir.
 (9) Q In your questionnaire, you mentioned that you knew Vern
 (10) Rollins, who is one of the other jurors?
 (11) A Yes, sir.
 (12) Q How do you know Mr. Rollins?
 (13) A I have - I took a dall sheep in the Rainbow mountains in
 (14) August of 1992, and he mounted the cape and horn for me.
 (15) Q Did you have - you have any discussions with Mr. Rollins
 (16) about your jury service here?
 (17) A No, sir.
 (18) Q I noticed you also knew - and I apologize, I can't
 (19) remember if it's a Mr. or Ms. at this point, Williamson?
 (20) A Martha Williamson. You want me to tell you who she is?
 (21) Q Yes, or just how you know her.
 (22) A I know her strictly on a professional basis. She's head of
 (23) the personal security division and director of planned training
 (24) and mobilization at Fort Richardson. When we have to go and
 (25) review security clearances on soldiers, we have to go through

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- (1) her. She's the one that handles the - does the records and
 (2) does the background check with the national security agency.
 (3) Q And Mr. Morris, or is it Ms. Morris?
 (4) A Lieutenant Morris, Ed's his first name.
 (5) Q Ed.
 (6) A He's the automation officer for the United States physical
 (7) and property office for Alaska at Fort Richardson. He's part
 (8) of the Alaska Guard, just like I am.
 (9) Q Do you have regular contacts with Mr. Morris as part of
 (10) your work?
 (11) A No. I don't.
 (12) Q You had said that during your trips out to - into the bush
 (13) you had gotten some basic understanding about subsistence.
 (14) Tell me what you feel you learned on those trips?
 (15) A Usually, if that's their major source of income, like, you
 (16) know, dependent on the animal herds that, as we know,
 (17) populations go up and down every year, and that could
 (18) determine, you know, what they may have to do to supplement
 (19) their income or, you know, provide for their family. I mean,
 (20) does that kind of answer your question?
 (21) Q Literally trying to get a feel for what you learned while
 (22) you were out there?
 (23) A I guess, really, appreciation for the Native people, their
 (24) way of life, you know, how they try to go about living, what
 (25) they do and how they go about doing it.

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- (1) Q You enjoyed the opportunity to get out there?
 (2) A Very much.
 (3) Q Did you get out to any communities that did most or at
 (4) least a significant portion of their subsistence from a marine
 (5) environment, from the ocean?
 (6) A Tununak, they depended there a lot on the herring
 (7) fisheries.
 (8) Q Have you heard any allegations that the oil spill has
 (9) impacted marine subsistence use in areas like Prince William
 (10) Sound?
 (11) A Have I heard that?
 (12) Q Yeah, either read it in the paper or heard somebody say
 (13) that?
 (14) A Yeah, I think we've all kind of heard a little bit about
 (15) it, but like I said, I don't know enough about it - I'm not a
 (16) specialist by any means, no.
 (17) Q You feel you can retain an open mind on that question?
 (18) A Yes, sir.
 (19) Q And listen to the evidence that both sides may present to
 (20) you?
 (21) A Yes, sir.
 (22) Q Have you ever had cause to sit through a civil trial from
 (23) start to finish?
 (24) A No, sir, it's always been military.
 (25) Q It may be the same, somewhat similar to the same
 procedures

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- (1) there?
- (2) A Yes, sir.
- (3) Q But in the civil trial the plaintiffs are going to get an
- (4) opportunity to go first, and they're going to have a
- (5) substantial period of time, probably a couple weeks or more
- (6) presenting their evidence, and it won't be until they're done
- (7) that Mr. Diamond and I get a chance to introduce our witnesses
- (8) and our evidence, and the Judge will be instructing you that
- (9) it's real important to wait until you've heard all the evidence
- (10) from both sides before forming any opinions on - on any of the
- (11) issues in the case. Do you feel real comfortable giving your
- (12) commitment to the Court and to all of us that you can do that?
- (13) A Yes, sir, as my civil duty if that's what I'm required to
- (14) do, then I will put all my commitment to that.
- (15) Q Have you ever been in a situation in your life where you
- (16) really felt, hey, I've got to wait until I hear from the other
- (17) side before I decide this?
- (18) A Yes, sir, especially when administering punishment in the
- (19) military, we always look at the total soldier. If there's more
- (20) than one party involved, we always have to look at both sides
- (21) of the stories, couldn't pass judgment or make decisions until
- (22) we heard both sides of story.
- (23) Q You indicated in your questionnaire, sir, that you've got a
- (24) commercial fishing deckhand license?
- (25) A Yes, sir.

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- (1) Q I may be reading too much into what you have in the
- (2) questionnaire, but it appeared that - is it Andrew Johnson is
- (3) the skipper of the boat?
- (4) A Andrew T. Jackson.
- (5) Q Jackson, excuse me. Is he a good friend of yours?
- (6) A I don't know him as well as my wife - as well as my wife
- (7) knows his wife because they're more best of friends, and he's
- (8) with the Anchorage Police Department, and this is really the -
- (9) I guess the first time we went fishing this year, was the first
- (10) time we kind of started a personal friendship and
- (11) relationship.
- (12) Q On one of the blanks in the questionnaire they have you
- (13) check if you have a close friend in the commercial fishing
- (14) industry, and I sort of presumed that's who you were talking
- (15) about; is that correct?
- (16) A Yes, sir, yes, sir.
- (17) Q And this is - you've only been actually fishing with him
- (18) this last year?
- (19) A This year, sir.
- (20) Q This year, '94?
- (21) A Yes, sir.
- (22) Q Do you know if he fishes any of the areas impacted by the
- (23) spill?
- (24) A Well, generally, we go out of Whittier, and I think he's
- (25) fished there for two or three years now, if I recall

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- (1) correctly.
- (2) Q Have you ever talked to him about the oil spill at all?
- (3) A No, just that it happened and supposedly this area was
- (4) impacted by it, you know. It was really about all that was
- (5) said.
- (6) Q There's been a lot of stuff in the newspapers at various
- (7) times about the oil spill and what effects it may or might not
- (8) have had on commercial fishing in different areas of Alaska,
- (9) have you seen some of that?
- (10) A I've seen it.
- (11) Q Is that another issue that you feel you can keep a fair and
- (12) open mind on as you listen to all the evidence from both sides?
- (13) A Yes, sir.
- (14) Q Do you know if Mr. Jackson had any claims against anyone
- (15) related to the oil spill?
- (16) A I don't know for a fact, but I do not believe that he
- (17) does.
- (18) Q You said also that you had some risk management training?
- (19) A Yes, sir.
- (20) Q What was that?
- (21) A Well, we have a - the military has gone to where we look
- (22) at what different types of missions, let's say we're going to
- (23) take a truck convoy from here to Fairbanks and it's in the
- (24) middle of the winter and the roads are bad. You take a risk
- (25) assessment, you look at the number of hours of sleep drivers

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- (1) have had, types of road conditions, and you come up with a
- (2) factor and equation as your formula there to where you might
- (3) need a higher authority's signature and authorization to make
- (4) the move; otherwise, wait for better weather. It's - you do
- (5) the same thing in combat, before you go on a military
- (6) operation, you have to take a real close look at the enemy,
- (7) what his strengths are, you know, what kind of rest your troops
- (8) have had, you know, and what your capabilities are and that
- (9) sort of thing. So it's a formula process that - it's
- (10) something new the military's working with trying to save more
- (11) lives because we do have a tendency to have a few accidents
- (12) every now and then.
- (13) Q It's a risky business?
- (14) A It's true, sir.
- (15) Q And that's part of your job as a trooper platoon commander,
- (16) to make those types of important risk evaluations?
- (17) A Yes, sir, but I do not serve in that capacity at this time.
- (18) Q Anymore?
- (19) A Right sir.
- (20) Q But you did for a number of years?
- (21) THE COURT: Counsel, you're at the end of your time.
- (22) MR. CLOUGH: Thank you very much. We have no cause to
- (23) challenge this juror.
- (24) THE COURT: Thank you. Sir, you've been passed -
- (25) what we call passed for cause. Simply means that in the cause

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- (1) process, there's no - nothing surfaced that would cause you to
 (2) be disqualified. That's not the end of the process, though, we
 (3) have a lot of other jurors to go through. So what I'm going to
 (4) do is excuse you with the admonition that you're not to talk
 (5) about this with anybody, and particularly with the other
 (6) jurors -
 (7) A Yes, sir.
 (8) THE COURT: - that were on the panel, so don't
 (9) discuss the questions that were asked or your answers or
 (10) anything like that; all right?
 (11) A Yes, sir.
 (12) THE COURT: And we'll get in contact with you to get
 (13) you back at the appropriate time.
 (14) A Yes, sir.
 (15) THE COURT: Thank you very much.
 (16) A Thank you, sir.
 (17) (Harold Owen leaves)
 (18) (Deborah Daum enters)
 (19) THE COURT: Ma'am, would you give your name for the
 (20) record, please?
 (21) A Deborah Daum.
 (22) THE COURT: All right. Ms. Daum, you understand that
 (23) the jury questionnaire questions you answered and the
 (24) questions
 (25) you're about to answer, those are all under oath, you understand that; don't you? You should have some brief

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- (1) supplemental questions by counsel, and then I'll tell you what
 (2) happens next; all right?
 (3) A Okay.
 (4) THE COURT: Go ahead, Mr. Fortier.
 (5) MR. FORTIER: Thank you, Judge.
 (6) VOIR DIRE EXAMINATION OF DEBORAH DAUM
 (7) BY MR. FORTIER:
 (8) Q Good morning, Ms. Daum. Ms. Daum, my name is Sam
 Fortier,
 (9) I represent some of the Native corporations in this case. Mr.
 (10) Stoll at the counsel table represents municipalities.
 (11) What I'd like to do first is ask you whether or not there
 (12) is anything which may give you pause or concern about serving
 (13) on a jury in this case?
 (14) A No.
 (15) Q You indicated, as a part of your response to the
 (16) questionnaire, that you had a vacation planned in June?
 (17) A Right. Next Tuesday. For three weeks.
 (18) Q Were you going out of state?
 (19) A Uh-huh.
 (20) Q Had you already purchased your ticket?
 (21) A Uh-huh.
 (22) Q Is this a nonrefundable ticket?
 (23) A (Nods head).
 (24) Q It is?
 (25) A I think so. Yeah, I bought it a couple months ago, so -

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- (1) I'm not really sure. I'd have to check, but I think that
 (2) they're nonrefundable.
 (3) Q Now, this case may begin - opening statements may be
 heard
 (4) next week, may be had next week. Have you inquired at all as
 (5) to whether or not a change of vacation to another time or
 (6) refund your tickets?
 (7) A I'd have to call my travel agent and see. I was going to
 (8) wait till today was over and see what happened.
 (9) THE COURT: Could you tell me something a little bit
 (10) about your vacation plan so I can figure out how complicated
 (11) they are?
 (12) A Well, I'm going to see family. I'm going to Idaho and
 (13) Kansas City for three weeks, and I feel that it's pretty
 (14) important to go back. My husband died last year of cancer, and
 (15) so I want to see family I haven't seen for four or five years
 (16) I've been up here, so I'm taking my 12 year old son, so I think
 (17) it's - it's pretty important for that one reason. And I
 (18) can - if I had to, I could change my plans. It wouldn't have
 (19) to be right now, but, you know, the plans are made and
 (20) everyone's excited to see us, so -
 (21) THE COURT: Counsel, would you approach the bench,
 (22) please?
 (23) (Bench Conference off the Record)
 (24) THE COURT: The parties have decided that your
 (25) vacation plans are important enough, and I believe so, too, so

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- (1) I'm going to excuse you. It simply means you'll be called back
 (2) later on for jury service, but this is important enough and
 (3) under the circumstances that I think you should be excused.
 (4) Thank you.
 (5) (Deborah Daum leaves)
 (6) THE COURT: That means - there's nobody out there.
 (7) We're going to have to take a brief break, counsel. I've been
 (8) bringing them up five at a time and we're out of the five.
 (9) Let me tell you, though, this is a good time for me to tell
 (10) you that I'd like to resolve a couple of questions raised this
 (11) morning, so I'm bringing the next four up, but I'm also
 (12) bringing in addition to them juror number 22 and juror number
 (13) 33. That's Findorff and Wallace.
 (14) MR. DIAMOND: Yes.
 (15) THE COURT: And I'm going to do them first, so we'll
 (16) simply - unless you - I've got - by the way, I never did
 (17) give you these things. There are - I think that if you're
 (18) going to stipulate to excuse these two jurors, you should
 (19) stipulate them both out. That's just my feeling. One is a
 (20) much stronger statement of cause than the other, although I
 (21) have a feeling when the other gets in here, he'll make it
 (22) strong. So take a look at these things. If you want to
 (23) stipulate that they could be excused, I won't fight you on it,
 (24) I'll just excuse them. And I'm going to recess myself for a
 (25) second till the jurors are up here.

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- (1) MR. STOLL: Could I just have a side bar with the
 (2) Court for just a second?
 (3) THE COURT: Side bar, yes.
 (4) (At side bar off the Record)
 (5) THE CLERK: Please rise. This court stands in recess.
 (6) (Recess taken at 12:04 p.m. to 12:14 p.m.)
 (7) THE CLERK: Please rise. This court now resumes its
 (8) session. Please be seated.
 (9) MR. DIAMOND: Your Honor, I talked to Mr. Stoll.
 (10) We're in agreement that numbers 22 and 33 can be excused.
 (11) We'll stipulate to that. Mr. Wichorer, number 45, is he here
 (12) today?
 (13) THE COURT: No, he's not here today.
 (14) MR. DIAMOND: Could we bring him in ahead of schedule
 (15) and talk to him tomorrow?
 (16) THE COURT: Sure.
 (17) MR. DIAMOND: He may not have a problem, depending on
 (18) how the Court schedules and how long this process takes. As I
 (19) read this, he needs to be gone Monday, Tuesday, Wednesday
 (20) of
 (21) next week. That's where his immediate hardship is.
 (22) THE COURT: Sure. I'll have him brought in.
 (23) MR. STOLL: Your Honor, our position is that that's
 (24) paragraph within of his letter. Paragraph two of his letter is
 (25) he's a four person CPA firm and he can't afford, he - he
 (26) thinks he couldn't afford to do this, support his family.

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- (1) THE COURT: Yes, but remember Mr. Kimura.
 (2) MR. STOLL: I understand. I'm just saying our
 (3) position - the plaintiffs' position is going to be - stay
 (4) consistent, Your Honor, our position is that we think that we
 (5) don't want somebody that has that kind of hardship to go
 (6) through it for this case. There's plenty of qualified jurors
 (7) and we don't - you know, they can do whatever they want to do
 (8) on it.
 (9) THE COURT: I'll deal with that individually but the
 (10) other two are going to be excused. Who are they?
 (11) MR. DIAMOND: Number 22 is Mr. Findorff and number 33
 (12) is Mr. Wallace.
 (13) THE COURT: All right. I was wrong, counsel.
 (14) Mr. Wichorer is here, let's talk to him first. And let me tell
 (15) you something else. There are only four other jurors, because
 (16) I've been reading the way the jury selection has been going,
 (17) and it's been going slowly enough so I didn't feel it was
 (18) necessary to keep other jurors here. Since we've gotten
 (19) through these two and maybe three fairly quickly, I figured
 (20) four more would eat up the rest of the day. So once you're at
 (21) the end of those four, it's the end then.
 (22) MR. STOLL: Fine. Your Honor, could I borrow that
 (23) Wichorer letter?
 (24) THE COURT: Yeah, you can if you want to.
 (25) (Paul Wichorer enters)

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- (1) THE COURT: Sir, could you give your name for the
 (2) record, please?
 (3) A Paul Mark Wichorer.
 (4) THE COURT: Mr. Wichorer, I took you out of order
 (5) because of the letter, the note you wrote and what you told the
 (6) jury clerk.
 (7) A Thank you.
 (8) THE COURT: We need to ask you questions about those
 (9) subjects and your - and your qualifications as a juror, too,
 (10) so remember you're under oath through all the questions
 (11) you've
 (12) answered up until this point and these questions also.
 (13) Mr. Stoll.
 (14) VOIR DIRE EXAMINATION OF PAUL WICHORER
 (15) BY MR. STOLL:
 (16) Q Mr. Wichorer, the Judge has shared your note with all of us
 (17) and so we need to determine - the Judge needs to determine
 (18) whether it's, you know, a financial hardship or, you know,
 (19) what - how serious it is.
 (20) Next week, I gather, is you've got this continuing
 (21) education obligation -
 (22) A Uh-huh.
 (23) Q - next week? Could you take that some other time during
 (24) the year if necessary, or is that - am I wrong?
 (25) A Yeah, I could.
 (26) Q So the real - the real issue, then, goes to this other

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- (1) thing, or am I wrong in that, the financial aspect of this
 (2) because you're in a small CPA firm?
 (3) A Well, the hours I could make up, but the course I couldn't
 (4) take because it's offered once a year.
 (5) Q Oh, I see. So how important of a course is this?
 (6) A Well, it's one that I've been looking forward to taking,
 (7) it's relevant to the business right now because we're in the
 (8) process of changing to a new computer system and it's
 (9) microcomputers and accounting and, you know, if I forego the
 (10) course, I think there's a monetary loss in terms of the deposit
 (11) and the plane tickets, but, you know, I - I suppose I could
 (12) take it a year from now.
 (13) THE COURT: The plane tickets, you mean you think
 (14) they're nonrefundable?
 (15) A Well, I think there's a - a fee for - you know, they were
 (16) purchased 30 days in advance.
 (17) THE COURT: Usually what happens in that situation is
 (18) the people who are held on juries, if they are, contact the
 (19) airline, and usually the airline doesn't - isn't strict about
 (20) it, but to the extent that they might indicate they were, I've
 (21) contacted airlines under these circumstances and I've never
 (22) known a juror not to - not to get the money back.
 (23) BY MR. STOLL:
 (24) Q So if necessary, if Judge Shortell did that, that could
 (25) work itself out, maybe.

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- (1) What about the financial? We think this trial is going to
 (2) last two months and it's going to be 8:30 to 1:30 every day.
 (3) Five days a week. What do you think - is that going to create
 (4) a problem for you and your family financially?
 (5) A You know, that's - that's something I really haven't
 (6) talked over with my employer. It is a small firm, four CPAs.
 (7) The summer is usually when people take their vacations, so
 (8) you're typically understaffed, so a lot of the work that - you
 (9) know, you don't have four people doing the work and we do
 have
 (10) quite a few extensions in the office. Financial statements, et
 (11) cetera, that need to get out to the clients that are in the
 (12) process, you know, it would mean me going in at I guess two
 and
 (13) working into the evening to get that work done.
 (14) Q Do you see this as an ongoing problem? In other words, in
 (15) the months ahead or weeks ahead, I should say, for two
 months?
 (16) I mean, that'd be pretty - it would be overpowering or not
 (17) or - I mean, we don't want to create any unnecessary problems
 (18) for you. I don't, at least.
 (19) A I see it as a - more than an inconvenience, and I don't
 (20) see the work not getting done unless I'm in there doing it.
 (21) Q Is it going to cause a problem to your clients as well as
 (22) yourself, then?
 (23) A Well, most definitely, if their work doesn't get done,
 (24) yeah, uh-huh.
 (25) Q And do you - do you - is it - how much of a problem

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- (1) would it be for you with respect to if you had to work a little
 (2) later in the afternoon, you know, to make up - if you didn't
 (3) get out of here until 1:30 or so, is that - doesn't sound too
 (4) great to me?
 (5) A Well, I just finished a tax season, so -
 (6) Q You can do anything?
 (7) A It would be like going back into another one, I suppose.
 (8) Q Do you want to serve on this jury?
 (9) A Do I want to? Well, I've served on two previous juries,
 (10) one civil, one criminal. I have really no overwhelming reason
 (11) to be on it. You know, I'm just - I was just picked, you
 (12) know, and I showed up. I would have to answer, I don't have an
 (13) opinion.
 (14) MR. STOLL: Your Honor, I'd like to go on to some
 (15) other area. Can I go into some other area?
 (16) THE COURT: Sure.
 (17) BY MR. STOLL:
 (18) Q In your - in your questionnaire, Mr. Wichorer - you
 (19) understand I represent the municipalities in this litigation,
 (20) some of the plaintiffs?
 (21) A I didn't, but -
 (22) Q Okay, well -
 (23) A That's fine.
 (24) Q Fine. And Mr. Fortier represents the Native corporations
 (25) and other plaintiffs in this.

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- (1) A Okay.
 (2) Q Now, in your questionnaire, you said that you think that
 (3) the money Exxon spent outweighed the damages caused, and
 what
 (4) do you mean by that exactly?
 (5) A Well, I think that was a statement in here or a question.
 (6) Q Yeah, question 46. It's on page 11 - or excuse me, 10.
 (7) A Page 10? And as a general statement, I agree with that.
 (8) Q This is because of your own personal experience with the -
 (9) doing people's tax returns from some of the year?
 (10) A I guess, the experience of living in Anchorage. I mean, I
 (11) was in Valdez the day of the spill. I was there a week later.
 (12) My brother worked in Prince William Sound.
 (13) Q Is your brother involved in fishing at all?
 (14) A No.
 (15) Q Have you been to or has your brother been to Cordova or
 (16) Kodiak?
 (17) A No, he was - he was in a barge working for the catering
 (18) company.
 (19) Q I see, so he made a lot of money, at least during 1989,
 (20) servicing of Veco and Exxon clean-up workers, and so on?
 (21) A I don't know if he made a lot of money, but he made enough
 (22) to go to college.
 (23) Q Did he make more than he normally would?
 (24) A Yeah, I would say so.
 (25) Q And you knew other people that were similarly situated?

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- (1) A Uh-huh.
 (2) Q And based on that, let me ask you some other questions.
 (3) Did - have you been back to the Prince William Sound since the
 (4) oil spill?
 (5) A Uh-huh.
 (6) Q When was the last time you were there?
 (7) A Does that include Valdez?
 (8) Q Yes, anywhere I'll ask you were in the Sound.
 (9) A I was in Valdez last fall.
 (10) Q You know that Valdez is not a plaintiff in this case; did
 (11) you know that?
 (12) A Yeah, I did, uh-huh.
 (13) Q And how did you know that?
 (14) A Because I remember it from the complaint that was read.
 (15) Q Pardon me?
 (16) A I remember it from the complaint that was read Monday, I
 (17) believe. When we were sitting in the big room.
 (18) Q Oh, the names of the different municipalities that brought
 (19) the action?
 (20) A Uh-huh.
 (21) Q And did you know that Valdez, the currents went south,
 (22) essentially, so the oil didn't go up into Valdez?
 (23) A Uh-huh.
 (24) Q Do you think that - have you been to any of the areas that
 (25) were oiled since the spill?

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- (1) A I think in 91 or '92 I was at Eshamy. Did a little fishing
 (2) there, and then we flew to College Fiords, and then we flew to
 (3) another lake, I don't remember, for a day.
 (4) Q Did you observe any after effects from the spill in any of
 (5) these places?
 (6) A Personally, no, I didn't.
 (7) Q Your brother-in-law works for Arco?
 (8) A On my wife's side and on my side, my brother's sister works
 (9) for Arco.
 (10) Q And does that - are you close to those people?
 (11) A Am I - well, it's my brother but -
 (12) Q I understand that, but are you close in the sense, are they
 (13) close personal friends as well as being related by marriage?
 (14) A Yeah, I would answer yes.
 (15) Q And do you think that - would that affect your - because
 (16) they work for Arco, would that affect your ability to evaluate
 (17) the evidence in this case in any way?
 (18) A Well, I - I mean, I don't think so. My brother's wife is
 (19) an Athabaskan and that's never had any bearing on our
 (20) relationship or on our family, so -
 (21) Q Have you talked to any - anyone in your family about the
 (22) oil spill litigation or the oil spill, that you recall?
 (23) A No. I haven't.
 (24) Q What about your - you have some friends who are with Veco?
 (25) A Yeah, I - you know, they worked temporarily.

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- (1) Q On the oil spill, or do you mean they just work temporarily
 (2) in the year?
 (3) A Well, in the summer, if they're not fishing or hunting,
 (4) then when the winter comes around they don't do those
 (5) activities so they try to get on with Veco to go up to the
 (6) slope and work during the winter.
 (7) Q Have they talked to you at all about the oil spill or have
 (8) you talked to them about the oil spill or anything about this?
 (9) A Not specifically that I can remember, but I mean since '89
 (10) I'm sure in general conversations, you know, it may have come
 (11) up.
 (12) Q And you have a friend that owns a Cook Inlet setnet?
 (13) A Uh-huh, my next-door neighbor.
 (14) Q And has that person made any claim in any litigation, to
 (15) your knowledge?
 (16) A No, he hasn't, but I believe people that have fished for
 (17) him have.
 (18) Q I see. And do you have any opinion as to the validity or
 (19) lack of validity of their claims?
 (20) A Well, I can just tell you what he relayed to me. I mean,
 (21) he didn't think they were valid, so he didn't file one.
 (22) Q Did you think that - do you carry this person's views in
 (23) high regard?
 (24) A Well, when it comes to commercial fishing I do, because
 (25) he's been doing it in Cook Inlet since 1920 and he's 91 years

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- (1) old, so he knows the industry.
 (2) Q Do you think he would know whether or not the oil spill
 (3) affected his setnetting in Cook Inlet?
 (4) A How it related to his setnetting?
 (5) Q Yeah, do you think he'd be able to make that
 (6) determination?
 (7) A Yeah, I think he could tell you how it affected his setnet
 (8) site, uh-huh.
 (9) Q Have you received information from other people that may be
 (10) you do tax returns for or other people that - as to how it -
 (11) fishermen that have been either in Prince William Sound or in
 (12) the Kodiak area that - how the oil spill affected them or has
 (13) not affected them?
 (14) A These are just commercial fishermen you're asking about?
 (15) Q Let's take commercial fishermen first.
 (16) A I'm trying to think through my client list of people in
 (17) that occupation.
 (18) Q Let me make it a broader question, then.
 (19) A Okay.
 (20) Q With respect to your clients in Prince William Sound, do
 (21) you have some clients from Cordova?
 (22) A Yes.
 (23) Q All right. And I gather from your answers here you think
 (24) that the Cordova and these other communities, that the money
 (25) that Exxon spent there far outweighed the - any losses that

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- (1) any one particular person may have incurred or something of
 (2) that nature?
 (3) A Well, I - I couldn't say on an individual level whether -
 (4) but on a collective level, I would agree with that statement.
 (5) Q All right. Now, one of the plaintiffs in this case is the
 (6) Municipality of Cordova, and they're - they're seeking damages
 (7) as a result of expenses that they incurred that were not paid
 (8) for by Exxon. Do you think, just being, you know, frank,
 (9) candid here, do you think that you'd start off with some
 (10) skepticism about that claim?
 (11) A No, I don't think I would have a critical view of their
 (12) claim until the facts were heard and the evidence was
 (13) presented.
 (14) Q Would you require them to put on a little extra burden of
 (15) proof to make their case other than what the normal plaintiff
 (16) would require?
 (17) A I don't know if I understand your question. I mean -
 (18) Q Let me rephrase it, then.
 (19) A Okay.
 (20) Q In a civil case like this, you've sat on both a civil and
 (21) criminal case?
 (22) A Right.
 (23) Q You know from sitting on a civil case before that the
 (24) plaintiff needs to prove their case only by a preponderance of
 (25) the evidence, which means that it's just slightly more than 50

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- (1) percent, maybe a lot more than 50 percent, but that's all
 (2) that's required. You understand that?
 (3) A Yeah, I've heard those terms before.
 (4) Q Right, and in a criminal case you have to prove your case
 (5) beyond any reasonable doubt?
 (6) A Right.
 (7) Q Now, this - in this case, fault or responsibility is not
 (8) an issue, it's just simply a question of the amount of damages,
 (9) if any, that were caused by the oil spill. And now with that
 (10) in mind, do you think that it would - your belief that in
 (11) the - in the general way, the community of Cordova essentially
 (12) got more than they lost as a result of this oil spill, do you
 (13) think that you would require a little more than just 50.01
 (14) percent or something like that for Cordova to prove their
 (15) case? In other words, if it was not this - if you didn't have
 (16) this belief, do you think you'd require Cordova more than -
 (17) A No, I don't think it would affect my opinion of the City of
 (18) Cordova, per se. In their claim against, you know, the
 (19) defendant.
 (20) Q You wouldn't hold them to a higher standard than you would
 (21) any other person?
 (22) A No. No, I don't - I don't believe I would.
 (23) Q Do you think that because of your evaluation of the damages
 (24) or that there is a lack of damage or that the positives
 (25) outweigh the negatives, do you think this would taint your -

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- (1) how you would look at evidence of damage by these plaintiffs?
 (2) A Well, I - I'd like to believe that, you know, I can keep
 (3) an open and honest and form, you know, a -
 (4) Q Sure.
 (5) A - an informed opinion.
 (6) Q Sure. That's why I'm asking you, because I believe you are
 (7) trying -
 (8) A You know, but I think as a general statement, what you
 (9) alluded to in question 46 I would agree with, although I think
 (10) in individual circumstances you're always going to find where
 (11) you have the exceptions and, you know, you have people on
 (12) basically both sides of the fence. So -
 (13) Q You would be able to evaluate that - the plaintiffs in
 (14) this case individually from what may have happened in the
 (15) overall community? In other words, if the - if the entity,
 (16) the City of Cordova suffered damages, you'd be able to award
 (17) them damages even if you thought that the community of
 (18) Cordova
 (19) had -
 (20) A Yeah, I -
 (21) Q - had not suffered injury?
 (22) A Correct, I mean I wouldn't hold a personal grudge against
 (23) the City of Cordova because I feel that the benefits outweighed
 (24) the negatives for that particular municipality. If that
 (25) answers your question.
 (26) Q Have you made a determination that the municipality - I'm

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- (1) talking about as an entity the Municipality of Cordova as a -
 (2) as opposed to the community. In other words, there may be
 (3) fishermen there, there may be shopkeepers, so on, the person
 (4) operating selling doughnuts or something may have sold a lot
 (5) of
 (6) doughnuts. I'm just giving you a hypothetical, you know, out
 (7) there, they may have made a lot of money, but I think the
 (8) municipality and I think the evidence will be the overall
 (9) community lost a lot of money, but you've made a determination
 (10) already that the community's had a positive benefit on this?
 (11) A Well, I wouldn't say that my opinion relates specifically
 (12) to the City of Cordova or that I've formed an opinion about the
 (13) Municipality of Cordova. I would just say that what I
 (14) generally agree with is the statement that the overall effects
 (15) after the spill have mitigated are greater than the negative
 (16) effect of the oil spill.
 (17) Q All right. Now, let me ask you this question. When - if
 (18) the evidence is put on here that - and the evidence is that
 (19) there were a variety of injuries to these plaintiffs, would you
 (20) be able to completely disassociate yourself from what you've,
 (21) the opinion you've already formed about the positive
 (22) outweighing the negative?
 (23) A Yeah, I believe I would.
 (24) Q Can you just base your decision only on the evidence that
 (25) was presented here?
 (26) A Uh-huh.

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- (1) Q Now, let me ask you a question about - I'd like to ask you
 (2) about Eshamy.
 (3) A Eshamy?
 (4) Q Eshamy. What did you observe and when were you there,
 (5) again?
 (6) A Oh, well, I've been there a couple of times, but we usually
 (7) go about the first week in August, last week in July when the
 (8) reds are running.
 (9) Q I see. And how many years have you been going there?
 (10) A I think I've been there on three or four separate
 (11) occasions. The question asked the last ten years.
 (12) Q Right, and have you been - the question said, have you
 (13) been there since the oil, since '89?
 (14) A Uh-huh.
 (15) Q Have you been there since the oil, since '89?
 (16) A No, we've just been there once. In '89 we couldn't go
 (17) because it was, you know, affected by the spill, and I think in
 (18) either '90 or '91 we went.
 (19) Q And did you catch a lot of fish that year, in '90 or '91;
 (20) do you recall?
 (21) A Yeah, I suppose. It was as good as - it was as good as it
 (22) was before, I guess, would be my - you could see them in the
 (23) water, they were there and -
 (24) Q Did you form an opinion as to whether or not there had
 (25) been - there was any lasting injury to fishing Eshamy as a

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- (1) result of the spill?
 (2) A Well, not really. I mean, we were basically in there
 (3) trying to catch sea run dollies or trout and the salmon were
 (4) just kind of schooling, you know, and spawning. It's basically
 (5) Eshamy Lake, and then there's about a 15-minute walk from the
 (6) lake to the lagoon, and then the lagoon opens up into Prince
 (7) William Sound. And I go with a friend of mine and we land the
 (8) plane and we park there at the head waters of the lake, and we
 (9) just fish off the floats because the sea run dollies and the
 (10) trout will be in the edge, so there seemed to be as many salmon
 (11) there that year as there had been previous years.
 (12) Q So based on that, you believe that the things were back to
 (13) normal, as far as Eshamy was concerned, by 19 - in other
 (14) words, '90 or '91?
 (15) A Yeah, I didn't see any effect. I mean, I didn't really
 (16) form an opinion based on the salmon runs. I wasn't there, you
 (17) know, but that's what I observed.
 (18) Q Now, the Native corporations have a claim for damages to
 (19) their land, including Eshamy, and do you think that your own
 (20) observations, you're going to come into the courtroom and
 (21) evaluate the evidence, and I appreciate it's very difficult if
 (22) not impossible for a normal person to forget their own life
 (23) experiences when they're evaluating the evidence, and that is
 (24) going to be an issue in this case, is what is the - was Eshamy
 (25) back to normal within - well, certainly in that time period?

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- (1) MR. DIAMOND: Your Honor, I think we may be confusing
 (2) different areas. The - Mr. Wichorer was talking about the
 (3) lake inland. There's only a claim for oiling to the shoreline
 (4) on Prince William Sound. I don't know that Mr. Stoll knows
 (5) it's part of the case, he may not know that we're talking about
 (6) a lagoon and lake and Prince William Sound shoreline are all
 (7) different.
 (8) MR. FORTIER: We can approach the bench if you'd like,
 (9) Your Honor.
 (10) THE COURT: If you believe that your questions will
 (11) develop information relative to this juror's qualification, I
 (12) don't think you need to approach the bench. You can ask your
 (13) questions.
 (14) MR. STOLL: Thank you, Your Honor.
 (15) MR. STOLL: I can't remember my last question, could
 (16) you tell me.
 (17) (Testimony read back by the Court Reporter)
 (18) BY MR. STOLL:
 (19) Q So one of the issues is a damage to the value of the
 (20) lands. I think Mr. Diamond misstated a little bit the claim
 (21) here, but the claim of the Native corporations here is the
 (22) value of their land, diminution and loss of value of that land
 (23) including Eshamy. I want to be very - I know that you've been
 (24) trying very hard to be very open, and I think you have been
 (25) very open and frank about your views. And we appreciate that.

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- (1) But when you're evaluating the evidence as to whether there
 was
 (2) a diminution, whether's an ongoing diminution of the value of
 (3) the lands in Eshamy as well as other areas, but let's just take
 (4) that for instance. Don't you think in your heart of hearts
 (5) that your own experience is going to influence your - no
 (6) matter what we say here about keep blinders on, there's going
 (7) to be a conflict in the testimony. I mean, there's no question
 (8) about that. There's going to be a conflict in the testimony
 (9) between Exxon's experts, the plaintiffs' experts as to whether
 (10) or not there is damage and what the extent of that damage is.
 (11) And when you're evaluating that, I mean don't you think it's
 (12) just human nature that when you're evaluating that you're going
 (13) to use some of your own life experiences, including your trips
 (14) to Eshamy?
 (15) A To evaluate the evidence?
 (16) Q Yes.
 (17) A Well, I think I would use them to evaluate the evidence. I
 (18) don't know that it would bias me favorably or unfavorably.
 (19) Q How would you - if you've reached this conclusion in your
 (20) mind about Eshamy being back to normal by 1990 or '91,
 whatever
 (21) it was that you went there, how would you use that experience
 (22) in terms of evaluating, let's say, a witness that said that the
 (23) land there was worthless now than it would have been - or it
 (24) was worthless in 1990 or '91, the very year you were there,
 (25) than it was - than it would have been if there'd been no oil

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- (1) spill, when your own observations is this is - we're back to
 (2) normal again.
 (3) A Well, I would - you know, I would hear the evidence that
 (4) is presented and based on how it was presented and, you
 know,
 (5) make as best I could an informed judgment, you know, as to the
 (6) credibility of the testimony.
 (7) Q And you'd evaluate - and in evaluating that credibility,
 (8) you'd utilize your own experience and your own knowledge?
 (9) A Right, my personal knowledge of the area, you know, the -
 (10) Q Right, you'd been there and you'd seen things?
 (11) A Yeah, well, I mean there's not much to see in terms of
 (12) buildings and that sort of thing.
 (13) Q No, I understand that. There's not buildings, but there's
 (14) fish or there's not fish?
 (15) A And there's a fish counter, you know, in the middle of the
 (16) river and there's a Fish & Game cabin and it's staffed every
 (17) summer and you go down and talk to the people and -
 (18) Q Sure.
 (19) A - see what the count is.
 (20) Q And so they give you information as to what the count is
 (21) and - and that - that's a piece of - you may not - I
 (22) probably can't ask you exact count, but that gives you sort of
 (23) an overall impression that you still carry with you?
 (24) A We just go down and ask them if we can use the boat
 because
 (25) we're fishing the lake and they keep on up there.

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- (1) Q I understand. You also say you work with attorneys who are
 (2) involved in determining damages?
 (3) A Uh-huh, correct.
 (4) Q And would you tell us, please, what – how you've happened
 (5) to do that? I mean, has it been anyone in particular? Any
 (6) lawyers in particular?
 (7) A I've worked with the law firm of Davis & Goerig, and I've
 (8) worked with Mark Davis in particular.
 (9) Q And have you worked primarily on the defense side of cases
 (10) on damage issues?
 (11) A No, it's been the plaintiff.
 (12) Q Mostly the plaintiff area?
 (13) A Uh-huh.
 (14) Q Does that – does that affect you in any way in evaluating
 (15) this case?
 (16) A Not that I'm aware of, no.
 (17) Q What type of damage cases have you worked with them on?
 (18) A Basically loss of income, where one case was a business
 (19) selling and the buyer didn't make good on the note, ran the
 (20) business into the ground, and owner came back and put in a
 (21) claim for lost profits.
 (22) Q Now, you also –
 (23) MR. STOLL: Your Honor, I know that I'm over the ten
 (24) minutes.
 (25) THE COURT: Yeah, I am aware you are over your time.

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- (1) MR. STOLL: There's a lot of things that this juror
 (2) wrote on this –
 (3) THE COURT: Yes, but how much more time do you need?
 (4) MR. STOLL: I think I'll need another five minutes,
 (5) Your Honor.
 (6) THE COURT: Okay, five minutes.
 (7) BY MR. STOLL:
 (8) Q You have a number of witnesses here that you identified
 (9) that you know and there's Hayden Green?
 (10) A If he's the one I'm thinking of, yeah. I took a class from
 (11) him at UAA when I was getting my masters.
 (12) Q And what was your – did you have any impression one way
 (13) or
 (14) the other about Professor Green?
 (15) A In terms of what, as a professor?
 (16) Q Well, as a professor, as whether he was – let's say, how
 (17) was he as a professor, and we won't tell him?
 (18) A He was a very amicable person and I – I have a warm fuzzy,
 (19) I guess, about him. I haven't seen him in about ten years,
 (20) but –
 (21) Q How did you feel he was in terms of competence in
 (22) evaluating, you know, what he – whether he knew what he was
 (23) talking about?
 (24) A Well, I felt he was competent, yeah.
 (25) Q Did you feel he was very competent, on a scale of 1 to 10
 with 10 being the highest, where would he fit within that area?

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- (1) A Regarding real estate?
 (2) Q Yes.
 (3) A And real estate investments?
 (4) Q Yes.
 (5) A 1 to 10? Well, I don't like giving anybody a 10 or a 1, so
 (6) I would say he's probably, you know, in the 7 to 8 range.
 (7) Q Okay. And John Middaugh, how do –
 (8) A How do I know him?
 (9) Q Yeah.
 (10) A I'm on the board of the American Lung Association, and we
 (11) had a focus group where we brought together leaders in the
 (12) business community, and he was one of the individuals on the
 (13) focus group that was conducted, I believe, February of '94.
 (14) Q And what did that – having to do with the American Lung
 (15) Association?
 (16) A Uh-huh, and its perception within the community.
 (17) Q I see. And did you have – did you draw any impression
 (18) about Mr. Middaugh in terms of his competence or anything of
 (19) that nature? That wasn't involved in your –
 (20) A That had basically – that wasn't part of the focus.
 (21) Q And what about Ralph Mabraga (ph)?
 (22) A I talked to him probably, I don't know, not in – I
 (23) wouldn't know him if he walked in the room, but I know who he
 (24) is, and I think I've spoken to him once or twice on the phone.
 (25) Q Did you hire him as a real estate agent?

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- (1) A No, never.
 (2) Q Do you have any particular impression about him, whether
 (3) he'd be a particularly good or accurate real estate agent or
 (4) not?
 (5) A No idea.
 (6) Q And Ed Rassmussen?
 (7) A Uh-huh.
 (8) Q You've written down here he's a client of your accounting
 (9) firm?
 (10) A Accounting firm, correct.
 (11) Q And is he an important – all clients are important. Is he
 (12) a particularly large client or his company a particularly large
 (13) client of your accounting firm?
 (14) A Well, we do his personal tax returns, so like you say, all
 (15) clients are important and some years I work on his case, some
 (16) years I don't, just depends on the workload.
 (17) Q Excuse me just a second. Now it's been brought to my
 (18) attention in answer to one of the questions regarding
 (19) municipalities on page 12, you wrote that under A,
 (20) municipalities listed, it said this is related to the
 (21) municipalities. You said it brought them, the municipalities,
 (22) much activity for a year or so, and then the areas returned to
 (23) their traditional activities?
 (24) A Uh-huh.
 (25) Q Is that – did I read that correctly?

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- (1) A Uh-huh.
- (2) Q Did – if there is a conflict, this goes again to
- (3) evaluating the credibility of witnesses, there's going to be
- (4) conflict in terms of the testimony as to whether or not these
- (5) communities returned to their traditional activities, and do
- (6) you think that when you evaluate those – that testimony, the
- (7) credibility of that testimony, do you think – you'll have to
- (8) take into account some of your – some of your own
- observations
- (9) that you've already made; won't you?
- (10) A Well, without, you know, first hearing the evidence,
- (11) it's – it's difficult to be specific in my response, but to
- (12) the extent that my personal experience is relevant or I have
- (13) knowledge of, like a particular area, Eshamy or what have
- (14) you –
- (15) Q You'd use that in evaluating the credibility of the
- (16) witnesses?
- (17) A In evaluating the credibility or in evaluating the
- (18) evidence?
- (19) Q Both.
- (20) A I'd say I'd use it in evaluating the evidence. I don't
- (21) know how much it would affect me in evaluating the credibility
- (22) of the witness.
- (23) Q Now, this question was in answer to the municipalities
- (24) themselves, and the municipalities we're talking about are the
- (25) six that are listed here in the preceding question. With

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- (1) respect to those – those areas, you did make a determination
- (2) that they'd returned to their traditional activities, those
- (3) municipalities?
- (4) A Well, you know, there again, as a – as a general – I
- (5) guess as a general opinion, you know, I would – I would agree
- (6) with that statement. And you know, that's why I wrote it
- (7) down.
- (8) THE COURT: Counsel, you're at the end of your five
- (9) minutes.
- (10) MR. STOLL: Could I just ask him one more question,
- (11) Your Honor?
- (12) THE COURT: Yes.
- (13) BY MR. STOLL:
- (14) Q In question 51 triple X, which is the bottom of that page.
- (15) A Uh-huh.
- (16) Q You – you wrote that you think that – you checked the box
- (17) yes, that you think that Exxon has paid enough money as a
- (18) result of the Exxon Valdez oil spill. And then you wrote down,
- (19) I think they are utilizing every legal avenue to obtain
- (20) revenue?
- (21) A Uh-huh.
- (22) Q And this is in response to the question about what, if any,
- (23) opinion do you have about the municipalities or Native
- (24) corporations suing Exxon for damages in connection with the oil
- (25) spill?

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- (1) A Uh-huh.
- (2) Q Now, my question is, just from the tone of that note that
- (3) you wrote there, is it your impression that these
- (4) municipalities and Native corporations are just – they're just
- (5) trying to get revenue any way they can, whether they have a
- (6) reasonable basis for it or not? I mean, if they get it, great,
- (7) if they can't get it –
- (8) A I assume you have a basis or we wouldn't be here, and, you
- (9) know, I think that as a general statement, 51 triple X I would
- (10) agree with.
- (11) Q That they've paid enough?
- (12) A In terms of subset A. You know, I think that they've –
- (13) they're exhausting all of their legal means.
- (14) Q You mean the plaintiffs are?
- (15) A The plaintiffs, correct, uh-huh.
- (16) Q And do you fault them for doing that?
- (17) A No.
- (18) Q What do you mean by you think that Exxon's paid enough?
- (19) A I think that relates back to 46 where I say, I think the
- (20) overall benefits outweigh the negatives.
- (21) Q So even if – if the municipalities or Native corporations
- (22) have a basis for a claim, you didn't think that Exxon should
- (23) have to pay anymore?
- (24) A No, I didn't say that. I said – I said that that
- (25) statement, in conjunction with 46, is a general statement that

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- (1) I would agree with.
- (2) MR. STOLL: Thank you. I have that on application,
- (3) Your Honor. I'll make an application.
- (4) VOIR DIRE EXAMINATION OF PAUL WICHORER
- (5) BY MR. DIAMOND:
- (6) Q Good afternoon, Mr. Wichorer. I'm Chuck Diamond
- (7) representing Exxon. I introduced myself to you and the
- (8) assembly on Monday.
- (9) It's difficult to find hermetically sealed jurors, and I
- (10) guess that was the thrust of Mr. Stoll's examination, whether
- (11) you feel comfortable that you will be able to follow the
- (12) Court's instructions to reach a decision in this case if you
- (13) serve as a juror based on what you hear in this courtroom, and
- (14) only what you hear in this courtroom, instructions the Court
- (15) gives you and your common sense; do you think you can do
- that?
- (16) A Uh-huh.
- (17) Q Any reservation in your mind about that?
- (18) A About forming an opinion, no.
- (19) Q You'll have to forgive me. I'm not familiar with Burnett &
- (20) Myer. Is that Anchorage based?
- (21) A Uh-huh.
- (22) Q And you are – you're a salaried employee with the firm?
- (23) A Correct.
- (24) Q You said you had a – a neighbor, I believe, who was a
- (25) commercial fisherman?

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- (1) A Correct.
- (2) Q I was way over there and I'm a little hard of hearing, and
- (3) was this a 91-year-old commercial fisherman?
- (4) A Correct.
- (5) Q Can you tell us his name, please?
- (6) A Frank grant.
- (7) Q As you might have gathered, we've all searched your answers
- (8) to the questionnaire and I had one question, to ask you about
- (9) this. On page 51 - I'm sorry, page 12, item 51, ask you about
- (10) areas that were exposed to oil from the spill, and sub part B
- (11) asked whether you thought everything was back to normal in
- (12) those areas, and you checked the box no, but - well, you
- (13) checked the box no.
- (14) What do you think is not back to normal in areas that were
- (15) affected by the spill?
- (16) A Well, I think the pink salmon returns in Prince William
- (17) Sound aren't back to normal.
- (18) Q Anything else?
- (19) A Nothing comes to mind.
- (20) Q One of the - the issues that we are going to be
- (21) litigating, perhaps, is the issue that we are disputing is the
- (22) impact of the spill on the value of land, but one of the
- (23) specific area of issues is the impact of the spill on fish runs
- (24) adjacent to the land and there may be a dispute, imagine there
- (25) will be as to the salmon runs and the effect of the oil spill

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- (1) on salmon runs and the explanation for the experience with pink
- (2) salmon.
- (3) You have an opinion, at least one that you were candid
- (4) enough to express just a moment ago. Is that something you
- (5) think you can put aside and listen to the evidence that comes
- (6) in from the witnesses and the experts and make a judgment as
- (7) to
- (8) pink salmon and the implications of the oil spill based upon
- (9) what you hear in this courtroom?
- (10) A Yes, I believe it is.
- (11) Q You talked a bit about your trip in either 1990 or '91 to
- (12) Eshamy Bay. Do you know whether it was '91 or '90?
- (13) A Without going back and looking at my calendar, I couldn't
- (14) tell you.
- (15) Q And that was a float plane trip?
- (16) A Yes.
- (17) Q You -
- (18) A I have a client slash friend, and every summer he invites
- (19) me to fly down there and we fish for dolly varden or trout or
- (20) what have you.
- (21) Q He's the pilot?
- (22) A Correct.
- (23) Q Did that year, did he put the plane down in Eshamy Bay?
- (24) A No, he always flies into the lake because he doesn't
- (25) like -
- (26) Q I'm sorry, that's what I meant to say, the lake, not the

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- (1) bay. There are three bodies of water, there's a bay out there
- (2) fronting Prince William Sound and there's a lagoon and then
- (3) there's the lake?
- (4) A Correct.
- (5) Q And you fish the lake in the interior?
- (6) A Well, sometimes we walk down and fish the lagoon. That
- (7) particular time we were fishing the lake.
- (8) Q Okay. And you weren't fishing for salmon; were you?
- (9) A No.
- (10) Q You have an opinion as to how good that year was for dolly
- (11) varden and for trout? But do you have an opinion as to the
- (12) implications of the spill on the salmon population? In that
- (13) area?
- (14) A I didn't really - I mean, I remember the dolly varden and
- (15) the trout fishing. When we were there, the reds were in the
- (16) lake. And it was pretty much past, you know, they were - they
- (17) were spawning, they returned, so - you know, I don't really
- (18) have an opinion as to whether or not that run or that salmon
- (19) run, how it was affected by the spill.
- (20) Q Did you walk any of the lands around the lake? You go up
- (21) into the uplands at all? In that trip in 1991?
- (22) A No, we didn't stay there long, because I turned around and
- (23) there was a black bear with two cubs about ten feet away, so I
- (24) tried to get back to the float plane, and then we left shortly
- (25) after.

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- (1) Q Do you bring to this court any - any preconceived notions
- (2) of what may have happened to the land values around Eshamy
- (3) Bay
- (4) as a result of the spill?
- (5) A No. I mean, I don't think I do.
- (6) Q Do you bring to the Court any preconceived notions
- (7) concerning the suitability of the Eshamy Bay area for
- (8) subsistence use?
- (9) A No, I don't believe I do.
- (10) MR. DIAMOND: Nothing further, Your Honor.
- (11) MR. STOLL: Your Honor, could I just ask one more
- (12) question?
- (13) THE COURT: Yes, go ahead.
- (14) FURTHER VOIR DIRE EXAMINATION OF PAUL WICHORER
- (15) BY MR. STOLL:
- (16) Q Mr. Wichorer, I want to go back to the thing we started out
- (17) in the very beginning, that's this possible financial
- (18) hardship.
- (19) A Uh-huh.
- (20) Q Are you - by what you've written here, as well as this
- (21) note you've written to the Court, are you asking for a deferral
- (22) of your jury service to some other time when you didn't have to
- (23) serve for a two month period of time?
- (24) A Well, the time I called the jury clerk, I think on like
- (25) three separate occasions, I tried to make sure that the trip I
- (26) was going to go on Sunday would not conflict and they either

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- (1) hadn't processed or they were about to or they were going to
 (2) get back to me and, you know, nobody mentioned a trial of this
 (3) duration.
 (4) Q I understand.
 (5) A And having been through this process twice, and having
 been
 (6) called pretty regularly every two years, I knew it was going to
 (7) be some type of major lawsuit by the number of jurors
 assembled
 (8) downstairs Monday, so - you know, here I sit.
 (9) Q Well, my question is, by this note, though, was the purpose
 (10) of your note to ask for a deferral of your jury service? I
 (11) mean, would you rather - is that the purpose of this, that
 (12) you -
 (13) A If I had my druthers.
 (14) Q Yeah, is that what you're asking for?
 (15) A I mean, I would rather come back in two months and serve
 (16) two days on a DWI case than sit here for three, yeah.
 (17) Q In order, Mr. Wichorer, to be considered for that you have
 (18) to ask for it. That's what I'm trying to ask you, is that what
 (19) you're asking for, just sort of sending us a note that oh, by
 (20) the way?
 (21) A Well, yeah, I would - I mean, I would like to if -
 (22) Q You'd be willing to come back in a couple months or any
 (23) time during the next ten months to - to do this as opposed to
 (24) then?
 (25) A Uh-huh.

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- (1) Q Is that correct?
 (2) A Uh-huh.
 (3) MR. STOLL: Thank you.
 (4) THE COURT: I'm going to excuse you for a minute,
 (5) Mr. Wichorer, but I'm going to bring you right back in to let
 (6) you know what happens next.
 (7) A Okay. Do you want to leave this here?
 (8) THE COURT: Please
 (9) (Paul Wichorer leaves)
 (10) MR. STOLL: Your Honor, we would ask that the juror be
 (11) excused for two reasons. One, he's requested this for hardship
 (12) reason. I grant you that I don't think that this is a
 (13) terrible - it's not as bad as some other hardships that I've
 (14) certainly heard about here today. I would ask that at least he
 (15) be asked to talk to his employer if you deny our request on
 (16) that basis to find out if he's going to lose - if they're
 (17) going to cut him off as far as pay is concerned after a couple
 (18) weeks or, you know, what his program is in that regard.
 (19) Secondly, though, we would ask that he be discharged for
 (20) cause because one of the issues is the value of the lands in
 (21) Eshamy, whether Eshamy's gone back to normal, what the
 (22) persistence is there. He has forthrightly testified or stated
 (23) that he would evaluate any testimony on this, judge the
 (24) credibility of that testimony based upon his own experience and
 (25) he didn't back off of that. And that - there's no question

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- (1) that this is the very land that's going to be evaluated, as I
 (2) understand it, and I'm not that much of an expert on the Native
 (3) corporation property, but is that right?
 (4) MR. FORTIER: You are correct.
 (5) MR. STOLL: Mr. Fortier assures me this very land is
 (6) subject to - is an issue in dispute in this case.
 (7) THE COURT: Mr. Diamond?
 (8) MR. DIAMOND: Do I need to address the hardship
 (9) issue?
 (10) THE COURT: No.
 (11) MR. DIAMOND: Okay. With respect to the fact that he
 (12) has been to Eshamy, he has, best I can gather, touched down
 (13) postspill in the lake, fished the lake and only fished for fish
 (14) species which are not even at issue in this case, at least I
 (15) trust that's the case, otherwise we may have another 1500
 (16) exhibits to designate. The only fish issues that I understand
 (17) were - we're fighting over are the salmon runs and herring
 (18) runs in Prince William Sound and along the Kodiak - the Kodiak
 (19) archipelago. If he's disqualified for having touched foot on
 (20) one of these parcels, then we have to disqualify a whole host
 (21) of jurors who may have visited Kodiak or some may have -
 some
 (22) who we have yet to see who have lived there.
 (23) He's got no preconceived notions of the effect of the spill
 (24) on the land values, which is the issue that we're talking
 (25) about. He's got no preconceived notions on the two subsidiary

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- (1) events which are alleged to have an impact on the land values,
 (2) notably subsistence use and the salmon runs along that parcel.
 (3) Since he has no opinions, there - on those issues, it's
 (4) certainly not going to influence him in any way, and I think
 (5) the only thing that Mr. Stoll listed was that in listening to
 (6) the evidence, this witness, like any other witness, will have
 (7) certain recollections of having visited certain places, and if
 (8) he hears something directly contrary from a witness to what he
 (9) has personally seen, like any other witness, he may question
 (10) that, but that has no bearing on his ability to judge issues in
 (11) this case, and unless we do unhermetically sealed jurors, which
 (12) I don't think is possible to get, I don't think this juror is
 (13) at all tainted. And finally he said he could - and I think
 (14) forthrightly said he could consider all of the issues to be
 (15) tried based solely on the evidence and the instructions you
 (16) give him and his own common sense, and I don't think we can
 ask
 (17) anymore.
 (18) THE COURT: Counsel, the motion is denied. I believe
 (19) that there are certain things that juror has said that might
 (20) raise the index of supervision on the part of the parties, but
 (21) I believe that he's - his overall examination shows that he's
 (22) a rational person who examines things based on information
 (23) that's given to him and makes - and draws rational
 (24) conclusions.
 (25) I don't see that his experiences, at least as he has

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- (1) related them and as he's answered your questions cause him to
 (2) be the kind of juror who's formed a state of mind or whose
 (3) experiences would affect his service as a juror. So I'm going
 (4) to deny the motion, but remember, now, this is juror number 45
 (5) and he stays juror number 45, so he's down on the list.
 (6) The second thing I want to say to you is, in terms of what
 (7) he said about his own personal situation, we have one more day
 (8) and then he's scheduled to go to his class. I think we'd
 (9) probably all admit that we're not going to get a jury by the
 (10) end of tomorrow; wouldn't we?
 (11) MR. STOLL: I'm not - can I just have a moment, Your
 (12) Honor? Head count.
 (13) THE COURT: Yes.
 (14) MR. STOLL: I think it's very doubtful, Your Honor.
 (15) THE COURT: I think it's doubtful, too, and we may not
 (16) have a jury by the end of Monday, too. Now Monday is one day
 (17) of the time that he was scheduled.
 (18) MR. STOLL: I can't remember how many days he was
 (19) going to be gone.
 (20) THE COURT: He was going to be gone for three days.
 (21) So one, he's down on the list, he may not be on the jury.
 (22) Two, the jury's going to take more time to pick than we had
 (23) originally anticipated, so this trip probably wouldn't
 (24) interfere with that jury service if he's chosen for the final
 (25) jury.

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- (1) Three, I don't think he's going to be on this jury no
 (2) matter what because there are peremptory challenges, so I'm
 (3) going to let him go. I'm simply going to tell him he can go on
 (4) his trip.
 (5) MR. STOLL: Fine, Your Honor.
 (6) THE COURT: And if he's on the jury, we have to wait a
 (7) day for him, so be it.
 (8) (Paul Wichorer enters)
 (9) THE COURT: Mr. Wichorer, when jurors come in here,
 (10) they frequently have personal situations that interfere with
 (11) their service as jurors and, of course, you understand that
 (12) those reasons increase the longer, the more complex the trials
 (13) are because of the hardships they cause. But I have to be
 (14) pretty hard on the jury panel in terms of not letting them off
 (15) for reasons that I can get - that I can either deal with and
 (16) sort of minimize the inconvenience to them, or when I feel the
 (17) jurors are qualified to serve and I don't - and I want to get
 (18) a fair cross-section of the community to serve as jurors.
 (19) So although I think you have some - some reasons why you
 (20) might not want to serve and some inconvenience that would be
 (21) caused by service on this jury, if you're finally picked for
 (22) it, I'd like you to understand a few things.
 (23) First, I think you are a qualified juror so I'm not - I
 (24) can't excuse you from this case. The financial hardship
 (25) reasons, we are going to go from 8:30 to 1:30. You'll be out

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- (1) in the afternoons every day. I know that imposes a burden on
 (2) you, but it's a burden all the jurors are going to have to bear
 (3) any way. The trip you're scheduled to take could - I mean, I
 (4) wouldn't want you to miss that, that opportunity, and I think I
 (5) can get around that. And the reason is because we are really,
 (6) if we're lucky, we're halfway through the jury selection
 (7) process. It's going to take a few days more, so I'm not going
 (8) to tell you not to go on that trip.
 (9) What I am going to do is say you're still on the panel.
 (10) And we will contact you later so that you can come back, if you
 (11) are chosen to be a final juror in this case, but whatever
 (12) happens, you can - you can - don't cancel your tickets and
 (13) you can go on your trip, you simply have to contact us when
 you
 (14) get back. As I understand it, you're leaving on Sunday?
 (15) A Sunday morning. I'll be back Wednesday night.
 (16) THE COURT: So you'll simply have to contact us when
 (17) you get back, all right, just call the jury clerk?
 (18) A Okay.
 (19) THE COURT: But you're still on the panel, so remember
 (20) not to talk about this case with anybody and don't talk about
 (21) what was discussed in here with anybody on the jury panel.
 (22) Thanks very much.
 (23) A That's it?
 (24) THE COURT: Yes.
 (25) (Paul Wichorer leaves)

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- (1) (Richard Gerwin enters)
 (2) THE COURT: Mr. Gerwin, could you sit - is that your
 (3) name, Gerwin?
 (4) A Yeah.
 (5) THE COURT: Would you sit in the middle chair in front
 (6) of the microphone?
 (7) A Okay.
 (8) THE COURT: If you pick up the microphone and hold it,
 (9) we get a better record that way. Just hold it in your lap or
 (10) something like that.
 (11) Your name for the record is Richard Gerwin and counsel are
 (12) going to ask you some supplemental questions. Remember all
 of
 (13) these questions, including the questions you've answered on the
 (14) questionnaire are answered under oath; you understand that?
 (15) A Yeah.
 (16) THE COURT: Go ahead, Mr. Stoll.
 (17) VOIR DIRE EXAMINATION OF RICHARD GERWIN
 (18) BY MR. STOLL:
 (19) Q Mr. Gerwin, my name's Bob Stoll. Good afternoon. I
 (20) represent the municipalities who are some of the plaintiffs in
 (21) this litigation. Mr. Fortier represents the Native
 (22) corporations and they are also plaintiffs in this case. You've
 (23) lived in Alaska all your life?
 (24) A Yes, that's correct.
 (25) Q What do you like about Alaska?

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- (1) A I like the wildlife, mountains. I do a lot of hiking,
 (2) camping, fishing, stuff like that.
 (3) Q And where do you - where do you usually go hiking and
 (4) fishing?
 (5) A Well, I do the fishing down by the Kenai, and usually I'll
 (6) go up to Denali and do some hiking, and I have to get all those
 (7) permits and stuff so it takes a little while, but - that's
 (8) usually where I go.
 (9) Q Have you ever served on a jury before?
 (10) A No.
 (11) Q You know that a jury's supposed to be fair and impartial in
 (12) evaluating the facts in a case?
 (13) A Yeah.
 (14) Q And will you do that?
 (15) A Yeah.
 (16) Q You don't have any preconceived ideas as to whether the
 (17) plaintiffs should win or the defendants should win or anything
 (18) of that nature?
 (19) A No.
 (20) Q You're going to evaluate the case just from the evidence
 (21) you hear in the courtroom?
 (22) A Yes.
 (23) Q And you - you put down in the questionnaire that you
 (24) viewed Exxon somewhat unfavorably. You didn't say extremely
 (25) unfavorably, just somewhat unfavorably. That's not going to

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- (1) affect your determination in evaluating the evidence here in
 (2) the courtroom?
 (3) A No, as I understand, this is over not if Exxon did it or
 (4) not, just what damages are done.
 (5) Q That's correct.
 (6) A So yes. You know, it's - has nothing to do with my view
 (7) on Exxon.
 (8) Q Okay. Do you have any preconceived ideas as to whether -
 (9) any thoughts that you have about damages, you're not going to
 (10) take those - make your judgment as a juror based upon those
 (11) preconceived ideas, you're going to listen to what the evidence
 (12) is?
 (13) A Yeah.
 (14) Q The fact that your father worked for Arco two or three
 (15) years ago, is that going to influence you in any way in terms
 (16) of evaluating this case?
 (17) A No.
 (18) Q Now, you wrote on one of the questionnaires that - one of
 (19) the questions that you said, there's no positive effects that's
 (20) came from the Exxon Valdez oil spill, from knowing oil doesn't
 (21) mix well with the environment?
 (22) A Yes.
 (23) Q And by making that statement, you weren't prejudging any
 (24) evidence; were you or were you?
 (25) A Well, I think that if oil got into the - on that ground

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- (1) or, you know, in the ocean there, it did do some damage.
 (2) Q I don't think anybody disputes that.
 (3) A Yeah.
 (4) Q That's all you meant?
 (5) A Yeah.
 (6) Q And you didn't make an evaluation - you're not prejudging
 (7) whether the oiling has a long term effect or whether it was -
 (8) as Exxon contends - just a short term effect or -
 (9) A I don't know how long the effects last.
 (10) Q You're just going to listen to the evidence and make -
 (11) A Yeah.
 (12) Q - your own determination of that?
 (13) A (Nods head)
 (14) Q You haven't made any evaluation as to what effect the
 (15) oiling may or may not have had on land values or
 (16) archaeological
 (17) sites or other things of that nature; have you?
 (18) A No.
 (19) Q Now, you mentioned in here that you start school on August
 (20) 24th?
 (21) A Yes.
 (22) Q And I can't recall right now where - where you're going
 (23) back to school?
 (24) A I go to school in Montana, Billings, at Rocky Mountain
 (25) College. That was a concern of mine, because I - you know,
 (26) I'm going to start school, so -

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- (1) Q Does school start right on the 24th for you?
 (2) A Yeah, and I'm driving down there, so I, you know, need
 (3) about a week before.
 (4) Q So what is - you don't leave on the 24th, you leave a week
 (5) earlier than that?
 (6) A Yeah, school starts on the 24th.
 (7) Q Would it be an extreme hardship on you if you - if you had
 (8) to drive down there, you were a couple days late or could you
 (9) drive in less time or we don't know exactly when this - we
 (10) think this trial will be over by mid August, but maybe even
 (11) earlier than that, but we're not exactly positive.
 (12) A Well, like I'm getting an apartment down there, so I have
 (13) to be down there a couple days early to, you know, just get
 (14) that straightened out, so, yeah, actually, it would be kind of
 (15) hard if I was there a couple days later.
 (16) MR. STOLL: Thank you very much.
 (17) MR. DIAMOND: Your Honor, I don't know whether you
 (18) want to deal with the hardship issue separately.
 (19) THE COURT: Well, all I can tell you, counsel, is that
 (20) at first it's - I think it's likely that there won't be a
 (21) problem, because the trial will be over by the time, and we
 (22) have six alternates, so my feeling is that although that could
 (23) be a hardship, the hardship can be avoided and I'm going to
 (24) proceed on that assumption.
 (25) VOIR DIRE EXAMINATION OF RICHARD GERWIN

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- (1) BY MR. DIAMOND:
 (2) Q Okay. Just – I should introduce myself, Mr. Gerwin. My
 (3) name's Chuck Diamond, and I am one of the lawyers
 representing
 (4) Exxon in the case.
 (5) Q When precisely do you anticipate leaving? I noticed in the
 (6) questionnaire you were out of state from the 15th last year,
 (7) August 15th?
 (8) A Uh-huh.
 (9) Q Are you going to be leaving by August 15th this year?
 (10) A Probably pretty close to that, yes.
 (11) Q Your classes start on the 24th?
 (12) A Yes.
 (13) Q I noticed you're studying aviation?
 (14) A Yes.
 (15) Q What do you want to do with it?
 (16) A I'm thinking about for smaller kind of bush piloting, not a
 (17) big commercial airliner, but that's what I plan on doing, just
 (18) kind of –
 (19) Q Have you done a lot of flying in Alaska?
 (20) A Actually, I haven't done any in Alaska.
 (21) Q How about as a passenger?
 (22) A Oh, yeah, I've been on several trips.
 (23) Q Anywhere down in the Prince William Sound area?
 (24) A No.
 (25) Q How about out along the Kenai?

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- (1) A No. Just local, just around Anchorage.
 (2) Q You haven't been down to Kodiak?
 (3) A No.
 (4) Q Your father was a geologist for Arco; is that right?
 (5) A Yeah.
 (6) Q How long did he work with the company?
 (7) A 17 or 18 years, I believe.
 (8) Q Where was he based?
 (9) A Here in Anchorage.
 (10) Q And what kind of work did he do for Arco?
 (11) A He was in the exploration department. They, like, took
 (12) samples of the ground, and he'd say if there's oil or whatever
 (13) down there, something like that.
 (14) Q He doesn't do that anymore, I take it?
 (15) A No.
 (16) Q You wrote in your questionnaire that your dad was laid off
 (17) by Arco two or three years ago?
 (18) A Yeah, something like that.
 (19) Q You were, what, 16 or 17?
 (20) A (Nods head)
 (21) Q That create any hardships for the family?
 (22) A No, because like the company gave him some pay, you
 know,
 (23) for I think half a year while he wasn't working, and he had
 (24) been taking classes before and kind of went into accounting,
 (25) that's what he's doing now, for the state. He is an

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- (1) accountant.
 (2) Q So you don't think your dad has any ax to grind against
 (3) Arco?
 (4) A No.
 (5) Q Do you have any ax to grind against oil companies because
 (6) of your father's layoff?
 (7) A No.
 (8) Q What department does your father now work for?
 (9) A He – actually I think Arco helped him get the job. It's
 (10) over accounts for Arco, I think. It – I'm not exactly sure,
 (11) but it's just like he takes care of their accounts, in a way,
 (12) he reviews, you know, where their money and everything is for
 (13) the state. And then reports to the state, I guess on if it's
 (14) all accurate or something.
 (15) Q But he's a state employee now?
 (16) A Yes, he's a state employee.
 (17) Q Summer jobs hard to find in Anchorage for college students?
 (18) A Last summer I didn't find a job. I just didn't find one.
 (19) This summer, three days after I was back, I found one, so I
 (20) mean, I guess it's the right place, right time type deal.
 (21) Q Is that money you need for – for college next year, or is
 (22) it just spending money over the summer?
 (23) A Part of it, yes, is for school. Part of it's just spending
 (24) money.
 (25) Q Do you finance a part of your own education?

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- (1) A Not right now. We have like a college account for me and
 (2) my brother and sister, and we get from that and from this job,
 (3) about two-thirds of the money is going towards the college
 (4) fund. I'll put it in there, so yes, I'll be paid for part of
 (5) it this year.
 (6) Q Do you – you're working the afternoon shifts at Alamo?
 (7) A Yeah, two to ten.
 (8) Q Would you anticipate trying to hold onto that job during
 (9) the evenings and serve as a juror from 8:30 to 1?
 (10) A It would seem to be a pretty long day if I did that and,
 (11) you know, I'm also concerned about for over the summer, I
 mean,
 (12) would it just be in the mornings or would it be on weekends and
 (13) everything? Because I have Sunday and Monday off and, you
 (14) know, I like to go out and do stuff with my friends and –
 (15) Q Well, we're all assuming it's not Saturday and Sunday:
 (16) Well, maybe I'm wrong. It would be ordinarily Monday through
 (17) Friday. But I'm more interested in the – your employment
 (18) situation, because none of us want sleeping jurors, and the
 (19) subject matter of some of the things we're going to talking
 (20) about may lend itself to sleeping. Would it be a hardship for
 (21) you if you did not work at Alamo for the summer?
 (22) A Yes. Because that money can be used for school.
 (23) Q I'm sure we could all – we could all use the money, but do
 (24) you really need it for college next year? How important is
 (25) this?

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- (1) A I suppose I don't absolutely need it, but it would help
 (2) out, I suppose is what I'm saying.
 (3) Q Is serving on a jury something you'd like to do this
 (4) summer?
 (5) A Well, it's a little bit interesting, but I don't know if
 (6) I'm interested for that long of a time, to tell you the truth.
 (7) Q You said in response to question number 46 of your
 (8) questionnaire that - I think Mr. Stoll brought this out, that
 (9) there were no positive effects that came from the spill. What
 (10) in your mind were the biggest negative problems, negative
 (11) effects?
 (12) A Well, like pictures and a couple - you know, like articles
 (13) they did, they showed, you know, the birds and the wildlife and
 (14) the beaches just like soaked with oil and, you know, it just
 (15) didn't seem positive to me. It killed off some wildlife, plant
 (16) life, stuff like that. It just didn't look positive. The only
 (17) positive thing I can maybe think is temporary jobs for some
 (18) people, but, you know -
 (19) Q Did the pictures of the animals and the birds and the
 (20) otters disturb you a great deal?
 (21) A Well, I thought it was pretty sad, you know, because, you
 (22) know, it definitely affected the population of them and -
 (23) yeah, it disturbed me, I guess.
 (24) Q There is a possibility, I don't know how great of a
 (25) possibility, but some of those photographs, some of those

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- (1) pictures, some of those film clips may be shown in this case.
 (2) I don't know that that's a fact, but it may happen. Do you
 (3) think that that might push some emotional buttons in you to
 (4) want to sock it to Exxon?
 (5) A I don't think so, even if it - you know, if it had to be
 (6) into the area that they're talking about and I mean, what
 (7) happened there, you know, obviously it happened, but I guess
 (8) we're looking at right now, how is the grant - the environment
 (9) recovering from it and stuff like that, so I don't think it
 (10) would have that much of effect, but I'm sure it probably would
 (11) have a little bit of a negative effect on my mind.
 (12) Q We need you to search way down deep into your soul,
 (13) because
 (14) this is important, and tell us whether you feel comfortable and
 (15) confident that you could put that aside and judge this case
 (16) fairly from the standpoint of Exxon as you would if the
 (17) defendant in this case were somebody you never heard of or
 (18) something you never knew about.
 (19) A Yeah, I'm - I'm sure I could.
 (20) Q You said when Mr. Stoll was asking you questions that if
 (21) oil got into the ground you're sure it did some damage?
 (22) A Yes.
 (23) Q What did you have in mind?
 (24) A Well, if it got into the ground, the plants in the area
 (25) would die. I don't know how the long-term effects on soil or
 (26) whatever are affected, but it'd be hard for the ground to

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- (1) recover and it's hard to get it out of the ground. I mean,
 (2) like water, I guess you can filter it out, you know, through a
 (3) slow process, but I don't know about ground, you just get rid
 (4) of the dirt or whatever, but it just didn't - it seems like
 (5) there would still be damage now, but if there's some way it
 (6) could be proven, otherwise, I guess, you know - but I guess I
 (7) am leaning a little towards, you know, the environment more
 (8) than, you know - Exxon gives me a negative effect, but it's
 (9) just like at work, there's a couple people, you know, you don't
 (10) really like or whatever, but you just kind of put your
 (11) differences aside to get the work done, so you know, I - I
 (12) think I could put the differences aside from the company to see
 (13) the facts.
 (14) Q You'll be hearing instructions from Judge Shortell if you
 (15) serve on this jury that the plaintiffs here have the burden of
 (16) proving, not the defendant, it's the plaintiffs have the burden
 (17) and they have to prove it by more than 50 percent. They have
 (18) to convince you by more than half. Doesn't have to be a great
 (19) deal more, but it has to be more, and that if you are truly
 (20) undecided on issues, you have to return a verdict for the
 (21) defendant. Even if the defendant is a big oil company called
 (22) Exxon. Do you think you're going to have any problems doing
 (23) that?
 (24) A I didn't quite understand what you were saying.
 (25) Q If you determine that you just can't answer some of these

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- (1) questions, plaintiffs' evidence hasn't convinced you, and you
 (2) don't know whether there is oil, if it's having any lasting
 (3) effect, if it's affected the lands, you're right in the middle,
 (4) if you're instructed by Judge Shortell that any benefit of
 (5) doubt goes to the defendant -
 (6) MR. STOLL: I don't think that's the law, Your Honor.
 (7) MR. DIAMOND: I'll rephrase it.
 (8) BY MR. DIAMOND:
 (9) Q If the Court tells you that the plaintiffs have the burden
 (10) of proving to you by more than 50 percent of the evidence and
 (11) you're right in the middle, do you think you'd have any problem
 (12) saying I could return a verdict despite the fact that it is
 (13) Exxon?
 (14) A I - probably, no, I mean.
 (15) Q Probably really isn't good enough.
 (16) A Well, probably really -
 (17) Q If you're uncomfortable, tell us, because there are other
 (18) cases you can serve on. We're entitled to know whether you
 (19) could be totally impartial and totally fair despite the case
 (20) that this case is Exxon.
 (21) MR. STOLL: Your Honor, I think he's misstating.
 (22) THE COURT: I'll ask the questions, counsel.
 (23) BY MR. DIAMOND:
 (24) Q Sir, the issue is, are you convinced you can be fair and
 (25) impartial in this case?

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- (1) A Yes.
- (2) THE COURT: There's also an issue regarding the
- (3) instructions I'm going to give you, the burden - you have to
- (4) follow my instructions on the law and you - as a juror you
- (5) would find the facts, but you have to follow what I told you
- (6) was the law, and the law is that if a plaintiff comes in this
- (7) court, any plaintiff, it has the burden of proof, the proof is
- (8) by more than 50 percent chance that something is true or not;
- (9) all right? So if you found it 50/50 or less, you'd have to
- (10) find that something was not true. In other words, you have to
- (11) find against the plaintiffs. Could you follow those
- (12) instructions?
- (13) A Yeah.
- (14) THE COURT: Are you sure of that?
- (15) A Yeah.
- (16) THE COURT: All right.
- (17) MR. DIAMOND: One final question.
- (18) BY MR. DIAMOND:
- (19) Q You checked that you never ever drank alcoholic beverages.
- (20) Is that on account of religious scruples?
- (21) A No.
- (22) MR. DIAMOND: Nothing further.
- (23) May I consult for just one moment, Your Honor?
- (24) THE COURT: Sure.
- (25) MR. DIAMOND: Pass for cause.

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- (1) THE COURT: Thank you. Sir, that means you're still
- (2) on the - you're on the jury panel because you've been passed
- (3) for cause by both sides. Doesn't mean that you'll actually -
- (4) it isn't a solid indication that you're going to be on the
- (5) final jury in this case because there's more questions to be
- (6) asked of other jurors, so I'd ask you to do a couple of
- (7) things. I'm going to excuse you, and then we'll call you back
- (8) at the appropriate time to determine whether or not you are
- (9) finally going to be on this jury.
- (10) In the meantime, remember not to talk about this case at
- (11) all with anybody, and it's very important that you not share
- (12) any information that was gleaned here in court about questions
- (13) or answers about your qualifications with any of the other jury
- (14) panel members. You can follow that; can't you?
- (15) A Yes.
- (16) THE COURT: So you're excused for now, and until we
- (17) get in contact with you or call you back, you can just go about
- (18) your normal affairs, you just have to be available for that
- (19) call; okay?
- (20) A All right.
- (21) THE COURT: Thanks very much for your time.
- (22) (Richard Gerwin leaves).
- (23) MR. DIAMOND: Your Honor, if we could clarify in
- (24) advance it might save some time. We had assumed we were
- (25) dealing with a two month estimate. There are a number of

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- (1) people coming up, I think we have two more college students,
- we
- (2) who have plans to leave mid - mid August. Is it your view
- (3) that we will - we will keep them on the panel if they're
- (4) otherwise qualified to serve?
- (5) THE COURT: Yes. Does anybody disagree with that
- (6) decision?
- (7) MR. STOLL: I don't think so, Your Honor, assuming we
- (8) can get started next week with our - which I think we should
- (9) be able to do.
- (10) THE COURT: I certainly hope so.
- (11) MR. DIAMOND: I - we have not yet reviewed
- (12) Mr. Mundy's materials. I think when we have we're going to
- (13) probably ask that you postpone opening statements until the,
- (14) 5th. If this case is seriously estimated to take anywhere
- (15) close to two months, given the fact that things seem to take
- (16) longer than even scheduled, I think you will end up - you have
- (17) a substantial possibility with ending up with three college
- (18) students who will leave in August.
- (19) THE COURT: If that's true, counsel, and I think it's
- (20) a possibility, you're probably going to have to pick more than
- (21) 18 jurors.
- (22) (Sarah Josephson enters)
- (23) THE COURT: I guess I can say good afternoon now,
- (24) right? I wonder if you would please give your name for the
- (25) record?

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- (1) A Yes, it's Sarah Josephson.
- (2) THE COURT: All right. Ms. Josephson, you understand
- (3) you're under oath?
- (4) A Yes.
- (5) THE COURT: And the questions you gave in the jury
- (6) questionnaires were under oath also?
- (7) A Yes.
- (8) THE COURT: The lawyers will have some brief
- (9) supplemental questions, and then I'll tell you what happens
- (10) next; okay?
- (11) A Okay.
- (12) VOIR DIRE EXAMINATION OF SARAH JOSEPHSON
- (13) BY MR. FORTIER:
- (14) Q Good afternoon, Ms. Josephson, my name is Sam Fortier. I
- (15) represent some of the Native corporations in this case. And
- (16) Mr. Stoll represents the municipal plaintiffs in the case.
- (17) What I'm going to be doing is asking you a few questions
- (18) just to get some basic facts off of your questionnaire. If I
- (19) ask anything that embarrasses you, you can take that up with
- (20) the Judge, okay?
- (21) Ms. Josephson, I note that you are a law student?
- (22) A Yes, I am.
- (23) Q Where do you go to school?
- (24) A Catholic University in Washington, D.C.
- (25) Q And when does school begin for you?

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- (1) A I think my first day of class is August 22nd and that means
 (2) that by August 22nd, I have to have my reading assignments
 done
 (3) and have moved into my apartment in D.C.
 (4) Q So you need to be back in D.C. By the 22nd?
 (5) A Definitely, yes.
 (6) Q 'Cause that's the first day of class; right?
 (7) A Yeah.
 (8) Q Now, this trial is expected - we anticipate being done
 (9) with it by around the middle part of August, around in there.
 (10) That wouldn't present you any difficulty; would it?
 (11) A The only would come from any delay in my arrival in D.C.
 (12) That's what I'm most concerned about, because even that first
 (13) day of class, I've got all of my classes on Monday and so
 (14) missing even a week of class I think would throw me off.
 (15) Q And Monday is the 22nd?
 (16) A Whatever the Monday is right around there, I'm not even
 (17) certain. But no, until August 15th, it wouldn't create any
 (18) problem whatsoever.
 (19) Q Now, Ms. Josephson, you've learned as a law student,
 (20) haven't you, that both sides need a jury that is composed of
 (21) fair jurors?
 (22) A Yes, I have.
 (23) Q And you've learned that it's important, haven't you, that
 (24) the jurors' role is to weigh the evidence as it's presented,
 (25) not to prejudge things?

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- (1) A Yes.
 (2) Q And that a jury also is given instructions by the Judge and
 (3) the jurors are expected to follow those instructions; right?
 (4) A Yes.
 (5) Q Now, do you think that you can be - you can first of all
 (6) weigh and evaluate the evidence, both sides?
 (7) A Yes, I do.
 (8) Q And do you think you would have any trouble following the
 (9) Judge's instructions?
 (10) A No, I - I don't think so.
 (11) Q And do you think you can set aside whatever you may or may
 (12) not have heard about the Exxon Valdez oil spill when you come
 (13) into - to be a juror?
 (14) A Yes, I think so.
 (15) Q I have just a couple of questions on your - on your
 (16) questionnaire, itself. I believe there was a copy set in front
 (17) of you, Ms. Josephson.
 (18) Now, you indicate that your brother went to work on the oil
 (19) spill. Do you know where he went to work on it?
 (20) A I don't. I've been out of town most of my last six years,
 (21) really, traveling, so - or at college, so I don't. And in
 (22) fact, I don't think we've ever had a conversation about it,
 (23) either. I've just sort of heard through my parents that he
 (24) went and volunteered.
 (25) Q So what he did wouldn't affect your determination as a

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- (1) juror then; would it?
 (2) A No.
 (3) Q I want to ask you about question number 46. Before I get
 (4) there, let me pose another question to you, Ms. Josephson.
 (5) You've been out of state for six years, then?
 (6) A Well, I was back for a couple of years working for my
 (7) father, but even during those years I would take off and travel
 (8) a lot, and I spent half of my undergraduate career, so to
 (9) speak, in England, so I've definitely moved around a lot.
 (10) Q You like traveling, huh?
 (11) A I love it.
 (12) Q Is that European sort of travel or do you travel around
 (13) Alaska, too?
 (14) A Not around Alaska, no, I don't.
 (15) Q You enjoy traveling to foreign lands, though?
 (16) A Yes.
 (17) Q So you were away, then, when the oil spill occurred or were
 (18) you in Anchorage?
 (19) A No, I was a sophomore in college in Baltimore.
 (20) Q Let me turn your attention to page 46 -
 (21) A Yes.
 (22) Q I'm sorry, page 10, item number 46. You do not have any
 (23) opinions or feelings that the positive effects of the Exxon
 (24) Valdez oil spill outweigh the negative effects; is that
 (25) correct?

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- (1) A I haven't spoken - that's correct. I haven't spoken with
 (2) any one in the room, in the jury room, but I have - but I know
 (3) that there was some people speaking about positive effects and
 (4) so I understand there to be some, if that's what you call them,
 (5) but it's difficult for me to really say that I believe there
 (6) were positive effects from the oil spill.
 (7) Q Okay, but whatever the effects may have been, is it fair to
 (8) say that you would want to hear both sides of the issue before
 (9) you arrived at any determinations?
 (10) A Yes.
 (11) Q Okay. And you haven't - you haven't developed any opinion
 (12) of your own at this point; is that correct, Ms. Josephson?
 (13) A That is correct.
 (14) Q Let me turn your attention to page - page 11 of your
 (15) questionnaire. Item 49X, you indicate that you think it's
 (16) going to be years, if ever, before things will really clear up?
 (17) A Uh-huh.
 (18) Q You see that?
 (19) A (Nods head)
 (20) Q Okay. Now, Ms. Josephson, in this case, there's going to
 (21) be evidence presented by the plaintiffs by - and also by the
 (22) defendants as to the nature and effect of the impact of the oil
 (23) spill on lands and with Mr. Stoll's clients as well on lands.
 (24) One of the - so I guess the question is whether or not you
 (25) would be able to weigh that evidence as presented by the

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- (1) plaintiffs and keep an open mind and as the – until the
 (2) defendants have presented their evidence before arriving at any
 (3) conclusions?
 (4) A Yes, I think so.
 (5) Q Would you be able to do that?
 (6) A I think so. So.
 (7) Q So your statement, I think it will be years, if ever,
 (8) things will really clear up, is that based on any – is that
 (9) based on any facts that you have at your disposal?
 (10) A No, it's not.
 (11) Q You'd want to hear the evidence on both sides before you
 (12) really arrive at a determination?
 (13) A Yes.
 (14) Q And finally, item number 51XXX, page 12, you indicate to
 (15) the answer you think Exxon has paid enough on the Exxon
 Valdez
 (16) oil spill, you indicate no. Do you see that?
 (17) A Yes.
 (18) Q Ms. Josephson, as to the Native corporations, do you know
 (19) anything about what the Native corporations' claims are?
 (20) A No, I don't.
 (21) Q Do you know anything about what the municipality claims
 (22) are?
 (23) A No, I don't.
 (24) Q So then have you arrived at any opinion one way or the
 (25) other as to whether or not Exxon should pay the Native

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- (1) corporations any money or the municipalities any money?
 (2) A No, I haven't.
 (3) Q So this – do you think that Exxon has paid enough as a
 (4) result of the Exxon Valdez oil spill, when you checked no, that
 (5) had nothing to do with anything that the Native corporations
 (6) may or may not present; is that correct?
 (7) A I have gone out of my way not to read anything, hear
 (8) anything, yes, that is correct.
 (9) Q That would be the same with the municipalities; is that
 (10) correct?
 (11) A Yes, that's true.
 (12) Q Okay. Under A, you indicate that you have an opinion about
 (13) the municipalities or Native corporations suing Exxon for
 (14) damages. You state you're all for it. You also go on to say
 (15) you've spent a lot of time over the last few years, I think
 (16) over the last year reading cases and you don't think that this
 (17) is one of those cases; do you see that?
 (18) A Yes, I do.
 (19) Q Okay. Now, do you try to look at both sides of an issue
 (20) before you arrive at a conclusion on things?
 (21) A After my first year of law school, I try to do that, yes.
 (22) Q That's one thing you learn in law school?
 (23) A Yeah.
 (24) Q And you look at the evidence, then?
 (25) A Yes.

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- (1) Q So you're all for this litigation because you think there
 (2) are genuine issues of fact involved on both sides, would that
 (3) be a fair way to restate what you said there?
 (4) A Yes, that would be a fair way.
 (5) Q Finally, I'm going to have to turn you back to page 11,
 (6) answer number 49 for a moment, Ms. Josephson.
 (7) A Okay.
 (8) Q You answer the answer – you were asked whether or not you
 (9) have an opinion regarding environmental standards, and you
 say
 (10) the standards are not strict enough. Now, in this case, do you
 (11) understand this case just concerns damages?
 (12) A Yes.
 (13) Q It has nothing to do at all with liability?
 (14) A Yes.
 (15) Q So even though you may think that the standards are not
 (16) strict enough, can you still be fair to both sides in this case
 (17) if you were to sit on the jury?
 (18) A Yes.
 (19) Q And I note that you're a lifelong Alaskan?
 (20) A Yes.
 (21) Q Why did you come back when you traveled all over the
 world?
 (22) A Oh, I – I haven't come back permanently. I'm – I'm just
 (23) here for the summer and then I'll probably come back next
 (24) summer, but I – I won't be living in Alaska.
 (25) Q Do you think of Alaska as your home?

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- (1) A Right now I do.
 (2) Q Do you like Alaska?
 (3) A Alaskans or Alaska?
 (4) Q Do you like being in Alaska?
 (5) A I like being with my family and I like Alaska in the
 (6) summertime.
 (7) Q Why do you like it in the summertime?
 (8) A The weather.
 (9) Q Do you do anything like do you go hunting or fishing,
 (10) anything like that?
 (11) A No, I just – I'm definitely – I like warm climates, so –
 (12) Q And do you want to be on the jury, on this jury? Would you
 (13) like to be on this jury?
 (14) A I'd like to be on this jury, but I – I really want to –
 (15) more than anything, get back to school on time. So.
 (16) Q Second year law school; right?
 (17) A Yes.
 (18) MR. FORTIER: Only one more year after this, too. I
 (19) thank you very much. Pass for cause.
 (20) VOIR DIRE EXAMINATION OF SARAH JOSEPHSON
 (21) BY MR. CLOUGH:
 (22) Q Hi, I'm John Clough, I'm from down in Juneau. I'm one of
 (23) the lawyers that's going to be representing Exxon in this,
 (24) Chuck Diamond, who you might remember from when we were
 all up
 (25) at the Supreme Court room, is one of the others. I've got to

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- (1) ask you this, why do you want to be a lawyer?
 (2) A Good question. And I – actually, I've heard that before
 (3) and it's – I have watched my father, who's been practicing for
 (4) 33 years, and I've been amazed and moved by him, and I don't
 (5) really consider our relationship to go past that sense of just
 (6) true love when I see him practice law and I want to be able to
 (7) have that feeling, myself. I've never known anyone to have any
 (8) passion like that, and I didn't know when I started law school
 (9) whether I would feel that way, and three months into it I had
 (10) the same feeling. It was really moving for me.
 (11) Q I appreciate on behalf of all of the lawyers in this
 (12) courtroom hearing someone that enthusiastic about it these
 (13) days, thank you. And if I can say something on this trial, I'm
 (14) going to do a good job for these guys.
 (15) You had mentioned a couple of things. One, school starts
 (16) the 22nd, but I thought I also heard you say you wanted to be
 (17) back by the 15th?
 (18) A I want to be back no later the 17th just because of reading
 (19) assignments and moving back there takes a little time, paying
 (20) tuition fees, registering, that sort of thing.
 (21) Q That's your drop-dead date so to speak?
 (22) A Yes.
 (23) Q This summer you're working with your dad in his office?
 (24) A I'm working Monday, Tuesday and Friday with my dad; and
 I'm
 (25) doing an internship at the courthouse Wednesday and
 Thursday.

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- (1) Q What are you doing?
 (2) A I'm doing really anything, depends on the day. Sometimes
 (3) it's secretary duties and sometimes it's actual research. He
 (4) has a general practice so he covers a lot of different types of
 (5) cases.
 (6) Q Do you meet clients in the course of that operation?
 (7) A Yes.
 (8) Q How many lawyers – does he have any other lawyers working
 (9) with him these days?
 (10) A He has one partner.
 (11) Q And he's only had a partner for the last couple years?
 (12) A Oh, maybe a year.
 (13) Q He's been a solo practitioner for a long time?
 (14) A Yes.
 (15) Q You had checked on your questionnaire, and I should know
 (16) the exact reference, I think it's question 80, I don't have the
 (17) page numbers memorized, but that you believed that one of
 your
 (18) dad's clients – ah, here it is, and my father has a client who
 (19) hopes to collect some damages. Can you tell us about that?
 (20) A I worked actually on a divorce case for my father, and the
 (21) man who was going through the divorce is presently working as
 a
 (22) fisherman in Kodiak, and I know – I haven't – I know just
 (23) through sort of hearing bits of their conversation that he's
 (24) hoping to get some money, but I don't know any more details
 (25) than that.

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- (1) Q When you say, hoping to get some money, hoping to get
 some
 (2) money from Exxon?
 (3) A From Exxon, yes.
 (4) Q Has your – has he and your dad talked about that case at
 (5) all?
 (6) A Not when I've been present, no.
 (7) Q Is your dad representing him in that claim?
 (8) A No, he's not.
 (9) Q Do you know who is?
 (10) A No, I don't.
 (11) Q Do you know if your dad's provided him any advice on that
 (12) claim?
 (13) A No, I don't.
 (14) Q And you haven't met this guy; right? The guy from Kodiak,
 (15) I'm sorry.
 (16) A I have met him.
 (17) Q Oh, I'm sorry.
 (18) A Yeah.
 (19) Q Have you had an opportunity to talk to – is it a man or
 (20) woman?
 (21) A It's a man.
 (22) Q To the gentleman from Kodiak about his claim?
 (23) A No, I haven't.
 (24) Q And you haven't read any documents about his claim against
 (25) Exxon?

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- (1) A No, I haven't.
 (2) Q You have also said that you thought your brother had a
 (3) couple of friends who might have claims. Can you tell us about
 (4) that?
 (5) A I know he's got one friend, who I think is presently sort
 (6) of spotting fish, whatever the term for that is called, and my
 (7) brother said that this friend is hoping to also get some money
 (8) from Exxon, but I – I've never spoken to his friend about
 (9) this. It's just been sort of through my brother mentioning
 (10) it.
 (11) Q And do you – have you ever met this friend?
 (12) A Yes, I have.
 (13) Q Do you know who it is?
 (14) A Matt Milnes (ph).
 (15) Q But you've never spoken to him about it?
 (16) A No, I have not.
 (17) Q You're in D.C. for what, about ten months of the year for
 (18) law school?
 (19) A Yes.
 (20) Q Do you maintain your residence in the District of Columbia
 (21) or up here?
 (22) A No, up here.
 (23) Q You keep your driver license up here?
 (24) A Yes, I do.
 (25) Q And you're registered to vote up here?

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- (1) A Yes.
- (2) Q Obviously from your work with your dad and the way you feel
- (3) about him and his work as an attorney, you know that what makes
- (4) the system work is integrity and people really being able to
- (5) put aside issues and be fair. You were very honest in your
- (6) responses in these questionnaire, and we appreciate that and
- (7) that's why I need to follow through with you on some of them,
- (8) but as I'm sure you recall some of them were fairly negative
- (9) towards Exxon, and it's my job here to ask you about those.
- (10) And I'd like to start with page 11, the same one Mr. Fortier
- (11) talked to you about.
- (12) What you did, as you recall, I think check on that, that
- (13) you felt extremely unfavorable about Exxon. Is that an opinion
- (14) that you feel pretty strongly about?
- (15) A I think I would call myself a most conservative of my
- (16) family, but my family's the most liberal and full of
- (17) environmentalists, so certainly, I think I could be fair in any
- (18) proceedings that I heard, but I've been brought up to basically
- (19) believe - to go against big companies and corporations when it
- (20) comes down to it.
- (21) Q Big oil companies in particular, is that -
- (22) A Well, no, not in particular, no.
- (23) Q Has the oil spill been a subject of the discussion in your
- (24) family?
- (25) A Yes, but - but not as much as many other issues. I mean,

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- (1) we talk about everything, but yes, of course it has been.
- (2) Q Have you had a chance to talk to your dad about it?
- (3) A Not really. I mean, Sunday night I said, I have jury duty,
- (4) I won't be in for work, and he said, oh, you might be on the
- (5) Exxon jury, and I - that was the extent of it, but no, not
- (6) really.
- (7) Q I'm not talking so much recently, but more back in time, in
- (8) those times you've been back home over the years?
- (9) A No, because I was really - during key points like the
- (10) actual spill I was out of town and there were other issues to
- (11) talk about when I was calling home, especially from England,
- (12) so
- (13) no.
- (14) Q Let me - let's look, if we could, a little bit farther
- (15) down. I mean, really one of the key issues, this is a case I
- (16) think you might remember, we talked about a little bit before
- (17) and the Judge has mentioned to you, it's mostly about land
- (18) damages and things associated with land damages and how long
- (19) the effects, whatever they may or may not be as the evidence
- (20) shows are going to persist over time and what those effects
- (21) are, and you were asked a question down there how long the
- (22) effects of the oil spill will last or continue to last, and you
- (23) said I think it will be years, if ever, before things really
- (24) clear up.
- (25) When you wrote that you really meant it; didn't you?
- (26) A I meant that I - I mean, I don't know enough about

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- (1) clean-up process to know exactly how that's been going, but
- (2) I - but I will say that just seems like there's such a mass of
- (3) oil out there that I can't possibly imagine in the span of five
- (4) years or four years how well it's been cleaned up. I just
- (5) can't, I can't imagine it.
- (6) Q When you say you can't imagine, what do you mean?
- (7) A I mean, I haven't heard anything yet that's made me believe
- (8) that that amount of oil has been cleared up enough that things
- (9) could be back to normal.
- (10) Q Have you seen or heard any of the stuff either in the
- (11) media, let's say in the media to the contrary, that there
- (12) are - there is still oil out there and there are still effects
- (13) going on?
- (14) A Yes. I have.
- (15) Q I'm going to ask you a real important personal question
- (16) here. In your heart of hearts, do you believe they're still
- (17) out there and there's still effects going on as you're sitting
- (18) here today, because this is what this process is about?
- (19) A I would - I mean, I really - I believe that there could
- (20) be evidence which would show me that no, things are back to
- (21) normal. I believe that. But right now, in my heart of hearts,
- (22) I would say I really cannot believe things are back to normal.
- (23) I can't.
- (24) Q Let me ask you this question, because this is really what
- (25) the nub of it's all about. I mean, Bob and Sam, they're going

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- (1) to represent their clients and Chuck and I are going to do
- (2) this, too, and it's really important that we start off in an
- (3) even playing field, and the only way with a jury we can start
- (4) off in an even playing field, you can say notwithstanding what
- (5) I believe in my heart of hearts when Mr. Diamond and Mr.
- (6) Clough
- (7) and the other lawyers there get up there and present me
- (8) evidence that maybe the oil isn't still out there and the
- (9) effects have not persisted nearly as long as I thought that I
- (10) can, from a starting place, give them just the same attention,
- (11) just the same credibility and just the same fair shake that I
- (12) will give plaintiffs when they say something to the contrary,
- (13) do you think you can really do that?
- (14) A Oh, yes, I think I can really do that.
- (15) Q You feel confident that you can do that?
- (16) A Yes. I want to give an example, actually.
- (17) Q Please.
- (18) A My father came to me and said, do you think O. J. Simpson
- (19) committed murder?
- (20) And I said, well, we don't know yet, do we?
- (21) And he said, that's exactly the answer I want.
- (22) And I think most people have an opinion one way or the
- (23) other, but I haven't heard everything. I've heard the 911
- (24) conversations with his wife. I've seen him. I know he had the
- (25) six-hour, four-hour, whatever, car chase, but I have not made
- (26) an opinion yet.

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- (1) MR. CLOUGH: I promise we will not introduce any
- (2) evidence of a six-hour car chase in this case. No videotapes,
- (3) Your Honor, not on that one.
- (4) MR. STOLL: I don't know about that.
- (5) BY MR. CLOUGH:
- (6) Q It's not a car. You know how the process works with the
- (7) plaintiffs and the defendants?
- (8) A Yes.
- (9) Q Do you understand the importance of, given the fact the
- (10) plaintiffs will be going first and having probably weeks to
- (11) present their testimony, maintaining an open mind until the
- (12) defense have had an opportunity to present their witnesses and
- (13) the their evidence on the issues?
- (14) A Yes.
- (15) Q And you feel like you can do that?
- (16) A Yes.
- (17) Q And you feel that you can give the Court, the plaintiffs,
- (18) lawyers and us your commitment to be a fair and impartial juror
- (19) in this case?
- (20) A Yes.
- (21) MR. CLOUGH: Could I have an opportunity to confer
- (22) with my co-counsel for just a moment, Your Honor?
- (23) THE COURT: Sure, yes, go ahead.
- (24) MR. CLOUGH: Your Honor, we'll pass this juror for
- (25) cause.

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- (1) MR. STOLL: I don't think so, Your Honor.
- (2) MR. DIAMOND: Can we make it four?
- (3) THE COURT: You always say that.
- (4) MR. DIAMOND: Well, we don't work here locally, we
- (5) have to hitch a ride way over to the other side, we got to
- (6) carry boxes and find lunch.
- (7) MR. STOLL: Poor babies.
- (8) THE COURT: What are we going to be discussing at the
- (9) 3:30 or four?
- (10) MR. STOLL: It's our motion, Your Honor, to strike
- (11) their 1750 new exhibits and - at least 1450. We said 300 they
- (12) can -
- (13) THE COURT: I'll compromise with you, counsel, quarter
- (14) to four. I want to be able to listen to you fully and give you
- (15) a decision before the end of the day; all right?
- (16) MR. DIAMOND: That's fine. We will also bring the
- (17) Naked Island maps to show you.
- (18) THE COURT: Yes, that's good.
- (19) MR. DIAMOND: To the extent that's an issue, if we've
- (20) gotten the Monday material, the appraisal expert reports and
- (21) we're in a position to talk about how much time we need to
- (22) assess those, Mr. Oppenheimer will be here to address that.
- (23) THE CLERK: Please rise. This court stands in
- (24) recess.
- (25) (Recess at 2:10 p.m.)

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- (1) THE COURT: You've been passed for cause,
- (2) Ms. Josephson, let me tell you what that means because it
- (3) means - basically what it means is you'll be here a little bit
- (4) longer. You know that there are lots of jurors behind you and
- (5) they have to be questioned also so the final jury composition
- (6) can't be arrived at until that's all done. But there's no
- (7) reason for you to hang around while that's going on, so I'm
- (8) going to excuse you, but since you're still on the jury panel
- (9) you have to know a couple of things.
- (10) One is we'll contact you when it's time for you to come
- (11) back and, two, it's important that you understand, like the
- (12) other jurors should have understood, that you shouldn't be
- (13) talking about this case at all and/or forming opinions about it
- (14) based on what you hear in here. You also shouldn't be sharing
- (15) what you hear in here or the questions that you're asked with
- (16) other jury panel members; you understand that?
- (17) A Yes, I do.
- (18) THE COURT: So I'll excuse you for now and we'll be in
- (19) contact with you later.
- (20) A Thank you, Your Honor.
- (21) (Sarah Josephson leaves)
- (22) MR. DIAMOND: Are we done?
- (23) MR. STOLL: We have another one, Judge?
- (24) THE COURT: No. We ran overtime. I let them go. Is
- (25) there anything else before 3:30?

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(1) STATE OF ALASKA)
 (2) : Reporter's Certificate
 (3) DISTRICT OF ALASKA)
 (6) I, Joy S. Brauer, a Registered Professional
 (7) Reporter and Notary Public;
 (8) DO HERBY CERTIFY:
 (9) That the foregoing transcript contains a true and
 (10) accurate transcription of my shorthand notes of all requested
 (11) matters held in the foregoing captioned case.
 (12) Further, that the transcript was prepared by me
 (13) or under my direction.
 (14) DATED this day
 (15) of , 1994.
 (21) JOY S. BRAUER, RPR
 Notary Public for Alaska
 (22) My Commission Expires: 5-10-97

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re) Case No. JAN-89-2533 Civil
) Anchorage, Alaska
 (5) the EXXON VALDEZ) Friday June 24, 1994
) 9:10 a.m.
 (6))
 (8) VOLUME 4 Pages 397 through 642
 (10) TRANSCRIPT OF PROCEEDINGS
 (11) TRIAL BY JURY- JURY SELECTION (Continuing)
 (13) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge

(16) APPEARANCES:

(17) FOR THE PLAINTIFF:

(18) N. ROBERT STOLL
 Stoll, Stoll, Berne & Lokting
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUMENOS
 (21) Birch, Horton, Bittner & Cherot
 1127 West Seventh Avenue
 (22) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 (24) Fortier & Mikko
 2550 Denali Street, Suite 604
 (25) Anchorage, AK 99503
 907/277-4222

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FOR THE DEFENDANTS:

(2) CHARLES P. DIAMOND
 M. RANDALL OPPENHEIMER
 (3) LINDA JANE SMITH
 O'Melveny & Myers
 (4) 400 South Hope Street
 213/689-6000
 JOHN F. CLOUGH III
 (6) Clough & Associates
 431 N. Franklin St., #202
 (7) Juneau, AK 99801
 907/586-5777
 Reported by:
 (9) KATHERINE L. NOVAK, RPR, and
 JOY S. BRAUER, RPR
 (10) Registered Professional Reporters
 Midnight Sun Court Reporters
 (11) 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99503
 (12) 907/258-7100

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(1) PROCEEDINGS
 (2) THE CLERK: All rise.
 (3) (Call to Order of the Court)
 (4) THE COURT: Good morning. We're on the record. The
 (5) jury is not present. Just a second, counsel, I've got
 (6) something here that I didn't expect.
 (7) Counsel, I have this pretrial order number, whatever it is
 (8) next in line, regarding severance of the unreimbursed labor
 (9) cost and the claim of Seward for unreimbursed attorney fees.
 (10) This is a stipulated order. I mean you've seen it and it's
 (11) acceptable?
 (12) MR. CLOUGH: Mr. Stoll and Mr. Diamond have seen it
 (13) and they are in the lobby and they are being called.
 (14) THE COURT: They are here right now.
 (15) MR. DIAMOND: I apologize.
 (16) THE COURT: This order on the severance order -
 (17) MR. DIAMOND: Yes, I've seen it. I would have done it
 (18) differently, but in the spirit of compromise, we've agreed to
 (19) it this morning.
 (20) THE COURT: That's a good step.
 (21) MR. DIAMOND: We've made another step in the right
 (22) direction. On the grounds that we had enough to argue about,
 (23) one controversy that we think we can head off. You left open
 (24) the question what we will do with the jurors, whether they will
 (25) be sworn as alternates or wait until the close of evidence. We

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(1) both agree if you don't make a decision on that until we've put
 (2) 30 in the box, then we'll go back to our numbers and figure out
 (3) what way is best for us.
 (4) Right now, I don't know. So it's better, we can avoid
 (5) controversy if we can avoid that issue by putting the first 12
 (6) that are passed, the jurors, and the next six will be
 (7) alternates, or whether you were going to have them all
 (8) participate and then called and make the decision at the end.
 (9) THE COURT: Do you want me to decide that now?
 (10) MR. DIAMOND: I think the plaintiffs have a preference
 (11) that you do it in the conventional fashion and we don't really
 (12) care.
 (13) THE COURT: I think that you will know what's
 (14) happening. It will be more predictable if you understand right
 (15) from the beginning what the scheme of things is going to be.
 (16) And the way I've always picked jurors and no way to diverge
 (17) from that now, the first 12 are the jury, so they're passed for
 (18) cause and no peremptorys for the first 12. They are the jury and
 (19) the next six are the jurors. And the alternates are numbered
 (20) one through six. So it's not a lottery, for instance. So if
 (21) juror number eight goes, alternate number one is juror number
 (22) eight. Got it?
 (23) MR. STOLL: Yep.
 (24) MR. DIAMOND: We understand.
 (25) THE COURT: Okay.

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- (1) MR. DIAMOND: I have one other procedural matter, but
 (2) I thought unless the Court objects I'd rather take it up in
 (3) chambers off the record.
 (4) THE COURT: That's fine, no problem. When, at the
 (5) first break?
 (6) MR. DIAMOND: At any time that is convenient to the
 (7) Court.
 (8) THE COURT: All right. Now. Today my intention is to
 (9) go all day. I don't have anything in the afternoon, so we'll
 (10) take maybe only a half hour break for lunch and just keep on
 (11) going until we exhaust whatever jurors have come in today. All
 (12) right?
 (13) MR. STOLL: Does all day mean five o'clock, Your
 (14) Honor?
 (15) THE COURT: What?
 (16) MR. STOLL: Does all day mean five?
 (17) THE COURT: I don't know. It usually means 4:30 but
 (18) it certainly didn't mean 4:30 yesterday; did it?
 (19) MR. STOLL: I can't remember what we did yesterday. I
 (20) didn't leave my office until ten.
 (21) THE COURT: The next juror is Ms. Adad.
 (22) (Cecilia Adad enters)
 (23) THE COURT: Good morning.
 (24) A Good morning.
 (25) THE COURT: Would you give your name for the record,

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- (1) please?
 (2) A My name is Cecilia Adad.
 (3) THE COURT: Ms. Adad, you know the questions you're
 (4) going to be answering now and the questions you've answered
 in
 (5) the jury questionnaire are under oath? You understand that;
 (6) don't you?
 (7) A Uh-huh.
 (8) THE COURT: It's the oath I administered at the first
 (9) day of jury selection. You'll be getting a few supplemental
 (10) questions. They won't take more than 20 minutes, I don't
 (11) think, and then I will tell you what happens next, all right?
 (12) A Okay.
 (13) THE COURT: And if you'd do me a favor, we get a
 (14) better record if you take that microphone and hold it. Thank
 (15) you very much.
 (16) VOIR DIRE EXAMINATION OF CECILIA ADAD
 (17) BY MR. FORTIER:
 (18) Q Good morning Ms. Adad?
 (19) A Good morning.
 (20) Q My name is Sam Fortier. I represent the Native
 (21) corporations in this case. We're plaintiffs in the case.
 (22) Mr. Stoll represents the municipalities in the case suing
 (23) Exxon, as the plaintiffs. As the Judge indicated to you, I
 (24) will be asking you a few questions, and then Mr. Diamond
 (25) represents Exxon and Mr. Clough who represents Exxon will be

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- (1) asking you some questions.
 (2) Ms. Adad, I noted that you - that your parents' 50th
 (3) anniversary is coming up?
 (4) A Correct.
 (5) Q When is that?
 (6) A That will be July 2nd.
 (7) Q And let's see, you are planning for it?
 (8) A Uh-huh.
 (9) Q And are there other members of your family up here also
 (10) assisting you plan for it?
 (11) A Yeah, but I'm the main one, you know, who's coordinating
 (12) everything.
 (13) Q You're coordinating everything?
 (14) A Because my - they are inviting like about 300 people for
 (15) this. So it's going to be a good one.
 (16) Q Are your parents coming up from the Philippines?
 (17) A They're here; they live here.
 (18) Q see. Did you understand that this trial is only expected
 (19) to last two months?
 (20) A Yes.
 (21) Q And did you know that the daily service was between 8:30
 (22) and 1:30?
 (23) A Correct, uh-huh. I understand that.
 (24) Q Now, based upon the daily service being between 8:30 and
 (25) 1:30, would it be more likely that the jury service would not

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- (1) present that much of a hardship on you?
 (2) A Well you know, after this wedding, I'm expecting some
 (3) company from L.A. and the Philippines and they will be here for
 (4) the first three weeks in July.
 (5) Q So you'll also have, besides the anniversary, you're also
 (6) having -
 (7) A I have some time off during the second week and third week
 (8) in July off work to be with them.
 (9) Q So you also took off vacation time?
 (10) A Uh-huh.
 (11) Q Besides your parents' 50th anniversary which is a milestone
 (12) in anybody's life, and the people coming up from - the people
 (13) coming in to visit you, is there anything else that presents a
 (14) problem?
 (15) A That's it. I don't mind serving the jury, except you know,
 (16) I just need the next few weeks for myself and my family, but
 (17) otherwise, I'm willing, you know.
 (18) Q Just a moment, please.
 (19) Ms. Adad, what I'd like to do is ask you a few questions
 (20) off the questionnaire.
 (21) A Okay.
 (22) Q And then perhaps we can take up the other matter.
 (23) You indicate as one of your questions - I believe your
 (24) questionnaire's in front of you there. In question number
 (25) 51 -

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- (1) A Can I go through this?
 (2) Q Yes, please. Please take a look.
 (3) A Okay.
 (4) Q That it's your opinion that Hazelwood's drinking on the job
 (5) should not have been allowed; do you see that?
 (6) A Yeah.
 (7) Q Now, Ms. Adad, in a jury trial, what a jury does is they
 (8) weigh the evidence that's presented by both sides, both the
 (9) plaintiffs and the defendants, and they weigh that evidence and
 (10) they arrive at a decision based only on the evidence that's
 (11) presented in court; do you understand that?
 (12) A I understand that.
 (13) Q Then Judge Shortell gives you instructions about how to
 (14) apply the law to that evidence; do you understand?
 (15) A Uh-huh.
 (16) Q And the juror has to apply the law that Judge Shortell
 (17) gives them to the evidence - just the evidence they hear in
 (18) court and that's how they arrive at decisions; do you
 (19) understand that?
 (20) A Uh-huh.
 (21) Q Now, when we met Monday when everybody was assembled
 (22) upstairs in the supreme courtroom, one of the things that Judge
 (23) Shortell indicated was the only issue in this case was damages?
 (24) A Correct, uh-huh.
 (25) Q So, did you know that drinking was not an issue in this

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- (1) somewhat favorably towards all the groups that are listed
 (2) there; do you see that?
 (3) A Uh-huh.
 (4) Q Okay. In other words, you feel somewhat favorably towards
 (5) Exxon Corporation?
 (6) A Uh-huh.
 (7) Q And you've also checked off that you feel somewhat
 (8) favorably toward Native corporations; do you see that?
 (9) A Uh-huh.
 (10) Q Do you know anything about Native corporations?
 (11) A Well, I just heard some people talk about, you know, well
 (12) it's a good company, but nothing more than that. I don't have
 (13) any dealings or no prior experiences with them.
 (14) Q Do you know why Native corporations came about?
 (15) A No.
 (16) Q Did you ever hear that before 1971 when the Alaska Native
 (17) Claims Settlement Act passed there was no such thing as Native
 (18) corporations?
 (19) A No, I didn't know that.
 (20) Q Did you ever hear about how the United States was required
 (21) to settle with the Natives for their indigenous or aboriginal
 (22) rights?
 (23) A Yes.
 (24) Q You did hear about that?
 (25) A I heard about that, uh-huh.

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- (1) case?
 (2) A Yes.
 (3) Q Okay, okay.
 (4) A Well, I don't know, for some reason the first thing that
 (5) entered my mind when it comes to Exxon Valdez you know, oil
 (6) spill, it's because of a drinking problem.
 (7) Q Let me ask you this then, Ms. Adad, if drinking is not an
 (8) issue in this case, and the only issue is damages, how much
 (9) does Exxon have to pay the plaintiffs, would you be able to set
 (10) aside that issue of drinking?
 (11) A I would be able to.
 (12) Q And you would be able to be fair to both sides?
 (13) A Uh-huh.
 (14) Q Both the plaintiffs and the defendants right?
 (15) A Yes.
 (16) Q And you would be able to listen to all of the evidence?
 (17) A Yes.
 (18) Q And you couldn't arrive at a decision until you've heard
 (19) all of the evidence?
 (20) A Correct.
 (21) Q And you'd make that decision based on what Judge - just on
 (22) what Judge Shortell told you, right?
 (23) A Right.
 (24) Q If you want to look at your questionnaire, at question
 (25) number 47, I think it's at Page 11, you indicate that you feel

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- (1) Q You also have a favorable or somewhat favorable attitude
 (2) towards Natives?
 (3) A Yeah, because I work with some of them at work.
 (4) Q And your experience with Native people has been positive?
 (5) A Yes, uh-huh.
 (6) Q And you also indicate that you have a somewhat favorable
 (7) attitude towards municipalities?
 (8) A Yeah. In all my dealings with them, I didn't have any
 (9) problems.
 (10) Q Now, Ms. Adad, you've lived in Alaska for 18 years?
 (11) A No, 16. Since '78, since January of '78.
 (12) Q That's 24 years?
 (13) A No, '78.
 (14) Q Oh, '78, I'm sorry. Do you like Alaska?
 (15) A Yes, uh-huh.
 (16) Q And what do you like about Alaska?
 (17) A It's a small place, you know, it's a small city. Not
 (18) overcrowded compared to Manila.
 (19) Q Is that where you were born, Manila?
 (20) A Yes.
 (21) Q Did you move from Manila to Alaska?
 (22) A Yes, uh-huh.
 (23) Q That's quite a change; isn't it?
 (24) A Uh-huh, extreme. Extremely.
 (25) Q Do you get out into the surrounding areas at all, like do

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- (1) you go out to go camping or fishing or anything?
 (2) A Yeah, uh-huh. All my brothers and sisters, they love
 (3) fishing, so, except me.
 (4) Q And you don't?
 (5) A (Witness shakes head.)
 (6) Q What don't you like about fishing?
 (7) A Well it's probably because I don't have time. I would
 (8) rather stay home.
 (9) Q How many brothers and sisters do you have?
 (10) A Eleven in the family.
 (11) Q And they're all up here now?
 (12) A Except for one brother that lives in Wisconsin. But all of
 (13) us are up here.
 (14) Q So you have lots of nieces and nephews then, too?
 (15) A Uh-huh. 20 nieces and nephews were born here.
 (16) Q Ms. Adad, what I'd like to do is refer your attention to
 (17) Page 9 of your questionnaire, if I could, for just a minute.
 (18) Page 9 you indicate that you've heard some - you've heard
 (19) something about the Exxon Valdez grounding?
 (20) A Uh-huh.
 (21) Q Now, do you understand that the news accounts of what you
 (22) heard isn't considered evidence in this courtroom?
 (23) A No, I didn't know that.
 (24) Q Do you recall any of the news stories you've heard about
 (25) the Exxon Valdez?

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- (1) A That was like when it first happened, you know, some of the
 (2) pictures, you know, taken during the oil spill, you know, the
 (3) animals that were affected, you know all the clean-ups that
 (4) were done.
 (5) Q Ms. Adad, would you be able to set aside whatever you may
 (6) have heard about the Exxon Valdez before you came in here
 (7) and
 (8) only listen to the evidence?
 (9) A Yeah.
 (10) THE COURT: Counsel, your ten minutes is up.
 (11) MR. FORTIER: I beg your pardon?
 (12) THE COURT: Your ten minutes is up.
 (13) MR. FORTIER: Oh, thank you, Your Honor. Thank you
 (14) very much Ms. Adad.
 (15) A You're welcome.
 (16) MR. FORTIER: And I pass for cause, Your Honor.
 (17) MR. DIAMOND: Good morning, my name is Chuck Diamond
 (18) I'm one of the lawyers who will be representing Exxon in this
 (19) case.
 (20) VOIR DIRE EXAMINATION OF CECILIA ADAD
 (21) BY MR. DIAMOND:
 (22) Q You hold a degree in foreign service, I notice; correct?
 (23) Have you ever worked in the service, either here or in the
 (24) Philippines?
 (25) A No, because when I finished my degree, I was only like 18
 years old and you're required to be 25 years to take the

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- (1) foreign service exam, and by then, I was already working. I
 (2) got involved in my work, so I decided not to push through with
 (3) it, but it would be nice, you know.
 (4) Q You had your degree at 18?
 (5) A Yeah.
 (6) Q Is that early in the Philippines?
 (7) A Well, no, that's - because we only have like six years in
 (8) grade school and then four years in high school, four years in
 (9) college. And I was in school when I was five.
 (10) Q You now work for Chugach Electric?
 (11) A Correct.
 (12) Q You wrote down you administer the credit card program.
 (13) What does that mean?
 (14) A Oh, we open a credit card program for all the customers
 (15) where they can just enroll, monthly their credit card is being
 (16) charged automatically for their electric bills.
 (17) Q Do you do any debt collection for the electric company?
 (18) A No.
 (19) Q Do you enjoy your job?
 (20) A Yes. I've been there for like 16 years.
 (21) Q What did your husband do before he joined the postal
 (22) service?
 (23) A Let me see. He used to manage a company in the
 (24) Philippines. He was like the vice-president and general
 (25) manager of an equipment company, like Risedale (ph) and
 things

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- (1) like that, electrical equipment.
 (2) Q For manufacturing?
 (3) A Uh-huh.
 (4) Q You've already told us and you told us in your
 (5) questionnaire that your parents are celebrating their 50th
 (6) anniversary next month and you're expecting out-of-town
 (7) company?
 (8) A Correct.
 (9) Q How many people are coming from out-of-town?
 (10) A I would say about 15.
 (11) Q And they're staying through the early part of July?
 (12) A In fact, like five of them will be staying with us.
 (13) Q You devoted a lot of time to planning this event?
 (14) A Yes.
 (15) Q Are you still planning it or is it taken care of?
 (16) A We're still planning. In fact I'm calling them every now
 (17) and then.
 (18) Q And understandably this is an important matter to both the
 (19) plaintiffs and to Exxon, and there is a lot of money at stake
 (20) and the issues, themselves, are important to the parties. You
 (21) said something on the questionnaire that I think caught both of
 (22) our attentions, and that is because of the upcoming event and
 (23) the pressure on you and the pressure of these out-of-town
 (24) people, you do not feel that you would be able to give these
 (25) proceedings your full concentration -

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- (1) A Correct.
- (2) Q - until after everything sort of simmered down. Why do
- (3) you think that's the case?
- (4) A In fact, this morning at 1:30, our company just left. My
- (5) stepdaughter and the three kids were with us for about a month,
- (6) and that has been stressing me out terribly, and now I have
- (7) only like one week for - to prepare the house for the next
- (8) company because of the next event, so I've been telling my
- (9) husband, I'm ready for a vacation right now, you know. I don't
- (10) even look forward to this company, but I have no choice.
- (11) Q Are you quite certain about this, that this is going to be
- (12) distracting to you?
- (13) A Uh-huh.
- (14) Q It's not just a reason that you're giving to get out of
- (15) jury service; is it?
- (16) A No, no. You know, I wouldn't mind serving in this jury, if
- (17) you can just excuse me for the first three weeks, and then
- (18) after that you can have me.
- (19) Q Well I think we want you, but we want all of you.
- (20) A Oh.
- (21) Q You said you followed the news coverage after the spill
- (22) somewhat?
- (23) A Uh-huh.
- (24) Q What were your feelings about Exxon, if you remember?
- (25) A Nothing. Well, accidents do happen, so -

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- (1) Q You didn't get angry?
- (2) A No.
- (3) Q Do you think the company handled what happened after the
- (4) spill responsibly?
- (5) A I think so.
- (6) Q You said that you didn't really have any opinion one way or
- (7) the other about how long the effects of the spill will last
- (8) into the future. Have you read anything on the subject, in the
- (9) newspapers?
- (10) A Have I read - yeah.
- (11) Q What do you remember reading?
- (12) A During the court proceedings for Hazelwood, like, you know,
- (13) the attorneys that were up here from out of state.
- (14) Q Do you remember reading anything, though, about the
- (15) subject
- (16) of how long the effects of the spill are going to last or
- (17) whether they're going to continue to last?
- (18) A Somewhat.
- (19) Q Do you remember your impressions? What are your
- (20) impressions?
- (21) A Well, it's not cleaned up, you know, the mess that was
- (22) done. They said it will take some years before everything -
- (23) or you know, I don't know if it will get back to its normal
- (24) stage, but -
- (25) Q And what do you base that on? Do you remember anything?
- (26) A Well, it's because of the news that I've heard.

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- (1) Q The subject on which you've just stated an opinion is going
- (2) to be a matter of dispute in this case. The plaintiffs will
- (3) say one thing and the defendants will say another, I suspect,
- (4) and the Judge will instruct you that if you serve on this jury
- (5) you have to make a decision just based on what you hear in this
- (6) courtroom and not what you read last week and not what you
- (7) read
- (8) last month, not what you saw on television last year. Do you
- (9) think you can do that?
- (10) A Yes.
- (11) Q I know you think that Mr. Hazelwood should not have been
- (12) allowed to drink on the job; you wrote that down in your
- (13) questionnaire. Do you feel that Exxon was at fault or remiss
- (14) in any way in letting that happen?
- (15) A No, I don't think so.
- (16) Q Why do you say that?
- (17) A Because Hazelwood is doing that on his own thing. He
- (18) wasn't advised to go drink while he was manning the tanker, but
- (19) I don't know who he is reporting to.
- (20) Q Do you have any opinion based on what you've heard or
- (21) read
- (22) concerning how the spill has impacted the people who own
- (23) land
- (24) on Prince William Sound?
- (25) A How it impacted the people that -
- (26) Q Who owned property a long Prince William Sound?
- (27) A Yeah, somewhat. They've lost a lot of revenues.
- (28) Q And who do you have in mind? Any particular groups?

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- (1) A Fishermen, commercial fishermen.
- (2) Q How about people who own property, who own land, do you
- (3) think they've been impacted?
- (4) A Probably.
- (5) Q You don't know, though?
- (6) A I'm not sure.
- (7) Q Do you think that's an issue you could decide based solely
- (8) on what you hear in the courtroom?
- (9) A Uh-huh.
- (10) Q Do you have any pets at home?
- (11) A No.
- (12) Q You said you recalled images from the coverage, the news
- (13) coverage after the spill happened of animals? At least, I
- (14) believe you said that.
- (15) A Uh-huh.
- (16) Q There is some possibility that some of those pictures may
- (17) be shown in this courtroom, photographs of two-headed fish
- (18) and
- (19) things like that and birds in distress and otters suffocating.
- (20) Is that going to cause you a problem?
- (21) A No. I'm not an animal advocate. I'm more of a human
- (22) advocate, so -
- (23) Q You said both your brothers and your sisters enjoy
- (24) fishing. Anybody in the family a commercial fisherperson?
- (25) A No.
- (26) Q When you've gone fishing, where do you fish?

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- (1) A Kenai.
 (2) Q Whereabouts?
 (3) A Just at the Kenai River.
 (4) MR. DIAMOND: Your Honor, nothing further. I do want to be heard, though.
 (5) THE COURT: I'm going to excuse you for just a moment and I'm going to bring you right back in.
 (6) A Okay.
 (7) THE COURT: If you'll just go out to the jury room. (Cecilia Adad leaves).
 (8) MR. DIAMOND: May I just consult for a moment?
 (9) THE COURT: You may.
 (10) MR. DIAMOND: Pass for cause.
 (11) THE COURT: All right, so bring her back in.
 (12) MR. FORTIER: Your Honor.
 (13) THE COURT: Hold it.
 (14) MR. FORTIER: Your Honor, if you know, one of the things that she did indicate was she might be distracted, so would be possible for you to instruct her on that issue?
 (15) THE COURT: Don't be distracted?
 (16) MR. FORTIER: Yes, sir.
 (17) THE COURT: No, I'm not going to instruct her on that. I'm sure she'll do her duty if she's chosen.
 (18) MR. FORTIER: Okay.
 (19) (Cecilia Adad enters).

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- (1) THE COURT: Ms. Adad, I think you'll recognize that this is a rather lengthy process, picking a jury in a case like this, it's lengthy and it's complicated and it involves questioning a lot of jurors. We have a lot of jurors yet to question. What you're going through right now is the examination for cause process to see whether or not you should be disqualified or not for cause, and you have been passed for cause, which the parties feel there is no reason to challenge you for cause. That doesn't mean you'll be on the final jury in this case, but it means you're a potential juror.
 (2) So what I'd like you to understand is a couple of things.
 (3) One is you could be on this jury. I know you have some hardship issues that you feel may be a reason why you should be excused, but at present you are still on the panel for this jury. But the jury panel is going to take at least the rest of the day, and I think probably Monday, and we still have to question a number of other jurors. So I'm going to excuse you until you're called back here. We will let you know what occurs, and when you're called back here, there maybe some further proceedings that you'll be required to go through, and in fact, you may be on this jury.
 (4) So what I want you to do is not talk to anybody about this case, including the people on the panel. Don't tell them what was said in here, don't explain what questions were asked and we'll get back to you with further information later, all

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- (1) right? But I'm not excusing you now, you're still on the jury panel.
 (2) A Okay.
 (3) THE COURT: Thank you very much.
 (4) A So somebody will just notify me?
 (5) THE COURT: Yes, we'll call you to bring you back in at some other time or to give you information about the case;
 (6) all right?
 (7) A Okay. Okay. Thanks a lot.
 (8) (Cecilia Adad leaves).
 (9) MR. STOLL: Your Honor, I'd like to take something up with the Court that I just thought about.
 (10) THE COURT: Sure.
 (11) MR. STOLL: It has nothing to do with these jurors. Yesterday, I don't have - I didn't look at the transcript, but my note to myself was, just your admonition to the juror reminded me of this, I think it was the last juror, Sarah Josephson, made some comment about some discussion in the jury room.
 (12) THE COURT: She did.
 (13) MR. STOLL: About the positive effects of the spill. And I think that you're giving these admonitions to the jurors as they're leaving here. I wonder if it wouldn't be a good idea to - if you make a statement to the jurors that are in the assembly room so they're not talking about the case. I

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- (1) know you made a statement on Monday, but it's Friday now, but if they're talking about it before they come up, you know, I'm just a little concerned about that.
 (2) THE COURT: Yeah, I considered doing that. Do you want me to do that?
 (3) MR. DIAMOND: We wouldn't have any objection.
 (4) THE COURT: Yeah, I'll - actually, I guess we're going to have some in-chambers communication at the first break. We'll talk about it when we're off the record.
 (5) MR. STOLL: That will be fine.
 (6) THE COURT: My inclination would be - I may even go down there and simply say to them it's very important that they understand it's not a point of discussion at this time, they should not discuss anything at this time about the spill or effects while you're here waiting to be pulled upstairs for questioning.
 (7) MR. STOLL: That's our preference, Your Honor. And I think it would be best if you did it.
 (8) THE COURT: I agree. And you'll waive your presence at that, right?
 (9) MR. STOLL: Absolutely.
 (10) MR. DIAMOND: Yes, we will.
 (11) THE COURT: Let's bring Mr. Morse in.
 (12) MR. STOLL: We're going to Mr. Morse and then we go to 26 after this?

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- (1) THE COURT: Yes.
 (2) (Edward Morse enters)
 (3) THE COURT: Mr. Morse?
 (4) A Sir.
 (5) THE COURT: Would you please give your name for the
 (6) record?
 (7) A Edward K. Morse, Jr.
 (8) THE COURT: Okay. Mr. Morse, could you unclip that
 (9) microphone and just hold it? We get a better record that way.
 (10) I'd like you to remember that I put you under oath in the first
 (11) jury session. You're still under oath. All the questions
 (12) you've given, including the questionnaire, are under oath; you
 (13) understand that, sir?
 (14) A Yes, sir.
 (15) THE COURT: You can expect no more than 20 minutes of
 (16) questions now regarding your qualifications as a juror and then
 (17) I'll tell you what happens next; all right?
 (18) A All right
 (19) VOIR DIRE EXAMINATION OF EDWARD MORSE
 (20) BY MR. STOLL:
 (21) Q Mr. Morse, my name is Bob Stoll. I represent the
 (22) municipality plaintiffs in this litigation and Mr. Fortier and
 (23) Ms. Johnson - Mr. Fortier represents a Native corporations;
 (24) Ms. Johnson represents the municipalities with me.
 (25) I understand you're a friend of Harold Owen, who's juror

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- (1) number 14?
 (2) A Not a friend. We work for the National Guard, yes.
 (3) Q So you're acquainted with him?
 (4) A I just met him.
 (5) Q Oh, you just met him?
 (6) A Yes.
 (7) Q You mean during this jury selection?
 (8) A Yeah.
 (9) Q I see. And you have been up here in Alaska for three
 (10) years?
 (11) A Yes.
 (12) Q Do you like it up here?
 (13) A Yes.
 (14) Q And what do you like about Alaska?
 (15) A I came from Hawaii, so it's a lot - it's a lot more open,
 (16) open areas, that type of thing.
 (17) Q Have you been able to adapt to the weather?
 (18) A I'm still adapting.
 (19) Q And where did you grow up in Hawaii?
 (20) A On Oahu.
 (21) Q Near Honolulu?
 (22) A Yes.
 (23) Q And did you live in the Honolulu area your entire life?
 (24) A Most of it, yes.
 (25) Q And I notice on the questionnaire that you mention that you

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- (1) run the data processing, I think, for the National Guard?
 (2) A Yes.
 (3) Q And did you know that in the first place in the
 (4) questionnaire it says that the trial is going to be three
 (5) months and we anticipate it's going to be two months and
 (6) maybe
 (7) even less than that. And secondly, that the trial's going to
 (8) last from 8:30 until 1:30, so you're not going to lose the
 (9) entire - you will not lose the entire day. You'll have some
 (10) time in the afternoons to, you know, make arrangements and so
 (11) on. So that should - I mean, that would be inconvenient
 (12) obviously, but it would be less inconvenient than otherwise?
 (13) A Uh-huh.
 (14) Q Have you ever sat on a jury before?
 (15) A No.
 (16) Q Have you ever watched any lawyer shows where they have
 (17) juries on the -
 (18) A Yes.
 (19) Q Well, you know during the - some of these shows they have
 (20) people object to evidence and so on, and the information that
 (21) is - the evidence that is put into evidence, that is admitted
 (22) into evidence is the only thing that jurors are entitled to
 (23) consider in reaching the determination; you know that?
 (24) A Uh-huh.
 (25) Q And you'd follow the Judge's instructions as to what the
 (26) law is? You don't have any preconceived ideas about what the

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- (1) law is or should be?
 (2) A No.
 (3) Q So do you think you could follow those instructions and the
 (4) law in terms of just considering what is evidence?
 (5) A Yes.
 (6) Q And do you feel that you could be fair to both sides in
 (7) this litigation?
 (8) A Yes.
 (9) Q Now, you indicated on the questionnaire, and there's a copy
 (10) of it there if you want to refer to it, but you don't need to,
 (11) depending on whatever you want to do, that you had - on
 (12) question 47 you said - I think that's on Page 9 - 11, that
 (13) you had had a somewhat favorable impression towards a
 (14) number of
 (15) these entities.
 (16) A Uh-huh.
 (17) Q Have you had any dealings with municipalities? Just the
 (18) typical thing with Anchorage, or is it any other municipalities
 (19) that you've dealt with?
 (20) A No, nothing out of the ordinary. I'm just an average
 (21) citizen, I guess.
 (22) Q And have you had any dealings with the Native corporations?
 (23) A No, no.
 (24) Q Or with either - have you had any dealings with the
 (25) Natives?
 (26) A No.

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- (1) Q And you checked the box here, it says somewhat unfavorable
- (2) towards Exxon. Now the fact that you've checked that, you
- (3) still believe that you can be fair in the trial to Exxon?
- (4) A I think basically I checked that based on I guess
- (5) experiences that I've had with people. Not - I don't think
- (6) directly against Exxon, but maybe large corporations, I
- (7) believe, the fact that I'm here for Exxon.
- (8) Q What do you mean you're here for Exxon?
- (9) A I mean to say that we're here for the Exxon trial, maybe
- (10) that's kind of - that's why I put that unfavorable type.
- (11) Q I see, but you're just going to consider the evidence here
- (12) in court? You're not going to say I have a unfavorable
- (13) impression towards business, so therefore, I'm going to hit
- (14) Exxon?
- (15) A No.
- (16) Q You're not on some mission here?
- (17) A No.
- (18) Q Okay. And you also checked the box on 51XXX, which is on
- (19) the following page. Do you think that Exxon has paid enough
- (20) money as a result of the Exxon Valdez oil spill, you said no.
- (21) You're not prejudging evidence there; are you?
- (22) A I don't think I had any evidence to prejudge, but I believe
- (23) it goes back to the same reason why I said unfavorable on the
- (24) first question.
- (25) Q I see. So you're just going to consider the evidence that

- (1) A No.
- (2) Q Have you ever been to Kodiak?
- (3) A No.
- (4) Q Do you enjoy fishing?
- (5) A Yes.
- (6) Q And where do you usually go fishing?
- (7) A I've been out to Kenai. I haven't gone north yet.
- (8) Q And do you fish for salmon or halibut or what?
- (9) A Salmon.
- (10) Q Salmon. And when you say you vacation in local areas, is
- (11) that where you've gone mainly is Kenai for a vacation locally?
- (12) A Uh-huh.
- (13) MR. STOLL: Thank you very much.
- (14) THE COURT: There's more, sir. Mr. Clough gets to
- (15) question you.
- (16) VOIR DIRE EXAMINATION OF EDWARD MORSE
- (17) BY MR. CLOUGH:
- (18) Q Hi. I'm John Clough, I'm from down in Juneau and I, along
- (19) with Chuck Diamond here who introduced us at the courtroom
- (20) the
- (21) other day, I'm going to be representing Exxon at the trial
- (22) here. You had indicated on your form that it was a job
- (23) related - I think you put job related move that brought you
- (24) from Honolulu up here?
- (25) A Yes.
- (26) Q You had been with the National Guard down in - what had

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- (1) is brought into court here?
- (2) A Uh-huh.
- (3) Q In your questionnaire, you mention that you manage data
- (4) processing, and you also said you were responsible for job
- (5) safety and enforcing regulations?
- (6) A Yes.
- (7) Q Could you describe that to me a little bit, as far as your
- (8) work is concerned, how you're involved in enforcing job safety?
- (9) A Well basically, I manage the business. Therefore, anything
- (10) that goes on or doesn't go on, I'm responsible for. And as far
- (11) as safety, we do come under OSHA requirements. We do get
- (12) inspected regularly, you know, that type of thing.
- (13) Q I see. And have you had any difficulties as far as OSHA is
- (14) concerned or any other type regulations?
- (15) A No. My background is military, so it goes with the trade.
- (16) Q Right, a lot of regulations?
- (17) A Uh-huh.
- (18) Q I'm sorry, what rank did you -
- (19) A I'm a first lieutenant.
- (20) Q And you do fly?
- (21) A Yes, I'm a pilot.
- (22) Q And have you flown to various lakes and other places around
- (23) Alaska?
- (24) A Just within the Anchorage area.
- (25) Q I see. Have you been to Prince William Sound?

- (1) you been doing down in Hawaii?
- (2) A I was with the National Guard in Hawaii, yes.
- (3) Q And how does it work? Do they transfer you up here or do
- (4) you have an opportunity to apply for a job?
- (5) A Apply for the job.
- (6) Q And that's in reference to the data processing job you have
- (7) now?
- (8) A Yes.
- (9) Q You indicated in that job you have both civilian and
- (10) military folks under your supervision?
- (11) A Yes.
- (12) Q How many folks do you supervise over there?
- (13) A Nine.
- (14) Q And for how large a segment of the Guard up here do you do
- (15) the data processing work for?
- (16) A For the entire Army National Guard, which is about 3,000
- (17) currently.
- (18) Q So you're the centralized data processing center for all
- (19) those folks?
- (20) A Yes.
- (21) Q You were down in Honolulu still at the time of the spill?
- (22) A Yes.
- (23) Q Do you recall hearing about the spill while you were in
- (24) Hawaii?
- (25) A Yes.

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- (1) Q Can you tell me what you remember about it?
- (2) A Just that a tanker ran aground, and there was a spill. A
- (3) lot of, I believe, agencies, you know, were involved with it, a
- (4) lot of people involved with it.
- (5) Q At the time that the spill occurred, did you know that you
- (6) might be applying for a job up here in the next couple of
- (7) years?
- (8) A No.
- (9) Q Once you moved up here, did you talk to anybody about the
- (10) oil spill?
- (11) A No.
- (12) Q In the course of your work with the Guard, have you heard
- (13) that some elements of the Guard were called out to work on the
- (14) cleanup and response effort?
- (15) A Well, not the cleanup. I believe - I believe we - the
- (16) National Guard had some aviators fly different government
- (17) agencies around the area.
- (18) Q Did they provide some Black Hawks or something at some
- (19) point?
- (20) A Yeah, that type of thing.
- (21) Q Have you talked to any of the people that were involved in
- (22) that effort?
- (23) A No.
- (24) Q Have you talked to anybody who was involved in the cleanup
- (25) of Prince William Sound?

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- (1) A Not that I'm aware of. I believe I knew some people who,
- (2) during that time - I don't know if they were working or
- (3) something like that, that I think they may have been involved
- (4) with it, in some way or manner. You know, for instance, I
- (5) believe - this is one acquaintance I knew was flying some
- (6) people out there. That's about it.
- (7) Q You might recall from Monday's session up in the supreme
- (8) courtroom that the Judge told you that this is a case about
- (9) damages, about what damages actually happened?
- (10) A Right.
- (11) Q And for those that can be proven to have occurred, what the
- (12) fair value of those damages are, and it's mostly related to
- (13) land, land owned by Mr. Stoll's clients, the municipalities,
- (14) and Mr. Fortier and a gentlemen who is not here, Mr. Petumenos,
- (15) some Native corporations. Have you ever had a chance to talk
- (16) to anybody about any of the lands that had oil wash up on them
- (17) as part of the oil spill?
- (18) A No.
- (19) Q Now you say you like to go fishing down in Kenai?
- (20) A Uh-huh.
- (21) Q Where do you go down there?
- (22) A Russian.
- (23) Q On the river there?
- (24) A Yes.
- (25) Q Have you ever done any fishing off of the coast of the

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- (1) peninsula?
- (2) A No.
- (3) Q Are you aware - have you ever talked to anybody who said
- (4) that they've seen any evidence of the oil spill down in the
- (5) Kenai?
- (6) A No.
- (7) Q You had said on your form that you had seen some media
- (8) coverage of the spill?
- (9) A Uh-huh.
- (10) Q Like the rest of us?
- (11) A Right.
- (12) Q I just wanted to follow up with you on that. What's your
- (13) view of the media, generally?
- (14) A The media, I believe, is in a way biased, a lot. As
- (15) anybody - for instance, if anybody gives - writes down or
- (16) says anything, it's bias from their point of view already. So,
- (17) I don't believe a lot of things that the media comes out with.
- (18) Q In the television and the electronic media and the print
- (19) media that you've seen regarding the spill, do you think that
- (20) Exxon has gotten a fair shake?
- (21) A It's hard to say, because I'm not aware of everything
- (22) that's gone - you know, or everything that's involved with
- (23) this.
- (24) Q As to whether or not they've gotten a fair shake, had you
- (25) -

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- (1) A I'd say it's hard to say, not knowing everything.
- (2) Q Would it be easy for you to disregard anything you've heard
- (3) in the media and make any decisions in this case, just on what
- (4) you hear here in the courtroom?
- (5) A If it's backed up by some kind of evidence, I believe, yes.
- (6) Q And to rely just on the evidence that you hear here in the
- (7) courtroom?
- (8) A Uh-huh.
- (9) Q You lived in Hawaii most your life until you moved here?
- (10) A Yes.
- (11) Q Were there ever any oil spills down in Hawaii during the
- (12) time that you lived there, that you recall?
- (13) A I believe they had, not oil spills, but something like
- (14) diesel and waste and that type of thing.
- (15) Q Were you ever involved in anything related to those?
- (16) A No.
- (17) Q Do you know what companies were involved in any of those?
- (18) A Some kind of tourist and shipping companies.
- (19) Q You talked about quite candidly, and I appreciate that sir,
- (20) some of your feelings about large corporations. I'd like to
- (21) ask your feelings about one in particular. When you hear
- (22) Exxon, how do you feel? How do you feel about Exxon?
- (23) A How do I feel about them? A large company, multi billion
- (24) dollars. That's it.
- (25) Q What do you know about Exxon's effort to clean up the oil

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- (1) spill?
 (2) A I believe they spent a lot of money, a lot of time and
 (3) effort to clean it up.
 (4) Q And what do you know about how they worked with state and
 (5) federal agencies in that?
 (6) A I believe there was a lot of involvement, you know,
 (7) associated with the cleanup, with the government and state
 (8) agencies, yes.
 (9) Q In your time up here, have you heard any information about
 (10) claims that Exxon has paid out of it's claims program for
 (11) fishermen or other individuals who were impacted by the spill?
 (12) A Just the news.
 (13) Q But have you heard about - I'm trying to find out if
 (14) you've heard about that program?
 (15) A No.
 (16) Q Although this is a case about lands, we're probably going
 (17) to be hearing some stuff about fish, as well. Have you heard
 (18) anything about impacts of the oil spill on commercial fisheries
 (19) in Alaska?
 (20) A Whatever the news has brought on, yes.
 (21) Q So your source of that would be just the news media?
 (22) A Uh-huh, right.
 (23) Q Do you recall what you might have heard?
 (24) A Something about I guess the environmental effects and how
 (25) long it would last, something like that.

- (1) Q And the Judge will also tell you that this is a case about
 (2) damages. Will you give us your commitment that you can give
 US
 (3) a fair shake for actual damages proved in this courtroom?
 (4) A Yes.
 (5) MR. CLOUGH: Pass for cause.
 (6) THE COURT: Pass for cause, correct? Let me tell you
 (7) what that means. That means you're still a potential jury
 (8) member on this case, but we still have a lot of jurors to
 (9) question. I'm going to excuse you now for the day but you
 (10) don't have to come back until we call you back. So we'll get
 (11) in touch with you.
 (12) Since you're still a potential jury member, it's important
 (13) you remember what I tell you, what I told you on the first day
 (14) and that is not talk to anybody or not form or express an
 (15) opinion about it. It's important that you not share any of the
 (16) information that you gleaned in this court or the kind of
 (17) questions you were asked or the answers you gave with the
 other
 (18) members of the jury panel; do you understand that?
 (19) A Yes.
 (20) THE COURT: So you're excused now and we'll call you
 (21) back. Thank you very much.
 (22) (Edward Morse leaves)
 (23) THE COURT: Counsel, the next juror is taken out of
 (24) order. Actually, we arranged to do that yesterday, and I
 (25) want to tell you a few things about this juror. First, she's

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- (1) Q Now, I think you can understand that those are pretty
 (2) complex and scientific issues and both sides are going to be
 (3) presenting a lot of testimony and evidence and exhibits to you
 (4) on those points in the course of this trial?
 (5) A Right.
 (6) Q Since you haven't sat as a juror before, I guess the last
 (7) thing I'd like to ask you about is related to how that's going
 (8) to work. The plaintiffs are going to have an opportunity to go
 (9) first, sir, and they're probably going to spend several weeks
 (10) presenting their evidence, their scientists, their witnesses on
 (11) the effects of the lands, some stuff about ecology, some stuff
 (12) about fisheries. It wouldn't be our chance until they've had a
 (13) chance to put on all their evidence that we're going to have a
 (14) chance to put on our evidence, our exhibits and have our folks
 (15) testify.
 (16) The Judge is going to tell you that it's very important
 (17) that throughout their presentation of their evidence that you
 (18) maintain an open mind and realize that we haven't had our turn
 (19) yet, our opportunity to present information for you, and that
 (20) you not make any decisions until you've heard all of the
 (21) evidence in the courtroom from both sides.
 (22) Can you give us your commitment here today, sir, that you
 (23) won't decide any of these things until you've heard from both
 (24) sides?
 (25) A Yes.

- (1) been very vocal in the jury room.
 (2) Second, I've looked at her questionnaire and she's been
 (3) vocal about the issues she's raised in her questionnaire,
 (4) troubled teen, single mother looking for work. Single mother
 (5) looking for work so hard that she actually left the jury room
 (6) on her own esteem and went away for a while, but then she
 came
 (7) back.
 (8) My impression - and actually it's not an impression, it's
 (9) an opinion. My opinion is that she's very angry and she does
 (10) not want to be involved in these proceedings, and she's given
 (11) lots of things on her questionnaire that might cause one or the
 (12) other of you to question whether she'd be an appropriate
 (13) juror. I'm going to tell you one of two things. One, is you
 (14) can expect a lively session when she's brought in, I think.
 (15) And two, if you want to stipulate her out, we'll let her go.
 (16) MR. CLOUGH: What number is it, Your Honor?
 (17) THE COURT: 26.
 (18) MR. CLOUGH: I think I recall the juror you're talking
 (19) about.
 (20) MR. STOLL: Can I have a moment, Your Honor?
 (21) THE COURT: Uh-huh.
 (22) MR. CLOUGH: Is this Ms. Wright?
 (23) THE COURT: Uh-huh.
 (24) MR. CLOUGH: Given the fact that she walked out
 (25) yesterday, especially, Your Honor, that this is one that the

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- (1) clerk was coming to several times about, as I recall, I think
 (2) she's got a 14 year old daughter, Andrea, who she described as
 (3) a troubled teen and who has epileptic seizures.
 (4) THE COURT: Not the daughter herself.
 (5) MR. CLOUGH: Her herself. We the defense won't
 (6) object. Leaving the jury room, particularly for me.
 (7) THE COURT: Excuse me, I didn't hear you.
 (8) MR. STOLL: We'll stipulate, Your Honor.
 (9) THE COURT: Now, I hope that this will be a smooth
 (10) transition because I'm only simply going to have the clerk here
 (11) go in and excuse her and get the next one in. All right? So
 (12) juror number 26, Ms. Wright, is excused by stipulation.
 (13) MR. STOLL: Is the next one we're going to do 21,
 (14) then?
 (15) THE COURT: The next one we'll do is 21, yes. Ann
 (16) Armstrong.
 (17) MR. DIAMOND: Can we stipulate to excuse some odd
 (18) numbered jurors?
 (19) THE COURT: Oh, you mean the focus group -
 (20) MR. CLOUGH: This is an issue between Mr. Diamond and
 (21) Mr. Clough.
 (22) THE COURT: Oh, you're forced to do double duty, eh?
 (23) (Ann Armstrong enters)
 (24) A Where at? Here?
 (25) THE COURT: Yes, please. Could you unclip that

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- (1) microphone there and just hold it while you're questioned.
 (2) A Yes, sir.
 (3) Q And give your name for the record, please?
 (4) A My name is Ann Marie Armstrong.
 (5) THE COURT: Ms. Armstrong, you understand you're under
 (6) oath because I put you under oath on the first day?
 (7) A Yes, I do.
 (8) THE COURT: These answers on the questionnaire and all
 (9) answers here are given under oath, and you can expect some
 (10) relatively brief questioning on your qualifications to serve as
 (11) a juror, and then I'll give you further instructions depending
 (12) on what transpires here; all right?
 (13) A All right, thank you
 (14) VOIR DIRE EXAMINATION OF ANN ARMSTRONG
 (15) BY MR. FORTIER:
 (16) Q Good morning, Ms. Armstrong.
 (17) A Hi, how are you?
 (18) Q My name is same Fortier, I represent the Native
 (19) corporations. Mr. Stoll and Ms. Johnson are representing the
 (20) municipalities in this case.
 (21) I noted that you graduated from high school here in
 (22) Anchorage?
 (23) A Yes, sir, I did.
 (24) Q What high school?
 (25) A West.

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- (1) Q In '70?
 (2) A In '70.
 (3) Q You indicated, Ms. Armstrong, that you have read a lot of
 (4) articles concerning the oil spill?
 (5) A Early on, not recent.
 (6) Q How long?
 (7) A Not recently.
 (8) Q And you heard a lot of things on TV, too?
 (9) A Yeah, I have a - recently, I haven't paid much attention
 (10) to it at all, I really haven't. I think when it first happened
 (11) everybody did, but not recently.
 (12) Q Back in '89?
 (13) A Yeah, way back.
 (14) Q Now, Ms. Armstrong, you understand that in a courtroom the
 (15) you're presented evidence first by the plaintiffs and then by
 (16) the defense?
 (17) A Yes, sir, I do.
 (18) Q And that's the evidence that you have to weigh and to
 (19) balance; do you understand that?
 (20) A Yes, sir, I do.
 (21) Q So everything that you may have heard back in 1989 about
 (22) the oil spill, you understand that's not evidence?
 (23) A I know things have changed a lot. A lot of things have
 (24) come up since then, I realize that, sir.
 (25) Q But that stuff back then, you understand that -

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- (1) A I understand exactly what you're saying, yes.
 (2) Q Can you tell me what law firms you worked in,
 (3) Ms. Armstrong?
 (4) A I would have to get my resume. I was working temporary
 (5) services at that time.
 (6) Q How long ago was that?
 (7) A A couple of years.
 (8) Q And you worked a couple of years?
 (9) A About three or four, probably. I was working temporary
 (10) services, and then I went to work for the district and then for
 (11) the state. I was in the midst of a separation, I had to get
 (12) full-time work. I'll be divorced next month, but for financial
 (13) reasons. But I did work temporary services for Olsten. Quite
 (14) a lot of the law firms and CPA firms in and different places in
 (15) town.
 (16) Q Did you like working in law firms?
 (17) A Oh, yes, sir. I enjoy people.
 (18) Q And I note you worked as a bailiff, too?
 (19) A Yes, sir, I did.
 (20) Q Was that for the Anchorage court?
 (21) A That was here, yes.
 (22) Q For the superior or district court?
 (23) A District court.
 (24) Q And how long was that?
 (25) A Oh, off and on for about nine months, I think, when my

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- (1) children were younger.
 (2) Q I notice that for a period you did go back to work and
 (3) raise children, too?
 (4) A Yes, sir, I did.
 (5) Q For a period of eight years?
 (6) A Off and on, yes.
 (7) Q And you've got two kids now?
 (8) A I've got two boys, yes.
 (9) Q What do you like about Alaska, Ms. Armstrong?
 (10) A Boy, that's a tough one. I've lived here forever. Just
 (11) about everything. I don't know. I've lived a lot of places,
 (12) but this is where - I don't know, I like the outdoors, I spend
 (13) a lot of time outdoors. People, people are real - I think
 (14) there's such a melting pot here, that people are really
 (15) friendly, and I'm not one to have an enemy. I don't know a
 (16) stranger, so it's a neat place for me to be.
 (17) Q What sort of things do you like to do outdoors?
 (18) A I like to fish, I like to camp. I do a little skiing. I'm
 (19) not very good. My kids got me up on skis again this year, snow
 (20) machine. But they're older now, so they're, come on, Mom, you
 (21) can do it, too. I haven't done it for years.
 (22) Q On fishing, where did you go fishing?
 (23) A Actually my favorite spot is right outside of Seward. I
 (24) love trout fishing. There's a place down there, a trout river,
 (25) it sits on the Kenai Lake, and I'm a great trout fisherman.

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- (1) That's where I like to go and I like fishing for silvers on the
 (2) Kenai.
 (3) Q Now I'm going to change gears just a little bit,
 (4) Ms. Armstrong.
 (5) A All right.
 (6) Q And ask you some questions, on your questionnaire at Page
 (7) 11, question number 47.
 (8) A Okay. Can I look?
 (9) Q Oh, please do.
 (10) A Okay.
 (11) Q Ms. Armstrong, you answered with regard to all those
 (12) entities that are listed there at number 47, local governments
 (13) all the way down to Exxon Corporation as somewhat favorable?
 (14) A Yes, I did.
 (15) Q My question is, just generally, you have - you don't have
 (16) feelings one way or the other about any of these groups?
 (17) A No, sir, I really don't.
 (18) Q Do you have any feelings one way or the other about
 (19) Natives?
 (20) A Well, I do have to say something, I work - and this
 (21) might - I didn't put this in my questionnaire but I thought
 (22) about it later on down the road. I work for a company called
 (23) Accent Service Company, and we are a collection agency, and I
 (24) deal a lot with Native people, regular people in Kodiak, Kenai,
 (25) Valdez. I don't know, some of my debtors may have been

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- (1) affected personally by this. I don't know. This is something
 (2) I wanted to bring up to you, too, so you do know that I work
 (3) with these type of people every day. Some are fishermen, some
 (4) have lost boats due to, you know, the spill many years ago.
 (5) Maybe not directly affected but down the road, and I do deal
 (6) with these people every day as - because they are in financial
 (7) difficulty. I did want to mention that. I don't know if this
 (8) was the right time or not, but I needed to say that, too.
 (9) Q Well, have you formed any -
 (10) A I don't really have - you know, I don't have any opinion.
 (11) I don't want to say one way or the other, I'm not a person who
 (12) will - I mean, I have some definite ideas in my mind from,
 (13) like I said, early on, but I haven't heard everything. And
 (14) until I do, it's hard for me. I mean, I have my own thoughts
 (15) about what's happened. I don't know if you want to hear that.
 (16) Q That's what we sort of do need to hear, Ms. Armstrong.
 (17) Could you tell me what you - if I could go about it just a
 (18) little bit differently, I had asked you if you had any thoughts
 (19) about Natives one way or the other?
 (20) A Natives one way or the other, no. Are you talking about
 (21) prejudices are you talking about just as people? Are you
 (22) talking about -
 (23) Q In general?
 (24) A In general, no, I don't. No, I don't.
 (25) Q Are some of the people that your company is trying to

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- (1) collect from Native people?
 (2) A Yes, they are.
 (3) Q And have you had experiences, either good or bad, in trying
 (4) to collect money from Native people?
 (5) A No more so than anyone else, I don't think.
 (6) Q Have you had any bad experiences trying to collect money
 (7) from Native people?
 (8) A I hate to categorize, because I deal with all kinds of
 (9) people. I can't - you know, one individual person, you know
 (10) - I mean, that wouldn't pop into my brain. I mean, hey, you
 (11) know this Native guy didn't pay his bill because of blah, blah,
 (12) blah. I think in my line of work, the way I'm working right
 (13) now is a lot of people go through hard times and some of them I
 (14) think may have been inadvertently affected by this. But maybe
 (15) I'm not answering the question.
 (16) Q No, you're doing fine. You think it is - you believe
 (17) perhaps that some people that you are trying to collect from
 (18) may have been affected by the oil spill?
 (19) A I do, I do. Because of location, because of, you know -
 (20) THE COURT: Ms. Armstrong, could you hold the
 (21) microphone a little bit further away from your mouth?
 (22) A Yes, sir. Is that better?
 (23) THE COURT: Yeah, you can hold it further down if it's
 (24) uncomfortable.
 (25) A Yeah, I know. I kind of feel like I'm a -

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- (1) THE COURT: Rock star?
- (2) A Yeah, really. I do sing a little bit, too, so I'm used to
- (3) having the mike up-front. I'm sorry.
- (4) BY MR. FORTIER:
- (5) Q We'd like to hear you sing?
- (6) A I would rather not, thank you. I'm not prepared.
- (7) Q Based upon your experiences and your belief that some of
- (8) the people that you try to collect from have run into financial
- (9) difficulties on account of the oil spill, do you think you
- (10) could set that aside and be fair, weigh the evidence both the
- (11) plaintiffs' evidence and the defendants' evidence in arriving
- (12) at a decision in this case?
- (13) A You know, I'm not sure, to be honest.
- (14) Q Well, let me ask you, you remember when we began this
- (15) thing, we began talking, Ms. Armstrong, you had indicated that
- (16) you were aware that in a courtroom, what you have is that the
- (17) plaintiffs come in and they present their evidence?
- (18) A Yes, sir.
- (19) Q And then the defendants present their evidence?
- (20) A (Nods head)
- (21) Q And you've seen TV shows?
- (22) A Absolutely. You've watched - you know, I'm no L.A. Law
- (23) guy, but that's generally the way to do it. Then the Judge
- (24) gives you instructions and you're bound to follow those
- (25) instructions?

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- (1) A Yes, sir.
- (2) Q Now, do you think you could do that?
- (3) A I think so.
- (4) Q And you don't have any - you don't hold any feelings one
- (5) way or the other against Exxon; do you?
- (6) A No, sir, I don't.
- (7) Q So you could be fair to Exxon, too?
- (8) A Yes, sir.
- (9) Q And you listed at item numbered 50, page 12 that you have a
- (10) close friend who does sports fishing in Prince William Sound?
- (11) A Well, I've had friends off and on during the years who have
- (12) sports fished. I don't name one individual, you know.
- (13) Q You weren't thinking about anybody in particular?
- (14) A No, sir, nobody in particular.
- (15) Q Or any places in particular?
- (16) A No, sir. No, sir.
- (17) THE COURT: Mr. Fortier, your ten minutes is up.
- (18) MR. FORTIER: Thank you.
- (19) BY MR. FORTIER:
- (20) Q One last question, would you want to serve on a jury, on
- (21) this jury?
- (22) A Sir, I think it would be very interesting to serve on the
- (23) jury. I don't know - my biggest problem is work. I know that
- (24) they will pay me my salary, with you I do get commission also,
- (25) and if I'm not there I lose that. I - only holdup - I want

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- (1) to do my civic duty, I want to do what is right, and I won't,
- (2) you know, say I won't or I cannot. I feel like whatever
- (3) happens is going to happen because - you know, if I'm chosen
- (4) or not chosen, there's a reason for it. So I'll deal with
- (5) whatever else I have to deal with.
- (6) MR. FORTIER: Thank you very much.
- (7) A Thank you.
- (8) MR. FORTIER: Pass for cause, Your Honor.
- (9) VOIR DIRE EXAMINATION OF ANN ARMSTRONG
- (10) BY MR. DIAMOND:
- (11) Q Good morning, Ms. Armstrong.
- (12) A Good morning.
- (13) Q My name is Chuck Diamond. I introduced myself to the
- (14) assembly on Monday?
- (15) A Yes, sir.
- (16) Q I'm one of the attorneys it's not like Night Court, it's
- (17) more like video dating?
- (18) A It's a little nerve racking.
- (19) THE COURT: Ms. Armstrong, I'm getting a bad record.
- (20) I think your voice is loud enough so I don't have to worry
- (21) about it.
- (22) A You don't think you'll need it?
- (23) THE COURT: Why don't you leave it up there?
- (24) A Okay, sir.
- (25) BY MR. DIAMOND:

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- (1) Q You have some banking experience I notice?
- (2) A Yes, sir.
- (3) Q Before your kids were born or when they were little, when
- (4) they were little, what did you do?
- (5) A I started at Alaska National Bank. I started off as a loan
- (6) officer doing commercial loans. I had three girls on the
- (7) switchboard in the file room, that sort of thing. I started
- (8) working with the credit supervisor at the bank and also
- (9) vice-president, and I was also at Alaska State Bank.
- (10) Q How long were you with them?
- (11) A Almost - close to four years before I had my first son.
- (12) Q And then you quit to raise your children?
- (13) A Well, yes, sir. I was told to quit the last month of my
- (14) pregnancy and then I stayed at home, you know, quite a bit
- (15) during that time. I can't remember dates. I volunteered and
- (16) worked part-time during that period, too, but I was home with
- (17) the kids most of the time.
- (18) Q I noticed in your questionnaire that you had some
- (19) accounting training?
- (20) A Yes, sir.
- (21) Q What training did you do?
- (22) A I worked for Burly Ott (ph). I worked for a CPA firm, Peat
- (23) Marwick Mitchell. They took me - I took an introduction to
- (24) accounting one at UAA. I worked a little bit through the years
- (25) with it. I worked - when I worked in child support I worked

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- (1) at accounting, I took payments from individuals who owed child
 (2) support, a little bit, you know, over the years I've used it.
 (3) Q What did you do at Peat Marwick?
 (4) A At Peat Marwick I did - well, I was real young then, I
 (5) hadn't worked long. I was receptionist, I scheduled all
 (6) appointments. I did some policy typing. I did a little bit -
 (7) I worked a lot with some of the trainees and accountants. I
 (8) learned quite a bit there. I did a little bit of everything,
 (9) actually. I filed.
 (10) Q Any on-the-job training for bookkeeping and things like
 (11) that?
 (12) A Yeah. Very little at that time. I worked with a lot of
 (13) different people and they had me doing a lot of different
 (14) things, but not really hands-on at that time, not - you know,
 (15) that wasn't my mainstay, the job - that job like I had was, as
 (16) I said, a melting pot, a little bit of everything.
 (17) Q I gather, looking at your career, that you're a numbers
 (18) kind of person?
 (19) A Pardon me, sir?
 (20) Q You look like a numbers kind of person, your jobs working
 (21) with numbers and dollars?
 (22) A A little.
 (23) Q Do you enjoy that?
 (24) A I do. I think what I enjoy best in working, and the things
 (25) that I've done the last few years, are people. I enjoy working

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- (1) with people. I enjoy - you know, children, and then I got
 (2) into child support and things like that, and what I like is
 (3) being able to work with children and work things out with
 (4) people. I'm trying to work things out. You know, everybody
 (5) has difficult times in their lives, everybody works at
 (6) different things in their life. If I could have, I would have
 (7) tried to get into social work, but it just didn't work. I just
 (8) married very young, you know.
 (9) Q It sounds like your present employment is a little bit of
 (10) social work?
 (11) A It is a little bit. I don't know if it's what I want to do
 (12) for the rest of my life, but it is, it is.
 (13) Q If you serve on this jury, we can promise you a lot of
 (14) people and quite a bit of numbers. You said in response to one
 (15) of Mr. Fortler's question that you had definite ideas of the
 (16) spill, definite impressions early on, and he never got into
 (17) that, and let me give you an opportunity to tell us what you
 (18) meant?
 (19) A Definite, I don't know. I don't know if you'd call
 (20) anything definite, I really don't. I can't - you know, I have
 (21) things in my mind, things that I remember. I haven't followed
 (22) it. I haven't kept up with it, you know. I remember what a
 (23) lot of people do. I mean, in the beginning you heard about
 (24) Hazelwood and you heard about the drinking, and you heard
 (25) about this, and you heard about that, but since then you've heard

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- (1) other things. I don't know enough facts, I can't - and like I
 (2) said, it wasn't a main priority to me. I never thought much
 (3) about it. It was just another sort of news. Unless I was
 (4) involved with it at, myself, at any point - I haven't been, up
 (5) until now, maybe just a little bit. So I really don't. I do
 (6) and I don't. It's hard for me to say specifics.
 (7) Q When you think back to 1969 (sic) and you think of Exxon's
 (8) involvement both in creating the situation and responding to
 (9) it, what kind of impressions do you have?
 (10) A '89?
 (11) Q 1989.
 (12) A I was going to say.
 (13) Q Going back to the spill in 1989, what kind of impressions
 (14) do you have?
 (15) A What kind of impressions do I have?
 (16) Q Yeah.
 (17) A You know what my first impression was and that's - and
 (18) this may be stupid or whatever - my first impression, the
 (19) first thing I remember about all of this was this man
 (20) shouldn't - that I - it goes back to Hazelwood. I don't
 (21) think about the companies. I don't think about the
 (22) corporations. That's what pops into my mind, and I've heard a
 (23) lot since then but that would be my initial, why was he there,
 (24) why was he - but now I wonder about that, too. I don't know
 (25) enough. I can't say specifically, I can't.

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- (1) Q Unfortunately, that's not one of the issues we're dealing
 (2) with this in this trial.
 (3) A I know. But that's what I feel, that's what I think.
 (4) Q You said that you have a sense that some of the people who
 (5) are on hard times that you have to deal with professionally,
 (6) you expect are maybe feeling the effects of what happened
 (7) back
 (8) in 1989. Why do you think that?
 (9) A Well, you know, I was thinking of locale. A lot of them
 (10) are fishermen, different things through the years that they've
 (11) dealt with, talking to the individuals. Nothing specific.
 (12) Q Do people cite the oil spill as a hard time of why they're
 (13) not making payments?
 (14) A No, sir, not directly.
 (15) Q They don't?
 (16) A Not directly.
 (17) Q You said in response to one of the hundreds of questions we
 (18) posed to you in writing that you suspect that things in areas
 (19) that were affected by the oil are probably not back to normal.
 (20) You can take a look, it was question 51(b). We asked you to
 (21) check a box if you think things returned to normal.
 (22) A Page?
 (23) Q 11, I believe. No, sorry, 12.
 (24) A Oh, 51(b)?
 (25) Q Yeah.
 (26) A Oh, please state - oh, here. I'm sorry.

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- (1) Q Do you see where I am?
- (2) A Well, I don't really think they could. I mean, just from
- (3) what I've heard, I know of people who have worked the oil
- (4) spill, I've heard - you know, I don't have any people that are
- (5) close to me, but several years ago, cleaning up. At this
- (6) point, I just don't think that they could, not completely.
- (7) Q Why do you think that?
- (8) A Well, because it was so devastating. I don't think that -
- (9) I keep going back to the fish, I go back to the environment,
- (10) the animals. I don't think everything's returned to normal.
- (11) Q Just your common sense impression?
- (12) A Just my - yes, I haven't seen anything particularly. I've
- (13) been down - well, I've been to Valdez once since then, but I
- (14) haven't - you know, we went down for a ball tournament.
- (15) Q Are you of that opinion based on anything that you've read
- (16) in the newspapers or heard on the television or was it just
- (17) your common sense judgment?
- (18) A I don't know. I'm sure that I've heard something, you
- (19) know. It's - I mean, things do come on TV, and you may be
- (20) sitting there watching it or you may just watch whatever. And
- (21) I've seen documentaries, I've seen this, I've seen that. It's
- (22) not that I've sat there diligently watching everything. There
- (23) may be something that occurred to me that I remember hearing
- (24) or
- (25) seeing at one time that may have - but I can't think of
- (26) anything like right off the bat.

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- (1) I know I'm being kind of sketchy, but it's hard. I can't
- (2) - you know, I don't just see how things could be back to
- (3) normal now.
- (4) Q You may - you probably know enough about this case to
- (5) understand that's an issue, that the plaintiffs own property on
- (6) Prince William Sound and Kodiak and Kenai and some of it was
- (7) oiled, and the parties are disputing whether there is still oil
- (8) out there, how much, what's it doing to the environment, if
- (9) anything, how it's harming the property.
- (10) If you serve on this jury, you're going to be asked to put
- (11) aside any preconceived notions you have, any ideas you have
- (12) as
- (13) to what the truths of those things are, and base a judgment
- (14) solely on what you hear from the witness stand and solely
- (15) based
- (16) on the instructions the Judge gives you and not based on what
- (17) you read in newspapers and not what you saw on television, not
- (18) based on what you surmised. Do you think you could do that?
- (19) A I think so.
- (20) MR. DIAMOND: Okay, thank you very much.
- (21) A Thank you, sir.
- (22) MR. DIAMOND: Pass for cause.
- (23) THE COURT: Ms. Armstrong, you've been passed for
- (24) cause which means you've only passed one part of the process.
- (25) A Okay, sir.
- (26) THE COURT: Hang on just a minute so I can explain
- (27) things to you. We have a number of other jurors to question,

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- (1) and the final jury is nowhere near -
- (2) A I'm sure.
- (3) THE COURT: - being complete, so what I want you to
- (4) do is I'll excuse you today.
- (5) A Thank you, sir.
- (6) THE COURT: But I want you not to talk to anybody
- (7) about this case, especially the people in the jury room as you
- (8) leave.
- (9) A Okay.
- (10) THE COURT: Because I don't want the information in
- (11) this room to go out of this room to other jurors who might be
- (12) affected by it; all right?
- (13) A I understand, yes, sir.
- (14) THE COURT: So we'll be in touch with you to call you
- (15) back or to give you further information sometime later. I
- (16) don't know when it will be and it could be a couple of days.
- (17) A Thank you, sir.
- (18) THE COURT: Thank you for your time.
- (19) A Thank you.
- (20) THE COURT: Counsel, I think we should take a break.
- (21) MR. DIAMOND: Thank you very much.
- (22) THE COURT: And if you want to come to chambers and
- (23) raise that matter you assigned, that's fine with me.
- (24) MR. STOLL: Are you going to talk to the jury now,
- (25) Your Honor?

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- (1) THE COURT: I'm going to talk with you first and then
- (2) we'll deal with that issue.
- (3) MR. STOLL: Okay.
- (4) (Recess from 10:30 a.m. to 10:55 a.m.)
- (5) (Bryan Young enters)
- (6) THE COURT: Mr. Young?
- (7) A Yes, sir.
- (8) THE COURT: Could you take that microphone out of the
- (9) clip and just hold it, not too close to your mouth because we
- (10) get a bad record, but you can hold it down near your chest. I
- (11) want you to understand that you're under oath now, and you
- (12) were
- (13) when you were answering the jury questionnaire. As you can
- (14) see
- (15) from the process, it takes about 20 minutes to question each
- (16) juror. You will have questions from both sides, and then I'll
- (17) inform you what we do next; all right?
- (18) A Okay.
- (19) THE COURT: Mr. Stoll will be the first one to
- (20) question you.
- (21) VOIR DIRE EXAMINATION OF BRYAN YOUNG
- (22) BY MR. STOLL:
- (23) Q Good morning, Mr. Young?
- (24) A Good morning.
- (25) Q My name is Bob Stoll. I represent the municipalities who
- (26) were damaged by the oil, and this is Mr. Fortier, he represents
- (27) the Native corporations and Trudy Johnson who also
- (28) represents

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- (1) the municipalities. I'd like to address, first of all your,
 (2) what I consider, request for hardship to get off the jury
 (3) service; is that essentially what you were writing here at the
 (4) end?
 (5) A Yes, sir. I'm a college student. I'll be leaving for
 (6) school on August 18th.
 (7) Q And then you also have a - I'm concerned also about your
 (8) immediate situation.
 (9) A Well, I'm working two jobs trying to pay for school. One's
 (10) from four to 12:30 at night, so it makes it rough kind of
 (11) coming in here sometimes.
 (12) Q You put in the questionnaire that you're a hour away from
 (13) your work?
 (14) A Correct. It's a 30, 31 mile drive one way to home.
 (15) Q And where is that?
 (16) A We live on the side of the mountain near the Eagle River
 (17) Visitors Center.
 (18) Q I'm sorry?
 (19) A I'm sorry, we live out in Eagle River Valley.
 (20) Q And then where do you work?
 (21) A I work at the Sourdough Mining Company.
 (22) Q I see. So what time - you work actually to midnight?
 (23) A Well, it depends when the last customer I have to transport
 (24) back to the hotel goes back. So basically, when I don't have
 (25) anymore people to take care of, I'm off.

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- (1) Q You don't know when that is?
 (2) A I have no idea. It varies from night to night.
 (3) Q And sometimes you go past midnight?
 (4) A No, it's never gone past midnight. So far the latest has
 (5) been 11:30.
 (6) Q But you can work until midnight?
 (7) A Yes, theoretically. The last time I can be on the job is
 (8) midnight.
 (9) Q So whether it's 11:30 or midnight, then it takes you an
 (10) hour after that to get home?
 (11) A Correct.
 (12) Q And then how long does it take you to get from home down to
 (13) here then?
 (14) A It takes about - it seems to be taking 40 minutes to
 (15) downtown.
 (16) Q I see. So that's why you were concerned about the - you
 (17) said you thought it would leave you about five hours of sleep?
 (18) A Five to six hours.
 (19) Q And you said you had another job in addition to the one
 (20) that goes to midnight?
 (21) A Right. I have a job on Wednesday and Fridays that goes
 (22) from eight a.m. anywhere from ten to two p.m., that's
 Wednesday
 (23) and Fridays.
 (24) Q Wednesday and Fridays?
 (25) A Correct.

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- (1) Q So if you have had - if you were here from eight a.m.
 (2) until - excuse me, 8:30 a.m., you'd have to leave at 7:30,
 (3) about?
 (4) A Correct.
 (5) Q And then go to 1:30, so you'd lose that other job then?
 (6) A Correct.
 (7) Q Plus you'd have a little bit of problem with the five
 (8) hours - five or whatever it is hours?
 (9) A Right, whatever it works out to.
 (10) Q Now, you also said in here that you have some attention
 (11) deficit disorder?
 (12) A Yeah, I'm - I have a real mild case of it, though I seem
 (13) to be working pretty well through it.
 (14) Q Does it get any worse if you have this only five or six
 (15) hours sleep?
 (16) A It is a little harder to concentrate, yes.
 (17) MR. STOLL: Your Honor, before we go through -
 (18) BY MR. STOLL:
 (19) Q Let me ask you another question. How important is this
 (20) second job to you in terms of being able to support yourself
 (21) through school?
 (22) A It's not terribly important, but basically I'm putting
 (23) myself through school, so every extra dollar I get for school
 (24) makes it that much less in loans I have to take out to pay for
 (25) my education.

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- (1) Q Do you think that this would create a real hardship on you,
 (2) this jury service for two months?
 (3) A It would create some major problems, yes. I'm kind of
 (4) concerned about getting overtired, of course. I've been here
 (5) five days in the morning, and especially when you're driving
 (6) and you're not really fully awake, you're driving for six or so
 (7) hours a day, I could see some problems developing, probably.
 (8) Q That's the six or so hours you mean in your work?
 (9) A Correct.
 (10) Q Plus the driving to and from the jury service?
 (11) A Right, correct.
 (12) MR. STOLL: Your Honor, could we take this up first
 (13) maybe?
 (14) THE COURT: Counsel, do you want to ask any questions
 (15) just on this subject?
 (16) MR. DIAMOND: Yes, I would.
 (17) THE COURT: You can.
 (18) VOIR DIRE EXAMINATION OF BRYAN YOUNG
 (19) BY MR. DIAMOND:
 (20) Q Good morning, Mr. Young. My name is Chuck Diamond. I'm
 (21) one of the lawyers, along with John Clough, representing Exxon
 (22) here.
 (23) You mentioned a job on Wednesday and Fridays?
 (24) A Correct.
 (25) Q Who do you work for?

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- (1) A That's a job with Sourdough Foods which provides food -
 (2) processed food products to the Sourdough Mining Company
 and
 (3) other buyers throughout Anchorage.
 (4) Q What do you do for them on Wednesday and Fridays?
 (5) A I basically drive a delivery van and I deliver at our other
 (6) clients the customers of the Sourdough Mining Company.
 (7) Q If you don't mind me asking, what do you get paid for the
 (8) Wednesday and Friday job on a weekly basis?
 (9) A Well, I'm making nine bucks an hour. I seem to be doing
 (10) nine to 12 hours a week there lately. So that's an extra
 (11) hundred bucks coming in.
 (12) Q Has anybody told you you get paid for being a juror?
 (13) A Yes, they have.
 (14) Q Have you discussed jury service with the folks who own
 (15) Sourdough?
 (16) A Yes, I have.
 (17) Q And who did you talk to there?
 (18) A I talked to a couple of different people. There is a guy I
 (19) worked for Sourdough Foods whose name is Duffy. I don't
 know
 (20) his last name because I just started working there recently,
 (21) and then there is an another lady at Sourdough Mining
 Company
 (22) named Val. There is another boss I have named Cindy who I've
 (23) talked about it with.
 (24) Q Have you talked to the manager yet?
 (25) A Those are the managers.

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- (1) Q Is the restaurant open for lunch?
 (2) A Yes, sir.
 (3) Q And do they shuttle people from the hotels for the lunch
 (4) hour as well?
 (5) A No.
 (6) Q Just dinner?
 (7) A Just dinner.
 (8) Q Have you talked to anybody about shifting your hours and
 (9) your responsibilities so that you could start a little bit
 (10) earlier?
 (11) A No, sir. They basically have it set up so that it's from
 (12) 4:30 to 10:00, and the main idea is that people aren't going to
 (13) go to dinner earlier than, say, five or so.
 (14) Q No, I understand the driving the van is a late afternoon,
 (15) evening job, but have you talked to anybody there about
 (16) adjusting your responsibilities so perhaps you could start
 (17) earlier and do some setup work or kitchen work?
 (18) A No, sir, I haven't. That would be a different job, though,
 (19) from what I'm doing now.
 (20) Q Right, I understand that. Is that something you could
 (21) explore if you went back and talked with them?
 (22) A I could, but I'd make about one-third the amount I'm making
 (23) now doing that.
 (24) Q How do you know that?
 (25) A Well, because most those kind of jobs, setup and stuff, pay

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- (1) five fifty an hour. I'm making nine bucks an hour driving and
 (2) making 20 to 30 dollars a night in tips.
 (3) Q Are you the only driver that they employ?
 (4) A Correct.
 (5) Q Are they open seven days a week?
 (6) A Yes.
 (7) Q Who drives when you're not working?
 (8) A I'm the only person who drives. I work seven days a week.
 (9) Q Oh, you do work seven days a week? While you're back her
 (10) from school you live with your parents?
 (11) A When I'm back home, yes.
 (12) Q Are your parents contributing to your college expenses?
 (13) A No.
 (14) Q Why is that?
 (15) A Well, they're - they're not making quite - they're making
 (16) just enough money now to keep the cars and house and food.
 (17) Q Your dad works for the state?
 (18) A Correct.
 (19) Q And your mom does tutoring?
 (20) A Correct.
 (21) Q Is she a teacher during the school year?
 (22) A No, she does tutoring during the school year.
 (23) MR. DIAMOND: That's all on this subject, Your Honor.
 (24) THE COURT: All right. Do you want it done outside
 (25) the presence of the juror?

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- (1) MR. STOLL: I don't care whether it is or not.
 (2) THE COURT: That's all right, I'll excuse him.
 (3) Could you go back to the jury room for just a minute?
 (4) We'll bring you right back in.
 (5) (Bryan young leaves.)
 (6) THE COURT: I understand what the issue is, counsel.
 (7) Does anybody oppose excusing him?
 (8) MR. DIAMOND: I'm sorry.
 (9) THE COURT: I said I understand the issue. Does
 (10) anybody oppose excusing Mr. Young?
 (11) MR. DIAMOND: We would oppose.
 (12) THE COURT: Give me the basis.
 (13) MR. DIAMOND: He falls in the same category as at last
 (14) one, I think, two young people we had yesterday who are
 working
 (15) afternoon jobs, there was a fellow who - working for Alamo
 (16) Rent-A-Car in the afternoons and said he was going to have to
 (17) work until ten or something like that and adjust his schedule.
 (18) This juror has - potential juror hasn't explored the
 (19) possibility of shifting things around. If he serves as a
 (20) juror, he's going to make more than what he gives up on the
 (21) Wednesday and Friday job, come ahead on that. And
 Sourdough is
 (22) a big operation, and I'm sure they have the flexibility,
 (23) particularly if they were asked appropriately, to make
 (24) arrangements so that he doesn't lose his job.
 (25) There's going to be some economic - potential economic

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- (1) effect if he's there for two hours a day earning six dollars
 (2) instead of nine dollars in those tips, but he's going to get a
 (3) jury service per diem, as well. So, you know, I - if we're
 (4) going to deal with these people the same way, he really is not
 (5) materially different from some of the other young people who
 (6) were also trying to put some money in the bank for college.
 (7) THE COURT: Okay. Thank you, counsel. Anything
 (8) further?
 (9) MR. STOLL: Well, Your Honor, I think there is some
 (10) difference from the Alamo person's hours, this person is
 (11) apparently an hour away. I'm personally unacquainted with all
 (12) these distances, but he drives and he knows what the distances
 (13) are. He drives eight hours a day, actually ten hours a day
 (14) because he drives an hour to and from work, then he has to
 (15) drive down here. He has attention deficit problem as it is.
 (16) He's supporting himself. Losing one job - it may not be the
 (17) end of the world, but he's talked to his supervisors already.
 (18) I mean, I'm just being consistent with the position that
 (19) the plaintiffs have taken on other ones. I think it just
 (20) sounds like a very tough hardship to me to a kid in college,
 (21) and it's borderline whether he'll be able to stay through the
 (22) thing anyhow, so he goes through this drill and loses his job
 (23) and then he gets knocked off the jury at the end because we're
 (24) still in trial. I just don't understand it, myself.
 (25) THE COURT: Which one was the Alamo person?

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- (1) MR. DIAMOND: There were two people we talked to in a
 (2) similar predicament. Mr. Gerwin, number 13, worked for Alamo,
 (3) and I think - and the other one was Mr. Blumer who we - I'm
 (4) sorry Mr. Gerwin was number 17 and Mr. Blumer was number
 (5) 13.
 (6) He's the fellow who's going back to Montana to play semi pro
 (7) hockey.
 (8) THE COURT: Right.
 (9) MR. DIAMOND: And he's got a current job working for
 (10) Green Giant, that he's automatically going to have to - I
 (11) guess the daylight hours are longer, but obviously he's going
 (12) to have to juggle things. We don't know with this juror. We
 (13) have in other instances at least had the jurors go back and
 (14) talk to their employers. I know that's what the lady from the
 (15) City of Anchorage did. He may well be able to adjust the
 (16) hours. He may end up with the same dollar amount in his
 (17) pocket
 (18) when it's all said and done.
 (19) THE COURT: There are similarities with this juror and
 (20) there are differences also, but with regard to his situation,
 (21) he is one of the school people, and I don't independently
 (22) excuse people because they're right at the end of the projected
 (23) trial period, so that wouldn't be a reason to excuse him. On
 (24) the other hand, he's clearly a - he's working very hard to get
 (25) through school. He's got two jobs to finance his school. His
 (26) parents are not helping him. He doesn't have any independent
 (27) help for the financing of school. He also has a job which he

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- (1) believes, and I have no reason to think that he's not correct
 (2) about this, that he - the best paying job he can get is a job
 (3) that will make him tired when he gets here to court, and will
 (4) require him to have few hours of sleep every night.
 (5) So I'm concerned about the amount of attention that he can
 (6) give to the case. This is only complicated by the fact that he
 (7) has what he calls mild attention deficit disorder, which would
 (8) cause each of the parties to worry about what attention he
 (9) would be able to give to this case.
 (10) I see this as a similar problem to the other jurors, but
 (11) it's the kind of thing where discretion plays a big part in
 (12) what a what a judge does when faced with a situation like
 (13) this. The other people were people that I thought that could
 (14) serve on this jury and whose problems could be dealt with by
 (15) them and by the Court. This one is a problem that I see that
 (16) is greater in degree, and a legitimate claim, both of hardship
 (17) and inappropriateness of a juror because there is a threat that
 (18) he will not be able to concentrate on the case, a very real
 (19) threat. So I'm going to excuse him over the defendants'
 (20) objection.
 (21) Would you bring him in, please.
 (22) (Bryan Young enters.)
 (23) THE COURT: You don't have to unclip that, Mr. Young.
 (24) Mr. Young, I've decided that I'm sure you'd be an appropriate
 (25) juror if it weren't for the fact that you had all these

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- (1) problems with your work, and the tiredness that that might
 (2) cause you, and in addition, I worry that you wouldn't be able
 (3) to concentrate on the case for the reasons that you've given
 (4) us. So it's certainly no criticism of you, I simply think that
 (5) it's appropriate to excuse you for service on this case.
 (6) If it was a shorter case, we could work around the job
 (7) problems. I'd certainly try to do that, but the problems
 (8) you've testified to seem to me to be large enough that really
 (9) it would be inappropriate for you to sit as a juror on the
 (10) case. So I'm going to excuse you. What that means is you are
 (11) excused from service on this case. You're still a potential
 (12) juror, so you have to call in as instructed.
 (13) THE CLERK: It's over with today.
 (14) THE COURT: There aren't any jurors this week, so you
 (15) are excused. Thanks very much.
 (16) A Do I leave this here?
 (17) THE COURT: You can leave it, yes. Thank you.
 (18) (Bryan Young leaves and Bethel Richardson enters).
 (19) THE COURT: This is Juror number 27, counsel?
 (20) A 24.
 (21) MR. FORTIER: 24, Your Honor.
 (22) THE COURT: I had it listed in mine as 27. Is it
 (23) juror number 24?
 (24) THE CLERK: Yeah, yeah I think so.
 (25) THE COURT: Is your name Joseph Shaw?

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- (1) A No.
- (2) THE CLERK: Bethel Richardson.
- (3) THE COURT: Okay, I'm sorry. I got you now. Why
- (4) don't you just give your name for the record then we won't be
- (5) confused?
- (6) A It's Bethel Richardson.
- (7) THE COURT: Mr. Richardson, you're under oath now and
- (8) you were when you answered THE jury questionnaire. You'll
- have
- (9) about 20 minutes of questioning and then I'll give you further
- (10) instructions at that time, all right?
- (11) Go ahead, Mr. Fortier
- (12) MR. FORTIER: Thank you, Your Honor.
- (13) VOIR DIRE EXAMINATION OF BETHEL RICHARDSON
- (14) BY MR. FORTIER:
- (15) Q Mr. Richardson, my name is Sam Fortier. I represent the
- (16) Native corporation plaintiffs. They're bringing a lawsuit
- (17) against Exxon in this case. Sitting next to me or sitting at
- (18) the table is Mr. Stoll.
- (19) MR. STOLL: Good morning.
- (20) Q And Ms. Johnson, both who represent the municipalities in
- (21) the case. I'll be asking a few questions, and then Mr. Clough
- (22) or Mr. Stoll - excuse me, Mr. Clough or Mr. Diamond who
- (23) represent Exxon will be asking you some questions.
- (24) Mr. Richardson, let me ask you first, do you understand
- (25) that in this case the plaintiffs will be presenting evidence

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- (1) and the defendants will be presenting evidence and your job as
- (2) a juror is to weigh the evidence as it's presented to you?
- (3) A Right.
- (4) Q And do you think you'll be able to do that?
- (5) A I would think so.
- (6) Q The judge will - Judge Shortell will give you instructions
- (7) called jury instructions about how to weigh the evidence, how
- (8) to evaluate the evidence, what the law is on the case. Can
- (9) you - and he will, when he gives you the instructions, you'll
- (10) be expected to follow those instructions. Does that create a
- (11) problem for you, following the instructions of the law?
- (12) A That's no problem.
- (13) Q Now, you understand that being a juror requires you to be
- (14) fair to both sides?
- (15) A I understand that.
- (16) Q And that both my clients' corporations and Mr. Stoll's
- (17) clients, the municipalities, as well as Mr. Clough and
- (18) Mr. Diamond's client, Exxon would expect the same thing of any
- (19) juror that's seated in a jury panel, that they would be fair.
- (20) Do you understand that?
- (21) A Uh-huh.
- (22) Q And do you think you could be fair to all sides?
- (23) A Sure.
- (24) Q In one of the questions on the questionnaire, and you can
- (25) check it out if you want, it's at the table. Right in front of

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- (1) you is the questionnaire. Question 47 you were asked, just
- (2) based on your experience and knowledge to state what your
- (3) impression was as to certain of the entities that are listed in
- (4) that question. One of them was local governments,
- (5) municipalities; do you see that? You listed that you feel
- (6) somewhat favorably towards the municipalities.
- (7) Further down there, there's Exxon, and you have listed
- (8) there somewhat unfavorable.
- (9) A Uh-huh.
- (10) Q Now, can you tell me whether or not, even if you felt
- (11) somewhat unfavorably when you filled out the questionnaire,
- you
- (12) would be able to set that aside and be fair to Exxon?
- (13) A Well, I would try to be fair, sure.
- (14) Q One of the items that wasn't listed here, Mr. Richardson,
- (15) has to do with Native corporations, it's about midway down that
- (16) column. Do you have any feelings one way or the other about
- (17) Native corporations?
- (18) A Well, the lady I live with is a member of a Native
- (19) corporation, and most the people I fish with in the summertime,
- (20) a good portion of them are Native. you know, so.
- (21) Q So, in general, then, you've had pretty positive sorts of
- (22) dealings with Native people?
- (23) A Uh-huh.
- (24) Q Would that be fair to say?
- (25) A Yes.

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- (1) Q What corporation - do you know what corporation it is
- (2) that -
- (3) A Cook Inlet region.
- (4) Q Cook Inlet Region?
- (5) A Uh-huh.
- (6) Q Do you know if she's enrolled to a village corporation?
- (7) A No.
- (8) Q Now you also indicate that you've been to Point Graham
- (9) before?
- (10) A Uh-huh.
- (11) Q When were you to Point Graham?
- (12) A Oh, jeez, '78 or '79.
- (13) Q Port Graham of course is one of the plaintiffs in this
- (14) lawsuit.
- (15) A Uh-huh.
- (16) Q Do you know anybody from Port Graham?
- (17) A No, no. I fished there, that was all.
- (18) Q That was commercial fishing?
- (19) A No, recreational.
- (20) Q Sports fishing?
- (21) A Yes.
- (22) Q Whereabouts did you sports fish?
- (23) A I beg your pardon.
- (24) Q Do you recall whereabouts in the Port Graham area you
- (25) sports fished?

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- (1) A Honestly, I don't remember. I remember there was a heck of
 (2) a tide, I don't remember the exact location, no.
 (3) Q Were you in a boat or were you on land?
 (4) A It was in a boat.
 (5) Q And you said you fished with - you did do a lot of fishing
 (6) with Alaska Native people?
 (7) A Uh-huh.
 (8) Q Is that sports fishing?
 (9) A Sports fishing, yes.
 (10) Q Whereabouts?
 (11) A The last four years we've been fishing at Seward.
 (12) Q And you like fishing, I take it?
 (13) A Oh, very much.
 (14) Q Did you and your girlfriend, did you ever talk about how
 (15) Native corporations came about?
 (16) A No.
 (17) Q Have you talked about the land that the Native corporation
 (18) owned?
 (19) A Yeah, we have, but Cook Inlet is all, you know, they have
 (20) owners in Texas and stuff like that.
 (21) Q Do you know of any Native corporation land holdings in
 (22) Alaska?
 (23) A No.
 (24) Q You moved up here after you were discharged from the
 Army;
 (25) is that correct?

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- (1) A No. Well, yeah, I came here in '76.
 (2) Q What brought you up here?
 (3) A Work.
 (4) Q What sort of work?
 (5) A I was working at the Copper Mines in Arizona, and when they
 (6) all shut down, my father lived up here, so I moved up here.
 (7) Q And you now work in boating?
 (8) A Yes, I work with the military on the Valdez and Seward.
 (9) Q Oh, in Valdez as well?
 (10) A Uh-huh.
 (11) Q Can you tell me what you do?
 (12) A I repair the boats. They have a fleet of fishing boats,
 (13) the military does.
 (14) Q And those would be like sports fishing boats?
 (15) A Yes, they are tour sports and sports fishermen boats.
 (16) Q And do you get out into Prince William Sound at all?
 (17) A Just out of Seward is all.
 (18) Q So kind of in the Resurrection Bay?
 (19) A Right, Resurrection Bay, Harbor Island, and I haven't
 (20) fished Homer.
 (21) Q From Resurrection Bay, have you ever gone west down
 towards
 (22) the Kenal Fjords-area?
 (23) A No.
 (24) Q Have you ever gone west towards Chenega Bay?
 (25) A Grant Point is about as far as we go.

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- (1) Q I'm sorry I didn't hear you?
 (2) A I said Grant Point is about as far as we go.
 (3) Q And it's correct, isn't it, that you have no opinion one
 (4) way or the other as to whether or not everything is back to
 (5) normal from the effects of the oil spill?
 (6) A I don't know about back to normal.
 (7) Q I beg your pardon?
 (8) A I said, I don't know that everything's back to normal.
 (9) Q You don't know one way or the other?
 (10) A I don't know.
 (11) Q And you'd be able to listen to all the evidence and
 (12) evaluate it fairly to determine whether or not -
 (13) A Well, I'd try, sure.
 (14) Q One of the issues in this case, Mr. Richardson, are whether
 (15) or not Exxon should pay damages -
 (16) A Right.
 (17) Q - to my clients, Native corporations, and Mr. Stoll's
 (18) clients, the municipalities. So that the evidence that will be
 (19) coming in then is going to be dealing with, you know, whether
 (20) or not there's damages. Would you be able to listen to that
 (21) evidence and evaluate it fairly for both sides?
 (22) A Well, I'd do the best I could, but it was my understanding
 (23) there was damages, though.
 (24) Q Mr. Richardson, you would only consider the evidence that's
 (25) presented here in Court, wouldn't you?

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- (1) A Sure.
 (2) Q Maybe I didn't go through that with you. You've read
 (3) things about the oil spill in the past, I take it?
 (4) A Uh-huh.
 (5) Q Do you understand that in these Court proceedings that the
 (6) only evidence that comes in is the evidence that Judge Shortell
 (7) allows in?
 (8) A Right.
 (9) Q And that's the evidence that you would be required to
 (10) evaluate?
 (11) A Right.
 (12) Q And you'd be able to do that and set aside whatever you may
 (13) have heard or read outside of the courtroom?
 (14) A Well, sure, you know - I'll try, sure.
 (15) Q Would you be able to, do you think, to be fair to both
 (16) sides on this?
 (17) A Sure.
 (18) THE COURT: Your time's up counsel.
 (19) MR. FORTIER: Thank you, Your Honor.
 (20) MR. FORTIER: Thank you very much, and Mr. Richardson
 (21) would pass for cause.
 (22) VOIR DIRE EXAMINATION OF BETHEL RICHARDSON
 (23) BY MR. CLOUGH:
 (24) Q Hi, Mr. Richardson?
 (25) A Hi.

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- (1) Q My name is John Clough, I'm from down in Juneau. This is
 (2) Chuck Diamond. Chuck and I will be representing Exxon in the
 (3) trial. You might remember, Chuck did the introductions when
 we
 (4) were all up in the auditorium the other day.
 (5) I'd like to start off if I could, sir, by just following up
 (6) on a couple of questions that Mr. Fortier asked you. You said
 (7) that most of the people that you fished with in the summer, or
 (8) at least some of them are also Alaska Natives?
 (9) A Right.
 (10) Q Do you know what Native corporations they may be members
 (11) of?
 (12) A Honestly, I don't, no.
 (13) Q Let me ask you this. Where are they from, where do you
 (14) live?
 (15) A Iliamna, several right here in town, and Kenai.
 (16) Q Do any of them do any commercial fishing; do you know?
 (17) A Yeah, two do.
 (18) Q Where do they do their fishing?
 (19) A Bristol Bay.
 (20) Q Have any of them ever talked to you about the oil spill and
 (21) whether it's had any impact on the fishing?
 (22) A No, they haven't, no.
 (23) Q Have you talked to anybody else about this?
 (24) A Oh, sure.
 (25) Q I mean it's no secret that people talk about that?

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- (1) A Right.
 (2) Q What do you think?
 (3) A My personal opinion?
 (4) Q Yeah.
 (5) A Fishing's not as good out of Seward as it used to be, but
 (6) I'm not going to say it was due to the oil spill, or just the
 (7) fish area, I don't...
 (8) Q How long have you been fishing, just sports fishing, right?
 (9) A Right.
 (10) Q What do you fish for usually?
 (11) A Halibut.
 (12) Q And where do you like to go for the halibut?
 (13) A Harbor Island.
 (14) Q How many years have you been fishing out of Seward?
 (15) A Out of Seward? Oh, probably five, six years.
 (16) Q Before the spill -
 (17) A I'm lying to you, it's '85 when I started fishing out of
 (18) Seward.
 (19) Q You're not lying to me, you're just doing your best job to
 (20) answer the questions and I appreciate it. About ten years or
 (21) so?
 (22) A Yeah, about.
 (23) Q Before the spill were there good years, bad years of
 (24) halibut fishing down there?
 (25) A Yeah, yeah, some were better than others.

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- (1) Q Are any of the people in Seward speculating that the oil
 (2) spill is what hurt the halibut fishing recently?
 (3) A I honestly don't know.
 (4) Q You do a lot of your work out of Seward?
 (5) A Yes.
 (6) Q Where is the Army - this is news to me that the Army had
 (7) some boats down there, I was going to ask you about it. I
 (8) guess these are used for the personnel that are stationed
 (9) throughout the state?
 (10) A Right, just military.
 (11) Q How many boats do they keep down there?
 (12) A We have eight 27 footers and we have five 38 to 32 footers.
 (13) Q Does the Army have sort of a crew of skippers down there to
 (14) take these out as well?
 (15) A Yes.
 (16) Q Do you do that as well?
 (17) A No, I don't skipper the boats.
 (18) Q When you go out, do you use your own boat?
 (19) A Yes.
 (20) Q What kind of a boat?
 (21) A Bayliner.
 (22) Q Did you say Bayliner?
 (23) A 25 foot Bayliner.
 (24) Q Do you keep it in Seward?
 (25) A No, I usually trailer it back and forth.

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- (1) Q Over that road?
 (2) A That's a trick. It's broken up. Part of the time we leave
 (3) it there and part of the time we bring it back.
 (4) Q In your work do you have to deal with Seward harbor folks
 (5) at all, folks at the municipal harbor?
 (6) A Very little.
 (7) Q Have you ever walked into Foster Singleton down there, the
 (8) harbor master?
 (9) A I usually deal with the lady down there at the harbor.
 (10) Q In talking to the folks at Seward, did anybody tell you at
 (11) one point that Seward's exerted a claim against Exxon?
 (12) A I never heard that. We had several people that worked
 (13) there - that worked in the military, the civilian employees,
 (14) and during the oil spill they all went to work for Veco, clean
 (15) up out of Seward.
 (16) MR. STOLL: Excuse me, Your Honor, I have a matter for
 (17) the Court.
 (18) THE COURT: Do you want to exclude the juror?
 (19) MR. STOLL: Yes, Your Honor.
 (20) THE COURT: All right. I'd just ask you to go back in
 (21) the jury room, sir, I'll bring you right back in
 (22) (Bethel Richardson leaves).
 (23) THE COURT: What is it, Mr. Stoll?
 (24) MR. STOLL: Your Honor, we've severed the case of
 (25) Seward, I don't think it's appropriate for counsel to bring up

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- (1) things of claims that may have been in the case at one time,
 (2) we've had a motion - Mr. Clough previously, I had talked to
 (3) him about the statement I made about the Exxon claims
 program,
 (4) and he agreed to not make any statements about that subject in
 (5) regard to the motion in limine. I just think things that are
 (6) subject to motions or parties out of the case or claims out of
 (7) the case that are not going to get into evidence shouldn't be
 (8) presented to the jury. Now, if we're going to have an open
 (9) field running, I can play that game also, but I want to know
 (10) what the rules are.
 (11) MR. CLOUGH: He lives down in Seward, I wasn't talking
 (12) about the nature of the Seward claim, but the Seward claim was
 (13) on all the hours claimed worked, he worked with boats, I didn't
 (14) know if he worked with Foster Singleton who might have been
 (15) telling him the oil spill caused all these problems and Exxon
 (16) is bad people.
 (17) THE COURT: He may have had a very valid reason for
 (18) asking the question.
 (19) MR. STOLL: I think he can ask a question.
 (20) THE COURT: You may have a valid reason for asking the
 (21) question, counsel, don't ask it again.
 (22) MR. CLOUGH: I didn't go further than that.
 (23) THE COURT: Don't ask it again, and don't ask a
 (24) question like that for an another juror without asking me
 (25) first.

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- (1) MR. CLOUGH: This was unique because of the time in
 (2) Seward.
 (3) THE COURT: If this unique question comes up again,
 (4) don't ask it without asking me first.
 (5) MR. CLOUGH: That's fine with me, Your Honor.
 (6) THE COURT: All right. Bring him back.
 (7) MR. STOLL: Thank you, Your Honor
 (8) (Bethel Richardson enters).
 (9) THE COURT: Go ahead, Mr. Clough.
 (10) MR. CLOUGH: Thank you, Your Honor.
 (11) BY MR. CLOUGH:
 (12) Q Under your - in your questionnaire, the one that everybody
 (13) had you filled out and Mr. Fortier asked you a little bit this,
 (14) you said that you did view Exxon somewhat unfavorably?
 (15) A Uh-huh.
 (16) Q Could you tell us why?
 (17) A Well, I think of my own boat, and if I was to get drunk and
 (18) lose my driver's license I'd lose my job because I couldn't
 (19) travel to my work, and that was what I had...
 (20) Q So was this feelings about Captain Hazelwood or about
 (21) Exxon?
 (22) A Well, both, because the guy didn't have a driver's license,
 (23) and he's driving a supertanker, I mean, I'm not trying to be
 (24) silly or anything.
 (25) Q No, you're not.

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- (1) A It just doesn't seem right.
 (2) Q Do you understand that the issues about Captain Hazelwood
 (3) and drinking are not part of this trial?
 (4) A Right.
 (5) Q The reason I'm asking is several times when Mr. Fortier
 (6) asked you if you could be fair, fair and impartial juror, you
 (7) said, I'll try, and I thought it was an honest answer, but it
 (8) seemed like you were hesitating a little?
 (9) A Well, it would be difficult.
 (10) Q Why would it be difficult?
 (11) A Just the way I feel. I'm not trying to put Exxon down, but
 (12) like I was saying, if I was to get drunk, I couldn't do what I
 (13) do on my work if I was - and Exxon was aware that Captain
 (14) Hazelwood had a drinking problem.
 (15) Q I respect you being candid with us here, that's what makes
 (16) the process work. Is it fair to say these are very strong
 (17) feelings held on your part?
 (18) A Yeah, I guess it would be.
 (19) Q And is it fair to say that these opinions could affect your
 (20) view of Exxon in this trial?
 (21) A I would do the best I could to be fair, but I'm sure
 (22) perhaps some - you know, it's something I'm going to think
 (23) about, you know, I'm not going to put it out of my head.
 (24) Q Do you think it would make it more difficult for you to
 (25) accept what Exxon is telling you?

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- (1) A Well, no. No. I mean what they say would be true, so I
 (2) wouldn't have a problem with that. I just feel that they were
 (3) careless, you know, I just feel that.
 (4) Q Even if it was a trial mostly about lands?
 (5) A Right.
 (6) Q Have you ever been to any of the lands that were touched by
 (7) the oil?
 (8) A By the oil spill?
 (9) Q Yes, sir.
 (10) A Harbor Island somewhat, but that's all I've seen.
 (11) Q Is that down in the Resurrection area?
 (12) A Yes.
 (13) Q Did you see any evidence of the oil spill when you were in
 (14) Harbor Island?
 (15) A Did I see any evidence?
 (16) Q Yeah.
 (17) A There's stains out there now.
 (18) Q When you say stains, what do you mean?
 (19) A The different color of the rocks, it isn't all cleaned off
 (20) yet.
 (21) Q Now, you've worked in the harbor for a long time?
 (22) A Uh-huh.
 (23) Q You're aware of other type of spills from other boats over
 (24) the years?
 (25) A Right.

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- (1) Q Do you know that the stuff that you saw was from the Exxon
 (2) Valdez?
 (3) A Oh, no.
 (4) Q So you don't know if it was or wasn't?
 (5) A No, I haven't read the studies.
 (6) Q And when you say you didn't think everything was back to
 (7) normal, what do you mean by that?
 (8) A Well, the fishing hasn't been good for the last few years,
 (9) and like he asked earlier, there's good years and bad years,
 (10) but the fish they catch now, especially out of Harbor Island
 (11) and that year, they're not the big fish I used to catch.
 (12) Q Those are halibut?
 (13) A Right.
 (14) Q Do you think that you'd be able to keep a fair mind on all
 (15) the testimony that might come up in this trial about fishing
 (16) evidence in this case?
 (17) A Sure.
 (18) Q Do you think you'd be able to rely just on what you hear
 (19) here in the courtroom?
 (20) A I would do the best I could, sure.
 (21) Q I appreciate you're going to do the best you can, we all
 (22) appreciate that, the critical question is whether you can set
 (23) aside the strong opinions which you share with us and just go
 (24) with the evidence?
 (25) A I'd do the best I could, I honestly don't know.

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- (1) Q You honestly don't know if you could be fair?
 (2) A Well, I would do the very best I could.
 (3) Q I appreciate it.
 (4) A But I honestly - I don't know how to answer that.
 (5) Q Let me ask you this, okay? If you were in Exxon shoes -
 (6) A Right.
 (7) Q - for this one.
 (8) A Right.
 (9) Q Would you want someone with your beliefs on this jury?
 (10) A Probably not, to be honest.
 (11) Q Why not?
 (12) A Well, it's just what I feel. I mean, Exxon was - you
 (13) know. I honestly don't know what to say.
 (14) Q There's no right or wrong answers here, sir, I promise
 (15) you.
 (16) A Well, from what I understand, Exxon was found at fault, and
 (17) what the jury's going to do is decide how much money goes to
 (18) where, is pretty much what I understand.
 (19) Q But if you were sitting on this side of the table over
 (20) here.
 (21) A Uh-huh.
 (22) Q Do you think that you would be a good person to hear your
 (23) case?
 (24) A I don't know. I honestly don't. I've never done this
 (25) before.

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- (1) Q Have you heard anybody down there talking about
 (2) overfishing
 (3) in the industry at all?
 (4) A No. I've heard them talk about that in Homer, the charter
 (5) boats, but I don't know.
 (6) Q By the way, I noted that you had said summer is too short,
 (7) and I agree in your response.
 (8) A Well, actually it is for a three month trial. I only work
 (9) three, four days during the week during the summer, the rest of
 (10) the time I'm fishing.
 (11) MR. CLOUGH: Your Honor, I probably exceeded my time.
 (12) I appreciate your indulgence. I'd like to be heard.
 (13) VOIR DIRE EXAMINATION OF BETHEL RICHARDSON
 (14) BY THE COURT:
 (15) THE COURT: Sir, I'd like to ask you a few questions.
 (16) A Sure.
 (17) THE COURT: The word fault has come up in your answers
 (18) frequently. You understand that fault is no part of the issues
 (19) in this trial?
 (20) A Right.
 (21) THE COURT: In other words, what you're doing is
 (22) evaluating damages?
 (23) A Right.
 (24) THE COURT: No, the issue is because you have a
 (25) feeling that Exxon is at fault -
 (26) A Right.

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- (1) THE COURT: - or the feelings that you've expressed,
 (2) are you saying that that fault determination would creep into
 (3) your - the way you'd look at the evidence in this case, and
 (4) that you would - in other words, be biased against Exxon and
 (5) perhaps not concentrate on the evidence, but make a decision
 (6) based on your feelings about it being Exxon's fault?
 (7) A Well, it's something that would be in my mind, it's
 (8) something that - you know, I just can't put it out of my head.
 (9) THE COURT: So do you think it would be hard for you
 (10) to banish those ideas about Exxon's fault when you made a
 (11) determination about the damages in this case?
 (12) A I honestly don't know. I don't know. It's just something
 (13) I'm thinking of though.
 (14) THE COURT: When you say you don't know, are you
 (15) telling me there's a substantial doubt in your mind whether you
 (16) could banish those ideas?
 (17) A Correct.
 (18) THE COURT: Your answer is right?
 (19) A Right.
 (20) THE COURT: I'll ask you to step back to the jury
 (21) room, I need to talk to the lawyers and then I'll bring you
 (22) back in.
 (23) (Bethel Richardson leaves)
 (24) THE COURT: Counsel, I know the issue, I don't need to
 (25) have it argued.

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- (1) MR. CLOUGH: Thank you.
- (2) THE COURT: I'm going to excuse the juror. I
- (3) initially thought that he might simply be confusing the issues,
- (4) but I think he's told us essentially that his feelings can't be
- (5) something that he can put aside when he evaluates damage in
- (6) the
- (7) case, and for that reason he's a biased juror and he should not
- (8) be sitting in this case.
- (9) MR. FORTIER: Your Honor?
- (10) THE COURT: Yes.
- (11) MR. FORTIER: If I could be heard for just a moment on
- (12) the issue. It's - the jurors are all going to be instructed
- (13) that you have found Exxon liable. Now, I don't know whether or
- (14) not he understands fault and liability the same way as we may,
- (15) but that may be all that he is referring to.
- (16) I believe in your instructions on Monday you informed the
- (17) jury as to that particular finding of order number 16. If
- (18) that's all he's saying, then clearly he's not going to be
- (19) putting anything out of his mind that he would have - he
- (20) wouldn't have to put anything out of his mind.
- (21) THE COURT: I understand what - I understood before
- (22) you stood up what your argument would be, counsel, and I
- (23) reject
- (24) that, counsel, I think this is a biased juror.
- (25) Bring him in. Honest, but biased.
- (26) (Bethel Richardson enters)
- (27) THE COURT: Mr. Richardson, I do appreciate the

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- (1) honesty of your answers. In another case, perhaps, where you
- (2) didn't have ideas that might threaten to interfere with your
- (3) objectivity, I'd be happy to have you as a juror, but in this
- (4) case, I believe that you're too close to the issues in the case
- (5) and you might have - your personal feelings might interfere
- (6) with your objectivity, so I'm going to let you go. Now, you
- (7) are excused and there are no other juries these week, so you
- (8) don't have to call in, you're just simply excused from jury
- (9) service.
- (10) A Thank you.
- (11) THE COURT: Thank you very much for your time and
- (12) honesty.
- (13) How many more do we have out there?
- (14) MR. DIAMOND: Excuse me, Your Honor, before you bring
- (15) in another one, I want to remind you of something.
- (16) THE COURT: Don't bring the next one in.
- (17) Yes, go ahead.
- (18) MR. DIAMOND: The next juror is Mr. Shaw who we
- (19) brought up earlier in the week. As much as we'd like Mr. Shaw
- (20) to be in, it appears he was convicted of a felony and we have
- (21) no indication that he was - we have no indication that he has
- (22) been unconditionally discharged or otherwise had his civil
- (23) rights restored.
- (24) THE COURT: Where did you see that?
- (25) MR. DIAMOND: Have you ever been a party or a witness

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- (1) to a case; you don't know this by heart, Your Honor?
- (2) THE COURT: What number?
- (3) MR. FORTIER: Question 62.
- (4) MR. STOLL: We were giving a test.
- (5) THE COURT: I can't read that second word, probation
- (6) what?
- (7) MR. STOLL: We couldn't make it out either, Your
- (8) Honor.
- (9) THE COURT: I guess we better bring him in and find
- (10) out.
- (11) MR. DIAMOND: We pulled the file.
- (12) THE COURT: The criminal file?
- (13) MR. DIAMOND: Yeah. I'm sorry, I stand corrected, we
- (14) haven't pulled it.
- (15) THE COURT: I better bring him in.
- (16) MR. STOLL: Could you inquire of him, Your Honor,
- (17) rather than - we'd rather not be the ones that inquire of him
- (18) on this.
- (19) THE COURT: You mean you can't bite the bullet, eh,
- (20) counsel?
- (21) MR. STOLL: That's right, I'm a chicken, I admit.
- (22) THE COURT: Do you want me to go back and ask him
- (23) rather than bring him out?
- (24) MR. DIAMOND: It's a while ago, I think it might be
- (25) fairer to him rather than do it in open court.

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- (1) THE COURT: So you trust me to ask him and come back
- (2) and give you the right information?
- (3) MR. STOLL: Yes.
- (4) MR. DIAMOND: We will.
- (5) (Off the Record)
- (6) THE COURT: All right. We're on the record. I've -
- (7) counsel, I've discussed the matter with Mr. Shaw and
- (8) essentially the information he gives in answer to the question
- (9) is correct. He was convicted on his plea of no contest to the
- (10) felony, he was put on probation, he successfully completed his
- (11) probation. It's his opinion, and mine too, I guess based on
- (12) this information, that he's been unconditionally discharged.
- (13) If that's true he's eligible to serve as a juror.
- (14) If you have contrary information, you'll have to give it to
- (15) me. He wanted to be examined out of the presence of - I guess
- (16) of the public, certainly out of the presence of the other
- (17) jurors, and I frankly at this point don't see a reason to
- (18) examine him on the record on that issue. You can easily find
- (19) out whether or not the information is - I think easily, you
- (20) may have to go to microfilm, but you can find it out. All
- (21) right? And there's plenty of time to do that, so if you come
- (22) up with contrary information, that's fine, I'll take into
- (23) consideration, but if you don't, then he is a qualified juror.
- (24) And that means we'll have to question him on his other
- (25) qualifications, but you're going to stay away from this felony

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- (1) crime issue.
- (2) MR. FORTIER: Yes, Your Honor.
- (3) MR. DIAMOND: We will, Your Honor.
- (4) THE COURT: Okay. Counsel, we're going to take a
- (5) lunch break, 12 to one.
- (6) MR. FORTIER: 12 to one.
- (7) (Joseph Shaw enters).
- (8) THE COURT: Hello, Mr. Shaw, would you please give
- (9) your name for the record?
- (10) A Joseph Shaw.
- (11) THE COURT: All right. Mr. Shaw, you understand that
- (12) the answers you're about to give will be given under oath,
- (13) that's the oath that I gave you on the first day of jury
- (14) service, and the answers that you gave in the questionnaire
- (15) were given under oath also?
- (16) A Yes.
- (17) THE COURT: You can expect a brief period of
- (18) questioning from each of the parties in this case, and then
- (19) I'll tell you what happens next.
- (20) A Thank you.
- (21) THE COURT: Go ahead.
- (22) MR. FORTIER: Thank you, Judge.
- (23) VOIR DIRE EXAMINATION OF JOSEPH SHAW
- (24) BY MR. FORTIER:
- (25) Q Good morning, Mr. Shaw.

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- (1) A Good morning.
- (2) Q My name is Sam Fortier, I represent the Native corporation
- (3) plaintiffs in this case, and Mr. Stoll, Ms. Johnson that are
- (4) seated at the table represent the municipalities.
- (5) Mr. Shaw, I'd like to ask you some questions, first of all,
- (6) based on your questionnaire, answers to the questionnaire.
- You
- (7) indicated at Page 11, question number 47, that you feel
- (8) somewhat unfavorably towards tribal governments. Can you
- tell
- (9) me why you feel unfavorably towards tribal governments?
- (10) A The only reason that I marked that particular location,
- (11) there wasn't a fifth column that I felt should have been there,
- (12) that's why I had to weigh that. I actually feel neutral in
- (13) that subject, but I don't feel positive because of observations
- (14) in some of employment, and I've been into some villages and
- (15) things of that nature, and I can see where some have taken
- (16) advantage of, my personal opinion. But I feel at the same time
- (17) they have been unjustly abused in the past and sometimes even
- (18) in the present to where it kind of balances.
- (19) Where it says somewhat unfavorably, it's kind of a - I
- (20) would say overall I would lean towards the unfavorable side
- (21) towards the favorable, but idealistically I really have no
- (22) opinion on that.
- (23) Q Now, you've been to some villages you say?
- (24) A Yes, I have.
- (25) Q Can you tell me what villages you've been to?

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- (1) A I've been to Wainwright, Nuiqsut, Kaktovik, and all the
- (2) north coast, I was on a disaster team that took me through that
- (3) area, and then I've been into Yakutat and also around Juneau,
- (4) the Gustavus area, it's not actually a village but I met a lot
- (5) of folks from villages over there.
- (6) Q So you've been up on the North Slope and certain villages
- (7) along the Artic Ocean, right?
- (8) A Correct, that was on a disaster.
- (9) Q What disaster was that?
- (10) A They had a windstorm in early March of, I believe, 1989, in
- (11) which I was on the Red Cross Disaster Team, and I went up
- there
- (12) with the state of Alaska and the American Red Cross, and also
- (13) we had some FEMA representatives with us.
- (14) Q And you were also - you also had experience in
- (15) southeastern Alaska?
- (16) A Correct.
- (17) Q You haven't had any in Prince William Sound area, correct?
- (18) A The community of Cordova, I spent a summer in Cordova
- with
- (19) Cordova Telephone Association.
- (20) Q And when was that?
- (21) A That was two years ago.
- (22) Q You indicated that you felt that Natives had advantages,
- (23) can you tell me what you mean by that?
- (24) A Yes, what I can see some advantages are, it stems down to
- (25) the tribal governments that I believe people, you know, we're

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- (1) In America, we should all be as one group, and I have strong
- (2) feelings that we should all be of one group, and when they
- know
- (3) the government within a government within a government, I
- (4) question that.
- (5) Q So you think that Natives are treated differently than
- (6) other people?
- (7) A Sometimes, yes, but not all the time.
- (8) Q And do you think that that's not fair, Mr. Shaw?
- (9) A Some I feel is not fair. I feel that it would be more fair
- (10) if we could all share equally versus having some differences
- (11) there.
- (12) Q Now, you didn't check Native corporations at all on this
- (13) sheet, do you hold the same -
- (14) A Oh, I'm sorry.
- (15) Q Do you hold the same view towards Native corporations as
- (16) you do towards tribal governments?
- (17) A No, that particular one I probably would have marked maybe
- (18) somewhat favorable, I'm sorry, I missed that. I feel that the
- (19) Native corporations on the whole are looking out for the whole
- (20) of that particular group of Natives, whatever association that
- (21) one is, corporation that one is, and, like I said, I probably
- (22) would have marked off somewhat favorable on that one.
- (23) Q Now, based upon your attitudes of Natives in general, what
- (24) makes Native corporations different than Natives in your mind?
- (25) A The corporations I feel seem to be a little more on the

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- (1) fair side for some reason, they seem to balance the pros and
 (2) cons of issues that I've seen. They make recommendations,
 and
 (3) sometimes they swing either direction on some things.
 (4) Q Do you think that Natives in Native corporations get
 (5) advantages?
 (6) A I feel they do receive some additional advantages, yes.
 (7) Q Now, Mr. Shaw, based upon what you've indicated on
 Natives
 (8) and receiving advantages that you don't think is fair, it would
 (9) be fair to say that you don't think it's fair that Natives and
 (10) Natives corporations receiving advantages would be fair either,
 (11) wouldn't it?
 (12) A Could you rephrase that?
 (13) Q Do you think that Natives and Native corporations who
 (14) receive advantages presents an unfairness in your mind?
 (15) A Sometimes, yes.
 (16) Q So, Mr. Shaw, would you be able then, based upon what you
 (17) perceive as these - as maybe the unfairness of Natives
 (18) receiving unadvantages, do you believe that - do you believe
 (19) that they shouldn't receive those advantages, everybody ought
 (20) to be the same in a Native corp, too?
 (21) A I feel in today's society, I feel it would be beneficial to
 (22) where it could be more equal. I know that some of the rules
 (23) have changed not too long ago, I can understand why some of
 the
 (24) rules have changed from, you know, way past to where they
 were
 (25) taken advantage of.

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- (1) Q And so, sir, do you - would it be fair to say that you
 (2) would have difficulty in being fair to Native corporations
 (3) under those circumstances?
 (4) A I feel that I would be fair to all of them, because I don't
 (5) like to really make opinions unless I know everything, you
 (6) know, pertaining to a particular thing.
 (7) Q When you were in Cordova - I'm going to switch gears here
 (8) real quickly. When you were in Cordova, did you make
 (9) observations as to whether or not Cordova was fully recovered?
 (10) A I didn't come to a real conclusion when I was there on
 (11) that, although I did have opportunities to be there in a sense
 (12) in a living situation from - two years ago, anyway, for the
 (13) summer season.
 (14) Q And have you reached any opinion in the meantime as to
 (15) whether or not Cordova is fully recovered?
 (16) A No, I haven't.
 (17) Q Now, Cordova is claiming damages in this litigation, the
 (18) question is whether or not you'd have a problem in awarding
 the
 (19) damages if the evidence came in that Cordova was entitled to
 (20) such damages?
 (21) A Like I said, I haven't made an opinion on that.
 (22) Q Let me ask you this, Mr. Shaw. The Native corporations
 (23) anticipate presenting evidence that they have been sustained
 (24) damages and will request an award in the proximate range of a
 (25) hundred million dollars, based upon your opinions, would you

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- (1) have any difficulty in awarding such amounts to a Native
 (2) corporation?
 (3) A If I eventually thought it was justified, yes, I could.
 (4) Q And what would a Native corporation have to do to justify
 (5) such an amount to you?
 (6) A Prove to me that they suffered that loss or potential loss,
 (7) yes.
 (8) Q You understand that the damages in this case involve
 (9) damages to land?
 (10) A My understanding is damages to land, yes.
 (11) Q And I notice that you are a real estate salesman; is that
 (12) correct, Mr. Shaw?
 (13) A Correct.
 (14) Q And as a real estate salesman, do you have any opinion one
 (15) way or the other as to whether or not lands in the Prince
 (16) William Sound have suffered damages as a result of the oil
 (17) spill?
 (18) A I have observed through the news that there's been damage
 (19) over there, but as far as seeing it firsthand, I have not
 (20) actually seen damage.
 (21) Q But you have heard of it through the news?
 (22) A Correct.
 (23) Q Have you heard from any - have you talked with any real
 (24) estate agents to sell land in Prince William Sound or attempted
 (25) to sell land in the Prince William Sound area?

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- (1) A Not pertaining to land, no.
 (2) Q Now, is it correct that you didn't recognize the names of
 (3) any of the witnesses on Exhibit A?
 (4) A I don't recall any of the names, I read the entire list of
 (5) that, and I didn't recall any names on there.
 (6) Q Have you ever heard of a Mr. MacSwain?
 (7) A No, I haven't.
 (8) Q Do you know anything about any of the municipalities that
 (9) are involved in this case?
 (10) A Not in - not in this particular situation, no.
 (11) Q Do you generally feel somewhat favorably towards Native or
 (12) towards local governments?
 (13) A I do, yeah.
 (14) Q Now, let me ask you, you checked aquaculture
 organizations,
 (15) that you feel somewhat unfavorably, I'm just curious why you
 (16) checked that?
 (17) A Oh, unfavorable?
 (18) Q Yeah.
 (19) A I was counting that as groups that were involved in, like
 (20) stopping growth and things of that nature, as far as - I don't
 (21) want to use the name Green Peace or anything like that, but
 (22) something in that format is how I was looking at that
 (23) organization.
 (24) Q So you thought it might have had some connection to an
 (25) environmental movement?

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- (1) A To a degree, yes.
- (2) Q And Mr. Shaw, do you have an opinion – you do have an
- (3) opinion, then, as to environmental organizations, it sounds
- (4) like?
- (5) A Not all organizations, no, I don't have opinions on them.
- (6) Q But environmental organizations that don't want to develop
- (7) things present a problem to you; is that correct?
- (8) A Not all of them, no. It's mostly on an individual
- (9) situation. I've been – I would say there had been
- (10) organizations that had tried to stop some growth, and not just
- (11) Alaska but The Dalles, also when I lived there, and they would
- (12) fight to keep any type of growth out. I feel that if growth is
- (13) going to occur that there needs to be a reasonable growth, and
- (14) some groups don't want any growths, and I feel if it's public
- (15) land or if it's land, if there's potential there to be
- (16) utilized, then I think that should be weighed at a particular
- (17) time.
- (18) THE COURT: Mr. Fortier, I'm sorry, I let you go well
- (19) over your time.
- (20) MR. FORTIER: I have no further questions. Thank you,
- (21) Your Honor.
- (22) VOIR DIRE EXAMINATION OF JOSEPH SHAW
- (23) BY MR. DIAMOND:
- (24) Q Good afternoon, Mr. Shaw. My name is Chuck Diamond, I'm
- (25) one of the lawyers representing Exxon along with John Clough.

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- (1) I'll go quick because my time cuts into everybody's lunch
- (2) hour. I see you own Aurora Specialty Products?
- (3) A It's Aurora Specialty Advertising Products.
- (4) Q What kind of work does that company do?
- (5) A It deals with imprinting specialty items, specialty
- (6) advertising items.
- (7) Q And calendars?
- (8) A Calendars pens, pencils, balloons.
- (9) Q Do you do any work for municipalities?
- (10) A Sometimes I'll do some work for them.
- (11) Q Which one?
- (12) A I haven't actually done any work for any, I put in bids,
- (13) but I have not received bids from them.
- (14) Q You asked Mr. Fortier to rephrase one of his questions, it
- (15) suggested to some of us that maybe you have some legal
- (16) training. Any legal background other than the law that you
- (17) picked up as a real estate broker?
- (18) A On that particular – I don't have any training other than
- (19) going to University of Nevada for political science, I took a
- (20) course there for that.
- (21) Q Probably from lawyers on television programs. When was the
- (22) first time you visited Cordova?
- (23) A I think it was 1990.
- (24) Q What was the circumstance that got you down there?
- (25) A I always wanted to take a cruise on the ferry, so I took a

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- (1) weekend ride on the ferry and it involved a ride from Seward to
- (2) Valdez, from Valdez to Cordova. And spent about six or seven
- (3) hours in Cordova, ate dinner and got back on board and back
- (4) to
- (5) Valdez, back to Seward, and that entailed a whole weekend.
- (6) Q And then you returned to Cordova for a long period of time
- (7) to work?
- (8) A Yes, I had a dispatch from the IBEW, and they dispatched me
- (9) to Cordova Telephone Association for season work with the
- (10) phone
- (11) company over there.
- (12) Q How long is a season?
- (13) A A season usually runs three or four months, sometimes five
- (14) months or even six months.
- (15) Q Did you say that was 1991 or 1992?
- (16) A That work was in 1992.
- (17) Q Make any friends in Cordova?
- (18) A Some, yes.
- (19) Q Still stay in touch with any?
- (20) A Occasionally.
- (21) Q Mr. Stoll represents Cordova, and Cordova is asserting
- (22) claims against Exxon Company. Do you think that is going to
- (23) create any problem for you, that you've had experience in
- (24) Cordova and have friends there?
- (25) A No, I don't.
- (26) Q You said that you heard through the news that Prince
- (27) William Sound land – or some land along the Prince William

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- (1) Sound had been damaged. What did you mean when you used
- (2) the
- (3) word damage?
- (4) A Well, the news had some stories in regards to the initial
- (5) happening and the oil was going throughout the Sound, and
- (6) they
- (7) would show pictures of oiled beaches and animal life. And then
- (8) from that there was areas to be left alone and see how it would
- (9) naturally come back, if it would or if it wouldn't, and those
- (10) types of news things.
- (11) Q You haven't made up your mind about whether land in Prince
- (12) William Sound is less today than it was in 1988?
- (13) A No, I haven't.
- (14) MR. DIAMOND: No further questions, Your Honor. Pass
- (15) for cause.
- (16) Thank you.
- (17) MR. STOLL: We pass for cause.
- (18) MR. FORTIER: Pass for cause, too, Your Honor.
- (19) THE COURT: Mr. Shaw, you're still a potential jury
- (20) member, but we still have a lot of jurors to question. What
- (21) I'm going to do is excuse you for now, and you won't have to
- (22) come back in until we contact you or give you further
- (23) information. So that will be our job, we'll contact you.
- (24) But you are still a potential jury member and you maybe are
- (25) sitting in on this case on the final analysis, so don't talk to
- (26) anybody in the case including fellow jurors about anything that
- (27) happened in here, for instance, or anything that happened
- (28) about

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- (1) the case, and I'll see you later, probably.
- (2) A Okay. Thank you very much.
- (3) THE COURT: Uh-huh. You're excused.
- (4) Anything else, counsel, before we break for lunch?
- (5) MR. DIAMOND: No, Your Honor.
- (6) THE COURT: All right. I'll see you at one o'clock.
- (7) (A lunch recess taken 12:10 p.m. to 1:10 p.m.)
- (8) THE CLERK: Please rise. This court now resumes its
- (9) session. Please be seated.
- (10) THE COURT: Ready for juror number 28.
- (11) (Florence Bryner enters)
- (12) THE COURT: Could you give your name for the record
- (13) please, ma'am?
- (14) A Florence Bryner.
- (15) THE COURT: You understand that you're under oath and
- (16) the questions on the questionnaire and your answers given
- (17) there
- (18) and these answers will be on - taken under oath?
- (19) A Yes.
- (20) THE COURT: Mr. Stoll?
- (21) VOIR DIRE EXAMINATION OF FLORENCE BRYNER
- (22) BY MR. STOLL:
- (23) Q Ms. Bryner, I'm Robert Stoll. I represent the municipal
- (24) corporations that are - the municipalities who are bringing
- (25) this action. Mr. Fortier represents Native corporations.
- (26) Trudy Johnson, Ms. Johnson also represents the municipalities.

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- (1) I can see from the answers you gave in the answers to the
- (2) questionnaire you're very forthright and you have some very
- (3) strong feelings about a number of subjects.
- (4) A Yes.
- (5) Q Is that a fair statement?
- (6) A Very fair.
- (7) Q Now, this trial is going to last approximately two months
- (8) and the idea that we're trying to - you know, we're trying to
- (9) determine at this stage, at least, is whether people have,
- (10) among other things, whether they have such strong feelings
- (11) that's going to interfere with them giving all sides a fair
- (12) shake, so to speak, in terms of evaluating the evidence.
- (13) Being as frank and as candid as you have been in here on a
- (14) number of subjects, do you think that your views in terms of
- (15) excessive damage awards and that Exxon has paid too much
- (16) and
- (17) that you think that the spill's been a boost to the Alaska
- (18) economy, a number of these issues are going to be issues in
- (19) this case, and so just to be frank and honest here, do you
- (20) think that these are going to make you - maybe this is a case
- (21) you shouldn't be sitting on as a fair and impartial juror?
- (22) A Very true, yes.
- (23) Q And that's because you think that those - you have
- (24) these - these are very heartfelt views that you have; isn't
- (25) that an accurate statement?
- (26) A True.

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- (1) Q And it'd be running against those views to - to vote a
- (2) different way, if - even if whatever the evidence showed in
- (3) the case, do you think?
- (4) A Probably.
- (5) Q So you think this is a case that you shouldn't be a juror
- (6) on?
- (7) A True.
- (8) MR. STOLL: Your Honor, we'd ask that the juror be
- (9) excused for -
- (10) THE COURT: Counsel, do you want to ask any
- (11) questions?
- (12) MR. CLOUGH: Oh, yeah, I'd like an opportunity to talk
- (13) to the juror, Your Honor.
- (14) THE COURT: Go ahead.
- (15) VOIR DIRE EXAMINATION OF FLORENCE BRYNER
- (16) BY MR. CLOUGH:
- (17) Q Hi, my name's John Clough and I'm from Juneau. Chuck
- (18) Diamond and I are going to be representing Exxon in this trial,
- (19) which is going to start soon. Have you ever served on a jury
- (20) before?
- (21) A Yes.
- (22) Q Do you recall that it's important to do things like follow
- (23) the instructions of the law as the Judge gives them to you?
- (24) A Yes.
- (25) Q And were you able to do that the time that you served as a

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- (1) juror before?
- (2) A Yes.
- (3) Q Did you think that that was important to do?
- (4) A Yes.
- (5) Q And when the judge gave you those instructions, did you
- (6) make every effort to follow them?
- (7) A Yes.
- (8) Q Now, you understand that in this great state of ours,
- (9) everybody's entitled to a fair trial, the plaintiffs and the
- (10) defendants, and what makes that work is jurors that are able to
- (11) set aside their personal opinions, if they can, and render fair
- (12) verdicts based on the evidence; do you understand that?
- (13) A Yes.
- (14) Q Now, the way a case works, civil trial like this, is that
- (15) first the plaintiffs get to go ahead and they go first, they
- (16) put all of their evidence on. You probably - was it a civil
- (17) case that you sat on before or a criminal case?
- (18) A It was a criminal case.
- (19) Q In a civil case, the plaintiffs get to go first and they
- (20) get to put on all of their evidence, and then the defendants
- (21) get to go and we get to put on our evidence and the Judge will
- (22) tell you that it's really important that you not make up any
- (23) decisions on any of the issues until you've heard from both
- (24) sides. Now, do you understand why that's important to do in a
- (25) case?

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- (1) A Yes.
- (2) Q When you were a juror in the criminal case, you probably
- (3) received an instruction that even though the state, the
- (4) prosecution could go first, it was very important for you not
- (5) to decide that the person was innocent or guilty until the
- (6) defendant had had an opportunity to present their case; do you
- (7) remember that?
- (8) A True.
- (9) Q And were you able to do that? Were you able to give that
- (10) defendant a fair hearing in that case?
- (11) A I think so.
- (12) Q Now, here the process, at least in terms of keeping a fair
- (13) and open mind, is pretty much the same. Many of us in Alaska
- (14) have seen things in the media, I think you checked you read
- (15) some articles and stuff like that, and it's important for us to
- (16) get a jury of people who can set aside what they've read and
- (17) try and render a fair and honest opinion based just on what
- (18) they hear in the courtroom, and do you understand why that's
- (19) important?
- (20) A Yes.
- (21) Q Now, do you think that you could sit here in this courtroom
- (22) and listen to the evidence presented by the plaintiffs and give
- (23) them a fair hearing?
- (24) A I'm not sure I could.
- (25) Q Why?

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- (1) A I think I'm prejudiced, you know. Too prejudiced against
- (2) them, I guess, to be honest.
- (3) Q Now, if the Judge were to instruct you that, Ms. Bryner,
- (4) you've been seated as a juror in the case and you have to set
- (5) aside any opinions that you might have formed prior to this
- (6) trial and judge the case solely on the evidence, would you be
- (7) able to follow the instructions as the Court gave them to you?
- (8) A Possibly.
- (9) Q Now, it's important – when you say possibly, would you
- (10) make every effort to follow the Judge's instructions?
- (11) A Yes, I would.
- (12) Q As you did in your prior service as a juror?
- (13) A Yes.
- (14) Q And you felt you were able to do that there?
- (15) A Yes.
- (16) MR. CLOUGH: Your Honor, I have no further questions
- (17) on that particular point. I didn't know if he wanted to be
- (18) heard on – Mr. Stoll wanted to be heard on that.
- (19) THE COURT: Ma'am, do you think that – you've said
- (20) that you're actually prejudiced; is that correct?
- (21) A I feel that I am, yes.
- (22) THE COURT: All right, and I know you would try very
- (23) hard to set your prejudices aside. Do you think that there's a
- (24) substantial chance that you would not be able to do that in
- (25) this case?

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- (1) A Probably, yes.
- (2) THE COURT: Counsel, I don't think it's worth wasting
- (3) that much time. She's being very honest and I think the
- (4) challenge – the motion is well taken, so I'll grant the
- (5) motion.
- (6) Ma'am, you're excused from service in this trial. There
- (7) aren't any other juries being picked this week, so you're
- (8) excused, actually. She doesn't have to go back down to the
- (9) jury room?
- (10) THE CLERK: No.
- (11) THE COURT: Thank you very much for your time.
- (12) (Florence Bryner leaves)
- (13) (Lynelle Kukowski enters)
- (14) THE COURT: Would you please give your name for the
- (15) record?
- (16) A Lynelle Kukowski.
- (17) THE COURT: Ms. Kukowski, you know that you're under
- (18) oath?
- (19) A Yes, I do.
- (20) THE COURT: And you've been under oath when you
- (21) answered the jury questionnaire and after, while you're
- (22) answering the questions given by the lawyers?
- (23) A Yes.
- (24) THE COURT: Okay. It will be a relatively brief
- (25) process and then I'll tell you what happens after that; all

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- (1) right?
- (2) A Okay.
- (3) VOIR DIRE EXAMINATION OF LYNELLE KUKOWSKI
- (4) BY MR. STOLL:
- (5) Q Ms. Kukowski, have you ever served as a juror before?
- (6) A No.
- (7) Q Have you ever watched any TV shows or lawyer shows, so to
- (8) speak, where there's a courtroom scene?
- (9) A A few.
- (10) Q Well, you know that in a courtroom, in a courtroom
- (11) sometimes a person puts – offers some evidence, the other side
- (12) objects to the evidence and the evidence is kept – some of the
- (13) evidence is kept out or some of the information is kept out
- (14) because it is considered not proper evidence?
- (15) A Yes.
- (16) Q Now, the Judge will instruct you, I'm sure, that the
- (17) evidence that is – that the jurors are to consider and the
- (18) only material, the only information they are to consider is the
- (19) evidence that is – the material that is put into evidence in
- (20) the courtroom. It's not what somebody heard about or saw or
- (21) any of those kind of – you know, feelings that they have
- (22) outside the courtroom, it's just what they – what was
- (23) presented before them and you have to – the juror's job is to
- (24) fairly evaluate that evidence, okay?
- (25) A Okay.

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- (1) Q And can you accept that?
- (2) A Yes.
- (3) Q So if you had any views, pro or con, or had any ideas about
- (4) the oil spill, everybody in Alaska probably has a view on the
- (5) oil spill; you understand that?
- (6) A Yes.
- (7) Q And the parties are entitled to have a cross-section of the
- (8) community sit on the jury, you understand that whole theory?
- (9) A Yeah.
- (10) Q And each party, all parties are entitled to have the jury
- (11) consider only the evidence when they deliberate, make their
- (12) decision, based upon only the evidence that comes out in the
- (13) courtroom, so they're not having to think, worry about, well,
- (14) what did that juror think about or hear about some other
- (15) place. Do you understand how that works?
- (16) A Yes.
- (17) Q Because that way, each of the lawyers have an opportunity
- (18) to cross-examine that evidence and put on their own evidence
- (19) in
- (20) response to it. So any views - do you think you would be able
- (21) to put aside any opinions or views that you have relative to
- (22) the oil spill when you determine what the evidence is in this
- (23) case?
- (24) A Yes.
- (25) Q Now, in this case, there is no issue of fault. In other
- (26) words, it is - the Judge, I believe, will instruct you - I

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- (1) know will instruct you that you do not have to determine
- (2) whether - it's not for the jury to decide whether Exxon or
- (3) Captain Hazelwood were at fault. The issue is what, if any,
- (4) damages were incurred by the Native corporations who are
- (5) bringing this action and the municipalities that are bringing
- (6) this action; okay?
- (7) A Okay.
- (8) Q So if you have some views on, you know, Captain Hazelwood
- (9) or Exxon relative to fault, that's not an issue in this - in
- (10) this case.
- (11) A Okay.
- (12) Q Now, I notice that in one of your questions - and
- (13) incidentally, if you want to look at it you can, but you don't
- (14) need to - on page 11, you - first of all, you checked at the
- (15) top of the page that you had somewhat favorable views towards
- (16) all of the parties here, the municipalities, Native
- (17) corporations, Natives and Exxon Corporation. You see that?
- (18) A Uh-huh.
- (19) Q And did you - what was the basis of that opinion or
- (20) what - how did you arrive at that?
- (21) A I guess I had no - didn't have any unfavorable, you know,
- (22) knowledge of any of these corporations or municipalities or -
- (23) Q So you have a general favorable outlook towards people or
- (24) entities, unless there's information to the contrary?
- (25) A Correct.

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- (1) Q And you had nothing unfavorable that you felt against
- (2) Exxon, as well as any of these other entities?
- (3) A Correct.
- (4) Q And at the bottom of the page, there's a question, 49X, in
- (5) which you stated that you believed that the - it'd take
- (6) several years before things start getting back to normal. What
- (7) I've heard, there was massive damage.
- (8) Now, there is going to be some conflict in the courtroom as
- (9) to what the extent of damage was that was caused by the Exxon
- (10) Valdez oil spill, and will you put aside those - your views
- (11) that you have here and consider only the evidence that is
- (12) presented in the courtroom when you reach your decision here?
- (13) A Yes.
- (14) Q You'll follow the Judge's instructions in that?
- (15) A Yes.
- (16) Q And on the following page, you made a check here about
- (17) Captain Hazelwood. You said, I think it should be illegal to
- (18) drink alcohol while operating any moving item. I believe he
- (19) caused a horrible disaster that will take several years to get
- (20) back to somewhat normal.
- (21) Now again, when you sit as a juror, you're just going to
- (22) consider the evidence that is presented here in the courtroom?
- (23) A Correct, yes.
- (24) Q Do you think that your view that whether he was drinking or
- (25) not drinking, that's not an issue in this case. You understand

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- (1) that?
- (2) A Right.
- (3) Q So that's - that's not going to be a factor, is it, in
- (4) your evaluation of the evidence in this trial?
- (5) A No.
- (6) Q And your views on whether - how long it's going to take or
- (7) whether the area is back to normal, have you made any
- (8) independent evaluation of that? I mean, have you gone out to
- (9) any of the sites or made any determination in that regard?
- (10) A No, I haven't, no.
- (11) Q So you're going to just consider the evidence that's
- (12) presented here in the courtroom?
- (13) A Right.
- (14) Q And I believe that in answer to another question, you know
- (15) another juror, Keith Fernandez?
- (16) A (Nods head)
- (17) Q And how well do you know Mr. Fernandez?
- (18) A Just through where I work. I am just familiar with his
- (19) name.
- (20) Q With - I'm sorry?
- (21) A With his name and I know who he is. Nothing on a personal
- (22) level.
- (23) Q I see. Have you ever worked - I see you've had some
- (24) training as a legal secretary. Have you worked as a legal
- (25) secretary?

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- (1) A No, I haven't.
 (2) Q With respect to your vacation, could you – you have some
 (3) note here that you were going to go on vacation in early July.
 (4) A (Nods head)
 (5) Q What's the nature of that?
 (6) A I have family coming up for a week.
 (7) Q They're coming up here for one week?
 (8) A Yes.
 (9) Q And when is that?
 (10) A The 4th of July through the 11th.
 (11) Q I see. And you know that in this trial that trial only
 (12) goes until – we go from 8:30 to 1:30 so all the afternoons and
 (13) evenings you wouldn't have any – that wouldn't be a conflict
 (14) for you?
 (15) A Okay.
 (16) MR. STOLL: All right. Thank you very much.
 (17) VOIR DIRE EXAMINATION OF LYNELLE KUKOWSKI
 (18) BY MR. DIAMOND:
 (19) Q Is it Ms. or Mrs. Kukowski?
 (20) A Mrs.
 (21) Q I noted with interest you work with Chris Gates (ph)?
 (22) A He is on our board of directors as an ex-officio board
 (23) member.
 (24) Q Is he employed by the agency that you work for?
 (25) A No, he works for the state.

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- (1) Q You're on the AEOC?
 (2) A AEDC, Anchorage Economic Development Corporation.
 (3) Q That's what I thought it was and I wrote down AEOC. Is
 (4) that a private corporation or is it part of the state?
 (5) A It's private nonprofit. We are funded primarily by the
 (6) private sector, and then we do get funding from the
 (7) municipality and the state also.
 (8) Q And what's the purpose of the organization?
 (9) A We try to create jobs here in Anchorage.
 (10) Q How well do you know Mr. Gates?
 (11) A Oh, not very well, just worked with him professionally.
 (12) Q Have you ever talked to Chris Gates about Exxon or the oil
 (13) spill or his experience when he was –
 (14) A No, I haven't.
 (15) Q Have you ever talked to him about Seward?
 (16) A No.
 (17) Q Could you describe for us in more detail what you do?
 (18) A I'm the executive secretary there. I am in charge of board
 (19) meetings, setting up committee meetings. I cover the phones,
 (20) the filing, support for the staff there.
 (21) Q Do you do any work outside the office?
 (22) A No.
 (23) Q You look like you changed your mind on one of the
 (24) questions. You started writing something and then – not that
 (25) you weren't entitled to, but not that it's the most

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- (1) understandable document that you will ever see, but 49X, you
 (2) ended up writing in the yeses and the nos and answered it
 (3) again. Did you change your mind while you were answering
 that
 (4) question or did it give you a problem or did Mr. Stoll and I
 (5) just do a bad job drafting it so it was unintelligible?
 (6) A No, I read – first I quickly went through the
 (7) questionnaire and then I wanted – I had some time and I went
 (8) back and just read through a few that I hadn't – I had left,
 (9) and I guess I did change my mind and I kind of had an opinion
 (10) so.
 (11) Q At first you thought – at first you checked you didn't
 (12) have an opinion?
 (13) A Correct.
 (14) Q And then you thought about it and decided you did?
 (15) A (Nods head)
 (16) Q What you ultimately wrote down here in legible handwriting
 (17) is, I believe it'll take several years before things start
 (18) getting back to normal. Why do you think that?
 (19) A Just what I've heard and what I've read in the newspaper
 (20) and on TV, that there's been a lot of damage. I haven't been
 (21) to the area, but just what I've heard.
 (22) Q In what way do you suspect that things are not normal?
 (23) A Because it's still an issue.
 (24) Q Still an issue in the newspapers and the media?
 (25) A Right.

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- (1) Q Does that cause you some concern that there's still
 (2) environmental effects out there from the spill?
 (3) A Yes.
 (4) Q How strongly are you concerned about that?
 (5) A Well, I mean, it killed a lot of animals and caused a lot
 (6) of damage and it's, you know, part of the world that I live in.
 (7) Q And that's a problem?
 (8) A Uh-huh.
 (9) Q The reason I ask, one of the issues in this case is – is
 (10) going to be what kind of effects the oil had when it was out
 (11) there, what kind of effects any residuary oil might still be
 (12) having, and ultimately if that's causing any damage to property
 (13) owned by the plaintiffs here, and there's going to be evidence
 (14) on both sides, as you may have suspected. You come into the
 (15) Court with some notions in your head. How do you think that's
 (16) going to affect your ability to listen to the evidence and
 (17) judge it impartially and dispassionately?
 (18) A I guess I haven't heard a lot of details, and I guess I
 (19) would – I'm willing to listen to both sides, and that's what
 (20) I'm going to have to do if I am picked. I guess I – right
 (21) now, I'm not leaning towards either side. I don't have a
 (22) strong opinion about either side.
 (23) Q Do you feel reasonably confident that you can listen to
 (24) both sides and make a judgment just based on what you hear in
 (25) the courtroom?

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- (1) A Yes.
 (2) Q Let me ask you the same question with respect to another
 (3) one of your answers that Mr. Stoll - or maybe Mr. Stoll didn't
 (4) point this one out, but on the following page, in response to
 (5) question 51 (b). The question is, do you think everything is
 (6) back to normal in those areas, and you checked no. What are
 (7) you concerned about? What do you think may not be back to
 (8) normal.
 (9) A Just what I've heard, that the area is still damaged and
 (10) it's not normal, it's not back to what it used to be, the
 (11) animals are lost and there's still oil there causing damage.
 (12) Q Pretty much the same that led you to write the comment at
 (13) the bottom of 49?
 (14) A Yes.
 (15) Q Are you a pet lover?
 (16) A Yes.
 (17) Q You have pets?
 (18) A Yes I do.
 (19) Q What kind?
 (20) A Two cats.
 (21) Q You weren't in Alaska at the time of the spill, but you
 (22) probably nonetheless saw fairly graphic, disturbing pictures in
 (23) the newspaper where you were living of suffering animals, oil
 (24) soaked otters, birds that couldn't fly?
 (25) A Yes.

- (1) A We will be going down there.
 (2) Q I hope not next month, was that the planned trip for July?
 (3) A For a few days, yes.
 (4) Q Who are you going with?
 (5) A My sister-in-law and husband.
 (6) Q Just touring, or do you like to fish as well?
 (7) A We fish.
 (8) Q What do you fish for?
 (9) A Salmon, halibut.
 (10) Q Where have you - where have you gone out thus far?
 (11) A I'm sorry?
 (12) Q Where have you gone fishing thus far since you've moved to
 (13) Alaska?
 (14) A Homer and Kenai and Ninilchik.
 (15) Q Have you been to any of the areas that you understood were
 (16) affected by the oil spill?
 (17) A No, I haven't.
 (18) Q Finally, you - you have some legal training in your
 (19) background, I understand?
 (20) A A little.
 (21) Q Can you tell us what that is?
 (22) A I took some legal secretary classes for about eight months
 (23) when I lived in Mentor, Minnesota.
 (24) Q You understand that that's another one of those things
 (25) you're supposed to leave at the courtroom door; we all get our

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- (1) Q And I imagine that was somewhat disturbing to you?
 (2) A Yes.
 (3) Q There may be some pictures of drowning otters and
 (4) suffocating animals and birds in distress and some stuff that's
 (5) just not easy to look at that probably will have an emotional
 (6) tug on you as it will for all of us. Do you think that's going
 (7) to affect your ability to listen to the evidence on both sides
 (8) and give Exxon, which in your mind may have been responsible
 (9) for that suffering, an even break, a fair shot?
 (10) A I believe I - I can.
 (11) Q Even as a pet lover?
 (12) A I'll try.
 (13) Q I'm sure you are being honest when you say you're going to
 (14) try.
 (15) A Yeah, I mean I guess I don't know until I - I see it. I
 (16) mean, I would do my best to be fair.
 (17) Q Do you think there's any substantial possibility that -
 (18) that that kind of evidence is going to have an affect on your
 (19) judgment? Your honest answer?
 (20) A I really don't know. It's hard to say. I guess there's
 (21) always that chance it could.
 (22) Q How big a chance?
 (23) A I'm just going to be - try to be as fair as I can.
 (24) Q I think that's a fair and honest answer. You vacation in
 (25) Kenai?

- (1) law from Judge Shortell as he directs us?
 (2) A Yes.
 (3) Q You think you can do that?
 (4) A Yes.
 (5) Q No question in your mind about that?
 (6) A No question.
 (7) MR. DIAMOND: Thank you very much.
 (8) I would like to be heard.
 (9) THE COURT: Ma'am, I'll send you out for just a moment
 (10) and bring you right back in.
 (11) (Lynelle Kukowski leaves)
 (12) THE COURT: Go ahead, counsel.
 (13) MR. DIAMOND: Your Honor, I don't know the extent of
 (14) the plaintiffs' plans in this regard, but I do know what
 (15) evidence their colleagues in the federal case have put on
 (16) through the same witnesses who were on our witness list. And
 (17) the first witness, I understand, that the plaintiffs here are
 (18) going to call is a National Geographic photographer who has
 (19) chronicled the misery, suffering and catastrophe that the
 (20) animal population in Prince William Sound suffered, or at least
 (21) part of it. We reserve our right to challenge that when it
 (22) comes in as being not relevant to a case about land, but I'm
 (23) sure that they're going to proffer it, and if some of it comes
 (24) in, I think it's going to have an affect on people who are very
 (25) akin to and sympathetic to animals.

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- (1) I think Mrs. Kukowski was fairly straightforward that
 (2) that's going to bother her. If we're not going to be faced
 (3) with that kind of graphic evidence, I think she would be a fine
 (4) juror. If we are going to be faced with that kind of evidence,
 (5) I think there's substantial questions that she's raised about
 (6) whether that is going to disturb her and is going to affect her
 (7) judgment. So on the assumption that that evidence is going to
 (8) be offered, I move to challenge her for cause.
 (9) MR. STOLL: Your Honor, we are going to offer some
 (10) evidence from Natalie Fobes, who is the photographer he's
 (11) referring to. I think as Mr. Diamond indicated, anyone looking
 (12) at seeing otters - we're not going to make a big inflammatory
 (13) thing about this, but I think anybody seeing any otters being
 (14) smothered by oil, whether they have two cats or don't have any
 (15) cats, are going to - could be affected by that. But this
 (16) juror hasn't said that that's going to bias her in evaluating
 (17) the evidence, and she repeatedly said - I asked her pretty
 (18) open-ended questions and Mr. Diamond did, also, that she can
 (19) fairly evaluate the evidence and she's only going to consider
 (20) the evidence that's presented here in the courtroom and follow
 (21) your instructions.
 (22) So I think that there's been, I must say, a lot - a number
 (23) of people that have much stronger views about the litigants.
 (24) Mr. Shaw, for instance, had some pretty strong feelings, you
 (25) know, about the Natives and Native corporations getting too -

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- (1) you know, unfair advantage and all that sort of stuff. We
 (2) didn't seek to challenge him. I think if we had, we would not
 (3) have been successful. I don't think that she's indicated that
 (4) she's going to let that - any feeling that she has for pets -
 (5) I mean, if you're going to let everybody that loves pets or
 (6) loves animals off the jury, we're not going to have anybody on
 (7) this jury.
 (8) MR. DIAMOND: This is the first juror to whom I posed
 (9) that question, and I think I posed it probably a dozen and a
 (10) half times, who has given me that answer. The other jurors who
 (11) I asked said they could disregard it, and if this juror said,
 (12) I'm reasonably certain I could disregard the emotional tug, I
 (13) wouldn't be making - I wouldn't be making this motion, but I
 (14) think the test here is whether she has something - some sort
 (15) of an opinion, something in her background which would raise a
 (16) substantial possibility of improperly influencing the verdict
 (17) and that was the question that I asked her, whether there was a
 (18) substantial possibility, and she said, you know, it's hard to
 (19) say, and she did not rule it out. There's always that chance
 (20) it could, she said. So I think we met the legal standard with
 (21) respect to this juror and, unlike all of the other jurors, she
 (22) is the only one who said that it would bother her in that
 (23) fashion.
 (24) MR. STOLL: Your Honor, she didn't say there was a
 (25) substantial possibility this would happen. She said there's a

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- (1) possibility. There's a possibility anything's going to happen.
 (2) THE COURT: Counsel, I heard her.
 (3) MR. STOLL: Okay.
 (4) MR. DIAMOND: Nothing further.
 (5) THE COURT: The motion is denied. The issue is, as
 (6) raised by counsel, is there some state of mind that she has
 (7) that would affect her - improperly affect her service as a
 (8) juror. Frankly, I think not. I think if she was leaning over
 (9) backwards to be as open as she could with both of you, and she
 (10) looks to me like a very good juror, a very dutiful juror, and I
 (11) don't think that she's shown a state of mind that would
 (12) indicate that that's not true.
 (13) THE CLERK: Bring her back in?
 (14) THE COURT: Yes.
 (15) (Lynelle Kukowski enters)
 (16) THE COURT: I'm going to keep you on the jury panel.
 (17) That doesn't mean you'll be a juror in the final setting of the
 (18) whole jury, but you are still a potential jury member. So what
 (19) I'd like you to do is this, I'm going to excuse you now. I
 (20) don't know whether I'll be bringing you back on Monday to give
 (21) you further instructions, but you don't have to contact us. We
 (22) will contact you now. I'll let you know what's occurring at
 (23) that time; all right?
 (24) A Okay.
 (25) THE COURT: So you have to be available for jury

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- (1) service when we call you, and you are still a potential jury
 (2) member so don't talk to anybody about the case at all,
 (3) particularly not those members of the jury panel; all right?
 (4) A All right, thank you.
 (5) (Lynelle Kukowski leaves)
 (6) (Delores Austin enters)
 (7) THE COURT: Ma'am, could you - could you do me a
 (8) favor and give your name for the record? Just speak into that
 (9) microphone.
 (10) A Delores Austin.
 (11) THE COURT: Ms. Austin, you understand that your
 (12) answers you're about to give are under oath; right?
 (13) A Pardon me?
 (14) THE COURT: You understand that you're under oath?
 (15) A Yes, I do.
 (16) THE COURT: And the answers in the questionnaire that
 (17) you gave and the answers that you're giving now are all given
 (18) under oath; right?
 (19) A Yes, sir.
 (20) THE COURT: Do you have a bit of a hearing problem?
 (21) A Little bit, yes.
 (22) THE COURT: Okay, have you had trouble hearing what
 (23) people have said in previous sessions here?
 (24) A If I'm far away, yeah, I kind of have trouble hearing. If
 (25) they're up close, I don't, no, I don't seem to have a problem.

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- (1) THE COURT: When I speak directly to you, can you
 (2) understand what I'm saying?
 (3) A It's better now.
 (4) THE COURT: Fine. All right. Go ahead, counsel,
 (5) speak up.
 (6) MR. FORTIER: I will, Judge, thank you.
 (7) VOIR DIRE EXAMINATION OF DELORES AUSTIN
 (8) BY MR. FORTIER:
 (9) Q Good afternoon, Ms. Austin. My name is Sam Fortier, I
 (10) represent the Native corporation plaintiffs in this case, and
 (11) Mr. Stoll and Ms. Johnson are here, they represent the
 (12) municipal plaintiffs in the case.
 (13) Can you hear me okay?
 (14) A Yes.
 (15) Q Have you ever served on a jury before, Ms. Austin?
 (16) A No, I have not.
 (17) Q Have you ever watched any TV shows about law and
 lawyers?
 (18) A Oh, yes, lots of them.
 (19) Q Have you learned from those that the lawyers put on
 (20) evidence and the jurors weigh the evidence?
 (21) A Right.
 (22) Q Now, Ms. Austin, do you understand that when the - when
 we
 (23) put on evidence as plaintiffs, that you're supposed to also
 (24) wait before you make up your mind until the defense, the Exxon
 (25) defendants put on their evidence?

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- (1) A Well, that's true.
 (2) Q And then you think that you could do that, that you can
 (3) weigh the evidence?
 (4) A Well, I've lived here for 26 years and I just love Alaska.
 (5) It's kind of hard to do that. I mean, it's - I have heard so
 (6) much about the oil spill and it's just - it'd be very hard for
 (7) me to do that, I think, to be honest with you.
 (8) Q Well, let me go at it this way, Ms. Austin, if I could. Do
 (9) you understand that the things you might have heard about the
 (10) oil spill outside of the courtroom aren't considered evidence?
 (11) A Well, that's true, but you hear a lot on TV and read a lot
 (12) of newspapers and you hear from fishermen and everything,
 you
 (13) know, so you just kind of draw your own conclusions.
 (14) Q Ms. Austin, would you - you would want to listen to all of
 (15) the evidence that came into the courtroom, wouldn't you?
 (16) A Oh, yes.
 (17) Q And you would want to wait to do that if you were selected
 (18) for the jury, you would want to wait to hear all the evidence
 (19) coming into the courtroom before you made up your mind?
 (20) A I would do my best.
 (21) Q And you'd do your best to be fair to both sides?
 (22) A Well, I'd try, but then again, like I say, it would be very
 (23) hard, I think for me being up here so long and - I think it
 (24) was just a very careless mistake how it happened and it'd be a
 (25) little bit hard to be honest and fair, probably.

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- (1) Q Let me ask you another question as to what you just said.
 (2) Judge Shortell will be reading you or giving you instructions
 (3) about what the law is in this case, so the way it would be set
 (4) up is that, you know, the evidence would come in, first
 (5) plaintiffs and then defendants would present the evidence, and
 (6) then Judge Shortell would instruct you as to what the law is in
 (7) the case. And then you as a juror would sit around with the
 (8) other jurors and come to a decision. Do you think that you
 (9) could follow the law as Judge Shortell instructed you?
 (10) A I'd try.
 (11) Q Now, Ms. Austin, do you understand that fault, that
 (12) liability is not an issue in this case?
 (13) A True.
 (14) Q Okay. This case is just about damages; right?
 (15) A Right.
 (16) Q So if fault isn't an issue in the case, liability isn't an
 (17) issue in the case, could you put that aside when you came in?
 (18) A I think it'd be pretty hard for me to do that.
 (19) Q Why is that?
 (20) A Well, I do have friends that have lost quite a bit and
 (21) they've lost their homes and they've lost their boats and it's
 (22) just - I don't know, it would just be a little bit hard, I
 (23) think.
 (24) Q Let me ask you something else, Ms. Austin. I note that -
 (25) that you got tickets for your brother's 60th anniversary?

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- (1) A True.
 (2) Q That's July 1st of this year?
 (3) A July 1st, yes.
 (4) Q Where's your brother live?
 (5) A Wisconsin. In fact, I have two of them there and one is 50
 (6) and one is 60, so I have two brothers that are celebrating
 (7) their anniversary this year.
 (8) Q Their wedding anniversaries?
 (9) A Uh-huh.
 (10) Q So you're going to have - you're going to be gone for how
 (11) long, then?
 (12) A A month.
 (13) Q And would it cause you a hardship to sit on the jury?
 (14) A Well, they're expecting me there.
 (15) MR. FORTIER: I'd make the application, Your Honor.
 (16) THE COURT: Any objection.
 (17) MR. CLOUGH: No objection to the juror, Your Honor.
 (18) THE COURT: I'm going to excuse you. There'll be
 (19) another case that will be more appropriate for you to serve on,
 (20) so I'll excuse you. And you don't have to report to the jury
 (21) clerk because we're done with the jurors for this week, so
 (22) thanks very much for your time. I'm sorry it took so long,
 (23) thank you for your patience.
 (24) A Thank you very much.
 (25) (Delores Austin leaves)

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- (1) MR. DIAMOND: Your Honor, yesterday afternoon
 (2) Mr. Oppenheimer offered to put something in writing about the
 (3) new reports, and I have a copy and we've served a courtesy
 (4) copy, if you'd like a copy.
 (5) THE COURT: I would, yes.
 (6) MR. DIAMOND: Just a courtesy copy of what we filed
 (7) yesterday.
 (8) (George Morgan enters)
 (9) MR. STOLL: Your Honor, may I just ask a question?
 (10) Is this going to be taken up this afternoon?
 (11) MR. DIAMOND: It's really up to the Court.
 (12) THE COURT: I don't know, counsel let's just go with
 (13) the jury selection and discuss it at the break.
 (14) MR. STOLL: Okay.
 (15) THE COURT: Sir, let's see, would you give your name
 (16) for the record, please?
 (17) A Yes, George Morgan.
 (18) THE COURT: All right. Mr. Morgan, you understand
 (19) that the answers you're about to give are given under oath,
 (20) right, and so were the answers in the questionnaire?
 (21) A Yes.
 (22) THE COURT: Mr. Stoll will have some questions for you
 (23) and then Mr. Diamond will have some questions for you later.
 (24) Go ahead.
 (25) VOIR DIRE EXAMINATION OF GEORGE MORGAN

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- (1) BY MR. STOLL:
 (2) Q Mr. Morgan, I'm Bob Stoll. I represent - Trudy Johnson
 (3) sitting there and myself represent the municipalities that are
 (4) seeking damages in this case, and Mr. Fortier represents the
 (5) Native corporations that are also plaintiffs in this case.
 (6) We anticipate, as the Judge indicated on Monday, that this
 (7) trial could go a couple months of duration, and the process
 (8) that we're going through now is a lot of people in Alaska
 (9) have - have heard a lot about the oil spill. I think a lot of
 (10) people everywhere have heard about the oil spill. There have
 (11) been certainly more impacted here, and we're trying to find a
 (12) few people that have - can be fair and impartial to sit on
 (13) this jury and weigh the evidence and don't have the, you know,
 (14) strong opinions already. And the thing that I notice in your
 (15) questionnaire is that you have pretty strong and forthright -
 (16) I'm not - everybody's entitled to their opinion, but you
 (17) certainly have very, I think it's safe to say, am I correct,
 (18) that you have strong opinions on this subject and some other
 (19) subjects as well. Is that a safe statement?
 (20) A Yes, that's true.
 (21) Q Okay, and do you think that as a result of those strong
 (22) opinions that it would be difficult for you to sit fairly as a
 (23) juror in this case?
 (24) A Yes, somewhat.
 (25) Q You think that that would be a - there would be a

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- (1) substantial chance that that probability, actually, that that
 (2) would affect your evaluation of the evidence, either pro or
 (3) against either one side or the other?
 (4) A Yes, I am.
 (5) MR. STOLL: Your Honor, I'd make application, ask that
 (6) the juror be excused.
 (7) THE COURT: Have anything?
 (8) MR. DIAMOND: Yes.
 (9) VOIR DIRE EXAMINATION OF GEORGE MORGAN
 (10) BY MR. DIAMOND:
 (11) Q Good afternoon, Mr. Morgan. You have some out-of-town
 (12) plans for next month?
 (13) A Yes, my family and I have - we have already purchased
 (14) tickets as we all know on a certain - certain method up here,
 (15) and if these tickets aren't used by such and such a time, that
 (16) money will be lost.
 (17) Q Where are you off to?
 (18) A Pardon?
 (19) Q Where are you off to?
 (20) A Going to California.
 (21) Q For how long?
 (22) A Two weeks.
 (23) Q You consider yourself a fair minded individual?
 (24) A At times.
 (25) Q At times you consider yourself an unfair minded individual?

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- (1) A Yes.
 (2) Q I just want to talk to you a little bit about the issues in
 (3) this litigation, just to make sure you understand and we get
 (4) your views about your impartiality as to these issues. This is
 (5) a dispute about whether certain property was damaged and, if
 (6) so, how much. Did you understand that?
 (7) A Yes.
 (8) Q The plaintiffs are property owners, Prince William Sound,
 (9) Kenai and Kodiak, and they're claiming that the oil spill did
 (10) damage to their property and they want compensation for that.
 (11) You understand that, as well?
 (12) A Yeah.
 (13) Q This is not a case involving anybody's fault or any
 (14) personal damaged individuals. It's corporation versus
 (15) corporation; you understand that?
 (16) A Yes.
 (17) Q Do you think, still, that you would have any problem
 (18) evaluating the evidence that came in on whether oil reached
 (19) certain lands - let me strike that and start again.
 (20) The fact that you may come into court with certain views,
 (21) do you think that's going to have an effect on any judgments
 (22) you make as to whether certain properties were oiled or not
 (23) oiled?
 (24) A I don't think I could answer that.
 (25) Q How come?

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- (1) A Well, primarily because my mind already is made up on who I
 (2) think is right and who is wrong, and my opinion is one that's
 (3) strongly right and the other one might be slightly right.
 (4) Q Who do you think is strongly right?
 (5) A Exxon.
 (6) Q How come?
 (7) A Well, I don't feel that the - all the parties that were
 (8) involved were equally treated when it came to the fault letting
 (9) process.
 (10) Q Okay. Putting aside questions of fault, because we're not
 (11) here to discuss those.
 (12) A Okay.
 (13) Q On issues such as whether a piece of land got oil on it, do
 (14) you think you could judge that kind of issue fairly?
 (15) A No.
 (16) Q Why not?
 (17) A I - I look at it this way, I don't own land with oil on
 (18) it. I have never seen the alleged land that has oil on it. I
 (19) don't know how it was before it had oil and after it had oil.
 (20) And my views on this type of litigation has been, I've seen so
 (21) much of it in our country, that it seems that once the door is
 (22) opened a crack, a lot of people come charging forth with their
 (23) claims, and I'm somewhat opinionated in that area, that just
 (24) because you say you're entitled, I don't feel you are entitled
 (25) because -

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- (1) Q Do you think -
 (2) A - somebody has big, deep pockets, so to speak.
 (3) Q Do you think a party has to prove it up before you would be
 (4) prepared to -
 (5) A It would have to be proven but, as I say, I'm somewhat very
 (6) strongly opposed to it.
 (7) Q Opposed to what, sir?
 (8) A To the - who do you represent?
 (9) Q Who do you think I represent?
 (10) A If I knew that I wouldn't ask you.
 (11) Q Okay, Exxon.
 (12) A Okay, fine. The people you're fighting in the lawsuit.
 (13) THE COURT: Any objection, counsel?
 (14) MR. DIAMOND: No, no objections.
 (15) THE COURT: Mr. Morgan, thanks very much for your
 (16) honesty. I'm going to excuse you from service on this case and
 (17) we have no other jurors - juries this week so you won't be
 (18) called again, so you're excused from jury service. Thanks very
 (19) much for your time.
 (20) A Thank you, thank you gentlemen.
 (21) (Mr. Morgan leaves)
 (22) (Alexander Bortnick enters)
 (23) THE COURT: Good afternoon, Mr. Bortnick. Give your
 (24) name for the record, please.
 (25) A Alexander Bortnick.

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- (1) Q And you're under oath, Mr. Bortnick, you were on the
 (2) questionnaire that you filled out and also in the answers
 (3) you'll be giving me.
 (4) A Yes, sir.
 (5) THE COURT: Go ahead, counsel.
 (6) VOIR DIRE EXAMINATION OF ALEXANDER BORTNICK
 (7) BY MR. STOLL:
 (8) Q Mr. Bortnick, I notice that you're an attorney and sole
 (9) practitioner here in Anchorage?
 (10) A That's correct.
 (11) Q And this trial is going to last approximately two months,
 (12) and I used to be a sole practitioner so I know a little bit
 (13) about what you're - would it be possible for you to serve as a
 (14) juror, and if we quit at 1:30 and -
 (15) A No, I don't believe so, counselor. Many of my court cases
 (16) would be in the morning. My primary practice deals with
 (17) foreign adoptions. Because of the time differences between
 (18) countries, I usually have to contact people I'm associated
 (19) with, foreign attorneys in the morning hours, which would be
 (20) the evening hours when they're at home. So I - I don't really
 (21) think it's feasible.
 (22) MR. STOLL: Your Honor, I -
 (23) THE COURT: Yes?
 (24) MR. STOLL: Let me ask you some other questions about
 (25) the case, I guess I've got to go forward here.

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- (1) BY MR. STOLL:
 (2) Q Is there anything about the nature of this case that you
 (3) think prevents you from sitting fairly in the case?
 (4) A No, not about the nature of the case. I - I think the
 (5) imposition of time would cause me some very great concern as
 (6) time went on, but the case, itself, no.
 (7) Q Have you ever been to Prince William Sound or Kodiak?
 (8) A Yes. I represent some people in Kodiak, criminal matters,
 (9) long preceding the spill.
 (10) Q And are any of those people plaintiffs in this -
 (11) A No, no.
 (12) Q Have you made any - have you prejudged any evidence as
 (13) to
 (14) what the damages are in any of these areas?
 (15) A No.
 (16) Q And you think that you could be fair to the plaintiffs, the
 (17) municipalities, including Kodiak Island Borough and Cordova
 (18) and
 (19) the various village municipalities in Kodiak, as well as the
 (20) Native corporations?
 (21) A Yes.
 (22) Q And could you be fair to Exxon also?
 (23) A I think so, yes.
 (24) MR. STOLL: Your Honor, we're satisfied with the
 (25) juror, but I think the issue is as to whether he's - you know,
 (26) I was a sole practitioner, myself, so I know a little bit about
 (27) what he's going through.

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- (1) THE COURT: It may be an issue, counsel, do you want
 (2) to ask any questions?
 (3) MR. CLOUGH: Your Honor, I'd like to maybe follow-up
 (4) on the hardship question with the juror and have a moment to
 (5) talk with counsel.
 (6) THE COURT: That would be fine.
 (7) VOIR DIRE EXAMINATION OF ALEXANDER BORTNICK
 (8) BY MR. CLOUGH:
 (9) Q Hi. I know you're in a tough spot. I'm John Clough, I'm
 (10) from down in Juneau and I started out as a sole practitioner
 (11) when I left my firm a while ago, so I know how you're feeling
 (12) on this.
 (13) Do you understand that we're not going full trial days for
 (14) this one?
 (15) A Yes, I do.
 (16) Q And we're going to be running 8:30 to 1:30?
 (17) A I do.
 (18) Q I don't know if anybody's explained this to you, the Judge
 (19) may have, although the form said two to three months, we're
 (20) now
 (21) looking at two months or possibly less for the length of the
 (22) trial in this case. Do you understand that?
 (23) A I understand the estimate is two months.
 (24) Q Well, and as my friend Mr. Stoll just said on more than one
 (25) occasion to some jurors here, less than two months, but what
 (26) we're really looking at doing is, you understand better than

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- (1) probably most of the people here, is getting a fair
 (2) cross-section of the community on this jury, and both sides
 (3) have an interest in doing that, and I think from the practice
 (4) you've probably done, you know that most of the folks on the
 (5) professional side, no matter what profession it might be, it
 (6) does seem to impact them in many ways, but it also impacts -
 (7) would you agree it also impacts other folks, nonprofessionals
 (8) and their lives as well and -
 (9) A Sure.
 (10) Q And that it has in its own way severe impacts of service to
 (11) do your duty to serve as a juror; would you agree with that?
 (12) A Could you -
 (13) Q Would you agree that serving as a jury has had substantial
 (14) impacts on nonprofessionals as well?
 (15) A In any given situation it could impact anyone.
 (16) Q And it's no fun for anybody to be a juror on a two-month
 (17) trial?
 (18) A I quite agree.
 (19) Q You say that your adoption practice requires you to do
 (20) some - let me ask you a couple questions about that because,
 (21) actually, I've heard about your practice before the trial. Is
 (22) this the - unless I'm mistaken, does your adoption practice to
 (23) a certain degree focus on the far east?
 (24) A Yes.
 (25) Q The former Soviet Union?

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- (1) A Yes.
 (2) Q And is that the area that you do your telephone calling to
 (3) or -
 (4) A Counsel, I have probably close to 40 adoptions going in
 (5) Romania, Moscow, nine cities in Russia including Gladysvstat
 (6) and Magastat (phonetics). So these are all times in between.
 (7) The great bulk of my contact with foreign attorneys has to be
 (8) between the hours of roughly nine and twelve, 9 a.m. to 12 p.m.
 (9) Q You've got literally - sort of around the world that
 (10) you're working with this?
 (11) A Yes, but the time zones vary. They're roughly 12 hours
 (12) ahead for east Europe. They're 19 or 20 hours ahead for the
 (13) Far East.
 (14) Q And when you add it altogether, including the other 48, you
 (15) really have the 24 hour circuit around the clock? #
 (16) A Seems that way.
 (17) Q Does that require you to do, for your business, a lot of
 (18) calls at odd hours on occasion?
 (19) A On occasion I call in the late evening, and the bulk of it
 (20) I call before 12 p.m.
 (21) Q And do you have a telecopier or a fax machine -
 (22) A Fax I do.
 (23) Q - in your office? And do you utilize your fax machine for
 (24) a lot of your communications around the world?
 (25) A I do.

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- (1) Q Still surprises me you can fax something darn near anywhere
 (2) these days.
 (3) A There's a cavity there. The fax capability is not so good
 (4) in a great many of these places, you're not able to fax a lot
 (5) of cities in Russia where you have to maintain communications.
 (6) Q The cities in Russia are the other way on the time zone;
 (7) aren't they?
 (8) A Yes.
 (9) MR. CLOUGH: Your Honor, I appreciate Mr. Bortnick's
 (10) sincerity in answering the questions and I, probably like all
 (11) the other lawyers here, appreciate the difficulties it might
 (12) cause, but I'm not certain he's demonstrated a hardship that a
 (13) number of other jurors have demonstrated or argued here
 (14) today.
 (15) Hardship, of course, is for the Court to decide. I prefer to
 (16) have the Court rule on the hardship question and -
 (17) THE COURT: I can rule on the hardship, counsel,
 (18) because I've ruled on it before. I don't see it's the kind of
 (19) thing I legitimately can excuse, and I've refused to excuse
 (20) other people who have similar hardship questions. So on this
 (21) record, I am not inclined to excuse him. Do you want to ask
 (22) him - counsel, you want to ask other questions, either of
 (23) you?
 (24) MR. STOLL: Your Honor, I just have a couple
 (25) questions.
 (26) THE COURT: Sure.

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- (1) VOIR DIRE EXAMINATION OF ALEXANDER BORTNICK
 (2) BY MR. STOLL:
 (3) Q Mr. Bortnick, you indicated that you have some - a friend
 (4) who works for Alyeska on personnel matters?
 (5) A That's correct.
 (6) Q And is that - is that friend - because he works for
 (7) Alyeska, is that going to influence you in any way, as far as
 (8) this case is concerned?
 (9) A Well, I would try to not have that as an influence.
 (10) Q I know you -
 (11) A He's a close personal friend.
 (12) Q Alyeska is not a defendant.
 (13) A I understand that.
 (14) Q At least in this particular action, but do you think that
 (15) that may influence how you evaluate the evidence as to whether
 (16) or not these - these municipalities are entitled to damages or
 (17) whether the Native corporations are entitled to damages?
 (18) A No, I don't think that - that fact would influence me.
 (19) Q Is there any information that your friend gave you that you
 (20) think might influence you in fairly evaluating the evidence?
 (21) A No, not - not that I can - not that comes to mind.
 (22) Q Do you think there's - you sort of - I know you're sort
 (23) of pausing and I appreciate very much, you know -
 (24) A Well, he's discussed a number of - not great details and
 (25) certainly not identities of people. He's mentioned general

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- (1) kinds of things periodically about events with Alyeska, so I
 (2) don't think that would influence my opinion, but -
 (3) Q Did he talk to you at all about - what kind of things did
 (4) he talk to you about?
 (5) A Oh, nothing that I haven't seen in the paper, that a large
 (6) number of people would be getting pink slips or a lot of work
 (7) is going on to bring things up to code requirements or correct
 (8) problems in the pipeline. Nothing in detail, I mean, we didn't
 (9) have conversations about it, but -
 (10) Q I see. You didn't get into any discussions with him
 (11) regarding the oil spill or -
 (12) A No.
 (13) Q - things of that nature?
 (14) A Huh-uh.
 (15) Q And you haven't conducted any investigation of your own in
 (16) terms of what the damage was -
 (17) A No.
 (18) Q - pertaining to any of these sites?
 (19) A No.
 (20) Q So as far as those issues are concerned, you could be fair
 (21) and evaluate the evidence as it's presented here?
 (22) A I think I would be as fair as I - as I could be to that.
 (23) My concerns that may impact my thoughts don't have to do with
 (24) impartiality.
 (25) Q I see. What are your concerns?

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- (1) A Well, recognizing my civic obligations to serve on a jury
 (2) and recognizing that that impacts everyone, the nature of my
 (3) particular practice is such that to be away from it for a week
 (4) as I've been, or possibly a bit longer, is something that can
 (5) be covered. There could be some coverage for court dates,
 (6) there could be some - some period of time I can float, but as
 (7) time goes by it's basically going to dry up. I'm going to lose
 (8) it. I'm going to be increasingly concerned about keeping up
 (9) with commitments that I have now. I'm not going to be able to
 (10) do that, and of course I'll try to do the best I can do, but
 (11) that's just going to really cause serious -
 (12) Q I understand. I completely understand.
 (13) A - fears, I mean about malpractice and about other things.
 (14) Q I completely understand. I don't have a lot of control
 (15) over the situation.
 (16) A I understand that. I recognize your concerns, too, for an
 (17) impartial jury. I've been on both sides of the table as a
 (18) trial attorney, so I recognize that. The nature of my practice
 (19) is such that a prolonged absence from it in the morning hours
 (20) is going to destroy it and that's, try as I may, going to
 (21) impact my thought process.
 (22) Q By that, you mean if you think that the - that may
 (23) influence you if you think that the plaintiffs are putting on
 (24) too much evidence or the defense are putting on too much
 (25) evidence and you're sitting here, why am I here, that kind of

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- (1) process?
 (2) A I will attempt to be as - to abide by all instructions and
 (3) be completely impartial, but I have a very strong concern,
 (4) candidly, that as time goes by, I will be increasingly
 (5) concerned with not meeting commitments that I have now and
 (6) that
 (7) will interfere with my - I'll be thinking about those things.
 (8) Q I completely understand. Well, do you think that there is
 (9) a substantial probability that because of these concerns you're
 (10) going to hold this against one party or the other in terms of
 (11) evaluating the evidence?
 (12) A No, I wouldn't hold it against - against anyone. I'm
 (13) wondering how close attention I'd be able to pay to what may
 (14) be
 (15) a meticulous - something that requires meticulous attention to
 (16) details, consider body of evidence, and I'm not sure that after
 (17) a period of time that my thought process will be elsewhere.
 (18) Q I understand.
 (19) A Not intentionally so, but -
 (20) Q There's nothing about the nature of this case, itself, or
 (21) the time that you think creates any prejudice or bias, as far
 (22) as you're personally concerned?
 (23) A No, not about the nature of the case.
 (24) MR. STOLL: Thank you.
 (25) VOIR DIRE EXAMINATION OF ALEXANDER BORTNICK
 BY MR. CLOUGH:
 Q HI again. I'll try not to take too much more of your time

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- (1) now. There were some things, though, on your questionnaire I'd
- (2) like to have an opportunity to go over with you for just a
- (3) second, if I could. Specifically, I noticed on question 28,
- (4) sir, you mentioned you'd also done work on a doctoral degree,
- (5) and I was curious what the topic was?
- (6) A Started with public administration justice studies. I
- (7) stopped it.
- (8) Q And you stopped it?
- (9) A I stopped it.
- (10) Q And in your work as a – both a district attorney and
- (11) defense attorney, seems to me you've had a fair amount of trial
- (12) practice; is that correct, sir?
- (13) A Yes.
- (14) Q Was that mostly in Anchorage or other parts of the state?
- (15) A No, it was King County in Washington State, and I was there
- (16) for five years, deputy prosecuting attorney. And some in
- (17) Anchorage and then in Bethel in the bush area, mostly in the
- (18) Bethel Superior Court.
- (19) Q And when were you up in Bethel, sir?
- (20) A I had a contract with the public advocacy office from, I
- (21) believe, '86 through '90.
- (22) Q And you obviously lived up in Bethel?
- (23) A No, I lived in Anchorage and flew out every week.
- (24) Q You would be up there for how long of a time?
- (25) A From one day to four or five days. Usually for a day to

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- (1) two days.
- (2) Q Mr. Bortnick, you responded to a number of questions like
- (3) all the other jurors did about media and all the articles and
- (4) TV shows that most of us up here – at least many of us up
- (5) here, I should say, have seen regarding the spill. What
- (6) opinions do you have generally about the media coverage of
- (7) the Exxon Valdez spill?
- (8) A Well, there's been a fair amount. I think you won't find
- (9) an Alaskan who hasn't been exposed. I've seen things on TV or
- (10) I've obviously read things in the paper. I haven't followed it
- (11) particularly closely, and no single article or show comes to
- (12) mind. Many attorneys I know have fought to represent some of
- (13) the fishermen years ago. I don't know if they did or didn't.
- (14) Q I guess I was more trying to get at the idea of – I mean,
- (15) I noticed in your resume, you're obviously a very well read
- (16) person, at least you listed a number of publications and all
- (17) that you said you had an opportunity to read regularly, and I
- (18) was curious whether you thought the media coverage of the
- (19) spill
- (20) biased you at all in one way or another?
- (21) A I don't think it was too biased, from what I recall. I
- (22) don't recall any bias, nothing comes to mind.
- (23) Q Are you aware that there's a trial going on in federal
- (24) court regarding some things regarding the oil spill now?
- (25) A I recall reading about the verdict. I'm not following any

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- (1) intentionally or unintentionally following anything to do with
- (2) the case, so I've not been reading so much in the newspaper.
- (3) Q Have you heard anything at all about the claims that
- (4) commercial fishermen in federal court have averted – let me
- (5) rephrase it. Have you heard anything at all about claims that
- (6) commercial fisheries had been impacted or injured by the
- (7) spill?
- (8) A Only what I've read. I haven't heard anything other than
- (9) what I've seen in the paper.
- (10) Q Have you formed any opinions yourself on the topic?
- (11) A No.
- (12) Q I notice that you spent a couple years in Israel. What did
- (13) you get to do while you were there?
- (14) A I was an officer in a prison. I was in the military. And
- (15) a student, on a farm.
- (16) Q For two years or so, is that so?
- (17) A It was for more than five years but spaced over years.
- (18) Q For how long did you serve in the military?
- (19) A Two years, approximately.
- (20) MR. CLOUGH: Your Honor, I have no further questions.
- (21) THE COURT: All right. Mr. Bortnick, you're still on
- (22) the panel. What the final jury will be, I don't know. So what
- (23) I can tell you is, I'm going to excuse you now. And I'll –
- (24) we'll be in touch with you. Whether we're going to call you
- (25) back in or just give you information, I don't know.

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- (1) A My next court hearing, Your Honor, is before Master Dugan
- (2) at 8:30 Monday. I'd like to make sure that that's not going to
- (3) be a problem.
- (4) THE COURT: No problem, no problem at all. I'll
- (5) excuse you for now, don't talk to anybody about the case.
- (6) (Alexander Bortnick leaves)
- (7) THE COURT: We're going to do one more juror, counsel,
- (8) and then we're going to take a break.
- (9) (Jay Blucher enters)
- (10) THE COURT: Sir, could you give your name for the
- (11) record, please?
- (12) A Jay Blucher.
- (13) THE COURT: Mr. Blucher, you understand that the
- (14) questions you're about to answer are answered under oath?
- (15) A Yes.
- (16) THE COURT: And so were the questions that you did
- (17) answer on the jury questionnaire; right?
- (18) A Yes.
- (19) THE COURT: Counsel for the plaintiffs, Mr. Stoll,
- (20) will have some questions for you, and then Mr. Diamond,
- (21) counsel
- (22) for the defense will have some questions for you, and then I'll
- (23) let you know what happens next; all right?
- (24) A Okay.
- (25) VOIR DIRE EXAMINATION OF JAY BLUCHER
- BY MR. STOLL:

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- (1) Q Mr. Blucher, my name is Bob Stoll. I represent, with Ms.
- (2) Johnson here, the municipalities, they're plaintiffs in this
- (3) case. And Mr. Fortier represents Native corporations that are
- (4) plaintiffs in this case.
- (5) First of all, I'd like to ask you some questions about
- (6) your - your views on the - have you covered any court cases
- (7) before?
- (8) A Yes.
- (9) Q As a news reporter?
- (10) A Yes.
- (11) Q And so you've heard the Judge instruct the jury at the end
- (12) of the case?
- (13) A Yes.
- (14) Q And you know that the - the decision of the jury is
- (15) supposed to be made only from the evidence, the material
- (16) that's
- (17) put into evidence in the courtroom?
- (18) A Yes.
- (19) Q Do you think that you could do that, and that you've
- (20) obviously, as a news reporter, just as a citizen, I'm sure,
- (21) have read a huge amount of material regarding the Exxon
- (22) Valdez
- (23) oil spill over the last five years?
- (24) A Uh-huh.
- (25) Q Do you think you could put that information aside in
- (26) evaluating the evidence in this case?
- (27) A Yeah, I think so.

- (1) A Big picture.
- (2) Q In your evaluation of individual cases, have you seen cases
- (3) where you thought that the awards were excessive?
- (4) A Just the opposite.
- (5) Q Haven't been significant?
- (6) A Right.
- (7) Q Is that going to affect you in any way in evaluating the
- (8) evidence in this case?
- (9) A I don't think so.
- (10) Q You're going to just listen to the evidence that's
- (11) presented here?
- (12) A It's so different.
- (13) Q You're talking about personal injury cases or things of
- (14) that nature?
- (15) A Yeah, doctors, negligence, medical malpractice, yes.
- (16) Q Now, you've indicated, also on your questionnaire, I think
- (17) it's on page 11, that you think that the effects of the Exxon
- (18) Valdez oil spill are going to last through - through your
- (19) lifetime and those of your children, et cetera.
- (20) One of the issues in this case, the large number of the
- (21) claims in this case are land damages, damages that are to land
- (22) that is owned by Native corporations or land that is owned by
- (23) the municipalities, and in evaluating the evidence as to
- (24) whether or not there has been damage to the municipalities or
- (25) to the - the land of the municipalities or to the Native

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- (1) Q And I notice also that you said that, in answer to one of
- (2) the questions, question 88, on Page 15, you said that you had
- (3) read or had substantial information on a number of legal issues
- (4) and the size of damage awards. You cited medical malpractice,
- (5) tort reform issues, health care reform, personal issues and
- (6) liability. This is - you're referring to the so-called tort
- (7) reform debate that's been going on the last few years?
- (8) A Right.
- (9) Q Have you, with respect to those issues, have you formulated
- (10) any opinions, yourself, as to what's right or what's wrong with
- (11) the legal system?
- (12) A No, not really.
- (13) Q You've just read a lot about it?
- (14) A Yeah.
- (15) Q You think that we should have so-called tort reform?
- (16) That's pretty open-ended, there's a lot of questions in there,
- (17) but what do you think about that?
- (18) A Just the term, itself, depends on how you define it.
- (19) Q You think there should be limits? One of the things, as
- (20) you probably know, a lot of tort reform is putting some kind of
- (21) limits on damage rewards. Do you think damage awards have
- (22) been
- (23) excessive, in your opinion?
- (24) A I've only written about it from the standpoint of
- (25) individuals. I don't have a sense for the -
- (26) Q Big picture?

- (1) corporations, would you consider only the evidence that is
- (2) presented here and follow the instructions of Judge Shortell,
- (3) even if you have some prior opinion about the long-term effects
- (4) of the oil spill?
- (5) A Yes. I would.
- (6) Q You'd just consider what was presented here?
- (7) A Yes.
- (8) Q And you think that your views as to the long term effects
- (9) would - would create any possibility that you would - or I
- (10) should say - rephrase that.
- (11) Do you think it would create a substantial possibility that
- (12) it would affect your judgment in evaluating the evidence here?
- (13) A No, I don't.
- (14) Q Do you think you could divorce those prior thoughts that
- (15) you've had from what you've read in the paper and so on to the
- (16) specific evidence that's presented in this courtroom?
- (17) A Yes.
- (18) Q And with respect to that, do you think that - have you
- (19) conducted any investigation, yourself, as to what the - have
- (20) you visited any - Kodiak, for instance?
- (21) A Yes.
- (22) Q And have you done any inspection on Kodiak as to whether -
- (23) what the long-term effects, if any, have been of the oil
- (24) spill?
- (25) A At the time I was there, didn't take much to -

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- (1) Q When were you there?
- (2) A '90.
- (3) Q I see, it was within a year after?
- (4) A Yeah, definitely within a year.
- (5) Q So within that first year, you could still see plenty of effects of the oil spill?
- (6) A Uh-huh.
- (8) Q And where did you go in Kodiak? Do you recall?
- (9) A Little bit of everywhere. Coast Guard.
- (10) Q Pardon me?
- (11) A There's a Coast Guard facility there.
- (12) Q I see, in - right outside the town of Kodiak?
- (13) A Uh-huh, fairly large Coast Guard.
- (14) Q That's the main place you were?
- (15) A Yeah.
- (16) Q Do you recall any of the other communities at the time you went to -
- (17) A Cordova, LaTouche Island, Homer, Valdez, several times.
- (18) Q Are these all on the - the spill was March 24th of '89, as you know?
- (21) A All -
- (22) Q Were these just shortly after the spill or -
- (23) A Yes, and up to now.
- (24) Q When was the last time you were in Cordova?
- (25) A Six, seven months ago.

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- (1) Q All right. Is that - or when was the last time you were at LaTouche Island?
- (2) A Oh, four years.
- (4) Q Four maybe even five years ago?
- (5) A Yeah.
- (6) Q Now, what you observed then, are you going to be able to divorce that from what you hear as evidence in this case?
- (7) A I think so.
- (8) Q Why do you think you feel that way?
- (9) A Well, I have to judge on what is presented here, not anything in the past I've done or seen.
- (10) Q How long have you been a newspaper reporter?
- (11) A Here in Alaska, five years. Before that, ten years before that. So total of about 15 years.
- (12) Q 15 years? I'm sorry, I didn't -
- (13) A I worked in Washington D.C.
- (14) Q State of Washington?
- (15) A D.C.
- (16) Q D.C.?
- (17) A Uh-huh, for about ten years.
- (18) Q For the Post or -
- (19) A I worked for the military, Army Times, Navy Times, Air Force Times.
- (20) Q And do you like Alaska?
- (21) A Oh, yes.

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- (1) Q What do you like about Alaska?
- (2) A Clean air, clean water, it's a lot different than D.C.
- (3) Q That's for sure. What - you get out, do you go camping?
- (4) A Yes.
- (5) Q Hiking, things like that?
- (6) A Fishing.
- (7) Q Where do you like to go fishing?
- (8) A Copper River.
- (9) Q And where do you go camping? Is there any particular -
- (10) A Wrangell-St. Elias, my favorite. McCarthy.
- (11) Q Does your whole family go?
- (12) A Yeah.
- (13) Q You also mentioned in your questionnaire you have friends at Veco or a friend at Veco?
- (14) A Yes.
- (15) Q Has that friend talked to you about any work on the oil spill or clean-up of the oil spill?
- (16) A Yes. He's not Veco like clean-up person. He's a Veco reporter. Used to work for the old Anchorage Times.
- (17) Q And has he - what has he told you about the oil spill?
- (18) A Well, we just discussed it sort of as reporters, not as clean-up.
- (19) Q I see, he didn't say this was clean or this was dirty or anything like that?
- (20) A No, he's a reporter just like myself.

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- (1) Q I see, okay. Now, with respect to - there's a number of people that are identified as witnesses on the attached and you've circled a number of names here?
- (2) A Yes.
- (3) Q The fact that you may have talked to some of these people on the phone, is that as a reporter primarily, or are any of these personal friends?
- (4) A Most are people I've talked with over the years, either on the phone or in person. None are close personal friends or even acquaintances, just I know them by face and over the years, numerous conversations over the telephone.
- (5) Q I see. Now, the fact that you've talked to them on the phone, if these people do in fact testify, are you going to give them either - if you were a juror, either more or less credibility than some other witness because you've talked to them on the phone?
- (6) A No, I don't think so.
- (7) Q You're just going to evaluate all the evidence evenly?
- (8) A I think so.
- (9) Q You think it's most probable that you will?
- (10) A Yes, that I will. Just because I know them -
- (11) Q That's not going to affect your - you're going to be a fair minded juror?
- (12) A I think so.
- (13) MR. STOLL: Okay. Thank you very much.

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- (1) VOIR DIRE EXAMINATION OF JAY BLUCHER
 (2) BY MR. DIAMOND:
 (3) Q Good afternoon, Mr. Blucher?
 (4) A Hi.
 (5) Q My name is Chuck Diamond, I'm one of the lawyers representing Exxon in the case. I introduced myself to the group on Monday.
 (6) MR. DIAMOND: Your Honor, I may need a little more time than normal.
 (7) THE COURT: Okay. Is that a warning?
 (8) MR. DIAMOND: I was just going to tell you, there are a couple of things I wanted to get into.
 (9) THE COURT: I'll give you as much time as you need within reason.
 (10) MR. DIAMOND: Thank you, Your Honor.
 (11) MR. STOLL: That's about ten minutes.
 (12) BY MR. DIAMOND:
 (13) Q Mr. Blucher, you joined the Anchorage Daily News in June of 1989?
 (14) A Uh-huh.
 (15) Q Is it just a remarkable coincidence, or did you come up because of the - to cover events related to the spill?
 (16) A No connection whatsoever to the spill.
 (17) Q Okay.
 (18) A At all.

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- (1) Q What brought you up?
 (2) A Layoff at my old paper.
 (3) Q Did you have a job with the Anchorage paper before you left?
 (4) A Yes.
 (5) Q Were you a general assignment reporter when you first started with the Daily News?
 (6) A Arts. I started writing about art.
 (7) Q And media? Motion pictures, things of that nature?
 (8) A Visual, paintings, weavings, some visual motion pictures.
 (9) Q Has the scope of your responsibilities on the paper, the breadth of the areas you cover changed at all or -
 (10) A No, now it's primarily health, fitness, lifestyle.
 (11) Occasionally I still do some art, but general assignment.
 (12) Q What is general assignment?
 (13) A Utility fielder, designated hitter, whatever comes up.
 (14) Just anything.
 (15) Q Do you ever have any input into the editorial process? By that I mean - that's probably a bad term to use with the newspaper man. I think in terms of the editorial page?
 (16) A None.
 (17) Q That's handled totally separately at the paper?
 (18) A Yes.
 (19) Q Do you generally read the paper's editorials?
 (20) A Oh, yes.

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- (1) Q Exxon's taken - would you agree with me Exxon's taken somewhat of a beating in your newspaper?
 (2) A No.
 (3) Q I'm not saying it's unjustified, but the newspaper has been somewhat supportive of large verdicts in litigation against Exxon arising out of the spill?
 (4) A I don't know if I'd agree with that.
 (5) Q How would you characterize it?
 (6) A Characterization?
 (7) Q How would you characterize it?
 (8) A How would I characterize -
 (9) Q The paper's position with respect to what kind of judgments ought to be returned against Exxon?
 (10) A I don't know how to answer that. On any given day, I find myself agreeing or disagreeing with their editorials. No more or less than anyone else. It's - it's so divorced from my reality or my job that it doesn't ever intersect. It's not -
 (11) Q Okay. I thought I remembered reading an editorial in your paper in connection with the federal case, somewhat supportive of the notion that Exxon ought to be subject to punitive damages for the spill. Do you remember reading that?
 (12) A I don't remember reading that.
 (13) Q Do you have a view on that?
 (14) A No.
 (15) Q Since joining the paper, what - what stories have you

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- (1) written that have any connection with the spill or coverage about the spill, media events in connection with the spill?
 (2) A Several stories earlier, which were expressions of - expressions of loss and how that was translated in art, in photographs, in paintings, documentary which was made.
 (3) Q What was the name of that?
 (4) A Sea of Oil. It was an independent documentary.
 (5) Q Approximately how many articles were there, if you remember, of that genre?
 (6) A Between five and ten.
 (7) Q Did you talk to folks who expressed in words the damage or the sense -
 (8) A Yes.
 (9) Q In Alaska or outside of Alaska or both?
 (10) A A little of both, but mostly Alaskans from Homer, Cordova, areas affected directly by the spill.
 (11) Q What would you talk to them about?
 (12) A Their art, what influenced them, what they were trying to get across, what it was they were trying to say.
 (13) Q Did you talk to them about what they had observed in connection with the effects of the oil spill?
 (14) A It came up just because of routine.
 (15) Q These were mostly firsthand chroniclers of what they had observed?
 (16) A Yes.

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- (1) Q And based on that, do you feel like you have a sense –
 (2) maybe a better sense of the effects than the general public of
 (3) the effects of the oil spill?
 (4) A I have a sense of how deeply it affected some of those
 (5) artists. I don't know whether that's more or less than any
 (6) other sense, but –
 (7) Q Do you know about the effects of the oil spill in any
 (8) particular areas based on the reporting that you've done?
 (9) A Yes.
 (10) Q What areas do you have a sense of?
 (11) A Cordova, Homer, LaTouche Island, Kodiak.
 (12) Q Have you been to all of those places?
 (13) A At one time or another, uh-huh.
 (14) Q Was there a bit of a controversy here concerning whether
 (15) Exxon had attempted to, for lack of a better word, suppress or
 (16) keep to a minimum distribution of the film, Sea of Oil?
 (17) A Yes.
 (18) Q Did you do a story on that subject?
 (19) A Yes.
 (20) Q What was that about?
 (21) A That very subject.
 (22) Q Who did you talk to in connection with that story?
 (23) A The lady that made the film, I can't remember her name
 (24) right now, but she was an independent filmmaker.
 (25) Q Anybody – anybody from Exxon?

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- (1) A Oh, yeah.
 (2) Q Who did you talk to with Exxon?
 (3) A They were public relations people from their corporate
 (4) offices. Houston, I believe.
 (5) Q Did you form any opinions of whether the allegation was
 (6) true or not?
 (7) A No, they just said it wasn't.
 (8) Q I know they said that it wasn't. What was your opinion?
 (9) A I more or less just put what they said into the paper. I
 (10) didn't really form an opinion.
 (11) Q The paper didn't – the story didn't draw a conclusion one
 (12) way or another?
 (13) A No. Although it was certainly her contention that Exxon
 (14) restricted its view.
 (15) Q You just didn't decide to believe her or not believe her?
 (16) A It was really hard to form an opinion on. It was just sort
 (17) of, she said they said.
 (18) Q Have you talked to any other Exxon representatives,
 (19) employees, officials in connection with your – your coverage
 (20) of spill related stories?
 (21) A Uh-huh.
 (22) Q On how many occasions?
 (23) A At least 20 times.
 (24) Q What individuals do you remember talking to?
 (25) A The only name I can recall is a man named Rogers, last name

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- (1) Rogers. No names stick out. Mostly public relations.
 (2) Q He was a public relations officer of the company?
 (3) A Yes.
 (4) Q And do you know what you talked to him about?
 (5) A Again, either art or photographs. There were numerous
 (6) displays. There was an Exxon display of the clean-up in the
 (7) Performing Arts Center, and then there was another
 (8) photographic
 (9) display in the courthouse for a time. And there was some
 (10) controversy about the appropriateness of such displays in
 (11) public buildings.
 (12) Q Was that the subject of –
 (13) A The articles that I wrote.
 (14) Q – the articles that you wrote?
 (15) A Uh-huh.
 (16) Q I'm familiar with one of those, the controversy involving
 (17) the federal court and the display of both clean-up pictures and
 (18) environmental pictures?
 (19) A Right, right.
 (20) Q And you covered that story?
 (21) A Yes.
 (22) Q Do you remember anybody else from Exxon you talked to in
 (23) connection with writing that story?
 (24) A Not by name, but I – I know I talked with several
 (25) different public relations people about that.
 (26) Q About whether the photographic depictions were

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- (1) representative or accurate or fair? What were you talking
 (2) about?
 (3) A Mostly about the venue, the appropriateness of the venue.
 (4) Q What other subjects, putting aside the fact that you can't
 (5) remember their names, on what other subjects have you talked
 (6) to
 (7) Exxon people?
 (8) A Outside of that, in that general area, I haven't had cause
 (9) to – to talk with them, anything outside that area of sort of
 (10) art, photography.
 (11) Q Aside from one on one conversations, have you attended any
 (12) Exxon press conferences?
 (13) A Not related to the spill. They called a press conference
 (14) related to the Sea of Oil, and not really press conferences,
 (15) but sort of impromptu talks related to the clean-up display at
 (16) both the courthouse and at the Performing Arts Center.
 (17) Q With respect to – you've seen the film, Sea of Oil; have
 (18) you not?
 (19) A Right.
 (20) Q How many times have you seen it?
 (21) A I've seen it twice.
 (22) Q Is there some controversy as to the accuracy or the
 (23) representativeness of that film?
 (24) A No, I don't think so.
 (25) Q Have you ever talked to Exxon people about whether they
 (26) think that fairly portrays the effects of the spill?

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- (1) A Yes.
- (2) Q And what's the - what do you get from them?
- (3) A I don't believe they had seen it at the time I was talking
- (4) about it, at that time. I'm not sure.
- (5) Q Did you have subsequent conversations with anyone from
- (6) Exxon about the film?
- (7) A No, I don't believe so.
- (8) Q You said you've been to some of - some of the areas
- (9) impacted by the spill. When were you at LaTouche?
- (10) A It was early, not there for oil spill, just - there used
- (11) to be an old mine on LaTouche Island, and I was there to see
- (12) the mine.
- (13) Q Was it after the spill?
- (14) A Yes.
- (15) Q Did you observe any effects of the spill?
- (16) A Not - I wasn't there for that reason, but the island,
- (17) itself, was affected, so.
- (18) Q How do you know that?
- (19) A Sort of right in the path, kind of.
- (20) Q In the path of the oil?
- (21) A Uh-huh.
- (22) Q Is that something somebody told you or did you know?
- (23) A I could look at a map and see.
- (24) Q Do you know or have any reason to believe that LaTouche
- (25) was affected?

- (1) aftermath of the oil spill?
- (2) A Well, it certainly came up, but it wasn't by any means the
- (3) focus of what I was there to talk about at all, so -
- (4) Q Do you believe that Kodiak was - was oiled?
- (5) A I believe it was, because the people told me it was. I
- (6) believed them. I don't believe they were lying or
- (7) exaggerating.
- (8) Q Did they tell you how badly it was oiled?
- (9) A Yeah.
- (10) Q What was your impression?
- (11) A I don't know how to gauge it. I mean, it's certainly their
- (12) feeling that it received its share of oil.
- (13) Q And you -
- (14) A I don't know how to say, how to characterize it. As to how
- (15) badly oiled.
- (16) Q These came - the information that you got came from people
- (17) who you thought were credible?
- (18) A Yes, Coast Guard people.
- (19) Q Would that cause you to doubt something you might hear
- (20) from
- (21) the witness stand if you serve as a juror in this case, someone
- (22) from Exxon says that Kodiak or a particular part of Kodiak was
- (23) not oiled?
- (24) A It would certainly stand in direct conflict with what
- (25) people have told me who live there.
- (26) Q Would you have trouble believing it for that reason?

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- (1) A No.
- (2) Q You didn't observe any - any -
- (3) A No, I was not -
- (4) Q - oiling or environmental effects at LaTouche?
- (5) A No, I wasn't - I was there to see the mine, so -
- (6) Q Okay. Have you seen any - have you seen any of the -
- (7) well, you said you also were at Kodiak?
- (8) A Right.
- (9) Q What was the purpose of -
- (10) A There's a Coast Guard facility there. Again, not for the
- (11) oil, but something unrelated.
- (12) Q And did you see any effects of the oil spill down in
- (13) Kodiak?
- (14) A No, but I heard a lot of talk, heard of lot of people talk
- (15) about it. Listened to a lot of people talk about it.
- (16) Q Who did you talk to?
- (17) A All anyone was talking about at that time. It would be
- (18) difficult to talk about anything else.
- (19) Q When were you in Kodiak?
- (20) A '89, late in '89. It was not too long after the spill.
- (21) Q Did you talk to residents and Coast Guardsmen?
- (22) A Mostly Coast Guard people. I was there doing a story about
- (23) the base, what it's like to be there, kind of the lifestyle of
- (24) living there.
- (25) Q And did they tell you what they had observed in the

- (1) A Yes, I might.
- (2) Q Well, one of the - one of the instructions that all jurors
- (3) get and one of the things that qualifies you to serve as a
- (4) juror is either a lack of personal knowledge or an ability to
- (5) put any personal knowledge that you may have to one side and
- (6) make decisions based solely on the evidence that you hear in
- (7) court.
- (8) Do you think that what you know and the sources of your
- (9) knowledge might cause you to have some skepticism about
- (10) what
- (11) you may hear regarding oiling in Cordova, for example?
- (12) A You asked me if Exxon stood up there and said that Kodiak
- (13) was not oiled, would that conflict with what I heard from
- (14) people at Kodiak. It would.
- (15) Q And I'm - I'm asking you whether it would - that would
- (16) cause you to be skeptical of what you hear from the witness
- (17) stand?
- (18) MR. STOLL: Your Honor, I have a matter I'd like to
- (19) take up with the Court on this.
- (20) THE COURT: Sure, that's fine. I'll excuse the
- (21) juror. If you go back in the jury room, sir, I'll bring you
- (22) right back in.
- (23) A Okay.
- (24) THE COURT: Thanks.
- (25) (Jay Blucher leaves)
- (26) MR. STOLL: Your Honor, I think it's very confusing

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- (1) and misleading to this witness. First of all -
- (2) MR. DIAMOND: The juror.
- (3) MR. STOLL: The juror. I don't believe that there's a
- (4) witness that's going to say that Kodiak was not oiled, period.
- (5) They may say that - there may be a disagreement about how much
- (6) oil there was, but there's not - I do not believe, unless
- (7) they've just created a new witness, that it's going to say that
- (8) Kodiak didn't get any oil, and I don't - I assume that
- (9) Mr. Diamond, it was through inadvertence that he changed
- (10) midstream to Cordova.
- (11) MR. DIAMOND: I'm sorry, if I said Cordova, I didn't
- (12) intend to.
- (13) MR. STOLL: But I don't know - I think he can ask if
- (14) there's a real conflict, and the conflict is going to exist,
- (15) but I don't think that there - do you have an -
- (16) MR. DIAMOND: Your Honor, there is substantial
- (17) conflict as to - what portions of - of Cordova - I'm sorry,
- (18) Kodiak were oiled or whether parcels owned by plaintiffs were
- (19) in fact oiled, more importantly to what degree, and we're to
- (20) offer evidence that this was very - for the most part very
- (21) minimal oiling way down in Kodiak and not at all what most
- (22) people associate.
- (23) Here's a witness who has got personal knowledge. I'm
- (24) trying to find out whether he's going to have difficulty
- (25) believing a witness who was there and who says now what I saw

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- (1) was essentially unoiled. What I saw of oiled properties was
- (2) very, very lightly oiled. If he's got knowledge to - that's
- (3) going to bring to bear on that subject, I want to know whether
- (4) he's going to be able to disregard it and listen solely to the
- (5) witnesses.
- (6) MR. STOLL: The problem I'm having, Your Honor, is
- (7) when you ask the witness - I mean the juror, whether the - if
- (8) he's going to have a problem with a hypothetical that is not in
- (9) testimony, if he wants - if Mr. Diamond wants to ask him about
- (10) whether there creates some issue in his mind if somebody said
- (11) that certain areas were lightly oiled, he can ask him that
- (12) question. I don't have any problem with that. But I think
- (13) it's very misleading to try to lead this juror into creating a
- (14) false conflict, because he, I think, was very forthright and
- (15) very careful. In fact, he picked up on it himself. He said if
- (16) you were saying that somebody's going to testify that Kodiak
- (17) was not oiled, that was - that was what the juror said. I
- (18) mean, he - I just don't think that it's proper to set up sort
- (19) of a false conflict. I mean, if he wants to say - you know,
- (20) ask him questions about levels of oiling, he can do that,
- (21) but -
- (22) MR. DIAMOND: And I tried doing that and the witness
- (23) had -
- (24) MR. STOLL: I don't think he -
- (25) MR. DIAMOND: And the witness said, what do you mean,

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- (1) how badly oiled. So he doesn't have an awareness of different
- (2) degrees.
- (3) THE COURT: I tell you what, counsel. Let's see if
- (4) this is acceptable to both of you. Setting up a hypothetical
- (5) is clearly contrary to what the witness may have observed but
- (6) is not in the evidence, is not the way to go about this, and I
- (7) don't think you're trying to do that.
- (8) MR. DIAMOND: I'm not.
- (9) THE COURT: So I think the only way to deal with this
- (10) particular issue, given this juror's experience, is to say we
- (11) anticipate that the evidence from us will be the following: Is
- (12) that contrary to your observation.
- (13) MR. DIAMOND: I could do it that way.
- (14) MR. STOLL: With his personal observations.
- (15) THE COURT: Right.
- (16) MR. DIAMOND: Well, personal observations or what he
- (17) was told.
- (18) THE COURT: And I think it's legitimate to ask about
- (19) both.
- (20) Counsel, we're going to break at three, no matter what.
- (21) MR. DIAMOND: Break at three no matter what?
- (22) THE COURT: No matter what, but that doesn't mean your
- (23) examination is going to end.
- (24) MR. DIAMOND: Thank you.
- (25) (Jay Blucher enters)

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- (1) MR. DIAMOND: Sorry for that interruption,
- (2) Mr. Blucher.
- (3) BY MR. DIAMOND:
- (4) Q We were talking about Kodiak and what you had been told
- (5) about the effects of the spill at Kodiak by the Coast Guardsmen
- (6) there and other people that you talked to. We anticipate
- (7) testimony from witnesses who are going to say that substantial
- (8) portions of Kodiak were unoiled and that the portions that were
- (9) affected by the spill were very lightly oiled?
- (10) A Were very lightly oiled.
- (11) Q Lightly oiled, occasional tar balls, occasional mousse, but
- (12) it was not significant oil in Kodiak; is that contrary -
- (13) A No, lightly.
- (14) Q - to what you were told? That's basically what you were
- (15) told by the Coast Guard?
- (16) A Right.
- (17) Q What do you understand lightly to mean?
- (18) A Tar balls, but -
- (19) Q Did you - you have any discussion when you were in
- (20) Cordova -
- (21) A Kodiak.
- (22) Q I keep saying - meaning - the brain says Kodiak and the
- (23) mouth says Cordova. Did you have any discussions about the
- (24) effect of the deposit of this kind of oiling on the -
- (25) A No, I wasn't really there to talk about the oil spill with

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- (1) them. It came up, but only because it came up everywhere at
 (2) that time. I was there to -
 (3) Q Have you talked -
 (4) A I was there to write about being a Coast Guard person
 (5) stationed there.
 (6) Q Do you have any other knowledge that you've acquired as a
 (7) newspaper reporter about whether any other specific areas
 were
 (8) oiled and, if so, the level of oiling, any other islands in
 (9) Prince William Sound, any other shorelines, any other places
 (10) along the Kenai?
 (11) A Like a lot of people, I've seen the maps with the blackened
 (12) areas of where the oil went.
 (13) Q Where have you seen those maps?
 (14) A Which islands, I mean they've been published in the
 (15) newspaper frequently.
 (16) Q Other than just -
 (17) A Several articles.
 (18) Q Other than just maps published in the paper, do you have
 (19) any other information?
 (20) A Firsthand?
 (21) Q Well, I -
 (22) A Yes, I've - I've - not firsthand, but I've talked with
 (23) other reporters who've come back from visits to - I think it
 (24) was Green Island and other islands.
 (25) Q Can you give us any other names?

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- (1) A I think it was Green Island. I'm not sure.
 (2) Q Chenega?
 (3) A Chenega, yes.
 (4) Q What's your understanding of what the situation was at
 (5) Chenega?
 (6) A This was '91. I don't remember. I do remember talking
 (7) with the reporter who came back from that area, but I don't
 (8) remember how much oil.
 (9) Q Do you remember having a sense or an understanding from
 (10) that conversation that there was still oil in Chenega?
 (11) A Yeah.
 (12) Q Is that what you were told?
 (13) A Yes.
 (14) Q How extensive?
 (15) A I don't know. He just said there was oil there, still oil.
 (16) Q How about Knight Island?
 (17) A Knight, yeah, that rings a bell. Not sure why.
 (18) Q Did the paper do some extensive coverage in 1991 about the
 (19) impacts of the oil?
 (20) A Yes.
 (21) Q How many reporters covered that?
 (22) A At any given time, maybe ten, 12 at different times.
 (23) Q You weren't part of that, though?
 (24) A No.
 (25) Q How many of the ten to 12 did you talk to?

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- (1) A Ten or 12. We're all kind of curious.
 (2) Q I'm sure. When were you at Cordova?
 (3) A Oh, as recently as two weeks ago and as far back as '89.
 (4) Q Have you done any -
 (5) A I go there a lot.
 (6) Q Have you done any reporting concerning the effects of the
 (7) oil spill in Cordova?
 (8) A Again, mostly not about if oil spill, per se, but about
 (9) expressions of - through art.
 (10) Q Have there been any separate exhibits -
 (11) A Yes.
 (12) Q - dealing with the subject of the effects of the oil spill
 (13) on Cordova?
 (14) A Yes. After the Exxon exhibit, there was a concern that
 (15) equal time be given to the other side, so then when the Exxon
 (16) exhibit left the Performing Arts Center and left the
 (17) courthouse, there were exhibits put together by various
 (18) environmental groups and that was sort of the way the issue
 was
 (19) framed.
 (20) Q During the course of covering that story, did you talk to
 (21) people about their perception of the effects of the spill on
 (22) Cordova?
 (23) A Yes.
 (24) THE COURT: Sorry, counsel, but I have to take a
 (25) break. We'll continue this examination when I come back in.

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- (1) It'll be a 15 minute break. You can go back to the jury room,
 (2) Mr. Blucher. We'll be with you in 15 minutes.
 (3) THE CLERK: Please rise. This court stands in
 (4) recess.
 (5) MR. DIAMOND: Did you want to give an admonition, Your
 (6) Honor?
 (7) THE COURT: Oh, yes, to Mr. Blucher, don't discuss
 (8) anything that's been said in here with any of the other jurors,
 (9) all right?
 (10) A If they ask, I just -
 (11) THE COURT: If they ask, just say you can't say
 (12) anything.
 (13) A Okay.
 (14) (Recess taken from 3:01 p.m. to 3:20 p.m.)
 (15) THE COURT: Counsel, will you give me a good faith
 (16) estimate how long you think it's going to take to question this
 (17) jury?
 (18) MR. DIAMOND: You know what I'd like to do is hand up
 (19) to the Court his articles and let you read them and pose the
 (20) question before he resumes whether you think it would be fair
 (21) to Exxon to have this gentleman serve as a juror.
 (22) THE COURT: I'm a speed reader, counsel.
 (23) MR. DIAMOND: You want to see them?
 (24) THE COURT: Sure.
 (25) MR. DIAMOND: I don't have copies for counsel, but -

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- (1) MR. STOLL: Story of my life.
- (2) THE COURT: Probably doesn't put you at a
- (3) disadvantage, counsel, you'd have to argue the facts if you
- (4) knew what was in them.
- (5) MR. STOLL: I never let the facts interfere with my
- (6) case, Your Honor. Never. But neither does Mr. Diamond, but -
- (7) THE COURT: Let the record reflect that I'm reading
- (8) these articles.
- (9) Counsel, I've read the articles. The articles by
- (10) themselves simply don't - he's explained, I think, that -
- (11) that he wrote an article involving the reactions of the artists
- (12) and the interviews with them and their reactions. I don't
- (13) think these articles are necessarily inconsistent with anything
- (14) that he's said here. So they don't impeach him in any way.
- (15) MR. DIAMOND: And I didn't mean to suggest that they
- (16) do. Nor do I mean to suggest that they definitely show that he
- (17) has - is biased or formed an opinion that he couldn't put
- (18) aside. What I think they do suggest is that this is an
- (19) individual who may not have been at the main stay of the
- (20) paper's coverage of the spill, but he certainly has been
- (21) associated with it and associated with it in a way that's some
- (22) of the more poignant, some of the more graphic aspects of the
- (23) spill and its effects, and I simply pose that in the interest
- (24) of the appearance of fairness somebody who has been so
- (25) connected with this in a public way ought not to be

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- (1) adjudicating factual issues over those issues, just if this
- (2) were not Exxon. If this were simply a defendant in a criminal
- (3) case.
- (4) THE COURT: Okay. I understand your position. Mr.
- (5) Stoll? Here's the problem, here's a person who's had extensive
- (6) connection with the facts of this case, done factual
- (7) investigation regarding the facts in this case. These
- (8) articles, themselves wouldn't disqualify him. But then he
- (9) fills out a questionnaire, and the answer to question number
- (10) 49X, have you formed an opinion as to how long the effects of
- (11) the Exxon Valdez oil spill continued or will continue in the
- (12) future. He says yes. Then as to what is your opinion, he does
- (13) the following - he says the following, this is an exact
- (14) quote. My lifetime and the lifetime of my children and the
- (15) lifetime of my children's children, et cetera, close quote.
- (16) Then he talks about whether he has any opinions about the
- (17) Exxon Valdez oil spill affected any of the municipalities, he
- (18) doesn't know. Exxon and Exxon Shipping Company, he says
- (19) minimal. Alyeska Pipeline Company or any oil company that
- (20) owns
- (21) parts of Alaska, he says minimal. Captain Hazelwood or any
- (22) member of the Exxon Valdez crew, he says minimal.
- (23) It seems, I think, a very good faith argument can be made
- (24) that this - this juror not only has had intimate connection
- (25) with the facts of this case, but he's drawn opinions based

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- (1) to - to Exxon.
- (2) Under these circumstances, are you seriously contending
- (3) that this is not a juror that should be excused from this
- (4) case?
- (5) MR. STOLL: Yes, Your Honor.
- (6) THE COURT: As long as you're serious in contending,
- (7) we'll go to the -
- (8) MR. STOLL: Ask I just be heard for a moment on this?
- (9) THE COURT: Sure.
- (10) MR. STOLL: I think there's been other jurors, Your
- (11) Honor, that have been very favorable towards the plaintiffs
- (12) that have expressed a bias and during my - there was a lady a
- (13) short time ago that I was - I think I was asking, maybe
- (14) Mr. Fortier was, I think it happened with two jurors recently,
- (15) in fact, where we asked some questions, and it was very clear
- (16) from our examination that - that the juror was biased and said
- (17) it would interfere with their ability to evaluate the facts in
- (18) the case, and we - we said during our examination that we
- (19) didn't have - you know, we didn't push the issue about that
- (20) juror sitting at all.
- (21) This juror is trained to evaluate stories, pro or con and
- (22) so on. And he has said that he is going to base any evaluation
- (23) he does simply from the evidence in this case. I do not - he
- (24) has not made a - in 1989 and 1990, he wrote articles on art,
- (25) the art area, and so he reported what various people said and I

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- (1) read the article that Mr. Diamond handed me on the Sea of Oil
- (2) movie, and he accurately stated here that he reported the view
- (3) that the producer of that film had and he reported in the same
- (4) article the view that Exxon had, and some allegations both
- (5) ways. I haven't read any of those other articles so I don't
- (6) know what he's said, but the fact of the matter is that he has
- (7) said that he can divorce his - any feelings that he has from
- (8) this.
- (9) There have been people here who have said categorically
- (10) that they think that Native corporations, the Natives get too
- (11) much and - and those people have been, you know, been
- (12) permitted to sit on this - on this jury. Now, I don't think
- (13) that the - I don't think that there's any - he has not
- (14) conducted any investigation or reported a story to my
- (15) knowledge - maybe I'm unaware of this, but I don't believe
- (16) that this juror has reported or done any investigation of his
- (17) own as to an issue that is - a matter that is an issue in this
- (18) litigation, in this particular trial.
- (19) THE COURT: Well, I don't think that's exactly true,
- (20) counsel. He's done an article which involves investigation, as
- (21) I know it, which means you go out and you talk to people who
- (22) have been involved in these things and you - and you find out
- (23) what they think. Well, what they think is that this is a
- (24) devastating oil spill with absolute long-term effects. That's
- (25) in the articles.

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- (1) MR. STOLL: I haven't seen that.
- (2) THE COURT: And then he repeats, essentially, the
- (3) conclusion that those people that he interviewed drew in his
- (4) article, so to the extent that you think he hasn't done an
- (5) investigation touching on things that are at issue in this
- (6) case, I think that the record belies that.
- (7) MR. STOLL: Your Honor, I haven't seen the - I don't
- (8) know which article you're referring to, but I think the fact
- (9) that he reports that somebody says something, I think that
- (10) every potential juror knows somebody that has said something
- (11) about the oil spill, whether it's been devastating or there's
- (12) been no injury or so on, and I don't think the fact that this
- (13) juror says one person or 50 people or a hundred people say
- (14) that's devastation does it. I mean, the fact that this juror
- (15) happens to be a reporter and therefore prints what somebody
- (16) told him I don't think makes him disqualified as opposed to
- (17) somebody that is -
- (18) THE COURT: I agree with you.
- (19) MR. STOLL: Okay.
- (20) THE COURT: But there's more than that in this record,
- (21) that's all I'm saying. But as long as you maintain that this
- (22) juror should sit on this case, then - then he needs to be
- (23) examined fully. So let's bring him in.
- (24) MR. STOLL: Your Honor, after Mr. Diamond's done, may
- (25) I ask a couple questions?

- (1) A Yeah.
- (2) Q In connection with the oil spill?
- (3) A Totally unrelated to the oil spill.
- (4) Q In connection with your coverage of artist residents in
- (5) Cordova, I take it you've talked to a number of them who have
- (6) done oil spill related work?
- (7) A Yes.
- (8) Q Approximately how many people have you talked to?
- (9) A From Cordova, maybe three or four artists.
- (10) Q How many artists would you say - are these artists with
- (11) personal knowledge of the spill and its effects?
- (12) A Yes.
- (13) Q And they've translated that into various art forms?
- (14) A Yes.
- (15) Q How many artists in that category did you talk to in the
- (16) last five years?
- (17) A A hundred or more.
- (18) Q Just when we were on recess, I just scanned through some
- (19) of
- (20) the - just two articles, one an article that you wrote in 1989
- (21) concerning the Darkened Waters exhibit?
- (22) A Yeah, that's one, right, Darkened Waters.
- (23) Q And then another that was published, I believe it was
- (24) Sunday, February 25th, 1990, Expressions of an Oil Spill?
- (25) A Yeah, that's another one.
- (26) Q All right.

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- (1) THE COURT: Oh, absolutely, surely.
- (2) MR. DIAMOND: May I borrow those back, Your Honor?
- (3) THE COURT: Yes.
- (4) (Jay Blucher enters)
- (5) THE COURT: Hello again.
- (6) BY MR. DIAMOND:
- (7) Q Mr. Blucher, sorry to keep you waiting. I believe we were
- (8) talking about your trip to Cordova or an exhibit that was held
- (9) there. When was that, sir?
- (10) A Well, it wasn't an exhibit that was held there.
- (11) Q I'm sorry?
- (12) A Yeah, it was a traveling kind of exhibit which went to all
- (13) of the communities affected by the spill, both big and small.
- (14) It was like a traveling art exhibit. Expressions of an Oil
- (15) Spill, or something like that.
- (16) Q Were you in Cordova for the opening of that exhibit?
- (17) A No, I only went down there to interview some of the
- (18) artists.
- (19) Q While the exhibit was in Cordova - or were they just
- (20) Cordova based artists?
- (21) A Just Cordova based artists. I wasn't there when it
- (22) actually was in Cordova.
- (23) Q Have you been to Cordova on any other occasions?
- (24) A Yes. Just to interview people.
- (25) Q I'm sorry, just to interview people?

- (1) A My sense is they were both kind of like traveling things,
- (2) traveling exhibits.
- (3) Q You've listened to a fair number of rather poignant
- (4) descriptions of what the oil spill was like and what the clean
- (5) up was like?
- (6) A Yes.
- (7) Q And you've published those interviews in the paper; have
- (8) you not?
- (9) A Yes. Sort of how it's reflected in the art, not on the oil
- (10) spill, per se.
- (11) Q I understand that, but you've talked to artists who've told
- (12) you what it's like to see suffering otters die in their arms?
- (13) A Yes.
- (14) Q And you've described that in articles that you've published
- (15) in the paper?
- (16) A Yes.
- (17) Q You've talked - talked to artists who characterize the
- (18) spill as a brutal attack on our natural world and published
- (19) that in the paper as well?
- (20) A Yes.
- (21) Q In the article, and I'll be happy to share this with you,
- (22) may have been some time since you've read it, but the article
- (23) that you published concerning the Darkened Waters exhibit,
- (24) you
- (25) say in describing the reaction of the visitors to that exhibit
- (26) other tourists nod in agreement. They are surprised to

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- (1) learn - this is not a quote. They are surprised to learn that
 (2) the oil has not been contained and that it is still moving.
 (3) They are surprised to learn that subsistence fishing has not
 (4) been stopped in places as far away as English Bay or that more
 (5) than a dozen commercial fisheries have been canceled.
 (6) As I read the article, this seems to be a statement by you
 (7) as the -
 (8) A Is that the Homer Pratt Museum, is that what that is?
 (9) Q Yes.
 (10) A That was different, that wasn't a traveling thing. I think
 (11) that was just like a - a static display at the museum which I
 (12) believe stayed there.
 (13) Q All right, but you concluded from what you saw that at that
 (14) exhibit that in fact oil had not been contained and that
 (15) subsistence fishing had been stopped in places as far away as
 (16) English Bay?
 (17) A It was kind of an educational display at the museum, so
 (18) that's what they were saying.
 (19) Q But you published in the paper that that was a fact that -
 (20) A That's what the museum was saying. That's what the
 (21) displays at the museum - I mean, separating that from my
 (22) opinion, that's what I mean.
 (23) Q You know English Bay is -
 (24) MR. STOLL: Can he finish his answer?
 (25) MR. DIAMOND: I thought he had. I'm sorry.

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- (1) BY MR. DIAMOND:
 (2) Q Did you finish?
 (3) A Yes, I have.
 (4) Q You know English Bay is a plaintiff in this action - I'll
 (5) tell you that it is.
 (6) A Do I - okay.
 (7) Q And I'll tell you that the effect of the spill of the
 (8) subsistence use of the English Bay lands is also an issue in
 (9) this case.
 (10) A Okay.
 (11) Q Is it your belief that you don't have any opinions - let
 (12) me ask you, do you have any opinions of the effect of the spill
 (13) on the subsistence usage of English Bay property?
 (14) A I don't know enough about that to really have an opinion.
 (15) Q Even though you published this in the paper?
 (16) A What I published in the paper, I believe was what the
 (17) museum was trying to get across to the people. It's not a
 (18) review. It's a - it's a news article about what the display
 (19) was about.
 (20) Q I'll let you read it if you like, but you're talking about
 (21) tourists, and you say they are surprised to learn that the oil
 (22) has not been contained and still moving. They are surprised to
 (23) learn that subsistence fishing has been stopped in places as
 (24) far away as English Bay.
 (25) A I was there for the opening of that at the Homer Pratt

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- (1) Museum and I documented the reactions of museum goers, a
 lot of
 (2) tourists. People who knew very little about the spill.
 (3) Q I take it the message of these - at least one of the
 (4) messages conveyed by the exhibit was that the spill had a very
 (5) substantial effect on subsistence fishing at least on English
 (6) Bay?
 (7) A Yes, that was the point of the exhibit - I mean not
 (8) Chenega Bay specifically, but to educate people about -
 (9) Q Didn't you come away from the exhibit with that impression,
 (10) that subsistence fishing had, in fact, been stopped in places
 (11) as far away as English Bay?
 (12) A That was, in fact, a point of the exhibit display.
 (13) Q As you sit here today, do you believe that to be true?
 (14) A Yes, I believe that to be true.
 (15) Q If there are disputes concerning the effect of the spill on
 (16) subsistence fishing in this litigation and its impact on
 (17) properties, do you think you can put all that aside?
 (18) A Yes, I do. I think I'm going to listen to what evidence
 (19) you show here.
 (20) Q Do you know what persistence is?
 (21) A Yes.
 (22) Q What do you understand that issue to be about?
 (23) A Subsistence or persistence?
 (24) Q Persistence, oil persistence.
 (25) A Oh, oil persistence.

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- (1) Q Yeah.
 (2) A No, I don't know what that's about.
 (3) Q Do you have an opinion as to how long oil will remain out
 (4) there on beaches where it was deposited?
 (5) A I'm not a scientist. I don't know.
 (6) Q Do you have an opinion as to what any residual oil may do
 (7) to the environment?
 (8) A No, I don't. I wouldn't call it an opinion, no.
 (9) Q Do you have an opinion as to how long the effects of the
 (10) spill will last?
 (11) A Yes, I - I do. I think - as I said in my questionnaire,
 (12) I think it's going to be there for my lifetime and my
 (13) children's lifetime.
 (14) Q And their children's lifetime?
 (15) A Yeah, and their children's children's lifetime.
 (16) Q And beyond that?
 (17) A Probably.
 (18) Q You think the effects of the spill are really permanent?
 (19) A I don't see how they can't be.
 (20) Q Let's be painfully frank with one another.
 (21) A Please.
 (22) Q Do you think you can be totally open-minded?
 (23) A I doubt it.
 (24) Q On the issue?
 (25) A I doubt it. I think I know too much. I think I

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- (1) reported - reported it. I don't think you're looking for
 (2) someone who's informed. I think you want a blank slate, a
 (3) tabula rasa up here, and I'm not that.
 (4) Q You have opinions as to the effects of the spill; don't
 (5) you?
 (6) A I've seen with my own eyes. I wouldn't characterize that
 (7) as an opinion.
 (8) MR. DIAMOND: Nothing further, Your Honor. I do want
 (9) to be heard.
 (10) MR. STOLL: I'll withdraw, Your Honor. I'll withdraw
 (11) my objections to the motion.
 (12) THE COURT: All right. I'm going to excuse you, sir.
 (13) It's just - you're just too close to this, you know too much.
 (14) A Thank you.
 (15) THE COURT: You've drawn too many opinions, I'm
 (16) afraid, and this is just the kind of thing where -
 (17) A Absolutely.
 (18) THE COURT: - you shouldn't be sitting on the case.
 (19) A Thank you.
 (20) THE COURT: You don't have to call back because you're
 (21) excused.
 (22) MR. DIAMOND: Can he be admonished?
 (23) THE COURT: Don't be talking. You've got a colleague
 (24) that's coming in here next, so don't be talking about the
 (25) things.

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- (1) MR. DIAMOND: Before the next juror is brought in -
 (2) we always wait until she's out.
 (3) THE COURT: You always wait until she's out of the
 (4) room before you -
 (5) MR. DIAMOND: Well, I can't see, I'm behind the podium
 (6) and Mr. Clough wanted to be heard.
 (7) MR. CLOUGH: Your Honor, you might recall that the
 (8) luck of the draw had people by pure happenstance who are
 (9) associated with each other come up one after another.
 (10) THE COURT: There's two of them right here.
 (11) MR. CLOUGH: I, if possible, did not want us to go
 (12) through even a much shortened investigation of this, but the
 (13) big distinction between the two is that this woman pointed out
 (14) in answer 80 something that she is right now working on a
 (15) layout on an article about the oil spill.
 (16) THE COURT: I believe she also called up to the jury
 (17) clerk or my office to say the very same thing.
 (18) MR. CLOUGH: It's going to be published next week
 (19) while the trial is underway. To me, that seems pretty much -
 (20) I've never heard of a case in American history where a reporter
 (21) who is working on an article about the events is considered to
 (22) be seated as a juror.
 (23) MR. FORTIER: Your Honor, she's a feature page - I
 (24) think she's a feature page layout person. She's not writing.
 (25) THE COURT: Which question is it? Which question is

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- (1) it?
 (2) MR. STOLL: Your Honor -
 (3) MR. CLOUGH: The question is, Your Honor, it carries
 (4) over to the next page, it's 81 on to the next page.
 (5) THE COURT: Counsel, I really don't want to go through
 (6) this again. I suspect you're going to find I'm going to excuse
 (7) this juror. I'll go through the exercise if you want me to,
 (8) but I think it's probable that I'll have to excuse her. We may
 (9) consider that the waste of time that goes on in here when you
 (10) decide whether or not you really want to make an issue of these
 (11) things. If you choose to do that, you get the full
 (12) examination.
 (13) MR. CLOUGH: Your Honor, we would prefer to see her be
 (14) excused at this point.
 (15) MR. STOLL: Your Honor, we're not trying to waste
 (16) time.
 (17) THE COURT: No, no, but, you know, events that occur
 (18) tell you what might occur in the future. That's one of the
 (19) propositions that you're espousing in this case. The last one
 (20) took too much time and didn't need to.
 (21) MR. DIAMOND: May I have a moment with Mr. Stoll?
 (22) THE COURT: Yes.
 (23) MR. CLOUGH: Pardon us, Your Honor.
 (24) MR. STOLL: We'll stipulate, Your Honor.
 (25) THE COURT: Don't I get to see it?

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- (1) MR. DIAMOND: You can if you'd like.
 (2) MR. CLOUGH: You can if you'd like, Your Honor.
 (3) THE COURT: That's all right.
 (4) MR. STOLL: Your Honor, can I just express our opinion
 (5) on the last. We were not trying to prolong something, but I
 (6) think if the person simply repeats what somebody else - they
 (7) heard and they happen to be a reporter and they publish, that
 (8) it doesn't make any difference when somebody else is getting
 (9) told something by somebody else and not passing it on. If they
 (10) form an opinion, that's the issue, and this - until the
 (11) last -
 (12) THE COURT: You never heard any disagreement from me,
 (13) and I don't think you ever heard any disagreement on that
 (14) particular issue from Mr. Diamond. That really wasn't the
 (15) question.
 (16) MR. STOLL: Until the last few questions by
 (17) Mr. Blucher, the answers, he didn't express that, you know, it
 (18) was just until after the break that he expressed these views of
 (19) what, you know, that he had these opinions that would prevent
 (20) him from evaluating the evidence fairly.
 (21) THE COURT: I think you can take that position. On
 (22) the other hand, I read his questionnaire and I thought it was
 (23) fairly obvious from the questionnaire, and the articles when
 (24) you read them together, that it wasn't - there wasn't going to
 (25) be much question.

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- (1) MR. STOLL: We don't have the resources that Exxon
 (2) does, Your Honor, so we hadn't - we didn't know all these
 (3) articles - I'd never looked at any of the articles he'd
 (4) written before.
 (5) MR. DIAMOND: I'll explain to him how Lexus works at
 (6) the next break.
 (7) THE COURT: I was amazed at the extent of your
 (8) knowledge, counsel, so - but I - that may just be a
 (9) resourceful lawyer.
 (10) MR. DIAMOND: It's my little \$1500, four pound PC,
 (11) Your Honor.
 (12) MR. STOLL: Is that how you got the next reporter's
 (13) husband's -
 (14) THE COURT: Mr. Stoll, would it satisfy you if I
 (15) said - I'm not criticizing you.
 (16) MR. STOLL: That's all right, Your Honor.
 (17) THE COURT: I just would like some of these things to
 (18) go a little faster.
 (19) THE CLERK: Should I excuse her?
 (20) THE COURT: You can excuse her and then bring the next
 (21) one in.
 (22) (Debra Shinn enters)
 (23) THE COURT: Hello.
 (24) A Hi.
 (25) THE COURT: Would you please give you name for the

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- (1) thing?
 (2) A Yes.
 (3) Q You understand, then, that the way it will work at trial is
 (4) that lawyers for the plaintiffs, for the Native corporations
 (5) and the municipalities will be presenting evidence, and then
 (6) the Exxon defendants will be presenting evidence?
 (7) A Right.
 (8) Q And that you, if you're on the jury, will be asked to weigh
 (9) that evidence; do you understand that?
 (10) A Yes, I do.
 (11) Q And you can be fair to both sides in weighing the
 (12) evidence?
 (13) A I believe so. Yes.
 (14) Q And Judge Shortell will then give you instructions and you
 (15) will be - instructions as to the law and you will be required
 (16) to apply the law to the evidence that you receive in court.
 (17) Can you do that?
 (18) A Yes.
 (19) Q You have been a mortgage loan underwriter for about 13
 (20) years; is that correct?
 (21) A Well, actually about nine years. I started out as a
 (22) secretary there.
 (23) Q I'm sorry?
 (24) A I started out as a secretary. I wasn't a loan underwriter
 (25) for the whole time.

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- (1) record?
 (2) A My name is Debra Shinn.
 (3) THE COURT: All right. Ms. Shinn, we're going to have
 (4) some brief questioning here. It's - you're under oath and
 (5) you're obligated to tell the truth in your examination as you
 (6) were on your jury questionnaire. Once we finish the
 (7) examination, I'll let you know what happens next; all right?
 (8) A Okay.
 (9) THE COURT: Go ahead.
 (10) MR. FORTIER: Thank you, Judge.
 (11) VOIR DIRE EXAMINATION OF DEBRA SHINN
 (12) BY MR. FORTIER:
 (13) Q Ms. Shinn, my name is Sam Fortier, I represent Native
 (14) corporations in this case. Good afternoon. This is Mr. Stoll
 (15) and he represents municipalities. Ms. Johnson, she also
 (16) represents municipalities.
 (17) Now, Ms. Shinn, I note in your questionnaire that you
 (18) indicate that you don't have any negative feelings about any of
 (19) the entities that were listed, ranging from local governments
 (20) down to Exxon Corporation. That's -
 (21) A Uh-huh, that's correct.
 (22) Q That fairly states where you're at. And have you ever sat
 (23) on a jury before?
 (24) A No, I haven't.
 (25) Q You've watched some TV shows about lawyers and that sort
 of

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- (1) Q Does your work deal mainly with urban properties?
 (2) A Yes, it does.
 (3) Q Have you ever done any work out in rural areas?
 (4) A No, we have a separate rural department and I haven't been
 (5) involved in that.
 (6) Q Have you ever been asked to appraise rural lands,
 (7) undeveloped lands?
 (8) A No.
 (9) Q Have you ever done any appraisals?
 (10) A No.
 (11) Q You review property appraisals for Anchorage residences?
 (12) A Well, I do some outside of Anchorage, you know, we do
 (13) Fairbanks, Soldotna, other places.
 (14) Q But those are city residences?
 (15) A Yes.
 (16) Q You also took a class from Mr. Ferrara (ph)?
 (17) A Uh-huh.
 (18) Q You noted that Mr. Ferrara is listed as a potential witness
 (19) in this case?
 (20) A Yes.
 (21) Q Did you have any feelings one way or another about
 (22) Mr. Ferrara?
 (23) A No, no.
 (24) Q Did you enjoy his class?
 (25) A Some of it, yeah.

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- (1) Q What did the class concern?
 (2) A Real estate appraising.
 (3) Q Would that be a general course on real estate appraising or
 (4) real estate appraising in an urban area?
 (5) A Just a general, like real estate appraising class.
 (6) Q Ms. Shinn, part of this case will concern damages to lands
 (7) owned by the Native corporations and the municipalities. Part
 (8) of it, therefore, will probably involve some fairly extensive
 (9) testimony by numerous land appraising experts. Will you be
 (10) able to – to listen to the testimony of each of those experts;
 (11) do you think?
 (12) A To listen to them?
 (13) Q Yeah.
 (14) A I guess I can.
 (15) Q Do you know a Dr. Green, Hayden Green?
 (16) A No.
 (17) Q Do you know a Steve MacSwain?
 (18) A No.
 (19) Q You've not reviewed any property appraisals by
 (20) Mr. MacSwain?
 (21) A Not that I recall.
 (22) Q You indicate that you know Birch, Horton, Bittner & Cherot
 (23) employees. I think Kathy Black is somebody you know?
 (24) A Uh-huh.
 (25) Q You know her personally?

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- (1) A Yes.
 (2) Q You don't know Mr. Petumenos, though; is that correct?
 (3) A No.
 (4) Q Now, the fact that you know Birch, Horton and Bittner
 (5) employees personally doesn't make a difference to you in the
 (6) evaluation of testimony in this case, would it, or evidence?
 (7) A It shouldn't, no.
 (8) Q You don't – it wouldn't?
 (9) A It shouldn't, no.
 (10) Q Besides a class from Mr. Ferrara, have you taken any other
 (11) classes of real property appraisal?
 (12) A Not in appraisals, just underwriting seminars, underwriting
 (13) appraisals.
 (14) Q Have you ever heard in appraising of the concept of natural
 (15) lands or conservation lands?
 (16) A No.
 (17) Q You've never heard of that concept at all; is that right?
 (18) A No.
 (19) Q Now, you've lived in Alaska for 13 years?
 (20) A Uh-huh.
 (21) Q Do you like living in Alaska?
 (22) A Uh-huh, I do.
 (23) Q What do you like about it?
 (24) A Oh, I just like the weather, the scenery, the smallness of
 (25) the community.

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- (1) Q Have you – do you enjoy outdoor activities?
 (2) A Yes.
 (3) Q Do you – do you go fishing?
 (4) A I have in the past. It's not one of my big things I do.
 (5) Q Does your husband go fishing?
 (6) A Occasionally.
 (7) Q When he goes fishing, where does he go?
 (8) A The last time we went was when my dad was up here two
 (9) summers ago, and we flew out to some river. I can't even
 (10) remember where it is. For kings, for kings, I mean.
 (11) Q You –
 (12) A I'm sorry, for king salmon.
 (13) Q For king salmon? Have you ever fished in the Prince
 (14) William Sound area?
 (15) A No.
 (16) Q Couple more questions about Mr. Ferrara. Because you took
 (17) a class from Mr. Ferrara, would you put any – any extra –
 (18) would you tend to think he was more credible than other
 (19) witnesses or would you evaluate his testimony the same way
 (20) you would evaluate anybody else's?
 (21) A I think I could evaluate it just as anyone else.
 (22) Q Do you know anything about Native corporations?
 (23) A Not too much, no.
 (24) Q Do you know why Native corporations were formed?
 (25) A Uh-huh.

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- (1) Q What is your understanding of why they were formed?
 (2) A Well, I don't know.
 (3) Q Have you ever heard it was to settle land claims between
 (4) Natives and the federal government?
 (5) A Again, I guess I just don't know too much about Natives.
 (6) Q And with regard to the – to the information about the oil
 (7) spill, you indicate that you've heard some things about it?
 (8) A Correct.
 (9) Q And coming into court, would you be able to put aside those
 (10) things you've heard about the oil spill and listen only to the
 (11) evidence in here?
 (12) A Yes.
 (13) Q You understand that the stuff you heard outside of the
 (14) courtroom about the oil spill wouldn't constitute evidence in
 (15) the courtroom; don't you?
 (16) A Yes.
 (17) MR. FORTIER: I have no further questions.
 (18) VOIR DIRE EXAMINATION OF DEBRA SHINN
 (19) BY MR. DIAMOND:
 (20) Q Good afternoon, is it Mrs. or Ms.?
 (21) A Mrs.
 (22) Q Mrs. Shinn, Mr. Fortier asked all my questions so I'm going
 (23) to be real brief.
 (24) I noticed you have spent time on the Prince William Sound.
 (25) Where do you go, where have you been?

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- (1) A Well, we just went on the – you know, the drive to Valdez
 (2) and on the ferry back over through Whittier, and that's about
 (3) the extent of it.
 (4) Q On a private boat or on the ferry?
 (5) A On a private boat and a ferry. I've done it twice.
 (6) Q One way on a boat and one way on a ferry?
 (7) A Yeah.
 (8) Q Have you been anywhere else on Prince William Sound?
 (9) A No.
 (10) Q Haven't visited any of the islands?
 (11) A Huh-uh.
 (12) Q Do you have any pets at home?
 (13) A Two cats.
 (14) Q Cats must come in pairs. We talked to somebody else with
 (15) two cats.
 (16) THE COURT: More than one, I think.
 (17) MR. DIAMOND: What's that?
 (18) THE COURT: More than one.
 (19) BY MR. DIAMOND:
 (20) Q This case involves damage from the oil spill or damage
 (21) claims arising from the oil spill concerning – concerning
 (22) land, but we also anticipate there's a possibility that there
 (23) may be some testimony and there may be some photographs
 and
 (24) other visuals of animals, fish, birds that were affected by the
 (25) spill and some of it is somewhat graphic and some of it is

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- (1) somewhat disturbing. How do you think you'll deal with that?
 (2) A Well, I probably won't like it. I'm sure it's pretty
 (3) distasteful.
 (4) Q The – the reason I'm telling you that, and I don't know
 (5) that this is going to happen, but if it does, jurors need to be
 (6) able to rein in their emotional response and decide issues of
 (7) facts based on the evidence and not on emotional reaction to
 (8) it, and I guess my question to you is, you're a pet owner, you
 (9) probably love your cats very much. Do you think you can put
 (10) aside emotional tugs and listen to what the witnesses say and
 (11) the instruction that the Court gives and render a decision
 (12) based only on that and not on emotion?
 (13) A I think so.
 (14) Q Have any qualms?
 (15) A Maybe a little.
 (16) Q How little, you tell me. Well, the reason is, both sides
 (17) want – both sides are entitled to jurors who can be totally
 (18) fair and focus on the information that's conveyed from the
 (19) witnesses and decide the case based on that and nothing but
 (20) that. And we just want to know whether you're that kind of
 (21) person. If you think you're going to have a problem, let us
 (22) know.
 (23) A Well, I don't think I am. Of course I haven't been through
 (24) it, so I don't know.
 (25) Q Only you can help. You think you could put those things

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- (1) aside?
 (2) A Yes, I do.
 (3) Q You mentioned a Kathy Black at Birch Horton. Is she a
 (4) lawyer?
 (5) A Yes.
 (6) Q Is she a personal friend?
 (7) A Uh-huh.
 (8) Q Do you know whether she's done any work in connection
 with
 (9) the oil spill?
 (10) A I don't know. I believe she's on sabbatical for six months
 (11) now.
 (12) Q Before that, did you ever talk to her about –
 (13) A No.
 (14) Q – any legal work she did in connection with the spill?
 (15) A No, we don't talk –
 (16) Q You understand that jurors are charged with the
 (17) responsibility of deciding the case based on the evidence and
 (18) not who represents whom?
 (19) A Yes.
 (20) Q Okay. So you won't hold it against me that you never heard
 (21) of my firm or won't hold it against my client that you've never
 (22) heard of my firm?
 (23) A No.
 (24) Q It's not a plus for Mr. Petumenos that you've heard of
 (25) Birch Horton?

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- (1) A No.
 (2) Q Is serving on this jury something you'd like to do?
 (3) A Well, I'm kind of torn. It would be difficult for me to be
 (4) away from my job for that long. I think it would be an
 (5) interesting experience, but it would be hard for me to be away
 (6) from work.
 (7) Q So you have mixed feelings about it?
 (8) A Yes.
 (9) Q You understand it's a civic obligation?
 (10) A Yes.
 (11) Q And it's one you're willing to do?
 (12) A Yes.
 (13) MR. DIAMOND: Okay, thank you. Nothing further.
 (14) THE COURT: Ms. Shinn, you've been passed for cause.
 (15) That doesn't – that's not the end of the story, though. We
 (16) still have to question a number of jurors and the final jury
 (17) composition hasn't been settled on yet. So all I can tell you
 (18) is you may very well be a juror in this case, but that I can't
 (19) tell you finally what the jury will be until after we finish
 (20) the examination of all the jurors.
 (21) So I'm going to excuse you and let you go until we call you
 (22) back. You don't have to call in because we'll contact you.
 (23) I – it's clear to me that this jury selection is going to take
 (24) at least to Monday, so we'll be contacting you, but it may not
 (25) be immediately. Just – if you just maintain your – the open

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- (1) phone lines, we'll get hold of you, all right?
- (2) A Okay.
- (3) THE COURT: Remember now you're a potential juror so
- (4) you shouldn't talk to anybody about the case, especially those
- (5) jurors out there; all right?
- (6) A Yes.
- (7) THE COURT: Thanks.
- (8) (Debra Shinn leaves).
- (9) THE COURT: Don't bring the next juror in. I want to
- (10) talk to counsel about something. You can leave that there, but
- (11) counsel, this is the tit for tat rule here. I want you to take
- (12) a look at Mr. Dorsey's -
- (13) MR. DIAMOND: Mr. -
- (14) THE COURT: Dorsey. He's the next one up after this
- (15) one, because I want to be as efficient as I can be. This juror
- (16) has answered a number of questions about his opinions. The
- (17) best one I think is that, do you have an opinion regarding the
- (18) environmental standards imposed on companies doing
- (19) business in
- (20) Alaska and he - this is a quote, typical environmental fascist
- (21) bureaucracy. But he goes on. He tells us that crude oil
- (22) dissipates after a few years due to bacterial ultraviolet
- (23) breakdown and his opinion about the municipalities or Native
- (24) corporations suing Exxon is, quote, big money grab, unquote.
- (25) He also feels the municipalities in question, except for
- (26) Cordova, were negligibly affected and Cordova only
- (27) marginally.

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- (1) And he says excessive damages should be only for lost
- (2) equipment
- (3) and provable lost wages. Do you really want to question Mr. -
- (4) MR. DIAMOND: I wanted to hear Mr. Stoll ask him
- (5) whether he could put all of that to one side.
- (6) THE COURT: You have a point.
- (7) MR. DIAMOND: I was going to propose a swap with
- (8) number 40 and we could get out of here that much earlier.
- (9) THE COURT: I thought you got your swap already, only
- (10) after a long questioning.
- (11) MR. DIAMOND: I think this man has some fairly strong
- (12) opinions that might prevent him from being an impartial juror.
- (13) THE COURT: I do, too. So I'm assuming I will get no
- (14) objection when I bring the next jury panel member in for
- (15) examination but I let Mr. Dorsey go, all right?
- (16) MR. DIAMOND: I would have used him -
- (17) MR. STOLL: No objection, Your Honor.
- (18) MR. DIAMOND: I would have used him for a trade had
- (19) you not done that, though, Your Honor.
- (20) THE COURT: I had no idea that was true, but I did
- (21) feel after I read his questionnaire, there was a substantial
- (22) question. So Mr. Dorsey can go and he's excused, period, and
- (23) the next juror should come in.
- (24) (Howard Lobb enters).
- (25) THE COURT: Sir, would you do me a favor and give your
- (26) name for the record, please?

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- (1) A Howard William Lobb.
- (2) THE COURT: Mr. Lobb, we're going to ask you a few
- (3) brief supplemental questions to your questionnaire. All of
- (4) these questions are answered under oath; you understand that,
- (5) right?
- (6) A Yes.
- (7) THE COURT: Go ahead, counsel.
- (8) MR. STOLL: Good afternoon, Mr. Lobb - is it Lobb or
- (9) Lobe?
- (10) A Lobb
- (11) VOIR DIRE EXAMINATION OF HOWARD LOBB
- (12) BY MR. STOLL:
- (13) Q My name is Bob Stoll and Trudy Johnson and I represent
- (14) municipalities in this litigation and Sam Fortier here
- (15) represents the Native corporations that have brought this
- (16) action for recovery of damages. Is there anything about the
- (17) nature of this case that you think should prevent you from
- (18) sitting as a fair juror in this case?
- (19) A Nothing I know of.
- (20) Q Okay. Now, you mentioned on the questionnaire on page 5
- (21) of
- (22) it that you - that you have some friends or family members
- (23) that have - that own some stock in a Native or a village
- (24) corporation?
- (25) A No, that have -
- (26) Q Do you own any stock in a Native corporation?

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- (1) A No.
- (2) Q Okay. Well, there's a question says, have you, a family
- (3) member or close friend ever been employed - oh, I'm sorry,
- (4) have you been employed by a Native corporation?
- (5) A Right.
- (6) Q And what Native corporation was that?
- (7) A It was Arctic Slope Regional. My company is a subsidiary
- (8) of their company.
- (9) Q Right, I understand that. And you've had a satisfactory
- (10) experience with that - that company?
- (11) A Yes.
- (12) Q That company is not - obviously is not a plaintiff in this
- (13) case?
- (14) A No.
- (15) Q Or the parent company, and you don't think that's going to
- (16) affect your ability to evaluate the evidence in this case?
- (17) A No.
- (18) Q Now what - you worked on a drilling rig, I see, at some
- (19) point in time. When was that?
- (20) A That was in the '80s in Oklahoma. Early '80s.
- (21) Q And as a result of that experience, do you have any
- (22) particular fondness - or any other experience, do you have any
- (23) particular fondness for oil companies or Exxon in particular?
- (24) A Not really.
- (25) Q You're not -

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- (1) A It was a job is all it was.
- (2) Q It was just a job. You're not - that's not going to
- (3) affect your ability to evaluate the evidence here?
- (4) A (Indicates negatively).
- (5) Q Okay, then on the page 11 of the questionnaire, you were
- (6) asked how do you - based upon your experience and
- knowledge,
- (7) what's your response to the various types of entities, and one
- (8) of them was municipalities and another one was Native
- (9) corporations, Natives, Exxon Corporation, et cetera. Do you,
- (10) sir, remember that question?
- (11) A Yeah.
- (12) Q All of your checks are sort of in the middle. I mean,
- (13) they're between somewhat favorable to somewhat unfavorable?
- (14) A Right.
- (15) Q Is there any reason why in particular you felt somewhat
- (16) favorable towards the municipalities and - or the Native
- (17) corporations or unfavorable towards others such as Exxon?
- (18) A Well, I just felt that sometimes you don't get all the
- (19) information.
- (20) Q I see?
- (21) A From all - from all sides.
- (22) Q So you're just going to wait and evaluate what you hear?
- (23) A Yeah.
- (24) Q And I notice in one of the questions here on the following
- (25) page, actually, you were asked, do you think that the Exxon

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- (1) Corporation has paid enough money as a result of the Exxon
- (2) Valdez, and you said you had no opinion. So you were forming
- (3) no opinion in that regard?
- (4) A Right.
- (5) Q And in fact, you wrote down here, I'll wait till I - I
- (6) hear the facts?
- (7) A Right.
- (8) Q So you know that the fact - you're not going to make any
- (9) determination until you hear the evidence?
- (10) A That's right.
- (11) Q And in one of your questions, one of the questions, you -
- (12) you said that you have not been to any of the areas since the
- (13) spill, you've not been to any of the areas that were affected
- (14) by the spill?
- (15) A No.
- (16) Q But that you didn't think that things were back to normal
- (17) in those areas; do you recall that?
- (18) A Yes.
- (19) Q Now, first of all, would you - before making a final
- (20) determination, if that's an issue in this case, would you wait
- (21) to hear all the evidence?
- (22) A Yes.
- (23) Q And what's - what is the basis of your saying that you
- (24) don't know if things are back to normal?
- (25) A I've worked in some smaller oil spill conditions and it all

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- (1) depends on how you do the clean-up, whether you've done it
- (2) right.
- (3) Q Have those oil spills been here or when you were in
- (4) Oklahoma?
- (5) A This was in Oklahoma.
- (6) Q So the circumstances there can be different than they are
- (7) here?
- (8) A Right, right.
- (9) Q You're not making a final evaluation?
- (10) A No.
- (11) Q Have you talked to any friends about the spill?
- (12) A No.
- (13) Q And have you gone to - have you ever been to Prince
- (14) William Sound?
- (15) A No.
- (16) Q Or to Kodiak?
- (17) A No.
- (18) Q Do you like living up in Alaska?
- (19) A Yes, sir.
- (20) Q What do you like about Alaska?
- (21) A Well, basically because I come up here in '52 and worked
- (22) the coal mines and made a man out of me. I guess that's why.
- (23) I feel like it's more my home than Washington.
- (24) Q You feel very comfortable up here?
- (25) A Yeah.

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- (1) Q You like the out-of-doors?
- (2) A Right.
- (3) Q Do you go camping or fishing?
- (4) A I do some fishing.
- (5) Q Where do you go fishing?
- (6) A Usually in Homer, Homer or Seward.
- (7) Q Have you talked to anybody in Seward about the oil spill?
- (8) A No.
- (9) MR. STOLL: Thank you very much, Mr. Lobb.
- (10) A Okay.
- (11) MR. CLOUGH: Hi, Mr. Lobb. My name's John Clough,
- (12) appreciate your hanging around all day. I know it's been a
- (13) long day for all of us. I'll try and be quick. I'd like to
- (14) follow up on some of Mr. Stoll's - oh, this is Chuck Diamond.
- (15) He's going to be working with me at the trial and we're going
- (16) to be, as I think you know, representing Exxon on this.
- (17) VOIR DIRE EXAMINATION OF HOWARD LOBB
- (18) BY MR. CLOUGH:
- (19) Q You said you were up in the mines in Nenana in '52?
- (20) A Yes, in Suntrana.
- (21) Q Where?
- (22) A Suntrana just up the river three and a half miles from
- (23) Healy. It's gone.
- (24) Q What brought you up there?
- (25) A A friend of mine got me a job from - from Washington. I

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- (1) was living there.
- (2) Q And how long were you working up there, sir?
- (3) A Well, I worked till I got - it was '52. I got there in
- (4) August and I worked till I got drafted in May and then come
- (5) back up in July of '57 after I got out of the service, and left
- (6) in December at year.
- (7) Q You were in Germany, I believe?
- (8) A Right.
- (9) Q And you were in the service for four years?
- (10) A Almost.
- (11) Q What did you do while you were in the service, sir?
- (12) A I was a parts clerk.
- (13) Q And how much of that time did you spend over in Germany?
- (14) A Three years to the day.
- (15) Q And you came back and you were here about six months?
- (16) A Right.
- (17) Q And is that when you went back to Washington or -
- (18) A Right.
- (19) Q A when did you get into the oil rig business?
- (20) A It was in '80 in Oklahoma.
- (21) Q Before that, what did you do, if I might ask, sir?
- (22) A I was a mechanic.
- (23) Q Was that in Oklahoma or -
- (24) A No, that was in Washington and California.
- (25) Q Was this a - a major company you worked for on the oil rig

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- (1) or one of the wildcatters?
- (2) A It was wildcat.
- (3) Q Which one?
- (4) A It was Oil and Gas Logistics.
- (5) Q Do you recall if they were doing any work for Exxon at any
- (6) time?
- (7) A No, there was - it was all wildcat. They were one of the
- (8) first companies out of Canada.
- (9) Q Did their business dry up with the drop in oil prices later
- (10) in the '80s?
- (11) A Yeah. That's basically what happened, right.
- (12) Q Lot of companies went through that?
- (13) A Right.
- (14) Q You said - I think it was while you were working with them
- (15) you had worked on some smaller oil spills?
- (16) A Right.
- (17) Q Were they all down in Oklahoma?
- (18) A Right.
- (19) Q Were they on land or on the water?
- (20) A They were on land and you - if you want to call a creek -
- (21) it would be water when they got into creeks.
- (22) Q What size of spills were you involved with?
- (23) A Oh, maybe two or three hundred barrels.
- (24) Q And were you involved in the actual clean-up of some of
- (25) those?

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- (1) A Part of the crew, right.
- (2) Q How did you guys go about doing that?
- (3) A Same thing. We had our - I can't think what they call
- (4) them now - to stop it from running to the streams and most of
- (5) ours was done with Amway. We sprayed it with Amway soap
- that
- (6) kept it from spreading and kept - kept it together.
- (7) Q That's right, they use that detergent; right?
- (8) A Right.
- (9) Q Then would you just basically scoop it up afterwards?
- (10) A Right, we sucked it up or mopped it up.
- (11) Q Now you said, I believe your response -
- (12) A Sorbent pads is what I was trying to think of.
- (13) Q They still use Sorbent pads some today? You had said you
- (14) had worked on some smaller spills, and you checked that box
- no
- (15) as to whether you thought things might have recovered from the
- (16) Exxon spill because you didn't know - I think what you said
- (17) was that it depends on how a spill is cleaned up?
- (18) A Right.
- (19) Q What makes it different? How do you do it right versus not
- (20) right in cleaning up the kind of spills you were working on?
- (21) A Well, for one thing, in the experience we had back there,
- (22) that hot water set oil up.
- (23) Q When you say set it up, what do you mean?
- (24) A It doesn't - it doesn't let it float out. In other words,
- (25) it'll just mat in one place. It stops it from being oil

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- (1) anymore. It makes it a colagual (sic), whatever you want to
- (2) call it, kind of curdles it so it's harder to - harder to pick
- (3) it up then because you got a whole bunch of little masses, like
- (4) something to suck up with a vacuum cleaner or rinse.
- (5) Q Do you know if they used hot water to clean up the Exxon
- (6) spill at all?
- (7) A I've seen some pictures and they were using some - I don't
- (8) know if it was steam or pressure.
- (9) Q But from what you saw, was it your understanding that they
- (10) were using some hot water wash on some of the beaches in
- Prince
- (11) William Sound?
- (12) A Right.
- (13) Q When you saw that, did you think that was a good idea?
- (14) A Well, I didn't think it was good or bad. I just thought
- (15) they'd have to do it more than once.
- (16) Q Why do you say that?
- (17) A Because I don't think you can get it all that way. That's
- (18) just my opinion. Like I say, I've never been down there. I
- (19) didn't see it, I just thought well, I guess that's the way they
- (20) want to do it. With my experience, it didn't work.
- (21) Q Now, when it didn't work, was it your experience that it
- (22) tended to leave more oil on the environment or on the land?
- (23) A Some was left, yes, but it was hard to clean up. That's
- (24) the reason.
- (25) Q When you worked on the oil spills down in - In Oklahoma,

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- (1) did you come into physical contact with any of the spilled oil
 (2) yourself? Did you touch it, get it on you?
 (3) A Oh, sure.
 (4) Q Did you have any worries about the toxicity of it whether
 (5) it would hurt you if you got spilled crude on you?
 (6) A Huh-uh.
 (7) Q Because we're making a record, you have to speak so
 (8) everybody can understand.
 (9) A No, I didn't worry about it.
 (10) Q Did other people on the crew you were in on occasion get it
 (11) on them?
 (12) A Sure.
 (13) Q Did any - and you didn't have any personal fears that you
 (14) were being exposed to a toxic substance or anything like that?
 (15) A No.
 (16) Q Did that happen to you more than once in the course of your
 (17) work?
 (18) A Yes.
 (19) Q You know, you also - you explained to plaintiffs' counsel
 (20) why you checked somewhat unfavorable in that little chart they
 (21) have on the thing and I believe you made a reference to
 (22) sometimes people don't - try and find my notes on it, but
 (23) sometimes people don't get all the facts out or tell the whole
 (24) story?
 (25) A Right.

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- (1) Q What did you mean by that?
 (2) A Well, just that sometimes you're told certain things and
 (3) sometimes you're not told certain things. I was raised to
 (4) believe nothing you hear and only half of what you see.
 (5) Q It's gotten you here today. So do you feel that there's
 (6) sort of an untold story to things about the Exxon Valdez oil
 (7) spill?
 (8) A I couldn't say. I really couldn't.
 (9) Q Do you feel that Exxon's been holding back anything about
 (10) the spill?
 (11) A No.
 (12) Q Do you feel that anybody else has?
 (13) A Well, I think there'll be some things brought up in this
 (14) trial maybe that hasn't been said.
 (15) Q But I guess what I'm trying to get at is do you feel - put
 (16) it this way, do you think that Exxon's been keeping secrets?
 (17) A No.
 (18) Q Trying to hide information from the public about this?
 (19) A No.
 (20) Q You also - and this time I have to refer you to your
 (21) questionnaire, if you would, sir, could you take a look at page
 (22) 12 and it's question - I don't know how we came up with this
 (23) numbering system - 51XX(d) and your response is Hazelwood
 (24) has
 (25) been - and then it cut off, at least on my copy.
 (26) A Oh, I'm sorry. Hazelwood has been tried.

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- (1) Q And did you - when you put that down, said have you formed
 (2) any opinions about the oil spill or how it's affected things,
 (3) what were you meaning there when you wrote that about
 Captain
 (4) Hazelwood?
 (5) A That as far as I'm concerned, he's been tried and it's
 (6) forgotten.
 (7) Q Now, we're going to be talking a lot about the clean-up of
 (8) the Valdez spill and especially some of the clean-up of the
 (9) lands because this is a case about lands owned by the
 municipal
 (10) corporations and the Native corporations, the plaintiffs we're
 (11) here with, and we're going to be showing pictures and talking
 (12) about that.
 (13) As you hear evidence of how the clean-up was done and how
 (14) well each of us thinks it worked out, do you think you'll be
 (15) able to put aside your personal experience and history in that
 (16) area?
 (17) A Yes.
 (18) Q And do you think that you'll be able to fairly judge, for
 (19) example, the techniques that Exxon used under the direction of
 (20) the Coast Guard cleaning up the beaches?
 (21) A Yes.
 (22) MR. STOLL: Objection, Your Honor.
 (23) THE COURT: What's the objection? Let me hear the
 (24) question again.
 (25) MR. CLOUGH: I will rephrase it to the best of my

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- (1) memory. Do you feel you will be able to fairly judge the
 (2) techniques used by Exxon under the direction of the Coast
 Guard
 (3) to clean up the beaches.
 (4) THE COURT: Objection's sustained. I'm sure you can
 (5) get at the question in another way, go ahead.
 (6) BY MR. CLOUGH:
 (7) Q Whoever did it, do you feel you can set aside your personal
 (8) experience down there in Oklahoma and your personal
 experience
 (9) on cleaning up the smaller spill as you hear about whatever was
 (10) done in cleaning up the beaches touched by the oil from the
 (11) Exxon Valdez oil spill?
 (12) A Yes.
 (13) Q I was going to ask you this, too, do you want to serve on
 (14) this jury, sir?
 (15) A Yes, I'd like to serve on it, but there's other people
 (16) probably more qualified than I am.
 (17) Q Well, the main qualifications, you know, are the ones the
 (18) judge talked to you before. Why would you like to serve on
 (19) it.
 (20) A Well, mostly just to hear the evidence and see that it's
 (21) done fairly.
 (22) Q And you feel that you could render a fair, fair decision on
 (23) the evidence?
 (24) A Yes.
 (25) Q Now, do you understand that in this case, the plaintiffs

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- (1) will get to go first and present all of their evidence first?
 (2) A Uh-huh.
 (3) Q And they'll probably take several weeks to do that?
 (4) A I'm aware of that.
 (5) Q And that we, the defense, won't have an opportunity to put
 (6) on our witnesses and evidence until after the plaintiffs have
 (7) put on their case. Are you prepared to maintain an open mind
 (8) throughout the entire course of the trial?
 (9) A Yes.
 (10) Q And not decide any issues until you've heard the evidence
 (11) from both sides, sir?
 (12) A Yes.
 (13) MR. CLOUGH: Just a moment, Your Honor. Mr. Diamond's
 (14) asked another question I'd like to ask you.
 (15) BY MR. CLOUGH:
 (16) Q Why do you think there's more qualified people than you to
 (17) serve, sir?
 (18) A I never thought about it that way.
 (19) Q Well, just a minute ago you said -
 (20) A Yeah, well there's probably more people that want to be on
 (21) here.
 (22) Q Is your employer going to be - if you're selected to serve
 (23) on this jury, will they pay your salary for the time you're on
 (24) the jury?
 (25) A Yes.

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- (1) MR. CLOUGH: I'm just thumbing through your
 (2) questionnaire, sir, to see if there's anything else other than
 (3) that while you're here and I don't think there is. Your Honor,
 (4) pass for cause.
 (5) THE COURT: All right, Mr. Lobb - yes?
 (6) MR. STOLL: I have one follow-up question, Your
 (7) Honor.
 (8) THE COURT: Sure, go ahead.
 (9) MR. STOLL: Mr. Lobb, excuse me, I just want to ask a
 (10) question.
 (11) VOIR DIRE EXAMINATION OF HOWARD LOBB
 (12) BY MR. STOLL:
 (13) Q Regardless of what Exxon - that Exxon may want to blame
 (14) somebody else for some of this, you understand that the issue
 (15) of fault is not an issue in this case?
 (16) A Yes.
 (17) Q And the issue is whether the municipalities, the Native
 (18) corporations have been damaged and Exxon is responsible for
 (19) that under the instructions the Judge will give you, you
 (20) understand that?
 (21) A I understand that.
 (22) Q So even though they may want to blame it on the Coast
 (23) Guard
 (24) or somebody else, as far as this court is concerned, they're
 (25) responsible?
 (26) A I understand that.

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- (1) MR. STOLL: Thank you very much.
 (2) THE COURT: Mr. Lobb, you've been passed for cause.
 (3) That simply means that you're still on the jury panel. I don't
 (4) know what the final composition of the jury will be and that'll
 (5) take at least another day to determine, but it's likely you
 (6) will be on this jury, so you should treat this situation as if
 (7) you will be on the jury.
 (8) There are more things to come, though, so what I'd like you
 (9) to do, I'll excuse you for the remaining five minutes of the
 (10) trial day and for Monday, too. We won't be calling you on
 (11) Monday. We'll call you back when it's time to let you know
 (12) whether - if you need more information or if you should come
 (13) in here for further examination; all right?
 (14) A Okay.
 (15) THE COURT: Since you're still a potential jury member
 (16) for this case, remember, don't talk to anybody about the case,
 (17) including fellow panel members. Very important you don't
 (18) share
 (19) information you got in here or the questions that were asked so
 (20) that we can make sure that the panel comes in here free of any
 (21) taint, all right?
 (22) A All right.
 (23) THE COURT: All right, Mr. Lobb, thanks very much for
 (24) your time and you're excused until we call you back.
 (25) A Okay.
 (26) MR. STOLL: Excuse me for my indulgence, Your Honor.

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- (1) THE COURT: No. You don't need me to excuse you,
 (2) counsel. If there had been an objection, I would have
 (3) sustained it rather forcefully.
 (4) MR. STOLL: I'd just like to have a truce and not get
 (5) involved in that.
 (6) THE COURT: Yeah, but when you keep firing shots,
 (7) counsel, truces are hard to come by.
 (8) MR. STOLL: I understand.
 (9) THE COURT: All right. Now, does anything else remain
 (10) today?
 (11) MR. STOLL: Don't we have another juror?
 (12) THE COURT: No, I think that's it. We're done.
 (13) Remember, I skipped over and excused that other juror. So do
 (14) we -
 (15) MR. STOLL: I was just getting warm.
 (16) THE COURT: And would it have been extra, you would
 (17) have had an opportunity.
 (18) MR. DIAMOND: Unfinished pieces of business from
 (19) earlier in the week, Mr. Kennedy, Naked Island, we keep
 (20) bringing the maps around if you'd like to see them.
 (21) THE COURT: Sure, I'd like to see them, sure. What
 (22) number was Kennedy; do you remember?
 (23) MR. DIAMOND: 12 or 13, I believe.
 (24) MR. DIAMOND: 12.
 (25) THE COURT: I got it.

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- (1) MR. CLOUGH: Your Honor, this discussion is probably
 (2) held best if we come to the bench and show you.
 (3) THE COURT: Sure.
 (4) MR. CLOUGH: Your Honor, this is one of the
 (5) plaintiffs' exhibits. It's number, for the record, 3751. Bob,
 (6) I can't remember which of the two stickers is the one for this
 (7) case. PX1355 is the number for this court, Your Honor, and
 (8) what the plaintiffs' exhibit shows is oiling not shown by SCAT2
 (9) mapping, which is the Exxon - actually Exxon co-star for
 (10) purposes of this discussion, Prince William Sound maps
 (11) conducted in 1989, and the map is pretty simple. It points in
 (12) pink to all the places throughout Prince William Sound where
 (13) they say there was oil that the Exxon maps didn't show any oil
 (14) and Naked Island, which is a particularly important location
 (15) because it's where the very first clean-up was ever conducted.
 (16) It is surrounded most of the way in pink, as you can see. It's
 (17) about - I looked on the scale. That's about seven or eight
 (18) miles across there. It's not a huge island.
 (19) He flew out to it three different times. I have a
 (20) transcript as to what he said about it in terms of
 (21) observations, and I think I lost the page. I'll have to turn
 (22) it back.
 (23) MR. CLOUGH: The particular island is not one of the
 (24) parcels at issue. I don't want to raise an inference that it
 (25) is. The testimony about going out to Naked Island starts at

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- (1) the witness myself.
 (2) THE COURT: The witness who's going to support that?
 (3) MR. STOLL: Yeah, he's simply going to say this was
 (4) reported oiled by somebody. He's not making a statement that
 (5) this - this map does not purport to show nor will he claim
 (6) that this map, that it shows that Naked Island was heavily or
 (7) lightly oiled, or anything like that. That's not - that's
 (8) not - that's not what this is all about.
 (9) MR. CLOUGH: We plan to be presenting testimony and
 (10) again, Naked Island is the first place it comes up because it's
 (11) the first place any clean-up was conducted, that there was
 (12) limited oil on Naked Island.
 (13) THE COURT: You going to contradict that?
 (14) MR. STOLL: I don't know the answer to that, Your
 (15) Honor. I think the issue is whether - all this purports to
 (16) show is that it was oiled in some places on Naked Island. I
 (17) don't think there -
 (18) THE COURT: So in response to the question, was this
 (19) oiling limited or unlimited, what's he's going to answer?
 (20) MR. STOLL: I don't know the answer to that. Naked
 (21) Island is not - there's lots of places in Prince William
 (22) Sound - let me just hold this up. There's lots of places in
 (23) Prince William Sound that are not an issue in this case. I
 (24) mean -
 (25) THE COURT: You're telling me, counsel.

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- (1) the top of page 66, sir, and continues over to the bottom of
 (2) 67.
 (3) THE COURT: All right. I remember this testimony
 (4) here, so -
 (5) MR. CLOUGH: And well, you have the testimony in front
 (6) of you. His recollection, strong personal recollection as to
 (7) the degree of oiling and oil that he saw there, we're going to
 (8) have a big - we think the map is quite erroneous in the terms
 (9) of degree of oiling and the extent of oiling shown there. So
 (10) we have the concern that it is not beyond question -
 (11) THE COURT: Why is it an issue?
 (12) MR. STOLL: Why is it?
 (13) THE COURT: Why is Naked Island an issue?
 (14) MR. STOLL: It's not an issue.
 (15) MR. CLOUGH: They're challenging our view of the
 (16) mapping.
 (17) THE COURT: Sure, they're saying this is one instance
 (18) of - everybody agrees it was oiled; right? And your maps show
 (19) it wasn't; right?
 (20) MR. CLOUGH: Our maps show it has very limited oil;
 (21) their maps show it doesn't have that.
 (22) MR. STOLL: No, it doesn't. Here's what it says, Your
 (23) Honor, and this is what the testimony will be, shorelines
 (24) unsurveyed, a claim by Exxon, and the maps show oil. It
 (25) doesn't say quite a bit of oil. It says oil. I've talked to

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- (1) MR. STOLL: So we're not - that were oiled, and so
 (2) that's not the - I mean, that are oiled that the land is not
 (3) owned by a Native corporation or municipality. So this is just
 (4) another piece of property. I mean, it's - Naked Island, this
 (5) case is not about Naked Island.
 (6) THE COURT: I hope it's not.
 (7) MR. CLOUGH: 20 seconds on that point, Your Honor.
 (8) MR. STOLL: We're going to be here a long, long time.
 (9) I want to go home, Your Honor.
 (10) MR. CLOUGH: We all do, believe it or not. Throughout
 (11) the motion practice and the depositions, the way they've
 (12) attacked the validity of the maps overall is not by attacking
 (13) the parcels in question. It's, "Look at this example over on
 (14) Kodiak," or, "Look at this example here," or, "Look at this
 (15) example here."
 (16) Most of the examples, almost all of the Kodiak examples are
 (17) not on parcels you see here, but they use those examples to
 (18) impeach the entire mapping system.
 (19) MR. STOLL: Your Honor, we have the burden of proof.
 (20) It's not us attacking. It's not us attacking that. We have to
 (21) prove our case. We'll prove our case and I don't understand
 (22) what -
 (23) THE COURT: Well look, I can make a judgment here and
 (24) I'm going to make a judgment in order to deal with this issue.
 (25) I haven't heard the evidence and I don't - I thought maybe

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- (1) there was a controversy regarding Naked Island. It sounds like
 (2) if there is a controversy it's a minimal controversy, and it's
 (3) not about a piece of land that's at issue in this case.
 (4) So to the extent that it's claimed somehow there's going to
 (5) be contradictory testimony about Naked Island, it doesn't
 sound
 (6) like it's the kind of contradictory testimony that disqualifies
 (7) this particular person from being a juror. That's all I can
 (8) say at this point.
 (9) Now, to the extent that I may be mistaken, based on the
 (10) plaintiffs' presentation, you - you run a risk here. Which
 (11) I'm sure you'll take into consideration. I just I don't think
 (12) this witness is disqualified on this basis.
 (13) MR. STOLL: Your Honor, you made that very clear to us
 (14) yesterday, I thought, and I went back and as a result of that,
 (15) quite frankly, I talked to people that should know on this
 (16) issue, and we don't think that it is any issue. I mean, I
 (17) don't know what they're - they've got some theory how Naked
 (18) Island is involved, but I don't - I don't see it.
 (19) THE COURT: I hear you. Your side's already ruled.
 (20) Counsel, here's your transcript.
 (21) MR. CLOUGH: Thank you.
 (22) MR. DIAMOND: Your Honor, the only other thing I
 (23) wanted to raise was scheduling. We have filed formally a
 (24) motion requesting that you not start opening statements until
 (25) the 5th.

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- (1) THE COURT: Yeah, I see it. I got a courtesy copy of
 (2) it up here.
 (3) MR. DIAMOND: If we are going to start next week,
 (4) we're entitled today to get their witness list and exhibit list
 (5) for next week's witnesses under the trial plan. I'm not
 (6) suggesting that you should rule on this, but if there's any
 (7) appreciable chance, we would like to get that information from
 (8) the -
 (9) THE COURT: There's more than an appreciable chance,
 (10) counsel.
 (11) MR. STOLL: We assume, Your Honor, that we're putting
 (12) on witnesses next week and we intend to provide them, if we
 (13) haven't already.
 (14) MR. FORTIER: Your Honor, we have indeed provided the
 (15) exhibit list.
 (16) MR. DIAMOND: I haven't been back to the office all
 (17) day.
 (18) THE COURT: That's fine.
 (19) MR. FORTIER: My office has done it, so I know it
 (20) went.
 (21) MR. DIAMOND: You'll tell us when if ever you want to
 (22) schedule a hearing on this?
 (23) THE COURT: I'll - I'll go right to the heart of that
 (24) matter, counsel. I think that I should have a hearing because
 (25) I want to hear from both of you on this. I'm not saying this

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- (1) isn't a substantial issue or that - that I shouldn't react to
 (2) it. All I'm saying is that you should assume that you're going
 (3) to go to trial as previously scheduled.
 (4) When I get hit with things like this at the last minute,
 (5) it's - I don't likely change my schedule simply because one
 (6) motion is filed taking a very strong position and I haven't
 (7) seen the opposition.
 (8) MR. DIAMOND: And we didn't anticipate you would. I
 (9) just wanted to put it on the table at the end of today's
 (10) schedule.
 (11) THE COURT: So I've got the jurors coming in for
 (12) tomorrow - for Monday, and I'm hoping that we can move it and
 (13) get a jury as quickly as we can. Maybe not on Monday, but
 (14) maybe Tuesday. All right?
 (15) MR. DIAMOND: Very good. Have a nice weekend.
 (16) THE COURT: Anything else?
 (17) MR. FORTIER: Your Honor, one question. We were going
 (18) to file the opposition Monday morning or Monday before -
 (19) THE COURT: Monday. I don't know that I specified a
 (20) time. 12:00, how's that?
 (21) MR. FORTIER: Fine.
 (22) MR. STOLL: We'll get it in as quickly as we can on
 (23) Monday, Your Honor.
 (24) THE COURT: You want 4:30?
 (25) MR. STOLL: I'd like to do it by noon, I just - I'd

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- (1) like to just keep it as we were, Your Honor.
 (2) THE COURT: All right, Monday. Monday usually means
 (3) 4:30 on Monday.
 (4) MR. STOLL: We'll try to get it there by noon.
 (5) THE COURT: Anything else? Have a good weekend.
 (6) THE CLERK: Please rise. This court stands in recess.
 (7) (Recess at 4:37 p.m.)

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- (1) STATE OF ALASKA)
- (2) : Reporter's Certificate
- (3) DISTRICT OF ALASKA)
- (6) I, Katherine L. Novak, RPR a Registered
- (7) Professional Reporter and Notary Public;
- (8) DO HERBY CERTIFY:
- (9) That the foregoing transcript of the morning
- (10) session, contains a true and accurate transcription of my
- (11) shorthand notes of all requested matters held in the foregoing
- (12) captioned case.
- (13) Further, that the transcript was prepared by me
- (14) or under my direction.
- (15) DATED this day
- (16) of , 1994.
- (22) KATHERINE L. NOVAK RPR
Notary Public for Alaska
- (23) My Commission Expires: 6-10-97

Vol. 4 - 642

- (1) STATE OF ALASKA)
- : Reporter's Certificate
- (2) DISTRICT OF ALASKA)
- I, Joy S. Brauer, RPR, a Registered Professional
- (4) Reporter and Notary Public;
- DO HERBY CERTIFY:
- (5) That the foregoing transcript of the afternoon
- session, contains a true and accurate transcription of my
- (6) shorthand notes of all requested matters held in the foregoing
- captioned case.
- (7) Further, that the transcript was prepared by me
- or under my direction.
- (8) DATED this day
- of , 1994.
- JOY S. BRAUER RPR
- (12) Notary Public for Alaska
- My Commission Expires: 5-10-97

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UNIQUE WORDS: 2,843
TOTAL OCCURRENCES: 14,813
NOISE WORDS: 385
TOTAL WORDS IN FILE: 49,020

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S): NOISE.NOI

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (3) In re) Case No. 344-89-2533 Civil
 (4)) Anchorage, Alaska
 (5) the EPOCH VALDEZ) Monday June 27, 1994
 (6)) 9:00 a.m.
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 TRANSCRIPT OF PROCEEDINGS (Continued)
 TRIAL BY JURY- JURY SELECTION
 BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge

(17) APPEARANCES:

(18) FOR THE PLAINTIFF:

(19) N. ROBERT STOLL
 Stoll, Stoll, Berne & Locking
 209 Southwest Oak Street
 Portland, OR 97204
 503/227-1600
 (20) SAMUEL J. FORTIER
 Fortier & Mikko
 2550 Denali Street, Suite 604
 Anchorage, AK 99503
 907/277-4222

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(1) PROCEEDINGS
 (2) (Jury out at 9:05 a.m.)
 (3) (Call to Order of the Court.)
 (4) THE COURT: Counsel, could you approach the bench,
 (5) please.
 (6) (Bench Conference off the Record)
 (7) THE COURT: All right, counsel. Counsel have
 (8) stipulated that Susan Wilson, she's number seven on your list,
 (9) can be excused for this case. Is that true?
 (10) MR. DIAMOND: Yes, Your Honor.
 (11) MR. STOLL: Yes, Your Honor.
 (12) MR. FORTIER: Yes, Your Honor.
 (13) THE COURT: Now I'm going to have the clerk mark this
 (14) excuse she sent in so the reasons are evident in case it would
 (15) come up later on; all right? It's Court's Exhibit -
 (16) MR. STOLL: Your Honor, we also have some other
 (17) stipulations.
 (18) THE COURT: Okay, fine.
 (19) MR. STOLL: Jurors 40, 43.
 (20) THE COURT: One, second, please, counsel. I want to
 (21) get my notes in order, here.
 (22) Okay. 40 what?
 (23) MR. STOLL: Danny Hill, number 40. Juror number 43,
 (24) Walter Blum.
 (25) MR. STOLL: And juror number 57, Mary Taylor.

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(1) FOR THE DEFENDANTS:

(2) CHARLES P. DIAMOND
 O'Melveny & Myers
 400 South Hope Street
 213/669-6000
 (3) Reported by:
 (4) KATHERINE L. NOVAK, RFR
 Registered Professional Reporter
 Midnight Sun Court Reporters
 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99503
 907/258-7100

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(1) THE COURT: 57, Mary Taylor.
 (2) MR. STOLL: 57, Mary Taylor. We both agree that those
 (3) jurors may all be excused for cause.
 (4) THE COURT: All right. Danny - juror number 40,
 (5) Danny Hill is excused by stipulation. Number 57, Mary Taylor
 (6) is excused by stipulation. And number 43, Walter Blum is
 (7) excused by stipulation. All right, Counsel?
 (8) MR. STOLL: Yes.
 (9) MR. DIAMOND: That's correct.
 (10) THE COURT: All right. There's one other thing,
 (11) counsel, and that is on Friday, I left Mr. Kennedy on the
 (12) panel. I'm in the process of reconsidering that decision. I
 (13) think the question is whether he has personal knowledge of the
 (14) facts in the case. The plaintiffs say yes, he has personal
 (15) knowledge of the facts in the case but it's insignificant
 (16) because of the issues in this case. The defendants say it is a
 (17) significant issue in this case. And therefore I have to apply
 (18) the Dalkovski standard and disqualify the juror.
 (19) If he has personal knowledge of the facts in the case, I
 (20) believe that I have to disqualify him. It's a very high
 (21) standard, counsel; the case law gives us a very high standard.
 (22) I'm not inclined to make a gross error here in the interest of
 (23) holding jurors in when in fact it's fairly clear to me he has
 (24) knowledge of the facts of the case.
 (25) MR. STOLL: Your Honor, we don't believe that he has

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- (1) knowledge – he was in Prince William Sound, that's correct,
 (2) but the area of Prince William Sound that he was in was not an
 (3) issue and there was no issue that there was cleanup activity.
 (4) I mean, the things that he has any knowledge of, a lot of
 (5) jurors have knowledge of.
 (6) THE COURT: I recognize that, counsel. The problem I
 (7) have here is you say one thing, Exxon says another, and I don't
 (8) want to find out in the middle of the trial that Exxon's
 (9) right. That's my problem. If I leave him on here and it turns
 (10) out this is a factual issue that reflects on credibility or
 (11) reflects on a contested issue in this case, then I think under
 (12) the case law standard, which is a high standard – I mean, you
 (13) really have to show that this juror would not be biased in any
 (14) way, or affected by those facts. If I leave him on here, I
 (15) think the case is possibly in jeopardy and your position is in
 (16) jeopardy.
 (17) MR. STOLL: Your Honor, could we at least brief this?
 (18) THE COURT: Yes.
 (19) MR. STOLL: Okay.
 (20) THE COURT: That's all I'm trying to tell you, is I
 (21) think it's a sufficient issue.
 (22) MR. STOLL: We don't want a mistrial, Your Honor, and
 (23) we don't want any kind of a problem with the – you know, with
 (24) the jury or we don't want to have this juror excused during the
 (25) middle of the trial, and we thought we had, you know,
 addressed

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- (1) this last week, but we'll be happy to respond.
 (2) THE COURT: That's fine. I'd appreciate it if you
 (3) would. So he's still on for now, but the question is still
 (4) under consideration.
 (5) MR. STOLL: Thank you.
 (6) THE COURT: All right. So where are we, counsel?
 (7) MR. DIAMOND: Number 41. Janice Bury.
 (8) (Janice Bury enters the room.)
 (9) THE COURT: Ma'am, could you give your name for the
 (10) record, please?
 (11) A Janice Bury.
 (12) THE COURT: All right. Ms. Bury, we're going to ask
 (13) you some fairly supplemental questions to supplement those
 (14) answers you've given on the jury questionnaire. You
 understand
 (15) that every answer you give the questionnaire answers and those
 (16) answers are under oath, don't you?
 (17) A Yes.
 (18) THE COURT: Okay. Mr. Stoll.
 (19) VOIR DIRE EXAMINATION OF JANICE BURY
 (20) BY MR. STOLL:
 (21) Q Good morning, Ms. Bury.
 (22) A Hi.
 (23) Q Hi. My name is Bob Stoll, I represent the municipalities
 (24) that have brought this action. And Mr. Fortier here represents
 (25) the Native corporations that are also plaintiffs in the case.

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- (1) Is there anything about the nature of the case, as far as
 (2) you're concerned, that you think would interfere with your
 (3) abilities to sit fairly as a juror in this case?
 (4) A No.
 (5) Q And did you – have you read anything – since we started
 (6) the – since you filled out this questionnaire there's been
 (7) some – from time to time there's articles in the newspaper.
 (8) Have you read any articles in the newspaper about this case
 (9) since we started a week ago?
 (10) A Well, we were instructed not to do that, but even if I had
 (11) been curious, I have two small children that don't give me time
 (12) to read things like that in detail.
 (13) Q So you've had your hands full, so to speak?
 (14) A Uh-huh.
 (15) Q And I notice that in your questionnaire you've had some
 (16) experience or some training as a legal assistant, a
 (17) paralegal?
 (18) A Yes.
 (19) Q And have you worked as a paralegal in any law office?
 (20) A No, I haven't. I had an internship where I volunteered at
 (21) Alaska Legal Services for a couple of months. That was part
 (22) time.
 (23) Q And how did you find that experience?
 (24) A Oh, it was fascinating, I loved it.
 (25) Q Do you hope to go into – to be a paralegal?

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- (1) A Yes, sir, but I guess I just don't have the right
 (2) connections, because there isn't much of a market for
 (3) inexperienced paralegals.
 (4) Q I see. In your questionnaire there was a question, number
 (5) 47, and there's a copy of it there if you want to look at it,
 (6) you don't need to but you may recall this: There was a
 (7) question based on your experience and knowledge, what is
 your
 (8) general response to any of the following types of organizations
 (9) or businesses and there's a list, it's on page 11. And you
 (10) checked essentially pretty much in the middle: in other words,
 (11) you said local governments, municipalities, Native
 (12) corporations, tribal governments. Natives, you had somewhat
 (13) favorable. Exxon, somewhat unfavorable – but they were all
 (14) sort of in the middle?
 (15) A Yeah.
 (16) Q How did you decide how you felt about one versus another?
 (17) I mean, what – was there any – just sort of your general
 (18) reaction pretty much in the middle or do you have a –
 (19) A Yeah, well, I really just don't have any strong opinions
 (20) about any of those entities, because I have never personally
 (21) had any kind of experience with any of those. And the only
 (22) way – reason I swayed a little bit with the Exxon thing was,
 (23) well, of course, you know, you heard about what happened and
 (24) everything, so it damaged the environment a little bit, so
 (25) that's the only reason why I checked that off.

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- (1) Q But you're not prejudging the case based upon your answers
 (2) to that, in terms of the environment or –
 (3) A Well, I believe that that issue was settled in another
 (4) case, and this case deals with more damages; is that correct?
 (5) Q Right. That's correct.
 (6) A Yeah. So I think I have the ability to see both sides of
 (7) the issue fairly.
 (8) Q Do you read any newspaper editorials from time to time?
 (9) A No.
 (10) MR. STOLL: Thank you very much.
 (11) VOIR DIRE EXAMINATION OF JANICE BURY
 (12) BY MR. DIAMOND:
 (13) Q Good morning, Ms. Bury.
 (14) A Hi.
 (15) Q Do you want to be called Mrs., Miss, Ms.? What's your
 (16) preference?
 (17) A Yes, Miss is fine.
 (18) Q My name is Chuck Diamond, I'm one of the lawyers who will
 (19) be representing Exxon during the course of the trial. I
 (20) noticed you worked for the Alaska Housing Finance Corp.?
 (21) A Yes, sir.
 (22) Q What do you do there?
 (23) A Admin assistant.
 (24) Q Do you have one person you report to or several?
 (25) A Well, their clerical staff is set up in kind of a weird

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- (1) way, so they have one – the clerical is under the
 (2) administrative supervisor, but then you work in a particular
 (3) department, which I work in risk management, so I kind of
 (4) report to two different places.
 (5) Q What's risk management?
 (6) A It's a very small department, there's only two other people
 (7) in it, and we're responsible for tracking all of the claims
 (8) that come in that could potentially put the corporation at
 (9) risk, and we also ensure that our workers, we have a lot of
 (10) public housing employees, and they – maintenance-type
 (11) people,
 (12) and we have to assure they're following safe work practices,
 (13) and so we're compiling manuals and setting up training
 (14) sessions
 (15) and things like that.
 (16) Q What does the overall organization do, AHFC, to run housing
 (17) or is it to simply finance people who want to purchase housing?
 (18) A Yeah, we finance mortgages and also take care of all the
 (19) public housing throughout Alaska; and rural Alaska, we have an
 (20) energy – nationwide famous energy program, so just about
 (21) everything about housing has been consolidated into our
 (22) corporation as of 1991.
 (23) Q Is it a public agency?
 (24) A State. State housing. It's a state agency, quasi state.
 (25) Q You sound like you have legal training.
 (26) You said there wasn't too much of a market for
 (27) inexperienced paralegals in Anchorage. Do you knock on
 (28) doors?

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- (1) A No, I haven't gone that far yet, but I've been to
 (2) employment agencies, and as you can see in the want ads they
 (3) never advertise for – they always want someone with at least
 (4) three or four years experience, and I've joined the Alaska
 (5) Association of Legal Assistants and talked with a lot of them,
 (6) and so I'm trying to make connections, but it's going to take
 (7) some time, I guess.
 (8) Q One of the things – you have a whole bunch of lawyers
 (9) sitting here on the other side of the courtroom, and one of the
 (10) things we're all interested in is making sure you judge the
 (11) case on the facts and nothing else. You don't have any
 (12) disappointment or resentment to lawyers because the doors
 (13) haven't yet opened for you?
 (14) A No, no, not really, because I'm an experienced words
 (15) processor and I can understand – you know, if someone hired
 (16) somebody right off the street to try to type documents, you
 (17) know, and it's taken me years to do what I know how to do. So
 (18) I can appreciate their need for someone with a lot of
 (19) knowledge.
 (20) Q This trial is currently estimated to go about two months,
 (21) maybe a little bit less, maybe a little bit more, and we all
 (22) noted that you have two small children. We – the judge has
 (23) indicated he's going to run court from 8:30 in the morning
 (24) until 1:30 in the afternoon. Another thing we're all
 (25) interested in is having jurors who will be able to participate

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- (1) for the entire duration of the trial and don't have any
 (2) problems. Does the schedule and your child care
 (3) responsibilities conflict in any way?
 (4) A No, I work full time and I have very reliable day-care.
 (5) Q Great. Mr. Stoll asked you about your answer to question
 (6) number 47, the way you arranged everyone, and you said you
 (7) didn't know much about most of those groups or organizations,
 (8) but you did know something about Exxon. I guess it's hard to
 (9) live anywhere and not know anything about Exxon?
 (10) A Right.
 (11) Q And I think you said that you had heard about what
 (12) happened
 (13) and it damaged the environment a little bit, and therefore you
 (14) judge them somewhat unfavorably as a result?
 (15) A Yeah.
 (16) Q Are you of the view that Exxon could and should have
 (17) avoided the accident?
 (18) A Well, I tell you, I really didn't follow that case in
 (19) depth, and I – I've heard some other things, you know, about
 (20) how it could have been avoided and not – you know, it wasn't
 (21) solely Exxon, you know, that could have avoided it. So I
 (22) really – I don't have all the facts and the issue so I can't
 (23) really say for sure, you know, whether – what really caused
 (24) it, you know.
 (25) Q Have you reached any opinions or have any views about how
 (26) effectively and responsibly Exxon handled the cleanup?

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- (1) A No, for sure I don't really know if they've cleaned it all
 (2) up or not; I don't really know what the conditions are down
 (3) there in Valdez.
 (4) Q Mr. Stoll asked you whether you understood that – whether
 (5) you were able to keep an open mind with respect to the effects
 (6) on the environment, and I think you may have misspoke, you
 (7) said
 (8) those issues were settled in another case. What case were you
 (9) thinking of?
 (10) A Well, wasn't there a recent – there was a federal, was
 (11) that a federal case in court?
 (12) Q Right.
 (13) A That decided that – in the favor of the plaintiffs, but –
 (14) so that's all I know.
 (15) Q Okay. In your own mind do you connect that case up with a
 (16) decision having been reached concerning the effects on the
 (17) environment of the spill?
 (18) A No, I don't know. No, I'm not really sure.
 (19) Q A fair amount of publicity has come out, particularly
 (20) during the course of the federal trial concerning the link
 (21) between substance abuse, alcohol abuse, and the grounding.
 (22) Does that give you any ill feelings towards Exxon or Hazelwood
 (23) or anybody involved?
 (24) A Could you repeat that, again?
 (25) Q Yeah. I previously fashioned my question by saying there
 (26) seems to be a fair amount of publicity or news connecting the

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- (1) grounding of the Exxon Valdez to Captain Hazelwood's use of
 (2) alcohol, and I'm just wondering whether that causes you to form
 (3) any sort of unique opinions about Exxon, whether it was
 (4) derelict in not dealing with Captain Hazelwood better, it might
 (5) influence how you view the issues in this case?
 (6) A Well, I'm not really sure if that would – if that's even
 (7) at issue in this case, you know.
 (8) Q It shouldn't, I'm just simply asking you whether that's
 (9) something –
 (10) A No.
 (11) Q – you would take into account?
 (12) A (Witness shakes head.)
 (13) Q Is this a trial that you'd like to serve on the jury for?
 (14) A Oh yeah, I'm excited.
 (15) Q Why so?
 (16) A Because I've got all this legal training but I've never
 (17) been able to actually, you know, experience anything, and so –
 (18) I've always watched People's Court, you know, and all that, and
 (19) so –
 (20) Q I tried my first case in front of Judge Wapner.
 (21) A Oh, really?
 (22) Q One of the – one of the things that the judge always tells
 (23) jurors, specifically jurors with legal training, and people
 (24) always remind jurors when you go through this process, is the
 (25) instructions concerning the law have to come from the judge
 (26) and

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- (1) not your own feelings about what the law is or what the law
 (2) should be.
 (3) Do you have a problem with that?
 (4) A No.
 (5) Q Any other reasons why you're anxious to serve?
 (6) A Well, no, I just feel like – well, another reason would be
 (7) it might be my only chance to really get a chance to have a say
 (8) in something really important, you know. That I might not ever
 (9) get a job in a law office, you know, so it might be my only
 (10) chance to use my training.
 (11) Q What do you mean by "your only chance to having a say in
 (12) something important"?
 (13) A Well, I'm not a real outgoing, community-type person, you
 (14) know. So I'm primarily involved in trying to raise my small
 (15) children and working and just trying to survive.
 (16) MR. DIAMOND: Thank you very much, Ms. Bury. Pass for
 (17) cause.
 (18) THE COURT: Ms. Bury, the process is ongoing, and
 (19) we're quite a ways from having a final jury, but you have been
 (20) passed for cause which means that you're still on the jury
 (21) panel and you may very well be on the jury. So I'd like you to
 (22) know a couple of things first:
 (23) It's going to take us some time to come to the final
 (24) decision about who are the jurors. And while you're gone from
 (25) here – and I'm going to excuse you in just a minute – you

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- (1) have to remember not to form or express any opinion on this
 (2) case and not talk to anybody about it. And that goes for your
 (3) other jurors as well on the jury panel; I don't want them to
 (4) receive information about this questioning process. I want them
 (5) to come in here untainted.
 (6) You understand, don't you?
 (7) A Okay.
 (8) THE COURT: I'm going to excuse you – and remember
 (9) not to talk to anybody about the case. We will be in touch
 (10) with you to let you know when to come back in or what happens
 (11) next; all right?
 (12) A All right.
 (13) THE COURT: Thank you very much.
 (14) A Do I leave this here?
 (15) THE COURT: Yes, we'll pick it up, thanks.
 (16) (Janice Bury leaves the room.)
 (17) (Kathy Wallingford enters the room.)
 (18) THE COURT: Miss Wallingford?
 (19) A Yes.
 (20) THE COURT: Would you please give your full name for
 (21) the record?
 (22) A Kathleen Joyce Wallingford.
 (23) THE COURT: Ms. Wallingford, you understand you're
 (24) under oath during this questioning process?
 (25) A Correct.

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- (1) THE COURT: And you were for your jury questionnaire
 (2) also; you understand that?
 (3) A Yes.
 (4) THE COURT: You'll have some brief questions, limited
 (5) to about 20 minutes, and then I will let you know what happens
 (6) next; all right?
 (7) A Okay.
 (8) VOIR DIRE EXAMINATION OF KATHY WALLINGFORD
 (9) BY MR. FORTIER:
 (10) Q Good morning, Ms. Wallingford.
 (11) A Good morning.
 (12) Q My name is Sam Fortier, I represent the Native corporations
 (13) in this matter; and this is Mr. Stoll, he represents the
 (14) municipalities. Ms. Wallingford, I note you work for Fred
 (15) Meyers?
 (16) A Correct.
 (17) Q What kind of job do you do?
 (18) A I'm in charge of the customer service desk and I do the
 (19) hiring for the company. At the Dimond store.
 (20) Q I'm sorry?
 (21) A At the Dimond store.
 (22) Q So you're involved with personnel, then; personnel
 (23) decisions?
 (24) A Correct.
 (25) Q Fred Myers has recently opened another store?

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- (1) A Correct, in the Muldoon area.
 (2) Q And did you hire for that one too, or do you just hire for
 (3) the Dimond store?
 (4) A When we open new stores or have remodeled like the
 Dimond
 (5) store was remodeled we have what we call - we have a hiring
 (6) team that travels to - like the Soldotna area when we opened
 (7) that store, I'm part of that team and we do a mass hiring. We
 (8) did our hiring for the Anchorage location at the Job Service.
 (9) And you're one of the people that actually interviews -
 (10) A Correct.
 (11) Q - personnel and talks with them?
 (12) A Uh-huh.
 (13) Q And makes decisions on what they say?
 (14) A Correct.
 (15) Q What sort of things do you look for with a - as far as an
 (16) employee for Fred Myers?
 (17) A Well, we look for someone that's outgoing, someone that
 (18) seems to be concerned about taking care of our customers, that
 (19) wants to please the customers, and someone that presents
 (20) themself in a professional manner.
 (21) Q The taking care of customers, how do you make a decision
 (22) about taking care of customers?
 (23) A Well, basically, you know, if they present themself in a
 (24) sour - a job interview that you would; but, you know, a
 (25) negative, a negative person would not be someone that I would

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- (1) pass on for hiring.
 (2) Q Do you make recommendations or do you actually do the
 (3) hiring?
 (4) A It's according to each of the managers. Each week they
 (5) give me their job needs. Then I post them the following week,
 (6) I'll get - from Job Service I'll get a group of people; or
 (7) also walk-in interviews that I set up, I'll interview on
 (8) certain days. I have a couple of managers who prefer me to go
 (9) ahead and make the hiring decision for them, I have some that
 (10) want me to set up, once they have passed through me, to set up
 (11) interviews for them, and so they're - you know, it's done
 (12) different ways, different managers.
 (13) Q When you decide on a person do you feel fairly strongly
 (14) about it?
 (15) A I'm a person that - I think I give people the benefit of
 (16) the doubt somewhat. If - you know, if you come in and you're
 (17) very negative, you know, I'll send you a thank you but no
 (18) thank-you card. But if you're - if you present to me that you
 (19) do want to work, I try to find the best position for you in the
 (20) store. It may not be the one that you came in for, I'll have
 (21) people who come in saying they want to be a cashier. They
 may
 (22) not have the cashier abilities; you know, they're maybe a
 (23) little bit slower or something, but I will try to find
 (24) something for them. You know, if we have other openings in
 (25) other departments that they would fit in.

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- (1) I try to back people down to the areas that they can work,
 (2) and I try to be very fair in the fact that, you know, are you
 (3) looking at this person; you know, I try to be very fair to make
 (4) sure that I'm giving them every chance possible, because we all
 (5) deserve a job.
 (6) Q Yeah, that's true. That's true.
 (7) When you filled out your questionnaire, I noted that you -
 (8) as a for-instance, item number 47 of the questionnaire, you
 (9) felt somewhat favorable towards all the groups that are listed
 (10) there. If you want to take a look at page number 11, you
 (11) indicated, for instance, you felt somewhat favorable towards
 (12) local governments, municipalities?
 (13) A I have to do that.
 (14) Q Why?
 (15) A My husband works for ATU.
 (16) Q Oh, Okay.
 (17) A That's why - I have to like city government. They - you
 (18) know. You know, I have to feel like they're okay, Anchorage;
 (19) and I guess I have nothing - I'm not against anyone, you
 (20) know. I will bring you home - you know, if you're hard - you
 (21) know, if you're having a hard time, and I will help you until
 (22) you prove that you're not worthy of the help, I guess is
 (23) what - until someone shows me something bad about
 themselves,
 (24) I'm not against anyone. I guess that's what that's for, like
 (25) that.

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- (1) Q Do you have any feelings one way or the other for Native
 (2) corporations? What do you think about Native corporations?
 (3) A I believe there are some Native corporations that have not
 (4) treated their people well, you know, that have not handled
 (5) their responsibilities, you know, correctly. There are people
 (6) that have not profited like perhaps they should have due to the
 (7) mishandling of leaders. But as Native corporations in general,
 (8) I think they need to have government, you know, to - I'm
 (9) really probably not as up on all of the Native corporations and
 (10) things as I should be. I've lived here 23 years and we have a
 (11) lot of - you know, we have Native friends and - you know, and
 (12) things, but mainly I'll be here in Anchorage. And we've had a
 (13) lot of foster children through the years that, you know, came
 (14) in from villages but then they went back again. So I don't
 (15) really have any - I think due to a lack of knowledge I'm
 (16) really not - that's why I have nothing against anything,
 (17) because I'm just not as knowledgeable probably as I should be,
 (18) after 23 years here.
 (19) Q Do you think that in the general Anchorage community there
 (20) is bias towards Natives?
 (21) A I think there probably is by some people; you know, they'll
 (22) make statements and things. I don't allow it, and in our
 (23) hiring process, you know, we have a lot of Native people
 (24) working for us. And they're given equal opportunity. I have a
 (25) real hard time, I think, making, you know, statements on that,

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- (1) because with our state we have paperwork we have to fill out
 (2) for the state and paperwork we have to fill out for our company
 (3) that tells - after you interview someone you have to put down
 (4) whether they're, you know, white, Caucasian, Negro - you
 know,
 (5) Asian - you know, what they are. And I have to make a little
 (6) note because I can interview six people and go back to my
 (7) office and I can't remember what they were. Because I guess I
 (8) don't see that.
 (9) Q I see.
 (10) A You know, I don't see this.
 (11) Q And you also have this - there's also a reference to EEO,
 (12) that you've been working with Equal Employment Opportunity?
 (13) A Right.
 (14) MR. FORTIER: Judge, I think I'm - if I can have a
 (15) few more minutes.
 (16) THE COURT: You have a few more minutes. You're well
 (17) within your time, counsel.
 (18) BY MR. FORTIER:
 (19) Q You indicated in your questionnaire, Ms. Wallingford, that
 (20) you thought that the plaintiffs were going for all they could
 (21) get. What did you mean by that?
 (22) A Well, I think probably we were - they were going to have
 (23) some people, there's always in - any time that you have a big
 (24) case like this, there will be those who are not entitled to
 (25) compensation who put in for a whole lot more than they're

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- (1) actually entitled to, and then we have those who actually end
 (2) up less than they were entitled to. In any case, no matter
 (3) what - you know, who it is. Whether it's an accident, whether
 (4) it's workmen's compensation - you know, whatever. I think
 (5) it's just a -
 (6) Q Does something like that - in the event that damages were
 (7) put forward, say, for the Native corporations in the area of,
 (8) say, 80 to a hundred million dollars, would something like that
 (9) bother you?
 (10) A No, not if - you know, if they deserved damages; I mean,
 (11) if they'd had a loss, you know.
 (12) Q Now, you also indicated that Exxon - with regard to Exxon,
 (13) it's cost them a lot of money, what do you mean by that?
 (14) A Well, they have - I think they were maybe a little late
 (15) getting - a day, in a matter of days after the accident
 (16) getting started, but they did try to put forth a lot for
 (17) cleanup. But, you know, a lot was spent, but maybe not
 enough,
 (18) too, so...
 (19) Q Have you read newspaper accounts of there being a lot
 (20) spent?
 (21) A No, I think it's just my head. I don't read the paper. I
 (22) don't read the newspaper. We are very busy, we don't even
 take
 (23) the newspaper. My mother-in-law was here and it will quit at
 (24) the end of this month, she was here for six months, so we
 (25) started the paper for her but we don't get the newspaper.

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- (1) Q Excuse me, Ms. Wallingford?
 (2) A Sure.
 (3) Q Do you think that Exxon should be given anything back
 (4) because it's your understanding they spent a lot of money?
 (5) A No; oh, no. People have had losses and they deserve to be
 (6) compensated.
 (7) Q Now, have you read anything -
 (8) THE COURT: Counsel, now you are at the end of your
 (9) time.
 (10) MR. FORTIER: Can I just ask one more question.
 (11) Judge?
 (12) THE COURT: Yes.
 (13) MR. FORTIER: Thank you.
 (14) BY MR. FORTIER:
 (15) Q Have you read anything in the past week since the jury -
 (16) since you were placed on the jury panel?
 (17) A No, no. We went fishing this weekend.
 (18) MR. FORTIER: Good for you, Ms. Wallingford. Thank
 (19) you so much.
 (20) Pass for cause.
 (21) VOIR DIRE EXAMINATION OF KATHY WALLINGFORD
 (22) BY MR. DIAMOND:
 (23) Q Good morning, Ms. Wallingford.
 (24) A Good morning.
 (25) Q My name is Chuck Diamond. I'm one of the lawyers

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- (1) representing Exxon, I introduced myself and the others when we
- (2) met on Monday. I have a lot of questions I have to ask you on
- (3) behalf of my client.
- (4) A Sure.
- (5) Q But on behalf of my son: Is Fred Meyer hiring high school
- (6) kids anymore for the summer?
- (7) A If he's over 16, send him to me.
- (8) Q 17?
- (9) A Sure. I've got jobs.
- (10) Q Okay. He's just 16, though?
- (11) A Well, 16 - we take them at 16.
- (12) Q You and your husband are foster parents?
- (13) A We were up until probably 12 years ago or so; we have not
- (14) been -
- (15) Q How long did you do that?
- (16) A Ten years.
- (17) Q Did you have a lot of kids?
- (18) A Well, we probably put 50 or 60 through our house, you know.
- (19) Q And I noticed you had your own business for a time?
- (20) A I had Balloon Arts, which were balloon bouquets and gifts
- (21) and things like that. And one Valentine's Day I had two people
- (22) not show up, and I was - when you have 300-and-some
- (23) deliveries
- (24) to make and two delivery people don't show up, it was about
- (25) three days later one gal from the Rose Garden said - and she
- said Kathy Haffer considered selling, I said, You got it. We

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- (1) didn't even talk money; I sold it after six years. I was
- (2) tired.
- (3) Q In response to question number 42, we asked you about
- (4) litigation, what you knew about litigation; and I think you
- (5) said you didn't really follow the litigation at all?
- (6) A This is true.
- (7) Q Just because you have more important things to spend your
- (8) time on?
- (9) A Well, I think so. I have my job, we have our church, we
- (10) have our family. And like I said, we don't take the newspaper
- (11) because we got tired of it piling up in the little orange bags.
- (12) Q One of the things you do find time to do is sports fishing?
- (13) A Yes, we go and we chance the wily king a couple of times a
- (14) year.
- (15) Q Where do you and your husband go fishing?
- (16) A Wherever they're at. We go north sometimes but usually we
- (17) make one trip north and we take - this weekend we went down
- (18) at
- (19) the Homer Spit at the hole, and our grandson caught his first
- (20) King salmon at seven years old. He caught a 20-pounder. He
- (21) was excited.
- (22) Q Have you been out to the Prince William Sound at all?
- (23) A No.
- (24) Q Do you have any pets at home?
- (25) A I have my Muffie, little terrier dog.
- Q A little terrier?

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- (1) A Uh-huh.
- (2) Q Do you like animals?
- (3) A Yeah.
- (4) Q There's a reason I ask.
- (5) A Oh, I'm sorry.
- (6) Q There may be some evidence offered in this case:
- (7) photographs, maybe some videotapes that were taken back
- (8) right
- (9) after the spill, and it may well be that you may have to look
- (10) at pictures that portray animals that -
- (11) A Die.
- (12) Q - are dying, that died or are suffering, and it has an
- (13) emotional tug for lots of us. How do you think you'll react to
- (14) that?
- (15) A Well, I think I will probably feel sorry that the animals
- (16) died, but in any type of disaster there's, you know, death of
- (17) people, death of, you know, animals and things. I mean, my
- (18) husband goes hunting; he shoots moose and caribou. You
- (19) know,
- (20) we eat game meat.
- (21) Q Do you think you could put any sort of emotional feelings
- (22) to one side, judge the issues in this case based on the facts
- (23) you're given?
- (24) A I think I probably could. I try to think that I'm a very
- (25) open-minded, you know, fair person. I don't let one thing away
- me; you know, I like to think that because I think we all do,
- you know.

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- (1) MR. DIAMOND: Thanks for your time this morning.
- (2) A Okay.
- (3) MR. DIAMOND: Thank you, Your Honor.
- (4) THE COURT: All right. You've been what we call
- (5) passed for cause, Ms. Wallingford, and that means you're still
- (6) on the jury panel and you may very well be a final member of
- (7) the jury. But we still have a number of people to question.
- (8) So if you'd do me a favor and when I excuse you - and I'm
- (9) going to excuse you now for the day - please don't talk to
- (10) anybody about this case and particularly your fellow jury
- (11) members, because I like to keep what goes on in this courtroom
- (12) from them at this point so that they're unbiased.
- (13) Do you understand?
- (14) A Uh-huh.
- (15) THE COURT: Okay. I'll excuse you now. We'll contact
- (16) you -
- (17) A Okay.
- (18) THE COURT: - to let you know what happens next.
- (19) A Okay. Do I take it this or leave it?
- (20) THE COURT: No, you leave it.
- (21) A Okay.
- (22) THE COURT: Thank you very much.
- (23) A And I hope you have a good day.
- (24) (Kathy Wallingford leaves the room.)
- (25) THE COURT: Mr. Stoll, Mr. Diamond bashed that

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- (1) microphone and knocked it down so we didn't get as good of
 (2) record as we could have on that last one.
 (3) MR. DIAMOND: I apologize. I didn't even know it was
 (4) connected.
 (5) (Hazel Duke enters the room.)
 (6) THE COURT: Could you please give your name for the
 (7) record?
 (8) A Hazel Duke.
 (9) THE COURT: Ms. Duke, we're going to ask you some
 (10) supplemental questions, supplemental to your questionnaire.
 (11) All these questions including the questionnaire questions are
 (12) under oath.
 (13) You understand that, don't you?
 (14) A Yes.
 (15) THE COURT: Mr. Stoll will ask you the questions
 (16) first.
 (17) MR. STOLL: Your Honor, I have down number 44 was -
 (18) THE COURT: Yeah, what happened to Ms. Call?
 (19) MR. DIAMOND: She was excused for cause by
 (20) stipulation. And we took 45 out of order, Your Honor.
 (21) MR. STOLL: Really?
 (22) THE COURT: That's right. Mr. Wichorer we questioned
 (23) on the first day, I think.
 (24) MR. STOLL: I'm sorry. We have a program here and if
 (25) you're not on the right page.

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- (1) VOIR DIRE EXAMINATION OF HAZEL DUKE
 (2) BY MR. STOLL:
 (3) Q Ms. Duke, my name is Bob Stoll. I represent the
 (4) municipalities that are plaintiffs in the case. And this is
 (5) Mr. Fortier, who represents Native corporations and also the
 (6) plaintiffs in this case.
 (7) Have you read anything about this case during the last week
 (8) or so?
 (9) A No.
 (10) Q And you've been in Alaska most of your life?
 (11) A Yeah.
 (12) Q What do you like about Alaska?
 (13) A I like the country.
 (14) Q You like the outdoors?
 (15) A The outdoors, right.
 (16) Q Do you fish?
 (17) A Fish and hunt everything.
 (18) Q And you go camping and hiking?
 (19) A Yes.
 (20) Q I see. And where do you go for your outdoors?
 (21) A Just Central Alaska: Fairbanks and out towards Tok.
 (22) Q North?
 (23) A Right.
 (24) Q Have you ever been to Prince William Sound?
 (25) A No.

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- (1) Q Or Kodiak?
 (2) A No.
 (3) Q Is there any particular reason why you haven't gone down,
 (4) or you just like going north?
 (5) A I used to live in Fairbanks and I've only been here a
 (6) couple of years and I haven't been there yet.
 (7) Q So it's sort of like going home, essentially?
 (8) A Right.
 (9) Q And you have a boyfriend, you mentioned, I think, that
 (10) worked security for Exxon during cleanup?
 (11) A Right. That's all I know about it other than he said he
 (12) had to check people in and out at the cleanup. That's it.
 (13) Q Where did he work?
 (14) A He just worked at security where he had to check people in
 (15) and out to do the security stuff. I didn't ask him anymore; I
 (16) wasn't that interested.
 (17) Q So he didn't tell you whether they were doing a good job or
 (18) bad job or anything like that?
 (19) A Huh-uh.
 (20) Q And you don't know where he worked, whether it was Prince
 (21) William Sound or -
 (22) A I'm not sure.
 (23) Q Okay. You mentioned that you had some problem with your
 (24) elbow, I think?
 (25) A Right, I'm having - I'm doing physical therapy. As long

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- (1) as I don't write or work on the computer, I'm fine.
 (2) Q We don't have a computer.
 (3) A This messed up my arm for a few days, but I'm ask okay now.
 (4) Q On this form, there's - how long have you had this
 (5) problem with your arm?
 (6) A A year and a half.
 (7) Q I see. And was there anything in the form that you had a
 (8) question about that bothered you or raised some question
 (9) about
 (10) your ability to serve as a juror on this case?
 (11) A As long as they let us go home each night, because I have a
 (12) 16-year-old daughter, I'm fine.
 (13) Q Normally the schedule will be 8:30 to 1:30 each day.
 (14) A Then I'm fine.
 (15) Q So you'll have the afternoons off and the evenings off; so
 (16) that shouldn't be a problem, should it?
 (17) A No.
 (18) Q Now, you mentioned in the questionnaire that you had a
 (19) family member that has been employed by Native regional or
 (20) village corporation?
 (21) A Right. Years ago.
 (22) Q I see. And who was that?
 (23) A Tim Luke (ph) and Ruth Luke.
 (24) Q And are those brothers or sisters or -
 (25) A Aunt and uncle.
 (26) Q Aunt and uncle. And what type of work were they doing?

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- (1) A They weren't doing anything like this; they were working in
 (2) alcohol related to Natives.
 (3) Q Did you get any impressions from them about Native
 (4) corporations?
 (5) A No.
 (6) Q Do you have a - I think there was a question, and I think
 (7) that you answered it, I think it's on page 11. You may recall
 (8) this.
 (9) There was a question about how you - what your experience
 (10) and knowledge about general response and to various
 (11) organizations, one which was Native corporations; and you said
 (12) somewhat favorable, but it's basically in the middle, you
 (13) either had no opinion or -
 (14) A Right.
 (15) Q - you just had sort of a general impression?
 (16) A I grew up in the villages and I felt the corporations
 (17) helped the people, I thought they were favorable to them.
 (18) Q You were trying to protect the interests of the people?
 (19) A (Nods head.)
 (20) Q And that experience is not going to influence you one way
 (21) or another in this case?
 (22) A No.
 (23) MR. STOLL: Thank you very much.
 (24) VOIR DIRE EXAMINATION OF HAZEL DUKE
 (25) BY MR. DIAMOND:

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- (1) Q Good morning, Ms. Duke.
 (2) A Good morning.
 (3) Q My name is Chuck Diamond. I'm one of the lawyers
 (4) representing Exxon in this case.
 (5) You grew up in a village?
 (6) A Most of it, and then we moved on.
 (7) Q Where was that?
 (8) A Dot Lake.
 (9) Q Where is that?
 (10) A It's between Delta Junction and Tok.
 (11) Q How many people?
 (12) A 55 people.
 (13) Q Not a metropolitan area?
 (14) A No.
 (15) Q Until what age did you live there?
 (16) A I moved back and forth between Dot Lake until I was 18.
 (17) Q And then you moved to Fairbanks?
 (18) A Fairbanks and North Pole area.
 (19) Q Do you go back and visit the village you grew up in?
 (20) A Occasionally.
 (21) Q Do you still have friends up there?
 (22) A Very few.
 (23) Q They grew up and move out?
 (24) A They grew up and move out.
 (25) Q You said that your aunt and uncle worked for a Native

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- (1) corporation. Whereabouts?
 (2) A In Dot Lake.
 (3) Q While you were living there?
 (4) A Right. My uncle's a Native there.
 (5) Q I'm sorry?
 (6) A I said my uncle is a Native from the village there.
 (7) Q Do you know whether he is a shareholder in any Native
 (8) corporation?
 (9) A In Doyon.
 (10) Q Do you have any other family members who were
 shareholder
 (11) of Native corporations?
 (12) A No. Except for my cousins from my uncle and aunt's
 (13) marriage.
 (14) Q And they're shareholders as well?
 (15) A Yeah.
 (16) Q You understand that there are seven Native corporation
 (17) plaintiffs in this case, not that Native corporation?
 (18) A Right.
 (19) Q Six. I'm sorry, there are seven municipalities and six
 (20) Native -
 (21) MR. STOLL: No, there's six municipalities also.
 (22) MR. DIAMOND: Since we severed.
 (23) BY MR. DIAMOND:
 (24) Q I don't seem to do anything right Monday morning. It's a
 (25) good thing I have opposing counsel here to correct me.

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- (1) Do you think that, given the fact that you grew up in a
 (2) small village with a Native corporation connection and that
 (3) your uncle is a shareholder in the Native corporation, you tend
 (4) to view Native corporations more favorably than other people?
 (5) A No.
 (6) Q No? Why do you say that?
 (7) A I don't know. You see the good and the bad just as you
 (8) would anywhere else. I mean, I don't know; it's not all good
 (9) stuff.
 (10) Q I noticed from your questionnaire that your problem with
 (11) your arm has kept you out of work for a while?
 (12) A Right, because I can't do anything repetitive. It's kind
 (13) of hard, I'm right-handed.
 (14) Q Can you take notes?
 (15) A Not for any length of time.
 (16) Q Are you now undergoing any kind of treatment?
 (17) A Physical therapy.
 (18) Q Just physical therapy?
 (19) A Until they decide - the next four weeks they're going to
 (20) decide whether they're going to do surgery or not.
 (21) Q That a tendon problem?
 (22) A That's right. My tendons are twisted, they just don't know
 (23) how bad.
 (24) Q How frequently do you go to physical therapy?
 (25) A Three times a week.

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- (1) Q Is that going to be a problem for you if you were serving,
 (2) doing jury service between 8:30 and 1:30?
 (3) A No.
 (4) Q Do they have you on any medication?
 (5) A No, I don't take medication.
 (6) Q They haven't given you any shots for that?
 (7) A Cortisone shots. I just don't take pain killers so I don't
 (8) take anything.
 (9) Q You've gone through the cortisone shot routine, though?
 (10) A (Nods head.)
 (11) Q So have I.
 (12) If they decide to do the surgery, when are they talking
 (13) about doing it?
 (14) A Whenever I schedule it. I'm not looking to do it, to be
 (15) honest with you.
 (16) Q I can understand. Is it any possibility that it could be
 (17) something that would happen this summer?
 (18) A No.
 (19) Q You told us in response to one of the questions. I think it
 (20) was 38, that you saw the Dianne Sawyer television program the
 (21) week before last?
 (22) A Yeah. I fell asleep during it.
 (23) Q You probably don't remember at what point you fell asleep?
 (24) A Right after they hit the ice, whatever they - I don't
 (25) know, whatever they hit.

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- (1) Q Is that a program you regularly watch?
 (2) A No.
 (3) Q How come you turned it?
 (4) A My boyfriend wanted to watch it.
 (5) Q Did he fall asleep?
 (6) A I don't know. I fell asleep first.
 (7) Q Did you talk to him about it?
 (8) A No.
 (9) Q What do you remember?
 (10) A I remember Hazelwood was drinking, he said, and he was
 (11) downstairs sleeping when they hit whatever it is they hit. It
 (12) kind of bothers me, the whole thing. I'm really sorry.
 (13) Q You don't have to apologize; it will probably bother some
 (14) of us in a while.
 (15) Do you remember learning anything in that program about
 (16) whether there was still oil out there in Prince William Sound?
 (17) A No, but I'm sure there is.
 (18) Q Why is that?
 (19) A Working with - when I was in the fire department working
 (20) on first and stuff, I know that stuff doesn't go away. It's
 (21) going to take years, that's my opinion.
 (22) Q Do you have some experience dealing with the oil spill?
 (23) A Not with oil itself, no.
 (24) Q What experience do you have from your fire department
 (25) days?
 (25) A Just fighting fires, and we had to study the books as

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- (1) engineers. We had to do, you know, how to treat oil spills,
 (2) and fires - not the spills themselves; and how long it bothers
 (3) the environment and stuff.
 (4) Q You think the oils going to be around for quite some time?
 (5) A Right.
 (6) Q And is that just based on -
 (7) A It's just the stuff doesn't go away; it doesn't just sink
 (8) in the ground and go away.
 (9) Q There's going to be some evidence in this case, probably
 (10) about what happens when oil falls into a marine environment
 (11) like Prince William Sound, and there may be some people that
 (12) tells you it goes away. Do you think you'd have difficulty
 (13) believing that?
 (14) A Yeah, I would.
 (15) Q Why do you say that?
 (16) A I think this case is in compensation; it's not stuff - the
 (17) stuff is going to be there; in my opinion it's not going to go
 (18) away. What you guys are looking at is to compensate the
 (19) people
 (19) for the changes of that. That's my opinion on it.
 (20) Q Let me just give you a preview of some of the things that
 (21) will happen in the trial and tell me whether you think you have
 (22) an open mind on all these issues.
 (23) One of the issues is whether oil that was spilled, that
 (24) washed up on the shore of property owned by the plaintiffs, is
 (25) still there, or whether in fact it's degraded and disappeared.

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- (1) evaporated or whatever happens to oil. Do you have a sense
 (2) that in your own mind you think that there's got to be some of
 (3) it still there?
 (4) A A lot of it is, I mean, gone, but there is always going to
 (5) be some traces for a lot of years to come. Somebody is going
 (6) to turn over a rock and find a little bit somewhere, in my
 (7) opinion.
 (8) Q Do you think you can put your opinion aside and listen to
 (9) somebody who may tell you something different and judge
 (10) them
 (10) the way you would judge anybody else?
 (11) A I'd have to.
 (12) Q I'm sorry?
 (13) A I said I guess I'd have to.
 (14) Q But do you think you'd have a problem doing that?
 (15) A I'd have to listen real close. I mean, I don't think I -
 (16) I know you're supposed to just decide on what you hear in the
 (17) Court -
 (18) Q Right.
 (19) A I can deal with that. I don't have to like it,
 (20) necessarily, but I can.
 (21) Q What do you mean "you don't have to like it"?
 (22) A Because in my own opinion it's going to be pretty hard to
 (23) convince me that there's not going to be some there. I think
 (24) the court has compensated the people how to deal with it, not
 (25) the fact that it's all gone.

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- (1) Q How about the ongoing effects on the environment, the
 (2) effects today of oil that was spilled in 1989? Do you have a
 (3) view of that?
 (4) A You mean on the effects that it's still having?
 (5) Q Yeah.
 (6) A Same thing: Exxon's got to deal with how to help the
 (7) people change and not to fix the problem. The problem is not
 (8) going to go away.
 (9) Q Do you think Exxon is going to have a difficulty convincing
 (10) you otherwise?
 (11) A That the problem is just going to go away?
 (12) Q That many of the time - most of the time the environmental
 (13) problems have already gone away?
 (14) A I think they'd have a hard time convincing me of that.
 (15) Q Correct me if I'm wrong: You'd have an open mind on that
 (16) issue?
 (17) A No.
 (18) Q I appreciate your candor. This process works if both sides
 (19) can get jurors who feel open-minded and receptive to both
 (20) sides
 (21) and it's a problem for both sides, somebody has definite
 (22) viewpoints that they can't put aside. Would you put yourself
 (23) in a category as someone that has definite viewpoints on these
 (24) issues we're talking about?
 (25) A As long as it's not gone away, yeah, that I do.
 (26) Q And you think it would be difficult to put those viewpoints

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- (1) aside?
 (2) A Yeah.
 (3) Q Do you remember anything from the Turning Point program,
 (4) the Dianne Sawyer program, about the effects of oil on the
 (5) environment?
 (6) A No.
 (7) Q Or did you think you fell asleep by then?
 (8) A Yeah, I don't remember that. I don't know that much. I
 (9) know the part about where they burnt it; I mean, that's the
 (10) part that caught my mind, when they tried to burnt it off,
 (11) because I know what effects fire has on the environment. I
 (12) know that takes a lot of years to straighten out.
 (13) Q What kind -
 (14) A That's my opinion of the fact that they hadn't burnt it, I
 (15) probably wouldn't have any - I'm a fire assistant, and I know
 (16) it takes years for the environment to come back.
 (17) Q And that was the information where you picked up from the
 (18) program?
 (19) A No, I don't know where I picked that up at, it was one of
 (20) the news things.
 (21) Q Do you recall anything from the Turning Point program about
 (22) how the cleanup was done, other than the oil burning you just
 (23) told us about?
 (24) A No.
 (25) Q At least with respect to the amount of program that you

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- (1) saw, do you think it was a balanced program, presented both
 (2) sides fairly?
 (3) A I didn't watch it that much. I wasn't really - I don't
 (4) know. I just didn't watch it that much.
 (5) Q That's fair.
 (6) Your Honor, I have no further questions, I would like to be
 (7) heard.
 (8) MR. STOLL: I have a question, if I could just follow
 (9) up.
 (10) THE COURT: Go ahead
 (11) VOIR DIRE EXAMINATION OF HAZEL DUKE
 (12) BY MR. STOLL:
 (13) Q Ms. Duke, both sides want to have fair and impartial
 (14) jurors. Now, there's going to be testimony on both sides, and
 (15) notwithstanding your views that you have about oil not
 (16) degrading and so on, would you be able to put aside those
 (17) views
 (18) and make your decisions solely upon the evidence that is
 (19) presented in court if Judge Shortell instructs you that that's
 (20) all you are to consider?
 (21) A I don't know.
 (22) Q Pardon me?
 (23) A I don't know.
 (24) Q You don't know whether you could, could be fair under those
 (25) circumstances; just consider the evidence that's in the
 (26) courtroom?

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- (1) A I can be fair in how to compensate somebody, but I cannot
 (2) say that that stuff goes away. I mean, I realize you can't pay
 (3) people, somebody forever for something that's done and over
 (4) with. I think I can be fair on that; I just can't be fair on
 (5) the fact that it's gone.
 (6) Q This is not a personal injury case.
 (7) A Right.
 (8) Q In other words, this is not someone - that's not what the
 (9) claims are. The claims are land claims and some other claims
 (10) about the archeological claims and some claims by the
 (11) municipalities for cleanup costs and so on.
 (12) Now, with respect to the land claims, do you believe that
 (13) you could only listen to the evidence that is presented here in
 (14) court, if you're instructed to do so by Judge Shortell?
 (15) A Not if they claim it's all gone.
 (16) Q Not if it's all gone, but what if they make a claim that in
 (17) certain areas it's not as bad as the plaintiffs say it is?
 (18) A That I can deal with, yeah.
 (19) Q You can consider that?
 (20) A I can consider that, right. I just can't believe in the
 (21) next ten or 20 years...
 (22) Q It's a hundred percent?
 (23) A It's a hundred percent gone, right.
 (24) Q So you're not saying that the evidence is that, no matter
 (25) what happens, that you believe that it's all gone?

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- (1) A Right.
 (2) Q But you can accept the fact that it could be?
 (3) A They could clean up 80 or 90 percent of it. I'm just saying
 (4) not 100 percent.
 (5) Q I see. And that it could be there somewhere but it's not
 (6) as bad as it was -
 (7) A Right.
 (8) Q - in 1989 or some other time?
 (9) A Right.
 (10) Q So do you think you could fairly evaluate whether there is
 (11) oil there or the results of oil there in someplace, maybe not
 (12) on the - in the area of the plaintiffs' land but somewhere;
 (13) that's what you're talking about?
 (14) A Right.
 (15) Q And as far as evaluating the evidence here, whether the
 (16) plaintiffs are entitled to make a recovery or not, you're going
 (17) to look only at the evidence that is presented in this
 (18) courtroom?
 (19) A Right.
 (20) Q So it's just sort of the theoretical possibility of 100
 (21) percent?
 (22) A Right. Just 100 percent I can't deal with. I can deal
 (23) with any other percentages.
 (24) Q 99 percent or 98 percent?
 (25) A Right.

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- (1) Q Something less than 100 percent?
 (2) A That's right.
 (3) Q And you haven't conducted any independent investigation of
 (4) your own down there?
 (5) A No.
 (6) Q You haven't been down to Prince William Sound or Kodiak?
 (7) A No.
 (8) Q Am I correct there?
 (9) A Pardon me?
 (10) Q Am I correct you've never been to any of those places?
 (11) A I've never been to those places.
 (12) Q You're not making a personal judgment here; you're going to
 (13) wait and listen to all the evidence?
 (14) A Right. I'll listen to all the evidence.
 (15) MR. STOLL: Thank you very much.
 (16) THE COURT: Any other questions, counsel?
 (17) MR. DIAMOND: No, Your Honor.
 (18) THE COURT: All right. I'm going to excuse you to go
 (19) back in the jury room. I'll bring you right back in.
 (20) (Hazel Duke leaves the room.)
 (21) MR. DIAMOND: Let me just begin with a subsidiary
 (22) point. This is going to be a lengthy trial, and a detailed
 (23) trial with in excess of a hundred witnesses, well in excess of
 (24) a hundred witnesses. I think somebody who can't take notes is
 (25) going to be at a real disadvantage, and I tend to think that

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- (1) that probably is a bona fide occupational qualification for
 (2) service on this jury as opposed to a case that would be
 (3) substantially shorter.
 (4) But I think the more important and substantial challenge we
 (5) would have to Ms. Duke is her candid admissions that she has
 (6) made up her mind as to whether there is still oil out there.
 (7) I'm not good at writing and talking, and I don't have - didn't
 (8) have somebody take notes for me, but she said she'd have a
 real
 (9) difficult time being convinced that the oil was gone, it had
 (10) disappeared; she'd have an equally difficult time being
 (11) convinced that there were no environmental effects. And she
 (12) said, "I can't look at it and say it's gone: I can look at this
 (13) as a damage case." I think in her own mind what she's saying
 (14) is, I can deal with the dollars and cents issues, but with
 (15) respect to questions of whether there is still oil in the
 (16) environment, she's got opinions.
 (17) Can't be fair to Exxon, she said: not if they're saying
 (18) it's all gone. Now, Mr. Stoll did an admirable job of leading
 (19) questions of getting her caught up in a semantics game where
 (20) she was prepared to say that Exxon isn't saying it's all gone,
 (21) then she's not going to have a problem. But the difficulty is
 (22) on many of these parcels our position is, it's all gone. On
 (23) many of the beach segments it's all gone.
 (24) Our basic position will be the scientific testimony that,
 (25) in particular areas of Prince William Sound where the oil was

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- (1) the heaviest, where much of the oil was deliberately channeled
 (2) for subsequent collection, there is still traces of oil. But
 (3) as we move further away from the Prince William Sound - as
 you
 (4) get out to Kenai, to Kodiak where the oil was very light -
 (5) that oil is all gone, this is a juror who is going to have
 (6) trouble accepting that fact and she's admitted she's going to
 (7) have trouble accepting that fact.
 (8) So on that basis I think she has opinions already formed
 (9) that are going to prevent her from having an open view of
 (10) things. This is not a case where you can say she's fair
 (11) because Exxon admits there was some percent of the oil out
 (12) there. That is a true statement, we admit there is some
 (13) residual subsurface oil out there. But when you start dealing
 (14) with this on a parcel-by-parcel, plaintiff-by-plaintiff basis,
 (15) ours is the contrary. Some of these parcels are oil-free and
 (16) no compensation is due and owing. I don't think she could be
 (17) fair as to that issue.
 (18) MR. STOLL: Your Honor, I think she was
 (19) straightforward and honest, and I think she said that there
 (20) could be - that it had gone away in some areas, it was just
 (21) taking the extreme position. And I think if the Court has any
 (22) questions the Court can ask her questions about it. But I
 (23) think that she was not saying that it was - that there was
 (24) oil, some oil everywhere. In fact I asked her about that,
 (25) about specific parcels.

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- (1) I said she has made up her mind about the land in the area,
 (2) and she didn't know the answer to that, she just said that the
 (3) problem she had a problem with was a - the extreme, the
 (4) hundred percent. And as Mr. Diamond says, that's not Exxon's
 (5) position. They admit that there's oil there somewhere. She
 (6) was taking him as his literal - in the literal sense that it's
 (7) a hundred percent gone. I mean, asked with that question, she
 (8) said she'd have a tough time with that. I don't think that
 (9) disqualifies her because that's not an issue in the case. And
 (10) if the Court wants to ask her more questions on it, then I
 (11) think you can, but I don't think she took that extreme
 (12) position.
 (13) THE COURT: Well, I think this is a contested
 (14) question, counsel; I don't think she knows what's contested and
 (15) what's not. The question is whether I should ask her any
 (16) questions or whether I should have Mr. Diamond ask her what
 she
 (17) sees as contested and tell her -
 (18) MR. STOLL: That's okay.
 (19) THE COURT: I think I'll do that. I'm going to bring
 (20) her back in here and I want you to tell her, you see the
 (21) contest here about the persistence of the oil, and then I may
 (22) have some supplemental questions for her after that. All
 (23) right?
 (24) MR. DIAMOND: Okay.
 (25) (Hazel Duke enters the room.)

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- (1) THE COURT: Ms. Duke, I do have some supplemental
 (2) questions for you, and let me set the stage for the questions
 (3) so you understand.
 (4) The issue of whether oil is still in some of the areas that
 (5) are in issue in this case, and to the - and if there is, to
 (6) what extent there is - is an important issue in this case.
 (7) Therefore, anybody who has opinions on it that would be hard
 (8) for them to shake, or on which they would impose more of a
 (9) burden on one party than another in those areas, that would
 (10) cause me to think that a juror might not be appropriate for a
 (11) case. But it's not for me to say exactly what the contested
 (12) issues are. The lawyers have worked with this case a lot
 (13) longer than I have, and they know essentially what's contested
 (14) and what's not.
 (15) So what I'd like to do is, I'd like to do this: I would
 (16) like to have Mr. Diamond explain to you what he thinks the
 (17) contested questions are, whether there is oil still out there,
 (18) as you say, and then I may have some supplemental questions
 for
 (19) you myself.
 (20) Go ahead, Mr. Diamond.
 (21) MR. DIAMOND: Thank you.
 (22) VOIR DIRE EXAMINATION OF HAZEL DUKE (Resumed)
 (23) BY MR. DIAMOND:
 (24) Q Thank you for your patience and tolerance for us. This is
 (25) not the easiest process and probably not the easiest one for

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- (1) you, and I appreciate you being as honest as you are with us.
 (2) We anticipate that the evidence in this case will show, as
 (3) to substantial parcels of land, that they had oil in them.
 (4) That's not to anyone's surprise. But as to some of the
 (5) properties owned by the plaintiffs in this case - for example,
 (6) along the Kenai Peninsula that had oil on them, there will be
 (7) evidence that much of that oil disappeared very quickly, much
 (8) of the harmful substances evaporated. And what remained was
 (9) gone within a number of years.
 (10) Now, as to other parcels up by - closer to Valdez, there
 (11) won't be any dispute between the parties that those beaches
 (12) were heavily oiled and if one goes searching for oil they can
 (13) still find it. But we're going to be fighting about places
 (14) along Kenai and places along Kodiak which were oiled but
 which
 (15) are, witnesses will say, don't have anymore oil on them.
 (16) Given your viewpoints, your experience as a fire fighter
 (17) and what's in your head, do you think you're going to have
 (18) difficulty accepting that testimony?
 (19) A You're talking about harmful effects, I mean, from -
 (20) Q No, I'm talking about beaches that were oiled.
 (21) A Okay, you are saying the water wash up -
 (22) Q Beaches were oiled along the Kenai and Kodiak, they had oil
 (23) on them in 1989, and there will be witnesses who will telling
 (24) you they don't have oil on them today, there are no traces of
 (25) oil on them today. Do you think you would be skeptical of that

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- (1) testimony? Do you think you'd be doubtful of that testimony?
 (2) A Are they going to show pictures?
 (3) I don't know. No, I guess all of it could have got cleaned
 (4) up.
 (5) Q Well, anything could happen, but do you think in your heart
 (6) of hearts, do you think that probably is not true, that if you
 (7) look hard enough you could still find some oil, even in those
 (8) remote places?
 (9) A I don't even know how far they are from the regular oil
 (10) spill. There would be maybe some traces, yeah.
 (11) MR. DIAMOND: Your Honor, those are the issues as we
 (12) see them.
 (13) VOIR DIRE EXAMINATION OF HAZEL DUKE
 (14) BY THE COURT:
 (15) Q I'm concerned that you not bring your opinions that you've
 (16) gained in other experiences into this courtroom and let that
 (17) intrude on your ability to judge the facts as they're presented
 (18) here in court. You understand that, don't you?
 (19) A Uh-huh.
 (20) Q Trials have a way of developing during the case so that
 (21) they might be slightly different than either counsel might
 (22) anticipate, but it does appear to me that a substantial issue
 (23) here is whether some beaches that were oiled do or do not have
 (24) residual oil still on them. You voice some doubt that you can
 (25) be convinced by evidence that might indicate that there isn't

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- (1) oil on certain beaches. Do you still hold to that opinion?
 (2) A I don't think any of them that had oil could be 100 percent
 (3) cleaned.
 (4) Q And since that appears to be a contested issue in this
 (5) case, do you feel that that opinion would keep you from being
 (6) an unbiased juror?
 (7) A I'm going to keep that opinion. I mean -
 (8) Q And you'll keep that -
 (9) A Anywhere - where they say it's a hundred percent, there's
 (10) no - that it's a hundred percent gone, that opinion does stay
 (11) with me, I cannot shake that.
 (12) Q So you can't just decide this case on the basis of the
 (13) evidence in this case, you're saying you'll have to use your
 (14) opinion in judging that issue; is that right?
 (15) A Yeah.
 (16) Q On another case I think you'd be a very appropriate juror,
 (17) ma'am, but that opinion is so close to the issues in this case
 (18) and so unshakable that I'm afraid I'm going to have to excuse
 (19) you from service on this case.
 (20) Since she was last week's juror we don't have to tell her
 (21) to contact the jury clerk?
 (22) THE CLERK: Right.
 (23) THE COURT: You don't have to contact the jury clerk
 (24) after this, you're simply excused. Thank you very much for
 (25) your time.

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- (1) (Hazel Duke leaves the room.)
 (2) (Viola Learjones enters the room.)
 (3) THE COURT: Good morning.
 (4) A Good morning.
 (5) THE COURT: Would you please give your name for the
 (6) record?
 (7) A Viola Learjones.
 (8) THE COURT: Ms. Learjones, we're going to ask you some
 (9) brief supplemental questions supplemental to your
 (10) questionnaire.
 (11) A All right.
 (12) THE COURT: All these questions are answered under
 (13) oath.
 (14) A Yes.
 (15) THE COURT: You understand that?
 (16) A Right.
 (17) THE COURT: Including the written answers you've
 (18) given?
 (19) A Right.
 (20) THE COURT: Mr. Stoll will question you first.
 (21) VOIR DIRE EXAMINATION OF VIOLA LEARJONES
 (22) BY MR. STOLL:
 (23) Q Good morning.
 (24) A Good morning.
 (25) Q Is it Ms. Learjones?

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- (1) A Just call me Vi (ph), it's easier.
 (2) Q You like Alaska?
 (3) A Definitely.
 (4) Q What do you like about Alaska?
 (5) A Oh, I like it from the weather, for one thing, and then I
 (6) love fishing.
 (7) Q Do you do a lot of fishing?
 (8) A No, not as much as I'd like to.
 (9) Q Have you in the past years done more than you do now?
 (10) A Up before my husband passed away, we used to go out
 pretty
 (11) regular; you know, on my days off or something.
 (12) Q And may I ask when he passed away?
 (13) A In December of '90.
 (14) Q I see. And where did you go and where do you go now on
 (15) your vacations in Alaska?
 (16) A Usual around Homer.
 (17) Q And do you go down to Seward, I notice?
 (18) A Right.
 (19) Q And have you gone down in the Prince William Sound since
 (20) the oil spill of 1989?
 (21) A No.
 (22) Q Have you been down to Seward at all since 1989?
 (23) A I was down to Seward just for a day outing, but not for
 (24) being down there for anything.
 (25) Q I see. Not fishing or -

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- (1) A No. Just went down and had lunch and -
 (2) Q Came back.
 (3) A In fact, the last time I was down there was when we took my
 (4) husband's ashes down and did the little thing.
 (5) Q I see.
 (6) Now, I notice that in your - in the questionnaire here you
 (7) had an extremely favorable - we asked you - there were some
 (8) questions here about how did you - based upon your
 knowledge
 (9) and experience, what was your reaction to various
 organizations
 (10) or companies, and one of them was Exxon Corporation. And
 you
 (11) had - you checked that you had an extremely favorable outlook
 (12) towards Exxon Corporation.
 (13) Do you recall that?
 (14) A Well, the only thing that I had, I work in a motel and have
 (15) ever since I came up here in '75, and I've had occasion to help
 (16) some of the gentlemen when they'd come in off the pipeline and
 (17) that kind of thing, that's the only real connection I've had
 (18) with their motels, and their staying long periods of time at
 (19) the motels.
 (20) Q So you found their employees to be good people to work
 (21) with?
 (22) A Well, yes, in the respect that as - well, I was a maid,
 (23) and then I went into management at the motels, and, as I say,
 (24) I've worked with them - sometimes they'd be so drunk that they
 (25) couldn't shave or anything, and they'd have a meeting to go to:

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- (1) and my experience doing practical nursing before I came up
 (2) here, it was nothing for me to go ahead and shave them and get
 (3) them dressed up so where they could go on to their meetings.
 (4) But other than that, that was the only thing.
 (5) Q And from that - what - since - incidentally, what motels
 (6) or motels did you work?
 (7) A Well, at the time they all belonged to Bruce Kendall (ph),
 (8) it was called the Fifth Avenue Co-op, and then the inlet - I
 (9) mean the Cook Inlet group took over most of them, and then
 when
 (10) they sold out I left at the very - near the end, I had a
 (11) stroke and I was off work for a year, and then I went to work
 (12) at the Big Timber, and I've worked there since '79.
 (13) Q That's here?
 (14) A Uh-huh.
 (15) Q And did you have any - with the people that you dealt with
 (16) at Exxon, were any of those people executives with Exxon
 (17) Corporation?
 (18) A The only thing was the union representative used to stay at
 (19) the motel with the men at times to do their little thing, that
 (20) type of thing.
 (21) Q So based upon that, do you have a positive view of Exxon?
 (22) A Yes.
 (23) Q And did you - dealing through the motel, did you deal -
 (24) talk with any people that had anything to do with the cleanup
 (25) after the Exxon Valdez oil spill?

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- (1) A We had several of them come in and stay, and the only thing
 (2) they talked about was money.
 (3) Q They were making lots of money?
 (4) A They would be out drinking and so on and so forth.
 (5) Q Did you get any impression as a result of that about
 (6) whether they were successfully cleaning up all the oil or any
 (7) of the oil, or what impressions did you draw?
 (8) A Well, most of them would more or less say, well, we got
 (9) most of it cleaned up, but there will always be a little bit
 (10) that will be showing up on and off; you know, in time the
 (11) weather would clean itself up.
 (12) Q That's what they told you?
 (13) A Uh-huh.
 (14) Q And do you believe what they told you?
 (15) A I didn't really take - just like sitting and talking, you
 (16) don't really pay any attention to what they say. That's just
 (17) like here the other night, we had a gentleman that came in with
 (18) a party, and all they were talking about, they were drunk, but
 (19) they wanted a room, which we didn't have, only our specialty
 (20) rooms; and they said, well, when we get our money from Exxon,
 (21) we'll be back and get a big room.
 (22) That - I mean, they were talking big money, and to me I
 (23) thought - and this, Your Honor, is my own opinion, but I felt
 (24) why should the fishermen come out and get money to go and
 drink
 (25) on. I don't approve of drinking, my husband was an alcoholic,

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- (1) and I've seen many people destroy their lives with it.
 (2) Q Sure.
 (3) A And I just don't really feel, if they're going to do
 (4) anything, if they're going to have to pay somebody, I feel they
 (5) should give it to the state to be used for the community and
 (6) not for the individual. That's my own opinion.
 (7) Q I understand. Well, we're all entitled to our opinion,
 (8) that's one of the things that makes our country great, right?
 (9) A Right.
 (10) Q So you have - you've observed this, I mean some of these
 (11) people were fishermen?
 (12) A Right.
 (13) Q Apparently this recent group?
 (14) A Right.
 (15) Q And you feel that, in these cases that have come out of the
 (16) oil spill, that the - just sort of it's general, just your
 (17) general impression - and I can tell that you're a lady that
 (18) has you know, strong feelings about -
 (19) A I do.
 (20) Q Yes. And that's a good thing.
 (21) Do you think that generally, just speaking, the plaintiffs
 (22) in these cases are asking for more than maybe they're entitled?
 (23) A Again, I think if they're going to pay anybody - anybody
 (24) can have a bad year in fishing.
 (25) Q Right.

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- (1) A If there's - if a person can have a company be able to
 (2) give them money for having a bad year, then that's fine. If
 (3) they're entitled to it. But I would feel that they should have
 (4) to prove the amount of actual loss that they would have had
 (5) from just having a bad year.
 (6) Q Right. Now, in this case that we're trying here, there are
 (7) no fishermen as plaintiffs. The plaintiffs in this case are
 (8) the Native corporations and municipalities.
 (9) A Uh-huh.
 (10) Q But an issue in this case is what happened to the - an
 (11) issue is what happened to the ecology system in Prince William
 (12) Sound and Kodiak.
 (13) A Well, I don't really know, so I can't make a judgment on
 (14) that.
 (15) Q All right.
 (16) A As I said, if the individual fishermen, as I understood,
 (17) that's what they were fighting as well as the communities. If
 (18) it was going for helping the community make a better tourist
 (19) attraction, living places and so forth, I would say yes, they
 (20) should have it. But otherwise - I mean this is my own
 (21) opinion, again.
 (22) Q Sure, I understand. That's what we're trying to find out.
 (23) A But I don't feel it should go to the individual fishermen.
 (24) Q What about - do you think that that feeling, because these
 (25) communities are made up of fishermen -

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- (1) A Of the fishermen.
 (2) Q I mean, that's where they live.
 (3) A Right.
 (4) Q So in a way, the fishermen –
 (5) A They benefit –
 (6) Q – they're going to get a direct – you know, they're going
 (7) to get a benefit out of this, because if money is awarded to
 (8) them they're going to get a benefit of this, and you've
 (9) expressed your very strong – which I appreciate – very strong
 (10) opinions about the fishermen really weren't injured that much
 (11) from the oil spill?
 (12) A No, because they could have gone to another location and
 (13) done their fishing.
 (14) Q Okay. So with that viewpoint in mind, you'd really want
 (15) these communities and these Native corporations, because a lot
 (16) of Native corporations are fisher people also –
 (17) A Well, true.
 (18) Q – you'd put a pretty heavy burden on them to prove their
 (19) case, wouldn't you? I mean, you'd want to make sure they
 (20) prove
 (21) their case before you let any money go to them?
 (22) A Yes, I would feel that they'd have to prove it. And I'm
 (23) broad-enough minded that I could accept anything, if it could
 (24) be shown; but the little bit I've seen and what little bit I
 (25) have talked with the ones that have come in at the motel, I
 (26) would definitely have to be shown before I would jump to it.

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- (1) Q All right. Let me ask a question, here, ma'am.
 (2) Have you ever been a juror before?
 (3) A No.
 (4) Q Well, you know, sometimes there's an automobile accident
 (5) cases not an oil spill, just somebody runs a stoplight and
 (6) there's an accident?
 (7) A Right.
 (8) Q And the person that's injured in that case, the person that
 (9) brings the lawsuit is always called the plaintiff?
 (10) A Right.
 (11) Q Now, in that type of a case, is there anything about the
 (12) nature of that case that would make you feel a little – that
 (13) the plaintiffs should have to prove? I mean, do you have
 (14) anything about that type of case that causes you any problems?
 (15) A No.
 (16) Q So in that kind of a case you'd be even to both sides?
 (17) A Right.
 (18) Q Now, in this case, with your strong feelings, because
 (19) you've been talking to people for a few years about this –
 (20) A Well, right.
 (21) Q – and you've formed some strong opinions, do you think
 (22) that for the plaintiffs in this case, these Native corporations
 (23) and municipality are made up of fisher people.
 (24) Do you think that having them to prove their case, they'd
 (25) have to prove a little bit more their case with you sitting on

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- (1) the jury than if it were just an obviously accident and the
 (2) plaintiff was somebody that, you know, you had no experience
 (3) with or anything of that nature?
 (4) A No, the only thing –
 (5) THE COURT: Ma'am, don't answer yet.
 (6) MR. DIAMOND: May I register an objection? It's an
 (7) argumentative question, it's leading, it's assuming facts with
 (8) respect to the composition of these plaintiffs.
 (9) THE COURT: Do you want to rephrase your question? Or
 (10) do you want me to ask the question?
 (11) MR. STOLL: Of course you can ask a question.
 (12) VOIR DIRE EXAMINATION OF VIOLA LEARJONES
 (13) BY THE COURT:
 (14) Q In most civil cases, the burden of proof is what we call a
 (15) preponderance of the evidence standard. That means a
 (16) plaintiff
 (17) has a burden of proving things. It's not like what you might
 (18) have heard in criminal cases, beyond a reasonable doubt. The
 (19) plaintiff wins on a factual issue in a case like this if he or
 (20) she shows that a fact is more than likely not true, that's
 (21) defined in the jury instructions as a better than 50 percent
 (22) chance that it is true.
 (23) That is the burden of proof, that's the standard that you
 (24) have to hold the plaintiffs to. In an automobile wreck case,
 (25) the plaintiff has the very same burden, to prove something is
 (26) more likely than not true.

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- (1) I think the question being posed to you is, would you
 (2) impose a higher burden on these plaintiffs who are claiming
 (3) damages from the spill because of your experience with –
 (4) experiences with claimants in the motel than you would just
 (5) someone you didn't know who was claiming damages in an
 (6) automobile accident case?
 (7) A Well, I don't think that would have the deal. What I was
 (8) referring to is that if the money was coming in to an
 (9) individual fishermen, I wouldn't feel that it would be fair,
 (10) because – but if it's coming to a community or a group, I
 (11) could be very open about it and whatever it showed up, then I
 (12) could accept it or not depending on what is showed. But no, I
 (13) don't think it would take any more proof than it would be on an
 (14) obviously accident or something like that. If they present the
 (15) facts. I really haven't studied up on the facts.
 (16) Q I have to be sure of that, I have to be sure that your
 (17) experiences outside this courtroom don't creep into your
 (18) decision when you listen to the evidence and you get the
 (19) exhibits in this case.
 (20) A No, I think it would –
 (21) Q If in fact you feel that there's something that might
 (22) interfere with your holding both parties to the burdens they
 (23) have under the instructions, then you should tell us about it.
 (24) A No, I don't think there would be.
 (25) THE COURT: All right.

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- (1) Counsel?
- (2) MR. STOLL: Your Honor, may I have the Court's
- (3) indulgence and ask a couple more questions?
- (4) THE COURT: Oh, sure, absolutely.
- (5) VOIR DIRE EXAMINATION OF VIOLA LEARJONES
- (6) BY MR. STOLL:
- (7) Q Do you, based upon your – we're trying to be very frank
- (8) and open here.
- (9) And based upon your talks with many people over the years,
- (10) have you formed an opinion as to whether or not the sound is –
- (11) Prince William Sound and Kenai and Kodiak is essentially –
- (12) they are essentially cleaned up?
- (13) A I really haven't paid that much – I believe that it had
- (14) been, I understood that it had been cleaned up. And I know
- (15) that it cost money to do that. But as far as my own knowledge,
- (16) no.
- (17) Q Do you think that these communities or Native corporations
- (18) benefited from the money that was spent in cleaning up?
- (19) A Well, if they cleaned it up, then it automatically had to
- (20) improve – I mean, give them the benefit.
- (21) Q How's that?
- (22) A Well, if it's clean – if it hadn't been cleaned up they
- (23) wouldn't be able to use the – and it is clearing up. They're
- (24) able to have fish again back in the area, and the seals and
- (25) everything are not being damaged.

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- (1) Q Do you think that there's any long-term ecological adverse
- (2) effects to the sound or to Kodiak?
- (3) A I don't think so.
- (4) Q And how did you arrive at that conclusion, just from what
- (5) you've read and from what –
- (6) A Just from – let's just take from forest fire or something
- (7) like that; in time it clears itself back up again.
- (8) Q And so this is your – based on your life experiences?
- (9) A Right.
- (10) Q And I assume, like your other opinions, you have pretty
- (11) strong feelings about this also?
- (12) A No.
- (13) Q Okay. Do you think that, if there's testimony that there's
- (14) still oil persisting in certain areas in the sound and in
- (15) Kodiak, that you could accept such testimony – even if it's
- (16) contested, in other words?
- (17) A Very definite I could accept it.
- (18) Q One expert says there is no oil anymore and the other says
- (19) there is oil, do you think you could – how do you think you'd
- (20) resolve that?
- (21) A Well, I'd have to listen to both sides of it to find out
- (22) where they're coming up with the ideas.
- (23) Q And let's say that you thought, from just what you heard,
- (24) that it was equally balanced. Would you make your final
- (25) decision based upon your general point of view that you think

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- (1) that things have been – nature solves itself or –
- (2) A I couldn't see right now, because right at this time, as I
- (3) said, I have no definite opinion. My only opinion of the oil
- (4) spill has been strictly through what I've heard them talking
- (5) about, going to get big money, they're going out fishing – I
- (6) mean, going out drinking to have parties; to me, I don't
- (7) approve of that.
- (8) Q No, I understand that.
- (9) A But as far as anything else, no, I'm open-minded as far as
- (10) hearing the – both sides and deciding according to whatever is
- (11) shown.
- (12) Q Do you have much dealings with Native Alaskans?
- (13) A Only if – yeah, watching the drunks.
- (14) No, I'm sorry, we have quite a few Natives that come into
- (15) the motel.
- (16) Q Drunk?
- (17) A A lot of them are drunk.
- (18) Q And so as a consequence of that, do you have any general
- (19) views about Native Alaskans and –
- (20) A Oh, no, no. There have been a lot of real nice once that
- (21) have come from different parts of Alaska. I have nothing
- (22) against – there is just as many drunk white people as there is
- (23) the Natives.
- (24) Q Do you think that your views on whether the environment
- (25) is – whether – that there's no long-lasting environmental

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- (1) difficulties as a result of this oil spill, you don't think
- (2) that that's going to influence you?
- (3) A No, I don't think it would, actually, what the result would
- (4) be one way or the other.
- (5) Q And do you have any – do you own any real estate yourself?
- (6) A No.
- (7) Q Do you have any opinions on what the oiling of property and
- (8) that oiling would do to real estate values?
- (9) A It probably would drop it until such a time that the
- (10) cleanup or the pickup by the hand of God would clear it up.
- (11) Q And do you think, if a party had brought an action for
- (12) damages to the marketability of their real estate as a result
- (13) of this, and in your opinion the property was back to normal,
- (14) if this was your opinion.
- (15) A Right, right.
- (16) Q Do you think that that person should not be able to make a
- (17) recovery for damages that occurred in the past?
- (18) A Well, to a certain amount; a reasonable amount, yes.
- (19) Q You think that it's still okay for them to bring an action?
- (20) A Yes.
- (21) Q Now, in this case the Native corporations have a brought a
- (22) claim for amount of damages to their claim and the amount of
- (23) that claim is over \$80 million. It's a large number. Do you
- (24) think that – when I tell you that number, does that shock you?
- (25) A I wish I had that kind of money coming my way, but then

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- (1) you're talking about a lot of property.
 (2) Q A lot of property?
 (3) A Right.
 (4) Q Many of thousands of acres?
 (5) A And again, if there's actual damage that has been done,
 (6) they have a right to it.
 (7) Q What do you mean by "actual damages"?
 (8) A Well, if it's really bothered the property so it couldn't
 (9) be used again for the purpose, beaches, if they're cleaned up
 (10) there is no reason for it.
 (11) Q There's no reason for bringing a damage action?
 (12) A No, there shouldn't - there shouldn't end up being a
 (13) percentage, an extremely high amount of damage. We're
 (14) talking - I don't know how to say it. What amount would be
 (15) permanent damage.
 (16) Q Could you separate - do you think, if you found that there
 (17) had been a lack of marketability in the property for a period
 (18) of time, do you think that - and so that you couldn't, if you
 (19) wanted to sell the property - even if it wasn't for sale -
 (20) you wanted to sell it, that the value of that property
 (21) decreased, do you think that that is a - something that
 (22) compensation - that should be compensable?
 (23) A As I say, if there is permanent damage or considerable
 (24) damage, yes, it should be to a certain amount.
 (25) Q Now, what if there wasn't permanent damage or - let's take

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- (1) that for instance. What if there wasn't permanent damage, what
 (2) if there was temporary damage what -
 (3) A If it's going to be for over a period of time, it should be
 (4) compensated; but, yes, again, I haven't kept on it so I don't
 (5) really know how much actual damage. What I understood, it
 (6) was
 (7) just beaches that were damaged, and of course the sea life and
 (8) so forth that was killed, but I don't think that the
 (9) fishermen - I mean, again, we go right back again.
 (10) Q Yes, I understand.
 (11) A So it's backtracking on the same thing.
 (12) Q So do you think that that could have an effect, though; the
 (13) fact that the fishing off that land may have declined?
 (14) A But I understood that it hasn't. I mean, that it's came
 (15) back again, that they are fishing from there now.
 (16) Q I see -
 (17) A So there was only maybe a year or so of growing back again.
 (18) Q So your feeling is that, after a year or so, that
 (19) everything was back to normal essentially as far as -
 (20) A That's what I understood.
 (21) Q And you have a strong feeling about that, I gather?
 (22) A Well, I don't know, because I haven't kept up with it. I
 (23) don't read the papers too often, and -
 (24) Q But you've talked to a lot of people?
 (25) A That's the only thing I can go by, what they've said.
 (26) Q Sure. And you respect what these people, at least some of

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- (1) these people say?
 (2) A It's only to a certain extent, yes.
 (3) Q And with that in mind, if there was testimony that the
 (4) fishing is not back to what it was before, and that it is
 (5) caused by the oil spill, would you have a tough time believing
 (6) that?
 (7) A I have to stay in different - I really don't know whether
 (8) I could accept it or not, because fish usually come in a period
 (9) of time, as I understand it. They are not there all the time,
 (10) so you're going to have your heavy years and your lean years.
 (11) And if it's going to be - nobody knows for sure which was
 (12) which.
 (13) Q Well, let me ask you this question: You can appreciate
 (14) that both sides want to have an impartial juror?
 (15) A Right.
 (16) Q And I have to be very frank with you, I'm concerned about
 (17) you?
 (18) A Well, that's fine with me, because I don't know that much
 (19) on it. And -
 (20) Q But here's the thing I'm concerned - and I just want to
 (21) ask you, if you were in my position -
 (22) A I would say no.
 (23) Q No, you wouldn't want to have you on a jury?
 (24) A No. Because I am too undecided. I don't know just exactly
 (25) what is going on because I haven't been down there, and I

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- (1) haven't seen it.
 (2) Q But you do have - the reason I was about to say no is you
 (3) say that you think that, after a year or so, everything is back
 (4) to normal?
 (5) A Well, that's what I understood.
 (6) Q I understand.
 (7) A Okay.
 (8) Q And I appreciate that. What I'm trying to say is, we're
 (9) going to have evidence that you may - a juror may believe or
 (10) not believe, but our evidence is going to be that there's been
 (11) adverse effects, long-term adverse effects as a result of the
 (12) oil spill. Now, Exxon, on the other hand, is going to have
 (13) testimony that says everything - pretty much what you say,
 (14) everything is fine.
 (15) A Well, I don't really know. And it's not because it's
 (16) Exxon; it's just what I have understood the fishermen have said
 (17) that they are back fishing.
 (18) Q Okay.
 (19) A But the only thing I have heard them discuss is the effects
 (20) of how much they're going to get when it's all cleared up.
 (21) Q So my question -
 (22) A So I really don't have any opinions.
 (23) Q Well, you do have opinions though.
 (24) A Well, I have opinions, but only based on -
 (25) Q What these people tell you?

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- (1) A Yeah, and I think it's because of the fact that they're not
 (2) talking in terms of doing any improvement on the property, it's
 (3) been strictly – or on anything that would really help bring it
 (4) back to where it was before. Except for their own pocketbooks.
 (5) Q So can I just sort of summarize – see if I think your view
 (6) is the following: Based upon a lot of discussions you've had
 (7) with a lot of people over a five-year period of time –
 (8) A Yeah, right.
 (9) Q – number one, you believe that the – after about a year,
 (10) the fishing is back to normal. And, number two, and the
 (11) ecology is back to normal, God and Mother Nature takes care of
 (12) the environment. And, number three, that the fishermen are
 (13) looking for – I'll call it a windfall.
 (14) A Yeah.
 (15) Q A big windfall?
 (16) A Windfall.
 (17) Q And they're going to get all this money and then they're
 (18) going to go out and have a grand ol' time, and you don't like
 (19) that of course, and I understand that. With that viewpoint
 (20) now, here's the question I have: With those views in mind,
 (21) don't you think that we want jurors that can fairly, evenly,
 (22) not come in with a point of view –
 (23) A I agree.
 (24) Q – and can fairly view the evidence, don't you think that
 (25) it would be better for you, because of these feelings, not to

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- (1) sit on this jury because of your – you know, let's be frank
 (2) about it: You're biased, your feelings; do you think that's
 (3) true?
 (4) THE COURT: Don't answer.
 (5) MR. DIAMOND: I object to the question as
 (6) argumentative.
 (7) THE COURT: Well, it's a better question for you, I
 (8) think, is the only part of the question that can be revised.
 (9) It's not a question whether it's better for me; the question is
 (10) whether she would be affected by all these experiences and not
 (11) be impartial.
 (12) MR. STOLL: Right.
 (13) MR. DIAMOND: I object to the preamble of the question
 (14) as misstating what Ms. Viola Jones has told us, and long
 (15) speeches which set the stage which don't really fairly
 (16) characterize she said. If they could have questions made
 (17) instead of speeches made.
 (18) THE COURT: That objection's overruled.
 (19) Do you understand the question? You have some pretty
 (20) strong opinions?
 (21) A Yes, I do.
 (22) THE COURT: And the question is whether you could be
 (23) fair and impartial, and these are contested questions in this
 (24) case, whether the oil is still there, what the ecology is still
 (25) there; it's all issues in the case.

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- (1) Do you think you could be fair and not affected by what
 (2) your experiences has taught you and listen to the evidence in
 (3) the case and treat each of the parties absolutely equal?
 (4) A Well, I believe I could, but I truthfully would just as
 (5) soon not be on it, and not have to go through the division
 (6) there. Because I'm not sure.
 (7) THE COURT: Is that because it's a difficult issue for
 (8) you to decide and you think you might be affected?
 (9) A No, I think – I believe I could fair about making a
 (10) choice, you know, after hearing all of the evidence. I don't
 (11) know what's going on down there. I haven't kept up with it,
 (12) other than just having them talk, "I'm going out fishing on the
 (13) next outing, or the opening," that type of thing. We don't
 (14) have – when they come in down at the motel, we don't usually
 (15) sit and talk with the people other than hello, good-bye, your
 (16) room number is such and such. But at the same time there is
 (17) some of them, when they get drinking or something, they talk
 (18) more than would otherwise.
 (19) But as far as – and I don't know any of the Natives
 (20) personally just than they come into the motel. So personal
 (21) feeling about, I don't know. But it's just on the general
 (22) if – as I said, if it's going to go, the money was going to
 (23) help the community that was affected by the oil spill, I could
 (24) go along with it. But if it's going to go to the individual
 (25) fishermen for his benefit, I don't go that route. Because, as

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- (1) I said, if they have a bad year, they have a bad year, and it
 (2) isn't all from the oil spill. Of course you can't ask God what
 (3) to come and pay them.
 (4) So I don't know. And I would have to be very open about
 (5) that.
 (6) BY MR. STOLL:
 (7) Q Well, you said you weren't sure about whether – you said
 (8) something about that you just – I can't remember, I didn't
 (9) write it down exactly, but you didn't want to – you thought
 (10) maybe you didn't want to sit on the jury because at the end you
 (11) said you weren't sure about something, and I didn't
 (12) understand.
 (13) A Well, I truthfully think I could be fair about it, but I
 (14) still don't –
 (15) Q There's still a doubt in your mind?
 (16) A There's still a doubt – I may not – I may not realize
 (17) that I have much feeling about it as what might show up.
 (18) Q I understand. And that's – you're being frank and honest
 (19) about it; I appreciate it. So you think that that could –
 (20) that there is a – there is a reasonable possibility that that
 (21) could affect your determination?
 (22) A Yes, it could. I don't know why it should, but it's
 (23) possible that it might.
 (24) Q And there's a doubt in your mind about it, isn't there?
 (25) A Right.
 (26) Q A reasonable doubt in your mind?

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- (1) A Pretty much.
 (2) MR. STOLL: Thank you, Your Honor. I'll have an
 (3) application.
 (4) THE COURT: Mr. Diamond.
 (5) VOIR DIRE EXAMINATION OF VIOLA LEARJONES
 (6) BY MR. DIAMOND:
 (7) Q Good morning, Ms. Jones, I'll try to be brief.
 (8) You heard the Judge describe this case last Monday when we
 (9) were assembled in the auditorium?
 (10) A Right.
 (11) Q And you understand this is a case about land?
 (12) A Right.
 (13) Q And about where the land got damaged as a result of the
 (14) spill?
 (15) A Right.
 (16) Q And you know that there are no fishermen plaintiffs in this
 (17) case, or do you think there are fishermen plaintiffs?
 (18) A Oh, I was under the impression from what I had heard that
 (19) they were affected - I mean, it was also counting the
 (20) fishermen that lost revenue from their fishing because of the
 (21) oil spill.
 (22) Q That's a different case. We don't have fishermen in this
 (23) case. The plaintiffs are all corporations, they are Native
 (24) corporations and they are municipal corporations -
 (25) A Okay.

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- (1) Q - on the plaintiffs' side, do you understand that?
 (2) A Uh-huh.
 (3) Q Do you think - do you have any doubt that you could be
 (4) fair to Native corporations?
 (5) A Oh, no.
 (6) Q You think you could be fair?
 (7) A I can be fair.
 (8) Q And as to the municipalities, the cities of - no longer
 (9) Seward, but Cordova Larsen Bay, Ouzinkie; do you think you
 (10) could be fair to them?
 (11) A I could be fair, yeah.
 (12) Q You said a moment ago maybe you shouldn't serve and I
 (13) thought you were saying because you don't know very much
 (14) about
 (15) this?
 (16) A Well, I don't know. I don't know as far as how long it
 (17) takes to clear from the oil, I don't know how much damage was
 (18) actually done other than the seafood - I mean the birds and
 (19) the things dying from the oil. Other than that, I don't know
 (20) too much about it.
 (21) Q Well, that probably makes you a better juror, not a worse
 (22) juror. There are a lot of issues that we're fighting with the
 (23) plaintiffs offer. One of them is the effects on the
 (24) environment. And I heard you say you're pretty open-minded
 (25) about that?
 (26) A Yes.

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- (1) Q What we're looking for is people who can come in and leave
 (2) outside the courtroom door their opinions and beliefs and
 (3) listen to the witnesses who testify and evaluate what you hear
 (4) using your common sense and the Court's instructions and
 reach
 (5) a decision based on the evidence as to the effects of the spill
 (6) on the environment. Do you think you could do that?
 (7) A I believe that I could.
 (8) Q Whether the oil was gone in a year or two years or three
 (9) years, or whether it's still there, do you think in the same
 (10) way you could listen to the witnesses testify and evaluate what
 (11) they say and see whether it makes sense to you under the
 (12) Judge's instructions and be fair to both sides?
 (13) A Yes.
 (14) Q You like to read hunting and fishing magazines?
 (15) A Usually.
 (16) Q Do you hunt and fish?
 (17) A I fish.
 (18) Q Where do you fish?
 (19) A Seward, Homer.
 (20) Q Have you fished recently?
 (21) A No, not for over five years.
 (22) Q I was going to ask you whether you wanted to be on this
 (23) jury, but I think you already answered that question. Do you
 (24) want to serve?
 (25) A I just as soon not.

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- (1) Q Because it's an inconvenience and hardship?
 (2) A Well, I won't say it's a hardship, but it's kind of
 (3) inconvenient.
 (4) Q To all of us, yeah.
 (5) A Uh-huh.
 (6) MR. DIAMOND: Nothing further.
 (7) THE COURT: I'm going to send you out for just a
 (8) moment, ma'am, and then I'm going to bring you right back in.
 (9) So wait out there.
 (10) A Okay.
 (11) (Viola Learjones leaves the room.)
 (12) THE COURT: Counsel, you've had 40 minutes to question
 (13) this witness, so be a little more succinct in the statement of
 (14) your various positions, all right?
 (15) MR. DIAMOND: I think I only had three minutes.
 (16) THE COURT: I was talking about the entire
 (17) examination.
 (18) MR. STOLL: Your Honor, I appreciate that, and she -
 (19) she gave - she said that she was going to try to be fair, she
 (20) also said that she thought that there was a reasonable
 (21) possibility that she was not - she couldn't put away her very
 (22) strongly held points of view on a variety of these subjects,
 (23) including whether or not everything was okay after a year, that
 (24) God and Mother Nature were going to take care of this
 (25) situation; and as far as this thing about the individuals are

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- (1) concerned, Exxon has among their exhibits – they have broken
 (2) down, for instance, the Native corporations, what the Native
 (3) corporation claim would mean to each shareholder of the Native
 (4) corporation. They've got a big graph that shows it would be
 (5) about \$400,000 per shareholder in the Native corporation. And
 (6) they're going to make a big thing of that, there's no question
 (7) about that.
 (8) I just think that – I think that – I do think that she
 (9) would try to be fair, but she's had a lot of experiences with
 (10) Exxon employees, both the cleanup and before the cleanup;
 she's
 (11) had a lot of experiences with apparently some plaintiffs or
 (12) potential plaintiffs in some other case. And I just think
 (13) that, as she said, there is a reasonable possibility that she's
 (14) not going to be able to put these views aside about whether
 (15) everything was okay in a year or not, and it's going to taint
 (16) the jury. I just don't think it's – I think she's prejudiced.
 (17) MR. DIAMOND: In 37 minutes of withering examination,
 (18) Mr. Stoll, I think, brought out a fact based on confusion.
 (19) This juror thought this was a fishermen case, and I would be
 (20) the first to agree that maybe I wouldn't want her on my jury if
 (21) this were a fishermen case. But this isn't a fishermen case,
 (22) it's a land case. It doesn't involve fishermen, it's
 (23) corporation versus corporation and she said repeatedly the
 (24) issues we're disputing. She has an open mind.
 (25) The only view she has is the oil is taken care of in a year

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- (1) or two, but with that it was not a very strong opinion it was
 (2) based on people she did not have total respect for I think
 (3) she's is a fair and open-minded juror and I don't think the
 (4) challenge is well taken.
 (5) THE COURT: That was a relatively lengthy examination
 (6) and there are lots of things on the record that could be argued
 (7) either way by both of the parties in this case. The ultimate
 (8) question, though, is whether there is something about the
 (9) experiences issued that the opinions she's gained from those
 (10) experiences and the confusion she's voiced about the claims
 and
 (11) what the benefits of the claims might be and what has to be
 (12) proved that would cause me to think that she can't be a fair
 (13) and impartial juror.
 (14) This is clearly one of those discretionary issues that I'm
 (15) given a degree of latitude on. And it's also clear from the
 (16) case law that the opinion of the juror that she can be fair,
 (17) even as insincere as it might be, is not a dispositive question
 (18) here.
 (19) Now, she's said she could be fair, she's also voiced what I
 (20) consider to be some doubt as to whether she could be fair.
 (21) More than that she showed a substantial amount of confusion
 (22) what these claims are for, on whose behalf they are being
 (23) prosecuted in this court and what the effects would be. This
 (24) is a question where I believe that the entire record shows that
 (25) she's an inappropriate juror because she has a state of mind

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- (1) that would keep her from being impartial on the case.
 (2) Therefore the motion is granted.
 (3) Counsel, we have one additional juror up here before we
 (4) have to go back downstairs and get the rest of the panel, so
 (5) I'd like to do that juror and then take a recess; all right.
 (6) MR. STOLL: Fine, Your Honor.
 (7) (Viola Learjones enters the room.)
 (8) THE COURT: Ma'am, would you do one thing for me?
 (9) First, you neglected to sign your questionnaire so you need to
 (10) do that.
 (11) A All right.
 (12) THE COURT: Ma'am, you underwent a relatively long
 (13) examination, more than some of the other jurors, and I've
 (14) decided based on everything that I've heard, that it would be
 (15) inappropriate for you to serve as a juror in this case. I just
 (16) think that the opinions you've gotten and the experiences
 (17) you've had they are more substantial than most of the jurors
 (18) here. You've really had some fairly extensive contact with
 (19) people who might be – who are making claims in a case of this
 (20) type, I feel that your opinions really might intrude on the
 (21) fact finding process.
 (22) A Right.
 (23) THE COURT: So I'm going to excuse you.
 (24) A Okay. Fine.
 (25) THE COURT: Thank you very much and you don't have to

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- (1) call back in, you're excused.
 (2) A All right.
 (3) (Viola Learjones leaves the room.)
 (4) MR. DIAMOND: Your Honor, before the next juror comes
 (5) in.
 (6) THE COURT: Uh-huh.
 (7) MR. DIAMOND: We filed a memorandum on Friday
 (8) concerning the new Mundy reports and the real estate reports.
 (9) After submitting that to you, we were served with additional
 (10) materials concerning the plaintiffs damage claim. We just want
 (11) to supplement the record. I've already filed something, I
 (12) served it on counsel. I'll drop off a courtesy copy with your
 (13) clerk.
 (14) THE COURT: That would be fine, yes. Why don't you
 (15) give it to me counsel, because I'll take it into chambers
 (16) myself.
 (17) (Lenore Stewart enters the room.)
 (18) THE COURT: Hello.
 (19) A Hi.
 (20) THE COURT: Would you please give your name for the
 (21) record?
 (22) A Lenore Stewart.
 (23) THE COURT: Ms. Stewart, we're going to be questioning
 (24) you, I hope relatively briefly regarding your quality case to
 (25) serve as a juror, that's a supplement to the questions that you

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- (1) gave under oath in the jury questionnaire.
 (2) A Okay.
 (3) THE COURT: Mr. Fortier will be the first one that
 (4) questions you and then Mr. Diamond will question you, and
 then
 (5) I will let you know what happens next.
 (6) A Okay.
 (7) VOIR DIRE EXAMINATION OF LENORE STEWART
 (8) BY MR. FORTIER:
 (9) Q Good morning, Ms. Stewart.
 (10) A Good morning.
 (11) Q My name is Sam Fortier and I represent the Native
 (12) corporations in this case and Mr. Stoll represents the
 (13) municipalities.
 (14) MR. STOLL: Good morning.
 (15) BY MR. FORTIER:
 (16) Q I hope that you are – you get a lot of news from Rush
 (17) Limbaugh?
 (18) A I get his newsletter, yes.
 (19) Q You get his newsletter?
 (20) A Yes.
 (21) Q Do you generally agree with his views?
 (22) A Most of them I have to say I do, yes.
 (23) Q Now, Rush Limbaugh is a person that – he has quite strong
 (24) opinions about things, doesn't he?
 (25) A Yes.

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- (1) Q Do you find yourself as being a person that also has strong
 (2) opinions about things?
 (3) A I guess. On some things, I guess, yeah. It varies, I
 (4) guess.
 (5) Q And do you have strong opinions as to Rush Limbaugh
 (6) himself? Do you strongly support him?
 (7) A No. I think he's more of an entertainer than – there's a
 (8) lot of entertainment value to him.
 (9) Q Now, besides receiving his newsletter, do you contribute
 (10) any other amounts to him, or –
 (11) A No.
 (12) Q Are you active in any organizations that involve Rush
 (13) Limbaugh?
 (14) A No.
 (15) Q You also participate in Girls' Club activities?
 (16) A I would say through the bank that I work in, they work with
 (17) a year annual auction that they have, fund-raiser, and I've
 (18) done that for the last few years, but that's pretty much it.
 (19) Q And the bank, that's the National Bank?
 (20) A Northrim.
 (21) Q Northrim?
 (22) A Right.
 (23) Q I notice that you are going for another job interview
 (24) around the 23rd?
 (25) A No, I did last Thursday. I did.

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- (1) Q You expressed some concern in your questionnaire.
 (2) Ms. Stewart, about what would happen if the job interview
 (3) panned out?
 (4) A I just don't know how it would affect new employment in
 (5) being away for a long period of time, but that's –
 (6) Q Did you inquire of the employment?
 (7) A I don't know yet, I have not heard.
 (8) Q Oh, I see. Did you explain to your – to the person with
 (9) whom you had the interview that you were presently on a jury
 (10) panel for selection?
 (11) A Yes, I did.
 (12) Q Did you get any understanding one way or the other as to
 (13) whether or not it would affect you?
 (14) A I didn't get any feedback either way.
 (15) Q Ms. Stewart, I need to have you refer to your questionnaire
 (16) for a minute, I need to ask you a few questions about it.
 (17) A Okay.
 (18) Q I think it's on the table just over there a little bit.
 (19) A Sure. Okay.
 (20) Q What I need you to do is have you, if you could turn to
 (21) question 47.
 (22) A Okay.
 (23) Q Okay. Now, you indicated that you feel somewhat
 (24) unfavorably towards local governments and municipalities.
 (25) Could you tell us why?

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- (1) A You know, I'm really not sure. Just pretty much government
 (2) in general, I don't – you know, I don't know. I was –
 (3) Q So you feel unfavorable towards government in general;
 (4) would that be a fair characterization?
 (5) A Well, currently, yes. I guess maybe not as much local as
 (6) national, you know.
 (7) Q But as a general proposition you would feel unfavorably
 (8) towards government; would that be correct?
 (9) A Yeah.
 (10) Q And, Ms. Stewart, again, you and that general feeling of
 (11) unfavorably towards governments, you would hold those
 opinions
 (12) fairly strongly, wouldn't you?
 (13) A Yeah, somewhat, you know, I don't –
 (14) Q So in a case where you had a government, like a
 (15) municipality on the government side, you would make an
 attempt,
 (16) would you not, to require the municipalities to prove more than
 (17) you would another plaintiff in such a case?
 (18) A No, I don't think so. I think I could be fair, I think
 (19) that's more just of a general opinion overall, the way the
 (20) government works more so than the specific dealings. You
 know,
 (21) I don't know.
 (22) Q So you don't like the way governments work?
 (23) A For the most part, no. I've not liked what I've seen,
 (24) but –
 (25) Q Well, in this case where there are municipalities in the

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- (1) case, I suppose one of the things we're looking for is a juror
 (2) that would come in and not have any opinions as to, you know,
 (3) government in general, one way or another. And it sounds to
 (4) me, you tell me if I'm wrong, but it sounds to me like if you
 (5) were to examine, you know, yourself fairly, you do have strong
 (6) opinions about government; wouldn't that be correct?
 (7) A Yes. I don't know that it's more on the local level or I
 (8) think I feel more strongly about government, big government if
 (9) you want to say, I don't know how I feel about local
 (10) municipality, that kind of thing, I don't know that I have much
 (11) of an opinion about local.
 (12) Q So in this case, then, you know, if you were let's say in
 (13) my position, or Mr. Stoll's position, Mr. Stoll represents the
 (14) municipalities, and there was somebody that shared your
 (15) beliefs
 (16) of government in general, would you think that that person
 (17) should be on a jury other than one in which a municipality is a
 (18) party to the case?
 (19) A I'm not sure, you know.
 (20) Q Do you think, examining how you feel about things and how
 (21) you look at things, really deeply inside of you, that it would
 (22) be more difficult for you to be fair to a municipality than it
 (23) would - or to a government, and a municipality is a
 (24) government, than it would be to anybody else?
 (25) A I think I could be fair given, you know, specifics and
 facts and that kind of thing.

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- (1) Q But would it be more difficult for you to be fair?
 (2) A No, in all honesty I don't really feel it would be.
 (3) Q So you feel even though you do have a negative feeling
 (4) towards governments in general, that you wouldn't towards
 (5) municipalities?
 (6) A Well, again -
 (7) MR. DIAMOND: I object, asked and answered and
 (8) mischaracterizes her statement about feelings about
 (9) governments
 (10) in general.
 (11) THE COURT: You can ask the question. Go ahead. Do
 (12) you remember the question?
 (13) A No, I'm sorry.
 (14) MR. FORTIER: I don't either.
 (15) THE COURT: Hold on, objection's sustained.
 (16) MR. DIAMOND: I'll withdraw the objection.
 (17) BY MR. FORTIER:
 (18) Q Let me ask you this. Based upon your feelings about
 (19) government in general, you indicated that you felt you could
 (20) set those aside with municipalities. My question is, let me
 (21) ask it this way. How would you do that?
 (22) A I think maybe I'm confusing my feeling of government in
 (23) general over maybe politics, if you want to say, and specific
 (24) politics maybe more so than an actual government entity, or,
 (25) you know. I'm not a real radical person, I don't think, on
 anything. I think I'm pretty laid back on a lot of things.

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- (1) I'm not involved in a whole lot of community type things or
 (2) anything like that, so it's just kind of, in my opinion just
 (3) kind of vague opinions, I don't - I'll leave you with that, I
 (4) don't know.
 (5) Q That's fine, Ms. Stewart. Let me move on. You indicated
 (6) that you felt somewhat favorably towards Native corporations.
 (7) But you left open the question of Natives, you didn't answer
 (8) that one further down, there's two more down. Do you have any
 (9) particular feelings one way or another about Native people?
 (10) A No.
 (11) Q Do you know any Native people?
 (12) A No, I don't.
 (13) Q And you also left open the question of Exxon Corporation.
 (14) In this case, do you have any particular feeling one way or the
 (15) other towards Exxon Corporation?
 (16) A No, I honestly don't.
 (17) Q And your job interview shouldn't bother you, it shouldn't
 (18) interfere with what is going on in this court; is that correct?
 (19) A Right.
 (20) Q In other words, you wouldn't have a problem if you were to
 (21) obtain a job and you sat on this jury to enjoy both?
 (22) A I hope not, no.
 (23) Q Do you have any feelings one way or the other about whether
 (24) or not you want to serve on a jury in the Exxon Valdez case?
 (25) A No, I really don't. I know it's going to be long, that's

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- (1) my only - but that's not a real concern.
 (2) Q I'm sorry?
 (3) A It's not a real concern, no.
 (4) Q It appears as if you haven't read a lot about the case?
 (5) A No, I have not.
 (6) Q And you haven't been to the Prince William Sound area?
 (7) A No.
 (8) Q But you've been - let me ask you this, Ms. Stewart, just a
 (9) couple more questions and then - I'm supposed to be brief, so?
 (10) A That's fine.
 (11) Q You've lived in Alaska for 15 years now, right?
 (12) A Yeah.
 (13) Q And you moved up here with your parents?
 (14) A Yes.
 (15) Q Why do you like Anchorage, why do you live here? Let me
 (16) ask it that way. Why do you live here?
 (17) A I live here because my husband lives here. My family has
 (18) since left, and my husband is here or I wouldn't be here
 (19) either.
 (20) Q Is there anything about Alaska that you do like?
 (21) A I like Anchorage, I don't like that it's far away from my
 (22) family. My husband and I don't have any family up here, and
 (23) that's really my only objection to it.
 (24) Q Do you get out and hike or anything like that? Do you have
 (25) any outdoor activities?

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- (1) A No, not really.
 (2) Q And the winters are long?
 (3) A Yeah, they are. I generally go to Hawaii in the winter, at
 (4) least once.
 (5) Q And do you own a home here in Anchorage?
 (6) A No.
 (7) Q And you indicate that you have specialized training in
 (8) tourism, could you tell me what that is?
 (9) A I just went to a travel school in Hawaii several years back
 (10) for a couple of months, but that was it.
 (11) Q You went to school in Hawaii for a couple of months?
 (12) A Just a couple of months.
 (13) MR. FORTIER: I have no further questions.
 (14) VOIR DIRE EXAMINATION OF LENORE STEWART
 (15) BY MR. DIAMOND:
 (16) Q Good morning, Ms. Stewart.
 (17) A Good morning.
 (18) Q My name is Chuck Diamond, I'm one of the lawyers
 (19) representing Exxon. You have the benefit of being our juror
 (20) just before our break so we're all in a hurry.
 (21) A Okay.
 (22) Q We were all routing for you on the 23rd, when did you find
 (23) out if you got the job?
 (24) A They said two or three weeks.
 (25) Q What kind of job are you looking for?

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- (1) A It was a sales position with American Express.
 (2) Q You were in Alaska at the time of the spill?
 (3) A Uh-huh.
 (4) Q Do you have any feeling towards Exxon at that time?
 (5) A To be honest, it was - what month was it in 1989.
 (6) Q It was March?
 (7) A March. To be honest, I was married in March so I was on my
 (8) honeymoon March of '89, and then my father had just been
 (9) diagnosed with a very severe cancer in February of '89 which
 (10) ultimately took his life in December of that year. So my 1989,
 (11) to be honest, was consumed with family things. My dad was
 (12) very
 (13) ill and, to be honest, it wasn't really - I don't recall much
 (14) of it.
 (15) Q Do you have any pets at home?
 (16) A No.
 (17) MR. DIAMOND: Thanks very much.
 (18) THE COURT: All right. You've been passed for cause,
 (19) that simply means you're still on the jury panel and you may
 (20) very well sit on this case in the final analysis. But there
 (21) are still a number of jurors to be questioned, and I can't tell
 (22) you what the final composition of the jury is at this time.
 (23) A Okay.
 (24) THE COURT: So I'm going to excuse you in just a
 (25) minute, and I'll excuse you until we call you back.
 (26) A Okay.

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- (1) THE COURT: You just have to remain in touch.
 (2) A Okay.
 (3) THE COURT: Please remember you're a jury panel member
 (4) in this case so do not form or express any opinions in the case
 (5) until it will be submitted to you for deliberation. And also
 (6) you don't want to talk to anybody about the case, including the
 (7) people in the jury panel, I don't want them to gather any
 (8) information from you about what the selection process is: all
 (9) right?
 (10) Okay. We'll probably see you later and we'll let you know.
 (11) A Okay.
 (12) THE COURT: Thank you.
 (13) All right, counsel, it's break time. Is there anything to
 (14) take up before -
 (15) MR. DIAMOND: I was just going to inquire, the jury,
 (16) how many jurors have we bought in today, how many -
 (17) THE CLERK: Ten - nine; one was excused.
 (18) THE COURT: That's right. You excused one by
 (19) stipulation, so it's nine. And we'll probably go through the
 (20) nine and that's it. Well, not actually, we probably will go
 (21) through the nine.
 (22) (Recess 11:20 a.m. to 12:01 p.m.)
 (23) THE COURT: We're on the record without the jury panel
 (24) present.
 (25) Counsel, these are the jurors we have: 50, 53, 55, and

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- (1) 56. The other jurors of the one we called, there are about
 (2) four or five of them, they've been contacted and been told to
 (3) report as quickly as they can around 12 o'clock, so we will
 (4) probably have them to examine also. All right.
 (5) All right. Let's bring the juror in.
 (6) MR. STOLL: Did you say 50, 53, 55 and 56. Your
 (7) Honor?
 (8) THE COURT: Yes.
 (9) (Kathy Wisthoff enters the room.)
 (10) THE COURT: Good afternoon.
 (11) A Hi.
 (12) THE COURT: Could you please give your name for the
 (13) record?
 (14) A Kathy Wisthoff.
 (15) THE COURT: Ms. Wisthoff, we're going to be asking you
 (16) a few supplemental questions to those in your questionnaire.
 (17) All these questions, including the ones in the questionnaire,
 (18) are under oath; you understand that?
 (19) A Yes.
 (20) THE COURT: Mr. Stoll?
 (21) VOIR DIRE EXAMINATION OF KATHY WISTHOFF
 (22) BY MR. STOLL:
 (23) Q Is it Miss or Mrs.?
 (24) A Mrs.
 (25) Q Mrs. Wisthoff, my name is Bob Stoll and I represent the

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- (1) municipalities in this case, and Mr. Fortier here represents
 (2) the Native corporations.
 (3) A Uh-huh.
 (4) Q And I just have a few questions to go over with you.
 (5) Have you ever sat on a jury before?
 (6) A Yes.
 (7) Q And what type of a case was that?
 (8) A Drunk driving.
 (9) Q Okay. And you know that in a trial we want to have fair
 (10) and impartial jurors?
 (11) A Yes.
 (12) Q And do you think you can be fair and impartial in this
 (13) case?
 (14) A Yes.
 (15) Q And you're going to consider only the evidence you hear in
 (16) the courtroom?
 (17) A Yes.
 (18) Q Now, your father worked for Veco during the cleanup, I
 (19) noticed from your questionnaire?
 (20) A Yes.
 (21) Q And did you talk to him about the - what he was doing?
 (22) A I don't remember very many conversations. It was a long
 (23) time ago. I just remember he left Anchorage and was working,
 (24) cleaning up; that's all I really knew.
 (25) Q Did you form any opinions as a result of that - you know,

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- (1) maybe -
 (2) A Of his work in -
 (3) Q Yes.
 (4) A No.
 (5) Q Okay. You've read, I see, numerous articles about the oil
 (6) spill. I guess a lot of us have probably been exposed to
 (7) that.
 (8) A Right.
 (9) Q Do you think those - you're going to consider the evidence
 (10) that's considered in the courtroom, not what you may have read
 (11) or heard?
 (12) A Yes.
 (13) Q And you understand in this case there is no issue here of
 (14) whether Exxon is liable for the actions of Captain Hazelwood,
 (15) liability has already been determined and the issue is only one
 (16) of what are the damages, if any, that were caused by the oil
 (17) spill?
 (18) A Yes, I understand that.
 (19) Q Is there anything about the nature of the plaintiffs, the
 (20) municipalities or Native corporations that cause you any
 (21) concerns in terms of your ability to deliberate as a juror?
 (22) A No.
 (23) Q Is there anything about Exxon as a party, do you have any
 (24) feelings towards or against Exxon that would affect your
 (25) ability to evaluate the evidence fairly?

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- (1) A No.
 (2) Q Do you have any friends or acquaintances that have talked
 (3) to you about any aspects of this case that you think might
 (4) influence you as a juror?
 (5) A I don't think so.
 (6) Q Have you ever been to Prince William Sound?
 (7) A No.
 (8) Q How about to Kodiak?
 (9) A I think I was in Kodiak many years ago on business. I
 (10) traveled a lot throughout the state when I worked for the state
 (11) several years ago, and I believe that was the one of the places
 (12) I've been. It's not very memorable for me; I think I was
 (13) there.
 (14) Q And I'm sorry, I can't remember what you did for the state?
 (15) A I worked in two departments under the governor's office;
 (16) the State Arts Council and the Alaska Woman's Commission.
 (17) Q And how did you happen to go around the state in those -
 (18) A Meetings.
 (19) Q I see in the arts area in particular or -
 (20) A Both. First with the arts council and then with the
 (21) woman's commission.
 (22) Q And I understand you are now the owner of the Athletic
 (23) Club?
 (24) A Right. The Alaska Athletic Club.
 (25) Q And this jury service is not going to interfere with

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- (1) your -
 (2) A No.
 (3) Q - management? You know that we're going to - normally we
 (4) will finish each day by 1:30 in the afternoon?
 (5) A Yes.
 (6) MR. STOLL: Thank you very much.
 (7) A You're welcome.
 (8) VOIR DIRE EXAMINATION OF KATHY WISTHOFF
 (9) BY MR. DIAMOND:
 (10) Q Good morning, Ms. Wisthoff.
 (11) A Good morning.
 (12) Q My name is Chuck Diamond. I'm one of the lawyers
 (13) representing Exxon in this case.
 (14) As I understand from your questionnaire, that you and your
 (15) husband are the co-owners of the Alaska Athletic Club?
 (16) A Yes.
 (17) Q And you have three locations?
 (18) A Right.
 (19) Q Two here and then one in Fairbanks?
 (20) A Right.
 (21) Q How many employees do you have here in Anchorage?
 (22) A In Anchorage, approximately 35 to 40.
 (23) Q Do you supervise them on a daily basis?
 (24) A Most of them.
 (25) Q How do you divide responsibilities for the operations with

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- (1) your husband?
 (2) A Well, he works in one location; my office is in another
 (3) location. I work downtown, he's in midtown.
 (4) Q And he's at the one on Tudor?
 (5) A Right.
 (6) Q Does the club have corporate memberships?
 (7) A Yes.
 (8) Q Does he handle that or do you, or both?
 (9) A We both are involved. We also have corporate salespeople
 (10) that are more directly involved than we are.
 (11) Q You're aware, are you not, that Exxon purchased a
 temporary
 (12) corporate membership?
 (13) A Yes, and my husband did that.
 (14) Q What do you understand about that?
 (15) A What I recall from him is that somebody called him saying
 (16) that they were a group of people, I think mostly attorneys in
 (17) town for the duration of the trial, and wanted to know if some
 (18) sort of special deal could be worked out; you have one. I had
 (19) actually forgotten about that since he set it up and he sold
 (20) those. I had forgotten about it when I did the questionnaire,
 (21) and I don't remember if there are any questions on there about
 (22) doing business with Exxon. I had forgotten about it until I
 (23) got home after this was over.
 (24) Q But the Athletic Club does have this ongoing business
 (25) relationship with Exxon?

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- (1) A Yes.
 (2) Q And I don't know whether you've seen me, but a number of
 (3) the Exxon lawyers work out of the downtown location?
 (4) A Right.
 (5) MR. DIAMOND: Your Honor, I think that probably is a
 (6) for-cause challenge.
 (7) THE COURT: It might be, counsel. Do you want me to
 (8) exclude the juror for just a minute?
 (9) MR. DIAMOND: Yeah, why don't we do that.
 (10) THE COURT: Can you go back to the jury room?
 (11) A Sure.
 (12) THE COURT: I'll bring you right back out.
 (13) (Kathy Wisthoff leaves the room.)
 (14) THE COURT: It might be a challenge for cause. The
 (15) question is who's going to do the challenge.
 (16) MR. DIAMOND: I believe the statute includes anyone
 (17) with a debit or credit relationship with a party to the action.
 (18) THE COURT: I agree. The grounds may very well be
 (19) there. The question is whether the plaintiffs or defendants
 (20) want to exercise the challenge; because if you don't, then she
 (21) doesn't go.
 (22) MR. DIAMOND: I think we would simply because there
 (23) are a lot of people that work out in that club.
 (24) MR. STOLL: Not in good shape.
 (25) MR. DIAMOND: And we're not in good shape and we need

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- (1) the exercise.
 (2) THE COURT: The other side of the coin is being in a
 (3) hotel and having people come in all the time, some of them
 (4) being snappish until you're desperate, possibly.
 (5) MR. DIAMOND: We've - or overhearing any
 (6) conversation; that would be my concern.
 (7) MR. STOLL: Let me ask you a question.
 (8) I don't know, they are a creditor or a debtor of the -
 (9) THE COURT: I think the word client is used.
 (10) MR. STOLL: Client.
 (11) THE COURT: Hang on just a minute.
 (12) That the person is the guardian, landlord, tenant,
 (13) employer, employee, partner, client, principal, agent, debtor,
 (14) creditor and a member of the family or party. Could he be a
 (15) creditor.
 (16) I believe it comes within the language of the rule.
 (17) counsel. So are you voicing an objection to that rule?
 (18) MR. STOLL: Well, Your Honor, I'm not that familiar
 (19) with the statutes, or this rule, so I can't - I don't feel
 (20) competent to argue on the basis.
 (21) THE COURT: You can consult with your co-counsel.
 (22) MR. STOLL: I will. May I have just a moment, Your
 (23) Honor?
 (24) MR. STOLL: Your Honor, my co-counsel advises me that
 (25) this is a discretionary matter, that this is a basis for

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- (1) challenge for cause but not that it's determinative. If that's
 (2) the case, then we're - we'd like the juror, we think that
 (3) she'd be fair. She's been very explicit about her ability to
 (4) evaluate the case, she didn't realize that Exxon was - she
 (5) forgot about it, actually. I don't think that's going to
 (6) influence her one way or the other, even though she knew about
 (7) it before today, but apparently after she had filled out this
 (8) form.
 (9) She felt that she could be fair. Furthermore, actually
 (10) technically, as I understand it, the - she is a shareholder in
 (11) a company, the company does business with either some of the
 (12) lawyers or with Exxon in terms of having this membership.
 (13) THE COURT: Who bought the memberships, counsel?
 (14) MR. DIAMOND: Are you asking me?
 (15) THE COURT: Yes.
 (16) MR. DIAMOND: Exxon.
 (17) THE COURT: All right.
 (18) MR. STOLL: Regardless, anyway, the memberships are
 (19) with the - another - you know, their Tudor Avenue facility.
 (20) She's in the downtown one. It's I assume, a company, a
 (21) corporation, maybe we should ask her that; but it's not really
 (22) her - I don't know if this rule is statutory - I mean,
 (23) whether it's absolute or whether this provides discretion for
 (24) the court, but I don't think that she has demonstrated any bias
 (25) one way or the other.

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- (1) THE COURT: No, it's clear that she hasn't so far
 (2) shown any basis.
 (3) MR. DIAMOND: Malvo versus JCPenney 512 Pac.2d 575 and
 (4) it discusses the various grounds, specifically referring to
 (5) other subsections, specific grounds for challenges based on
 (6) the
 (7) existence of certain relationships. Citing subsections nine
 (8) and ten, which is this one where one of those relationships
 (9) clearly exist, the trial judge must grant the challenge.
 (10) At 579 it says again, once facts have been presented
 (11) establishing such a relationship between the juror and a party,
 (12) the grounds for challenge have been met. Accordingly, the
 (13) failure of the trial judge to grant the challenge for those
 (14) jurors who had a debtor-creditor relationship with JCPenney
 (15) was
 (16) erred.
 (17) MR. DIAMOND: I don't think it's discretionary.
 (18) THE COURT: Counsel, do you want to read the case?
 (19) MR. STOLL: Yes, Your Honor. Maybe we could - well,
 (20) can I have just a moment here?
 (21) THE COURT: Let me tell you: That's the way I see -
 (22) I see the rule, that once you establish a relationship the
 (23) party has the right to challenge and my discretion is gone;
 (24) once the written relationship is established.
 (25) MR. STOLL: Can I have just a moment, Your Honor?
 (26) Your Honor, I think that counsel's reading is correct, and
 (27) I think she's - as I read that case.

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- (1) THE COURT: Yeah, I think so too, counsel. So I'm
 (2) going to bring her in here and excuse her.
 (3) (Kathy Wisthoff enters the room.)
 (4) MR. DIAMOND: Could I ask that it be explained it's
 (5) not because of any bias, because I may be seeing her at the
 (6) club?
 (7) THE COURT: You won't get any towels, counsel.
 (8) Ms. Wisthoff, there's a rule, a court rule that
 (9) requires people who are creditors of a party in a case to be
 (10) disqualified from service on that particular case. You are in
 (11) a debtor-creditor relationship with Exxon, who is a party in
 (12) this case; therefore, I have no discretion: I have to let you
 (13) off. I'm sure you would have been an unbiased and good juror,
 (14) so I'm sorry to see you go, actually.
 (15) A All right.
 (16) THE COURT: But I have to let you go.
 (17) A Okay. Thank you.
 (18) (Kathy Wisthoff leaves the room.)
 (19) THE COURT: Juror number 51 is here, we're going to
 (20) take her. Her name is Sandra Lewis.
 (21) MR. STOLL: Can I have just a moment, Your Honor?
 (22) THE COURT: Yes.
 (23) (Sandra Lewis enters the room.)
 (24) THE COURT: Ms. Lewis?
 (25) A Yes, sir.

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- (1) THE COURT: Would you please give your full name for
 (2) the record?
 (3) A Sandra Cole Lewis.
 (4) THE COURT: And you understand that we're going to be
 (5) giving you some brief supplemental questions to those in your
 (6) questionnaire?
 (7) A Okay.
 (8) THE COURT: And the questionnaire and these answers
 (9) are all given under oath?
 (10) A Okay.
 (11) THE COURT: Mr. Stoll.
 (12) VOIR DIRE EXAMINATION OF SANDRA LEWIS
 (13) BY MR. STOLL:
 (14) Q Ms. Lewis, my name is Bob Stoll and I represent the
 (15) municipalities. And this is Mr. Fortier and he represents the
 (16) Native corporations.
 (17) A Okay.
 (18) Q And we represent plaintiffs that are bringing this action
 (19) against Exxon.
 (20) And I understand that you're a shareholder in Exxon?
 (21) A Well, through some mutual funds that we own.
 (22) Q Yes. But you consider yourself a shareholder of Exxon?
 (23) A Well, in that way, yes.
 (24) Q And you also said in the questionnaire that you feel that
 (25) you're biased towards Exxon?

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- (1) A I think I do. I have to be honest about it.
 (2) Q Sure. That's what we want.
 (3) MR. STOLL: Your Honor, we ask that the juror be
 (4) excused for cause.
 (5) MR. DIAMOND: May I just ask her a few questions?
 (6) THE COURT: Yes.
 (7) VOIR DIRE EXAMINATION OF SANDRA LEWIS
 (8) BY MR. DIAMOND:
 (9) Q Good morning, Mrs. Lewis. My name is Chuck Diamond; I'm
 (10) one of the attorneys representing Exxon.
 (11) You're one of the few people that own mutual funds that
 (12) know what stocks in mutual funds are?
 (13) A That's an interest I have.
 (14) Q Which mutual fund is it?
 (15) A The Vanguard Windsor (ph) fund, and I believe Windsor II,
 (16) most recently.
 (17) Q Have you checked recently on the portfolio?
 (18) A Not since the last quarterly report I've got, and it's
 (19) probably been several months ago.
 (20) Q The Vanguard fund, from time to time?
 (21) A Yes, sir. They do turn things over, right.
 (22) Q And you haven't checked to see whether or not Exxon's
 (23) stock -
 (24) A Not in the last week - not since I got last quarterly
 (25) statement. They sent out a quarterly report that often will

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- (1) list all the reports that they own at the end of that quarter.
 (2) Q Right. Do they prepare that on a calendar quarter basis?
 (3) A Yes, sir.
 (4) Q So the last time you looked at it would have been
 (5) essentially in March?
 (6) A Probably the end of March. I haven't gone back and
 (7) double-checked it, but we own several different mutual funds;
 (8) but I'm pretty sure that that's right.
 (9) Q You don't - as a mutual fund owner you don't have the
 (10) ability to have the Vanguard buy or sell a particular security?
 (11) A No.
 (12) Q That's beyond your control?
 (13) A That's right.
 (14) Q I believe you told us in your questionnaire that you view
 (15) Exxon extremely favorably; is that correct?
 (16) A Yes, sir.
 (17) Q In this case, as all other cases, there are two sides to
 (18) the dispute, and the judge will instruct all the people who
 (19) serve as jurors that they have to put their own personal views
 (20) and own preconceptions to one side, base a decision in the
 (21) case
 (22) solely on what they hear from witnesses on the witness stand
 (23) and based on the instructions that the Court gives.
 (24) Do you consider yourself a fair-minded person?
 (25) A I like to think that I am, but I also think is that people
 (26) deserve a fair trial, and I'm not real sure that I don't come

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- (1) to this with a lot of bias, so...
 (2) Q Everybody comes to situations with all of their biases?
 (3) A Okay. Okay.
 (4) Q The question is, do you think you could put them aside?
 (5) A No.
 (6) Q Okay.
 (7) MR. DIAMOND: We have no objection to the -
 (8) THE COURT: Thank you very much for your honesty. I
 (9) appreciate it. And I'll excuse you, and since you were on the
 (10) panel from last week you don't have to make any calls in;
 (11) you're excused, all right?
 (12) A Yes, sir. Thank you.
 (13) (Sandra Lewis leaves the room.)
 (14) THE COURT: Number 53 is the next juror.
 (15) (Bonnie Faulk enters the room.)
 (16) THE COURT: Ma'am, could you give your name for the
 (17) record, please?
 (18) A Bonnie Faulk.
 (19) THE COURT: Ms. Faulk, we're going to give you some
 (20) brief supplemental questions. All the questions you give and
 (21) in the questionnaire are under oath. You understand that?
 (22) A Yes, I do
 (23) VOIR DIRE EXAMINATION OF BONNIE FAULK
 (24) BY MR. STOLL:
 (25) Q Ms. Faulk, my name is Bob Stoll and I represent the

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- (1) municipalities who are plaintiffs in this case, and this is
 (2) Mr. Fortier and he represents the Native corporations that are
 (3) also plaintiffs in this case. I just have a few questions for
 (4) you.
 (5) First of all, you expressed some concerns about child care
 (6) -
 (7) A Yes.
 (8) Q - if you sat on this jury. Could you tell me a little bit
 (9) about that?
 (10) A I have a 11- and a 15-year-old at home with no
 (11) supervision. Both are involved in summer programs, they need
 (12) transportation, they are a great deal of time where they're at
 (13) home alone, together. They need a referee. I cannot leave
 (14) them
 (15) together alone.
 (16) Q And -
 (17) A And my husband travels, he's in and out of the state. I do
 (18) have concerns.
 (19) Q Do you think if this trial, we anticipate it's going to go
 (20) on for several weeks here, but the trial day is 8:30 to 1:30.
 (21) Do you think that would create a problem?
 (22) A A definite problem, I really do.
 (23) I'm also involved in coaching a friend for delivery on the
 (24) 15th of July.
 (25) Q She's pregnant?
 (26) A She's pregnant. She's due to give birth on the 15th of

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- (1) July.
 (2) Q And you're the principal person that's assisting?
 (3) A I'm the principal coaching involved in that as well.
 (4) Q And with respect to - during the school year, I imagine
 (5) it's a little easier to -
 (6) A The school year is a lot easier, yeah. The kids get out at
 (7) 3:30; that definitely would be a lot easier. I wish this was
 (8) during the school year.
 (9) Q You'd be willing to defer your jury service until the
 (10) school year if you could?
 (11) A I could definitely do that.
 (12) MR. STOLL: Your Honor, we'd make an application on
 (13) her behalf as far as this.
 (14) THE COURT: Mr. Diamond, are you going to have some -
 (15) MR. DIAMOND: Once again, Mr. Stoll has put me in the
 (16) position of being a potential ogre.
 (17) THE COURT: Not necessarily, counsel.
 (18) Counsel, it's inappropriate to make that kind of remark in
 (19) front of a juror.
 (20) MR. DIAMOND: I'm sorry.
 (21) May I ask some questions?
 (22) THE COURT: Yes, you may.
 (23) VOIR DIRE EXAMINATION OF BONNIE FAULK
 (24) BY MR. DIAMOND:
 (25) Q Ms. Faulk, I'm Chuck Diamond, one of the lawyers

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- (1) representing Exxon. Nobody wants to make your summer more
 (2) difficult than otherwise it would be. During the school year,
 (3) your kids are in school in the morning?
 (4) A Uh-huh. Nine to 3:30.
 (5) Q Do you have any household help?
 (6) A No.
 (7) Q I noticed you're a homemaker?
 (8) A Yes.
 (9) Q And your husband is president of Alaska Pacific
 (10) Transportation?
 (11) A Correct.
 (12) Q Is that a large company based here in Anchorage?
 (13) A It's probably mediocre. I don't know what you would
 (14) consider large. I don't know. Not compared to Exxon.
 (15) Q Nothing's large compared to Exxon.
 (16) A No.
 (17) Q I understand.
 (18) How many employees does the company have?
 (19) A Currently, I believe we employ ten office people and truck
 (20) drivers. Right now I don't think there are very many.
 (21) Q Your daughter is 15 years old?
 (22) A She's 15.
 (23) Q And your son is 12?
 (24) A Just barely.
 (25) Q Are they enrolled in any programs for the summer?

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- (1) A Yes. My son's in soccer, my daughter will start a
 (2) theatrical program next month at the university, which she
 (3) needs to be there from 9:30 till - I'm not sure, I'd have to
 (4) double-check, I think it's three for the month of July.
 (5) David's soccer programs take him through the evening.
 (6) Some horseback riding lessons periodically during the day.
 (7) Q Is it a summer camp? I'm sorry, a soccer camp?
 (8) A No, it's a Boys Club.
 (9) Q And where does he go to riding school?
 (10) A It's - we call it "the barn" up on Huffman Road.
 (11) Q Have you made any inquiries about getting some child care
 (12) or somebody watching over the kids if you have to serve on this
 (13) jury?
 (14) A No, I haven't. Not at this point.
 (15) Q You have the financial wherewithal, if that became
 (16) necessary?
 (17) A I'm sorry?
 (18) Q Does the family have the financial wherewithal, if you
 (19) needed to hire somebody for the mornings?
 (20) A We're probably okay.
 (21) MR. DIAMOND: I have no further questions, but if
 (22) we're going to talk about this further, may I be heard outside
 (23) the presence?
 (24) THE COURT: Yes.
 (25) I'll excuse you for a moment and then bring you right back

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- (1) in.
 (2) (Bonnie Fauik leaves the room.)
 (3) MR. DIAMOND: I want to apologize to the Court and to
 (4) Mr. Stoll for the comment, but I found myself in a position a
 (5) couple of times where the suggestion was made in the presence
 (6) of the juror that the juror was suffering under a hardship if
 (7) he or she was forced to serve, and it's difficult standing up
 (8) after that and saying anything without creating a negative
 (9) impression.
 (10) But as to this juror, she is clearly in a financial
 (11) position to arrange for someone to watch over her kids. They
 (12) are not little kids, they are teenagers. Her daughter is going
 (13) to be in a program from 9:30 to three in a matter of four
 (14) days. Her husband is the chief executive officer of a fairly
 (15) significant company. I don't know if you've read her
 (16) questionnaire, but it does not seem the family's laboring under
 (17) any economic disability, and I don't know that her problems are
 (18) really different in magnitude from the problems of any mom
 (19) who's called down for jury service.
 (20) So I don't think the requirement has been met.
 (21) THE COURT: Mr. Stoll?
 (22) MR. STOLL: Well, I think it's a - you know, it's
 (23) within the discretion of the Court. She's - I'm just sort of
 (24) loathe to make a judgment as to whether she - you know, how
 (25) much of a problem it is. People can do all kinds of things.

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- (1) She's said that it would be a hardship. She's got young
 (2) children at home, and she is willing to serve again during the
 (3) school year, so I don't think this is a person that's just
 (4) trying to get out of doing her, you know, civic duty. But, on
 (5) the other hand, I don't think - I mean, she knows better than
 (6) I do certainly whether it's a hardship or not, and that's my
 (7) only point.
 (8) THE COURT: That's right, counsel; I think it is a
 (9) discretionary position with me, and I have a number of jurors
 (10) on this panel so far that have been passed for cause over
 (11) objection or without objection who have much more severe
 (12) hardship than this one does. She - yes, she has a hardship,
 (13) it's not the kind of hardship that I think I should let a juror
 (14) off. And she certainly has shown herself to be subject to any
 (15) other disqualification at this point.
 (16) Do you want to question further?
 (17) MR. STOLL: Yeah, I haven't even started on the cause.
 (18) THE COURT: Let's set some guidelines here, all
 (19) right?
 (20) With most of these cases, after the plaintiff has
 (21) questioned the witness, and if the plaintiff sees a reason for
 (22) getting someone off the case, you know that I'm going to allow
 (23) the defense to question a juror further. So it's inappropriate
 (24) for you to say, Well, it looks like it's okay, you've got a
 (25) real hardship, ma'am.

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- (1) MR. STOLL: That's fine. Your Honor. I won't make it.
 (2) THE COURT: Wait. Let me finish. It is a tactic and
 (3) it's used by lawyers frequently, and I don't - that kind of
 (4) tactic is inappropriate here.
 (5) It's also inappropriate to respond to the situation by
 (6) making a remark like Mr. Diamond made. So I admonished
 him, he
 (7) shouldn't do that anymore, but I don't want to have to do that
 (8) to either one of you. So if in fact a question of fact arises
 (9) when a plaintiff is questioning and Mr. Diamond hasn't had an
 (10) opportunity to question, then you can say, That's all I have on
 (11) that subject; I may have some other questions, does Mr.
 Diamond
 (12) want to question. That way we avoid the whole problem of call
 (13) and response, which I don't want to see anymore; all right?
 (14) MR. STOLL: Fine.
 (15) THE COURT: Okay.
 (16) MR. STOLL: Are you going to explain to her what
 (17) happened, Your Honor?
 (18) THE COURT: Yes. Not in detail.
 (19) MR. STOLL: Pardon me?
 (20) THE COURT: Not in detail.
 (21) MR. STOLL: No.
 (22) (Bonnie Faulk enters the room.)
 (23) THE COURT: Mrs. Faulk, I'd like you to understand a
 (24) couple of things.
 (25) Hardship, if it's a severe hardship on someone or a member

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- (1) of their immediate family, that's recognized as something
 (2) that's within the court of the trial judge to use as a reason
 (3) to excuse you from the jury. On the other hand, I think you'll
 (4) understand, all jurors go through some degree of hardship, and
 (5) certainly in cases like this, particularly long cases; and this
 (6) one is a relatively long case.
 (7) But I've gone through now your number, juror number 53 - a
 (8) lot of jurors, and some of them have voiced hardships that are
 (9) really much more severe than yours and I've kept them on the
 (10) jury. I don't see that this is the kind of severe hardship
 (11) that should cause me to excuse you from this jury, and I do
 (12) feel I need to be consistent about this; and the reason is, if
 (13) people from one segment of the community voiced one kind of
 (14) hardship and then people from another segment had another
 kind
 (15) of hardship voiced theirs, if I was to favor one group of
 (16) people over another - homemakers, for instance, over
 somebody
 (17) who has a business problem, or a financial problem arising -
 (18) I'd lose the capacity to get a fair and impartial jury that's a
 (19) cross-section of the community, which is very important.
 (20) So although I recognize your hardship and I sympathize with
 (21) you, I simply can't excuse you for the reasons you've given.
 (22) That does not mean you're going to be on the final jury; it
 (23) means at this point, at least for the hardship reason, you
 (24) haven't been excused. Do you understand?
 (25) A Yes, I do.

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- (1) THE COURT: There's lots of time to go before the
 (2) final jury is chosen.
 (3) A Okay. Thank you.
 (4) THE COURT: Mr. Stoll, do you have some more
 (5) questions in another area?
 (6) MR. STOLL: Yes, I do.
 (7) VOIR DIRE EXAMINATION OF BONNIE FAULK (Resumed)
 (8) BY MR. STOLL:
 (9) Q Ms. Faulk, you mentioned in the jury questionnaire that you
 (10) do business, or your family does business with Alyeska. And
 (11) this is your husband's business, or the one that he manages?
 (12) A Correct.
 (13) Q And does - tell me a little bit about what your business
 (14) does with Alyeska.
 (15) A Alaska Pacific Transport has the contract for providing the
 (16) CDR for the pipeline, Prudhoe Bay. We transport - it's a dry
 (17) reducing agent.
 (18) Q I'm sorry?
 (19) A It's a dry reducing agent that's injected into the
 (20) pipeline, and we've had that contract for at least six years;
 (21) and that's - that's a big amount of our business.
 (22) Just about everything is related to the pipeline that
 (23) Alaska Transport does. I don't know directly everything, I'm
 (24) not there every day. I do the payroll for my husband at home.
 (25) so I do have some contact with things that are going on.

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- (1) Q Sure.
 (2) And are you and your husband the shareholders of this
 (3) company?
 (4) A Yes.
 (5) Q Now, you know Alyeska is owned by various oil companies?
 (6) A Yes.
 (7) Q And one of those is Exxon?
 (8) A Yeah, I guess so.
 (9) Q And let me ask you a few other questions.
 (10) You mentioned that you knew, slightly, a potential
 (11) witness: Bernie Volkner?
 (12) A Yeah, slightly.
 (13) Q And how is that?
 (14) A Through skiing at Alyeska. I think my husband has had real
 (15) estate dealings with him. I think he's a realtor; I'm not
 (16) sure.
 (17) Q And if Mr. Volkner testified, do you think you'd give him a
 (18) little more credibility than some other witnesses?
 (19) A I don't know.
 (20) Q If there was somebody you didn't know and Mr. Volkner was
 (21) on the stand and there was a -
 (22) A I would probably give him less credibility.
 (23) Q Why is that?
 (24) A Just in my personal relationship of knowing him at the
 (25) lodge at Alyeska and conversations.

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- (1) Q I see. Okay.
- (2) Now, you also checked the box about the size and damage awards that – you actually checked two boxes here, and the
- (3) first question was: Do you have an opinion as to whether the
- (4) size of damages award being made is too small or too large.
- (5) And you said no.
- (6) And then you said that you read, seen or heard any types of
- (7) information on the subject. And you checked both yes and no.
- (8) And you said you didn't remember the amounts of the award.
- (9) Do you just remember there were stories about awards?
- (10) A Oh, sure. There's been stories everywhere.
- (11) Q Do you have any particular opinion on that subject?
- (12) A On the awards?
- (13) Q Yeah, that they are too much or too little or anything?
- (14) A I think Alaska deserves every dollar that they have coming
- (15) to them.
- (16) Q But you don't have a general premonition that jury awards
- (17) in a general way are too large or too small; it varies with
- (18) each case?
- (19) A On this particular case?
- (20) Q Any type of a case. I'm not talking about an Exxon Valdez
- (21) oil spill case; I'm just talking about any kind of a case.
- (22) A I don't understand your question.
- (23) Q I'm sorry. I'm not asking it very well, I guess.
- (24) Do you have any general point of view that jury awards,
- (25)

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- (1) from what you've seen in the general way, whether they are –
- (2) personal injury cases like automobile accident cases or any
- (3) type of case – that the jury awards are too large or too
- (4) small? You don't have any general point of view of that?
- (5) A No. How could I?
- (6) Q Well, some people do. I'm not saying –
- (7) A No.
- (8) Q Do you have any general views about claims that have been
- (9) made against Exxon in connection with the Exxon Valdez oil
- (10) spill?
- (11) A Well, I think it's a great tragedy that Alaska suffered,
- (12) and they certainly deserve to be reimbursed for all damages
- (13) that have happened, both materially and with the land.
- (14) Q And do you think that your connection with Alyeska as a
- (15) creditor, your company being a creditor of Alyeska and Alyeska
- (16) being owned by Exxon, do you think that that would – it being
- (17) such an important – such an important factor to your company,
- (18) do you think that that would affect you in terms of your
- (19) ability to fairly evaluate the evidence in this case?
- (20) A You know, honestly, I don't know. I don't know. I know my
- (21) husband has had a lot of dealings with Alyeska. I don't – I
- (22) don't know if it would have an affect on an opinion of mine
- (23) during the course of the trial.
- (24) Q It would be tough to separate the fact that you're doing so
- (25) much business?

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- (1) A Well, sure, it would be.
- (2) Q Sure. And I appreciate it.
- (3) A Sure. Definitely.
- (4) Q Sure.
- (5) Now, you also – in the jury questionnaire you were asked
- (6) the question about your feelings towards various organizations,
- (7) and, generally speaking, you said that you drew a line down the
- (8) middle between –
- (9) A I thought it was an absurd question. I started to answer
- (10) them and I thought, what are they asking, what is this question
- (11) about, so...
- (12) Q Well, I represent the municipalities in this litigation,
- (13) and the one that you did happen to check was towards the
- (14) municipalities, you felt somewhat unfavorable towards them?
- (15) A The first thing that came to mine is the battle that we've
- (16) had with the telephone company and the municipality, and the
- (17) municipality has absolutely no business being involved with the
- (18) private enterprise that has been a sort of bugaboo with the
- (19) telephone company checking it off. And going down through
- (20) the
- (21) other organizations, I didn't quite understand the gist of the
- (22) questions so I left it blank.
- (23) Q Now, in this case – there's no telephone company involved
- (24) in this case?
- (25) A I know.
- (26) Q But let me ask you this question.

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- (1) There is a claim by one of the Kodiak village
- (2) municipalities, Larsen Bay, associated with a hydro project
- (3) that they were going to build, it was delayed – they claim was
- (4) delayed because of the oil spill. Do you have any feelings
- (5) towards municipalities being in the power generation business
- (6) that you think could influence you one way or the other as far
- (7) as that's concerned?
- (8) A No, I don't think so.
- (9) Q The main thing that you're concerned about, and I think
- (10) you're being forthright and I appreciate that, is your concern
- (11) about your business relationship or your company's business
- (12) relationship with Alyeska?
- (13) A Well, there is a business relationship there, yes.
- (14) Q And you mentioned that you have specialized training in
- (15) accounting, and could you tell us a little bit about what that
- (16) is?
- (17) A Specialized, I've been doing payroll for, gosh, the last
- (18) ten years. I've always worked and done the bookkeeping.
- (19) More
- (20) than that, what could I say.
- (21) Q Do you think that this – never mind.
- (22) Thank you very much.
- (23) VOIR DIRE EXAMINATION OF BONNIE FAULK
- (24) BY MR. DIAMOND:
- (25) Q Thanks for your time, Mrs. Faulk.
- (26) I'm trying to remember who has to take responsibility for

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- (1) that stupid question.
- (2) Were there any other questions – any other questions that
- (3) were stupid, that you had difficulty with?
- (4) A Well, I tell you what, we had been sitting in that room
- (5) downstairs for two and a half hours. there was no ventilation.
- (6) it was a warm day: and after the fifth page, they started to
- (7) get a little frustrating, so I think there might have been more
- (8) than just myself that wanted to get through it and get outside
- (9) and get some air.
- (10) Q And behalf of Mr. Stoll and myself, we apologize for the
- (11) circumstances.
- (12) You realize that Alyeska is not a defendant or a plaintiff
- (13) in this case? Did you understand that?
- (14) A Yes.
- (15) Q That the only defendant is Exxon?
- (16) A Exxon, yes.
- (17) Q The – what the parties are interested in determining is
- (18) whether you, as a member of the public who comes in here like
- (19) everybody else with some preconceived notions and some
- (20) feelings
- (21) about various subjects, could come in and listen to the
- (22) evidence, listen to what witnesses tell you, evaluate –
- (23) determine for yourself what they were telling you makes sense,
- (24) and render decisions on issues that we're going to be fighting
- (25) about based upon what you hear in the courtroom and not upon
- biases or prejudices that you may bring with you.

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- (1) Do you expect that you can do that?
- (2) A Well, I have a great love for Alaska and I might be a
- (3) little biased and prejudiced. I think it's a tragedy what's
- (4) happened and I think there is absolutely no excuse for it.
- (5) Q And when you say "what's happened," what do you have in
- (6) mind?
- (7) A With the Exxon oil spill, yeah, overall, what it's done to
- (8) the state of Alaska.
- (9) Q What do you think it's done to the state?
- (10) A We've had a lot of environmental issues, we've had people
- (11) that have been devastated financially, and we've had fishermen
- (12) that – I know just from reading and listening to the news
- (13) we've had families that have suffered marital problems because
- (14) of finance, and that's certainly one of the number one problems
- (15) of marital problems is finance. And this is what, going into
- (16) our third year? These people are – they're having hard times.
- (17) Q Do you think you'll have difficulty putting those feelings
- (18) aside in judging these issues fairly and impartially?
- (19) A I don't know that I can say I could.
- (20) Q You think you might let those things influence you?
- (21) A I might. I've lived here 26 years, and I have a great love
- (22) for the state and the people.
- (23) Q You understand this is a case about the impact of the oil
- (24) spill and land of Prince William?
- (25) A Okay.

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- (1) Q The Native corporations and the municipalities own land in
- (2) Prince William Sound and along the Kenai and along Kodiak,
- and
- (3) they claim the use and value of their land were adversely
- (4) affected by the spill.
- (5) As to those kind of disputes, corporation versus
- (6) corporation, do you think your feelings about what the spill
- (7) did to Alaskans – pardon the expression – might spill over
- (8) and cloud your judgment?
- (9) A It very well could. I can't very honestly say no.
- (10) Q Well, I appreciate your candor. We're all interested in
- (11) the same thing and that's getting jurors who can decide the
- (12) case on the facts. And I take it you have some sense that
- (13) maybe you're not such a person?
- (14) A Possibly.
- (15) Q Only you can tell us. Do you think there's a substantial
- (16) probability that your feelings about this are going to affect
- (17) your judgments if you serve as a juror in this case?
- (18) A A fair possibility.
- (19) MR. DIAMOND: Okay, thank you. I have nothing
- (20) further.
- (21) THE COURT: Any other questions?
- (22) MR. DIAMOND: I think we may want to be jointly heard
- (23) on this.
- (24) THE COURT: Any other questions?
- (25) MR. STOLL: No, Your Honor.

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- (1) THE COURT: You'll be excused and I'll bring you right
- (2) back in. Please step out.
- (3) (Bonnie Faulk leaves the room.)
- (4) MR. DIAMOND: We'll stipulate to that she may be
- (5) excused for cause.
- (6) THE COURT: Bring her back in.
- (7) The next juror, counsel, will be number 52, Tracy Sheldon.
- (8) (Bonnie Faulk enters the room.)
- (9) THE COURT: Mrs. Faulk, the parties have stipulated you
- (10) could be excused based on the answers you gave to the
- questions
- (11) of how you would view this case. And so I – and I think that
- (12) there is support in the record for that decision. So I'm going
- (13) to excuse you from service in this case.
- (14) Normally what the jury clerk tells you is you're still on
- (15) the panel but you have to call in. But because you were called
- (16) last week, you've already gone through all of that process in
- (17) this jury selection, so you're simply excused; you don't have
- (18) to call back in.
- (19) A Okay. Thank you.
- (20) THE COURT: Thank you very much.
- (21) (Bonnie Faulk leaves the room.)
- (22) MR. STOLL: Your Honor, am I correct that we skipped
- (23) over 49?
- (24) THE COURT: Skipped over because 49 is not here.
- (25) MR. STOLL: Okay. That's fine.

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- (1) (Tracy Sheldon enters the room.)
 (2) THE COURT: Sir, could you give your name for the
 (3) record, please?
 (4) A What is that?
 (5) THE COURT: Could you give your name for the record?
 (6) That microphone is recording you.
 (7) A Okay. Tracy Sheldon.
 (8) THE COURT: Mr. Sheldon, we're going to ask you some
 (9) brief supplemental questions under oath, supplemental to
 those
 (10) questions you gave in your questionnaire.
 (11) You understand that all those answers, including the
 (12) questionnaire, were under oath, right?
 (13) A Yes, sir.
 (14) THE COURT: Okay, Mr. Fortier.
 (15) VOIR DIRE EXAMINATION OF TRACY SHELDEN
 (16) BY MR. FORTIER:
 (17) Q Thank you, Your Honor.
 (18) Good morning Mr. Sheldon. My name is Sam Fortier, I
 (19) represent the Native corporations in this case, and beside me
 (20) is Mr. Stoll who represents the municipalities in the case.
 (21) I'm going to be asking you a few questions concerning the
 (22) questionnaire that you filled out.
 (23) And I note that you're in the National Guard?
 (24) A Yes, that's correct.
 (25) Q In the food service?

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- (1) A Uh-huh.
 (2) Q Can you tell me what SE guidelines are?
 (3) I'm sorry, your questionnaire indicates you go by "SE
 (4) guidelines"; I'm just curious what those are. Question 20, I
 (5) think.
 (6) A I don't know. I must have misread it or something.
 (7) Q Maybe you said it. We won't be concerned about that.
 (8) If you could take a look Mr. Sheldon, question number 47,
 (9) it's at page 11, and it has a number of different entities that
 (10) are listed on it ranging from local governments down to Exxon.
 (11) MR. DIAMOND: He's got the wrong questionnaire, Your
 (12) Honor.
 (13) THE COURT: I was wondering that. I don't see the
 (14) question in number 20.
 (15) A We went out of number 20 -
 (16) MR. FORTIER: Oh, I have the wrong questionnaire.
 (17) THE COURT: You may, Sheldon.
 (18) MR. FORTIER: Sheldon. Number 52.
 (19) THE COURT: Number -
 (20) MR. DIAMOND: We have two Sheldons, one with an "E"
 (21) and the other with an "O". There's a 59, a James Sheldon.
 (22) A It's not me.
 (23) MR. FORTIER: You're Tracy Sheldon?
 (24) A Right.
 (25) MR. DIAMOND: This is Tracy Sheldon.

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- (1) MR. FORTIER: I was right, Judge, for once.
 (2) MR. DIAMOND: I think Mr. Sheldon does not have
 (3) Mr. Sheldon's questionnaire, that's the problem.
 (4) A I've got Steve Roberts.
 (5) So page number 11 you said?
 (6) BY MR. FORTIER:
 (7) Q Yes, sir, page 11, question number 47. Sorry about that.
 (8) A Okay. Question number - what was it?
 (9) Q 47.
 (10) A 47, okay.
 (11) Q Now, it's my understanding, when people were filling out
 (12) these questionnaires, by the time most people got to this page
 (13) it was pretty hot and stuffy downstairs?
 (14) A Yeah, I kind of missed this page, I guess; part of it. ♪
 (15) Q Accept our apologies.
 (16) What I'm concerned about, Mr. Sheldon, is whether you have
 (17) any - based on your experience and knowledge, whether you
 have
 (18) any feelings one way or another towards governments and
 (19) municipalities.
 (20) A I guess I really haven't gotten into it that much. I'm not
 (21) really into politics a whole lot.
 (22) Q Do you have any feelings one way or another towards Native
 (23) corporations?
 (24) A No.
 (25) Q Do you have any feelings one way or another towards Native

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- (1) people?
 (2) A No. In fact I work with a lot of them, being in the guard
 (3) and stuff; and, you know, I get along with them really good.
 (4) Q You've had positive experiences with Native people?
 (5) A Yeah, for the most part. I mean, I'm all friends with -
 (6) you know, all the ones that I've run across.
 (7) Q Do you get to travel out to outlying areas as part of your
 (8) guard duties?
 (9) A Yeah, I have a couple of times.
 (10) Q Can you tell me where you've been?
 (11) A I've been to Nome and Kotzebue.
 (12) Q Anyplace else?
 (13) A That's - that's pretty much it for the outlying areas.
 (14) Q Now, Mr. Sheldon, have you ever sat on a jury before?
 (15) A No. This will be the first time.
 (16) Q You've watched shows about lawyers and trials and that kind
 (17) of thing?
 (18) A Television, that kind of stuff?
 (19) Q Yeah, television shows.
 (20) A Yeah.
 (21) Q Mr. Sheldon, are you generally aware of the fact that, with
 (22) the trial, that the evidence comes in; first of all, the
 (23) plaintiffs give their evidence and then the defendants give
 (24) their evidence?
 (25) A Uh-huh.

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- (1) Q Generally where it's at.
 (2) A Yeah. I understand most of the process.
 (3) I'm in the midst of a child custody battle right now, and
 (4) we're still waiting for it to go through the court.
 (5) Q I notice that that was stated in your questionnaire. Can
 (6) you tell me what your experience has been like with the legal
 (7) system?
 (8) A We just - we've been to the attorney's office and, you
 (9) know, he went over a few things and such; and that was about it
 (10) so far.
 (11) Q So your experience is not - it's been neither good nor bad
 (12) right now?
 (13) A Yeah, pretty much.
 (14) Q Now, you understand it's important to be fair as a juror,
 (15) it's important for a juror to be fair to both parties?
 (16) A Uh-huh.
 (17) Q And to listen to the instructions of - I'll withdraw
 (18) that.
 (19) And you understand that whatever you may have read outside
 (20) the courtroom isn't evidence, don't you?
 (21) A Uh-huh.
 (22) Q And do you think you could be fair, Mr. Shelden, to both
 (23) parties?
 (24) A Yes.
 (25) Q And do you think you can follow the instructions the judge

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- (1) gives you instead of the law in the case?
 (2) A I'd hope so. He's the judge.
 (3) Q Now, you listed item number 50 of your - of your
 (4) questionnaire that you're engaged in subsistence hunting and
 (5) fishing activities?
 (6) A From time to time, yeah.
 (7) Q Where do you go fishing?
 (8) A I fish on the Kenai and out at Stony River. I fished up in
 (9) the valley before.
 (10) Q And that's subsistence fishing or just sports fishing?
 (11) A Sports fishing pretty much, I guess.
 (12) Q And you like to go hunting, too?
 (13) A Uh-huh.
 (14) Q Where do you go hunting?
 (15) A Out by Stony River, out there.
 (16) Q Is it Stony River on the Kuskokwim?
 (17) A Yeah.
 (18) Q How do you get out there?
 (19) A By a chopper.
 (20) Q Do you stay in a village out there?
 (21) A What it was, I was a cook for a hunting lodge out there,
 (22) and I cooked out there for like five years.
 (23) Q Now, you got listed in item number 49 of your
 (24) questionnaire, do you have an opinion regarding environmental
 (25) standards imposed on companies doing business in Alaska,
 and

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- (1) you indicated, Yeah, there ought to be a contingency plan.
 (2) Do you understand that, in this case, the only question is
 (3) how much in damages Exxon will be required to pay to the
 (4) plaintiffs?
 (5) A That's - that's pretty much what the - that's what the
 (6) case is about, right?
 (7) Q Right.
 (8) A Right.
 (9) Q So when you put down there should be a good contingency
 (10) plan, you understood that in this case the question is to
 (11) damages itself, didn't you?
 (12) A Uh-huh.
 (13) Q Do you have any opinion as to whether or not there was a
 (14) contingency plan?
 (15) A I guess I don't understand the question.
 (16) Q Did you have an opinion, when you wrote this, as to whether
 (17) or not there was a contingency plan in effect prior to the -
 (18) before the Exxon Valdez went on the rocks?
 (19) A I just thought that - you know, if you're going to have an
 (20) organization like that, that you should have a - that plan, in
 (21) case something happens.
 (22) Q But you don't - it's true then that you don't know whether
 (23) or not there was a plan; is that right?
 (24) A Oh, yeah.
 (25) Q That's correct?

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- (1) A Uh-huh.
 (2) Q Now, one of the questions - one of the last questions you
 (3) raised was in question number 82, and if you want to take a
 (4) look at that, it's at number 16; page 16.
 (5) A Number 18 you said?
 (6) Q Number 18 at page 82, right.
 (7) A Uh-huh.
 (8) Q You indicated, Mr. Shelden, that you had a question about
 (9) finance with regard to jury service?
 (10) A Uh-huh.
 (11) Q Do you understand that you do receive a daily payment for
 (12) sitting on a jury?
 (13) A Yeah, I understood that, but it was - you know, there is a
 (14) child custody battle going on; and then my wife, she was
 (15) self-employed for the post office, and she had to pay the IRS a
 (16) lot, and she's no longer working for the post office so we've
 (17) got like a whole bunch of bills to pay; and 24 a day doesn't -
 (18) or however it is, it just wasn't enough.
 (19) Q Do you know what the National Guard's policy is with regard
 (20) to jury service, Mr. Shelden?
 (21) A Well, I was talking to the lady downstairs about it just
 (22) before I came up here, and she explained it to me.
 (23) Q So, is it your understanding that the National Guard does
 (24) pay for jury service?
 (25) A From what she told me, yeah.

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- (1) Q So you don't lose any money by - if you sat on the jury?
- (2) A Uh-huh.
- (3) Q And so does that kind of satisfy what your concerns are?
- (4) A Yeah.
- (5) Q And you indicated that you were somewhat concerned, too,
- (6) about the amount of time that the case would last. Do you
- (7) understand that the case is expected to last at two months -
- (8) the questionnaire said three months, but it's really two
- (9) months?
- (10) A Uh-huh.
- (11) Q Did you understand that?
- (12) A Yeah.
- (13) Q And did you understand that generally the time of day is
- (14) from 8:30 to 1:30?
- (15) A Uh-huh.
- (16) THE COURT: Counsel, your time is about up.
- (17) MR. FORTIER: Thank you, Your Honor.
- (18) Thank you Mr. Shelden, I don't have any further questions.
- (19) VOIR DIRE EXAMINATION OF TRACY SHELDEN
- (20) BY MR. DIAMOND:
- (21) Q Good afternoon, Mr. Shelden. My name is Chuck Diamond.
- (22) I'm one of the lawyers representing Exxon in this case; I
- (23) introduced myself to everybody on Monday.
- (24) As long as you've got your questionnaire open, do you have
- (25) it open to next-to-the-last page? Next-to-last page is a list,

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- (1) but page 17, the top one, the 85, do you see where I am? It
- (2) says, Are there situations in your life.
- (3) We asked you whether there is anything going on in your
- (4) life that would make it difficult for you to concentrate on the
- (5) evidence in the case, and you checked that box, yes.
- (6) A Uh-huh.
- (7) Q What are your concerns? What are you worried about?
- (8) A Well, I just got married in January. And the whole time me
- (9) and my wife have been together, it's like she's either been
- (10) working six days a week or I haven't been there and stuff, and
- (11) it's just - I got the whole next month off, you know, the
- (12) month of July, and we were going to spend time together
- (13) because
- (14) we - you know, we haven't had that much time. I was just
- (15) thinking, you know, if I got caught in something where I had to
- (16) do for a couple of months, then we probably - then we wouldn't
- (17) be able to go anywhere, we wouldn't be able to go camping or
- (18) anything.
- (19) Q You're worried about it being a hardship and disrupting
- (20) your plans?
- (21) A Uh-huh.
- (22) Q Is that going to make it impossible for you to concentrate
- (23) on the evidence, assuming you're selected as one of our jurors?
- (24) A Well, it's like me and - me and her, we've - you know,
- (25) we've been through some pretty rough times and stuff, and it's
- (26) just like - it seems like whenever something is really wrong

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- (1) between us, like I don't get to see that much of her and stuff.
- (2) it's like I'm always thinking about it, I guess.
- (3) Q I understand you may be distracted, sometimes we are all
- (4) distracted by other things. But I'm sure, as you understand,
- (5) this is an important case to the parties and it may get
- (6) complicated at times, and we do need jurors who can devote all
- (7) of their attention that is going on and focus and concentrate
- (8) and think hard about it. Do you think you'll have any problem
- (9) doing that?
- (10) A If it's something I have to do, it's something I have to
- (11) do, and, you know, it's like, she'll just have to accept that,
- (12) I guess; that's the way it is, and....
- (13) Q I'm asking about you. Do you think you'll be able to
- (14) concentrate on the evidence or are you going to be off worrying
- (15) about some other problems?
- (16) A Well, providing she doesn't go crazy. I mean, me doing
- (17) this all day long and me having to go home and her saying I
- (18) haven't seen you and we haven't done this, it racks your brain.
- (19) Q What you're telling us is we should be talking to your
- (20) wife?
- (21) A Yeah,
- (22) Q I know the feeling.
- (23) The question you didn't - and Mr. Fortier pointed out, you
- (24) didn't answer 47 which asked you whether you had favorable
- (25) views or unfavorable views of all these people, on page 11.

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- (1) What views do you have, if any, about Exxon?
- (2) A I guess I'm just kind of neutral; I really don't have
- (3) anything negative to say about them, you know. You know,
- (4) something happened; you know, a mistake was made, you
- (5) know, but
- (6) that's - you know, that's life. Just, you know, that people
- (7) learn from their mistakes, you know.
- (8) Q What are your feelings about how Exxon dealt with things
- (9) after the mistake happened?
- (10) A I think that they done their best; you know, they couldn't
- (11) have done any better from, you know, what they had to work
- (12) with.
- (13) Q The custody battle that you're involved in, is that here,
- (14) locally here in Anchorage?
- (15) A Uh-huh.
- (16) Q You're not going to have to leave town for that?
- (17) A No. We're not going to be able to leave town at all.
- (18) Q You said you had a friend who's a commercial fishermen.
- (19) Where does he fish at?
- (20) A Oh, is that what it was?
- (21) Q I'm sorry; maybe I misunderstood your answer. Question
- (22) 50?
- (23) A I had a friend that worked as a - worked, you know, on a
- (24) boat, commercial fisherman.
- (25) Q And where did he - where did the boat fish?
- (26) A I think it was in the inlet over here.
- (27) Q Is this a good close friend of yours?

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- (1) A He was.
- (2) Q He's not anymore?
- (3) A No.
- (4) Q Just wandered off, or falling out?
- (5) A Yeah, walked off with my bank account.
- (6) Q Does that affect your judgment of commercial fishermen?
- (7) A No.
- (8) Q Did you ever talk to him before he did that to you about the oil spill and the effects it had on fishing or him as a
- (9) fishermen?
- (10) A No.
- (11) Q I notice that your - is your current wife a pet groomer?
- (12) A No, she's - she's still working part time for the post
- (13) office right now, two days a week.
- (14) Q You said someone in your family was a pet groomer?
- (15) A Oh. She was at one time.
- (16) Q Not any longer?
- (17) A No.
- (18) Q Do you have pets at home?
- (19) A Yeah, we've got two.
- (20) Q What kind of pets?
- (21) A A Rottweiler and a Blue Heeler.
- (22) Q What's the second one?
- (23) A A Blue Heeler. It's kind of like a cattle dog.
- (24) MR. DIAMOND: Nothing further.
- (25)

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- (1) THE COURT: Mr. Shelden, you've been what we call
- (2) passed for cause. That means you're still on the jury panel.
- (3) But we still have a number of people to question, so you may or
- (4) may not be on the final jury. But because you are still on the
- (5) panel, it's likely that you will be on the jury, so I want you
- (6) to understand a couple of things.
- (7) First, it's going to take us some time to talk to the rest
- (8) of the jurors, so I'm going to excuse you now. That doesn't
- (9) mean you're excused from the panel; that means we'll contact
- (10) you later regarding whether or not you serve; and because you
- (11) are on the panel I want to make sure you nor the other jurors
- (12) aren't tainted from conversations and things like that. So
- (13) don't talk to this case to anybody, including the jury panel,
- (14) and don't form or express an opinion on it until, if you are on
- (15) the jury panel, it will be submitted for deliberations.
- (16) Do you understand all those things?
- (17) A Uh-huh.
- (18) THE COURT: So we'll let you go for now and we'll
- (19) contact you later.
- (20) A So - okay, so I go to work until I'm contacted.
- (21) THE COURT: You're excused from service here now, but
- (22) you're still on the panel. So we'll be calling you later about
- (23) whether or not you're going to sit on the final jury.
- (24) A Okay. Thanks.
- (25) (Tracy Shelden leaves the room.)

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- (1) MR. STOLL: Who's next. Your Honor?
- (2) THE COURT: Marie Jones
- (3) (Marie Jones enters the room.)
- (4) THE COURT: Ms. Jones?
- (5) A Yes.
- (6) THE COURT: If you would give your full name for the
- (7) record, please?
- (8) A Marie Elizabeth Jones.
- (9) THE COURT: All right. Miss Jones, you're going to be
- (10) answering some questions here for a brief period. Remember,
- (11) the jury questionnaire questions that you filled out in writing
- (12) and these answers that you give in response to counsel's
- (13) questions, they are all given under oath.
- (14) You understand that, don't you?
- (15) A Yes.
- (16) THE COURT: All right.
- (17) Mr. Stoll.
- (18) VOIR DIRE EXAMINATION OF MARIE JONES
- (19) BY MR. STOLL:
- (20) Q Ms. Jones, you're from Larsen Bay?
- (21) A Yes, I was born and raised there.
- (22) Q And I represent Larsen Bay, I'm proud to represent Larsen
- (23) Bay with Mr. Jamin. And you know Mr. Jamin?
- (24) A I know Mr. Jamin.
- (25) Q Do you think that you can be fair in evaluating the case in

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- (1) this evidence?
- (2) A No, I couldn't be fair. I mean, I didn't know that they
- (3) were suing anyway; but still, if they are, naturally I'd want
- (4) them to win whatever they are suing for.
- (5) Q Okay. I mean -
- (6) I think we can stipulate.
- (7) MR. DIAMOND: We'll stipulate.
- (8) THE COURT: All right.
- (9) This was a little quicker than I thought it would be. Ms.
- (10) Jones. I'm going to excuse you and thank you for your
- (11) honesty,
- (12) but it's clear you shouldn't be sitting on this particular
- (13) case.
- (14) A No, I don't think so.
- (15) THE COURT: So you're excused.
- (16) A Thank you.
- (17) THE COURT: And there won't be any more calls, because
- (18) you're off - your jury service is over now.
- (19) A It's over now?
- (20) THE COURT: Yes. Thank you.
- (21) A I didn't know I was supposed to come back. I'm sorry.
- (22) (Marie Jones leaves the room.)
- (23) MR. STOLL: She knows Mr. Jamin.
- (24) MR. DIAMOND: And her son is the Larsen Bay city
- (25) councilman.
- (26) MR. STOLL: She would have been a fine juror.

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- (1) (Steve Roberts enters the room.)
 (2) THE COURT: Mr. Roberts?
 (3) A Yes, sir.
 (4) THE COURT: Would you please give your full name for
 (5) the record?
 (6) A My name is Steve Troy Roberts.
 (7) THE COURT: Now, you'll be answering a number of
 (8) questions from the parties, and these answers are given under
 (9) oath. You understand that, don't you?
 (10) A Yes, sir.
 (11) THE COURT: You also understand that your
 (12) questionnaire was given under oath?
 (13) A Yes, sir.
 (14) THE COURT: Mr. Stoll.
 (15) MR. STOLL: That was so fast, Your Honor.
 (16) THE COURT: I get more efficient as the day goes on.
 (17) MR. STOLL: I think we were pretty efficient on that
 (18) one.
 (19) THE COURT: You were, and I compliment you.
 (20) VOIR DIRE EXAMINATION OF STEVE ROBERTS
 (21) BY MR. STOLL:
 (22) Q Mr. Roberts, I notice that you've had some medical issues
 (23) in your past. Do you think that will create any problems with
 (24) you as sitting as a juror in this case?
 (25) A No, sir.

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- (1) Q Is there anything that you know about this case that causes
 (2) you any hesitation to serve?
 (3) A No, sir.
 (4) Q Have you ever been to Prince William Sound?
 (5) A No, sir.
 (6) Q And how about to Kodiak?
 (7) A No, sir.
 (8) Q And I'm sorry, I can't recall what you did in the Navy, you
 (9) were in the Navy -
 (10) A My stepdad's in the Navy. I'm not in the Navy. That's why
 (11) we were shipped up here.
 (12) Q I'm sorry?
 (13) A My stepdad's in the military. We got moved up here, to
 (14) Anchorage.
 (15) Q How do you like living in Alaska?
 (16) A I like it.
 (17) Q What do you like about Alaska?
 (18) A Well, I don't much like the winters too much, but the
 (19) summers are nice. I like the summers a lot.
 (20) Q Do you like to get in the outdoors?
 (21) A Sometimes, but not much.
 (22) Q Do you go fishing?
 (23) A Sometimes.
 (24) Q Where do you go fishing? When you do go fishing?
 (25) A I usually go with my friends, and I'm not an avid

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- (1) fisherman, I just go with my friends. I really don't, you
 (2) know, know the lakes or the streams. But - yes, sir.
 (3) Q No, I was nodding.
 (4) A Oh.
 (5) Q And where do they - are any of them commercial fishermen
 (6) or are they all sports fishermen?
 (7) A They're more sports fishermen.
 (8) Q And when they go fishing, where do they go? Where do you
 (9) go?
 (10) A One of my friends, he usually goes on base. He's Army.
 (11) Q Pardon me?
 (12) A He's in the Army. He goes on base sometimes, and he goes
 (13) out - there's this one - I think down by the pier, it's real
 (14) close to the water. I don't know; I'm not -
 (15) Q Ship Creek?
 (16) A Ship Creek. . And a lake by -
 (17) Q One of the questions in this questionnaire was, Do you
 (18) think Exxon Corporation has paid enough money as a result of
 (19) the Exxon Valdez oil spill.
 (20) A Yes, sir.
 (21) Q And you didn't check any of the boxes in connection with
 (22) that. Do you have an opinion on that, whether they've paid
 (23) enough or not paid enough or anything?
 (24) A Well, I'm not sure, sir. I'm not really familiar with -
 (25) the amount that they actually gave, you know, to people.

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- (1) Q You don't know whether they've paid -
 (2) A Paid enough or -
 (3) Q Yeah. Or paid any.
 (4) A I'm sure they paid some, but I don't know if it's enough or
 (5) not.
 (6) Q And do you know anything about the claims of the
 (7) municipalities? I represent the municipalities, such as Kodiak
 (8) and Cordova.
 (9) A You mean the claims?
 (10) Q Yes.
 (11) A Like -
 (12) Q A lot of these claims, the municipalities own land -
 (13) A Oh, the land? What they messed up, the land?
 (14) Q Right.
 (15) A Do I know - no.
 (16) Q You don't know anything about that, necessarily?
 (17) A No, not necessarily.
 (18) Q What do you recall about the Exxon Valdez oil spill?
 (19) A What do I recall about it?
 (20) Q Yeah.
 (21) A I know it was in '89, and just - just the basic stuff
 (22) about oil in the Prince Harbor (sic) - Prince William Sound,
 (23) and it killed -
 (24) Q And it spread on down to Kodiak?
 (25) A Yeah, Kodiak.

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- (1) Q And further on down the Alaska Peninsula?
- (2) A Yeah. I know that they - people said that when they lit
- (3) the fire - when they lit on the fire it got to some of the
- (4) Native islands and it hurt some of the women or - that's what
- (5) I heard, that's what I saw; that's what I heard. And that it
- (6) killed the birds and the puffins and the otters and something.
- (7) Q Do you have an opinion as to whether or not everything is
- (8) back to normal now or not?
- (9) A Well, I'm sure it's not all back to normal.
- (10) Q I'm sorry?
- (11) A I'm sure it's not back to normal. Nothing like that could
- (12) be back to normal. But I'm sure they are trying everything to
- (13) make it possible.
- (14) Q Do you think that, in terms of evaluating the evidence, do
- (15) you think that you could evaluate the evidence fairly and
- (16) impartially?
- (17) A Yes, sir; I would try as hard as I could.
- (18) Q And do you think you'd be successful in trying to do that?
- (19) A Well, I don't know if - I wouldn't know if I could be
- (20) successful but I would try, because what is good - I'm not,
- (21) you know...
- (22) Q You don't have any particular point of view as far as
- (23) whether there's been environmental injury or damage to the
- (24) land
- (25) or not?
- (26) A Oh, I know there's some there. environmental damages
- (27) there,

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- (1) but I don't know.
- (2) Q You don't know how serious it is, though?
- (3) A I know it's serious, but the damage of the wildlife and
- (4) the -
- (5) Q So you're going to wait to hear the evidence -
- (6) A Yes.
- (7) Q - before you make a decision?
- (8) A Yes.
- (9) MR. STOLL: Thank you very much.
- (10) VOIR DIRE EXAMINATION OF STEVE ROBERTS
- (11) BY MR. DIAMOND:
- (12) Q Good afternoon, Mr. Roberts. My name is Chuck Diamond,
- (13) I'm
- (14) one of the lawyers representing Exxon.
- (15) If you take a look at the questionnaire you filled out, on
- (16) Page 15 a question toward the bottom under miscellaneous,
- (17) number 47 -
- (18) A Yes, sir.
- (19) Q We asked you whether you were on medication or had a
- (20) condition which would make it difficult for you to concentrate
- (21) or attend all the sessions of the trial?
- (22) A Yes, sir.
- (23) Q And you checked that box yes?
- (24) A Well, I'm epileptic and I'm taking Dylansic (ph), but I
- (25) haven't had a seizure for over a year so I just checked that
- (26) just so that you guys know that I do, you know, have - I'm

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- (1) epileptic.
- (2) Q Right. Do you think that's going to -
- (3) A No.
- (4) Q - make it difficult for you to concentrate -
- (5) A No.
- (6) Q - or attend all the sessions?
- (7) A No.
- (8) Q We need everybody to show up every day.
- (9) A I didn't do it that once because I didn't take my
- (10) medication for a week, I didn't have my medication and that's
- (11) what happened, but my doctor chewed me out; so I've been
- (12) taking
- (13) my medicine every day on time.
- (14) Q Are there any side effects from that medicine?
- (15) A No, sir.
- (16) Q We also asked on the next page, on 84, whether you have
- (17) any
- (18) difficulty being a juror in a case as long as this one, and I
- (19) think you check, you checked both boxes. Which one did you
- (20) check last?
- (21) A Which one did I check last? I probably checked them both
- (22) at the same time. I checked yes and no. I - I'm looking for
- (23) a job and I don't know if this would inflict on my job hunt,
- (24) but I know it's my civic duty to be here. So I was - at that
- (25) time in point I was thinking yes or no I could. I may not be,
- (26) just in case I get a morning job, if it was nine to 1:30 or
- (27) later - I work nights right now, from like three to ten or six

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- (1) to ten and I mainly work weekends right now, so...
- (2) Q If you serve on the jury, do you expect that you will try
- (3) to keep your current job?
- (4) A Yes.
- (5) Q You'd do both?
- (6) A That's what I was thinking, if I have to keep my job and
- (7) then - keep my job, do both? No. Do both?
- (8) Q Well, could you serve on the jury in the morning from 8:30
- (9) to 1:30 -
- (10) A Yes, sir.
- (11) Q - and then -
- (12) A Yes, sir.
- (13) Q And you would plan on doing your job in the afternoon?
- (14) A Yes, sir.
- (15) Q What are the hours, again?
- (16) A From three - next week my - the lady, she's cooking, she
- (17) went on vacation for two weeks, I have to take her shift from
- (18) three to ten or nine; and then I usually work weekends from
- (19) three to ten or two to ten. Sometimes I come in - have me
- (20) come in at six if she needs help.
- (21) Q But basically you'd be working two jobs. Do you think you
- (22) could handle that?
- (23) A Yes, sir.
- (24) Q We asked you question number 36, which is on page 9 -
- (25) A Yes, sir.

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- (1) Q - about your knowledge of the Exxon Valdez oil spill and
 (2) where it came from; and you answered "the movie"?
 (3) A The movie. Oh, the HBO special on tribal grounds. I
 (4) wasn't really familiar with the name, but that was the movie I
 (5) saw on HBO.
 (6) Q On HBO, the cable movie?
 (7) A Yes, sir.
 (8) Q What do you remember about that?
 (9) A What do you mean, sir; remember about the whole movie?
 (10) Q Yeah. What did you take away from it?
 (11) A What did I take away from it? Not much, I was just
 (12) watching just probably to - I don't know. What did I take
 (13) away from it?
 (14) Q Did you draw any conclusions?
 (15) A No.
 (16) Q Draw any opinions?
 (17) A No. I just thought it was tragic and, you know, it wasn't
 (18) really good for the environment. Just at that time when I saw
 (19) it - I don't know, I just - I probably didn't really care
 (20) because I was in school, I had other things to worry about. It
 (21) was just a movie.
 (22) Q You also said you saw that Dianne Sawyer program last
 week?
 (23) A Dianne Sawyer last week? No, which one was that?
 (24) Q Take a look at question 38.
 (25) A 38. Oh, no.

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- (1) Q Question was, did you see on last week, Channel 13 -
 (2) A No, I probably didn't see that; I was probably thinking of
 (3) something else. I probably work nights; in fact, I usually
 (4) work nights.
 (5) Q You said something, and I had trouble hearing -
 (6) A Yes, sir.
 (7) Q - when Mr. Stoll was asking you some questions, that you
 (8) had heard something about the oil being lit on fire?
 (9) A Yes. On the - from the TV movie on HBO, they told them,
 (10) Why don't you just light it on the fire; and they saw the
 (11) smoke, and that's what I heard, and they said they went to one
 (12) of the islands and - they said that the babies from the woman,
 (13) the Native ladies, that it hurt them, and it came premature.
 (14) That's what they said.
 (15) Q Pregnant woman?
 (16) A Yes, sir. And they hurt the livestock.
 (17) Q Hurt the -
 (18) A Livestock. Like the pigs or cattle, whatever they do over
 (19) there.
 (20) Q Was that part of the HBO cable movie?
 (21) A Yes, sir - on HBO.
 (22) Q Do you suspect that's true?
 (23) A I don't know, sir. I'm not a scientist; I don't know what
 (24) smoke does to you or not.
 (25) Q It didn't cause you to reach any conclusions -

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- (1) A No.
 (2) Q - or form any opinions -
 (3) A No, sir.
 (4) Q - about Exxon or anything like that?
 (5) A No, sir.
 (6) Q You said you're sure that it's not all back to normal,
 (7) referring to areas that got oiled?
 (8) A Yes, sir.
 (9) Q Why do you say that?
 (10) A Well, something about the size and magnitude of the oil and
 (11) spill, you can't get every drop, you can't get every
 (12) minuscule - if you go down, you'll probably find some oil that
 (13) they couldn't, you know, manage to get off. That's what I
 (14) meant. They couldn't get every last bit of it.
 (15) I'm sure through time it will go away and wash off, but
 (16) right now there is probably a little bit there.
 (17) Q One of the issues in the case -
 (18) A Yes, sir.
 (19) Q - is whether the oil that got spilled is still in the air
 (20) and, if so, how much.
 (21) A I don't know where it is, and I wouldn't know how much, but
 (22) I'm sure there is still some.
 (23) Q There will probably be some testimony in the case from
 (24) people who profess to know what they're talking about, that as
 (25) to some of the pieces of land that are owned by the plaintiffs

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- (1) here they got oil on them back in '89, the oil is gone, there
 (2) are no more traces of the oil, it's disappeared. Do you think,
 (3) based on what you saw on the HBO special and what's in your
 own
 (4) mind, that you'd have trouble believing anybody that told you
 (5) that?
 (6) A I don't know. I'd probably say yes, because I'm sure -
 (7) that size of area, I'm sure there has to be some left; not a
 (8) lot, but I'm sure there is some. You can't get all of it, I'm
 (9) sure.
 (10) It's like it you go digging for rocks, places where people
 (11) can't actually get, there will still be some, and I'm sure
 (12) areas that are widespread that people can get to, I'm sure they
 (13) got all of the oil off and tried something. But not in areas
 (14) where people can't get to, and I'm sure there is still some in
 (15) there, sir.
 (16) Q Well, some of the experts who I suspect will testify will
 (17) try to convince you that even on beaches with boulders and big
 (18) rocks oil can get in and underneath, nature has a way of taking
 (19) care of those spots and it's disappeared. Do you think you
 (20) would doubt that testimony?
 (21) A No, I'm sure nature has its way of getting rid of those
 (22) things, but I want to know how long it would take - I want to
 (23) know how long it would take and how much time it would take,
 (24) but I'm sure it will go away and Mother Nature has its way of
 (25) taking care of these problems.

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- (1) Q If somebody told you some of these beaches, most of them
 (2) it's already gone, would you have trouble buying that?
 (3) A No, sir.
 (4) Q You'd be prepared to listen to that testimony and accept
 (5) it?
 (6) A Yeah.
 (7) Q But -
 (8) A I imagine there will some be. There has to be some there.
 (9) I'm not sure, there has to be some. You can't just say it's
 (10) all gone, it's gone completely, there's nothing there at all.
 (11) I'm sure there has to be some there. I'm not there, I haven't
 (12) gone down and looked at myself, but I couldn't take one
 (13) person's testimony about it; but if I saw it - I just couldn't
 (14) take it that all of it is gone. There has to be some.
 (15) Q You feel pretty strongly about that?
 (16) A Yeah. There has to be some; not a lot, but there has to be
 (17) some.
 (18) Q So we'd have to bring a lot of witnesses to convince you?
 (19) A Not a lot, but I would say; you know, bring me - I don't
 (20) know, yeah, maybe just not one person would do it. But I would
 (21) say there at least has to be some there. But some areas, most
 (22) populated areas, they got away, got all of it. But I would
 (23) have to believe, obviously -
 (24) Q We're talking about remote, we're talking about
 (25) wilderness.

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- (1) A Wilderness, no, I wouldn't say it's all gone, but I would
 (2) say there's some there.
 (3) Q And you think - you probably have difficulty leaving that
 (4) opinion outside the courtroom and -
 (5) A "Leaving it outside," what do you mean, sir? You mean talk
 (6) about it to other people?
 (7) Q No. In making a judgment.
 (8) A Oh, no, judgment no.
 (9) Q When you make a judgment about a witness that you believe
 (10) there is no oil on certain beaches -
 (11) A What kind of expert is he? An oil depletion -
 (12) Q Well, say it's a geologist.
 (13) A Geologist. Does he have - I don't know. I'd like to know
 (14) what his background is, how long he's been a geologist and
 (15) what's his credible (sic); is he - is he a good geologist, you
 (16) know; see if he knows what he's doing, if he knows what he's
 (17) saying.
 (18) Q If you heard from one expert the plaintiffs put on that
 (19) said on a certain parcel of land, there still is oil -
 (20) A Yeah.
 (21) Q - and you heard from another expert who Exxon called who
 (22) told you no, it's all gone, all things considered, who would
 (23) you believe?
 (24) A Neither one of them. Because you just have to have
 (25) somebody who's not biased towards Exxon or the plaintiffs, sir.

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- (1) Q You tend to doubt anything a party's expert told you?
 (2) A I would say there is still something there, I still believe
 (3) there is still some there. If you say it's all gone, I believe
 (4) there is still some there, it's not totally gone. There is
 (5) still some. If they show me proof that it's all gone, I would
 (6) have to believe it, that's what they showed me.
 (7) Q When you say "proof" what do you have in mind?
 (8) A Do they have a videotape, do they have people that actually
 (9) live there; you know, people that actually go to those places
 (10) every - well, not every day, but actually see and feel and
 (11) touch these rocks and - you know, I would have to tend to
 (12) believe them, yes.
 (13) Q Well, we have 80 separate parcels of land, 1200 miles of
 (14) coastline. In order to be convinced that oil was gone, we
 (15) would have to bring you pictures of each of the parcels?
 (16) A No, sir, I'm not saying that; no. No. But I was - at
 (17) least some. At least have some kind of proof to show that it's
 (18) not there.
 (19) Q So we need to bring some evidence, and you can't tell us
 (20) how much?
 (21) A You want to know how much?
 (22) Q Yeah, how much?
 (23) A How much. Okay. I guess the plaintiffs got a geologist,
 (24) you've got a geologist, and one says it's all gone, one says
 (25) it's not all gone.

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- (1) Q What are you going to do if that situation arises, and the
 (2) judge says if you have doubts, if the plaintiffs haven't put on
 (3) more evidence than Exxon, then you have to find that there is
 (4) no oil, do you think you would be able -
 (5) THE COURT: Hold it. Hold it. That's -
 (6) MR. DIAMOND: I'm not very artful at jury
 (7) instructions.
 (8) THE COURT: That's not what I'm going to say, but it's
 (9) close.
 (10) MR. DIAMOND: Do you want to pose the question? I'll
 (11) defer to you.
 (12) THE COURT: At least I'll tell you what Mr. Diamond is
 (13) talking about is what we call the burden of proof. If in fact
 (14) the plaintiffs are claiming that there is oil and that it's
 (15) having a bad effect on certain things, including land values,
 (16) then they have the burden of proving that proposition. And the
 (17) burden that they have is that they present more than a 50
 (18) percent probability that the facts that they say are true are
 (19) true - so therefore, if it comes up 50-50, if in fact the
 (20) evidence equally balances, then you'd have to find in favor of
 (21) Exxon on that proposition because they haven't proved their
 (22) case - because the plaintiffs would not have proved their case
 (23) better than 50-50 chance; all right?
 (24) A All right.
 (25) THE COURT: Now, that's the burden, that's what has to

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- (1) be proved.
 (2) A Okay.
 (3) THE COURT: So the issue is whether, hearing all the
 (4) evidence in the case on that issue, whether you would hold the
 (5) plaintiffs to their burden; in other words, make them prove
 (6) something was more than equally balanced, that it was a better
 (7) than 50 percent chance at what the plaintiffs was saying was
 (8) true. Do you understand that?
 (9) A Yes, sir.
 (10) THE COURT: Do you think you can follow that
 (11) instruction?
 (12) A Yes, sir. Yes.
 (13) BY MR. DIAMOND:
 (14) Q You think you could leave your own viewpoints aside and
 (15) follow the instructions -
 (16) A Yes, sir.
 (17) Q - without any difficulty?
 (18) A Yes, sir.
 (19) Q Do you have any views as to whether there is oil out there
 (20) that's currently affecting the environment?
 (21) A No, sir.
 (22) Q No opinion on that one way or the other?
 (23) A No, sir. Is there oil out there right now that's hurting
 (24) the environment that's still killing the birds and the -
 (25) Q Yeah.

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- (1) A No, I'm sure it's not killing anybody, I haven't heard
 (2) anything on it.
 (3) Q Why do you say that?
 (4) A Because probably municipal parks that - like I said, it's
 (5) remote that no one goes to and no one sees, it couldn't hurt
 (6) that many people.
 (7) Q Put aside people. Do you think there could be oil out
 (8) there that's hurting the environment, hurting fish or wildlife,
 (9) birds?
 (10) A I'd say no.
 (11) Q Why do you say that?
 (12) A Because in a spill there was a lot of oil that the birds
 (13) were swimming in, they were all - if it's on the rocks and if
 (14) it's under the rocks and besides the rocks, you know, it
 (15) probably got on their feet and you know, they probably get it
 (16) off their feet or something like that; but I would say no, just
 (17) you know, maybe two - it would probably be one or two birds
 (18) maybe, but not as much - you know, it would be very - to me
 (19) it would be very unlikely that - too many wildlife is being
 (20) killed or being hurt by that much oil, if there's any oil at
 (21) all on the rocks.
 (22) MR. DIAMOND: Okay. I have nothing further. I would
 (23) like to be heard.
 (24) THE COURT: I'll excuse you for just a minute. Stay
 (25) out there, though, because I'll going to be bringing you right

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- (1) back in, all right?
 (2) A Yes, sir.
 (3) (Steve Roberts leaves the room.)
 (4) THE COURT: Yes, counsel.
 (5) MR. DIAMOND: Your Honor, I spent a lot of time with
 (6) him, so I won't belabor but it seems to me Mr. Roberts does
 (7) have some very definite views and said to me, at least, that he
 (8) would require a fairly exacting amount of proof to overcome his
 (9) perception that there is still oil in places that would have
 (10) been oiled, and I think there is substantial question as to
 (11) whether he has not already formed opinions on critical issues
 (12) of the case.
 (13) MR. STOLL: Your Honor, I think Mr. Roberts was
 (14) forthright, and I think that he had - the problem is that
 (15) counsel poses questions in an absolute, Do you think there is
 (16) any oil out there on 1200 miles of coastline, and he says, I
 (17) think there is. Exxon agrees that there's some oil out there.
 (18) But he has different views all over the place on whether
 (19) there is any effect of that, and he didn't indicate any bias on
 (20) that; in fact, if anything, he indicated that he didn't think
 (21) there was any ongoing effect going on as a result of it, so I
 (22) don't think - I think that he's - I don't think he's shown
 (23) any bias.
 (24) THE COURT: It's like most questions, counsel. There
 (25) are some questions that raise an index of suspicion, and you've

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- (1) had a chance to fully examine this juror, and I don't think the
 (2) record discloses and I don't believe that he should be - that,
 (3) first, that he is biased in the sense that the rule uses that
 (4) term, he has formed a state of mind that he couldn't listen to
 (5) the evidence in this case and decide it rationally and
 (6) impartially. And that is the bottom line issue here, so I'm
 (7) going to deny the motion.
 (8) MR. STOLL: Your Honor, could we take -
 (9) (William Delaney enters the room.)
 (10) MR. STOLL: Mr. Delaney?
 (11) THE COURT: Yes.
 (12) Is your name Delaney?
 (13) A Yes.
 (14) THE COURT: Would you give our full name for the
 (15) record, please?
 (16) A William F. Delaney.
 (17) THE COURT: Mr. Delaney, you understand that the jury
 (18) questionnaire answers you gave and these answers you're
 (19) to give are all given under oath, right?
 (20) A Right. Yes.
 (21) THE COURT: And Mr. Stoll will be the first one to
 (22) question you.
 (23) VOIR DIRE EXAMINATION OF WILLIAM DELANEY
 (24) BY MR. STOLL:
 (25) Q My name is Bob Stoll, I represent the municipalities that

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- (1) are plaintiffs in this case. And Mr. Fortier here represents
 (2) the Native corporations who are also plaintiffs.
 (3) Now, in the questionnaire, and towards the end of the
 (4) questionnaire in questions 83 and 84, you've indicated that you
 (5) have a relationship with the company that is involved in these
 (6) different categories, including Alyeska. Do you see that?
 (7) A Yes.
 (8) Q Would you tell us, please, what you were getting at when
 (9) you were answering this?
 (10) A Well, I've got a company that sells industrial pipe valves
 (11) and fittings, and they are one of our largest customers.
 (12) Q Alyeska is?
 (13) A Yes.
 (14) Q And you know that Exxon is an owner of Alyeska?
 (15) A Yes.
 (16) Q And as a result of that - and you've been very forthright,
 (17) I must say, in your answers to your questions. Do you think
 (18) that Exxon's done a fine job in cleaning up the oil spill, and
 (19) you gave - the only favorable rating you gave to categories is
 (20) Exxon, you put them at extremely unfavorable?
 (21) A I did that?
 (22) Q Well, I think that's question 48.
 (23) A It was awful hot in there that day; I was just trying to
 (24) get this done as fast as I could.
 (25) THE COURT: You're not the first person to say that,

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- (1) sir.
 (2) Q Page 47?
 (3) A I know I got a little sloppy.
 (4) Oh, extremely favorable.
 (5) Q You - I can't -
 (6) A Oh, I thought you said "unfavorable". No, I thought they
 (7) did a great job on the cleanup.
 (8) Q And another question you said that you thought that Exxon
 (9) had paid enough, and the damage award are too high.
 (10) When you consider all these things, do you think it will be
 (11) difficult to sit as a fair and impartial juror in this case?
 (12) A In this case, yes, I do.
 (13) THE COURT: Mr. Diamond, are you going to want to ask
 (14) him some?
 (15) MR. DIAMOND: If I may.
 (16) MR. STOLL: May I ask him a couple more questions?
 (17) THE COURT: On this issue?
 (18) MR. STOLL: Yeah.
 (19) THE COURT: Sure
 (20) BY MR. STOLL:
 (21) Q And that's because of the business relationship and also
 (22) your own personal opinion that you've formed after hearing a
 (23) lot about this oil spill?
 (24) A Yes.
 (25) Q And you felt that - you saw the HBO show and you thought

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- (1) that was unfair to Exxon?
 (2) A Yes, I did.
 (3) Q And did you - are you the owner of this company -
 (4) A I'm part owner.
 (5) Q - that has a business relationship with Alyeska?
 (6) A Yes, I do.
 (7) Q And did you - have you been to Prince William Sound?
 (8) A Yes, I have.
 (9) Q On quite a few occasions, I gather?
 (10) A Well, a few times I have.
 (11) Q You've made your own observations as to how good the
 (12) cleanup was and so on?
 (13) A Yes.
 (14) Q And that's the basis of your opinion?
 (15) A Yes.
 (16) Q And have you - have you ever been to Kodiak?
 (17) A No, I have not.
 (18) Q And incidentally, I see you checked here that you have
 (19) heard a great deal - this is on page 9 - you said grounding
 (20) of Exxon Valdez oil spill occurred March 20 -
 (21) A I'm sorry, which page?
 (22) Q I'm sorry, page 9.
 (23) A Okay.
 (24) Q And you indicated that you've had a great deal of
 (25) information - heard a great deal of information about the

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- (1) spill?
 (2) A That's true.
 (3) Q And so your opinion is strongly felt based upon these -
 (4) all this information that you have?
 (5) A Well, in the business that I'm in and being here for as
 (6) long as I have, it would be hard not to be honest, yes.
 (7) MR. STOLL: All right. Thank you very much sir.
 (8) I have an application, Your Honor.
 (9) VOIR DIRE EXAMINATION OF WILLIAM DELANEY
 (10) BY MR. DIAMOND:
 (11) Q Good afternoon, Mr. Delaney.
 (12) A Good afternoon.
 (13) Q I'm Chuck Diamond, one of the Exxon attorneys.
 (14) You're the co-owner of a small business?
 (15) A Yes.
 (16) Q And I take it you're not real anxious to serve - well,
 (17) serving on this jury would be an imposition on you, don't you
 (18) think?
 (19) A Yes, it is. In fact, I think I put in here that our
 (20) company does like 80 percent of our business over a six-month
 (21) period and we're right in the middle of that, so the time frame
 (22) also would be definitely a problem, yes.
 (23) Q You do business with oil companies, I understand?
 (24) A Yes.
 (25) Q And in your view, you think Exxon handled the response to

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- (1) the spill in a responsible way?
- (2) A I believe they did, why he.
- (3) Q And you hold the company in high regard for that?
- (4) A I do.
- (5) Q Do you consider yourself a fair-minded individual?
- (6) A I do.
- (7) Q The issues in this case, you understand, don't concern
- (8) whether Exxon was at fault for the grounding?
- (9) A I do.
- (10) Q What we are here determining is the extent to which the oil
- (11) that got on the plaintiff's land either affected its market
- (12) value or affected its use so they are entitled to
- (13) compensation. Do you understand that?
- (14) A Yes, I do.
- (15) Q Do you think that you would have any difficulty being
- (16) fair-minded in evaluating issues concerning property values
- (17) because you think Exxon handled the spill responsibly?
- (18) A From what I've seen in the area - and of course I've
- (19) gotten some of the pamphlets from Exxon and Alyeska,
- (20) before-and-after pictures. I think they did a fine job.
- (21) Q I'm sorry?
- (22) A Yes, they did a fine job as far as I'm concerned.
- (23) Q I know you think that Exxon did a fine job, but they're -
- (24) A What I have, a problem determining whether or not that the
- (25) land has been cleaned up - or is that what you're saying, or

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- (1) hurt the value of it is what you're saying?
- (2) Q Let me try to explain what we're fighting about, and you
- (3) tell me whether you can be fair on this.
- (4) A Okay.
- (5) Q It is undisputed as to some of the plaintiffs' land, some
- (6) of the parcels, Exxon Valdez oil got on their property. And
- (7) it's not in dispute that it took some period of time to remove
- (8) the oil. The issue here is whether the presence of oil had or
- (9) has an effect on the market value of the plaintiffs' property
- (10) or whether it's affected. The plaintiffs have used the
- (11) property, how much that they're entitled to be awarded
- (12) damages.
- (13) Now, on that issue or on those set of issues, do you think
- (14) that you could be a trier of fact in this case who was fair,
- (15) open-minded -
- (16) A I would hope that I could be open-minded about it.
- (17) Q Do you think you could?
- (18) A Well, as I said, unless it's something that I - that's out
- (19) there that I haven't seen anything or haven't heard anything
- (20) about, like I believe I said that the land down there has been
- (21) cleaned up. Now, if it's been cleaned up to the position that
- (22) it was in prior to the spill, I don't believe that they should
- (23) get any more money.
- (24) Q Even if they couldn't use the property while it was oiled?
- (25) A Well, I'd have to see what property it was.

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- (1) Q Let's assume the judge gives you instructions -
- (2) A If there was a playground and it was full of oil and nobody
- (3) could use it, yeah, I might think they'd have something to do
- (4) with that.
- (5) Q There's going to be differing opinions on lots of issues in
- (6) this case, there's going to be differing opinions on what got
- (7) oiled in the first place, and the plaintiffs will present
- (8) witnesses and the defendants will present witnesses. Do you
- (9) feel you can be fair in deciding issues, what parcels got oiled
- (10) and how badly?
- (11) A I feel I probably could.
- (12) Q There's going to be a dispute as to whether there continues
- (13) to be subsurface oil present in some of these locations, and
- (14) they're going to come in with experts and we'll come in with
- (15) experts and both of them will talk to you. Do you think you
- (16) could be fair in deciding those kinds of questions?
- (17) A I believe I could. I hope I could.
- (18) Q There are going to be disputes about the effects of any
- (19) oil, or oil residue that may remain below the surface.
- (20) Plaintiffs will have experts talking about that, defendants
- (21) will have experts talking about that. Do you think that you
- (22) could decide those issues fairly?
- (23) A I believe so.
- (24) Q Finally, you're going to hear from a real estate
- (25) appraisers - plaintiffs will have real estate appraisers,

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- (1) defendants will have appraisers about whether their property
- (2) has declined in value or remained the same.
- (3) Do you think that you could be fair in deciding those
- (4) issues, Mr. Delaney?
- (5) A I would hope that I have an open mind to something like
- (6) that. Do I say yes or no? I can't say until I've heard this,
- (7) so I don't know how I feel.
- (8) Q No one's asking you -
- (9) A No, I said, I believe, that I would hope that I would have
- (10) an open mind. I have to be honest about this, that I truly
- (11) feel that Exxon has paid enough on this damn thing, and I think
- (12) I'd like to see it just go away and go on to something else.
- (13) You know, five years is a long time. And I have to admit, I
- (14) don't think I put in here, but I am a member of the Alliance
- (15) Group, and also the Arctic Comber (ph), which is pro oil. I
- (16) didn't put that in here, but I am, and I just feel that way,
- (17) so...
- (18) Q Juries are composed of cross-sections of the community.
- (19) A That's right, and I -
- (20) Q Some people with your feelings and some people with other
- (21) feelings, some people with strong environmental feelings.
- (22) That's really not the issue; the issue is not what you bring in
- (23) the courtroom -
- (24) A I'm trying to answer you as fair as I can to you, of
- (25) whether I can, yes.

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- (1) Q You understand that these plaintiffs have not yet had their
 (2) day in court as to Exxon?
 (3) A I understand that.
 (4) Q And they're going to attempt to prove - I'm sure they
 (5) believe it - that they were injured by the spill, property was
 (6) damaged by the spill, and they're going to try to quantify that
 (7) and put it in a number, and you'll be called upon to decide
 (8) whether that's reasonable to you, and whether it's appropriate
 (9) to you.
 (10) Do you think you could be fair in dealing with that issue?
 (11) A Yes, I believe I could.
 (12) MR. DIAMOND: Thank you.
 (13) MR. STOLL: Your Honor, can I have a couple of
 (14) follow-up questions?
 (15) THE COURT: Yes, sir.
 (16) VOIR DIRE EXAMINATION OF WILLIAM DELANEY
 (17) BY MR. STOLL:
 (18) Q Mr. Delaney, the plaintiffs in this case are asking for
 (19) over a hundred million dollars in damages.
 (20) A I saw that in the paper, yes.
 (21) Q That's a lot of money.
 (22) A Yes, it is.
 (23) Q And I know you feel - and you've been very honest and
 (24) forthright and I appreciate it very much, your view that you
 (25) think this case - Exxon's paid enough, you think it should be

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- (1) over with and so on. And with your relationship in the - with
 (2) the oil industry, and these various memberships you have, you
 (3) see these - your friends and your business associates on a -
 (4) you know, after this case is long over.
 (5) Do you think there's a - when you're evaluating the
 (6) evidence, whether it's municipalities or the Native
 (7) corporations, experts versus Exxon's experts, and then you
 (8) have
 (9) your own personal observations of whether - you know,
 (10) whether
 (11) this is all cleaned up or not cleaned up, we're not talking
 (12) about playgrounds here.
 (13) Do you think that - do you think there's a - there's a
 (14) reasonable likelihood, isn't there, that your own personal
 (15) observations and knowledge which you've got from several
 (16) years,
 (17) and your knowledge of people that you've been dealing with,
 (18) that's going to affect your evaluation of who's right and who's
 (19) wrong, isn't it? That's just human nature.
 (20) MR. DIAMOND: Your Honor, I object to the question as
 (21) being unintelligible.
 (22) THE COURT: I feel that's just in the nature, just
 (23) leave out that's just human nature, counsel.
 (24) Do you understand the question, sir? Maybe I should -
 (25) A Maybe you ought to repeat it.
 (26) THE COURT: Let me do it.
 (27) In a case, whether it's a simple one or one like this, has
 (28) the right to have jurors that aren't affected in an unfair way

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- (1) by their experiences or by their opinions so that, when they
 (2) come into court, they have open minds and they don't put a
 (3) party at a disadvantage prior to the time that opening
 (4) statements are made.
 (5) You've said that you feel that Exxon paid enough. Well,
 (6) this case is about whether or not Exxon should pay more and,
 (7) as
 (8) you can see, as counsel stated, a substantial amount of money.
 (9) Under the circumstances, do you think that your mind set is
 (10) such that you could say, Well, I'll disregard those prior
 (11) opinions and I'll just listen to the evidence that I hear in
 (12) court and I won't let anything that I believe affect me until I
 (13) hear all the evidence in the case and decide the case
 (14) impartially? Do you believe that that's the situation with
 (15) you?
 (16) A No, I don't.
 (17) THE COURT: I'll excuse you, sir.
 (18) I really appreciate your honesty. That's exactly why we
 (19) talk to jurors, so we can find out whether or not they have
 (20) biases and, if they do, whether or not they should serve on the
 (21) jury. I'm sure you'd be a fine juror on another case?
 (22) A On another case - well, I was on the federal grand jury
 (23) for 13 months.
 (24) THE COURT: That's good. You've done your service?
 (25) A So I've done my time on it.
 (26) THE COURT: Thank you very much, Mr. Delaney. You're

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- (1) excused and you're no longer required to call in.
 (2) A Okay. Fine. Thank you.
 (3) (William Delaney leaves the room.)
 (4) THE COURT: Juror number 49 never reported, so we're
 (5) done. We've used all the jurors for the day.
 (6) If I'm not mistaken, counsel, we have a total 26 jurors
 (7) passed for cause, but one question - one cause question is
 (8) reserved so really we have 25 solid passed for cause. I'm
 (9) having 15 jurors coming in tomorrow at 8:30 and we're going
 (10) until they're done or we have a jury, all right?
 (11) MR. STOLL: Fine.
 (12) MR. DIAMOND: 8:30 or nine?
 (13) THE COURT: I'm having them come in at 8:30, and the
 (14) reason I'm doing that, even though I tell them to come in, they
 (15) don't get questioned until ten to nine or nine o'clock, so I
 (16) want to start early. So you all be here and ready.
 (17) I guess we've only got 24, I always address the clerk on
 (18) computations of those who have been passed for cause. And
 (19) we
 (20) have 24, but you better check your records.
 (21) MR. DIAMOND: We're in agreement of 24.
 (22) THE COURT: What I did is excused one and didn't take
 (23) that into consideration. So we have 24, we need six more.
 (24) We do have to deal with this for cause question on juror
 (25) number 15, I believe it is.
 (26) MR. STOLL: Number 12.

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- (1) MR. DIAMOND: Number 12, Mr. Kennedy.
- (2) THE COURT: Number 12, okay. And I want to be able to
- (3) do that by tomorrow so that you know - so that things are
- (4) predictable for you.
- (5) By the way, when can you get your brief in, Mr. Stoll?
- (6) MR. STOLL: On Mr. Kennedy?
- (7) THE COURT: Uh-huh.
- (8) MR. STOLL: First thing in the morning, Your Honor.
- (9) MR. DIAMOND: We'll file something simultaneously. I
- (10) don't know that it needs to be responsive.
- (11) THE COURT: That's fine.
- (12) MR. DIAMOND: At one point we were talking about the
- (13) fact that we have some college kids who leave the 15th, that
- (14) you might seat more than 30; I mean, more than six alternates.
- (15) THE COURT: That's not a bad idea, if we go through
- (16) the 30 and get a cushion.
- (17) MR. DIAMOND: We have physical -
- (18) MR. STOLL: We have overnight, Your Honor, or maybe
- (19) later this afternoon we can talk.
- (20) THE COURT: That's a good idea, but I had thought
- (21) about that, going more than 30. One, because this jury
- (22) selection is taking a long time; two, because there's a
- (23) possible delay because of these reports that are coming in that
- (24) I simply have no opinion on right now. and I don't want to be
- (25) out there at the end of it with three qualified jurors seeming

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- (1) to go, it just wouldn't be appropriate.
- (2) All right.
- (3) THE CLERK: Please rise. Court stands in recess.
- (4) (Recess at 2:06 p.m.)

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(1) STATE OF ALASKA)
 (2) : Reporter's Certificate
 (3) DISTRICT OF ALASKA)
 (6) I, Katherine L. Novak, RPR, a Registered
 (7) Professional Reporter and Notary Public;
 (8) DO HERBY CERTIFY:
 (9) That the foregoing transcript contains a true and
 (10) accurate transcription of my shorthand notes of all requested
 (11) matters held in the foregoing captioned case.
 (12) Further, that the transcript was prepared by me
 (13) or under my direction.
 (14) DATED this 27th day of June, 1994.
 (20) Katherine L. Novak, RPR
 Notary Public for Alaska
 (21) My Commission Expires: 6-10-97

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IGNORES PURE NUMBERS

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re) Case No. 3AN-89-2533 Civil
) Anchorage, Alaska
 (5) the EXXON VALDEZ) Tuesday, June 28th, 1994
) 4:20 p.m.
 (5))
 (3) VOLUME 1 Pages 1 through 46
 (9) TRANSCRIPT OF PROCEEDINGS
 (12) HEARING
 (12) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge
 (15) APPEARANCES:
 (16) FOR THE PLAINTIFF:
 N. ROBERT STOLL
 (17) Stoll, Stoll, Berne & Lokting
 209 Southwest Oak Street
 (18) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUMENOS
 (20) Birch, Horton, Bittner & Cherot
 1127 West Seventh Avenue
 (21) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 (23) Fortier & Mikko
 2550 Denali Street, Suite 604
 (24) Anchorage, AK 99503
 907/277-4222
 (25) FOR THE DEFENDANTS:
 CHARLES P. DIAMOND

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(1) PROCEEDINGS
 (2) (Call to Order of the Court.)
 (3) THE COURT: All right. Counsel, we have a few things
 (4) to take up today. The first is the trial schedule. Did
 (5) anybody want to be heard on that?
 (6) MR. OPPENHEIMER: Your Honor, if I may, good
 (7) afternoon.
 (8) THE COURT: Hi.
 (9) MR. STOLL: What day is this?
 (10) THE COURT: Right, is this afternoon?
 (11) MR. OPPENHEIMER: Your Honor, I assume it will be
 (12) helpful for us to address the motion we as a result of
 (13) Dr. Mundy's report. I reviewed the opposition papers this
 (14) morning to see if they helped explain what has been confusing
 (15) us about the changes and what we think is problematic about
 (16) them. And it added to our confusion a bit.
 (17) In fact, one of the things we've been doing to try to catch
 (18) up to eliminate as much of the delay as we can from our own
 (19) preparation, is to run against what we have prepared, what we
 (20) think we are seeing in the new report. I have, in the course
 (21) of doing that, ended up with a number of comparisons which I
 (22) think may be very clear that the explanation, which was in the
 (23) opposition, while it may explain some of the changes can't
 (24) possibly explain all of the changes that we're seeing in
 (25) Mr. Mundy's report.

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(1) M. RANDALL OPPENHEIMER
 LINDA JANE SMITH
 (2) O'Melveny & Myers
 400 South Hope Street
 (3) 213/669-6000
 (4) JOHN F. CLOUGH III
 Clough & Associates
 (5) 431 N. Franklin St., #202
 Juneau, AK 99801
 (6) 907/586-5777
 (7) Reported by:
 KELLY R. BOLLWINKEL
 (8) Midnight Sun Court Reporters
 2550 Denali Street, Suite 1505
 (9) Anchorage, Alaska 99503
 907/258-7100

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(1) THE COURT: Well, tell me something. Is the general
 (2) drift of these changes to cut the damages?
 (3) MR. OPPENHEIMER: Well, Your Honor, as to some
 (4) parcels, yes. On a total basis, yes, as to some parcels, no.
 (5) It increases them. See, the problem, Your Honor, at the risk
 (6) of overgeneralizing, I think there is a fair characterization
 (7) that could be made about the plaintiffs' position on this
 (8) point.
 (9) Their statement that the overall damages have come down is
 (10) true. The statement is untrue as it applies to specific
 (11) parcels. And the problems, of course, is that this is a land
 (12) damage case where we're going to attempt to assess in a very
 (13) traditional way, damages to specific parcels. And there are
 (14) two problems with what they have suggested.
 (15) One is, you have parcels and I can be very specific, which
 (16) we've identified so far, where the damage analysis shows -
 (17) their damage analysis shows that the damages have gone up,
 (18) all
 (19) of the variables are changing.
 (20) In other words, this is not a situation where you have a
 (21) simple reduction by percentage of the acreage, and we can just
 (22) plug that in and take into account and nothing else changes.
 (23) Virtually all of the variables have changed. We have tried to
 (24) see if we can figure out where this is happening, but we simply
 (25) can't at this point. We do not - literally do not know where
 the boundaries are on all of these parcels. And one of the

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- (1) reasons that that's important by way of an example is that it
 (2) seems to be important to all the appraisers to understand the
 (3) nature of the property; how much is shoreline, what type of
 (4) shoreline, where is it located. This is reasonable and those
 (5) things have changed. And in some cases the parcel total
 (6) acreage has gone down, but the shoreline has gone up, and
 there
 (7) may be an explanation for that.
 (8) We really have, frankly, been mindful of the fact that even
 (9) though this is perhaps recognized by everyone as a problem,
 (10) that we had to utilize all the time we could to try to be as
 (11) prepared we could under any circumstances. We really have
 been
 (12) working to see if we could figure out why all of the happening
 (13) was to the model, and we have not been able to do that. We do
 (14) not believe -
 (15) THE COURT: What would it take to make you capable of
 (16) evaluating that issue?
 (17) MR. OPPENHEIMER: I would like to give you two answers
 (18) to that.
 (19) THE COURT: I figured you would. Go with what the
 (20) first one is.
 (21) MR. OPPENHEIMER: The first one would be the one -
 (22) MR. STOLL: He's going to be a juror, Your Honor.
 (23) MR. OPPENHEIMER: - the first answer, Your Honor,
 (24) would be that which would be necessary to fully understand
 (25) what's going on here. And I'll be candid with you, Your

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- (1) Honor. I think the exigencies of the circumstances will make
 (2) it very hard for the Court to permit us that time, but we have
 (3) at least three witnesses and - excuse me, we have four
 (4) witnesses, counting our value witnesses, who need to be
 (5) deposed. And we would need, in the normal course of events,
 we
 (6) would have needed at least 30 days to deal with these changes.
 (7) If we can at least have an opportunity to have depositions
 (8) of Mr. Bush and Mr. Mundy on the land issues, and a period of
 (9) time after those depositions have been concluded, and we have
 (10) the documents to assess what they have told us, we can make a
 (11) mad dash to be ready.
 (12) I realize when we filled our papers, Your Honor, we talked
 (13) about getting materials and depositions by the beginning of
 (14) this week and starting up in the Fourth of July weekend, we're
 (15) very mindful what's going on and the jury can't sit around
 (16) forever. I can't represent to you that my experts will - they
 (17) have told me they can't be ready short of 30 days. I've told
 (18) them that the real world may work differently. I'm telling you
 (19) that whatever we do short of that, they're going to tell me
 (20) they have been hindered in their ability to get the job done.
 (21) I do think there are some things that if it's going to be
 (22) any less than that, that would at least help us deal with it on
 (23) a somewhat ad hoc basis. Let me give you one very specific
 (24) example. We gave a -
 (25) THE COURT: Hang on. Just let's explore that for the

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- (1) possibilities here. The first possibility, all right?
 (2) MR. OPPENHEIMER: Sure.
 (3) THE COURT: So you want depositions of Bush and Mundy,
 (4) and then you want some time to adjust and deal with the
 (5) situation.
 (6) MR. OPPENHEIMER: That's correct, Your Honor.
 (7) THE COURT: Counsel, whoever it is that's responding.
 (8) MR. FORTIER: Well, Your Honor, we oppose the idea of
 (9) additional depositions of Bush and Mundy. They deposed
 Bush -
 (10) THE COURT: Yes, but you've changed -
 (11) MR. FORTIER: - less than a week ago.
 (12) THE COURT: You did?
 (13) MR. FORTIER: Yes. And with regard to Dr. Mundy,
 (14) we've submitted his affidavit as part of our submittals in
 (15) opposition to the motion for continuance. That affidavit
 (16) demonstrates what happened. And what happened was that
 acreage
 (17) was reduced. I brought some charts, I'm trying to get some
 (18) exhibits over to show you that -
 (19) MR. STOLL: They're here.
 (20) MR. FORTIER: Oh, they are here? If I could, Your
 (21) Honor, I've got a set of the old version of the Mundy exhibits
 (22) and a set of the new version of the Mundy exhibits. And I
 (23) think that if you look at these, you'll see that the only thing
 (24) that's changed, it has gone down; there has been no change in
 (25) the basic comparables that have been -

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- (1) THE COURT: I know that's what you said, Counsel. But
 (2) here's the situation as somebody's who has not been involved
 in
 (3) the adversary process here, but simply watching this thing as
 (4) it develops receives this information.
 (5) First, why should Exxon accept your representation that the
 (6) only thing that's happened is that there's been a reduction in
 (7) the claim when they seem to have some fairly objective
 evidence
 (8) that indicates that some of these individual claims have
 (9) increased? Why is it, with the last minute change like this,
 (10) why shouldn't they get a fair opportunity to examine your
 (11) witnesses to see whether or not your representations are true?
 (12) MR. FORTIER: Well, I guess, Your Honor, that - and
 (13) that's why I would like to show you the exhibits because you,
 (14) as the impartial arbitrator, would be able to see that nothing
 (15) has changed.
 (16) THE COURT: Well, I might come to that conclusion, but
 (17) I might be ill-informed, Counsel, that's what discovery is all
 (18) about.
 (19) MR. FORTIER: Your Honor, I think the issue arose
 (20) because -
 (21) THE COURT: I can't - I've got to - I'm no clearer
 (22) on the Naked Island problem after two times going through the
 (23) maps than I was when I started, and I have a feeling that
 (24) that's what's going to happen when I look at your diagrams.
 (25) MR. FORTIER: They aren't diagrams, Your Honor, what

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(1) they are is that they're statements of the parcels. I mean,
 (2) what we have here, as I understand the defendants as they're
 (3) saying your parcels got little, so the boundaries have been
 (4) sucked in to accommodate the parcels getting littler. And as
 (5) the result of that, your numbers have gone down. And we want
 (6) to know why.
 (7) They knew why because they deposed Dr. Mundy, and they
 (8) deposed him for 11 days and they were aware of the fact that
 (9) the parcels were going to go down in size because of boundary
 (10) adjustments that they were aware of long before a week ago.
 (11) They were aware of it.
 (12) THE COURT: They were aware they were going to happen,
 (13) or they were aware of the specific adjustments that were going
 (14) to be made?
 (15) MR. FORTIER: I believe - well, they were aware of
 (16) both, Your Honor. As an example, I did bring along a map of
 (17) Chenega. In order to get an in depth understanding, I think
 (18) you have to go back to the January motion the defendants filed
 (19) with regard to the open 90's selections, if you remember that
 (20) motion?
 (21) THE COURT: I remember. I remember it very well.
 (22) MR. FORTIER: The issue in that motion was, you know,
 (23) what lands could the plaintiffs claim for it. The plaintiffs
 (24) at that point presented their open 90 selections, and they also
 (25) presented a set of maps that showed the contours of the

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(1) we do not know now. We do have not have any GIS data, we do
 (2) not have any mapping data that answer this question. I'm not a
 (3) cartographer, so I will have to rely upon others for this, but
 (4) you can rest assured that when this issue arose, one of the
 (5) first questions we asked of those among us who are
 (6) knowledgeable, is please double check your data. If we have
 (7) this, let us know and we simply do not - our maps drawn from
 (8) their electronic database, the most recent ones provided to us,
 (9) do not correspond with all that is in Mr. Mundy's new
 (10) material.
 (11) There are three parcels that we don't even find. Nothing
 (12) I've said so far, by the way, addresses other variables that
 (13) have changed, that are very important to the damage
 (14) calculations, perhaps the next of most importance would be
 (15) persistence which has a similar panoply of problems associated
 (16) with it. I start with the obvious problem, though, which is at
 (17) the moment I don't believe there is a map in the courtroom. I
 (18) don't believe that there is a map that Mr. Fortier could
 (19) provide. We don't have one that they could provide that would
 (20) actually show where the boundaries of these properties are.
 (21) I don't believe it's an adequate response, I also don't
 (22) think it's accurate to say that the differences are minor.
 (23) There is a tendency to globalize. I would suggest to you that
 (24) if we were plaintiff saying that our property was very small,
 (25) that no defendant would be here to answer, it's permissible for

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(1) parcels, or I guess a better way of putting that really would
 (2) be the maps showed the over selected lands which have now
 (3) been
 (4) extracted out for the new Mundy exhibits.
 (5) So it's a process, Your Honor, of elimination more than
 (6) anything else. It's simply subtracting acreage and coming up
 (7) with a different size, and that's what happened and that's what
 (8) they were aware of.
 (9) THE COURT: Okay. I'd like to hear from you,
 (10) Mr. Oppenheimer, on that.
 (11) MR. OPPENHEIMER: Yes, Your Honor. Let me quote from
 (12) the papers. I was not involved in this briefing, but I've
 (13) scanned it since it came in this morning. This is from the
 (14) brief that was filed in opposition to the motion to dismiss
 (15) selective, but un conveyed lands, the priority selections.
 (16) In Mr. Fortier's own argument concludes on the issue why is
 (17) it not right for summary judgment back in January. Defendants
 (18) argued that Chenega is claiming damages on 3,000 acres too
 (19) many
 (20) and English Bay in almost 3,000 acres too many as established
 (21) above each village corporation may assert claims for damages
 (22) on
 (23) its OPA (ps) elected valid selections to entitlement.
 (24) Arbitrarily cut off the claims, it causes issue for
 (25) speculation. The village corporations will receive most, if
 (26) not all, the valid selection prinets. No village corporation
 (27) knows at this point where that will fall.
 (28) They didn't know, we didn't know, we do not - Your Honor,

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(1) us to oil it over and over it again because it's so small
 (2) surrounding the calculation.
 (3) We have individual parcels here that we can't specify
 (4) boundary for, we don't know how much of their shoreline is of a
 (5) particular type. We don't even know how long it is in some
 (6) cases.
 (7) Again, the question of depositions, Mr. Bush was recently
 (8) deposed, Mr. Mundy has not been. Mr. Bush's deposition did
 (9) not
 (10) get very far on persistence because he indicated, and we quote
 (11) in our papers, the portion from his deposition that he was
 (12) still in the process of preparing final persistence figures as
 (13) of his deposition this month for Mr. Mundy.
 (14) We asked for those persistence figures at the conclusion of
 (15) his deposition, and we were told that they were unavailable and
 (16) may be appropriately so understand one of the orders because
 (17) they were being treated as draft material for Mr. Mundy's
 (18) report, which has just been received. We still don't have
 (19) those persistence figures.
 (20) I do have a notebook that came right after - well, I don't
 (21) know right after, it came after Mr. Mundy's most recent field
 (22) trip. It's a notebook it has fold-out pages of some of the
 (23) parcels that are drawn in the old maps that have printed on
 (24) them new numbers which I believe to be new persistence
 (25) numbers,
 (26) oil persistence numbers for each parcels. The printed numbers
 (27) are different from the numbers in what had then been the most

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- (1) recent Mundy report. Some of them are crossed out and
- (2) different numbers are written in with initials. I presume
- (3) those are some form of field notes Mr. Mundy's made or that
- (4) Mr. Bush made with him.
- (5) The report we received just last week has yet another
- (6) persistence number, for - I don't want to say all, I'm not
- (7) sure it's all, but certainly for a majority of those parcels I
- (8) looked at, so we now have four persistence numbers, and I don't
- (9) know how the last three - there is no testimony as to how the
- (10) last three of those were generated.
- (11) Those persistence numbers are very significant variables in
- (12) the damage calculation. The statement was made that not all
- (13) the parcels, I believe the statement was made, that all the
- (14) parcels have come down in the damage amounts, and I just - I
- (15) don't think that's correct.
- (16) THE COURT: I didn't hear that statement.
- (17) MR. OPPENHEIMER: Perhaps, I didn't mean to
- (18) overgeneralize.
- (19) THE COURT: I'm going to assume that you're correct,
- (20) that some have come up and some have come down. Tell me,
- (21) Counsel, the Bush deposition, how long is it going to take?
- (22) MR. OPPENHEIMER: If we have the materials, Your
- (23) Honor, I believe it could be done in a day.
- (24) THE COURT: And how about the Mundy deposition?
- (25) MR. OPPENHEIMER: I think that would take - I

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- (1) honestly believe, Your Honor, that that is a two-day
- (2) deposition.
- (3) THE COURT: Well -
- (4) MR. OPPENHEIMER: And I omitted reference to the
- (5) archaeology.
- (6) THE COURT: Let me just cut to the bottom line here,
- (7) Counsel. You can have those depositions, all right? The
- (8) parties have to accommodate. When information like this
- (9) comes
- (9) in, close to trial the' opposing party has got to have a fair
- (10) opportunity to find out what the new reports or material mean
- (11) to determine whether or not the theory has changed or the
- (12) calculations have changed in some fundamental or small way.
- (13) I don't question that you need a fairer opportunity to
- (14) adjust to this particular information. And I'm going to do
- (15) everything I can to make sure you get that thorough
- (16) opportunity. So you can take the Bush deposition, and you are
- (17) limited to a day. You can take Mundy's deposition and you're
- (18) limited two days.
- (19) Once you get to those - those deadlines, you may be cut
- (20) off. I don't know how complicated this process is going to
- (21) be. Assume that you will be cut off after a day for Bush and
- (22) two days for Mundy, so ask your important questions at the
- (23) beginning and not at the end.
- (24) MR. OPPENHEIMER: Understood, Your Honor. I omitted
- (25) reference to two archaeologists, Lobdell and Johnson.

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- (1) THE COURT: And how long would they take if you were
- (2) to depose them?
- (3) MR. OPPENHEIMER: I would have to defer to my
- (4) colleague.
- (5) THE COURT: Is there information part and parcel of
- (6) this problem, the Bush-Mundy problem?
- (7) MR. DIAMOND: They went out with Mr. Bush and
- (8) Mr. Mundy on the most recent field trip. And all we know
- (9) is - you remember I showed you during summary judgment
- (10) argument the appendix to the report which listed on each parcel
- (11) how many hours of archaeologists time and how many assistant
- (12) archaeologists, those numbers have all changed. Some of the
- (13) parcel have dropped out that were once part of this. Other
- (14) parcels have appeared totally - they may be new ones, they
- (15) may
- (15) be segments of old ones, we don't know. The deck got
- (16) reshuffled.
- (17) We're going to have to sit down with both Lobdell and
- (18) Johnson and try to figure out just how they shuffled the deck,
- (19) so that we know what we are responding to. It's part of -
- (20) MR. OPPENHEIMER: There is something that would be
- (21) very specifically helpful. There is I believe it's AHRA number
- (22) or ARHC, it's historical. There is an Alaska historical
- (23) designation for these sites. We have requested that for each
- (24) sites so that we can get away from the nomenclature Yalik
- (25) Village. Well, you know, there are a number of Yalik Village

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- (1) sites, well, which is it? Some there is a claim for
- (2) remediation, some only for monitoring, some perhaps for
- (3) neither
- (3) that we can't tell. It will be enormously valuable and
- (4) expeditious to just to have the numbers for those we requested
- (5) them, but they denied them. That would help identify them.
- (6) MR. FORTIER: Your Honor, we would be glad to provide
- (7) them the HRS numbers. I didn't realize that they -
- (8) THE COURT: How soon can you provide them?
- (9) MR. FORTIER: - that they've been requested. We will
- (10) provide them - I should be able to provide them by tomorrow.
- (11) THE COURT: All right. You have got to provide them
- (12) by 4:30 tomorrow.
- (13) MR. FORTIER: If I can be heard on what I understood
- (14) was a request to depose Lobdell and Johnson.
- (15) THE COURT: You can be.
- (16) MR. FORTIER: Let me explain, first of all, Your
- (17) Honor, again there sites were dropped.
- (18) THE COURT: I know, you've said that.
- (19) MR. FORTIER: With the archaeology though, too, the
- (20) sites were dropped.
- (21) THE COURT: Yes, I know.
- (22) MR. FORTIER: The trips were necessitated on account
- (23) of - first of all defendants didn't make production to us
- (24) until August of last year, this was the first real field trip.
- (25) THE COURT: Counsel, you haven't heard my blaming

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- (1) anybody, have you?
- (2) MR. FORTIER: No, I haven't, Your Honor.
- (3) THE COURT: I'm just trying to be fair. Look, the
- (4) situation I'm faced with is I've got a trial here that we're
- (5) picking the jury on. I'm not interested in saying you get to
- (6) depose three witnesses, but you don't because you get to
- (7) depose the fourth because you're partially at fault. I'm not
- (8) interested in doing that.
- (9) What I want to do is provide the other side with the
- (10) discovery it needs and get to the point. And the point of this
- (11) case is the trial. The maneuvering, some day, has got to stop
- (12) and you've got to sit down and try this case, but they can't
- (13) try the case without getting an adequate opportunity to find
- (14) out why these changes were made and how they were made.
- (15) Now the issue should be addressing is not fault. It's why
- (16) if they shouldn't be deposed, these two people shouldn't be
- (17) deposed.
- (18) MR. FORTIER: Okay. Your Honor, they should not be
- (19) deposed because Exxon has all of the information on each of
- (20) these sites. As I understand Exxon, it is saying they want to
- (21) depose the archaeologist on why they dropped certain sites.
- (22) THE COURT: On why?
- (23) MR. FORTIER: Yes. That's what I understand them
- (24) asking.
- (25) THE COURT: Did you really want to know why such sites

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- (1) piggybacks on his findings, but there are, by last count and
- (2) Mr. Fortier knows better than I, there are scores and scores of
- (3) sites. I think we were at 103 before they began dropping. You
- (4) know, and a half-day to go over just the sites that have
- (5) changed, we're not going to be able to do that.
- (6) THE COURT: I'm giving you a day to depose both these
- (7) witnesses. You can use three-quarters of it, depose the most
- (8) important witness, but you've got a day to depose them both.
- (9) Now, just as with the other one, if there is some situation
- (10) that develops during the deposition that requires more time,
- (11) then the first thing you do is you ask the other side. And if
- (12) they agree, then you can continue. And if they don't agree
- (13) you're always welcome to come in here and ask me for extra
- (14) time, being precise about what you need.
- (15) MR. DIAMOND: We'll do.
- (16) MR. FORTIER: Finally, Your Honor, I guess there is a
- (17) question of when the trial beings. I'd like to point out to
- (18) you that -
- (19) THE COURT: That question occurs - I think I have to
- (20) explore how long it takes for Exxon to adjust to the
- (21) information it gets in these depositions. All right? And I've
- (22) already asked about that. When are these witnesses scheduled
- (23) to testify?
- (24) MR. FORTIER: Dr. Mundy is not scheduled to testify
- (25) until the third week of trial. I believe that Laura Johnson

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- (1) were dropped, if such drop sites were dropped?
- (2) MR. DIAMOND: I certainly would like to inquire.
- (3) That's not the principle reason for these depositions, but if
- (4) an expert says Exxon one day and then the day before trial says
- (5) why, I would like to be able to ask of the presence of the jury
- (6) why did you make these changes. It's obviously going to be
- (7) relevant impeachment at trial, we would certainly like to be
- (8) able to test the waters into discovery.
- (9) THE COURT: You tell me why these changes were made.
- (10) MR. FORTIER: Well, the changes were made for the most
- (11) part, Your Honor, because they went out, they looked at the
- (12) sites again. They had a better opportunity to determine that
- (13) certain sites that were identified by Exxon were really not
- (14) sites and we are not going to claim damages for them.
- (15) THE COURT: Okay. They weren't sites and some of them
- (16) weren't on your property, right.
- (17) MR. FORTIER: That's correct. So I mean that hardly
- (18) merits depositions.
- (19) THE COURT: I think it merits depositions, Counsel. I
- (20) want to be certain, and I'm sure Exxon does too. So yes, you
- (21) can depose these two witnesses, and you're limited to a half
- (22) day a piece.
- (23) MR. DIAMOND: I would suggest that with respect to
- (24) Lobdell, who goes to all of the sites, we would like at least a
- (25) day with Lobdell maybe a little less with Johnson because she

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- (1) and Dr. Lobdell are not testified - not scheduled to testify
- (2) until July.
- (3) MR. STOLL: I have no idea.
- (4) MR. FORTIER: I believe the third week of trial, Your
- (5) Honor.
- (6) THE COURT: Both are?
- (7) MR. FORTIER: Yes, they are kind of back-to-back
- (8) witnesses.
- (9) THE COURT: I'll accept that representation from you,
- (10) Counsel, and what I'm going to tell Exxon is you have to take
- (11) your discovery. But I'm inclined to think that you can adjust
- (12) to this information within the time allotted. So I'm not
- (13) saying now I'm continuing the case for a specific amount of
- (14) time to allow you to deal with this situation. In other words,
- (15) you take your depositions, your experts are going to have to
- (16) adjust.
- (17) MR. OPPENHEIMER: Your Honor, could I address one
- (18) aspect of that?
- (19) THE COURT: Sure.
- (20) MR. OPPENHEIMER: I do appreciate the circumstances.
- (21) We attached some exhibits that we were very interested to use
- (22) in our opening statement that describe and try to put into
- (23) perspective our view of the damage testimony that will be
- (24) coming from plaintiffs. It's a complicated appraisal case that
- (25) point of view and we think that this is very critical.

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- (1) THE COURT: I don't have them here.
 (2) MR. OPPENHEIMER: I have another set, actually. May I
 (3) approach the bench?
 (4) THE COURT: Yes.
 (5) MR. OPPENHEIMER: These are all heavily influenced.
 (6) Your Honor, I'm showing you what is a bar chart which I think
 (7) is a good example. And you'll notice that we endeavored to be
 (8) as specific as we could the numbers that are involved in the
 (9) case. We really believe it's critical to getting across our
 (10) view of what's at issue. Those numbers, of course, are all
 (11) outdated now.
 (12) THE COURT: They may be, but can't the plaintiffs
 (13) provide you with the numbers that they're claiming on these
 (14) things?
 (15) MR. FORTIER: We have done so, Your Honor.
 (16) MR. OPPENHEIMER: Your Honor, I don't believe that
 (17) they can. They certainly have not.
 (18) THE COURT: But suppose I just said this. They have
 (19) to. And for landlock properties, they have to give you a
 (20) figure for it that they are claiming. That resolves the
 (21) exhibit problem; doesn't it?
 (22) MR. OPPENHEIMER: Your Honor, the acreages, the
 (23) dollars that are depicted there, are based on what we will
 (24) explain to be our experts analysis of their underlying data.
 (25) So let me give you an example, if I may. I don't really want

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- (1) to present to the jury Mr. Fortier's assessment of what is an
 (2) upland, because I suspect it will be different from what our
 (3) experts believe an upland is.
 (4) And as you can see from that bar column, that's a very
 (5) important part of what we're talking about in terms of the
 (6) total dollars involved; that is, frankly a point of dispute I'm
 (7) sure between the parties. And Mr. Fortier might try, but I
 (8) don't believe he would or could give me that bar chart back.
 (9) It's based really on an analysis of the data that his experts
 (10) had in their materials.
 (11) And so for example, when boundary changes, our own experts
 (12) would love to track through that. I wonder if we could have
 (13) the plaintiffs' definitive map and definitive GIS data of the
 (14) parcels they are claiming, and if we can be given or assured
 (15) that we have been given and it's identified to us the
 (16) definitive persistence data so that there will be not be a
 (17) question at any point in this trial as to what it is we're
 (18) talking about when we're talking about their property. And
 (19) what it is when we're talking about when we're talking about a
 (20) measure of their boundary, and what is we're talking about
 (21) when
 (22) we're talking about the data that comprised their persistence
 (23) of oil which we don't have yet.
 (24) I think that would greatly facilitate our trying to get
 (25) this done in a very short period of time. I also believe if we
 could be given permission to use our exhibits, perhaps I don't

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- (1) know if we can do this but, I won't inquire immediately with
 (2) the numbers blocked out or if we use the numbers with the
 (3) ability to talk about damage proximations free from being
 (4) criticized later in closing for having used numbers which we
 (5) can't control for the fact, that they are going to be off by
 (6) some margin.
 (7) I think that would also be helpful, it's a practical
 (8) attempt to try to solve the problem at the time. With all due
 (9) respect, even with these things, it seems to me - it's hard
 (10) for me to imagine how we could be ready to go this week with
 (11) those things.
 (12) THE COURT: Okay. First as to your exhibits. I see
 (13) no problem with using them with the dollar figures blocked out,
 (14) if that's what you're asking about. Because you may, in fact,
 (15) say that these final figures are dependent on the evidence and
 (16) you can't come up with a final figure. I mean, I think that
 (17) would be a fair statement, it would be true; wouldn't it?
 (18) MR. DIAMOND: Well, it would also deprive the exhibits
 (19) of any impact or value to us.
 (20) THE COURT: Okay. So the -
 (21) MR. DIAMOND: The practical solution, and I think
 (22) Mr. Oppenheimer and may be a little modest in describing it
 and
 (23) the describing the nature of the problem, we are not going to
 (24) be able to remanufacture all of our exhibits, even if we get
 (25) the data tomorrow and even if we get the continuance until

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- (1) Tuesday that we request. In the time that remains, we're not
 (2) going to be able to remanufacture everything, and we're not
 (3) going to be able to revise all of our numbers and all of our
 (4) boundaries.
 (5) One of the problems we have in just using exhibits in
 (6) opening statement, we want to be able to use exhibits that some
 (7) power, and that's why we prepared the exhibits that are in
 (8) front of you.
 (9) We don't want to be ambushed in closing argument that
 (10) either that exhibit misrepresents the evidence or if our expert
 (11) talks about a parcel that is depicted on his map in a way
 (12) that's slightly different from what turns out to be actuality,
 (13) we don't want our expert to be criticized nor do we want the
 (14) exhibit that he has prepared to be criticized because we based
 (15) it on data that we had available a week before trial instead of
 (16) the day before trial. And I don't think the solution is to put
 (17) this off for a month.
 (18) Mr. Stoll and I don't want to have to try to pick another
 (19) 26 jurors, it's too painful, but there ought to be some relief
 (20) from criticism either in front of the jury during the course of
 (21) the cross-examination or in argument in front of the jury
 (22) because our numbers don't jive with their last minute numbers.
 (23) The discrepancies may not be wild, but you know, they may be
 (24) significant enough that it would draw somebody's attention if
 (25) Counsel called attention to it. We think that ought not to be

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- (1) allowed.
- (2) MR. FORTIER: Your Honor, we can live with that and as
- (3) to the other requests, the map, the GIS data and the
- (4) persistence data, and we'll get it to them.
- (5) THE COURT: When?
- (6) MR. FORTIER: We will try to get it to them by
- (7) tomorrow.
- (8) THE COURT: All right. Tomorrow, 4:30.
- (9) MR. FORTIER: Yes, Your Honor.
- (10) THE COURT: Okay? And then -
- (11) MR. DIAMOND: That concludes the persistence -
- (12) THE COURT: Which only means, Counsel, try not because
- (13) it's important that we get these figures to them, so that I
- (14) don't have to come in and do something else that will open up
- (15) the case.
- (16) MR. FORTIER: I understand, Your Honor.
- (17) MR. OPPENHEIMER: Your Honor, may we also confirm
- (18) that's the persistence data?
- (19) THE COURT: Yes, you may. Now the question of the
- (20) exhibits to be used in opening statement, I can see your point,
- (21) Counsel. You go to a lot of trouble and you prepare a nice
- (22) graphic picture exhibit and then suddenly the figures change,
- (23) and you might be accused of saying of somehow misleading the
- (24) jury when you say the total claims are \$97 million and other
- (25) unopened properties are \$15 million.

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- (1) I don't think you should be criticized under the
- (2) circumstances for saying those things if that's what you would
- (3) say in opening statement. If in fact what you intended to say
- (4) was the information we have now, but the process - these
- (5) claims appear to be in the process of change is that the total
- (6) figure is \$15,550,000, then I don't think that statement can be
- (7) criticized because it's exactly true; right? Isn't it?
- (8) MR. DIAMOND: It would be true.
- (9) THE COURT: So to that extent I guess I can protect
- (10) you. The problem is I don't want to make an over-broad
- (11) statement here and intrude on the legitimate argument that
- (12) might occur at the end of the case.
- (13) MR. DIAMOND: I guess I had in mind, we have prepared
- (14) an awful lot of maps.
- (15) THE COURT: I know.
- (16) MR. DIAMOND: And some of them are bigger than your
- (17) screen and some of them just can't be revised even if we have
- (18) the GIS data to do it, or can't be revised quickly.
- (19) Some of the other computations are not simple
- (20) computations. We don't think that even if, you know, we spared
- (21) no expense, we would be able to generate the data so as to
- (22) recreate all of the exhibits. And there are going to be what I
- (23) would think largely to be small discrepancies between, for
- (24) example, our parcel boundaries and theirs.
- (25) Unless you want to stop the clocks and let us, you know,

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- (1) start all over again, which I don't think you want to do, and I
- (2) don't think we want to do, I'm concerned that an advocate will
- (3) take every advantage, and that's an area where we're going to
- (4) be exposed. And I think we are entitled to some protection to
- (5) that. So it's not only exhibits that we use in opening
- (6) statement and we may introduce copy of, but down the road I
- (7) envision that there - not everything is going to be revised.
- (8) THE COURT: I see what you mean. You may have to use
- (9) exhibits that may not be quite right because - as long as
- (10) there is an explanation I believe that I can protect you. I
- (11) just - I know from hard experience, Counsel, that when a judge
- (12) says you will not do blah, blah, blah, not knowing what it is
- (13) that the other side intends to do, or in fact what you intend
- (14) to do, that judge always had to modify the ruling.
- (15) I want to make sure that you understand that I'm willing to
- (16) protect you but that, in Mr. Clough's words, reserve the right
- (17) to do the appropriate thing and not be bound by some
- (18) over-broad
- (19) statement that I might have made in response to a motion like
- (20) this, okay?
- (21) MR. DIAMOND: And as we know you have the right to
- (22) reserve.
- (23) THE COURT: That's it.
- (24) MR. STOLL: We all agree on that.
- (25) THE COURT: All right. Now so, what else do we have
- (26) to discuss on this issue before I tell you when you will do

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- (1) your opening statements?
- (2) MR. STOLL: Your Honor, may I be heard, briefly?
- (3) THE COURT: Sure.
- (4) MR. DIAMOND: Mr. Stoll, can I have just one minute.
- (5) MR. STOLL: Your Honor, I would like to respectfully
- (6) ask that we continue to go ahead on Thursday with our opening
- (7) statements assuming we get two more jurors tomorrow, which
- (8) I'm
- (9) confident we should be able to do.
- (10) I don't think - I mean, I don't have my trial schedule
- (11) here, but given the fact these witnesses of the Native
- (12) corporations are not going to be on for quite some period of
- (13) time, and given the fact that their witnesses are not going to
- (14) have to testify, for defendants experts are not going to have
- (15) to testify for at least a month from now, the ones that are,
- (16) you know, involved in this, I just - I'd like to get on with
- (17) the trial.
- (18) And we do have a couple jurors that we think that frankly
- (19) we can get this case tried before mid-August. And I'm watching
- (20) if we lose a couple more days here, I'm concerned about, you
- (21) know, that time line, because a couple more days could make the
- (22) difference between whether we have jurors or don't have jurors.
- (23) THE COURT: I understand what you're saying.
- (24) MR. OPPENHEIMER: Your Honor, I came up to try a case
- (25) too, I'm anxious to get back to my eight-year-old. I say this
- (26) in all earnestness that we really have been trying to get up to

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- (1) the curve that the new report gave.
 (2) I have properties here that have been changed by almost
 (3) 60,000 square feet on shoreline areas. On shoreline areas.
 (4) There may be matters of importance to our opening statement
 and
 (5) things we emphasized we could end up looking very foolish on
 (6) some of these parcels if we choose the wrong ones to make
 some
 (7) of our points.
 (8) There may be some points that we do not emphasize that we
 (9) would choose, and I think we have a right to choose to or not
 (10) to emphasize, I honestly believe, Your Honor, we cannot be
 (11) prepared to make an opening that I believe genuinely reflects
 (12) our best effort and our best work under the circumstances this
 (13) week.
 (14) I believe that the changes we're seeing, we will do our
 (15) best to control and to deal with. I believe we are vulnerable
 (16) right now in all candor to putting our foot in something.
 (17) There are things that we must examine, we will prioritize them
 (18) to do it by next week means we're going to have to shift our
 (19) perspectives to make sure our main points remain in tact to the
 (20) examples we're using, we may have to pull some of these
 (21) exhibits if they're the wrong examples, we would do that if we
 (22) had to meet the date next week to start.
 (23) We are asking one of our lawyers to make an opening
 (24) statement and we know how important those are in a jury trial,
 (25) and we may be saying something that's going to operate like a

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- (1) bad analogy, you know, stand out because we think it's
 dramatic
 (2) and a good point to be made, and it will be the wrong parcel or
 (3) the wrong point.
 (4) And in all earnestness, I am not going to feel that we are
 (5) even at the threshold of being adequately prepared this week.
 (6) We'll work through the Fourth of July weekend, we will do what
 (7) needs to be done with all of the time available, no one is
 (8) talking about creating vacation time, but we can't do it this
 (9) week.
 (10) We have one other point in all this, we don't know whether
 (11) the Appraiser Green is testifying any longer, because the last
 (12) exhibit change took him off.
 (13) THE COURT: Is he?
 (14) MR. OPPENHEIMER: Which is another problem.
 (15) THE COURT: Is he?
 (16) MR. FORTIER: He is, he's still on board.
 (17) MR. OPPENHEIMER: I make my point as I did. I don't
 (18) need to qualify.
 (19) MR. FORTIER: Your Honor, as far as starting next week
 (20) the exigencies of the circumstances are is that the jury will
 (21) be picked; that there is going to be a number of college
 (22) students on that jury. We'll make Drs. Mundy and - Dr. Mundy
 (23) and Mr. Bush no doubt available just as soon as we can. It is
 (24) possible that we can make Dr. Mundy available by tomorrow
 which
 (25) should resolve a lot of defendants' problems, it seems to me.

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- (1) THE COURT: I don't think so, Counsel. I think this
 (2) is a big enough development that I should give leeway to the
 (3) defense, so I'm going to do that. The openings statements will
 (4) begin on Tuesday. And you have to work really hard to get
 (5) things done, and I'm giving you that, but I'm giving it to you
 (6) grudgingly because I see the schedule slipping. I really don't
 (7) want to cause you this difficulty, but I think I'm required to
 (8) do so in the interest of fairness.
 (9) And let me tell you about these colleges students. We come
 (10) to the end of the process and if I'm threatened with a loss of
 (11) a jury, these college students are going to stay there. This
 (12) is something you have to take into consideration.
 (13) MR. STOLL: They will stay here?
 (14) THE COURT: They'll stay. I'm not going to get down
 (15) to 11 jurors because someone is going to miss a week of class.
 (16) I just won't do it. So unless, of course, if you do what the
 (17) pretrial order allows you to do, which is stipulate to less
 (18) than 12.
 (19) All right. Is there anything else on that point? Then,
 (20) Counsel, you can have your exhibits back. I would go out of
 (21) here with courtesy copies and they all end up in my desk, and I
 (22) get in a blathering a state of anxiety wondering if I'm going
 (23) to lose important papers.
 (24) Let's talk about the juror Kennedy now. If you want to
 (25) talk about it any further, I know what the issues are.

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- (1) MR. OPPENHEIMER: I'm sorry. Did you invite us to
 (2) talk?
 (3) THE COURT: No. In fact, I'm not certain I need to
 (4) you repeat what you've already said. Do you want to be heard?
 (5) You're welcome to speak.
 (6) MR. STOLL: Your Honor, I think we've said it in our
 (7) papers we don't think that he's - his one visit within 100
 (8) yards of Naked Island is material. In fact, not even material
 (9) it has anything to do with this - with the issues in this
 (10) case.
 (11) He said he's keeping an open mind, the juror was very frank
 (12) about what he saw and what, you know, what he felt about it
 and
 (13) he felt that, you know, he didn't think he was biased or - not
 (14) just that he - this was not a juror who equivocated and/or,
 (15) you know, was like some of the jurors that we had today. It's
 (16) just a different situation. I mean, there is no question he
 (17) was there apparently a week or two after the spill, but that
 (18) doesn't disqualify him.
 (19) MR. DIAMOND: Your Honor, there is nothing
 (20) intrinsically wrong with Mr. Kennedy. An in fact, he didn't
 (21) have particular knowledge that he does, I think we would be
 (22) anxious to have him serve on this jury.
 (23) It wasn't one day, it was two weeks on a daily basis that
 (24) he was going out to Naked Island, and what we're concerned
 (25) about is having a hidden witness in the jury room that we can't

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- (1) cross-examine.
 (2) We are submitting SCAT mapping data which really is the
 (3) backbone of our case of what got oiled and what didn't get
 (4) oiled. You have the SCAT data for the area around Naked
 Island
 (5) as an exhibit, it shows only a portion of Naked Island, a very
 (6) small portion oiled.
 (7) If that is not in agreement with Mr. Kennedy's recollection
 (8) of things, unbenownst to us and unbenownst to you and
 (9) unbenownst anybody in the courtroom, he can decide that our
 (10) SCAT mapping is not reliable. And if he does that, it may not
 (11) hurt us in Naked Island, but that's not an issue, but he may
 (12) decide that the mapping is not accurate overall. And he may
 (13) well convince the entire jury since he was there that he
 (14) knows.
 (15) You said it when we first served this issue, the real issue
 (16) here is Exxon's credibility, could we lose our credibility in
 (17) the jury room behind closed doors to a witness that we haven't
 (18) even heard testify and who we can't cross-examine, I think
 (19) that's a real problem.
 (20) It's simply compounded by the fact that their maps disagree
 (21) with our maps as to Naked Island. And they are choosing to
 (22) make a point of that discrepancy in their exhibits, but even if
 (23) they didn't I'd say we still would be entitled to have a juror
 (24) who wouldn't introduce that kind of potential prejudice into
 (25) the jury room in a way that we just can't deal with it.

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- (1) MR. STOLL: Your Honor, I think the issue is whether
 (2) the juror - whether some knowledge that he has can prevent the
 (3) jury from being impartial only on the evidence produced at
 (4) trial.
 (5) THE COURT: That isn't the question, Counsel. I think
 (6) you're briefing ignores the fact that that is the question.
 (7) The question is whether I can find that it's beyond question
 (8) that he can try the case and return a verdict only on the
 (9) evidence introduced in the courtroom, because Dawkowski
 makes
 (10) this a much heavier burden, and it makes my inquiry a lot more
 (11) limited. I have to be able to say beyond question that he
 (12) would return the verdict based on what he heard in the
 (13) courtroom and not what he observed and what he experienced.
 (14) MR. STOLL: Your Honor, the only thing that he said he
 (15) saw at one point, one place on Naked Island, we don't even
 know
 (16) where that was, there was no - on this record there is no
 (17) record of what, you know, he remembers being by Naked
 Island
 (18) within a hundred yards of Naked Island that's it. That
 (19) doesn't - we're not making any big thing about Naked Island,
 (20) we're not making a little thing about Naked Island.
 (21) There is no question that Naked Island was oiled. I do not
 (22) believe that there is any issue as to which - nobody is going
 (23) to get into which lagoons were oiled or not oiled or any of
 (24) that business, Naked Island is not an issue in this case.
 (25) THE COURT: I understand.

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- (1) MR. STOLL: And I just don't see on this record that
 (2) this witness, simply because he came within a hundred yards of
 (3) Naked Island and thought that there was oil, I agree, we all
 (4) agreed there was oil there. He's not going to know from five
 (5) years after the event Oh, yes, I remember there was this lagoon
 (6) and they show on some map here I'm going to do my own little
 (7) investigation on their SCAT map, it doesn't look like that
 (8) particular lagoon was oiled.
 (9) I mean that is - that's not - there is just no evidence
 (10) of that here. I mean, there is not even a scintilla of that as
 (11) far as this juror is concerned.
 (12) THE COURT: You're done, Counsel. Exxon has provided
 (13) me a transcript of the whole conversation with Mr. Kennedy.
 (14) MR. STOLL: Right.
 (15) THE COURT: And that transcript reveals that he was
 (16) involved in the cleanup process; he was there for days not on
 (17) the sites that the plaintiffs are claiming damages for, but he
 (18) was out there for days; he saw oiling; he's described the
 (19) oiling in some detail; he clearly remembers it as he said
 (20) vividly.
 (21) The parties tell me that either there is or there isn't an
 (22) issue revolving around the Naked Island oiling here and that
 (23) the maps could be used to argue might be used by the parties
 to
 (24) argue the credibility of Exxon's position. I can't judge that
 (25) because I haven't heard the evidence.

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- (1) So what do I have to do? I think I have to say it's
 (2) unclear to me whether or not the maps might be argued to
 (3) undermine Exxon's credibility. And what do I do with it -
 (4) even if they aren't mentioned, but they're there and they're in
 (5) evidence the, and I know that there is a juror who has gone out
 (6) and participated in the cleanup process and had some pretty
 (7) definite ideas of about what he saw there, and the extent of
 (8) the oiling he saw there. And he just goes and looks at the map
 (9) and decides that something about the map is wrong and then
 (10) tells the other jurors about it, and they come to a decision.
 (11) And the decision is adverse to Exxon on a point that may not
 (12) have been argued.
 (13) I think there is a very real danger that that could occur
 (14) here because I don't know the extent of what he saw, but I know
 (15) he had an opportunity to see quite a bit out there.
 (16) I also know that the transcript reveals that he went to
 (17) some of the towns that are claiming the damages here. And
 he's
 (18) said not very specific information, but he says it is not the
 (19) same out there now as it was before the spill.
 (20) This is a witness who has had an opportunity to observe
 (21) things that may very well be described in this trial. The
 (22) extent of what he observed as it relates to what the issues are
 (23) in this case is unclear to me. It's unclear to me whether or
 (24) not Naked Island would actually be an issue in this case, but
 (25) it's not just whether the parties argue that it's an issue it's

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- (1) whether – also whether the potential juror might think it's an
 (2) issue, and that might have some affect on the deliberations.
 (3) Now under the normal circumstances, not with a juror who
 (4) has personally observed things that relate to the case, I might
 (5) say well, I can make a discretionary call, I have wide
 (6) discretion here and I'll exercise my discretion because I think
 (7) he's ultimately a fair and rational person and leave him on the
 (8) jury, but that's not the test that I think the law requires me
 (9) to follow.
 (10) I have to make a good-faith finding that Mr. Kennedy can –
 (11) that it's beyond question that Mr. Kennedy can try this, can
 (12) listen to this case and return a verdict only into the evidence
 (13) introduced in the courtroom, I can't do that. There is no way
 (14) I can do that with the uncertainty produced by this record and
 (15) on the information produced in this record. So he's got to
 (16) go. And the motion to disqualify him is granted and he'll be
 (17) informed. I'm simply going to have him called and told that
 (18) he's excused, Counsel. All right.
 (19) Now so that takes care of that one. One other question I
 (20) wanted to ask you. You may have other things to talk about,
 (21) but what I wanted to ask you, about what the referral – the
 (22) later referral that I made to the master. What's the status of
 (23) that?
 (24) MR. DIAMOND: Mr. Stoll and I have been in discussions
 (25) with the night court resolution, I think we don't have

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- (1) resolution. I was going to call Mr. Ruskin when I got back to
 (2) the office and set up an appointment. He offered to make
 (3) himself available last Sunday to try to work it out. We
 (4) thought we could work it out ourselves, but we are in need for
 (5) help.
 (6) THE COURT: Well, get to him as quickly as possible
 (7) will you, because I know that he's leaving town on Friday so
 (8) you have to.
 (9) MR. STOLL: We will go tomorrow or at the very least,
 (10) we will do it tomorrow.
 (11) THE COURT: I think you should. I'll just leave it to
 (12) him to – or you to advise me what's going on with that
 (13) particular issue.
 (14) MR. STOLL: Your Honor, did you issue an Ashley or some
 (15) form of order to referring the matter to Mr. Ruskin?
 (16) THE COURT: No, I relied on the record, but I did call
 (17) him and told him what I had found..
 (18) MR. STOLL: I just wanted to know, maybe this was
 (19) another piece of paper I didn't catch.
 (20) THE COURT: No. I didn't, that's the infamous minute
 (21) order.
 (22) MR. STOLL: I understand.
 (23) THE COURT: Let me think if there is anything else. I
 (24) don't have anything else, do you?
 (25) MR. OPPENHEIMER: We have nothing further.

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- (1) MR. STOLL: Your Honor, if I may, I don't know if
 (2) you've received our papers on the – they have a motion on the
 (3) City of Cordova's motion to sever, is that –
 (4) THE COURT: What? They have a motion?
 (5) MR. STOLL: They filled a motion I don't know whether
 (6) when we can argue, get that resolved.
 (7) THE COURT: I'm baffled, where are we?
 (8) MR. DIAMOND: We mentioned this to you– when you work
 (9) seven days, it's hard to remember which day you're at. I think
 (10) we mentioned this to you on – at Friday's hearing we had or
 (11) otherwise it was Thursday's hearing, the plaintiffs' produced
 (12) to us 2500 pages of additional Cordova discovery last week.
 (13) THE COURT: Yes.
 (14) MR. DIAMOND: In support of what we contend is another
 (15) \$400,000 upon reimbursed expense claims that we have not
 had an
 (16) opportunity to conduct discovery on. You remember there was
 (17) some confusion as to whether we inadvertently withdrawn this
 (18) motion or something else.
 (19) THE COURT: Oh, that's right.
 (20) MR. DIAMOND: It has not been withdrawn, it's pending.
 (21) I gather opposition has filed late yesterday, we'll file a
 (22) reply forthwith and I think Mr. Stoll wants it set for writing
 (23) if you want to hear it.
 (24) THE COURT: And that's fine. I'll set it for
 (25) argument, I can probably hear it tomorrow. You're filing

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- (1) courtesy copies of changes in chambers, aren't you?
 (2) MR. DIAMOND: Yes.
 (3) THE COURT: I believe I'm getting them on most of
 (4) these things and I appreciate that and so I know what's in and
 (5) I can gather them altogether and look at them.
 (6) MR. DIAMOND: I don't know that we will have anything
 (7) to you until after – until tomorrow afternoon when we finally
 (8) get back.
 (9) MR. STOLL: I think you had previously ordered, Your
 (10) Honor, that we file ours on Monday and they were supposed to
 (11) file something by noon tomorrow. That is my recollection.
 (12) THE COURT: I may have done that, yes.
 (13) MR. STOLL: So I'm wondering if we can get the three
 (14) jurors that we need to if, we can get them by – before lunch
 (15) if we could maybe have a hearing you know, 4 o'clock.
 (16) THE COURT: The answer is yes, we can probably have a
 (17) hearing. And I'd like you to make the 12 o'clock deadline. I'm
 (18) assuming I said that, even though I don't remember.
 (19) MR. DIAMOND: Mr. Stoll hasn't lied to me yet so I
 (20) assume he said as well.
 (21) THE COURT: As I tell jurors all the time,
 (22) recollection is immune, even honest people can differ. What
 (23) else?
 (24) MR. PETUMENOUS: I have a couple matters. One is
 (25) administrative and that is I listened to you explain to the

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- (1) jurors that if they had problems with tickets for their travel
 (2) plans, that you can sometimes assist, we have some witnesses
 (3) now that we believe are going to have those kind of problems.
 (4) May I inquire of the Court, if the Court could use some
 (5) assistance in –
 (6) THE COURT: I would be happy to be. And the way I
 (7) suggest you go about it is you can even draft the letter for my
 (8) signature telling the airlines what the situation is, I'll read
 (9) it and if it's correct, I'll sign it.
 (10) MR. PETUMENOUS: And all right. I don't know if this
 (11) has been covered, but I think we need to schedule some time,
 (12) number one to have a final understanding what the preliminary
 (13) jury instructions are going to be prior to –
 (14) THE COURT: Yes, I agree.
 (15) MR. PETUMENOUS: And the parties will probably agree
 (16) that the – I think what we ought to do is meet for both the
 (17) oil plate ones and see what agreements we can reach on that.
 (18) And I think on substantive instructions, we'll probably
 (19) disagree on about every one of them, and there may not be
 (20) more than one or two that we're talking about, but we should
 (21) schedule some time for that.
 (22) THE COURT: But we have time now, don't we?
 (23) MR. PETUMENOUS: I arrived late, but I understand that
 (24) was the case. And the other issue that I thought we ought to
 (25) discuss is prior to opening statements, I think that the

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- (1) opening statement Counsel should meet and discuss what
 issues
 (2) are going to be addressed in opening.
 (3) There are a couple of exhibits that I know of not
 (4) specifically the subject of any motion in limine which would
 (5) causing me to move for a mistrial if they were to be used, but
 (6) they may not intended to be used. I think Counsel ought to
 (7) meet and we ought to have a hearing prior to opening
 statements
 (8) to discuss any objections that we may have use of exhibits in
 (9) the opening, and that there may be one or two or none, but we
 (10) should work it out of court before that.
 (11) THE COURT: I agree. The exhibits you have to share,
 (12) well enough in advance of the opening statements. Those
 (13) exhibits you intend into use in opening. You do not have to
 (14) explain what you're going to say about those exhibits, neither
 (15) party has to do that, but I think we can set all these things
 (16) after we get the jury.
 (17) I'm praying we get the jury tomorrow. Once we do that,
 (18) I'll be breathing easier, so will you, and if we get the jury
 (19) tomorrow, then we'll – or at somewhat curtailed leisure, we
 (20) can deal with the scheduling problems and the instruction
 (21) problems.
 (22) MR. PETUMENOUS: I just want to apprise the court what
 (23) things are up on the horizon and those are the only things I
 (24) can think of.
 (25) MR. DIAMOND: There is one other event and that's the

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- (1) exercise of preemptories. And to make this as much fun as
 (2) possible I was going to suggest if the Court give us, assuming
 (3) we seat the balance of the jury tomorrow, give us over night to
 (4) scheme and come in on Thursday morning and do
 preemptories so
 (5) that we can vent out all the possibilities and thoroughly enjoy
 (6) the process.
 (7) MR. STOLL: Your Honor, I'd rather not prolong the
 (8) agony. I'd like to just get – if we, you know, over lunch
 (9) hour we could figure out what our – look at our Ouiji boards
 (10) and –
 (11) THE COURT: I think we can do that, Counsel, I'm not
 (12) saying that I might not allow that if circumstances warrant it
 (13) and we're late in the morning or something like that, and I
 (14) will consider it but, it appears to me that you've been
 (15) thinking about these jurors for a good, long time, you know who
 (16) he's going to call.
 (17) Now let's talk about that because I've read the pretrial
 (18) order and it's clear to me that some of you have – this is the
 (19) way that I envision the preempt process will take, will go.
 (20) The plaintiff will issue a preemptory, the defendant will
 (21) issue a preemptory, and it will go just like that and it will
 (22) take – should take no more than a half an hour, the whole
 (23) process. Am I wrong about that?
 (24) MR. DIAMOND: Other than stopping to call back NFL
 (25) headquarters.

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- (1) MR. STOLL: Draft choices.
 (2) MR. DIAMOND: No, I think we're in an agreement that's
 (3) the way it's going to work.
 (4) THE COURT: I like that aspect of the pretrial order
 (5) so I want to encourage you all, the people are going to be
 (6) doing the preempt, read it. So that we're all on the same page
 (7) when we get to the preempt page. Because it looked to me like
 (8) it's a very efficient way of doing the preempts and it doesn't
 (9) involve calling new jurors in or anything like that, it's just
 (10) you do it and all the way down the six apiece, right?
 (11) MR. STOLL: May I ask one question, Your Honor?
 (12) THE COURT: Yes.
 (13) MR. STOLL: If a Counsel – if they, I'm just going to
 (14) arbitrarily take a number. If a Counsel uses a preempt on
 (15) let's say juror number 15, let's say that they all were 1
 (16) through 30.
 (17) THE COURT: Okay.
 (18) MR. STOLL: And a Counsel uses a preempt on number 15,
 (19) and then the opposing side, preempt jury number seven, the
 fact
 (20) that as I understand it, the fact that the counsel started at
 (21) 15 they can use a preempt on any one.
 (22) THE COURT: So sure.
 (23) MR. STOLL: You can go up to the first, you can go to
 (24) preempt number one if you wanted to.
 (25) THE COURT: That's right. That's right, but if you go

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- (1) say 15, 7, 22. The only thing that happened is those jurors
- (2) drop out 1, 2, 3, 4, 5, 6, stay in line and they are the first
- (3) six jurors. 8, 9, 10, all the way up to 12, they are the jury,
- (4) and the remaining six, in that order, the order that they
- (5) originally came in are the alternates. We all understand that,
- (6) won't we?
- (7) MR. STOLL: So 21 doesn't suddenly go up to six or
- (8) something.
- (9) THE COURT: No. The numbers of the jurors who stay,
- (10) stay the same. So if one stays and two goes then three
- becomes
- (11) two.
- (12) MR. STOLL: Right.
- (13) MR. DIAMOND: Like soup cans at the supermarket.
- (14) THE COURT: Some supermarkets, yes.
- (15) MR. STOLL: That's the way this supermarket operated
- (16) anyhow.
- (17) THE COURT: Counsel, I'm not certain that this
- (18) supermarket is operating. So, we're done for the day, right?
- (19) MR. STOLL: Yes, we are.
- (20) THE COURT: My clerks both thank you very much for
- (21) being so brief.
- (22) THE CLERK: Please rise, court stands in recess.
- (23) (Recess at 5:26 p.m.)

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- (1) STATE OF ALASKA)
- (2) : Reporter's Certificate
- (3) DISTRICT OF ALASKA)
- (6) I, Kelly R. Bollwinkel, a Verbatim Professional
- (7) Reporter and Notary Public;
- (8) DO HERBY CERTIFY:
- (9) That the foregoing transcript contains a true and
- (10) accurate transcription of my shorthand notes of all requested
- (11) matters held in the foregoing captioned case.
- (12) Further, that the transcript was prepared by me
- (13) or under my direction.
- (14) DATED this day
- (15) of , 1994.
- (21) KELLY R. BOLLWINKEL
- Notary Public for Alaska
- (22) My Commission Expires: June 21, 1998

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- (1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re) Case No. 344-89-2533 Civil
) Anchorage, Alaska
 (5) the EXXON VALDEZ) Tuesday June 28, 1994
) 8:30 a.m.
 (6))

- (8) VOLUME 6, Pages 826 through 1029
 (10) TRANSCRIPT OF PROCEEDINGS (Continued)
 (11) TRIAL BY JURY - JURY SELECTION
 (13) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge

(16) APPEARANCES:

(17) FOR THE PLAINTIFF:

- (18) N. ROBERT STOLL
 Stoll, Stoll, Berne & Lokking
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600
 SAMUEL J. FORTIER
 (21) Fortier & Mikko
 2550 Denali Street, Suite 604
 (22) Anchorage, AK 99503
 907/271-4222

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(1) FOR THE DEFENDANTS:

- (2) CHARLES P. DIAMOND
 O'Melvery & Myers
 400 South Hope Street
 (3) 213/669-6000
 Reported by:
 (5) LEONARD J. DiPAOLO, RFR
 Registered Professional Reporter
 (6) Midnight Sun Court Reporters
 2550 Denali Street, Suite 1505
 (7) Anchorage, Alaska 99503
 907/258-7100

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- (1) PROCEEDINGS
 (2) (Jury out at 8:50 a.m.)
 (3) (Call to Order of the Court.)
 (4) THE COURT: Counsel, before we start the jury
 (5) selection, I have a letter from the employer of a juror, what
 (6) number is Mrs. Tanner?
 (7) THE CLERK: 65.
 (8) THE COURT: We may not have to worry about it, but the
 (9) employer has a terrific hardship for Mrs. Tanner to serve as a
 (10) juror, so I'll tell you, I'll have the clerk make copies of
 (11) this letter. We have plenty of time before we get to her, if
 (12) ever.
 (13) MR. DIAMOND: Your Honor, we may have one
 (14) stipulation - I'm sorry, we don't have a stipulation.
 (15) THE COURT: Maybe I'll give you more time.
 (16) Well, what do we have?
 (17) MR. DIAMOND: I'm sorry.
 (18) THE COURT: Stipulation to excuse?
 (19) MR. STOLL: No, we don't, Your Honor. We tried.
 (20) Your Honor, there is one matter I would like to bring up
 (21) and that is that there is one - I'm just trying to keep track
 (22) of the motions, and I think there is one motion that we have
 (23) from before that's still outstanding, and that's the -
 (24) THE COURT: No, go ahead, tell me about it.
 (25) MR. STOLL: Well, it's the plaintiff's part - part of

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- (1) plaintiff's omnibus motion in limine relating to Exxon's
 (2) payments to plaintiffs.
 (3) THE COURT: I have decided.
 (4) MR. STOLL: You did?
 (5) THE COURT: Uh-huh.
 (6) MR. STOLL: I didn't get a copy of that.
 (7) THE COURT: You better read it, it might affect your
 (8) case. I don't know if you know this, and it's probably ominous
 (9) development, but the computers in the court system have been
 (10) down for three days now, and doesn't look like they will get
 (11) fixed at least until this evening, so our word processing
 (12) capacity has diminished severely. That's part of the problem.
 (13) My secretary had to switch it over to her PC and go through the
 (14) torture in order to get that two-page order out.
 (15) MR. DIAMOND: Would you like a loaner?
 (16) THE COURT: Just give me a computer that works,
 (17) please.
 (18) THE CLERK: Are we ready?
 (19) THE COURT: I don't know.
 (20) MR. STOLL: Your Honor, I have one other thing.
 (21) We provided the court with our brief on Mr. Kennedy.
 (22) THE COURT: I see it, I have a copy here.
 (23) MR. STOLL: And incidentally, just so the court knows,
 (24) I've got a little map here of Prince William Sound, and it just
 (25) shows where Naked Island is. It's not - the significance of

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- (1) that, Judge, is it's not one of the parcels - it's not one of
 (2) the parcels that - that is subject of the litigation, and it's
 (3) also the place where they took - when - before the Exxon
 (4) Valdez was taken to California, it was stored for a little
 (5) while off of Naked Island, so there is no issue about having
 (6) been oiled, it's just a question of - well, it's not a
 (7) question of anything, really.
 (8) MR. DIAMOND: Mr. Bauermeister is bringing our brief
 (9) up, he should have it in the next 15 minutes.
 (10) THE COURT: That's fine. Let's go through the jury
 (11) selection and see where we are. We talked about passing
 (12) through a couple more than 30, which I think might be a good
 (13) idea, and then we'll deal with the Kennedy question.
 (14) MR. DIAMOND: Our logistical people point out that we
 (15) don't have any place to house them if you had more than 30.
 (16) We
 (17) started running out of room here, and if you try to put
 (18) additional jurors elsewhere, they are going to have trouble
 (19) with the Barco.
 (20) MR. STOLL: Your Honor, I think 30 is fine. We will
 (21) end up with 18 and 18 is fine. There is a maximum potential
 (22) jurors that we could lose as a result of the school starting of
 (23) three, that's the maximum, and with six alternates at least we
 (24) feel fine. As far as, you know, having plenty of alternates, I
 (25) don't think it's going to be a problem.
 (26) THE COURT: I don't quite understand, counsel. The

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- (1) way I envisioned this, we just increase the pool of jurors from
 (2) 30 to some number over 30 so that the preempts and whatever
 (3) happens with Kennedy, and the inevitable goofy developments
 (4) that occur in the long jury selection are covered, but as far
 (5) as logistics are concerned there is only going to be 18 people.
 (6) MR. DIAMOND: I think both of us understood you to be
 (7) adding additional jurors.
 (8) THE COURT: No, I think 18/30 is adequate, I don't
 (9) have any reason to think that's true. I only did it because
 (10) there are students on the jury and Kennedy is still an open
 (11) question, so I just wanted to give you a bigger pool to draw
 (12) from when you did your preempts, all right?
 (13) MR. STOLL: I think we're ready to go.
 (14) THE COURT: Are you ready to go? Mr. Owens is not
 (15) here today, what a surprise, so we're going to bypass him
 (16) again, and the next juror is Sheldon.
 (17) THE CLERK: Yes.
 (18) (James Sheldon enters the room.)
 (19) THE COURT: Mr. Sheldon, would you please give your
 (20) full name for the record?
 (21) A James Larry Sheldon.
 (22) THE COURT: Mr. Sheldon, the questions that you
 (23) answered in the jury questionnaire, which you have a copy of in
 (24) front of you, those were answered under oath, and these
 (25) questions you're going to answer are also going to be
 answered

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- (1) under oath.
 (2) You understand that?
 (3) A Yes.
 (4) THE COURT: Mr. Fortier will be the first person.
 (5) VOIR DIRE EXAMINATION OF JAMES SHELDON
 (6) BY MR. FORTIER:
 (7) Q Good morning Mr. Sheldon. I'm Sam Fortier, I represent the
 (8) Native corporations in this case; and Mr. Stoll, who represents
 (9) the municipalities.
 (10) Mr. Sheldon, we've of course reviewed your questionnaire.
 (11) You indicate that you have a seasonal job. Can you tell me
 (12) what that is?
 (13) A I work Avionic Systems at the airport for Aviation
 (14) Electronics, and it pretty much dies out about October, doesn't
 (15) pick up again until May; so I've been doing about 30 hours a
 (16) week during the winter. Summertime is when I get the overtime
 (17) and everything else.
 (18) Q In the summertime is - you've got June through September
 (19) as the peak seasons, peak months?
 (20) A Yeah, end of May, right, until about the end of September.
 (21) End of September it drops right off.
 (22) Q Can you tell me how many hours a week you would work in
 (23) July, generally?
 (24) A It would average about 50.
 (25) Q Now, Mr. Sheldon, do you understand that this trial is

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- (1) expected to last at the most two months?
 (2) A That's my understanding, yes.
 (3) Q And that the court hours are between 8:30 and 1:30?
 (4) A I wasn't aware of the court hours.
 (5) Q Now, if the court hours - were the court hours between
 (6) 8:30 and 1:30, that would still allow you to work, wouldn't it?
 (7) A I could pick up about four hours.
 (8) Q So the problem then would be that it would reduce the
 (9) availability of overtime for you?
 (10) A It would negate overtime completely, and virtually cut me
 (11) down to 20 hours.
 (12) Q Do you work for a private company or for the government?
 (13) A Yes, it's a private company.
 (14) Q What I'm trying to do is figure out what serving on the
 (15) jury would do for you personally if you were selected, and in
 (16) that sense what I'm trying to - what I'd like to know is
 (17) whether or not you would be able to, over the short-term of the
 (18) trial, because it's only two months, whether or not you would
 (19) be able to pick up the overtime that you need after the trial
 (20) is over, that sort of thing. How great a hardship slip is it
 (21) for you to serve on the jury?
 (22) A Well, it cuts my pay in half for two months virtually, so I
 (23) have to recover from that, plus the winter months.
 (24) Q Is there anything else you can tell me about it?
 (25) A What's that?

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- (1) Q Is there anything else you can tell me?
- (2) A Pertaining to what?
- (3) Q About what serving on the jury would do in regard to your employment.
- (4) A Well, just the fact that it's going to hurt me financially
- (5) is one aspect; the other fact my employer is not too happy
- (6) about it either because I'm the head technician there.
- (7) Q Let me ask you some other questions.
- (8) You indicate in the questionnaire, and I think it's in
- (9) front of you, Mr. Sheldon, that - I'll just - do you want to
- (10) look, I think it's page 11, question 47, yeah.
- (11) You indicate - well, there is a number of entities that is
- (12) listed there and one of them is an entity called local
- (13) governments and municipalities.
- (14) A Uh-huh.
- (15) Q I told you that Mr. Stoll represents six of the
- (16) municipalities in the state that are suing Exxon. You marked
- (17) that you have a somewhat unfavorable feeling towards
- (18) municipalities. Can you tell me why that is?
- (19) A Oh, mainly just government bureaucracy in general. Nothing
- (20) specific.
- (21) Q So you don't like bureaucracies?
- (22) A Not too much.
- (23) Q Now, where there are - let me tell you who the
- (24) municipalities are that are suing Exxon: Cordova. Have you
- (25)

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- (1) ever heard of Cordova?
- (2) A I've heard of it.
- (3) Q Have you ever been to Cordova?
- (4) A No.
- (5) Q Do you know anything about Cordova?
- (6) A Not a thing.
- (7) Q Do you think that, based upon your dislike of
- (8) bureaucracies, that you would tend to be - that you would tend
- (9) to require Cordova to prove more, to bring on more evidence of
- (10) damages before you were convinced that that had been harmed?
- (11) A No, I don't think so.
- (12) Q Do you think, in other words, that you can set aside your
- (13) feelings of dislike of bureaucracies?
- (14) A Of course I can, yes.
- (15) Q Have you ever been to Kodiak?
- (16) A Yeah, a couple times on jobs.
- (17) Q Do you mean the city of Kodiak?
- (18) A I guess it was the downtown area, I had a do a job real
- (19) quick.
- (20) Q An avionics sort of job?
- (21) A Yes.
- (22) Q What did you think of Kodiak?
- (23) A I didn't get to see much of it.
- (24) Q When was it that you got to see Kodiak?
- (25) A Couple months back.

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- (1) Q And that was the first time you were there?
- (2) A Yeah.
- (3) Q And have you been to Larsen Bay?
- (4) A No.
- (5) Q Have you ever been to Ouzinkie?
- (6) A I haven't been too many places.
- (7) Q I note that you came up here three-and-a-half years ago?
- (8) A Right, about that.
- (9) Q What brought you up here?
- (10) A Change of weather. It was too hot in Massachusetts.
- (11) Q Well, it's cool up here. Do you enjoy it better up here?
- (12) A So far. It's been getting a little warm lately.
- (13) Q Do you get out, do any fishing, hunting?
- (14) A When I can, I do a little fishing.
- (15) Q Where do you go for fishing?
- (16) A Up around Talkeetna.
- (17) Q What sort of fishing do you do, Mr. Sheldon?
- (18) A Just kings.
- (19) Q Any hunting?
- (20) A No.
- (21) Q Have you ever been to Prince William Sound?
- (22) A Nope.
- (23) Q Now, you retired from the Navy?
- (24) A No. I did 14 active, and that was about it.
- (25) Q I didn't hear you.

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- (1) A 14 years active, and that was about it.
- (2) Q And your job in the Navy was also avionics?
- (3) A Yeah.
- (4) Q Now, another question on the questionnaire, number 51 asks,
- (5) Do you think that Exxon Corporation has paid enough money as a
- (6) result of the Exxon Valdez oil spill. And you didn't mark
- (7) that. Do you have any opinion on that?
- (8) A I don't think I have enough information to actually form an
- (9) opinion on that.
- (10) Q The question under that, Mr. Sheldon, asks, What opinion,
- (11) if any, do you have about the municipalities or Native
- (12) corporations that are suing Exxon for damages?
- (13) A Well, I don't know anything about these municipalities or
- (14) Native - I don't know much about them so I can't form an
- (15) opinion.
- (16) Q Do you think anything about Native corporations at all?
- (17) A No.
- (18) Q Do you have any - have you had any dealings with Natives?
- (19) A Not really, no.
- (20) Q Do you have any feeling about the - what the community
- (21) attitude is of the Anchorage area attitude toward Natives?
- (22) A Hard to say. I haven't really noticed any attitude to
- (23) speak of.
- (24) Q Now, I note that one of your hobbies is reading, and you
- (25) indicate in your questionnaire, I think, that you enjoy reading

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- (1) some classics and mysteries?
 (2) A Just kind of rereading them.
 (3) Q What kind of classics?
 (4) A Stuff like Three Musketeers, Great Expectations.
 (5) Q So you like Dickens?
 (6) A A little bit. He's different.
 (7) Q And I note that you also like mysteries?
 (8) A Some of them, if they are not too obvious.
 (9) Q What kind of mysteries do you like?
 (10) A I reread the Holmes miseries, but the newer ones I haven't
 (11) seen anything worth buying.
 (12) Q Let me ask you a couple more questions about municipalities
 (13) and I'll let you go.
 (14) Have you ever worked for a municipality?
 (15) A I never worked civil service.
 (16) Q I asked you whether or not you thought you could be fair to
 (17) the municipalities in this case. Do you understand that what
 (18) both sides are looking for is a juror who can be fair and
 (19) impartial.
 (20) Now, is there anything that you could think of that would
 (21) cause you not to be fair and impartial towards the
 (22) municipalities?
 (23) A Not really.
 (24) Q Do you have any feelings one way or another towards
 Exxon?
 (25) A Nothing really.

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- (1) Q Your questionnaire indicates that you have occasionally
 (2) followed legal proceedings?
 (3) A What's that?
 (4) Q Your questionnaire indicates that you have occasionally
 (5) followed the legal proceedings with regard to the Exxon Valdez
 (6) litigation?
 (7) A Just read about it; didn't pay that much attention to it,
 (8) didn't follow it completely.
 (9) Q Have you read anything in the past week about it?
 (10) A No.
 (11) THE COURT: Counsel, you're at the end of your time.
 (12) MR. FORTIER: Mr. Sheldon, thank you. I have no
 (13) further questions.
 (14) VOIR DIRE EXAMINATION OF JAMES SHELDON
 (15) BY MR. DIAMOND:
 (16) Q Good morning, I'm Chuck Diamond, I'm representing Exxon
 in
 (17) this case.
 (18) You work for Aviation Electronics?
 (19) A Yes.
 (20) Q Is that located out by the airport?
 (21) A Yes.
 (22) Q Have you talked to anybody there about what their juror
 (23) service policy is? Some employers continue to pay you while
 (24) you're on jury duty; do you know whether that's the case with
 (25) your employer?

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- (1) A It's a small business. I don't think they are going to be
 (2) able to pull that off.
 (3) Q How many employees?
 (4) A Four, five, something like that; and the owner works, too.
 (5) so it's pretty small.
 (6) Q You normally work five days a week?
 (7) A Five, sometimes five-and-a-half, six; depends on the
 (8) workload.
 (9) Q Any chance of making up anytime, any hours you miss
 during
 (10) the week, on weekends?
 (11) A It's possible, but, you know, like I say, everything is
 (12) pretty much - you're going to work 40 hours and it depends on
 (13) events that day, what's going to happen that day. Sometimes I
 (14) get sent out, other times I have to work late.
 (15) Q And you're strictly hourly, not salary?
 (16) A Yeah, hourly.
 (17) Q Mostly private or commercial?
 (18) A We do Peninsula Airways and several other big rigs, and we
 (19) also do a lot of the private ones, too.
 (20) Q I was wondering how you get your fingers behind there?
 (21) A Small hands.
 (22) Q You said you were in the Navy for 14 years. Any sea duty?
 (23) A Yeah. I spent three hours on the Coral Sea, and before
 (24) that I spent some time on a destroyer.
 (25) Q In Atlantic or Pacific?

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- (1) A Most of it - let's see, Mediterranean.
 (2) Q How many years total sea duty?
 (3) A On sea duty?
 (4) Q Yeah.
 (5) A Three years with the Coral Sea, and I was on sea duty for
 (6) three years, but I only had to take the one cruise on the
 (7) destroyer.
 (8) Q What was your highest rank in the Navy?
 (9) A E-6.
 (10) Q Have you been doing avionics repair and installation ever
 (11) since?
 (12) A Yes.
 (13) Q Since you came to Alaska, have you been down to the Lower
 (14) 48 at all?
 (15) A No, I haven't left.
 (16) Q Any reason why?
 (17) A No desire to go down there.
 (18) Q And you take some vacation time up at Talkeetna?
 (19) A Well, I usually go up on the weekend; that's about it.
 (20) Q How frequently do you get up there?
 (21) A Just in the spring, me and a friend will go up there, and
 (22) more or less just camp out for the weekend and fish.
 (23) Q You don't have a place up there, just camp out?
 (24) A Yeah.
 (25) Q Any friends up there?

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- (1) A No, I don't really know anybody up there.
- (2) Q We've learned that the jury assembly room was pretty hot
- (3) when people were filling out questionnaires. I understand that
- (4) the answers may not be the most accurate for those reasons,
- (5) but
- (6) you said you followed the grounding of the Exxon Valdez a
- (7) great
- (8) deal in the media?
- (9) A Well, it was pretty popular down in the Lower 48 at the
- (10) time and it was on every news broadcast.
- (11) Q Was it something you had a particular interest or the media
- (12) was in?
- (13) A No, it was just something I was apprised of there was
- (14) another one, an Ecuadorian freighter, and nothing surprises
- (15) me.
- (16) Q You were living in New England at the time?
- (17) A '89, yeah.
- (18) Q And you told us you saw the HBO special on the grounding?
- (19) A Yeah, I watched it.
- (20) Q Do you remember what reactions you had to it?
- (21) A It was a typical movie, kind of overdramatized things.
- (22) Q Do you have a sense whether it was a fair portrayal, in
- (23) your own mind, as to the facts?
- (24) A I don't know if it was or not. It was just - I think it
- (25) was a lot of - it was typical, they always got to make a movie
- (26) every week on something, and a lot of it I didn't really buy.
- (27) Q You sound like you have a healthy degree of skepticism?
- (28) A A lot.

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- (1) Q Why is that?
- (2) A Just grew up that way.
- (3) Q Did you come away from that HBO program with any views or
- (4) opinions about the environmental effects of the grounding?
- (5) A I'm sure it was pretty damaging.
- (6) Q Was the program influential in your view - that viewpoint,
- (7) or was that something you just gathered?
- (8) A I figured it would be. It was covered earlier that there
- (9) was quite a bit of damage. The movie just dwelled a little bit
- (10) more on it.
- (11) Q The reason I'm asking, that's one of the issues that we're
- (12) going to be fighting over in this case, to the extent which the
- (13) plaintiffs' property was oiled, to the extent to which there is
- (14) still oil out there, to the extent which any remaining oil may
- (15) pose a continuing harm to the environment.
- (16) Do you have an opinion as to whether it is more probable
- (17) than not shorelines have oil on them?
- (18) A I don't think there is any real way to determine it.
- (19) Q You don't know one way or another?
- (20) A No. One person is going to say this, another person is
- (21) going to say this. Nobody is really go going to know.
- (22) Q If you serve on this jury and that happens, how would you
- (23) go about evaluating what you were being told and making a
- (24) decision?
- (25) A Well, just going to be a matter of what I hear. I'll have

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- (1) to formulate an opinion, I suppose. I don't have any
- (2) prejudices on that.
- (3) Q How about environmental effects, do you think there are any
- (4) ongoing environmental effects from the spill?
- (5) A There could be, but I'm not that knowledgeable about it.
- (6) Q Do you think you're open-minded on that, as well?
- (7) A Oh, yeah.
- (8) Q You said you didn't follow the litigation closely. Was
- (9) there any reason?
- (10) A I don't know. It's like anything else, if you turn on the
- (11) TV you're going to have O.J. Simpson, I got tired of listening
- (12) to it, same thing with the Exxon stuff.
- (13) Q Did you hear about the verdicts that were entered in
- (14) federal court in this case?
- (15) A No, I don't think I did.
- (16) MR. DIAMOND: That's all I have for you, thank you
- (17) very much.
- (18) THE COURT: Mr. Sheldon, you've been what we call
- (19) passed for cause. Doesn't mean you're on the final jury, but
- (20) it means you're a potential member of the jury panel and may
- (21) very well be on the panel, so I'd like you to understand a
- (22) couple things: First, we have a number of examinations to go,
- (23) we still have the talk to a lot of jurors, so it's going to
- (24) take some time to pick the final jury. Excuse me just a
- (25) minute.

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- (1) Then finally, since you are on the jury panel, I don't want
- (2) you sharing any information gleaned in here with the other jury
- (3) panel members. It's important that you not talk about the case
- (4) with anybody while you're on the panel, and not form or express
- (5) any opinion on it, because you may be deliberating on the case,
- (6) so what I'd like you to know is that we will get in touch with
- (7) you, you don't have to call in periodically now.
- (8) I'll excuse you now, and until you're called back you won't
- (9) have to report or anything like that, but if you do have any
- (10) questions, you're welcome to call my office and ask them and
- (11) I'll see if I can answer them in this interim period.
- (12) All right?
- (13) A Okay.
- (14) THE COURT: You're still on the panel, so you are a
- (15) potential jury member on the final jury. Thanks
- (16) (James Sheldon leaves the room.)
- (17) MR. DIAMOND: Your Honor, before we bring in the next
- (18) juror, may I have a moment to consult with my client?
- (19) THE COURT: You may.
- (20) (Off record.)
- (21) THE COURT: Where are we, counsel?
- (22) MR. DIAMOND: May we approach? I just want to deal
- (23) with something off the record.
- (24) (Bench Conference off the Record)
- (25) THE COURT: Back on the record.

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- (1) Counsel have stipulated that – what is the name, Tanner?
 (2) MR. STOLL: Tanner.
 (3) THE COURT: That would be number 65, Elizabeth Tanner
 (4) can be excused. You can take her – after bringing the next
 (5) juror in, take her out in the hall and explain to her quietly
 (6) that she's been excused.
 (7) Next juror is Billy Stapleton.
 (8) MR. STOLL: Judge, are you going to do the inquiry
 (9) about Mr. Stapleton?
 (10) THE COURT: Yes, with my usual diplomacy and tact.
 (11) MR. STOLL: I'm going to sit down.
 (12) THE COURT: I'm going to let you question, I'll just
 (13) follow up with that question.
 (14) (Billy G. Stapleton enters the room.)
 (15) THE COURT: Is your name Stapleton?
 (16) A Yes.
 (17) THE COURT: Would you give your full name for the
 (18) record?
 (19) A Billy Gene Stapleton, Junior.
 (20) THE COURT: Mr. Stapleton, you're a potential jury
 (21) member in this case, and you know you've been under oath for
 (22) the juror questionnaire?
 (23) A Yes.
 (24) THE COURT: And you'll be under oath for the
 (25) supplement questions that counsel may ask you, and I may
 have

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- (1) some questions of you also.
 (2) A All right.
 (3) THE COURT: Mr. Stoll, will you be next?
 (4) MR. STOLL: Yes, Your Honor.
 (5) VOIR DIRE EXAMINATION OF BILLY G. STAPLETON
 (6) BY MR. STOLL:
 (7) Q Mr. Stapleton, my name is Bob Stoll, I represent the
 (8) municipalities that have brought this action against Exxon; and
 (9) Mr. Fortier represents the Natives that are plaintiffs in this
 (10) case.
 (11) Now I want to ask you a few questions. We're trying to get
 (12) a fair and impartial jury. Do you think that you could be fair
 (13) and impartial in evaluating the claims in this case?
 (14) A I think so, my best.
 (15) Q You haven't prejudged – you understand in this case the
 (16) issue – there is no issue about liability; in other, words
 (17) there is no issue as to whether or not Exxon is at fault,
 (18) that's already been determined?
 (19) A Okay.
 (20) Q So the only issue is the extent of damage to the
 (21) plaintiffs.
 (22) A Yes.
 (23) Q Do you understand?
 (24) A Yes, I do.
 (25) Q And you haven't made any evaluation of that yet, have you?

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- (1) A No, I don't really keep up with the news because of my
 (2) work. I travel.
 (3) Q You understand that the evidence that you want to – that
 (4) the jury is to consider is only the testimony and the exhibits
 (5) that are brought into the courtroom, it's not what somebody
 may
 (6) have told you some other place or you may have heard
 somewhere
 (7) else?
 (8) A Yes.
 (9) Q Now, in your questionnaire there are a few questions I
 (10) would like to ask you something about. One is that you said
 (11) that you had heard regarding damage awards, you said, "I
 heard
 (12) they want Exxon to pay bills"?
 (13) A Yeah, that was some gossip on the job site I was on, and
 (14) that's what I heard from people talking, they wanted Exxon to
 (15) pay bills of dollars of damages for cost. That's what I heard.
 (16) Q When did you hear this, when you were down in Kodiak?
 (17) A Yeah, down in Kodiak, on a job there two weeks ago.
 (18) Q Who gave you that information?
 (19) A Some co-workers that we were working with, they were
 (20) electrician, tapers.
 (21) Q What else was said by them? I mean did they scoff at the
 (22) idea, what was their –
 (23) A They were just talking about it. It was at lunch hour, and
 (24) they said, Did you hear about the Exxon thing, and I said no,
 (25) and they said they found Exxon responsible and they wanted
 them

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- (1) to pay billions of dollars in damages. That's all I heard
 (2) about it.
 (3) Q What was your reaction to that?
 (4) A My opinion on it?
 (5) Q Yeah.
 (6) A Well, I don't know.
 (7) Q You haven't heard any evidence?
 (8) A No, I didn't hear nothing about it.
 (9) Q You understand in this case no one is asking for any –
 (10) billions of dollars?
 (11) A Yeah, I understand that now.
 (12) Q The claims in this case are substantial, though; I mean,
 (13) the land claims alone approach a hundred million dollars, and
 (14) that's a lot of money. These Native corporations and these
 (15) municipalities do own a lot of land, so it's a fraction of the
 (16) value of that land, but the fact of the matter is that it's
 (17) a – that's a large – there is no question, I think at
 (18) least –
 (19) A Yeah, that's a lot of money.
 (20) Q To me that's a lot of money.
 (21) Now, does that – if the evidence warranted it, I'm not
 (22) asking – you haven't heard any evidence, but if the evidence
 (23) warranted it, is there anything about the size of that amount
 (24) of money that would cause you any particular problem, if you
 (25) thought the evidence showed that that was appropriate
 amount?

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- (1) A I don't understand the question you're asking me.
 (2) Q Well, is there anything about the size of that claimed
 (3) damage that you think starts off with these municipalities or
 (4) these Native corporations are asking for - that's got to be
 (5) too much?
 (6) A I don't really know if the land is worth that much, I
 (7) guess.
 (8) Q So you're going to listen to the evidence?
 (9) A Oh, yeah, I'll listen to both sides of the story.
 (10) Q Who did you - how long were you down in Kodiak?
 (11) A I was there for five-and-a-half weeks.
 (12) Q I see. Did you talk to any of the local - the people you
 (13) were talking to, these electricians, were these local people?
 (14) A No, they were from Anchorage, and we really didn't get to
 (15) go out on the town; we were working six days a week, ten hours
 (16) a day. And I had school lessons, I went shopping and did a
 (17) little sightseeing, and that was about it.
 (18) Q Were you right in the town of Kodiak?
 (19) A Yeah, we had an apartment there and we were working on
 (20) the
 (21) National Guard base there.
 (22) Q Just outside of town there?
 (23) A Yeah.
 (24) Q Did you get out to any of the other communities, like
 (25) Larsen Bay or Old Harbor, Ouzinkie or Port Lions?
 A No, we went out fishing, and that was about it, on a boat.

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- (1) Q Out in the ocean?
 (2) A Yeah, about - right about a mile off out of town, about a
 (3) mile off of shore out of town there.
 (4) Q Did you go out with a friend or charter boat?
 (5) A It was a guy that we met at the National Guard base, he
 (6) owned a boat and asked us if we wanted to go fishing. We went
 (7) out there one time.
 (8) Q What did you go fishing for?
 (9) A Halibut.
 (10) Q How did you do?
 (11) A Didn't catch nothing.
 (12) Q Have you ever been to Kodiak before?
 (13) A No, that was my first time.
 (14) Q Have you been to Prince William Sound?
 (15) A That's here in Anchorage, right?
 (16) Q Well, south of here. Near Seward.
 (17) A I've been there when I was about - about ten years ago,
 (18) went down to Seward and Homer. I haven't been there since.
 (19) Q Do you have any feelings about how you - what affects land
 (20) values?
 (21) A Do I have any feelings about it?
 (22) Q Yeah.
 (23) A What do you mean by "affects"?
 (24) Q Well, you know, prices go up and prices go down on land.
 (25) A Yeah.

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- (1) Q Do you have any - have you ever thought about what causes
 (2) the prices to go up or prices to go down?
 (3) A No.
 (4) Q The demand of the consumer - you know, people wanting to
 (5) buy land or not wanting to buy land?
 (6) A No, I don't understand any of that.
 (7) Q Have you ever owned any real property?
 (8) A No.
 (9) Q How about your folks? Have they ever owned their home?
 (10) A Yeah, my dad owned a house, and he was in the real estate
 (11) business for a while. He had a little company, I guess he
 (12) started himself, and he bought some houses and rented them
 (13) out,
 (14) but then he lost them all through the bank.
 (15) Q I'm sorry?
 (16) A He lost them all through the bank. I don't know what
 (17) happened.
 (18) Q And then the market went down and the values went down?
 (19) A I guess. We quit talking around that time, and that's the
 (20) last I heard of him.
 (21) Q That was quite a few years ago?
 (22) A Yeah, this was six, seven years ago.
 (23) Q Do you think that the demand for land sometimes goes up
 (24) and
 (25) sometimes it goes down?
 A Yeah.
 Q And that could be affected by a variety of factors that

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- (1) makes some land more - people more interested in some land
 (2) than other land?
 (3) A Yeah.
 (4) Q You can imagine that?
 (5) A Yeah.
 (6) Q Let's see, where do you vacation?
 (7) A Where do I vacation?
 (8) Q Yeah.
 (9) A Well, a friend of mine has a cabin up at Nancy Lake, and if
 (10) I got some time off from work I take the family up there, maybe
 (11) go to Willow Creek, things like that.
 (12) Q Do you like to fish?
 (13) A Oh, yeah. We do that a lot.
 (14) Q What kind of fishing do you do, other than the halibut?
 (15) A River fishing, lake fishing; we go out on a boat in a lake
 (16) or river. We went down to Kenai a couple times, stayed at a
 (17) camping ground. We like to go in the woods and stuff.
 (18) Q Is that for salmon or trout or -
 (19) A Salmon mostly. Those charters are pretty expensive to go
 (20) out on the sea and we don't do that much.
 (21) Q But on the stream fishing, a lot of that is salmon fishing
 (22) as well?
 (23) A Yeah.
 (24) Q Do you like the outdoors?
 (25) A Oh, yeah, we like to camp out.

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- (1) Q What do you like best about Alaska?
 (2) A Alaska, oh, there is all sorts of things I like about it.
 (3) The scenery, and how pretty it is. I lived most of my life up
 (4) here, and a lot of camping and fishing; we used to do a little
 (5) bit of hunting in the wintertime. Just the people, I guess.
 (6) It's not like the Lower 48, all the stuff down there.
 (7) Q What do you mean by that?
 (8) A I have family that lives down in Texas and stuff, and all
 (9) the crime and all that stuff, the gangs. It's not like that up
 (10) here, it's a pretty good place to live.
 (11) Q Did - is there anything about this case that you've made
 (12) any prejudgments on in terms of being able to fairly evaluate
 (13) the evidence?
 (14) A No.
 (15) Q Would you like to sit as a juror in this case?
 (16) A I wouldn't mind it, but it kind of really affects me
 (17) financially. I work in the construction trade, and we - this
 (18) is really our busy time of the season right now, and it kind of
 (19) affects me. Financially. I wouldn't mind it, but choosing
 (20) between paying bills and stuff....
 (21) Q It's tough?
 (22) A Yeah.
 (23) Q I understand. Thank you very much.
 (24) VOIR DIRE EXAMINATION OF BILLY STAPLETON
 (25) BY MR. DIAMOND:

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- (1) Q Good morning, Mr. Stapleton. My name is Chuck Diamond,
 I'm
 (2) one of the lawyers representing Exxon in this case.
 (3) You're in the pipe fitters apprentice program?
 (4) A It's not the pipe fitters; sprinkler fitters. We install
 (5) fire systems.
 (6) Q Different local?
 (7) A Yeah.
 (8) Q Different trade?
 (9) A Yeah, different trade.
 (10) Q I tend to think of those pipes being interchangeable. I
 (11) take it sprinkler pipes are different?
 (12) A Yeah, it's just a different trade. Pipe fitters, steam
 (13) fitters and sprinkler fitters are three locals. A lot of
 (14) people get confused.
 (15) Q The skills you acquire in one, you can transfer them to
 (16) another?
 (17) A In my trade I can. I can do any of those trades once I get
 (18) my card, but those trades go through the apprentice committee,
 (19) through the sprinkler fitters.
 (20) Q How did you get into this?
 (21) A My brother-in-law got into this it about three years ago,
 (22) and I was looking for something pretty nice; you know, good
 (23) benefits and stuff. So I got into this shop in a company
 (24) called Grinnell Fire Protection.
 (25) Q That's a big corporation?

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- (1) A Yeah. And about two years later I got noticed through some
 (2) other companies and they asked me to be an apprentice and I
 (3) went over there.
 (4) Q How long is the apprentice program?
 (5) A It's five years.
 (6) Q Takes awhile to learn this?
 (7) A Oh, yeah.
 (8) Q Had you been a member of the union before you started the
 (9) apprentice program?
 (10) A No, I didn't.
 (11) Q Did they require you to join the union?
 (12) A Yes, you had to be a member.
 (13) Q Was that okay with you?
 (14) A Oh, yeah.
 (15) Q Is there a formal course of instruction you have to do, or
 (16) is it just on-the-job training?
 (17) A It's - a lot of it is on-the-job training, and we have to
 (18) take a correspondence courses from Penn State University, it's
 (19) lessons that are developed only for this trade, you have to be
 (20) enrolled in the apprentice committee to be enrolled; and they
 (21) cover everything from safety to cover of tools to basic
 (22) engineering and drafting.
 (23) Q But you do that on your own time?
 (24) A Yeah, after work on our own time.
 (25) Q If you have luck or bad luck of serving on this jury, you

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- (1) can still do the course of instruction?
 (2) A Yeah, whether I'm working or not I still have to have one
 (3) lesson a week put in to stay in place. If I fall behind then
 (4) they lay me off until I get caught up and then I have to go
 (5) through that.
 (6) Q Even if you have to do jury duty, that's not going to be a
 (7) problem?
 (8) A No, I still have to do that on my own time.
 (9) Q It could be disruptive, I hope it won't be that
 (10) disruptive.
 (11) You said in your questionnaire that you do a fair amount of
 (12) out-of-town travel?
 (13) A Yeah, all over the state of Alaska from Shemya to
 (14) Ketchikan. If they have a job there, if I'm one of the select
 (15) ones to go out there, they ship us out of town. Right now we
 (16) have been working in town and my boss has some more jobs in
 (17) St. Lawrence, Kodiak and Barrow. I don't know when those are
 (18) starting or what's going on with that, just whenever they get
 (19) started up.
 (20) I never know when I'm going out of town or staying in town.
 (21) Q If you're selected for this jury, would you anticipate
 (22) trying to do some work as well as jury service?
 (23) A What do you mean?
 (24) Q Well, we're in court from 8:30 to 1:30, so you have
 (25) afternoons off.

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- (1) A Their hours are 7:00 to 3:30, so I could get a couple hours
 (2) in after that.
 (3) Q Have you talked to anybody over at your shop about doing
 (4) local work if you get picked?
 (5) A You mean local work in town?
 (6) Q Yeah.
 (7) A Yeah, that's what I'm doing right now.
 (8) Q And they are pretty sure they can keep you doing local
 (9) work?
 (10) A Yeah. I mean, talking about it, and he said it's my civil
 (11) duty to do this and everything, so I'm sure they will try to do
 (12) what they can to give me hours and stuff.
 (13) Q That's what your employer told you?
 (14) A Yeah.
 (15) Q Probably don't hear that very much?
 (16) A He will do what he can.
 (17) Q I was thumbing through your questionnaire last night, and
 (18) some other juries told us it was a little bit hot and
 (19) uncomfortable when you were completing these things, so this
 (20) may have been a mistake, but on page 11, I think it's in front
 (21) of you, gave you a whole bunch of groups of categories and
 (22) organizations, and there was question number 47 on the top.
 (23) You checked, under the extremely unfavorable box, Native
 (24) corporations and Natives, and it's scratched out and wrote "a
 (25) mistake"?

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- (1) A Yeah. That was an accident. I was reading through this
 (2) stuff and I got it mixed up on one half, like I wasn't reading
 (3) in the middle of them, I got mixed up on the one half and that
 (4) wasn't trying to be smart or be sarcastic, that was an absolute
 (5) mistake.
 (6) Q Do you think you can be fair to everybody in this case?
 (7) A Yes, I'll try to. I don't want to get in trouble.
 (8) Q You checked, for Native corporations, tribal governments,
 (9) Natives and Exxon, you checked two boxes. Was that because
 (10) you
 (11) were basically neutral?
 (12) A Well, yeah. What's fair is fair, I guess. You can't
 (13) really judge anybody, I don't really have a say in it, so I
 (14) just kind of stayed neutral on everything.
 (15) Q You checked "somewhat unfavorable" as to commercial
 (16) fishermen. Was there a reason for that?
 (17) A Well, that had to do with a couple years ago. Like I said,
 (18) I don't really keep up with the news, but I just caught some
 (19) things on TV, commercial fishermen going on strike, and they
 (20) had a real bad year couple years ago, and Japan and the
 (21) prices. Alaska really, you know, is built on oil and fishing
 (22) and stuff like that, so that's their families and stuff.
 (23) Me being a construction worker, if I don't have a job I'm
 (24) not going to have any money; I can understand how it affected
 (25) them and stuff. They need to keep on working just like I do,
 (26) so I can understand their being like that.

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- (1) Q You checked somewhat unfavorable. Did you think they
 (2) were
 (3) bellyaching?
 (4) A That was a mistake, too.
 (5) Q We'll give you another chance: Do you want a clean
 (6) questionnaire?
 (7) A I'm sorry, let me read this over, please.
 (8) That one was a mistake, I'm sorry.
 (9) Q Which side of the ledger?
 (10) A Somewhat favorable toward them. I didn't mean to do that,
 (11) I'm sorry.
 (12) Q You also checked local governments and municipalities,
 (13) somewhat favorable?
 (14) A Yeah.
 (15) Q That's what you intended to do?
 (16) A Yes.
 (17) Q And why do you have that?
 (18) A Well, I kind of agree with some of their things on what
 (19) they do and everything, the governments in Alaska and stuff. I
 (20) think they are pretty good. I hear some things about how
 (21) people don't like certain people like governors and senators
 (22) and stuff like that; I think they are doing a pretty good job
 (23) so far, we're doing good, our economy is doing good, so that
 (24) makes me happy.
 (25) Q Your job depends on the economy?
 (26) A Yes, not just the oil, but everything. They will get -

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- (1) laying off all those people got me worried, because that can
 (2) possibly affect my future in this trade.
 (3) Q Let me ask you a question about environmental standards; it
 (4) was on the bottom of this same page, 49.
 (5) A Yeah.
 (6) Q I was thinking - be a good person to write bumper
 (7) stickers.
 (8) You said "be safe, don't hurt Alaska," what did you mean by
 (9) that?
 (10) A Well, affected just the nature of Alaska, the fish, the
 (11) wildlife; kind of messed up a lot of things, I thought. I
 (12) mean, I'm sure it was an accident, no one intended to do it on
 (13) purpose, but what did it happen, about in '89 or something?
 (14) Q Right.
 (15) A I was in ninth grade, and it was big talk around school,
 (16) and showed up with the pictures on how it affected Alaska. And
 (17) we saw sea otters and eagles and stuff, so it kind of messed up
 (18) a lot of things.
 (19) Q Did that make you mad?
 (20) A It made me irritated, you know. Like I said, Alaska is
 (21) great, I love it here, it's real beautiful, and I don't think
 (22) you should hurt it. It's got to be more precautionous on what
 (23) people do.
 (24) Q Did it make you mad at Exxon?
 (25) A No, it didn't make me mad at any particular person. I

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- (1) don't try to seek revenge or anything like that.
- (2) Q One of the issues that we're going to be kicking about in
- (3) this trial is exactly what effects the spill had, particularly
- (4) on the property of the plaintiffs that they owned, and the
- (5) environment, the ecology, and the water alongside their land.
- (6) Do you have any opinions as to what effects the spill had in
- (7) that regard?
- (8) A I can't really say I do. I don't know.
- (9) Q Read anything in the paper or heard anything on television
- (10) or radio that led you to think one thing or another?
- (11) A No, I really don't get to watch a lot of television and
- (12) stuff.
- (13) Q Do you think it's possible that some of the shorelines that
- (14) got oil on them, things got returned to normal; that's
- (15) possible?
- (16) A From all that oil, you mean?
- (17) Q Yeah, with respect to some of the shorelines that were
- (18) oiled, some of the shorelines owned by the plaintiffs were
- (19) oiled. Do you think it's possible that things are returned to
- (20) normal?
- (21) A I don't know. Did I see anything on TV?
- (22) Q No, in your own mind do you have any view?
- (23) A I don't know. If they cleaned it all up, I guess it would
- (24) be, but I don't know if they did or not.
- (25) Q One of the things that people who serve on this jury will

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- (1) be asked to determine is whether that oil is all gone; if it's
- (2) not all gone, whether it will still have any effects on the
- (3) property and water by the property.
- (4) Do you think that's something that you could be open-minded
- (5) on?
- (6) A I guess. I mean, if the oil is cleaned up, then the damage
- (7) is all finished; but if it's still there, then I'm sure it's
- (8) going to do something to something out there, the wildlife out
- (9) there, the fish - probably affect something if it's still
- (10) there.
- (11) Q There may be testimony during the course of the trial that,
- (12) to the extent there are any oil residues on many of these
- (13) pieces of property, that the oil is inert, it doesn't interact
- (14) with anything, it doesn't affect anything, it's just there but
- (15) it doesn't have any effect on the environment. Is that a
- (16) proposition, is that something that you find be silly, absurd,
- (17) ridiculous, unbelievable?
- (18) A I've heard of a thing called controlled contamination, I
- (19) think I've heard that, the people that lay the asphalt on the
- (20) road, they pour oil down, and it's controlled. I guess if it
- (21) was something like that, yeah. If they can control it to where
- (22) it's not going to affect anything, yeah.
- (23) Q So you wouldn't rule testimony like that just out of hand?
- (24) A No, I'd listen to both sides.
- (25) Q That's all we can ask you to do.

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- (1) When you were in Kodiak fishing, did you talk to anybody
- (2) about whether the spill had any effect on the fishing down
- (3) there?
- (4) A No, the first I heard about it affecting Kodiak was here.
- (5) I never knew it did make it all the way down to Kodiak, I never
- (6) heard about it.
- (7) Q Well, that's a matter in dispute.
- (8) You said your father at one time owned a family residence,
- (9) and lost it to the bank?
- (10) A Yeah.
- (11) Q How old were you then?
- (12) A I was 16, I think. Yeah, 16. And he lost it, he lost his
- (13) house that he was living in and the houses that he owned and
- (14) rented out. I don't know exactly how he worked at it. I knew
- (15) he had some houses in Anchorage that he was renting out. He
- (16) had a little real estate business I guess he was trying to
- (17) start.
- (18) Q And lost them all?
- (19) A Yeah.
- (20) Q Do you know why?
- (21) A Because I sued him. We had a family dispute, I was on my
- (22) own since I was 15, so I sued him for child support, and they
- (23) came in, the state came in and looked at all his finances and
- (24) he had to pay child support until I was 18, because I was
- (25) living on my own. Lost that because of me.

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- (1) Q You raised yourself from about age 15?
- (2) A Well, yeah, I was living with my mother, I was taking care
- (3) of my mother, and yeah, I guess so.
- (4) Q Did you sue him here in Anchorage?
- (5) A Yeah.
- (6) Q Because I thought we had asked you, maybe we missed this
- (7) question.
- (8) Turn to page 14, about halfway down the page, 62, Have you
- (9) or any of your family members ever been a party or a witness in
- (10) a civil or criminal court case?
- (11) A No.
- (12) Q How about when you sued him?
- (13) A I wasn't even there. I don't know what happened. They
- (14) just called me up and told me that's what they went through and
- (15) I will be getting monthly checks from him. I don't know if my
- (16) dad was in court.
- (17) Q You never went to court yourself?
- (18) A No, it was the state child support division; they took care
- (19) of all that, I never had to go to court. They told me a case
- (20) number and I called, and they told me which one to report to,
- (21) and that was it.
- (22) Q Is this jury service the first time you've ever been in a
- (23) court?
- (24) A Yes. Well, been in a courtroom ever?
- (25) Q Yeah, first time you've ever been in a courtroom.

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- (1) A No, I got in trouble when I was younger and had to go to
 (2) court myself for traffic violations and stuff like that.
 (3) Q The fact that you have been in court before and the fact
 (4) that you sued your father, does that give you any bad feelings
 (5) one way or the other about lawyers, judges, court rooms?
 (6) A Like prejudice towards them or something?
 (7) Q Yeah.
 (8) A It's the laws, you got to obey them or you get in trouble,
 (9) I guess. I don't try to be prejudice towards anything like
 (10) that. I'm trying to, later on in the years after I get my card
 (11) I'm wanting to put an application in the Anchorage Police
 (12) Department after I get my card, something I've always wanted
 (13) to
 (14) do.
 (14) Q Become a police officer?
 (15) A Yeah.
 (16) Q Well, good luck to you.
 (17) VOIR DIRE EXAMINATION OF BILLY STAPLETON
 (18) BY THE COURT:
 (19) Q Mr. Stapleton, on the trouble you got in before, the
 (20) traffic violations, can you tell me what they were?
 (21) A Speeding, racing my friends and stuff; got my license
 (22) suspended once for not stopping at stop lights; going too fast.
 (23) Q How old were you at the time?
 (24) A I was 16.
 (25) Q Is that all, there were no other criminal violations?

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- (1) A And when I was 17 I got arrested for leaving a car on some
 (2) cinder blocks, we stole its tires and I got caught for that.
 (3) That was it.
 (4) Q What were you charged with?
 (5) A I think it was theft.
 (6) Q It's a misdemeanor?
 (7) A Yeah, that was when I was 17.
 (8) Q Did you plead to that?
 (9) A I think it was no contest, and then I had a lawyer that got
 (10) me off with like eight hours of community service - no, it
 (11) wasn't that, it was 32 hours of community service work.
 (12) Q And that's it, those are the -
 (13) A That was it. I grew up after that.
 (14) THE COURT: Okay. Any other questions, counsel?
 (15) MR. DIAMOND: No.
 (16) MR. STOLL: No.
 (17) THE COURT: Thank you. Mr. Stapleton, you've been
 (18) passed for cause, that means you're still on the jury panel,
 (19) but it doesn't mean necessarily that you're going to be on the
 (20) final jury in this case because we have to talk to a lot of
 (21) other jurors, so I'm going to excuse you now, you can go about
 (22) your normal business, we will contact you to either bring you
 (23) in to talk to you to tell you you're on the jury or give you
 (24) further information, but in the meantime, while you're excused,
 (25) remember, don't talk to anybody about this case; and that

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- (1) includes your panel members, don't talk to them about what
 (2) questions were asked, or what went on in here. I want to keep
 (3) them free of that kind of information.
 (4) All right?
 (5) A So I don't need to call that number?
 (6) THE COURT: You don't have to call in, we will contact
 (7) you.
 (8) A Okay.
 (9) THE COURT: Thank you, Mr. Stapleton
 (10) (Billy Stapleton leaves the room.)
 (11) MR. STOLL: Your Honor -
 (12) MR. FORTIER: Your Honor, for the next - Your Honor,
 (13) I wanted to discuss - perhaps approach the bench and discuss
 (14) this next jury prior to him being brought in.
 (15) THE COURT: Off the record?
 (16) MR. FORTIER: Yeah, off the record if we could.
 (17) (Bench Conference off the Record)
 (18) THE COURT: On the record. We'll stipulate that Miss
 (19) Hanks can be excused, is that right?
 (20) MR. FORTIER: Correct, Your Honor.
 (21) THE COURT: Mr. Diamond.
 (22) MR. DIAMOND: I'm sorry?
 (23) THE COURT: The plaintiffs stipulate that Miss Hanks
 (24) can be excused.
 (25) MR. DIAMOND: Yes, we'll stipulate.

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- (1) THE COURT: Okay, that's by stipulation. We'll go to
 (2) the next juror, and explain that to her quietly, please.
 (3) (Vera K. Lahdenpera enters the room.)
 (4) THE COURT: Good morning.
 (5) A Good morning.
 (6) THE COURT: Would you do me a favor and give your
 (7) complete name for the record, please?
 (8) A Yes. Is this on? I presume it is.
 (9) THE COURT: Yes, it is.
 (10) A Vera K. Lahdenpera, and I go by Kay.
 (11) THE COURT: Ms. Lahdenpera, you're going to be some
 (12) supplemental questions in your questionnaire, you understand
 (13) that all these questions are answered under oath?
 (14) A Yes.
 (15) THE COURT: Mr. Stoll will do the first questioning.
 (16) VOIR DIRE EXAMINATION OF VERA K. LAHDENPERA
 (17) BY MR. STOLL:
 (18) Q Good morning, my name is Bob Stoll, and I represent the
 (19) municipalities in this case who have brought this action, along
 (20) with a Native corporation, Mr. Fortier is here. He represents
 (21) the Native corporations.
 (22) Now, the first question I have is that you indicate that
 (23) you are going to be leaving the state in early August.
 (24) A I think it's around the 13th.
 (25) Q Yes. And you think you were going to be gone for about ten

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- (1) days?
 (2) A Yes.
 (3) Q Or thereabouts?
 (4) A Yes.
 (5) Q To visit your parents who are ill, I guess?
 (6) A Yes.
 (7) Q And could this be rescheduled?
 (8) A (Indicating).
 (9) Q How is that?
 (10) A My parents, I just went down the middle, towards the end of
 (11) March for three weeks to move them into senior center, and they
 (12) have not adjusted well. I was down there again the end of May,
 (13) and met with the nurses and the doctors, and my father is
 (14) beginning to have dementia very seriously, and my mother has
 (15) had a stroke, so I really - they would like me to come sooner,
 (16) but I'm really not able to go before the time that I arranged,
 (17) and I really do need to go and get some business taken care of
 (18) for them, but more important, their health.
 (19) Q I see.
 (20) A Otherwise I wouldn't mind serving on the trial, but I just
 (21) am feeling - I mean I've been in touch not so much now every
 (22) day, but when I came back in May I was calling professional
 (23) people and my parents nearly every day to try and resolve
 (24) some
 (24) problems they have.
 (25) Q And if you were, I believe, to not sit on this jury, would

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- (1) you be willing to come back and serve later on in the year?
 (2) A Yes, I think I would. Now, I do travel with my job, and if
 (3) it didn't - I get - receive federal funding for my program
 (4) that I work, and so I am committed to go out certain times of
 (5) the year, but I know when I'm going out and I can give you
 (6) those dates.
 (7) Q You're with the Public Health?
 (8) A Yes.
 (9) Q And would you tell me please what the nature of your work
 (10) is with Public Health?
 (11) A I'm the nursing supervisor, program manager for the
 (12) Municipal Family Planning Program.
 (13) Q What is the Municipal Family Planning Program?
 (14) A Well, it's under the department of health and human
 (15) services for the municipality of Anchorage, and I've been in
 (16) that position - well, I've nearly been there 30 years.
 (17) Q Really.
 (18) A And it's working with women's health, and we're charged
 (19) with our federal funding to serve teens and low income women
 (20) primarily.
 (21) Q So you've been involved in advising the teens in the low
 (22) income?
 (23) A Yeah, all of the program managers at the municipality under
 (24) the community health services, we are working program
 (25) managers. I mean, we supervise, but we also see clients.

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- (1) Q And you mentioned that you do traveling in your work?
 (2) A Yes.
 (3) Q How is that?
 (4) A I attend - we get funding from title ten, region ten,
 (5) family planning monies, and so we're required quarterly to
 (6) attend conferences.
 (7) Q And do you occasionally deal with people in public health
 (8) in Cordova or any of the other municipalities in Alaska?
 (9) A Occasionally we do get clients that really don't have
 (10) services in their communities, and we don't turn away.
 (11) Q Because those communities are so small?
 (12) A Yeah, and sometimes they don't have those services, or if
 (13) they can't afford services, you know, from physicians or that
 (14) sort of thing.
 (15) Q Some of the very small village municipalities?
 (16) A We get some. We get more down the Kenai area and the rail
 (17) belt where they really don't have services, but we have had
 (18) maybe a client from Cordova, when they come to town.
 (19) Q I understand. Now you indicate on your - on this
 (20) questionnaire that you know a Barbara Meier?
 (21) A We go to the same church.
 (22) Q Is she a close personal friend of yours?
 (23) A No.
 (24) Q Would you - if she testified in this court, would you give
 (25) her anymore credibility than anybody else?

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- (1) A No, I don't think so.
 (2) Q What about John Middaugh?
 (3) A I've known him for years. He's with the state, and I'm
 (4) with the municipality, but I've known him through professional
 (5) organizations as well as - more I've known him through
 (6) professional organizations. My type of work doesn't deal with
 (7) him, but right now we're dealing with cancer, and the cancer
 (8) epidemiology portion is under him, but I don't come in contact
 (9) through him with that.
 (10) Q Do you have a high regard for Dr. Middaugh?
 (11) A Yeah.
 (12) Q And if he testified in this case, because of your knowledge
 (13) and relationship with him over many years, would you tend to
 (14) give his testimony a little more weight than somebody maybe
 (15) you
 (15) didn't know?
 (16) A Yeah, I would, for his professional testimony.
 (17) Q Yeah, his professional testimony?
 (18) A Uh-huh.
 (19) Q Give a little extra credibility?
 (20) A Yeah, I would.
 (21) Q Than somebody else?
 (22) A Uh-huh.
 (23) Q And what about Mr. Wooley?
 (24) A I know his wife very well, and I know him briefly. I
 (25) work - his wife works in our division.

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- (1) Q And do you have a high regard for Mr. Wooley also?
- (2) A Yes, I don't know him real well, but I know he's - does a
- (3) fine job at his work.
- (4) Q And as a consequence to that, you, like Dr. Middaugh, you
- (5) would hold what he has to say in high regard?
- (6) A Uh-huh.
- (7) Q If there were some other witness that said the opposite of
- (8) what Mr. Wooley or Dr. Middaugh said, you would tend to -
- (9) because of your knowledge with these people, you would tend
- (10) to
- (11) give a little more credibility to them, wouldn't you?
- (12) A I'm not quite sure what you're getting at, but are you
- (13) talking about similar occupations that come in -
- (14) Q Yes.
- (15) A Yes, I would, because I know them, but I would want to get
- (16) an objective opinion. I would want to know somebody that isn't
- (17) necessarily equal - I'd sure want to know their
- (18) qualifications, their school and all that, and years of
- (19) experience and type of experience so I had a comparison, but
- (20) I'd want to get a non-Alaska to get an objective opinion, but
- (21) if all were equal, I would go with Middaugh and Wooley.
- (22) Q That's what I mean. Because you've had years of experience
- (23) with these people?
- (24) A Not so much with Wooley, but with his wife, yes. And yes,
- (25) Middaugh, I've known him for years.
- (26) Q And Wooley's wife you're going to see again after this case

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- (1) is over?
- (2) A Yes, she's a good friend.
- (3) Q And do you see her socially as well as professionally?
- (4) A Some, uh-huh.
- (5) Q Now in answer to another question, you indicated that you
- (6) had close friends who were in commercial fishing?
- (7) A Yes. Well, they were not real close friends, but I do know
- (8) a couple people. I can't remember what I put on that to tell
- (9) you the truth. What page are you on?
- (10) Q Well, it's question 26, and that's on page - just a
- (11) minute. No, it's question 26, and it's on page 6, actually.
- (12) A Yeah, I do know friends that commercially fish. They are
- (13) not - well, one of them is - every year she does it. The
- (14) other friend that I know, he doesn't have his own boat or
- (15) anything, but he goes when he gets asked.
- (16) Q And does commercial fishing?
- (17) A Yeah, uh-huh.
- (18) Q Have any of those people made any claim, to your
- (19) knowledge,
- (20) as a result of the Exxon Valdez oil spill?
- (21) A I don't know.
- (22) Q You don't know anything about that?
- (23) A No, I really don't.
- (24) Q Now you also indicated you have an attorney friend who was
- (25) with Alyeska?
- (26) A He's retired.

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- (1) Q Have you talked to that gentleman at all about the Exxon
- (2) Valdez oil spill?
- (3) A I really haven't.
- (4) Q Would that affect you in any way as a result of evaluating
- (5) the evidence in this case?
- (6) A You mean knowing him?
- (7) Q Yes.
- (8) A I really haven't talked to him about it, so I don't know -
- (9) I just haven't talked to him about it. And actually he doesn't
- (10) live here anymore, although recently I did see him at church
- (11) when they were up visiting.
- (12) Q On page 15, there is a question 68, and you indicated that
- (13) you had an opinion that the size of damage awards being made
- (14) today by juries are too large, do you see that?
- (15) A Uh-huh.
- (16) Q What do you base that opinion on?
- (17) A Well, you have to recognize that I'm not real crazy about
- (18) unions, and I'm not really crazy about suing. I do feel they
- (19) are important. I've never sued anyone myself. I have had
- (20) occasion, but I have decided not to do that, and I really feel
- (21) strongly that the fishermen, or anybody else that's involved,
- (22) need to get their fair share.
- (23) And I was sort of thinking about this, since I've been, you
- (24) know, involved in this, but it seemed to me that you can't
- (25) depend on the season for fishing, so I would think that the

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- (1) high season, whatever that should have been for that fisherman
- (2) and his family, that that's what they should get in the years
- (3) that they haven't been able to fish.
- (4) But I think our country has gone crazy over suing, and the
- (5) suits often are just a greed element, and I don't think that is
- (6) necessarily a healthy way to go. And being in the health care
- (7) field, I think that's one of the reason health care costs are
- (8) what they are today. Not to say that people shouldn't sue and
- (9) get fair recognition, but to go way off the scale is not
- (10) accurate. It throws the whole system out of balance, and I
- (11) just felt that some of the claims - and I really don't
- (12) remember what they are now - when I heard them originally, I
- (13) thought wow, that's out of touch, and that's just my only
- (14) person feeling about suits.
- (15) Q I understand. Do you have that feeling generally about
- (16) lawsuits that have been brought in connection with the Exxon
- (17) Valdez oil spill?
- (18) A Yeah, I do, but I think there is a lot of health that needs
- (19) to be looked at, because I do think the city of Cordova went
- (20) through a lot of mental health, the families, over this issue,
- (21) and health care and whatever relates to a healthy situation
- (22) should be covered. But I think to go way beyond the high level
- (23) of what somebody should get is not accurate.
- (24) Q Do you have any views - there are very substantial land
- (25) damage claims brought by the Native corporation and the

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- (1) municipalities. The municipalities, Cordova is not one of the
 (2) ones that is bringing a land damages claim. They have other
 (3) claims, but the other municipalities have land damage claims
 (4) because they own property, and they contend that the property
 (5) values, the property market basically went away in their area
 (6) in Kodiak as a result of the oil spill. I mean, nobody was
 (7) interested in property in Kodiak for a period of time as a
 (8) result of that spill, and whether the particular parcel was
 (9) oiled or not oiled didn't really matter. The whole market just
 (10) vanished, if you know what I mean.
 (11) A Uh-huh.
 (12) Q And the Native corporations own very substantial land
 (13) holdings in Prince William Sound, and that area they contend
 (14) also was – the market was basically wiped out for a period of
 (15) time.
 (16) A Uh-huh.
 (17) Q Exxon says, well, the – if the market went down, it's back
 (18) up now, so everybody is happy. And what happened then is –
 (19) that's that, and life goes on and so on.
 (20) Do you have any views in terms of whether these land
 (21) claims – because these land claims add up to about a hundred
 (22) million dollars. I mean these are big claims.
 (23) A I recognized that they were, but I don't have an
 (24) understanding for what the value should be. I mean, of the
 (25) damage and the – I really don't understand that. It seems

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- (1) high to me, but I don't understand it. I don't have a good
 (2) knowledge base to make a decision on that, I don't think. But
 (3) I could do some research on it.
 (4) Q Sure. There is going to be – you know, there is going to
 (5) be some issues here that your friends, Dr. Middaugh and
 (6) Mr. Wooley, are going to testify on, and, quite frankly, they
 (7) are going to testify. We believe, they are going to testify
 (8) for Exxon.
 (9) A They are?
 (10) Q They are.
 (11) A Oh, I don't know, you're telling me.
 (12) Q I'm telling you. There is going to be these other
 (13) witnesses who are going to say that Dr. Middaugh is not
 (14) correct, and Mr. Wooley is not correct, and that's going to be
 (15) an issue in the case, quite honestly.
 (16) Now, with your – to be very Frank and honest with one
 (17) another here, and I appreciate you being so candid, you've
 (18) been
 (19) very candid.
 (20) A That's the way I feel.
 (21) Q I think that's fine. That's the American system. That's a
 (22) great attribute that we have being so open, but this attitude
 (23) that you have or outlook, this viewpoint, which I'm sure you
 (24) hold your viewpoints very dear to your heart, am I correct? I
 (25) can just sort of tell that –
 (26) A I'm not real educated on the spill.

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- (1) Q I understand that, but your views on jury verdicts being
 (2) too large and certain claimants asking for too much, you feel
 (3) strongly about these views, don't you?
 (4) A Yeah, I do.
 (5) Q Now, with that in mind, and Dr. Middaugh and Mr. Wooley
 (6) testifying on something that is in controversy, an issue in the
 (7) case –
 (8) A See, that's interesting, because until you said that they
 (9) would probably be favorable to Exxon, I thought they would be
 (10) favorable to your group, so I did not realize that.
 (11) Q I understand. But with that in mind, and as you said you
 (12) would tend to believe them naturally because you know them
 (13) from –
 (14) A Yes.
 (15) Q – do you think that might be – you might not be the best
 (16) person to be on this jury?
 (17) MR. DIAMOND: Objection, I don't know that that's a
 (18) relevant inquiry.
 (19) THE COURT: Put it in terms of partiality or,
 (20) impartiality.
 (21) A Am I supposed to answer that?
 (22) MR. STOLL: I'll rephrase the question.
 (23) BY MR. STOLL:
 (24) Q Because of this personal experience you've had for these
 (25) many years with these witnesses, who are going to testify about

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- (1) something that's in issue, plus your general view that
 (2) plaintiffs in the Exxon Valdez cases are generally asking for
 (3) too much, do you think that you would be biased so that, as
 (4) opposed to some other juror, that maybe this is not – this is
 (5) not a case that you can sit on as a totally impartial juror?
 (6) MR. DIAMOND: Your Honor, I object to the preambled
 (7) mischaracterizing what Ms. Lahdenpera said.
 (8) THE COURT: She can respond, I don't want her to lose
 (9) sight of the question so it has to be asked again. You can
 (10) answer the question.
 (11) BY MR. STOLL:
 (12) Q Did you understand my question?
 (13) A Uh-huh.
 (14) Q What's the answer?
 (15) A I don't have a strong background, at the – I haven't kept
 (16) up with the news on this in the last year, so I don't have a
 (17) solid background on what's gone on, but I do hold strong my
 (18) feelings about that I thought the awards were too high.
 (19) So if – and I really didn't realize that Middaugh – the
 (20) way you were talking, that they were representing your folks. I
 (21) didn't know that. But yeah, maybe I would not be a good
 (22) person.
 (23) Q You think there is a reasonable probability that that would
 (24) be the case?
 (25) A Well, I really do believe in being objective, so I would

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- (1) listen to outsiders as well as the local people, but I think if
 (2) they were the same, I would pick the local people.
 (3) MR. STOLL: Thank you very much. Thank you for your
 (4) candor?
 (5) A Thank you. You asked the right questions, I guess.
 (6) VOIR DIRE EXAMINATION OF VERA K. LAHDENPERA
 (7) BY MR. DIAMOND:
 (8) Q Good morning, Mrs. Lahdenpera. I'm one of the lawyers
 (9) representing Exxon. I'm Chuck Diamond.
 (10) One question, Dr. Middaugh, who does he work for?
 (11) A He's in charge of the state of Alaska, division of
 (12) epidemiology.
 (13) Q Do you know what kind of issues he deals with?
 (14) A All epidemiological situations stemming from AIDS, STDS,
 (15) cancer. That's my interest right now with that division,
 (16) environmental. I'm not really quite sure how he's tied into
 (17) environmental, but anything that would - well, I know he was
 (18) involved in the - that new gas that we were supposed to use
 (19) during the winter months, I know there was a lot of controversy
 (20) over that.
 (21) Q Do you know anything about Chris Wooley's view?
 (22) A I really don't. I know that they lived in Barrow for a
 (23) while because that's where he was able to get work, and I
 (24) really don't know a lot about his work. I've never talked to
 (25) him about his work.

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- (1) Q If - normally if you know somebody, does that, in your own
 (2) mind, lead you to believe everything they tell you?
 (3) A No, that's why I like to hear both sides, because I - I do
 (4) respect Dr. Middaugh very much, because he's published and
 (5) he's
 (6) just been in the field for a long time.
 (7) Q Well, I won't testify at this point.
 (8) I wanted to talk about the problem that you're having with
 (9) your parents. Where are they residing now?
 (10) A Outside of San Diego in Del Mar.
 (11) Q And they are in a senior citizens facility?
 (12) A I just moved them there April 10th.
 (13) Q And are you planning to move them to a different facility?
 (14) A No, they just left a large home and are there. It's not a
 (15) large home, but a home, and they are really - it's a big
 (16) adjustment, and people have told me that, but I didn't realize
 (17) how big an adjustment it would be for them.
 (18) Q So you're going to go down, visit with them and try and
 (19) ease the adjustment along?
 (20) A Yeah, I need to get with the doctors and the social workers
 (21) and we need to establish some counseling. They are really not
 (22) adjusting well.
 (23) Q Do you have any brothers and sisters?
 (24) A I have two step-brothers.
 (25) Q Are they involved in this process at all?
 (26) A I've been the one that's been involved.

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- (1) Q Is your daughter involved at all?
 (2) A Yes, my daughter helps, but she's got a job, doesn't give
 (3) her as many weeks off as I have. Of course, I've worked my job
 (4) so long, but two weeks isn't much when you're a young person.
 (5) Q She lives down in the Lower 48?
 (6) A She lives in Colorado.
 (7) Q I noticed you worked in New York City for a while.
 (8) A Oh, yeah, loved it.
 (9) Q And you sometimes visit back there?
 (10) A I do.
 (11) Q What kind of work did you do there?
 (12) A Well, that was just after I graduated from nurse's training
 (13) and I was the charge nurse for a shelter for neglected
 (14) children, and then I worked evenings in Bellevue Hospital in
 (15) psychiatric and medical ward for two years. I did that per
 (16) diem.
 (17) Q And you occasionally visit back east?
 (18) A Yes, I do.
 (19) Q How frequently have you gotten back there?
 (20) A Well, when I go on these federal trips, we go in the end of
 (21) February in Washington D.C., and then I usually get back to the
 (22) city, oh, I think since I've left there I've been back four
 (23) times.
 (24) Q You said - the federally funded, bad way of stating it.
 (25) The periodic meetings that you have, are those quarterly

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- (1) or -
 (2) A Quarterly.
 (3) Q And are they typically on the east coast?
 (4) A Once a year in Washington D.C. and then in Seattle.
 (5) Although the last two conferences have been in Portland,
 (6) Oregon.
 (7) Q I'm sorry if I'm repeating something that you've already
 (8) told Mr. Stoll, but you said you had some friends who were
 (9) commercial fishermen?
 (10) A Yes, I have one nurse friend who grew up - I think she
 (11) grew up in Dillingham, and her family fished every summer, and
 (12) then I have a friend who fishes when asked by his friend who
 (13) has a commercial boat. And he fishes, oh, I don't know, maybe
 (14) a couple - he hasn't done it a whole lot. He's probably done
 (15) it maybe six times in all the time he's lived up here. He's
 (16) lived up here 30 years, too.
 (17) Q Have you discussed with either friend the effects of the
 (18) oil spill on commercial fishing?
 (19) A I really haven't.
 (20) Q You said you had an opinion concerning damage awards
 (21) and
 (22) some of the claims that have been made in connection with the
 (23) Exxon Valdez spill. This is an important area, because both
 (24) sides, the plaintiffs and the defendants, are entitled to
 (25) jurors who can listen to the evidence in court, follow the
 (26) judge's instruction, and render a fair verdict to both sides,

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- (1) not influenced by biases and prejudices that they bring in from
 (2) the outside.
 (3) The issues in this case involve damage to land. I think
 (4) you heard that from the court. You understand that?
 (5) A Uh-huh.
 (6) Q We're not talking about injuries that fishermen suffer,
 (7) we're talking about injuries that municipalities suffered,
 (8) property owners.
 (9) A Maybe this was in the first settlement, but I thought that,
 (10) or what I recall is that it was a very hardship on the
 (11) fishermen not being able to fish. And then I know that some of
 (12) the cities, the families suffered, really did suffer some
 (13) mental health problems, and so these two issues aren't what's
 (14) in this particular case.
 (15) Q Your assumption, I believe is correct. That we're dealing
 (16) solely with -
 (17) A Land.
 (18) Q - damages to property, and in the case of the
 (19) municipalities there is some claims by some of them that they
 (20) incurred costs that ought to be reimbursed by Exxon from the
 (21) spill?
 (22) A So this early on development has been handled.
 (23) Q Well, that's not something that the jury in this case will
 (24) be required to decide on?
 (25) A So strictly land we're talking about, okay.

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- (1) Q Now that you understand that -
 (2) A I hadn't realized that.
 (3) Q - given the scope of the issues in dispute in this trial,
 (4) do you think you can be fair-minded to both the plaintiffs and
 (5) the defendants?
 (6) A Well, I'm really not knowledgeable. The past year I haven't
 (7) been hooked up.
 (8) Q Well, that qualifies you as a juror, because typically we
 (9) look for people who don't bring a lot of information on the
 (10) subject and who can follow the Court's instruction, and you can
 (11) decide based on what you hear from the witness stand.
 (12) So that's my question, do you understand you can decide on
 (13) whether the plaintiffs' property was damaged by the spill, and,
 (14) if so, the amount of the damage based on what you hear from
 (15) the witness stand, or do you think you would let biases and
 (16) projects affect your decision?
 (17) A That's a difficult question. I mean, to be really honest,
 (18) because like what I've told the previous attorney, Mr. Stoll?
 (19) Q Stoll.
 (20) A Stoll. I do have opinions.
 (21) Q The past tense of steel?
 (22) A I do have opinions on high claims.
 (23) Q But would that prevent you from agreeing on a verdict, if,
 (24) in fact, you found that the plaintiffs were damaged in some
 (25) amount and they had proven that to your satisfaction?

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- (1) A Well, will the expert witnesses give you the information,
 (2) or - sec, I don't feel like at this point in time I'd have
 (3) enough information to make a decision.
 (4) Q Well, the way the trial works is the plaintiffs put on
 (5) their evidence, and they will bring on witnesses who will
 (6) describe to you what they saw happen, and they will put on
 (7) experts who will evaluate that and tell you in their view how
 (8) much that's worth.
 (9) And then you'll hear from the defense side of the case,
 (10) people who saw what happened, and they will tell you what
 (11) they think happened and you'll probably hear from defense experts.
 (12) who will give you their view of the amount of damage and how
 (13) much it's worth, and as a juror, if you're going to serve,
 (14) you'll be required to decide that.
 (15) The question is whether you can listen to both sides and
 (16) bring to bear your common sense, your life's experience, and
 (17) follow the Judge's instructions and render a decision based on
 (18) that, like any juror?
 (19) A Can you take notes, because I really think this is a
 (20) complicated issue, and I think I need to have pros and cons.
 (21) Q I believe Judge Shortell allows jurors to take notes.
 (22) THE COURT: Yes, you can take notes.
 (23) A I think I could be objective, but if there was a balance,
 (24) my opinions, you know, would come out. But I think I could
 (25) listen objectively

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- (1) BY MR. DIAMOND:
 (2) Q The Judge will instruct you if you serve on this jury, that
 (3) as to issues like, was the land damaged, and if so by how
 (4) much. The plaintiffs have the burden of proving that by a
 (5) preponderance of evidence, which means just anything more
 (6) than
 (7) 50 percent, and as a juror you're required by law to find in
 (8) their favor if you find that they have produced more
 (9) evidence - not quantitative, but qualitatively, more evidence
 (10) - so that they tip the scales more than 50 percent, dispute
 (11) any preconceptions and any biases and any prejudices you
 (12) have.
 (13) Do you think you could follow that?
 (14) A Uh-huh, and as I told Mr. Stoll, I really do feel - I am
 (15) an Alaskan, but I really do feel because I do it myself, that
 (16) you can be colored about your state. So I really feel that I'd
 (17) like to get other outside opinions, if they are equal
 (18) education, like I said, to bring us back to sort of reality.
 (19) And then, if there is an equal situation, I will go with
 (20) the Alaskan, but I would want to hear the other side. And
 (21) maybe because I go out quarterly, and I'm with a broad
 (22) spectrum
 (23) of people, in my field it's a wonderful way to grow, and I do
 (24) feel that people need to do this.
 (25) Q I anticipate that Judge Shortell, if you serve on this
 (26) jury, will give you instruction on how you evaluate the
 (27) testimony you hear from a witness, and what facts you ought to
 (28) consider. And I believe he will probably tell you that you're

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- (1) supposed to listen to the testimony, judge the credibility of
 (2) the witness who is giving it, look at his or her background,
 (3) determine whether it makes sense to you.
 (4) Do you think you could follow instructions of that kind?
 (5) A Uh-huh, but I really do need to be gone in August.
 (6) Q I know that, and I'm not saying that you are going to serve
 (7) on this jury, and it's not up to the lawyers in this case
 (8) anyway?
 (9) A I really do need to do that.
 (10) Q What we want to know is if you do end up serving, you know,
 (11) whether you could be fair to both sides, and evaluate the
 (12) evidence fairly.
 (13) With respect to individuals who you know, I anticipate
 (14) Judge Shortell would give you an instruction that merely
 (15) because you know an individual doesn't mean you're supposed
 (16) to
 (17) accredit what they are telling you anymore highly than
 (18) somebody
 (19) else, that you're supposed to evaluate that testimony the same
 (20) way you would evaluate what somebody was telling you if you
 (21) didn't know them based on what they are telling you; whether it
 (22) makes sense to you, who they are, what kind of background
 (23) they
 (24) have, and whether it's convincing to you.
 (25) Do you think you could follow an instruction like that?
 (26) A Uh-huh.
 (27) Q If what you heard from the witness stand from Mr. Wooley
 (28) didn't make sense or struck you as something, an opinion he
 (29) had

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- (1) really based on lack of education or in an area in which he
 (2) didn't have expertise, would you have any problem in rejecting
 (3) that kind of testimony simply because you know his wife?
 (4) A No.
 (5) Q Sure?
 (6) A Uh-huh. But I mean, I wouldn't - if what he's testifying
 (7) on is so removed, and I don't have any background in that, it
 (8) would be hard to, you know, to come up with decisions
 (9) sometimes. But given an opposite person so - yeah, I think I
 (10) could handle that.
 (11) Q Well, I don't know who Mr. Wooley is going to testify for
 (12) in this case, and if he does, he's not testifying as an expert,
 (13) but to the extent he testifies about something in controversy,
 (14) you'll hear from witnesses that the plaintiffs bring in to
 (15) court, who will testify on the same subject, if it's an
 (16) important matter that's in dispute, and you'll be asked to
 (17) judge all the witnesses and judge them based upon their
 (18) presentation in court to you, whether it makes sense, whether
 (19) they seem credible.
 (20) Do you think you could judge Mr. Wooley and somebody who
 (21) is
 (22) offering a different view from Mr. Wooley the same way?
 (23) A Uh-huh.
 (24) Q Sure?
 (25) A Uh-huh, I think so.
 (26) MR. DIAMOND: I think I probably exceeded my time.

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- (1) Thank you for your patience.
 (2) MR. STOLL: Your Honor, I have a follow-up question I
 (3) would like to ask, if I could.
 (4) THE COURT: Go ahead
 (5) VOIR DIRE EXAMINATION OF VERA K. LAHDENPERA
 (6) BY MR. STOLL:
 (7) Q Mrs. Lahdenpera, did I pronounce your name correctly?
 (8) A Yes.
 (9) Q You said something that you hadn't been following the facts
 (10) in this case much lately?
 (11) A I haven't.
 (12) Q But that implied to me that at some point in time you had
 (13) been following this case, or at least the Exxon Valdez oil
 (14) spill, am I incorrect?
 (15) A Originally, yes. About for the first couple years, I
 (16) guess, but I just really haven't been in touch with it very
 (17) much.
 (18) Q Is that when you formulated this opinion that you thought
 (19) the people were asking for too much in the Exxon case?
 (20) A No.
 (21) Q That was something else?
 (22) A Yeah, I don't even know what they were asking for. I just
 (23) know that there were a lot of people who could not - their
 (24) livelihood was affected and the mental health was what we were
 (25) hearing.

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- (1) Q I understand, but at some point in time you also formulated
 (2) the opinion, I think you said that you thought that a lot of
 (3) people were asking for too much money in the Exxon case?
 (4) A Yeah, that's been in the recent trial.
 (5) Q You've been reading that, or hearing that?
 (6) A On television.
 (7) MR. STOLL: That you very much. I have an
 (8) application.
 (9) THE COURT: I'm going to ask you a couple questions
 (10) also. You heard the amounts that are being claimed in this
 (11) case?
 (12) A I heard them a long time ago, and then I just heard him
 (13) speak of a million dollars.
 (14) THE COURT: A hundred million. What does that sum do
 (15) to you? If you think that people sue for too much, the fact
 (16) that somebody is claiming a hundred million dollars, what
 (17) effect does that have on you?
 (18) A I think that's a lot of money.
 (19) THE COURT: Well, the question is: Do you think it's
 (20) too much?
 (21) A Yes.
 (22) THE COURT: You do?
 (23) A Uh-huh.
 (24) THE COURT: Without hearing the evidence, you think
 (25) it's too much?

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- (1) A Yeah, I do think it's a lot.
- (2) THE COURT: Now, do you think that that opinion would affect your service as a juror when you're evaluating whether someone should get what they claim?
- (3) A I guess it really does.
- (4) THE COURT: Now honestly now, do you think you can set that bias aside?
- (5) A I don't know. I guess I was thinking that and this is my inexperience with trials, but I was thinking that when you hear both sides, and you get a complete picture, that the bargaining occurs, and that may be a more realistic evaluation will occur.
- (6) THE COURT: Well, when people make claims, sometimes they believe and sometimes they are entitled to what they claim, and sometimes they are entitled to nothing, or some fraction of what they claim. That's what the jurors are for are to evaluate that.
- (7) The question I have, it sounds to me like you may have an arbitrary limit beyond which you will not go, beyond what's being claimed. Is that a fair estimate of what your position is?
- (8) A I have set no amount. I mean, I don't know enough to set an amount.
- (9) THE COURT: But we know, you think a hundred million is too much?
- (10) A Yes, I think that's too much.

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- (1) THE COURT: Are there any circumstances under which you would not think a hundred million was too much?
- (2) A I think it's too much.
- (3) MR. DIAMOND: Your Honor, may I ask some follow up?
- (4) THE COURT: Sure.
- (5) VOIR DIRE EXAMINATION OF VERA K. LAHDENPERA BY MR. DIAMOND:
- (6) Q I think we all agree a hundred million is a lot of money.
- (7) A Uh-huh.
- (8) Q The plaintiffs in this case own something in the neighborhood of 80 to 85 large parcels of land, 1200 miles of coastline, something in the neighborhood of 600,000 acres which they claim has been damaged. The market for that property has fallen, okay?
- (9) There will be evidence in the case, I anticipate, by real estate experts that they offer, who will say that that property was once worth maybe \$5,000 an acre, but it's not worth that anymore because of what happened, and those numbers may aggregate up to close to a hundred million dollars.
- (10) If a real estate expert, who you find to be convincing, tells you that in fact happened, that they have lost a hundred million dollars worth of value to the property that they own, would you have difficulty returning a verdict for a hundred million dollars?
- (11) A I'd have to hear the information and then I would have to

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- (1) make the decision.
- (2) Q We understand that. All jurors have to hear the information. The question is: If the information supports that makes you think they had been damaged in that amount?
- (3) A Then I would go with that. If the information given, and I can hear both sides, then I would, you know, it just - it's a shock to hear that amount of money to me.
- (4) Q Those are large amounts of money, and I think most people have an initial reaction that has to be a lot of damage. But the question is: Have you so prejudged everything that under no circumstances, even if you find their experts to be convincing, you would not award a hundred million dollars. And
- (5) I don't hear you telling me that, you haven't prejudged it?
- (6) A I'd have to hear both sides and then I would make my decision, but I hear how you're phrasing that. I don't know. I don't know if I can honestly answer that. I hope I'm objective, but I don't know.
- (7) Q Do you think you prejudged the issue of whether their property has been damaged?
- (8) A I really don't know the extent - you've told me now, so I have a little bit better handle on that, but I don't know, I just would have to hear the information.
- (9) Q No one has given you all the information, there will be several weeks of that.
- (10) A I realize that, but obviously I haven't kept up with

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- (1) knowing the quantities that they are responding to.
- (2) MR. DIAMOND: Thank you, Your Honor.
- (3) THE COURT: I'm going to send you out for a minute, I'll bring you right back in. I need to talk to the lawyers about the issues that you've discussed, and then I'll bring you right back in. So wait out there until I call you.
- (4) A Sorry to be kind of on a fence. It's a big decision either way.
- (5) THE CLERK: Do you want to leave your questionnaire on the table?
- (6) THE COURT: Okay.
- (7) MR. STOLL: Ms. Lahdenpera is a very nice lady, and she's trying to be as candid and forthright as she can be. In the first place, we've taken a joint position whether a juror is pro or against us. When they have a hardship situation, I think this is a hardship situation, but that's for the Court to determine in terms of her elderly parents. And apparently she can't - she thinks that she needs to go there and she is a nurse and they can evaluate that. So I would have ask for that reason for her to be excused.
- (8) THE COURT: I can tell you both, counsel, if this trial gets to August 10th, and she's on it, she would be on the jury, she's gone. I don't question that this is a legitimate hardship that would excuse her if the timing were wrong. There is just too much involved there, and she would be totally be

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- (1) preoccupied if I held her here, so I could not hold her here.
- (2) MR. STOLL: I understand, Your Honor. But the second
- (3) thing, I think she's been very candid, and I think she would
- (4) try to be objective, but she's also said, and it's within the
- (5) discretion of the Court, she's been very forthright about her
- (6) feelings about a hundred million dollars. I think the chances
- (7) of her being able to objectively evaluate a hundred million
- (8) dollar claim is just not possible. The issue is not whether
- (9) she tried to listen objectively. I think she would try, but in
- (10) fact with her viewpoints, she says it would be very difficult
- (11) and she didn't think she could do it. And I don't think that
- (12) Mr. Diamond's attempts at rehabilitation of her of what she
- (13) would try to do solves the problem.
- (14) I think Your Honor is in a position to evaluate this
- (15) woman. She has a real thing about the damage awards. Not
- (16) just
- (17) damage awards in general, but she has a viewpoint of the
- (18) Exxon
- (19) Valdez claims generally, which she expressed on several
- (20) occasions.
- (21) Finally we have the matter of these witnesses, and although
- (22) Mr. Diamond was very careful to ask her her opinions on
- (23) Mr. Wooley, would somebody else be able to, you know, how
- (24) would
- (25) she evaluate that? Even with Mr. Wooley she was - she said
- (26) that she would give him more credibility than somebody else of
- (27) equal weight because of the knowledge of him. But with
- (28) Dr. Middaugh she's going to count his testimony substantially

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- (1) more than some other witnesses simply because of her
- (2) experience
- (3) with him over many years. And I can understand that, that's
- (4) human nature. But he is going to testify on something that the
- (5) plaintiffs have - are going to have experts and other
- (6) testimony, diametrically opposed, and there is no question,
- (7) from a resume standpoint Dr. Middaugh has a nice looking
- (8) resume
- (9) and plaintiffs' experts have nice looking resumes, but they are
- (10) going to - the jury is going to have to come down and make an
- (11) evaluation as to whether they go with Dr. Middaugh or go with
- (12) the plaintiffs. And the testimony is 180 degrees apart.
- (13) So I just don't think that it's appropriate for this juror
- (14) to sit on this jury for all of those reasons.
- (15) MR. DIAMOND: In Mrs. Lahdenpera I think the Court has
- (16) a highly educated, very sensible, worldly experienced woman
- (17) who
- (18) would bring a dimension that argument must not be excluded
- (19) based on anything she said here today, the principal alleged
- (20) against her as a juror is that she blanched at a hundred
- (21) million dollars cold, and I think that's not an uncommon
- (22) reaction. But that's not dispositive of the fact whether she
- (23) could listen to the evidence fairly and dispassionately.
- (24) The test, as I understand it to be, under the decisions in
- (25) Sirotiak and Beck, and I will read to the Court from Beck at
- (26) page 111, the record need not reflect unequivocal - the record need
- (27) not reflect unequivocal and absolute impartiality of
- (28) prospective jurors, but all that is required of a prospective

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- (1) juror is a good faith statement that he or she will be fair,
- (2) impartial and follow instructions, as we noted in Sirotiak, we
- (3) doubt that the truly honest juror can state unequivocally and
- (4) absolutely that his or her biases will have no effect on the
- (5) verdict. Mrs. Lahdenpera stated she could listen to the
- (6) evidence, what she understood what was going on, and could
- (7) return a verdict in any amount that the plaintiffs were able to
- (8) prove up to a hundred million dollars. We've left on this
- (9) jury, at least thus far, a lot of prospective jurors that said
- (10) on their questionnaire that Exxon has not paid enough, in
- (11) effect they have prejudged things the other way, that they
- (12) think Exxon ought to pay more money, and that suggests a
- (13) determination on their part that regardless of the evidence
- (14) they want to see Exxon pay some money in this case, but we've
- (15) left them on because they were able to make a good faith
- (16) statement as did Mrs. Lahdenpera, that she could render a
- (17) verdict based on the evidence, and I think evenhandedness
- (18) suggests that Mrs. Lahdenpera be dealt with the same way
- (19) those
- (20) prospective jurors were dealt with.
- (21) THE COURT: By you counsel, or by me? I mean just
- (22) because you have a concern of certain jurors doesn't
- (23) necessarily mean I'm going to find your way when I see a juror
- (24) who has a bias.
- (25) MR. DIAMOND: I don't dispute that, but there has been
- (26) jurors we have challenged for cause who have said in their ,

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- (1) questionnaire - before I make a statement of fact I better
- (2) make sure. I can't think of one. I'm being handed one. I
- (3) don't remember that one well enough to say anything about it,
- (4) without going back in the transcript. But with respect to the
- (5) Beck test and statements of good faith - statements made in
- (6) good faith by this juror, she has said ultimately she would
- (7) weigh all the evidence and could return a verdict.
- (8) I think we come down to Dr. Middaugh. Dr. Middaugh is not
- (9) an expert, Dr. Middaugh is not an Exxon witness. Dr.
- (10) Middaugh,
- (11) I suspect is going to be testifying as to matters which are not
- (12) even in controversy. He works for the state, he's a state
- (13) epidemiologist. He did work, I believe in 1989 or 1990
- (14) concerning food safety. I don't even know if it's an issue in
- (15) this case, but he is a potential witness who could talk about
- (16) subsistence issues. I don't know that anything he's going to
- (17) say is in dispute. I mean the state didn't - he's been
- (18) subpoenaed or will be subpoenaed to authenticate the state
- (19) tests and describe what they are.
- (20) THE COURT: State tests on what, counsel?
- (21) MR. DIAMOND: I'm sorry?
- (22) THE COURT: On what?
- (23) MR. DIAMOND: The state did food safety testing on
- (24) fish and I think shellfish in 1989 and 1990, and he was either
- (25) involved or responsible for that testing. Whatever the testing
- (26) was the testing was, whatever it revealed it revealed. There

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- (1) is nobody identified in the plaintiffs witness list who is a
 (2) counter epidemiologist that the state's testing was somewhat
 (3) inaccurate. But I think in good faith Mrs. Lahdenpera told us
 (4) she would be able to listen to witnesses that she knows
 (5) dispassionately, and evaluate them based on the court's
 (6) instructions, and I think that really is all we can ask of her
 (7) or we can ask of any of these jurors.
 (8) THE COURT: Thank you, counsel, anything else.
 (9) MR. STOLL: No, Your Honor, we've said everything.
 (10) THE COURT: Once again, this is an issue that's
 (11) governed by the case law and by my discretion. It is true that
 (12) a good faith statement, "I can be fair", by a potential juror
 (13) is important in the mix of things, it goes into deciding
 (14) whether or not the juror can be impartial. It's also true that
 (15) the case law says that that opinion, voiced by the juror, is
 (16) not dispositive. The issue really is, on all of the
 (17) circumstances that are described in the questions and the
 (18) testimony on jury selection of the juror, does the judge feel,
 (19) in his discretion, that this juror has a state of mind that
 (20) would keep the jury from being impartial.
 (21) There are a number of areas in Mrs. Lahdenpera's
 (22) examination that give me concern. I think there are two that
 (23) are major, one is that she clearly has a bias against large
 (24) lawsuits, lawsuits in which large sums of money are being
 (25) asked. She said things on both sides of that question. She

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- (1) has said it's too much, she's repeatedly said a hundred million
 (2) dollars is too much, and it may very well be too much at the
 (3) end of this case.
 (4) On the other hand, we need jurors who will look at those
 (5) amounts objectively and not simply shut off because the
 amount
 (6) is too high in their opinion, and I don't question that she
 (7) clearly has a bias against a lawsuit that's brought that asks
 (8) that much money, she has said it twice in response to my direct
 (9) question.
 (10) The second area is the witnesses. She does know the
 (11) witnesses, she appears to have a tremendous amount of
 respect
 (12) for Mr. Middaugh. I'm told by one side that Mr. Middaugh will
 (13) be testifying in an area that's contested and he'll be directly
 (14) contradicted by Exxon's witnesses. Exxon tells me they don't
 (15) think this is a contested issue. I frankly don't know how to
 (16) deal with that, I haven't seen Dr. Middaugh's testimony, I
 (17) don't know what it's going to be. I only know if he's up there
 (18) on the stand and it's called into question by the plaintiffs,
 (19) that this witness starts out with a bias in Dr. Middaugh's
 (20) statement. And the other witness, maybe not quite so strongly,
 (21) but some form of bias. She's said in response to counsel's
 (22) questions, if everything is even I would go with local
 (23) witnesses, that's a cryptic statement, I don't know what that
 (24) means, but it seems to me she favors these witnesses before
 (25) she's heard the opening statements or any of the testimony.

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- (1) She also said something, if everything is balanced, my
 (2) opinions would come out. That's. I think. support for the
 (3) proposition that her opinions, which are strong, about large
 (4) lawsuits, and about the value of these two witnesses she knows.
 (5) might very well - poses a danger that her bias will rule and
 (6) her objectivity will take a back seat.
 (7) There is no - we know that she says - she has said, on a
 (8) couple of occasions, that she thinks she could be objective,
 (9) and that she thinks she could follow the instructions. This is
 (10) a discretionary area for me.
 (11) I think on balance she shows a bias, and I think that bias
 (12) shows her to be disqualified. That's supported by the fact
 (13) that I believe on August 12 we are probably still going to be
 (14) in session and she's got to go, I'd let her go, because this is
 (15) something that no human being, even a judge (inaudible), I'd
 (16) have to let her go, and I also think there is a great danger
 (17) that she's going to be distracted as we get closer to that
 (18) August 12 trial date. It seems clear to me that she's very
 (19) involved in this process with her parents and her attention is
 (20) going to wander if she thinks she's going to be held here. I
 (21) can allay that by saying, don't worry, you can go on the 12th.
 (22) but that conjures up that she will stop thinking when it gets
 (23) closer to the 12th.
 (24) All of those things wrapped up into one package, with
 (25) regard to the motion, she should not be involved in this case.

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- (1) (Recess at 11:05 a.m.)
 (2) THE CLERK: All rise.
 (3) THE COURT: Counsel, before we start with the next
 (4) juror, Mr. Fierro, who was the next juror, you've stipulated to
 (5) excuse; is that right?
 (6) MR. STOLL: That's correct.
 (7) MR. DIAMOND: Correct, Your Honor.
 (8) THE COURT: So we'll call the next juror.
 (9) (Jenny Ramirez enters the room.)
 (10) THE COURT: Good morning.
 (11) A Good morning.
 (12) THE COURT: Would you please give your name for the
 (13) record?
 (14) A My name is Jenny Ramirez.
 (15) THE COURT: Mrs. Ramirez, we're going to be
 (16) questioning briefly regarding your qualifications, these
 (17) questions that you're answering and the juror questionnaire.
 (18) These answers are all given under oath. Do you understand
 (19) that?
 (20) A Yes, I do.
 (21) THE COURT: Mr. Stoll will give you the first set of
 (22) questions. Mr. Diamond will then respond, and I may ask you
 (23) some questions also, then I'll give you further instructions
 (24) after that; all right?
 (25) A Okay

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- (1) VOIR DIRE EXAMINATION OF JENNY RAMIREZ
 (2) BY MR. STOLL:
 (3) Q Good morning, Mrs. Ramirez. My name is Bob Stoll, and I
 (4) represent the municipalities that brought this action, and Mr.
 (5) Fortier represents the Native corporations that are also
 (6) plaintiffs in this case.
 (7) Is there anything about this case that you think creates a
 (8) question in your mind as to whether you're biased or prejudiced
 (9) or for any party?
 (10) A No.
 (11) Q You're going to fairly and impartially consider the
 (12) evidence?
 (13) A Yes.
 (14) Q Have you ever sat on a jury before?
 (15) A Yes, I have, a few years back.
 (16) Q What type of case or cases was that?
 (17) A I don't really recall right now, but it wasn't a very long
 (18) case.
 (19) Q Was it a criminal case or a civil case?
 (20) A I think it was a civil case.
 (21) Q Was it here in Alaska?
 (22) A Yes.
 (23) Q And at the end of the case the judge instructed you, gave
 (24) you some instructions as to what the law was and you were to
 (25) consider the evidence and some other things?

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- (1) A They dismissed the case.
 (2) Q They did?
 (3) A Yes.
 (4) Q During the course of the trial?
 (5) A Yes.
 (6) Q So it never got that far?
 (7) A No.
 (8) Q Now, do you understand that in a trial such as this the
 (9) material that you are to consider is only the evidence that is
 (10) presented here in the courtroom?
 (11) A Yes.
 (12) Q And I notice that you indicate on your questionnaire that
 (13) you had seen some television shows and read some news
 (14) reports about the Exxon Valdez oil spill?
 (15) A Yes, we did. My husband reads the newspaper all the time
 (16) and watches the news every night.
 (17) Q But the evidence, the material that you're going to
 (18) consider if you sit as a juror here will be solely the material
 (19) that came into the courtroom, it wouldn't be those newspaper
 (20) articles or anything you watched on television, am I correct?
 (21) A Yes, I'm sure they would.
 (22) Q In other words do you have a view, do you think, that Exxon
 (23) should pay millions of dollars, or do you start off with any
 (24) kind of prejudice in that regard?
 (25) A Well, my view was just that it was a terrible tragedy, what

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- (1) happened.
 (2) Q Right. You understand in this trial the question of fault;
 (3) in other words, whether or not Exxon is at fault is not an
 (4) issue in the case; that's already been determined?
 (5) A Determined, yes.
 (6) Q So the only question is whether the plaintiffs have been
 (7) damaged and what the amount of those damages are?
 (8) A Yes.
 (9) Q Do you think you can evaluate that evidence fairly and
 (10) impartially?
 (11) A Probably so, yes.
 (12) Q Do you have any hesitation in that regard?
 (13) A Some, maybe, you know.
 (14) Q What's that, would you tell us please what that is?
 (15) A Well, I don't know what kind of value you put on something
 (16) like this, so that would be my hesitation. What value do you
 (17) put on a tragedy this great.
 (18) Q In this case most of the claims involve land claims, and
 (19) the municipalities also have some claims for some expenses that
 (20) they incurred or some projects that they -- that were delayed,
 (21) and there is some archeological claims by the Native
 (22) corporations as well.
 (23) Now I'm sure that you don't know anything about those
 (24) claims as we sit here?
 (25) A No, I don't.

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- (1) Q So you would -- and the Judge will instruct you at the end
 (2) of the case, will instruct the jury as to how to evaluate those
 (3) claims. You'd be able to follow his instructions though,
 (4) wouldn't you?
 (5) A I'm sure I would.
 (6) Q And you'd have no question -- do you come in with any kind
 (7) of preconceived idea on what the law should be or shouldn't be
 (8) in evaluating those claims?
 (9) A No, I don't.
 (10) Q You indicated in the questionnaire that you had a favorable
 (11) attitude towards municipalities, do you recall checking that?
 (12) There were various boxes that you were asked about?
 (13) A Right.
 (14) Q How did you -- let's -- what type of an opinion do you
 (15) have -- what's been your experience with municipalities?
 (16) A Well, they seem to do a good job.
 (17) Q That's not going to affect you in terms of evaluating the
 (18) evidence in this case, is it?
 (19) A No.
 (20) Q And I notice also that you are taking some medication?
 (21) A Yes, I am.
 (22) Q And do you think that will interfere at all with your
 (23) ability to sit as a juror?
 (24) A I have just recently had some extensive tests. I've had a
 (25) lot of problem with my stomach, and there is days that I feel

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- (1) well and there is days not very well. So I never know what's
 (2) going to happen. They just can't really come to a decision on
 (3) what's wrong.
 (4) Q Now we're going to be in trial from only 8:30 in the
 (5) morning until 1:30 in the afternoon. You're not going to be
 (6) here all day. Do you think that will help you?
 (7) A Well, it depends on what – sometimes it starts at night,
 (8) and I'll go on like this for a couple days and I can't really
 (9) do anything because sometimes I'll just have to take the
 (10) medication and stay in bed, and then there is days I'm all
 (11) right all day. It just varies. I have a different time. I
 (12) never know when it's going to come on, but I do take
 (13) medication
 (14) for it.
 (15) Q And when you do take the medication, are things okay?
 (16) A It relieves me. It depends on what I eat, or if I get
 (17) nervous or upset, that has a lot to do with it. If I'm under
 (18) stress that affects me some, too.
 (19) Q Do you think if you're sitting here, that listening to the
 (20) testimony you're not going to be asking any questions and
 (21) nobody, after this is done, nobody is going to be asking you
 (22) any questions, do you think that would be a stressful situation
 (23) for you to sit here and listen to the witnesses?
 (24) A I don't know. I just don't know.
 (25) Q Did you find your other jury experience a stressful
 (26) experience?

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- (1) A Some, but not really that bad, no.
 (2) Q Excuse me, go ahead.
 (3) A It just depends on the type of stress. And certain
 (4) situations I'll get stressed, and that's what happens.
 (5) Q But you don't think that this particular kind of situation,
 (6) sitting here in a courtroom, is that one of the types of
 (7) situations in which you'd feel stressed?
 (8) A Well, that – not necessarily, but something might
 (9) happen – I have children at home and grandchildren, and
 (10) sometimes I get stressed there, and then that carries on.
 (11) Q I see, it carries over to somewhere else?
 (12) A Yeah.
 (13) Q So not being in the courtroom as such, but might be
 (14) something outside the courtroom?
 (15) A Yes, uh-huh.
 (16) Q Now with respect to your medication, if you're taking the
 (17) medication and you're not having this stress, are you usually
 (18) okay as far as your –
 (19) A Yeah, sometimes I can go for weeks and I'm fine, and then
 (20) just all of the sudden I'm just sick again. So it's something
 (21) that I have to live with.
 (22) Q Right.
 (23) A But it can get pretty out of control. Like I can – I
 (24) can't eat, and I get nauseous and I get diarrhea and go to the
 (25) bathroom. It just depends on how it works.

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- (1) Q Do you think – is it possible you could go a couple months
 (2) without having an –
 (3) A An attack.
 (4) Q – an attack?
 (5) A I don't know. I really don't know.
 (6) Q Have you had occasions where you've gone a couple
 (7) months
 (8) without any problem?
 (9) A There has been at times, yes.
 (10) Q How are you feeling right now?
 (11) A Well, I feel – I've been under a little stress just
 (12) recently. My son just got a ticket for driving while drunk or
 (13) intoxicated, and that's been a little stressful this week.
 (14) Q Is that causing you – are you under medication now?
 (15) A Yes, I am.
 (16) Q You seem, frankly you seem fine, as we talk right now, so
 (17) apparently the medication has helped the stress you had this
 (18) week.
 (19) A Yes, it's helped some, yes.
 (20) MR. STOLL: Thank you very much
 (21) VOIR DIRE EXAMINATION OF JENNY RAMIREZ
 (22) BY MR. DIAMOND:
 (23) Q Good morning, Mrs. Ramirez. My name is Chuck Diamond.
 (24) I'm
 (25) one of the lawyers in this case. I introduced myself when you
 (26) were in the auditorium on Monday.
 (27) A Yes.

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- (1) Q You said you just had some tests?
 (2) A Yes. I had some tests done out on Elmendorf about three
 (3) months ago or so. They were trying to get to the bottom of my
 (4) condition, and I had some – they did a scope, put a scope down
 (5) my stomach and then they did a barium enema, and I had
 (6) Dr. Tompkins out at Elmendorf.
 (7) Q And they still haven't figured out what was wrong?
 (8) A As far as he could tell, he thought maybe the gall bladder,
 (9) but he thinks maybe it's just a nervous reaction to my
 (10) intestines and whenever I am under stress they just react, and
 (11) I have – they go into spasms, and that causes the pain and the
 (12) diarrhea and sometimes the nausea, whatever.
 (13) Q When that happens are you basically bedridden?
 (14) A It just depends on how bad I get. Sometimes I get to where
 (15) I can function if I have medication; sometimes I don't. It
 (16) just depends.
 (17) Q Do you suspect over two or three months you might get an
 (18) attack that would make you miss a court day if you served on
 (19) the jury?
 (20) A I have been able – where I can't –
 (21) Q I'm sorry.
 (22) A I have been able – I've done – where I have done that,
 (23) where I can't do anything for a couple, two, three days, if I'm
 (24) really bad.
 (25) Q Do you ever concern that's likely to happen during the

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- (1) course of this trial if it goes two months?
 (2) A Well, the reason I had the tests made just recently was
 (3) because I was having – they were reoccurring so often, and
 (4) that's why he decided to go in with a scope and see what was
 (5) going on.
 (6) Q How frequently are they now reoccurring?
 (7) A Sometimes I get them once or twice a week, sometimes they
 (8) go a couple weeks and I won't get it.
 (9) MR. DIAMOND: That's all the questions I have on this
 (10) aspect. If you would like we can continue.
 (11) THE COURT: Counsel, I think this is a pretty
 (12) substantial issue. I'd like to resolve this issue first. I
 (13) think I'll excuse you for a minute, ma'am.
 (14) MR. STOLL: Can I just ask her one question?
 (15) THE COURT: Sure.
 (16) VOIR DIRE EXAMINATION OF JENNY RAMIREZ (Resumed)
 (17) BY MR. STOLL:
 (18) Q Mrs. Ramirez, in the recent weeks, has there been a day, a
 (19) week, or a day every two weeks when you've been totally
 (20) bedridden? I mean just recently.
 (21) A Well, I told you my son just got a ticket, and that kind of
 (22) upset me. I was down for a couple days, but then I got all
 (23) right.
 (24) Q That was within the last week?
 (25) A I think it was a couple weeks ago or something like this

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- (1) when he did it.
 (2) Q That's a pretty unusual event though, I mean?
 (3) A It was very stressful, yes.
 (4) Q But normally – could I just – I don't mean to get too
 (5) personal, but when was the last time before that that you were
 (6) bedridden; was it months ago?
 (7) A Yeah, it's been awhile. It's been –
 (8) Q Last year?
 (9) A No, it's not been last year, because – I don't really
 (10) recall the dates of the – of when I've had my tests done. I
 (11) think it was in April, and just before that I was very, very
 (12) bad, and that's why they requested the tests and I went through
 (13) the tests and all that, and they put me on different
 (14) medication.
 (15) Q Since the new medication have you been a lot better other
 (16) than this one experience with your son?
 (17) A It goes and comes – no, it's about the same.
 (18) Q Oh, it is?
 (19) A Yeah.
 (20) Q And you've still been bedridden, even without your son's
 (21) situation?
 (22) A It just depends. Yes, on – but it's not as bad as it was,
 (23) because it does seem like this new medication has helped me
 (24) some more, so it hasn't been that bad.
 (25) Q Mrs. Ramirez, only you can evaluate this. What are the

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- (1) chances do you think that you could go two months without
 (2) having any problem?
 (3) A I really don't know. I don't know when it's going to
 (4) happen, so I can't say I'll go two months or three months, I
 (5) just don't know if I will or not.
 (6) MR. STOLL: Thank you very much.
 (7) VOIR DIRE EXAMINATION OF JENNY RAMIREZ
 (8) BY THE COURT:
 (9) Q Mrs. Ramirez, does this situation, in the courtroom, being
 (10) involved in the jury process, does that cause you any
 (11) apprehension that you might consider to be the kind of stress
 (12) that would bring some symptoms to the surface?
 (13) A No, I don't think so.
 (14) Q So the recent acute problem you've had revolved around a
 (15) problem with your son?
 (16) A Yes.
 (17) Q But if I understand you correctly, the last time this
 (18) occurred before that was April?
 (19) A Yeah, sometime in April I had the really, really, really
 (20) bad ones, and now I just take medication, and I get some, but I
 (21) keep taking my medications.
 (22) Q Since April, how many days would you say you've
 (23) experienced
 (24) that were an acute stage that might keep you from attendance
 (25) at
 (26) this trial?
 (27) A Well, see, I'm home all the time, so I really don't keep

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- (1) track. I'll just lay down if I'm there and rest and whatever,
 (2) and then get up and keep going again.
 (3) Q Since April, how many days have you had where you've
 (4) actually had to vary your routine and simply rest because your
 (5) stomach was giving you trouble?
 (6) A Maybe two or three times where I had to just really rest.
 (7) Q Two or three times in a period of three months?
 (8) A Yes, where I really had to rest. It gets very
 (9) uncomfortable sometimes, but I just try to keep going, and if
 (10) I'm close to a bathroom then it's not too bad.
 (11) Q How often does it get very uncomfortable?
 (12) A When I have to keep running to the bathroom. That just
 (13) depends, again, on how – I just can't explain how it comes on.
 (14) Q Here is what I'm trying to get at. You're going to be in
 (15) session every day, every weekday from 8:30 to 1:30 and the
 (16) breaks that we're slatted to take happen every maybe
 (17) hour-and-a-half. So if you're uncomfortable to the extent that
 (18) you can't concentrate on what may be some pretty technical
 (19) evidence, then I think there is a serious problem with you
 (20) serving as a juror in this case.
 (21) So what I'm trying to get at by my questions are, is it the
 (22) kind of condition that happens so frequently that I could
 (23) expect that, say, one day out of ten you might have the
 (24) condition and it would affect your ability to concentrate on
 (25) the evidence in the case?

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- (1) A Yes, because sometimes if I have to go to the bathroom, I
 (2) have to go to the bathroom, and that's all I'm concentrating
 (3) on. And, again, I'm uncomfortable if I'm around a lot of
 (4) people. I have a lot of gas and stuff, so I usually like to be
 (5) near a bathroom all the time.
 (6) THE COURT: Counsel, I think I have to excuse this
 (7) juror. I just think it's too likely that this condition will
 (8) cause some problems with concentration.
 (9) MR. STOLL: I understand.
 (10) THE COURT: You're excused from service at this trial,
 (11) and I think your jury duty is also over, so you can simply be
 (12) excused?
 (13) A Yes, thank you very much.
 (14) (Jenny Ramirez leaves the room.)
 (15) (Harold H. Parker enters the room.)
 (16) THE COURT: Mr. Parker?
 (17) A Yes.
 (18) THE COURT: Would you please give your full name for
 (19) the record, please?
 (20) A Harold Hartley Parker.
 (21) THE COURT: Mr. Parker, you're going to answer some
 (22) questions under oath, and you understand these questions
 (23) under
 (24) the juror questionnaire are given under oath?
 (25) A Yes.
 (26) THE COURT: Mr. Stoll will question you first

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- (1) VOIR DIRE EXAMINATION OF HAROLD H. PARKER
 (2) BY MR. STOLL:
 (3) Q Good morning, Mr. Parker. My name is Bob Stoll. I
 (4) represent the municipalities, who are plaintiffs in this case,
 (5) and this is Mr. Fortier. He represents the Native
 (6) corporations. This is Mr. Diamond, he's one of the lawyers for
 (7) Exxon.
 (8) Now I'd just like to ask you - there is a copy of your
 (9) questionnaire, you can look at it or not look at it, whatever
 (10) you want to do.
 (11) You've indicated that your son-in-law works for Alyeska?
 (12) A Uh-huh.
 (13) Q What type of work does he do for Alyeska?
 (14) A Warehouse work in Anchorage.
 (15) Q The fact that your son-in-law works for Alyeska, is that
 (16) going to influence you in any way as far as evaluating the
 (17) evidence in this case?
 (18) A I don't think so. I don't think much about it as far as
 (19) attaching his job to any, you know.
 (20) Q Anything here?
 (21) A Yeah.
 (22) Q You don't work in the oil industry, do you?
 (23) A No.
 (24) Q And you said that you had a couple friends that work on the
 (25) North Slope presently?

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- (1) A Yeah, I did. I think just one that I know of now.
 (2) Q And again, have any of these people talked to you about the
 (3) oil spill?
 (4) A No. He hasn't that I can think of.
 (5) Q On one of the questions there is - if you wouldn't mind
 (6) looking at the questionnaire on page 10. question 43. in the
 (7) middle of the page there?
 (8) A Uh-huh.
 (9) Q There is some questions about what you heard about the,
 (10) any
 (11) of the Exxon Valdez trials or legal proceedings, and you said
 (12) that you - very seldom had you seen anything.
 (13) And then in question 43 you say, Which lawsuits did you
 (14) follow and what do you recall about them? And I can't make out,
 (15) the second word, and you said "none" in terms of lawsuits, and
 (16) none -
 (17) A I don't know if that was the right word, but I meant
 (18) contiguously, to follow through, to follow through the steps of
 (19) what was actually happening.
 (20) Q So you just heard little bits and pieces of some lawsuit?
 (21) A Yeah.
 (22) Q Did you formulate any opinions as a result of what you
 (23) heard?
 (24) A I guess not because I don't even remember any, you know,
 (25) any details. I don't watch news on television and I just catch
 (26) little bits here and there on the radio.

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- (1) Q Have you read anything about it. any of the lawsuits in the
 (2) newspaper?
 (3) A No.
 (4) Q Have you read anything recently about the Exxon Valdez oil
 (5) spill in the last couple weeks, for instance?
 (6) A No.
 (7) Q And then you wrote here, what do you recall, you said only
 (8) generally various conflicting statements from different sides.
 (9) In other words you heard one side say one thing and one side
 (10) say another?
 (11) A Yeah.
 (12) Q Have you ever served as a juror before?
 (13) A Yes.
 (14) Q What kind of case was that?
 (15) A It was about 14, 15 years ago. DWI.
 (16) Q Well, in that case, and maybe - have you ever watched any
 (17) television or movies about trials?
 (18) A As far as - not other than, I guess, fictional, you know.
 (19) Q You know that the - did you know that the material that
 (20) juries are supposed to consider is only the evidence that's
 (21) presented in the courtroom and it's not what you may have
 (22) heard
 (23) or thought about outside the courtroom?
 (24) A Yeah.
 (25) Q You could follow that - if the Judge instructs you to that
 (26) effect, you could follow that?

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- (1) A Yes, I think so. We did have an extensive instruction in
 (2) that trial, you know, that was in, I remember that quite a bit.
 (3) Q Now on page 11 there was a question about what, based
 upon
 (4) your experience and knowledge, what are your feelings about
 (5) different organizations, and you checked basically, between
 (6) somewhat favorable and somewhat unfavorable on most of
 these,
 (7) you were somewhat in the middle there. Is that what you were
 (8) trying to convey?
 (9) A Yeah. Like in any given case, it was somewhat favorable,
 (10) you know, some - either experiences that I've had or things
 (11) that I've heard have either been somewhat favorable and
 (12) somewhat unfavorable.
 (13) Q Both ways?
 (14) A Right, no strong views either way, but pretty well
 (15) two-sided, I think.
 (16) Q And you've been to Valdez and Homer and Kodiak, I see?
 (17) A Uh-huh.
 (18) Q When was the last time you were in Kodiak?
 (19) A I think it was four years ago.
 (20) Q And where did you go in Kodiak?
 (21) A Just to the town of Kodiak.
 (22) Q How did you happen to go there?
 (23) A I went over to Spruce Island. On a pilgrimage.
 (24) Q With your church?
 (25) A Right, church pilgrimage to Spruce Island.

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- (1) Q Did you talk to any people in Kodiak?
 (2) A Yeah.
 (3) Q And did you talk to anybody about the Exxon Valdez oil
 (4) spill?
 (5) A No, no, I don't remember anything about the status of, or
 (6) the experience of Kodiak people with the oil.
 (7) Q Have you had any experience in - I can't remember if you
 (8) were buying your home or - yes, you are.
 (9) A Uh-huh, it's paid for, yeah.
 (10) Q And do you have - why do you like Alaska?
 (11) A I like the space, get out as much as I can.
 (12) Q Do you go hiking?
 (13) A The space and the pace you could say, I guess.
 (14) Q Uh-huh.
 (15) A Yeah, hike and ski, cross-country ski.
 (16) Q Do you go fishing? Do you fish at all, sports fish?
 (17) A Not very fanatically. I've done some subsistence fishing.
 (18) Q Some subsistence?
 (19) A You know, the dipnet fishery.
 (20) Q What do you like to do when you go hiking?
 (21) A Really, I just like to be out there. Not usually hunting
 (22) or fishing.
 (23) Q Sort of a communal with nature?
 (24) A At this main point, our project out in the bush is building
 (25) a cabin.

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- (1) Q I see. Where are you doing that?
 (2) A Near Talkeetna.
 (3) Q And how long have you been working on your cabin up
 there?
 (4) A Just started last winter.
 (5) Q Do you own a little piece of ground up there?
 (6) A Yeah.
 (7) Q How big a piece do you have up there?
 (8) A It's 40 acres. It's the remote parcel program.
 (9) Q And are you building that yourself?
 (10) A Uh-huh, yeah.
 (11) Q And do you anticipate that being - do you anticipate
 (12) finishing it this year?
 (13) A No, I won't even get putting the logs together until next
 (14) year. We're doing the preliminary work.
 (15) Q Do you live in Eagle River?
 (16) A Yes.
 (17) Q And then you commute down here for the jury service?
 (18) A Uh-huh.
 (19) Q And I can't recall - do you work for the postal service
 (20) here in Anchorage?
 (21) A Out in Eagle River.
 (22) Q Is there anything that you think that - you understand in
 (23) this case the question is one of damages, there is no issue
 (24) here about the liability or fault of Exxon, that's already been
 (25) determined?

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- (1) A No, I didn't - I wasn't even clear on that.
 (2) Q Well, the issue really is one of what the damages are that
 (3) have been incurred by the municipalities and the Native
 (4) corporations, and the largest single category of the claims
 (5) relate to land that was - that is owned by the Native
 (6) corporations and the municipalities.
 (7) Is there anything about the nature of that case that you
 (8) think would prevent you from fairly evaluating the evidence?
 (9) A I don't think so. Are you saying that the evidence would
 (10) be of the nature of like physical changes that have occurred
 (11) because of the oil spill on land?
 (12) Q Let me explain what I think some of the evidence will be.
 (13) When the Exxon Valdez went aground it released
 (14) approximately 11 million gallons of oil and the oil spread
 (15) through Prince William Sound down into Kodiak. And the
 (16) plaintiffs in this case, will show that there was extensive
 (17) oiling of their property, but they will also show that there
 (18) was, at least as significant as that, was that there was a
 (19) perception in the marketplace, the real estate marketplace,
 (20) that this area had been heavily oiled, and that as a result of
 (21) that it caused a disruption in the marketplace, and therefore
 (22) the value of property. If you had any property anywhere on the
 (23) marketplace, the value of that property went down. Whether it
 (24) was oiled or not oiled, it went down. We're going to have -
 (25) the plaintiffs will have testimony in support of that.

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- (1) Exxon will have testimony that says, well, some of this
 (2) oil – some of this property was oiled, but if it wasn't oiled,
 (3) so what, and they will have conflicting testimony. So I don't
 (4) know all that they are going to say, but basically they are
 (5) going to say no damage, or very little damage.
 (6) So do you think there is anything about, as I've just
 (7) described this, and I've given you a very thumbnail sketch of
 (8) it, do you think that you could evaluate that evidence?
 (9) A I think so. You know, I certainly have opinions in general
 (10) about the oil industry and about Native corporations, but I
 (11) guess I feel that, you know, like in this situation that I
 (12) don't have an opinion as to what the damages were or how
 (13) extensive or who should pay for them.
 (14) Q You haven't made any determination on that?
 (15) A Right. I realized that damages could be meaningful in that
 (16) someone needs to be responsible for them if they are there, but
 (17) I also realize that – when such a big thing like this, there
 (18) could be entities that would want to take advantage, you know,
 (19) of the situation without having a good cause, just because it's
 (20) there and say, Hey, I want my piece of the pie, so –
 (21) Q You're not prejudging this, are you?
 (22) A No, I'm just saying, you know, in fact I would say that, I
 (23) guess, to myself because my own a tendency is, I guess. to – I
 (24) don't know. I want to get – how do I say this?
 (25) As far as oil industry goes, you know, I do feel like there

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- (1) was probably damages. I mean, you know, there were for sure.
 (2) What they were, what all they were specifically, I don't know,
 (3) and I realized, you know, when the Pipeline went in that it was
 (4) a potentially dangerous thing, and so I just kind of say that I
 (5) realize that some entities might want to take advantage of the
 (6) oil spill, I say that kind of for myself.
 (7) Q To balance things?
 (8) A Yeah.
 (9) Q You haven't made any determination in your – have you
 made
 (10) any determination in your own mind whether the Native
 (11) corporations, the municipalities, are trying to take advantage
 (12) in bringing this claim?
 (13) A No, not in this case.
 (14) Q You just don't have an opinion?
 (15) A No.
 (16) Q Now you said you had some opinions about Native
 (17) corporations, what's your views on Native corporations?
 (18) A I don't have a thorough understanding. I understand why
 (19) they have been created, I think out of, you know, necessity,
 (20) it's very difficult with their changing culture as being pretty
 (21) much imposed on them, I guess. Very difficult for a lot of the
 (22) individuals in that they tend to need support, financial
 (23) support, and I guess, you know, I've also – I've met Natives
 (24) that I really like, and I've run across, you could say, Natives
 (25) that would be – that are ready to take advantage of the

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- (1) situation, which I understand because I tend to be that way
 (2) myself. You see an opportunity, you tend to take it until I
 (3) stop and think about it, Hey, this isn't right. But I've seen
 (4) that in the Natives, too.
 (5) Q You've seen it in all people?
 (6) A Yeah.
 (7) Q Would you hold – require more of a Native corporation
 (8) trying to move its case or an organization that was Caucasian
 (9) or some other group?
 (10) A No.
 (11) Q You could be fair across the board?
 (12) A No – yes, but I guess my own human tendency would tend to
 (13) be partial to Natives initially, because I'm sympathetic with
 (14) the problems in the changing culture, but I realize that that's
 (15) a struggle, that they have to live and if they don't, then –
 (16) if they don't face up to that struggle then it's going to be a
 (17) downhill path for them.
 (18) Q Do you have any prejudices or biases pro or against oil
 (19) companies or Exxon?
 (20) A No, not other than what I already said, was that I realized
 (21) that I –
 (22) Q This business about when they built the Pipeline that there
 (23) were some risks involved?
 (24) A Yeah, and that I guess as far as responsibility for the oil
 (25) industry, in general, instead of applying that to a company, or

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- (1) a set of companies, I apply that responsibility to the
 (2) consumers. Here we are, we want oil, so there is somebody
 (3) providing that for us.
 (4) MR. STOLL: Thank you very much, sir.
 (5) VOIR DIRE EXAMINATION OF HAROLD H. PARKER
 (6) BY MR. DIAMOND:
 (7) Q Good afternoon, Mr. Parker.
 (8) A Good afternoon.
 (9) Q I guess it's just barely afternoon. My name is Chuck
 (10) Diamond. I'm one of the lawyers representing Exxon in this
 (11) case. I noticed you speak some Russian, you've had some
 (12) Russian training?
 (13) A Was that in there? Yeah, I've had a couple years.
 (14) Q And you have a daughter who lives in Russia?
 (15) A Uh-huh.
 (16) Q Do you travel to Russia at all?
 (17) A I've been there on two visits.
 (18) Q Recently?
 (19) A '85 and – I mean '88 and '90, I guess it was.
 (20) Q Did it change much between '88 and '90?
 (21) A Well, actually my '88 visit was to western Russia, Moscow
 (22) and that area. And my '90 visit was eastern, Traberos (ph), so
 (23) very different. But the interchanges weren't that much,
 (24) nothing of significance.
 (25) Q I noticed you studied math and physics for a while.

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- (1) A Uh-huh.
- (2) Q You view yourself as having a scientific background?
- (3) A Yeah.
- (4) Q You still dabble in it, did you read Scientific American, or follow science reporting in the paper?
- (5) A I do when I have a little free time of that sort, which isn't much. In other words, when I catch an article in Scientific American, which I don't subscribe to, but if I see one, it will catch my interest pretty easily.
- (6) Q We're going to have lots of scientific evidence in this case.
- (7) A Uh-huh.
- (8) Q Part of the scientific evidence will be in the area of geomorphology, the persistence of oil.
- (9) A Yeah.
- (10) Q The evidence will be, as Mr. Stoll points out, 11 million gallons of oil was spilled, what's happened to it.
- (11) A Yeah.
- (12) Q Do you have any views or opinions, based on what you've read, what you've heard, what you think about, about whether it's likely that there are substantial amounts of oil still out there?
- (13) A That's one of those things that I've heard a little bits and pieces on each side, that it's just about basically all gone, or that there is still some great gobs of it out there.

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- (1) So personally, no, I haven't been in the Prince William Sound since then.
- (2) Q Do you think you would have an open mind listening to the testimony on that subject?
- (3) A Yeah.
- (4) Q Another area where the scientists interests may differ on this case concerns the environment, the ecological effects of the oil that was deposited on some of these shorelines. Do you have any views about how long the ecological effects are going to continue, if they are still?
- (5) A Really vague, I guess, as far as time frame, but I don't really have any idea. It - there does seem to be a lot of - some conflicting views as to how long it actually takes for it to totally dissipate, break down, so I don't know what the latest scientific theories or knowledge of that has been. They just have kind of a vague idea that it might be ten to 20 years, you know.
- (6) Q Do you know where that comes from?
- (7) A No.
- (8) Q Would you be skeptical of a scientist who came to court and testified that the duration of environmental effects was substantially less than that?
- (9) A At the outset, I guess I would be - if he was saying that - if he was talking about two or three years and talking about total effects all around, initially I would be skeptical.

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- (1) Q Why do you say initially?
- (2) A I guess just because of my basic - my concept that we're looking at ten or 20 years, where that came from.
- (3) Q Do you feel reasonably strongly about that? Is that something you would say you are somewhat wedded to, the notion
- (4) to take that long?
- (5) A Well, I guess, on a scale of one to ten, maybe around a three or something towards -
- (6) Q I don't know which the one is and what the ten is.
- (7) A One being ready to believe that that scientist, and ten being totally unwilling to believe it.
- (8) Q Does that mean you would not be very prepared to believe him or you would be very prepared to believe him?
- (9) A Well, I'd be prepared to believe him, but I'd be skeptical enough to want to hear quite a bit about it, you know, evidence wise.
- (10) Q Well, as between two experts, one who voiced an opinion which agreed with yours, ten to 20 years, and one who said no, the effects of oil are much more short-lived than that. If you were choosing between the two, do you think you would tend to gravitate towards the one who said ten to 20 years?
- (11) A Barring any evidence, you mean, just as a matter of opinion on each side?
- (12) Q Maybe they both expressed their opinion and told you why and told you what they based it on.

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- (1) A And if like their evidence was equally convincing on each side, I guess I would - out of conservativeness, I would lean towards the ten to 20 because - to be safe kind of deal, that would be my approach, that would be my belief if evidence was equal.
- (2) Q One of the responsibilities of jurors, particularly jurors with specialized knowledge they may have acquired, is to leave that outside the courtroom, and to try to listen to the evidence on its face and make judgments based upon just what you hear in the courtroom. With respect to issues like those we've been discussing, persistence, effects of oil, do you have some doubts whether you could do that?
- (3) A Well, okay, I guess you're asking about whether - about weighing evidence as opposed to holding on to an opinion, right?
- (4) Q Uh-huh.
- (5) A I guess I don't feel like I'd have a problem with it.
- (6) Q You think you could leave your own views - put your own views to one side and weigh the evidence as you hear it?
- (7) A Uh-huh.
- (8) Q You're building a cabin in the mountains?
- (9) A Yeah.
- (10) Q In the Talkeetna area?
- (11) A Uh-huh.
- (12) Q How come you chose to build up there?

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- (1) A Well, that was where land was available several years ago
 (2) and we -- when we decided to stake some. You know, you put
 in
 (3) the lottery.
 (4) Q Oh, is that how it works?
 (5) A And we got chosen. That was like 12, 13 years ago, and we
 (6) just decided we should start doing something with it for a
 (7) getaway, a place where me and my wife can spend a couple
 weeks
 (8) at a time.
 (9) Q How frequently do you go up there now?
 (10) A At this point, in order to do our work up there, probably
 (11) be -- well, I guess I should just -- we spent five weeks back
 (12) in February, March to cut trees, we spent a week this summer to
 (13) get trees up off the ground. I'll spend two more weeks this
 (14) fall to put in footers, and tentatively the idea is go back
 (15) next spring to start putting the logs together, so that's
 (16) our -- and that would be for a month or two in the summer.
 (17) Q Are you and your wife doing most of the manual labor?
 (18) A My son.
 (19) THE COURT: You're at about the end of your time,
 (20) counsel.
 (21) MR. DIAMOND: Thank you.
 (22) THE COURT: Mr. Parker, you've been passed for cause.
 (23) That means that you're still on the jury panel, and you may
 (24) very well be a juror in this case. But it's a time consuming
 (25) process, as you can see, and we still have other jurors to talk

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- (1) to.
 (2) So what I'm going to do now is let you go with the
 (3) admonishing that you shouldn't talk to anybody about this case,
 (4) including the jurors that were waiting to be selected. I want
 (5) them to come in here fresh, and we will let you know from now
 (6) on what's next, so we'll contact you, you don't have to call in
 (7) periodically. Of course, if you had any problems you want to
 (8) share with us or you want to ask any questions, you're always
 (9) free to call me. So we'll bring you back when it's time or
 (10) give you further information.
 (11) So it's up in the air. We don't know who the final jury
 (12) is, you're a potential member, so you have to keep yourself
 (13) from information about this case, just like I told the other
 (14) jurors, and not share information about this case with anybody,
 (15) including your fellow jurors, okay?
 (16) A All right.
 (17) THE COURT: I'll see you later.
 (18) A Did you want me to take this?
 (19) THE CLERK: No, just leave it right there.
 (20) (Harold H. Parker leaves the room.)
 (21) MR. STOLL: Halfway there, Judge. I mean today, six
 (22) to go if we got three.
 (23) THE COURT: I thought you were showing me your sense
 (24) of humor there.
 (25) MR. STOLL: I was, I was trying. It was a little

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- (1) warped.
 (2) THE COURT: Frayed.
 (3) (Ogden C. Banks enters the room.)
 (4) THE COURT: Sir, would you give your full name for the
 (5) record?
 (6) A Ogden Clayton Banks.
 (7) THE COURT: Mr. Banks, we're going to be asking you
 (8) some brief supplemental questions which supplement your
 juror
 (9) questionnaire. All of those, including the written ones were
 (10) under oath, you understand that?
 (11) A Yes.
 (12) THE COURT: Mr. Stoll will go first, Mr. Diamond will
 (13) follow.
 (14) VOIR DIRE EXAMINATION OF OGDEN C. BANKS
 (15) BY MR. STOLL:
 (16) Q My name is Bob Stoll, and I represent the municipalities of
 (17) Kodjak and Cordova that are brought in this action, and
 (18) Mr. Fortier here represents the Native corporations that are
 (19) also plaintiffs, and Mr. Diamond over here is one of the
 (20) lawyers for Exxon.
 (21) Now I just have a few questions to follow up on your
 (22) questionnaire here. Have you ever served on a jury before?
 (23) A No, sir.
 (24) Q You know that a jury is supposed to be fair and impartial.
 (25) Do you think you can do that in this case?

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- (1) A Yes, I can.
 (2) Q And in one of the questions on page 15, if you want to look
 (3) at that, there is a question 68. And there was a question
 (4) about -- first of all, you said you didn't have any opinion on
 (5) the size of the damage awards, and then you were asked
 whether
 (6) you'd read or seen or heard anything on the subject, and you
 (7) said yes, and then you said on the radio, the amount of money
 (8) the plaintiffs are seeking. Are you talking about plaintiffs
 (9) in cases related to the Exxon Valdez oil spill?
 (10) A Yes, I am.
 (11) Q And could you tell us, please, a little bit about what
 (12) you've heard?
 (13) A Vaguely, because I didn't really keep that much onto what
 (14) was going on, but more or less that after the oil spill the
 (15) people felt, that were out of jobs, they needed a way to have
 (16) income, and a lot of people were -- basically didn't have no
 (17) way supporting themselves once that happened.
 (18) Q In this case, this action is brought by the municipalities
 (19) and the Native corporations. That's all that we're concerned
 (20) with in this case. It's not a case by fishermen as such, you
 (21) understand that?
 (22) A Vaguely.
 (23) Q Now you do maybe?
 (24) A Yeah.
 (25) Q Have you formulated any opinions as to -- that create any

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- (1) biases in your own mind as a result of hearing anything on the
 (2) radio or somewhere else about these lawsuits?
 (3) A Sort of, kind of.
 (4) Q What's that?
 (5) A Even though it was an accident, and you have people that
 (6) are out of jobs and no way of supporting themselves, and to me
 (7) the way I formulated it in my mind, there should be a way that
 (8) it could be resolved without "X" amount of dollars being given
 (9) out to support them. I feel it should be a compromise. They
 (10) should be able to give them jobs so they can start supporting
 (11) themselves, and seeing that they have a way of supporting
 (12) themselves because of the accident.
 (13) Q But jobs are not an issue in this case though, the case
 (14) that we're going to be trying here in this courtroom this
 (15) month. So can you just evaluate, do you think - do you start
 (16) off with a point of view that the plaintiffs in this case
 (17) shouldn't be able - shouldn't be bringing this lawsuit?
 (18) A I think I'd have to look at the facts a little bit more
 (19) before I can make a decision on that.
 (20) Q So you're just going to evaluate what you hear in this
 (21) courtroom?
 (22) A True enough, yes.
 (23) Q Is it that you think that the people that lost their jobs
 (24) shouldn't be able to bring a lawsuit, or you think they should
 (25) be able to bring a lawsuit if they were damaged?

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- (1) A I think they should have if they were damaged.
 (2) Q You're just going to require them to prove that they were
 (3) damaged?
 (4) A Correct.
 (5) Q And you watched the HBO movie I saw some time ago?
 (6) A As I stated, I watched it, but it wasn't that I sat and
 (7) watched, I flicked through - channel surfing. Once it got
 (8) boring, I flicked it off, so -
 (9) Q Now you made the comment that Exxon is at fault, and you
 (10) understand that's not an issue in this case, that's already
 (11) been determined. The only issue is the amount of damage
 (12) caused by the oil spill, is that okay?
 (13) A Yes.
 (14) Q And you like Alaska?
 (15) A Yes, I do.
 (16) Q What do you like about Alaska?
 (17) A Well, actually I like the scenery, the extended daylight
 (18) hours actually, and the environment is not - it's kind of
 (19) close - it's different from the Lower 48, but it's kind of
 (20) quiet and laid back.
 (21) Q You like that?
 (22) A Yes, I do.
 (23) Q And how do you like - if you like the long daylight in the
 (24) summer, how do you like the winters?
 (25) A I like the winters a lot, too.

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- (1) Q And you've moved up here with the military?
 (2) A Yes, I did.
 (3) Q That was what, about six years ago, I guess?
 (4) A Yes.
 (5) Q Does your wife like Alaska also?
 (6) A Yes, she does.
 (7) Q What does she like about Alaska?
 (8) A Distance between her and her family.
 (9) Q Do you go hiking?
 (10) A No.
 (11) Q Do you get in the out of doors at all?
 (12) A Yes, I like to go halibut fishing, yes.
 (13) Q Where did you go halibut fishing?
 (14) A Homer and Seward sometimes.
 (15) Q Have you - when you go out of Seward, is there any
 (16) particular area that you go to in Prince William Sound?
 (17) A Normally whatever the captain of the boat directs us.
 (18) Normally I'm asleep when we get on the boat, so whenever I
 (19) wake
 (19) up we've dropped Anchor.
 (20) Q Do you go camping at all?
 (21) A No.
 (22) MR. STOLL: Thank you very much.
 (23) VOIR DIRE EXAMINATION OF OGDEN C. BANKS
 (24) BY MR. DIAMOND:
 (25) Q Good afternoon, Mr. Banks.

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- (1) A How are you doing?
 (2) Q I'm hungry, I'm counting on my son to fix that. He's out
 (3) at Seward fishing.
 (4) A I hope he has some luck.
 (5) Q I hope he stays dry.
 (6) You sound like a person who likes compromise?
 (7) A Basically I do.
 (8) Q Why is that?
 (9) A Basically how I was trained, if you can't get it your way
 (10) you're going to have to meet because everybody can't always
 (11) have their way.
 (12) Q Maybe you can help us here. You've taken some business
 (13) courses?
 (14) A Yes.
 (15) Q What's your interest?
 (16) A Started off being CPA and got bored with crunching
 (17) numbers,
 (17) more or less in the management field.
 (18) Q Have you taken accounting courses?
 (19) A Yes, I have in the past, and I've taken one since I've been
 (20) up in Alaska.
 (21) Q What sort of accounting?
 (22) A Freshman accounting. Accounting one and two, yeah,
 (23) accounting one and two, but there has been a lot of years in
 (24) between those.
 (25) Q Do you like numbers?

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- (1) A Sometimes, sometimes.
 (2) Q What -
 (3) A Story problems I hate. When it comes to story problems and
 (4) figuring them out, I get kind of frustrated.
 (5) Q If you serve on this jury, you'll hear lots of numbers,
 (6) can't spare you there.
 (7) A That's true.
 (8) Q You said - in your questionnaire you watched a good deal
 (9) of coverage about the spill in '89, mostly on television?
 (10) A Yes, but mostly on CNN news. Like I say, channel surfing
 (11) is what I - CNN would be the only TV station that would give
 (12) you the quick analysis of what was going on and press on to the
 (13) other news.
 (14) Q You get tired of listening to the local coverage of it?
 (15) A Yes, I did.
 (16) Q Why was that?
 (17) A Point of figuring out who was to blame, and they wouldn't
 (18) more or less let it rest. Once they found out what happened
 (19) and who to blame and was pointing the finger at, then it just
 (20) seemed that stuff kept surfacing up, not what the pertinent
 (21) information was, and I just got tired of it.
 (22) Q Did you recall reaching any conclusions or drawing any -
 (23) having any feelings at the time it all happened about how long
 (24) the environmental effects were going to last of the spill?
 (25) A I feel pretty sad about it. It was something that should

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- (1) have never happened, and you feel bad once you look at the TV
 (2) and see how it affected the wildlife and how damaged they
 were,
 (3) basically just that.
 (4) Q I noticed in the questionnaire where you were asked to say
 (5) whether you viewed people as favorable, unfavorable,
 extremely
 (6) favorable, extremely unfavorable, you checked somewhat
 (7) unfavorable for Exxon the same way you had for all these other
 (8) groups.
 (9) Are you one of these people who don't bear Exxon the grudge
 (10) for this?
 (11) A The way I look at it, freak of nature, regardless, it was
 (12) something that was going to happen. If the captain was on the
 (13) ship, but he wasn't at his post at the time, but the person who
 (14) was second in charge, he ran it in the ground, and pointing the
 (15) finger, he was at fault. He should have been here. That's
 (16) beside the point. It shouldn't have happened, if it wasn't
 (17) him, there was another accident after that that happened
 (18) overseas in Europe.
 (19) They shouldn't have happened, but they did, it doesn't make
 (20) a difference who was at fault, if it's going to happen it's
 (21) going to happen.
 (22) Q You're one of those people who think sooner or later one of
 (23) those accidents is going to happen to somebody?
 (24) A Yes, they are.
 (25) Q You told Mr. Stoll that you flipped through the HBO

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- (1) special, you didn't watch it from beginning to end. I'm
 (2) curious, why did you turn it on in the first place?
 (3) A Just to see what - basically to see they would portray it
 (4) as a perceptual facts or the things that happened, and once it
 (5) started getting dry, I mean it just lost my interest real
 (6) quick.
 (7) Q What was your sense of the fairness of the portrayal, did
 (8) you think it was evenly balanced or skewed in favor of Exxon,
 (9) skewed -
 (10) A It's kind of hard for me to say, because I didn't watch it
 (11) on the - to me, if I can't sit through a whole movie, I can't
 (12) make an opinion, obviously I lost interest. So to me it wasn't
 (13) that good.
 (14) Q And you said you didn't really follow the litigation that's
 (15) been going on?
 (16) A When I picked up the paper, "oh, that's what happened",
 (17) pressed on.
 (18) Q Moved on to bigger and better things?
 (19) A Moved on to bigger and better, but I have other things in
 (20) my life to worry about besides that.
 (21) Q Have you talked to anybody about the effects of the spill
 (22) on the fishing industry, fishermen?
 (23) A No, I haven't.
 (24) Q You said you go out from Homer and you go out from
 Seward,
 (25) do you ever talk to the folks that work those boats?

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- (1) A No, I haven't.
 (2) Q Do you have any impressions as to what effects, if any, the
 (3) spill had on the fishing industry?
 (4) A My opinions, you mean?
 (5) Q Yeah.
 (6) A As in - I figure, like I was telling the gentleman prior
 (7) to you, if they were making their living by doing that and the
 (8) effects would have stopped that from happening. I think there
 (9) is a way - there should have been somehow, some way to me.
 (10) Giving them a quick lump of money is not going to put them
 back
 (11) on their feet. They need jobs to support themselves and feel
 (12) worthwhile than throwing some money and having them living
 off
 (13) of that. That's not going to solve the problem. Did that
 (14) answer your question?
 (15) Q Yeah. Have you decided in your own mind that the down -
 (16) the fishing industry, the fishermen may be experiencing low
 (17) catches that they are complaining about which is the fault of
 (18) the spill as opposed to something else?
 (19) A Kind of hard to say. Not too sure.
 (20) Q You don't have an opinion one way or the other?
 (21) A No, no opinion. I'll have to do more research on that to
 (22) answer that question.
 (23) MR. DIAMOND: Nice talking to you.
 (24) THE COURT: Mr. Banks, you've been passed for cause,
 (25) that simply means you're still on the jury panel, but we still

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- (1) have some jurors to go before we find out what the final count
 (2) will be. So what I'm going to do, I'll excuse you now, but
 (3) since you're on the jury panel, you have to act as if you might
 (4) be deciding this case, and that means don't talk to anybody
 (5) about the case, including your fellow jury panel members, and
 (6) don't form or express any opinion on it until
 (7) you - if you're on the jury - and submitted to you for
 (8) deliberation. We will contact you now, you don't have to call
 (9) us, unless you have some questions, then you're free to call my
 (10) secretary. The selection process should be done within today
 (11) and tomorrow. We'll probably have a jury by then, so we'll let
 (12) you know.
 (13) A Thank you, sir.
 (14) THE COURT: Thank you very much.
 (15) (Christopher Joseph enters the room.)
 (16) THE COURT: Sir, could you give your name for the
 (17) record, please?
 (18) A Christopher Joseph.
 (19) THE COURT: Mr. Joseph, we're going to be asking you
 (20) some supplemental questions similar to the questionnaire you
 (21) filled out. You hadn't signed it, but now you have signed it?
 (22) A Yes.
 (23) THE COURT: And I'd like you to understand, all of
 (24) those questions, including the written questions, are given
 (25) under oath. Remember when I gave you the oath on the first
 day

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- (1) of the jury selection?
 (2) A (Indicating)
 (3) VOIR DIRE EXAMINATION OF CHRISTOPHER JOSEPH
 (4) BY MR. FORTIER:
 (5) Q Mr. Joseph, my name is Sam Fortier. I represent the Native
 (6) corporations in this case. And this is Mr. Stoll and he
 (7) represents the municipalities in this case. I'll be asking you
 (8) a few questions, okay?
 (9) A Okay.
 (10) Q Mr. Joseph, I note that you're from Alakanuk?
 (11) A Originally. I've been living here in Anchorage for about
 (12) five years now.
 (13) Q Do you have family over in Hooper Bay, too?
 (14) A No.
 (15) Q A different Joseph family over there?
 (16) A Yeah, I guess.
 (17) Q Now you've been employed by Ocean Trawl, too?
 (18) A Yes.
 (19) Q That's going out in the high seas and fishing with Ocean
 (20) Trawl?
 (21) A Yeah.
 (22) Q Do you like that kind of work?
 (23) A Not really, but it's just work, you know.
 (24) Q Lots of long hours though, hu?
 (25) A Oh, yeah.

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- (1) Q Now, Mr. Joseph, have you ever sat on a jury before?
 (2) A No, I haven't.
 (3) Q Have you ever watched TV shows about lawyers?
 (4) A Occasionally.
 (5) Q Do you know - are you familiar, you know, watching those
 (6) shows with the idea that one side presents evidence and then
 (7) it's the other side's turn to present evidence?
 (8) A Yeah, a little.
 (9) Q And from those shows, have you seen that the judge instruct
 (10) the jury on what the law is?
 (11) A Pardon me?
 (12) Q Let me go about it this way.
 (13) When you came in here, you don't have any preconceived -
 (14) you don't have any ideas just walking in here about what the
 (15) law would be to apply to this case, do you?
 (16) A No.
 (17) Q So for your ideas about where the law would come from, you
 (18) would look to Judge Shortell to instruct you, wouldn't you?
 (19) A No, I don't think so.
 (20) Q If Judge Shortell told you what the law was - Judge
 (21) Shortell will read you what you are called jury instructions,
 (22) and will tell you what are called jury instructions, what the
 (23) law is, and you would follow his instructions, wouldn't you?
 (24) A Uh-huh.
 (25) Q Now Mr. Joseph, did you know that the things that you may

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- (1) have read about the case aren't evidence?
 (2) A Well, I never really considered it like that.
 (3) Q You never looked at it one way or the another?
 (4) A No, not really.
 (5) Q Do you understand that the only evidence about the case
 (6) that a jury gets to consider is the evidence that's presented
 (7) in court, right?
 (8) A Uh-huh.
 (9) Q So lots of times people come in to these sort of settings
 (10) like, you know, get interviewed for being on a jury, and they
 (11) may have opinions before they come into the courtroom. It's
 (12) human nature to have opinions on things. But both sides, both
 (13) the clients I represent, the Native corporations, and Mr.
 (14) Stoll's clients, the municipalities, and Mr. Diamond's clients,
 (15) Exxon, just want the jurors to listen to the evidence and be
 (16) fair to all sides. Now you could do that, couldn't you?
 (17) A Yeah.
 (18) Q So just as an example, Mr. Joseph, one of the questions
 (19) that we asked you was whether or not you thought that Exxon had
 had
 (20) paid enough money as a result of the Exxon Valdez oil spill,
 (21) and you indicated that maybe it hadn't paid enough, that it was
 (22) your opinion that they needed more money from Exxon, the
 Native
 (23) corporations and the municipalities, needed more money from
 (24) Exxon. Now that's just your opinion, wasn't it?
 (25) A Well, from what I've heard, you know, they say they weren't

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- (1) paying nothing and stuff like that.
 (2) Q Now let me explain to you in this case the Native
 (3) corporations will be putting on evidence about damages to their
 (4) land, okay, caused by the oil spill, and so will the
 (5) municipalities, okay, and then Exxon will be putting on
 (6) evidence that maybe the oil is all gone, as a for instance they
 (7) could put on evidence, too, that there are not the sort of
 (8) damages that the Native corporations and the municipalities say
 (9) there are.
 (10) Now you would – you could listen to Exxon's evidence,
 (11) couldn't you, before arriving at a decision?
 (12) A Yeah, I guess so.
 (13) Q You could be fair to Exxon before arriving at a decision,
 (14) couldn't you?
 (15) A Well, that would be hard to say right now.
 (16) Q But you could put aside whatever opinions you may have had
 (17) if you were to sit on a jury, put aside all your opinions and
 (18) listen to the evidence, couldn't you?
 (19) A Uh-huh.
 (20) Q And be fair to all sides when you're listening to the
 (21) evidence?
 (22) A Yeah.
 (23) Q And then follow the instructions of Judge Shortell for the
 (24) jury, right, for the jury instructions?
 (25) A Yeah.

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- (1) Q See, that's what we're looking for for jurors, is people
 (2) that can be fair and reasonable, for people that will listen
 (3) fairly to both sides, and make a decision based upon all the
 (4) evidence when it comes in, okay? And you don't have any
 (5) problems with that, do you, Mr. Joseph?
 (6) A No, no, no.
 (7) Q Now, another thing you indicated in your questionnaire was
 (8) that it was your opinion that the oil will be on the beaches
 (9) affected for five more years, but Mr. Joseph, that's an
 (10) opinion, too, isn't it, that you could put aside when you come
 (11) in and listen to the testimony of both the plaintiffs and the
 (12) defendants?
 (13) A Oh, I don't know, I just wrote that.
 (14) Q It's not something that you really feel strongly about, is
 (15) it?
 (16) A Well, it all depends on – well, like how it affects
 (17) wildlife and stuff like that.
 (18) Q Sure, and it would depend on the evidence that comes in at
 (19) trial as to what sort of a decision you make, wouldn't it?
 (20) A Yeah.
 (21) Q So, you know, just as a for instance, let me give you a for
 (22) instance, Mr. Joseph. If the plaintiffs were to present
 (23) evidence that, you know, there was damage on account of the
 (24) coming in contact with the lands, and there was damage on
 (25) account of wildlife being injured or killed on account of the

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- (1) oil spill that affected land values, okay, and then you had the
 (2) Exxon people come in and they gave testimony, that, well, it's
 (3) not this bad, and they showed you why they thought it wasn't so
 (4) bad, you would be able to – you would be able to listen to the
 (5) Exxon evidence, too, wouldn't you?
 (6) A Yeah.
 (7) Q And you could treat it as fairly as you treat the Native
 (8) corporation testimony, wouldn't you, and the municipality
 (9) testimony?
 (10) A I suppose so.
 (11) Q And if Judge Shortell told you in his instructions that
 (12) that's what you would be expected to do, you'd be able to do
 (13) it, wouldn't you?
 (14) A Yeah.
 (15) THE COURT: You're about at the end of your time.
 (16) counsel.
 (17) MR. FORTIER: Your Honor, could I ask just a couple
 (18) more questions? Thank you.
 (19) BY MR. FORTIER:
 (20) Q Mr. Joseph, let me ask you another few questions.
 (21) In your questionnaire, too, you indicated that in your
 (22) opinion that the size of some damage awards might be too
 (23) small.
 (24) but again, is that just an opinion?
 (25) A Could you repeat that again?
 (26) Q In your questionnaire you indicate that it's your opinion

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- (1) that damage awards by juries are sometimes – you indicate that
 (2) they are too small?
 (3) A Uh-huh.
 (4) Q What did you mean by that?
 (5) A Well, like – just like I said earlier, reading the papers
 (6) and the TV, watching the television, everybody says that they
 (7) haven't been awarded enough.
 (8) Q But do you understand in this case it's the first time
 (9) that – do you understand that that's something for the jury to
 (10) do? Let me ask it this way.
 (11) You don't have any ideas, do you, about how much to award
 (12) or not award the Native corporations and the municipalities, do
 (13) you?
 (14) A No, I don't.
 (15) Q So you'd just make whatever decision – you would form your
 (16) decisions after listening to all the evidence, wouldn't you?
 (17) A Yeah.
 (18) Q And be fair to both sides?
 (19) A Uh-huh.
 (20) Q And follow the instructions of Judge Shortell?
 (21) A Yeah.
 (22) Q Mr. Joseph, I thank you very much. Pass for cause.
 (23) VOIR DIRE EXAMINATION OF CHRISTOPHER JOSEPH
 (24) BY MR. DIAMOND:
 (25) Q Good afternoon, Mr. Joseph. My name is Chuck Diamond.
 I'm

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- (1) one of the lawyers representing Exxon. How are you, sir?
 (2) A All right.
 (3) Q I see you've worked for the last three years on various
 (4) fish processing companies?
 (5) A Uh-huh.
 (6) Q How long have you done that, how many years in a row?
 (7) A Well, I've done that for - my first job was about 12 years
 (8) ago in fish processing in - I was a deckhand on a tender boat.
 (9) Q Whereabouts?
 (10) A This was in the Yukon River, further north, not around the
 (11) Valdez area.
 (12) Q Have you fished out of the Valdez area?
 (13) A No, I haven't.
 (14) Q Have you done any work for any fish processing company or
 (15) any fishermen in the Prince William Sound area?
 (16) A Yeah, at Cordova.
 (17) Q When did you work in Cordova?
 (18) A This was a couple years ago.
 (19) Q Around the time of the oil spill?
 (20) A That was a little bit before, I think.
 (21) Q Around 1990, 1991?
 (22) A Uh-huh.
 (23) Q Who did you work for?
 (24) A St. Elias Seafoods.
 (25) Q I'm sorry, I didn't hear the name.

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- (1) A St. Elias Ocean Products.
 (2) Q What kind of work were you doing?
 (3) A They were just processing herring fish.
 (4) Q How many years did you work for St. Elias?
 (5) A That was my - that was just only temporary work, you know,
 (6) just for one season.
 (7) Q Did you work anywhere else that year?
 (8) A Yeah, I worked for Royal Prince Fisheries, again, out on
 (9) the open ocean in the North Pacific.
 (10) Q How about in around 1991, where did you work?
 (11) A In '91 mostly at Kodiak, Kodiak Island.
 (12) Q Who did you work for in Kodiak?
 (13) A Alaska Onshore Fisheries, and just that company.
 (14) Q Doing what?
 (15) A Mostly salmon, but also some other raw fish and bottom
 (16) fish.
 (17) Q For how much of 1991 did you work there?
 (18) A About three months.
 (19) Q Work for anybody else in 1991?
 (20) A No.
 (21) Q I think you told us in 1992 you worked for Ocean Trawl?
 (22) A Uh-huh.
 (23) Q And Supreme Alaska Seafoods in 1993?
 (24) A Yeah, that's on the open ocean, Bering Sea, North Pacific.
 (25) Also down around Seattle area, too, Washington.

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- (1) Q Have you worked - did you work in the Cordova area at any
 (2) other time other than the three months that you worked for St.
 (3) Elias?
 (4) A No.
 (5) Q Have you worked in the Kodiak area other than the work you
 (6) did for - in 1991?
 (7) A No.
 (8) Q Has anybody told you whether you're entitled to make any
 (9) claims against Exxon as somebody who worked in the fish
 (10) processing industry in 1990, 1991?
 (11) A No.
 (12) Q Have you ever talked to anybody about that?
 (13) A A few people.
 (14) Q Who have you talked to?
 (15) A Just some friends.
 (16) Q What do you understand?
 (17) A Well, one of them was a couple allowed some money from
 (18) the
 (19) oil spill, you know, as a result of the oil spill, that's about
 (20) it.
 (21) Q Was he somebody who worked with you?
 (22) A Yeah.
 (23) Q Did you understand he got some money because he was
 (24) working
 (25) in the industry at the same time you were?
 (26) A Yeah.
 (27) Q Were you working together?

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- (1) A Yes, for a while.
 (2) Q Where were you working with him?
 (3) A Kodiak.
 (4) Q That was for - did you say Royal Prince in Kodiak?
 (5) A Well, I was working on - this happened from some people
 (6) that I was working on shore, and then after I went out to sea
 (7) for a while and came back, that's - I found out that they had
 (8) been awarded that money.
 (9) Q For working on shore?
 (10) A Uh-huh.
 (11) Q Who did you work for when you were working on shore?
 (12) A This was king crab. That's part of St. Elias Seafoods.
 (13) Q When you say you were working on shore, was this on shore
 (14) at Kodiak?
 (15) A Uh-huh.
 (16) Q I didn't ask you, who you were working for in '89.
 (17) A '89, king crabbing.
 (18) Q Where about?
 (19) A In Kodiak Island.
 (20) Q As a fish processor?
 (21) A Uh-huh.
 (22) Q Salmon again?
 (23) A Just about everything, crab.
 (24) Q Was that the year of the closure of the salmon fishery?
 (25) A I don't know. I wasn't watching the salmon fisheries all

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- (1) too well.
 (2) Q What was the name of your friend who did, or friends who
 (3) did get some money from Exxon?
 (4) A Francisco Martinez and William Jansen.
 (5) Q What was the first name?
 (6) A William.
 (7) Q And you said you didn't find out about it until you came
 (8) back from some offshore fishing?
 (9) A Uh-huh.
 (10) Q Did you talk to anybody about whether you were entitled?
 (11) A No.
 (12) Q How come?
 (13) A Well, that was after I had moved to another company, and
 (14) they were still in the same company that I had worked for
 (15) before.
 (16) Q Did somebody tell you you weren't entitled to compensation
 (17) because you had changed companies?
 (18) A Well, from what I understood, I wasn't entitled to any of
 (19) it.
 (20) Q Do you hold a fishing permit?
 (21) A Well, I used to have one, that was for the Yukon River.
 (22) Q You've never had a permit for fishing down here?
 (23) A No, just only for the Yukon river.
 (24) Q You also said, checked a box on your questionnaire on page
 (25) 5 that you were at some time employed by a Native corporation

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- (1) or a village corporation?
 (2) A Uh-huh.
 (3) Q Who have you worked for, what Native corporation?
 (4) A Alakanuk Native Corporation.
 (5) Q Doing what?
 (6) A Well, I was kind of working in the general store pumping
 (7) gas and things like that.
 (8) Q Mr. Fortier asked you about your answer to question 51,
 (9) look at it if you can, it's on page 12. You said in response
 (10) to this question: Do you think that Exxon has paid enough
 (11) money for the spill? You said, No. And then I think you told
 (12) us that you heard people talking about that, that Exxon hasn't
 (13) paid enough; is that right? People have talked to you about
 (14) that?
 (15) A No, that's just what I heard on - from watching TV.
 (16) Q But your view is that Exxon hasn't paid enough, too; do you
 (17) agree with that?
 (18) A Yeah, I think so.
 (19) Q Why do you have that opinion?
 (20) A Well, there has been - people have been saying that there
 (21) is hardly not enough fish in those affected areas where the oil
 (22) spill was.
 (23) Q Do you think that's right?
 (24) A I don't know, I don't fish - I don't go in those areas, so
 (25) I haven't been in those areas.

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- (1) Q But you said that you thought that Exxon hadn't paid
 (2) enough. Are there any facts or things that you have or things
 (3) that you feel are true that suggest to you that Exxon hasn't
 (4) paid enough?
 (5) A No.
 (6) Q Do you think Exxon should be paying more for what
 (7) happened?
 (8) A Well, from what I've been hearing, and reading on the
 (9) paper, you know, it seems like every Exxon article, oil spill
 (10) article is - kind of reflects on that.
 (11) Q You said when you were asked about your opinion of the
 (12) Native corporations and the municipalities suing Exxon, you
 (13) said that they need money from Exxon. Do you think sitting
 (14) here the Native corporations and municipalities ought to get
 (15) money from Exxon?
 (16) A Yeah.
 (17) Q This case is basically about damage to Native corporation
 (18) land, some land owned by some municipalities. Do you think
 (19) that's happened, that they are entitled to money for it?
 (20) A Yeah, I guess so.
 (21) Q Why do you think that?
 (22) A Because they don't, you know, there is not enough fish
 (23) after that oil spill for them to make a good a living from
 (24) fishing as they did before the oil spill.
 (25) Q Exxon's going to take the position in this case that at
 (26) least one of Mr. Fortier's clients, Eyak Native Corporation

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- (1) isn't entitled to have a dime. Do you have trouble with that?
 (2) A No.
 (3) Q You don't think that Eyak Corporation should get some
 (4) money
 (5) at this juncture, sitting here today?
 (6) A Well, if the decision has been made already, I guess not.
 (7) Q Well, no decision has been made, that's why you're
 (8) spending
 (9) this time with us, we're looking for people to make that
 (10) decision. And the reason that I'm asking you these questions
 (11) is that they are a Native corporation plaintiff in this case,
 (12) you are a shareholder in a Native corporation, you've worked
 (13) for a Native corporation. Do you think that is likely to
 (14) influence your judgment as to whether Exxon should pay the
 (15) plaintiff Native corporations' money or how much?
 (16) A Yes, I guess they would be entitled to some.
 (17) Q Do you think you feel that way because you're a member of a
 (18) Native corporation, a shareholder, and someone who has
 (19) worked
 (20) for a Native corporation?
 (21) A No, I don't feel that way just because I'm a member of a
 (22) Native corporation.
 (23) Q Why do you feel that way?
 (24) A Well, in all fairness, something should be awarded to
 (25) whoever is affected.
 (26) Q Do you think that the Native corporations along Prince
 (27) William Sound were affected?
 (28) A Yeah.

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- (1) Q Why do you say that?
- (2) A They have been saying that there is no more clams and stuff
- (3) like that on the beaches.
- (4) Q Exxon is going to take the position in this case and there
- (5) are going to be witnesses to say that some of these Native
- (6) corporations, Eyak in particular, hasn't been hurt at all. Do
- (7) you think that your feelings are going to prevent you from
- (8) listening to that kind of testimony the way you would other
- (9) kind of testimony, do you think you would be doubtful of that?
- (10) A No.
- (11) Q Do you think you would be able to accept that, that they
- (12) haven't been hurt?
- (13) A Yeah.
- (14) Q No problem with that?
- (15) A No, I don't think so.
- (16) Q What we're looking for are people who can be fair, and Mr.
- (17) Fortier asked you about whether you could be fair to Exxon and
- (18) I wrote down what you said. And what you said was, it's hard
- (19) to say whether I could be fair to Exxon. Why do you feel that
- (20) way?
- (21) MR. FORTIER: Objection, Your Honor, I think that
- (22) mischaracterizes.
- (23) THE COURT: I don't recall, counsel, you're going to
- (24) have to go to the transcript if you have a dispute because I
- (25) don't have the words.

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- (1) MR. DIAMOND: That's exactly what I wrote down, but
- (2) I'll ask the question again.
- (3) BY MR. DIAMOND:
- (4) Q In your own heart, do you have the sense that it might be
- (5) difficult for you to be totally fair to Exxon?
- (6) A Well, I guess that would be just like that, like what I
- (7) said.
- (8) Q Why do you feel that way?
- (9) A Because it seems Exxon has kind of a bad image. There is
- (10) still oil underneath the beaches. You can dig up some oil on
- (11) those places that were affected.
- (12) Q How do you know that, have you seen it?
- (13) A No, I haven't.
- (14) Q Did you talk to people who have seen it?
- (15) A No, I haven't.
- (16) Q Why do you think that?
- (17) A I've been reading that, in the newspaper, letters from
- (18) people and stuff like that.
- (19) Q Do you think you've made up your own mind as to that
- (20) question, whether there is still oil out on the beaches and
- (21) it's affected by the spill?
- (22) A Well, not on the surface I don't think so, but maybe
- (23) underneath.
- (24) Q That's what I was asking. Have you made up your mind that
- (25) that is the fact, the case that there is oil underneath the

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- (1) surface of some of the shoreline?
- (2) A Yes.
- (3) Q Do you think you might question if somebody came in to
- (4) court and told you differently, do you think you might doubt
- (5) that?
- (6) A No.
- (7) Q It wouldn't raise a question in your mind if somebody told
- (8) you something different than what you think?
- (9) A It would.
- (10) Q When did you have your salmon permit?
- (11) A From 1982 up through 1991.
- (12) MR. DIAMOND: Can I have just a moment, Your Honor.
- (13) BY MR. DIAMOND:
- (14) Q On question number 47, I think there Fortier pointed this
- (15) out, you said you had an extremely favorable view of seafood
- (16) processors, that's not surprising, fishermen, Native
- (17) corporations, tribal governments, Natives, but you had a
- (18) somewhat unfavorable opinion of Exxon, why is that?
- (19) A That all comes from, like what I said earlier, you know,
- (20) people who are interviewed on the TV and stuff like that, just
- (21) the news.
- (22) Q You think that might make you partial to a party in this
- (23) case who is conducted to a Native corporation against Exxon?
- (24) A Yeah, I guess it would.
- (25) MR. DIAMOND: Nothing further. I would like to be

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- (1) heard.
- (2) THE COURT: Sir, the big question is, is impartiality,
- (3) or whether you're on somebody's side. In this litigation are
- (4) you on somebody's side?
- (5) A Yes.
- (6) THE COURT: Whose side are you on?
- (7) A The corporations'.
- (8) THE COURT: The Native corporations?
- (9) A Yeah.
- (10) THE COURT: Do you think you could set aside that
- (11) partiality and decide this case like another juror who didn't
- (12) have that viewpoint?
- (13) A No, I don't think so.
- (14) THE COURT: I'm going to excuse you, sir, thanks a
- (15) lot. You're excused now, and this is the end of your jury
- (16) service, so you can go. Thanks very much.
- (17) MR. STOLL: We have a proposed stipulation.
- (18) THE COURT: Don't stop them, what is it?
- (19) MR. STOLL: Lunch.
- (20) THE COURT: I'm hungry, too, counsel, do you want to
- (21) go to lunch now.
- (22) MR. STOLL: Yeah, we would sort of like to have lunch
- (23) now, Your Honor, I'm having a concentration problem myself.
- (24) THE COURT: I noticed that.
- (25) MR. STOLL: Even a 30 minute or 20 minute.

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- (1) THE COURT: We'll come back at 2:00.
 (2) MR. DIAMOND: Are all the remaining prospective jurors
 (3) waiting around for us?
 (4) THE COURT: Yes, and there are one, two, three, four,
 (5) five of them.
 (6) MR. STOLL: Your Honor, we could take a shorter lunch
 (7) break.
 (8) MR. DIAMOND: You have five of them, I have four of
 (9) them.
 (10) THE COURT: I have five, five more.
 (11) MR. DIAMOND: Last one is 73.
 (12) THE COURT: Yes.
 (13) THE COURT: Well, if you're going to take a break, you
 (14) might as well take a break, digest your sandwich, it's not
 (15) going to make any difference if we come back at a quarter to
 (16) 2:00 or 2:00. Off the record.
 (17) (Lunch recess)
 (18) THE COURT: Are we ready?
 (19) MR. STOLL: We're ready.
 (20) MR. DIAMOND: We're getting a little dopey over here,
 (21) that's all.
 (22) MR. STOLL: Mr. Diamond didn't want to give the Court
 (23) the best question.
 (24) MR. DIAMOND: We thought you boiled voir dire down to
 (25) ultimate succinctness, "Which side are you on"?

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- (1) (Jane Haswell enters the room.)
 (2) THE COURT: Could you give your name for the record,
 (3) please?
 (4) A Jane Haswell.
 (5) THE COURT: Mrs. Haswell, you're under oath and you
 (6) were when you answered the jury questionnaire. This should
 (7) be
 (8) a relatively brief set of questions from both sides, and then
 (9) I'll let you know what happens next.
 (10) VOIR DIRE EXAMINATION OF JANE HASWELL
 (11) BY MR. STOLL:
 (12) Q Mrs. Haswell, I'm here representing municipalities and Mr.
 (13) Fortier is here on behalf of the Native corporations that are
 (14) in this case. And Mr. Diamond is here representing Exxon. I
 (15) just have a few questions for you.
 (16) In answer to your questionnaire, I see that you have read
 (17) quite a few articles and seen - you said you think you've seen
 (18) 250 TV shows?
 (19) A Yeah, that was a hard number to put down, but a lot, just
 (20) about every night and every day in the paper.
 (21) Q Are you sort of sick of it or do you find it interesting?
 (22) A I scan the headlines, so I know what it is, but I don't
 (23) follow it all the way through anymore.
 (24) Q Was there a period when you did follow it pretty carefully?
 (25) A Uh-huh.
 (26) Q When was that?

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- (1) A Well, just last couple weeks to find out what was going to
 (2) be the outcome of that last trial.
 (3) Q And what did you learn?
 (4) A That Hazelwood was found negligent and that Exxon was
 (5) accepting responsibility for his actions and the crew.
 (6) Q Did you formulate - did you hear anything about anybody
 (7) being charged with recklessness?
 (8) A Uh-huh.
 (9) Q What did you draw from that?
 (10) A That because of his history, that maybe he wasn't carefully
 (11) monitored enough. Apparently there was some knowledge
 (12) there
 (13) that that could be a problem and that it wasn't handled
 (14) responsibly.
 (15) Q Did you formulate any opinions as a result of that?
 (16) A Yeah, that he was guilty.
 (17) Q What did you think about Exxon?
 (18) A See, I think they kind of have an impossible job in that I
 (19) think they were wrong, but it's maybe not as bad as it all
 (20) seems.
 (21) Q And I notice that in one of your - in one of your other
 (22) answers you thought that the municipalities and Native
 (23) corporations were probably overdoing it, taking advantage.
 (24) That's fine, I mean -
 (25) A I just think a lot of people are on the bandwagon. Like
 (26) when you asked for that number, I would have no idea, it just

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- (1) seems like it's getting overdone.
 (2) Q Well, that's fair. I mean, we're trying to find out - the
 (3) reason it's taking the amount of time it's taken is that there
 (4) are a lot of people that have a lot of opinions, and what this
 (5) process is, we're trying to, you know, find people that can be
 (6) fair to, you know, all sides, and don't have, you know, strong
 (7) opinions that are going to influence their evaluation of the
 (8) evidence. And so when you have, you know, to be very candid
 (9) with you, when you have someone that has studied this issue as
 (10) much as you have for, you know, 250 shows or whatever the
 (11) number - I'm not holding you to that number, but obviously
 (12) you've been following this pretty regularly for quite some
 (13) period of time, and you've got some definite opinions, I think
 (14) that's - is that an accurate statement?
 (15) A Probably, sure.
 (16) Q And so - you know, one of these opinions apparently is
 (17) that, and there is nothing wrong with this, this is what you've
 (18) been reading all this stuff, it's just what your opinion
 (19) happens to be, that the Native corporations and the
 (20) municipalities in this case may be trying to take advantage of
 (21) a situation, that's sort of your outlook essentially?
 (22) A More or less, yes.
 (23) Q And with that in mind, do you think it would be, in terms
 (24) of trying to get, you know, somebody that could come here with
 (25) a clean slate and evaluate the evidence impartially, do you

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- (1) think that there would be other jurors that would be able to do
 (2) that better than you could?
 (3) MR. DIAMOND: Objection to the form of the question.
 (4) THE COURT: The question includes a better -
 (5) MR. STOLL: Let me rephrase it, Judge.
 (6) BY MR. STOLL:
 (7) Q I'm not trying to put you on the spot, and I can tell you
 (8) want to be a fair-minded person.
 (9) A I really do.
 (10) Q And that's shown in the answers you gave to the
 (11) questionnaire. You were very forthright and you could have
 (12) just written down, everything is fine, I'm, you know,
 (13) fair-minded and I'm not - I don't have any opinions on
 (14) anything, but you didn't do that, and other jurors did the same
 (15) thing.
 (16) You're number 69, there has been 68 people before you, so
 (17) it's not unusual to find that there are people that have
 (18) opinions, and most people have not read as much as you have
 (19) read, I think, safe to say, at least most haven't admitted
 (20) reading as much as you have, and so with your views about the
 (21) case and the Native corporations and municipalities may be
 (22) trying to take advantage of the situation, do you think that
 (23) that would color your evaluation of the evidence in this case?
 (24) I mean, you're coming to the courtroom with some ideas
 (25) already established, do you think there is a reasonable

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- (1) possibility that would influence you?
 (2) A I'm not understanding your question. Because I have
 (3) read - are you thinking that because of what I have read, am I
 (4) able to still be fair?
 (5) Q Essentially, I mean that's part of the question, but I'm
 (6) asking really not just because of what you have read, you've
 (7) got an opinion, which I can see is - you've expressed a
 (8) strongly held opinion, that these plaintiffs are asking for -
 (9) they are trying to take unfair advantage of a situation, and in
 (10) this case the plaintiffs are asking for over a hundred million
 (11) dollars in damages, which is a large sum of money. You agree
 (12) with that?
 (13) A Sure.
 (14) Q Now with that in mind, do you feel that when you come in to
 (15) court you sort of start off with the assumption that - strike,
 (16) forget that.
 (17) You've already said that you come into court with a view,
 (18) as I understand it, that the plaintiffs are asking - are
 (19) probably asking for more than they are entitled to.
 (20) MR. DIAMOND: Objection, Your Honor, that's not at all
 (21) what she said and that's not -
 (22) MR. STOLL: I'll rephrase the question.
 (23) MR. DIAMOND: If Mr. Stoll can simply ask her what she
 (24) thinks -
 (25) BY MR. STOLL:

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- (1) Q Do you think the plaintiffs are coming in to court here
 (2) asking for probably more than they are entitled to?
 (3) A I think I said they probably could be.
 (4) Q Do you think that view is going to affect your evaluation
 (5) of the plaintiffs' witnesses in terms of evaluating their
 (6) credibility, are you going to start off with sort of an extra
 (7) skepticism towards the plaintiffs that, for instance, you
 (8) wouldn't have towards Exxon's witnesses?
 (9) A I have no idea. I don't know what they are saying or
 (10) doing.
 (11) Q Do you think that you could fairly be completely objective
 (12) in evaluating the evidence in this case, putting aside
 (13) everything you know and judge the evidence?
 (14) A I would hope so.
 (15) Q I know you would hope so and I would hope you could also,
 (16) but in your heart of hearts, what do you think, Ms. Haswell?
 (17) A In my heart of hearts I think I can, but I do read the
 (18) paper and I do watch the news every night, so I don't know
 (19) until the time would come. I would hope so in answer to your
 (20) question, but I don't know.
 (21) Q Do you think - why do you think that the municipalities
 (22) and Native corporations are probably asking for more than they
 (23) should?
 (24) A Because I've lived here quite awhile now, and I'm getting
 (25) tired of a lot of whining, and it seems like we all need to do

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- (1) our part and move on, and I just feel we keep getting bogged
 (2) down in a lot of issues that - a lot of Native issues, that we
 (3) just need to move on.
 (4) Q And you think - do you think that Exxon's whining too much
 (5) as well?
 (6) A I think everybody is whining too much. I think everybody
 (7) needs to be culpable for what has happened and determine the
 (8) future of the world. I'm tired from kindergartners on up for
 (9) people not taking responsibility for their own actions.
 (10) Q Do you think that Exxon has any responsibility with respect
 (11) to oil spill above and beyond whatever they had spent on
 (12) clean-up?
 (13) A Sure, not just financially.
 (14) Q How else do you mean?
 (15) A Culpability, morality, just the future of the world working
 (16) together. Everybody needs to do their own thing and quit
 (17) blaming it and taking off-shots, just come down and finish the
 (18) job and do it and move on.
 (19) Q Do you have any views one way or the other about lawsuits
 (20) in general; in other words, that people shouldn't bring
 (21) lawsuits?
 (22) A I'm getting sick of that, too, yes.
 (23) Q How do you think - what do you think you could do, if
 (24) anything, to discourage that?
 (25) A I don't know. I guess to not start anything myself,

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- (1) obviously. To talk to people who are involved in small issues,
 (2) to say, Hey, you don't need to make this into a big deal, there
 (3) are other ways to settle this. And work with young children
 (4) and on up to settle differences. It's not a go-to-court thing
 (5) and somebody gets hurt, there are other ways to work it out.
 (6) Q Well, what if someone was damaged and the responsible
 party
 (7) wouldn't pay the, you know, the damage. Do you think that the
 (8) person that is damaged should - I mean there is nothing wrong
 (9) with this viewpoint, do you think that person should walk away
 (10) from it, or do you think that they should be entitled to bring
 (11) a lawsuit?
 (12) A I guess it depends on what the act is, and yes, if it's an
 (13) issue where there needs to be an action taken, then yes, it
 (14) should happen.
 (15) Q Then it's okay to bring a lawsuit?
 (16) A Yeah, but not just to bring a lawsuit. I just think there
 (17) needs to be some boundaries.
 (18) Q What type of boundaries are you thinking about?
 (19) A I guess some things are more serious than others. I mean
 (20) if my child was, you know, run over by a kid without a license
 (21) who was 12 years old and was mad and just running away from
 (22) home or something, I would say that that child needs to have
 (23) something drastically change his life. There is responsibility
 (24) for your actions.
 (25) Q What about a situation in this case, the Native

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- (1) corporations and the municipalities both own substantial
 (2) amounts of land - in the Native corporations' case in Prince
 (3) William Sound and the municipalities are in Kodiak, and they
 (4) claim that because of the oiling of those areas it adversely
 (5) affected real estate values in those areas.
 (6) Now do you think that the fact that they believe that and
 (7) they have - well, do you think there is anything wrong with
 (8) them bringing that kind of action based upon that, or do you
 (9) think they should have just - they still own the property,
 (10) they still have the property they did before, do you think
 (11) it's -
 (12) A It's just that there were not a million people knocking
 (13) down their door trying to buy up Kodiak. Most people didn't
 (14) know that Kodiak existed. Yes, I do think they were jumping on
 (15) the bandwagon. They weren't having people knocking on their
 (16) doors begging them to sell their property.
 (17) Q And you feel that way from what you know about Kodiak and
 (18) those other areas already?
 (19) A Uh-huh.
 (20) Q And you're going to go into any evaluation of the evidence
 (21) with that point of view, aren't you?
 (22) A Probably on that, sure.
 (23) Q That's going to be a big issue in this case, and so with
 (24) that being a big issue in this case, do you think that that
 (25) could - that reasonably would color your view of the evidence

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- (1) and weighing the evidence in this case?
 (2) A Yeah, probably.
 (3) Q And so you would hold a higher burden onto the plaintiffs
 (4) in this case? I shouldn't say that, you've already made a
 (5) decision what your view is on this case.
 (6) MR. DIAMOND: I'm going to object to this line.
 (7) because this assumes the jury will not be instructed.
 (8) THE COURT: He's changing his question.
 (9) MR. STOLL: I'm changing my question.
 (10) THE COURT: Listen to this, ask the question again.
 (11) BY MR. STOLL:
 (12) Q You're going to evaluate - you're going to be asked by the
 (13) Court to evaluate the evidence that's presented here in the
 (14) courtroom, but you have a strong view about lawsuits and
 people
 (15) trying to get something that they aren't entitled to and so on,
 (16) and you have a particular view about Kodiak or whether or not
 (17) people were knocking down the - you know, trying to get -
 (18) A Yes, that's fair to say.
 (19) Q And that's going to, no matter what Judge Shortell tells
 (20) you, is that going to affect your evaluation of the evidence in
 (21) this case?
 (22) A I'm sure on some level it's going to. I don't see how it
 (23) could be totally shut out.
 (24) MR. STOLL: Thank you.
 (25) VOIR DIRE EXAMINATION OF JANE HASWELL

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- (1) BY MR. DIAMOND:
 (2) Q Good afternoon, Mrs. Haswell - is it Mrs.?
 (3) A Yes.
 (4) Q Let me follow up on what Mr. Stoll was just talking about.
 (5) I gather from what Mr. Stoll told you is that one of the
 (6) claims in this case will be the property owned by Native
 (7) corporations and municipalities declined in value in some of
 (8) the outlying areas, some wilderness property.
 (9) If Judge Shortell instructs the jury, and you sit on the
 (10) jury, that a decline in market value is damaged under Alaska
 (11) law and a party is entitled to recover that kind of damage if
 (12) he or she or it can profit, would you hesitate to award those
 (13) kind of damages if that's what the law said?
 (14) A If I could personally believe that that happened, I
 (15) wouldn't worry about it.
 (16) Q But are you telling us you would wait and listen to the
 (17) evidence on that?
 (18) A Yeah, but it is fair to say that I do also know that that
 (19) wasn't, you know, a big hot spot real estate area, too, it's
 (20) just a little of both.
 (21) Q And I don't think we'll be hearing anything but the
 (22) plaintiffs saying it is a hot spot of property transactions,
 (23) but if witnesses testify that the plaintiffs bring forward
 (24) that, in fact, the oil spill had an effect on property values,
 (25) and if Judge Shortell tells you that is a recoverable item of

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- (1) damage and that they are entitled to recover if they can prove
 (2) it, do you think your feelings are going to prevent you from
 (3) following the Judge's instructions?
 (4) A No, it wouldn't prevent me from it, but I think it would
 (5) tick me off.
 (6) Q But you would still follow what the law was?
 (7) A Yeah, I guess I would have to.
 (8) Q Can you assure us that you would?
 (9) A If I could honestly believe what they said.
 (10) Q Your answer is yes, if you could honestly believe what they
 (11) said you could follow the Judge's instructions?
 (12) A I could, but I would need to believe that what they were
 (13) saying I could believe, which I don't think they have lost that
 (14) much.
 (15) Q We all understand that you come to court with certain
 (16) feelings, everybody does. The question is whether - on the
 (17) issue of whether their value of their property was affected by
 (18) the spill, you could leave whatever feelings you may have, just
 (19) based on common sense and general perceptions, and base
 any
 (20) decision you need to make as a juror in this case on what the
 (21) witnesses say and on your estimation of their credibility and
 (22) what the Judge tells you is the law.
 (23) Do you think you could do that?
 (24) A Probably, yeah.
 (25) Q You said that a lot of people have jumped on the
 bandwagon,

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- (1) and I gathered by that you meant that there have been people
 in
 (2) Alaska who have made claims against Exxon for spill-related
 (3) damage that you think are questionable; is that right?
 (4) A Uh-huh.
 (5) Q Have you prejudged whether the Native corporations in this
 (6) case have, in fact, suffered damage or not suffered damage to
 (7) their land?
 (8) A No, maybe I have prejudged, yes, only because I'm tired -
 (9) I'm just tired of everybody whining and crying. I guess if
 (10) that's prejudgment, then yes, it is.
 (11) Q I understand that you have views about people making
 claims
 (12) that you think are not bona fide, but as to these claims, the
 (13) claims of Chugach, for example, Chugach Alaska Corporation,
 is
 (14) making a claim for damage to its land, have you made a
 judgment
 (15) as to whether, in fact, their land has been damaged or not?
 (16) A More or less, yes.
 (17) Q How so?
 (18) A I don't think it's that big a deal.
 (19) Q Why do you say that?
 (20) A I guess just because - I don't have a specific answer, I'm
 (21) just thinking that it's gone on and on and on, and it's time to
 (22) make a break, and people do what they need to do, be
 (23) responsible, get on with your life, get your lands going, and
 (24) let's move it.
 (25) Q And I appreciate your point of view, and I appreciate your

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- (1) honesty, and I represent Exxon, and I guess what you're telling
 (2) me is that you have certainly feelings that would probably work
 (3) to the benefit of my client or could work to the benefit of my
 (4) client and I'm an officer of the court and these gentlemen's
 (5) clients are entitled to have a fair trial, and they are
 (6) entitled to have somebody judge the facts in the case, the same
 (7) way you would want the facts of a case you were personally
 (8) involved in judged, and the question is: Do you think you can
 (9) do that? And if not you have no business serving, and you have
 (10) a civic obligation to do that, so you tell us, which is it?
 (11) A Well, I really do feel like the Native corporations have
 (12) had more maybe than they need to be having.
 (13) Q Can you give them a fair trial?
 (14) A I would like to, and I don't know enough - look, I read
 (15) the papers, I know enough to get by at cocktail parties, do my
 (16) thing. Specifics I really don't know, what I have are
 (17) impressions, my impressions in what people say and how
 people
 (18) talk are that Native corporations don't have any business
 (19) getting any more money. Just let's get on with it.
 (20) Q Can you put aside your impressions what people said to you
 (21) at cocktail parties and give these gentlemen a fair trial?
 (22) A I would hope so.
 (23) Q Do you think so?
 (24) A Boy, do I have to be on the spot?
 (25) Q Only you know what's in your heart.

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- (1) A I know, but I don't know that people can convince me
 (2) because I don't know that. I don't really feel like they
 (3) deserve anymore, but I feel you're responsible for a lot of
 (4) shit, too, excuse me, so I think you both need to - I think
 (5) there is good and bad on both sides. I think you cry a little
 (6) bit wolf, I think they cry a little bit wolf, and I don't know
 (7) which one to believe.
 (8) Q We probably could use you as a conciliator, but the
 (9) judicial system hasn't chosen you as one, you're being called
 (10) to judge the facts, and the question is whether, like other
 (11) jurors, you can put aside any feelings you may have subject -
 (12) feelings about Exxon, feeling about Exxon's culpability,
 (13) Exxon's bellyaching, put aside your feelings about Native
 (14) corporations bellyaching, bandwagon, and just decide the
 (15) factual issues in this case based on the evidence fairly to
 (16) both sides?
 (17) A Yeah, I guess I could. I think I could.
 (18) Q Let me ask you about some questions that you answered that
 (19) I found curious.
 (20) You said that there were members of your family or friends
 (21) who had commercial fishing licenses?
 (22) A My husband had a commercial fishing license for about four
 (23) or five years back, oh, I don't know when it was, probably late
 (24) '70s, early '80s, fished out of Homer.
 (25) Q That's more than four or five years, that's about what, ten

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- (1) years?
 (2) A Probably, yeah, maybe closer to that.
 (3) Q What did he fish for?
 (4) A Pardon?
 (5) Q I'm swallowing my words. What did he fish for?
 (6) A Just halibut.
 (7) Q Has he held a fishing license, a commercial fishing license
 (8) since the oil spill in 1989?
 (9) A No.
 (10) Q Any family friends commercial fishermen?
 (11) A My husband - some of my husband's closer friends are.
 (12) Q As a result of those associations, do you have any
 (13) impressions or views or opinions about the effect of the oil
 (14) spill on commercial fishing?
 (15) A Well, they are all claiming that it's been ruined and that
 (16) they have lost money and things have gone downhill for them.
 (17) Q Do you have a view whether there is a connection between
 (18) the spill and commercial fish catches?
 (19) A I do on that issue.
 (20) Q What's your view?
 (21) A That commercial fishermen I do think have lost a lot of
 (22) their income, and I do feel that a lot of the waters have been
 (23) polluted for a really long time and that there are a lot of
 (24) negative effects. That I do believe.
 (25) Q Let me ask you the same question that I asked you on behalf

- (1) A Yes.
 (2) Q Glad I asked. I guess we both want to be heard.
 (3) MR. STOLL: I'll stipulate.
 (4) THE COURT: I'll send you out for a minute and bring
 (5) you right back in. so just wait out there.
 (6) A All right.
 (7) (Jane Haswell leaves the room.)
 (8) MR. DIAMOND: I have half a motion to make.
 (9) MR. STOLL: I have the other half, Your Honor.
 (10) THE COURT: Say the word "stipulate."
 (11) MR. DIAMOND: We stipulate to excuse her for cause.
 (12) THE COURT: Well, for the first seven minutes I
 (13) thought she was going to make it.
 (14) MR. PETUMENOS: Before we bring in the next juror,
 (15) Judge Shortell, could I address the Court?
 (16) THE COURT: Can you what?
 (17) MR. PETUMENOS: Address the Court, talk to you.
 (18) THE COURT: Certainly.
 (19) MR. PETUMENOS: I just came in to try and figure out
 (20) if there has been any ruling on time scheduling, opening
 (21) statements.
 (22) THE COURT: No.
 (23) MR. PETUMENOS: Do we know at this hour that we're not
 (24) opening tomorrow?
 (25) THE COURT: We are not.

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- (1) of Mr. Stoll and Mr. Petumenos and his clients. With respect
 (2) to issues of that kind, the effect of the oil spill on the
 (3) environment, do you think you can put to one side any
 (4) preconceived notions that you bring in to the courtroom and
 (5) decide those issues based on the evidence that you hear?
 (6) A Huh-uh, then I really think that was damaging.
 (7) Q What exactly do you think was damaging?
 (8) A Territory-wise or what, that the waters and the inhabitants
 (9) and reproduction cycles, that the earth itself has been
 (10) damaged. And I know tides and all take in a lot of
 (11) consideration, and that's why I don't think it's nearly as bad
 (12) as a lot of people say, but I think there is reputable damage,
 (13) and I don't think we've seen the total effects of it.
 (14) Q Do you think environmental damages are still ongoing?
 (15) A Yes, definitely.
 (16) Q That's going to be one of the parties' disputes, evidence
 (17) from experts to say that basically whatever oil is still out
 (18) there is inert and not affecting anything.
 (19) Do you think your state of mind is such that no matter who
 (20) tells you that, you're not going to believe it?
 (21) A No, I'm not going to believe anything differently on that.
 (22) Q Why are you so certain about that?
 (23) A I don't know, that's just -
 (24) Q You're convinced to a moral certainty and you're not going
 (25) to change your mind?

- (1) MR. PETUMENOS: We are not?
 (2) THE COURT: There is just too much to be done. Won't
 (3) be tomorrow.
 (4) MR. PETUMENOS: Thank you.
 (5) Also I want to know if there was a motion to reconsider the
 (6) ten-minute rule while I was gone.
 (7) THE COURT: Expanded to 20.
 (8) MR. STOLL: He did get a haircut for tomorrow.
 (9) THE COURT: I thought he looked different.
 (10) MR. STOLL: Yeah, younger.
 (11) (Jane Haswell enters the room.)
 (12) THE COURT: I hate to say this, but I'm going to have
 (13) to excuse you from the jury. It really is kind of refreshing
 (14) to see people direct as you are voice their opinions and see
 (15) the people still have strong opinions these days, but those
 (16) strong opinions that you have I think really would intrude on
 (17) the fact-finding process, so I'm going to have to let you go,
 (18) but thanks very much for your time. I know it's been a
 (19) significant imposition and I appreciate that.
 (20) A Thank you. Good luck to you.
 (21) (Jane Haswell leaves the room.)
 (22) MR. STOLL: If you thought that juror had strong
 (23) opinions, wait until the next one.
 (24) (Richard Floyd enters the room.)
 (25) THE COURT: Good afternoon, sir. Could you give your

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- (1) name for the record, please?
- (2) A Richard Floyd.
- (3) THE COURT: Mr. Floyd, you're under oath now, just
- (4) because you're still under oath from the first day. The
- (5) questions you'll be answering will be given under oath and so
- (6) are the juror questionnaire questions. You understand that,
- (7) don't you?
- (8) A Okay.
- (9) THE COURT: Go ahead, Mr. Stole.
- (10) VOIR DIRE EXAMINATION OF RICHARD FLOYD
- (11) BY MR. STOLL:
- (12) Q Mr. Floyd, my name is Bob Stoll, and I represent the
- (13) municipalities, some of the plaintiffs in this case. I'm here
- (14) today also on behalf of the Native corporations that are also
- (15) plaintiffs, and this is Mr. Diamond who is one of the lawyers
- (16) for Exxon.
- (17) Now, I noticed that you put down that you had some question
- (18) about being able to sit as a juror in this case because of your
- (19) work schedule and you have a hearing impairment?
- (20) A Well, my hearing is diminishing. As far as my work
- (21) schedule, I work at the air traffic control center, and I work
- (22) evening, midnight and day shifts, and I'm on vacation this
- (23) week, but back to work next week, so on -
- (24) Q The jury service here is 8:30 to 1:30. Would that
- (25) interfere with your work schedule?

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- (1) A It would interfere with part of it. For instance, next
- (2) week I go to work from 1:00 to 11:00, and I'll just go in late.
- (3) Q 1:00 in the afternoon until 11:00 at night?
- (4) A Uh-huh.
- (5) Q So you could go in, but you would go in late?
- (6) A Yeah.
- (7) Q Now what I'd like to address really is your - you have a
- (8) number of fairly strongly felt views, I think it's safe to say,
- (9) am I correct in that that you expressed -
- (10) A Well, I have opinions about the way this thing is going,
- (11) yes.
- (12) Q And are those opinions pretty strong?
- (13) A I think so, yes.
- (14) Q And do you think that some of these opinions would affect
- (15) how you would evaluate the testimony and the evidence in the
- (16) case?
- (17) A Well, probably, I don't know.
- (18) Q Well, you know better than I know, so do you think there is
- (19) a reasonable probability that it would?
- (20) A I think so, yes.
- (21) Q And some of these views you've put down that you thought
- (22) that the municipalities and Native corporations are greedy, I
- (23) think that's one of the things you said.
- (24) A Yeah.
- (25) Q That's all right.

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- (1) A That's my opinion.
- (2) Q That's your opinion, and area one was that you thought that
- (3) the press and the attorneys have raped Exxon for what was an
- (4) accident?
- (5) A Right.
- (6) Q And you think that the environmental standards are too
- (7) strict?
- (8) A I don't know. I know we need them, I don't know if they
- (9) are too strict or not.
- (10) Q How did you make the decision that you thought that the
- (11) municipalities and Native corporations were greedy?
- (12) A Just an opinion I formed by the news coverage I've heard
- (13) and so on.
- (14) Q In connection with this case?
- (15) A Yeah, uh-huh.
- (16) Q How did you reach the decision that the press and the
- (17) attorneys have raped Exxon for what was an accident, what do
- (18) you mean by that?
- (19) A Well, my opinion is every time a big company becomes
- (20) vulnerable, the press and the attorneys jump on them. I don't
- (21) see how a company like Exxon can stay in business, and that's
- (22) why all our businesses are going to Mexico and the Orient and
- (23) so on. I think enough is enough.
- (24) Q Do you think that with that point of view that in
- (25) evaluating the evidence in this case, that you would require

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- (1) the plaintiffs in this case, the Native corporations and the
- (2) municipalities to - would they be able to prove a case at all
- (3) as far as you're concerned against Exxon?
- (4) A I'd try to be fair and listen to all the evidence.
- (5) Q I know you'd try, but let's be frank and candid about it.
- (6) Do you think you would put an extra burden on them that you
- (7) wouldn't a normal plaintiff?
- (8) A I don't know. Possibly.
- (9) Q Do you think there is a reasonable possibility that you
- (10) would do that?
- (11) A I suppose. I don't know.
- (12) Q Do you think that Exxon has paid all that they should pay
- (13) in terms of damages as far as the oil spill is concerned?
- (14) A I don't know what the dollar figure is, but I have a
- (15) feeling they have.
- (16) Q Now in this case the municipalities and Native corporations
- (17) are seeking approximately a hundred million dollars in
- (18) damages,
- (19) that's a large sum of money.
- (20) A How much?
- (21) Q A hundred million dollars.
- (22) A A hundred million?
- (23) Q A hundred million. That's - you'd agree with me that
- (24) that's a large amount of money?
- (25) A Seems so.
- (26) Q And with your point of view, your strongly held opinions,

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- (1) do you think that that would – it would be very difficult for
 (2) them – would it be possible for them to prove that kind of
 (3) damage in your mind?
 (4) A I haven't heard the evidence.
 (5) Q I understand. But you start off with the point of view
 (6) that that just couldn't be right?
 (7) A I'll admit I'm biased but, you know, I can listen to
 (8) reason.
 (9) Q You can listen to reason, but you admit that you're biased
 (10) as far as these plaintiffs are concerned?
 (11) A I suppose.
 (12) MR. STOLL: Thank you very much.
 (13) VOIR DIRE EXAMINATION OF RICHARD FLOYD
 (14) BY MR. DIAMOND:
 (15) Q Good afternoon, Mr. Floyd. My name is Chuck Diamond.
 I'm
 (16) one of the lawyers representing Exxon. I'll try to keep my
 (17) voice up because I have the same problem on this side.
 (18) Believe it or not, Mr. Stoll and I are after the same
 (19) thing, and that is a jury of folks who can listen to the
 (20) evidence and decide it fairly and impartially based upon what's
 (21) said in the courtroom and not on a preconceived notion. So
 (22) with that preamble, let me make sure you understand what this
 (23) case is about.
 (24) Did you think this case was about individual Natives
 (25) asserting claims against Exxon?

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- (1) A I'm not sure.
 (2) Q Let me tell you that the plaintiffs that are represented by
 (3) two lawyers, who are absent this afternoon, are six Native
 (4) corporations that own large tracts of land along Prince William
 (5) Sound and the Kenai, and Mr. Stoll's clients are a group of
 (6) municipalities that, for the most part, own land down in
 (7) Kodiak, do you understand that?
 (8) A Yes.
 (9) Q And what this case is about is really a dispute between
 (10) corporations, the Native corporations, the municipal
 (11) corporations and the Exxon Corporation. Do you understand
 (12) that?
 (13) A Okay.
 (14) Q The issues that the jury will be dealing with real concern
 (15) whether the oil spill damaged real estate, some 80 or so
 (16) parcels of real estate, 600,000 acres, 1200 miles of shoreline,
 (17) and if the oil spill damaged that property, how much, the
 (18) landowners, the plaintiffs are entitled to be paid for those
 (19) damages. Do you understand that?
 (20) A Yes, I do.
 (21) Q Now that we're all on the same page and you know what the
 (22) issues are here, do you think you could be a fair and impartial
 (23) judge, listening to the evidence that's put on by both sides,
 (24) as to those kinds of questions?
 (25) A Well, I'd certainly try to be fair and impartial.

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- (1) Q I'm sure you would, and Mr. Stoll and I both appreciate you
 (2) telling us that.
 (3) You said that you have some views that – this is something
 (4) that probably ought to be put behind us and Exxon has already
 (5) paid out a great deal of money, I appreciate that, but the
 (6) question is, part of your responsibilities is serving as a
 (7) juror on this case if you're chosen to serve, will be to leave
 (8) those viewpoints to one side and judge questions of damage to
 (9) the property just based on what you hear the witnesses say and
 (10) based on what Judge Shortell tells you the law of the state of
 (11) Alaska is, do you think you could do that?
 (12) A Yeah, I think so.
 (13) Q You said you had a feeling that Exxon paid all that it
 (14) should pay, or it's paid – you don't know how much Exxon has
 (15) paid today, do you?
 (16) A (Witness shakes head side to side.)
 (17) Q You just know it's a lot of money?
 (18) A It's a lot of money in my book.
 (19) Q The plaintiffs in this case, like you would be if you were
 (20) a plaintiff in a lawsuit, are entitled to recover all the
 (21) damages they can prove under law. Do you understand that?
 (22) A Yeah.
 (23) Q Do you think you would have any problem if they convinced
 (24) you that their land had been damaged, their land had been
 hurt,
 (25) and they convinced you what the amount was, would you have
 any

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- (1) problem returning a verdict in favor of the plaintiffs simply
 (2) because I think Exxon has already paid a lot?
 (3) A No, I guess not.
 (4) Q You work for the FAA?
 (5) A That's right.
 (6) Q On behalf of those of us who fly in airliners, were you
 (7) planning, if you're selected for this jury, to also keep your
 (8) full-time job?
 (9) A As much as I can, because we're very short right now.
 (10) Q Are you an air traffic controller?
 (11) A No, I'm not.
 (12) Q Well, then I feel better.
 (13) A Just in the electronics maintenance portion of it.
 (14) Q Do you know whether the government continues you on
 salary
 (15) even if you don't work when you're doing jury service?
 (16) A Yeah, I get court leave, yeah.
 (17) Q Is there a cut-off period for that?
 (18) A Not that I know of.
 (19) Q So this would not be an economic hardship for you then?
 (20) A No.
 (21) MR. DIAMOND: I have nothing further for Mr. Floyd.
 (22) MR. STOLL: Your Honor, can I ask a question?
 (23) THE COURT: Yes.
 (24) VOIR DIRE EXAMINATION OF RICHARD FLOYD (Resumed)
 (25) BY MR. STOLL:

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- (1) Q Mr. Floyd, you've said earlier when I asked you questions,
 (2) you felt that you were biased as we sit here right now. And
 (3) you had that viewpoint that you expressed very clearly and I
 (4) appreciate you being frank and honest, a lot of people have
 (5) viewpoints, that's why you're juror number 70. We're trying to
 (6) get 12 people. A lot of people have strong views here, so
 (7) there is nothing - and there has been a lot of news here, so
 (8) there is nothing wrong with having strong views, but it's very
 (9) important for us to have people that are, you know, are -
 (10) everybody is going to try to be fair. I don't think anybody
 (11) comes in here with an idea I'm going to try to be unfair, I
 (12) haven't run into that person, I don't think anybody has run
 (13) into that person, but we're trying to find people that are
 (14) unbiased to evaluate the evidence. That's the idea here, and
 (15) in your heart of hearts, when we get down to the bottom line
 (16) here, a question that was asked earlier was: Which side are
 (17) you on? And in my - is it a safe statement to say that as you
 (18) start off this trial right now you're on the Exxon side of this
 (19) equation; is that a fair statement?
 (20) A That's a fair statement.
 (21) MR. DIAMOND: One more question - or I'll let you
 (22) ask.
 (23) THE COURT: I never try to limit you that much,
 (24) counsel, but you can ask question and we'll see if it generates
 (25) another.

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- (1) VOIR DIRE EXAMINATION OF RICHARD FLOYD (Resumed)
 (2) BY MR. DIAMOND:
 (3) Q Although you may start with a bias toward Exxon, do you
 (4) think you can put aside that bias and be fair to both Mr.
 (5) Stoll's clients and my clients, and render a verdict based only
 (6) on the evidence heard in this Court and not on any bias?
 (7) A I think so.
 (8) THE COURT: Sir, I have to ask you some questions,
 (9) too.
 (10) VOIR DIRE EXAMINATION OF RICHARD FLOYD
 (11) BY THE COURT:
 (12) Q You say you think that the press and the attorneys have
 (13) raped Exxon up until this point?
 (14) A I think that's what I said.
 (15) Q That's exactly your words, that's what you wrote down.
 (16) A Yes.
 (17) Q Do you think it would be raping Exxon to make them pay
 (18) money to these municipalities and Native corporations?
 (19) A Some more?
 (20) Q Right, because that's the issue?
 (21) A I don't know, I haven't - you know, I haven't been
 (22) informed of how much damage has been caused and so on.
 (23) Q So when you say that Exxon has been raped by the press
 and
 (24) the attorneys, you're not talking about this case, are you?
 (25) A No. In fact, I didn't realize this case was coming, but

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- (1) I'm talking about for the last five years.
 (2) Q You also say that municipalities and Native corporations
 (3) suing Exxon for damages are greedy, are you talking about
 these
 (4) plaintiffs?
 (5) A Yes.
 (6) Q Now, doesn't that seem to you, to very strongly voice a
 (7) bias that you can't set aside?
 (8) A Well, since you put it that way, I suppose it is.
 (9) Q No, I want it from you, tell me.
 (10) A I think I can listen to the evidence on both sides and make
 (11) a decision on that evidence. Like I say, I'm coming from the
 (12) opinions I've formed, and I would expect that I would be able
 (13) to put those aside.
 (14) Q So you could put aside the feeling that you thought these
 (15) plaintiffs were greedy?
 (16) A I think so.
 (17) Q And you can set aside your negative feelings about Exxon
 (18) being raped?
 (19) A I think so.
 (20) THE COURT: Any other questions, counsel.
 (21) MR. DIAMOND: No, Your Honor.
 (22) MR. STOLL: No, Your Honor.
 (23) THE COURT: I'm going to have to excuse you for a
 (24) minute and bring you right back in.
 (25) (Richard Floyd leaves the room.)

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- (1) MR. STOLL: Your Honor, we would move to excuse this
 (2) juror for cause, he's - I'm sure that he'd try to be as fair
 (3) as he can. I think that he was very clear that he thought he
 (4) was biased. He felt that - I asked him the question about
 (5) which side as we sit right now, which side is he on, and he's
 (6) on Exxon's side.
 (7) He's made a number of other statements, large number of
 (8) statements, not only the things he wrote down about his views
 (9) about the plaintiffs being greedy - not some plaintiffs, these
 (10) plaintiffs, not some abstract, plaintiffs being greedy, raped
 (11) by the plaintiffs. I'm sure that he would try, but I think
 (12) there is a substantial probability based upon what he has said
 (13) that his views and his own view of himself as being biased is
 (14) going to influence his evaluation of the evidence in this
 (15) case. I don't think there is any question about it.
 (16) THE COURT: Mr. Diamond?
 (17) MR. DIAMOND: Your Honor, nobody is coming here
 (18) without any opinions, and I think most of the jurors we've
 (19) seated have opinions, and some of them have opinions about
 (20) Exxon which start off being unfavorable, and Mr. Stoll has been
 (21) quite skillful in eliciting from them statements that they can
 (22) put aside opinions, and they can be fair and impartial. The
 (23) test -
 (24) THE COURT: Both lawyers have been quite skillful,
 (25) counsel.

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- (1) MR. DIAMOND: Well, I'm new at this business. I'm
 (2) doing my best.
 (3) MR. STOLL: I do this every week, Your Honor.
 (4) MR. DIAMOND: Really, a good faith statement that he
 (5) or she will be fair and follow instructions, obviously this man
 (6) comes to the Court with some viewpoints, but they are
 (7) generalized and not particularized as to these kind of claims,
 (8) they are not particularized as to these specific Native
 (9) corporations or municipalities.
 (10) THE COURT: What is this if it's not specific? What,
 (11) if any, opinion do you have about the municipalities or Native
 (12) corporations suing Exxon for damages in connection with the
 (13) Exxon oil spill. Quote, greedy, unquote.
 (14) MR. DIAMOND: Your Honor, I think that's not
 (15) materially different than somebody who comes in and says I
 (16) have
 (17) a highly unfavorable view of Exxon. That's quite directed at a
 (18) party. Yet, if we - on inquiry we determine that that juror
 (19) can put aside the highly unfavorable views of the party and
 (20) judge the case on the facts, as I think we have done countless
 (21) times with jurors, we have already selected, and there is a
 (22) ring of truth in the proclamation that the prospective juror
 (23) can, in fact, be fair and impartial to both sides, then that is
 (24) dispositive.
 (25) I think clearly this is an area for the exercise of the
 (26) Court's discretion, but this is not like Juror Lahden- - I've

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- (1) now forgotten the name.
 (2) THE COURT: Lahdenpera.
 (3) MR. DIAMOND: Who was quite openly equivocal. I think
 (4) we have put Mr. Floyd through the ringer here and ultimately he
 (5) says he can do it. Just the way other jurors have said
 (6) ultimately they can put aside very strong antipathy toward my
 (7) client. If the test is purity from the time they walk in the
 (8) door, then, you know, maybe we ought to reexamine some of
 (9) the
 (10) people we have already seated.
 (11) The question is not purity walking in the door if whether
 (12) that individual thinks and says he - or thinks he or she can
 (13) be fair, and I think the Court ought to earn his favor.
 (14) MR. STOLL: Your Honor, this is not just somebody
 (15) saying, I am one person, they have a general impression about
 (16) that party, that question that counsel referred to about
 (17) whether they are favorable, unfavorable in a general way, this
 (18) is about a specific lawsuit where this person says that they
 (19) think that the plaintiffs in this case are greedy, it's not -
 (20) and they are talking about this lawsuit, it's nothing else in
 (21) the abstract, and he answered your question specifically on
 (22) that.
 (23) This is not something that he just has sort of a general
 (24) bad taste in his mouth towards municipalities or Native
 (25) corporations, I don't think that that is a basis for
 (26) disqualification, and there have been other jurors that have

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- (1) had that sort of general unfavorable feeling, and this is about
 (2) this specific lawsuit, and I think he admits himself he's
 (3) biased.
 (4) THE COURT: Well, he certainly said that well,
 (5) counsel. This is another one of those where he said things on
 (6) both sides of the issue, and the question is whether I think he
 (7) can be fair and impartial in view of the fact that he's made
 (8) some very strong statements in writing, not prompted by the
 (9) lawyers on his own, and then he came in here and admitted his
 (10) bias, and then he made statements that would indicate that he
 (11) can't set that bias aside. Then he made statements that
 (12) indicated he could set that bias aside.
 (13) I know what he has said, and what he said predominates in
 (14) the favor of the viewpoint that he cannot be unbiased. But
 (15) beyond that, I watched him when he was answering the
 (16) questions,
 (17) and frankly there is not very much credibility in the answers
 (18) given by a witness who answers the way he did when he was
 (19) saying he thought he could be fair. His body language was not
 (20) positive about that statement. He wasn't facing the issue
 (21) directly, and he had a look on his face that indicated to me
 (22) that this was not something that he firmly and sincerely
 (23) believed.
 (24) I think he had some serious doubts about whether or not he
 (25) could be impartial, but he is a man of strong opinions and I
 (26) think he probably went through an intellectual process that

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- (1) convinced him, yeah, I can be fair in spite of the fact that I
 (2) have all these very strong opinions that I voiced. And frankly
 (3) it's my job to determine whether or not that's a credible
 (4) statement.
 (5) In the context of this case, given what he said
 (6) specifically about these plaintiffs and what he has said about
 (7) Exxon, and what he said in the examination, it's clear to me
 (8) that he should not sit on this case, so the motion is granted.
 (9) (Richard Floyd enters the room.)
 (10) THE COURT: Mr. Floyd, I'm sure you're going to be
 (11) real unhappy that you're not going to be sitting on the jury in
 (12) this case, and it's - I simply made a determination that given
 (13) the opinions that you voiced that you shouldn't sit in a case
 (14) of this type.
 (15) A Okay.
 (16) THE COURT: I hope you understand this is a process
 (17) that we go through all the time, lots of jurors are
 (18) disqualified.
 (19) A I figured that with the numbers.
 (20) THE COURT: Excuse me?
 (21) A I figured that with the numbers.
 (22) THE COURT: Right, there is a lot of people. Thanks
 (23) for your time. I know it's been an imposition.
 (24) A Is this mine?
 (25) THE COURT: That's theirs.

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- (1) (Richard Floyd leaves the room.)
 (2) Sir, I wonder, can you – did you want to be heard,
 (3) counsel?
 (4) MR. STOLL: No.
 (5) THE COURT: Could you give your name for the record?
 (6) A Ramon Davila, Junior.
 (7) THE COURT: Mr. Davila, you're going to get several
 (8) questions to those you answered in the questionnaire, you
 (9) understand that every question you've answered, including the
 (10) written ones, are under oath?
 (11) A Uh-huh.
 (12) THE COURT: Mr. Stoll, then Mr. Diamond.
 (13) VOIR DIRE EXAMINATION OF RAMON DAVILA, JUNIOR
 (14) BY MR. STOLL:
 (15) Q Mr. Davila, I'm Bob Stoll, I'm here on behalf of the
 (16) municipalities and Native corporations that are plaintiffs in
 (17) this case, and Mr. Diamond is one of the lawyers for Exxon.
 (18) Now my first question is, relates to – you're in school
 (19) now?
 (20) A Yeah.
 (21) Q When do you go back – where are you going to school?
 (22) A Well, I just finished my first year at Hawaii Pacific
 (23) University, and I'm in the process of transferring schools, so
 (24) I'm just off right now, but I start class – it's a five-week
 (25) class to make another three credits so I can transfer next

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- (1) month, the 7th, at UAA.
 (2) Q The 7th of July?
 (3) A Yeah.
 (4) Q Where is that going to be?
 (5) A University of Alaska, Anchorage.
 (6) Q Here in Anchorage?
 (7) A Yeah.
 (8) Q What time of day do you go to class?
 (9) A It starts at 9 a.m. and it goes to 11:00, Monday through
 (10) Friday.
 (11) Q So you couldn't sit as a jury as a result of that, from
 (12) 8:30 to 1:30?
 (13) A I wouldn't really want to, it would kind of get in the way.
 (14) Q There is not a class you could take in the afternoon, for
 (15) instance?
 (16) A It might be possible. I don't know the schedule totally
 (17) off the top of my head, but they have a lot of different
 (18) classes, it might be possible.
 (19) Q Is it necessary to – is there one particular class that
 (20) you have to take?
 (21) A I just need one class. See, to transfer to the school I
 (22) want to go to takes 24 credits. I took two semesters of 12
 (23) credits, but my first semester math class was a non-credit, so
 (24) I only have 21, so I'm taking a four-credit math class so I get
 (25) my 24 credits so I can transfer.

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- (1) Q So you have to take the four credit math class?
 (2) A Yeah.
 (3) Q And do you have to – so is the only time that class meets
 (4) in the morning?
 (5) A I'm sure it meets other times. They have a schedule for
 (6) summer classes, but I'd have to, you know, look – I don't know
 (7) off the top of my head.
 (8) Q If it was possible, are there classes that go from like
 (9) 2:00 in the afternoon into the evening?
 (10) A I don't know for sure.
 (11) Q Would you be willing to do that?
 (12) A Well, I guess it's my civil duty, but it kind of throws a
 (13) stick in my plans. I wouldn't really – to be honest with you,
 (14) I'm just getting started with my college education, and this
 (15) two months I wouldn't be able to work as much hours, wouldn't
 (16) be able to – because I pretty much have to pay my own way.
 (17) Q You have to pay your own way?
 (18) A Yeah, my parents pay my rent, but my father just recently
 (19) got laid off, so I don't know how long it's going to be, and I
 (20) use Alaska state student loan to pay the television, and the
 (21) rest I get, you know, I work at a part-time job in Hawaii, you
 (22) know, to make my way in, and I'll probably do the same.
 (23) Q When did you go back to Hawaii?
 (24) A I'm not going back to Hawaii, I'm transferring to a better
 (25) university.

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- (1) Q Where are you going?
 (2) A University of Kansas.
 (3) Q When did that school start?
 (4) A I won't be going to spring semester, that starts in
 (5) January.
 (6) Q So your plan is to go to University of Alaska during the
 (7) summertime, and then what would you do –
 (8) A And also during the fall, instead of just sitting around,
 (9) you know, just continue taking the courses and working.
 (10) Q Let me ask another question. If you could – you just need
 (11) to get four more hours between sometime between now and
 (12) January, is that the situation?
 (13) A Yeah.
 (14) Q So you could take that in the fall, you don't –
 (15) A Well, that's – school isn't really – you know, I can get
 (16) the four hours, no problem, between now and January of next
 (17) year, it's the – I need the money, I have to work.
 (18) Q You need the money?
 (19) A I live with my parents, but I have to pay pretty much my
 (20) own way.
 (21) Q I see.
 (22) A If it would be possible, totally possible, I would be happy
 (23) to do it, but I just – I just have my own plans, and it jumps
 (24) in.
 (25) Q Do you think the five hours a day that you would be here

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- (1) would prevent you from earning enough money to go to college?
- (2) A I'm sure I'd just have to work a little bit harder and do
- (3) it. I mean, I can do it, I'm not saying that I totally can't.
- (4) THE COURT: Sir, let me ask you a question. If you
- (5) have this class in the morning – is it possible that that
- (6) class would be given some other time of day?
- (7) A Yeah, that's what I said, I don't know totally for sure. I
- (8) have to look at the schedule. I don't have all the classes
- (9) memorized.
- (10) MR. STOLL: I think the main thing is the financial
- (11) thing.
- (12) THE COURT: But if you don't get this class, do you
- (13) get to transfer?
- (14) A I can't transfer until I have 24 credits.
- (15) MR. STOLL: Excuse me, Your Honor, in the fall – he
- (16) has anytime between now and January to pick up four hours?
- (17) A See, to be accepted, I'm not formally accepted at the
- (18) University of Kansas, because I have to get the credits, so if
- (19) I start in August and go on through December for that fall
- (20) semester, you know, I don't know if that's enough time. I have
- (21) to call the school and find out totally the time for
- (22) transferring and everything like that. So to transfer, I have
- (23) to go to the fall semester and then I want to transfer starting
- (24) the spring semester at the University of Kansas. So I would
- (25) have to call the attendant's office and get the information

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- (1) before I can give you an answer that I can't do it.
- (2) THE COURT: Well, I'm not going to be able to decide
- (3) this until I find out.
- (4) MR. STOLL: I understand.
- (5) THE COURT: Why don't we excuse Mr. Davila. He can
- (6) look at his information and tell us what he found and I will
- (7) evaluate that question along with other questions that might
- (8) arise. But if it's something that's going to keep him from
- (9) going off to another school, then it's a serious hardship, and
- (10) I would seriously consider it.
- (11) So do you understand that, sir? I want you to find out
- (12) what all the possibilities are. For instance, if you were not
- (13) to take this class in the morning in July, could you take it in
- (14) the afternoon, say after 2:00? You have to check that with the
- (15) university; and, second, if you don't get to take the class,
- (16) what's the effect on you in the long run. Could you make it up
- (17) during this fall or could you not, you know, those things are
- (18) important for me to determine whether you should stay.
- (19) So I'll excuse you now, but I want you to come back here at
- (20) 8:30 in the morning and we may very well continue this jury
- (21) examination.
- (22) MR. STOLL: Maybe as long as he's here –
- (23) MR. DIAMOND: Let him go, because otherwise we're
- (24) wasting time.
- (25) THE COURT: I agree, do you stipulate he can be

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- (1) excused.
- (2) MR. DIAMOND: I would stipulate he can be excused.
- (3) MR. STOLL: That's fine, come back tomorrow morning
- (4) then. Are you saying he could come back tomorrow morning?
- (5) MR. DIAMOND: Or stipulate he can be excused for
- (6) cause.
- (7) MR. STOLL: Why don't we see.
- (8) THE COURT: Do your investigation.
- (9) A Maybe a little hard to do. It's 3:00 here and there's some
- (10) time difference with Kansas.
- (11) THE COURT: Kansas?
- (12) A Do you want me to get the information on that or do you
- (13) just care about the fall classes?
- (14) THE COURT: All I want you to do is find out if you
- (15) can take this class sometime in the afternoon this summer or in
- (16) the fall, because if you can, then one aspect of the hardship
- (17) drops away. If you can't, then it becomes a serious problem
- (18) that I have to deal with.
- (19) A From what I remember, they offer night classes. I'll call
- (20) and see if they are in the fall.
- (21) THE COURT: Exactly, that's what I want you to do.
- (22) Do you want me to have him come back tomorrow at 8:30.
- (23) MR. DIAMOND: Up to you, Mr. Stoll.
- (24) MR. STOLL: Yeah.
- (25) THE COURT: Come back here, and go to the jury clerk's

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- (1) room and they will bring you upstairs.
- (2) (Ramon Davila, Junior, leaves the room.)
- (3) (April Wilkening enters the room.)
- (4) THE COURT: Is your name Wilkening?
- (5) A Yes.
- (6) THE COURT: Would you give your whole name for the
- (7) record?
- (8) A April Wilkening.
- (9) THE COURT: This is a questioning process and you're
- (10) under oath now. You were under oath when you filled out your
- (11) questionnaire also, you understand?
- (12) A I do.
- (13) THE COURT: Go ahead, Mr. Stoll
- (14) VOIR DIRE EXAMINATION OF APRIL WILKENING
- (15) BY MR. STOLL:
- (16) Q Ms. Wilkening, my name is Bob Stoll, and I represent – I'm
- (17) here today on the behalf of the municipalities and the Native
- (18) corporations who are plaintiffs in this case, and Mr. Diamond
- (19) and Mr. Clough are some of the lawyers for Exxon. Have you
- (20) ever sat as a juror before?
- (21) A Yes, I have.
- (22) Q When was that?
- (23) A Couple years ago for a federal.
- (24) Q In a federal jury?
- (25) A Yes.

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- (1) Q What type of case was it?
- (2) A It was marijuana, and it was about firearms.
- (3) Q So it was a criminal case?
- (4) A It was a criminal case, yes.
- (5) Q And did that go to the jury, did you have to make a decision ultimately?
- (7) A Yes, we did.
- (8) Q Did the Judge instruct you in that case as to the law that you're supposed to consider only the evidence in the courtroom?
- (10) A Yes.
- (11) Q So you know those rules?
- (12) A Yeah.
- (13) Q Do you have any difficulties following that, those kinds of rules?
- (15) A We had our opinions, but we did just what we were told, we had to make a decision based on the law and we did. We didn't have any trouble doing it.
- (18) MR. DIAMOND: Your Honor, I'm having a little trouble hearing Ms. Wilkening.
- (20) BY MR. STOLL:
- (21) Q If you want to, Ms. Wilkening, you can pull the microphone out of the holder if that would be more comfortable for you.
- (23) I'm sorry, you said you had your own opinions, but you were able to put those aside and make your own decision?
- (25) A Oh, yeah.

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- (1) Q And in this case, the plaintiffs in this case are seeking money damages from Exxon. This is not an issue - there is no issue as to whether or not Exxon was at fault, you understand that?
- (5) A I do.
- (6) Q And you wrote down in a questionnaire, actually you said something about Exxon guilty, money damages not decided, so that's what you had heard about?
- (9) A Yes, it is.
- (10) Q So do I get from that - what did you mean by that?
- (11) A Well, I didn't read the paper a lot, but I just understood that that was other trials going on and something about jury decided that they were guilty, or negligent, and another jury was going to decide the monetary amounts.
- (14) Q Have you made up your mind as to how much damage has been caused by the Exxon Valdez oil spill?
- (17) A I haven't seen the damage, just heard about it.
- (18) Q So you haven't - you have no preconceived idea in that regard?
- (20) A Right, I don't have any idea of the magnitude of the damage or any - I can't relate to it.
- (22) Q You expressed the opinion that you think that the spill affected salmon runs, you wrote that down somewhere in the questionnaire.
- (24) A Yeah, I did.

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- (1) Q Is that based upon - well, let me ask this question.
- (2) Do you think that that is going to influence your ability to evaluate whether or not the municipalities or the Native corporations, this is not fishermen, being a fishermen case, these are Native corporations and municipalities bringing damage cases for mainly land claims, land damage claims.
- (7) Is that going to affect your evaluation of that at all, or are you going to consider the evidence in this case?
- (8) A It doesn't have anything to do with fish, so no.
- (9) Q So that's a separate issue altogether?
- (10) A Uh-huh.
- (12) Q Have you formulated any decision, do you have any bias or view yet on whether or not there was damage to land?
- (14) A No, because I haven't seen it.
- (15) Q You haven't seen any evidence?
- (16) A I haven't seen any evidence, just heard of it.
- (17) Q In one of the questions you indicated you had a view that was unfavorable toward Exxon Corporation. Does that - first of all, why do you - what is that view?
- (20) A Because I guess from what I remember, Hazelwood had a problem with alcohol, and he was still allowed to run this oil ship or whatever it was. I think they were negligent.
- (22) Q So you're going to whether they were negligent or not?
- (24) A Yeah, so that was my opinion about Exxon, I thought that would be stupid to let the guy back in that kind of a position.

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- (1) Q But that is not - you're not prejudging the decision as to what the amount of damages are, if any?
- (2) A No. It just goes to their responsibility for something like that.
- (5) Q And you understand that's already been determined?
- (6) A I understand that.
- (7) Q So you're not going to be asked to make a determination in that regard?
- (9) A I know that.
- (10) Q Do you think that you can be fair in evaluating the evidence?
- (12) A Yeah.
- (13) Q Now your father, who I guess is deceased, was employed by VECO or Alyeska, it's sort of unclear.
- (15) A I don't know what companies. He died a long time ago, and I can't remember, but he did work on the North Slope.
- (17) Q He worked on the North Slope?
- (18) A Yeah, he did.
- (19) Q Does - do you think that factor will affect your evaluating the evidence in this case?
- (21) A No.
- (22) Q Have you ever worked for an oil company yourself?
- (23) A No.
- (24) MR. STOLL: That you very much.
- (25) VOIR DIRE EXAMINATION OF APRIL WILKENING

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- (1) BY MR. DIAMOND:
 (2) Q Good afternoon. Mrs. Wilkening. Is it Mrs.?
 (3) A It is.
 (4) Q You said that you didn't think you'd have a problem
 (5) evaluating the evidence in this case because it didn't have
 (6) anything to do with fish. If fish were an issue in this case,
 (7) the affect on the oil spill had on fish and fishing, do you
 (8) think that might affect your ability to -
 (9) A I would have a hard time believing it didn't affect it.
 (10) Q Why do you say that?
 (11) A Because I think fish can't live in oil.
 (12) Q Pretty much made up your mind that that's the case?
 (13) A Uh-huh.
 (14) Q Some people say the fish harvests are down for reasons that
 (15) are totally unrelated to the spill?
 (16) A That's possible, too. I'm sure there is a lot of factors
 (17) involved in fish harvest, maybe they are overharvested, maybe
 (18) something else could happen, but I'm sure that an oil spill the
 (19) size of that one would play a big part in the fish - I'd have
 (20) to decide that was - that would affect a lot of people's
 (21) lives.
 (22) Q Do you have a sense that a lot of Alaskans have had their
 (23) lives affected because of the events of the spill on the
 (24) fishing population or the fish catch?
 (25) A Well, the people who rely on that industry and - yeah.

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- (1) some favorable and some not, some made a lot of money.
 (2) Q I anticipate that the parties will be calling lots of
 (3) witnesses and lots of experts to talk to you, and it may well
 (4) be that somebody from Exxon gets up on the witness stand and
 (5) says that there has been no effect on the salmon or herring
 (6) catch from the oil spill. Do you think you're going to be able
 (7) to evaluate that kind of testimony the same way you evaluate
 (8) any other testimony?
 (9) A Yeah, if he had something to back up what he was saying,
 (10) you know, statistics or something to show me. I could look at
 (11) it and it could convince me.
 (12) Q But it would require some convincing?
 (13) A Yeah.
 (14) Q You're skeptical?
 (15) A I'm skeptical.
 (16) Q You think the fish has been catches have been affected by
 (17) the oil spill?
 (18) A Yeah.
 (19) Q You said you heard about the damage caused by the spill,
 (20) what do you have in mind?
 (21) A Just the shores all messed up and birds and just tons of
 (22) birds and animals, full of dead creatures.
 (23) Q You saw those pictures back in '89?
 (24) A I saw something or read something about these birds being
 (25) auctioned off, some were there, and there was people that

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- (1) studied them and were interested in the carcasses. That's all
 (2) I remember.
 (3) Q At the time the spill happened, do you remember reading
 (4) about the effect on otters and birds and other animals?
 (5) A No.
 (6) Q Do you remember seeing any pictures?
 (7) A Maybe I did a bird or two - yeah, black looking bird with
 (8) beaks, yeah. It's all vague, because I don't have good long
 (9) memory, you know.
 (10) Q How did that make you feel toward Exxon?
 (11) A It didn't move me either way. I looked at the picture and
 (12) saw the picture and said, Poor bird.
 (13) Q You're not a real animal lover?
 (14) A I don't think to the Audubon Society.
 (15) Q I noticed - you can turn to the questionnaire, but on page
 (16) 11, question 47 asked you for your general response to all of
 (17) these groups, and you had an extremely favorable view as to
 (18) everybody, and an extremely unfavorable view toward my
 (19) client,
 (20) Exxon, do you see that?
 (21) A Yeah, I see it.
 (22) Q Would you agree with me that at least in your own mind that
 (23) some of these other groups might start out with somewhat of an
 (24) advantage in your mind?
 (25) A I would say that you would be at a disadvantage because of
 the way I felt about Hazelwood and basically being responsible

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- (1) for all that mess, yeah, you'd have to come a long way - have
 (2) to come a long way to get a fair shake from the way I feel,
 (3) yeah.
 (4) Q No, I appreciate your honesty. That's what we're doing
 (5) here. As my friend Mr. Stoll points out, you're juror number
 (6) 72, we've talked to a lot of people, and everybody has
 (7) viewpoints, and some of them have strong viewpoints that take
 (8) them out of the running of those that think that they can be
 (9) fair to both the plaintiffs and Exxon, would you agree with me
 (10) that you're not in a position to be totally fair?
 (11) A I'd say I'm pretty biased. I couldn't be totally fair,
 (12) no. Sorry.
 (13) Q No apologies necessary. Is that the reason wrote on the
 (14) next page, page 12, that you don't think Exxon has paid enough
 (15) money?
 (16) A I don't think they are finished, yeah.
 (17) Q You've already decided the Natives ought to be
 (18) compensated
 (19) some more?
 (20) A I do, I pretty much decided that.
 (21) MR. DIAMOND: I do have a motion.
 (22) MR. STOLL: May I just ask one question.
 (23) THE COURT: Yes.
 (24) VOIR DIRE EXAMINATION OF APRIL WILKENING (Resumed)
 (25) BY MR. STOLL:
 Q Mrs. Wilkening, in your past jury experience you said that

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- (1) people had views when they went in, had opinions, and that when
- (2) they reached a decision they had to look at only the evidence
- (3) that was before them and evaluate that evidence and follow the
- (4) judges instructions, do you recall that?
- (5) A Yes, I do.
- (6) Q Do you think you can do that in this case, or do you think
- (7) you're biased and you couldn't do it?
- (8) A I think I could do it in any case, because my opinions are
- (9) still my opinions, and -- but if I had to make a decision based
- (10) on what's sitting in front of me, I would be able to do that
- (11) and keep my opinion to the side.
- (12) Q I'm sorry, I didn't hear you?
- (13) A I would still be able to do that and keep my opinion to
- (14) myself.
- (15) Q You would be able to base your decision solely on what's in
- (16) front of you in the courtroom?
- (17) A Yes.
- (18) Q Do you have any doubt in your mind about that?
- (19) A No.
- (20) Q I think that's -- what both sides want to have is they want
- (21) to have unbiased -- they want to have jurors that are going to
- (22) evaluate the information before them in an unbiased way and put
- (23) any opinions that they may have before aside, do you think you
- (24) can do that?
- (25) A Yes.

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- (1) Q There is no question in your mind about that?
- (2) A No, there is not. Like I said, I already have these
- (3) opinions based on all of what I heard and my own feelings, but
- (4) I can put those aside and look at the facts and make a decision
- (5) based on the facts.
- (6) MR. STOLL: Thank you.
- (7) THE COURT: I have some questions for you, ma'am.
- (8) VOIR DIRE EXAMINATION OF APRIL WILKENING
- (9) BY THE COURT:
- (10) Q You said at an earlier time Exxon was at a disadvantage in
- (11) this case because of your attitude, do you still believe that?
- (12) A I do. I don't know how much of my attitude would be
- (13) reflected in my decision.
- (14) Q Now you also said Exxon would have to come a long way to
- (15) get a fair shake, do you still believe that?
- (16) A Yeah, because of the -- I already have these preformed
- (17) Valdez.
- (18) Q And you also said you couldn't be totally fair, do you also
- (19) believe that?
- (20) A Not in the way I judge them right now, I couldn't.
- (21) Q You could not be totally fair?
- (22) A Right, I could not. But if I was given evidence on this
- (23) side and that side and I had to look at it, and give me a
- (24) direction based on the laws, I could make a decision that way.
- (25) Q When a party comes into court at a disadvantage, and it

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- (1) presents evidence of the sort that you've described, and it
- (2) presents evidence, how do you think you're going to look at
- (3) that evidence? Is it going to be the same as a juror who
- (4) doesn't have your biases?
- (5) A No, probably not.
- (6) Q Don't you think there is a pretty substantial possibility
- (7) that you'd allow your opinions to creep in and not just look at
- (8) this evidence from a new standpoint without being affected by
- (9) your opinions?
- (10) A Yeah.
- (11) THE COURT: I'll excuse you, thank you very much, and
- (12) since I excused you from this jury, you're also excused from
- (13) jury duty, you don't have to call in, thanks.
- (14) Counsel, this next juror, the employer has written a rather
- (15) lengthy note of the hardship on the employer.
- (16) THE COURT: You're Mr. Hesson?
- (17) A Yes.
- (18) THE COURT: Could you state your full name for the
- (19) record?
- (20) A Brian Scott Hesson.
- (21) THE COURT: Mr. Hesson, I got your employers note
- (22) earlier in the morning, and this is the first time I've had an
- (23) opportunity to share it with the parties, so they are reading
- (24) it right now. We'll be talking to you about that and other
- (25) things. You're under oath, you understand, as you were when

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- (1) you are filled out the jury questionnaire?
- (2) A Yes.
- (3) MR. STOLL: We'll stipulate, Your Honor.
- (4) THE COURT: You'll stipulate to excuse him.
- (5) MR. STOLL: Yes.
- (6) THE COURT: That was quick, you're under oath but not
- (7) answering any questions. I'll excuse you then and you're
- (8) excused from jury duty also because your group has already
- (9) gone, so you don't have to call back.
- (10) A Thank you, very much.
- (11) MR. STOLL: Your Honor, do we have any more jurors?
- (12) THE COURT: I believe we are all out.
- (13) THE CLERK: We're done.
- (14) MR. STOLL: Your Honor, can I bring something up with
- (15) the court?
- (16) THE COURT: Yes, if it's not going to hurt my
- (17) feelings.
- (18) MR. STOLL: Your Honor, there is always a problem in
- (19) scheduling with any trial, and we have a number of out of state
- (20) witnesses, and I know that we're obviously not going to start
- (21) tomorrow, you've already indicated that, I wonder if we could
- (22) perhaps reconvene later this afternoon and get this issue
- (23) resolved on their request for a set over. We've got witnesses
- (24) backed up, I've flown people up from Seattle, I was just
- (25) advised by one of the other lawyers in our trial team that

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- (1) we're getting more and more backed up with witnesses from out
- (2) of state and there is, with the three day weekend coming up
- (3) here, if we have to put people, you know, fly them up and
- (4) either fly them back, the cost is not insignificant here.
- (5) THE COURT: I understand that, counsel, I'll try to
- (6) accommodate everybody within reason, but where are we on
- the
- (7) briefing on that issue.
- (8) MR. DIAMOND: The briefing has been completed. We did
- (9) not understand that we had the right, nor do we plan on filing
- (10) a reply. So you have gotten our motion, opposition was served
- (11) on us late yesterday, early today. We filed a supplemental
- (12) yesterday morning when we had another piece of paper, but I
- (13) could have Mr. Oppenheimer, who is going to discuss it with
- (14) you, come to court at your convenience and do it either late
- (15) today or early tomorrow.
- (16) THE COURT: Do you want to do it at 4:15?
- (17) MR. STOLL: If I could make a call, Your Honor.
- (18) MR. STOLL: Could it do that right now -
- (19) THE COURT: I'm just going to set it for 4:15, if you
- (20) can't do it, call and I'll reschedule it.
- (21) MR. DIAMOND: How many prospective jurors are you
- (22) going to have in tomorrow?
- (23) THE COURT: 15.
- (24) MR. DIAMOND: We only need how much?
- (25) THE COURT: Doesn't matter, counsel, I've seen - look

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- (1) what happened in this last go around, ten, ten out of 15 went
- (2) for cause, so I'm being cautious on the side of abundance here,
- (3) so we have to - the first person we'll talk to is Mr. Davila.
- (4) MR. STOLL: Or Mr. Owens may show up.
- (5) THE COURT: I hope so, I'd like to talk to him.
- (6) Apparently we keep calling him and the phone gets lifted and
- (7) then there is silence on the other end and the phone goes
- down.
- (8) MR. STOLL: Is there heavy breathing?
- (9) MR. DIAMOND: Your Honor, I may want to take a look at
- (10) his questionnaire, because he lives with one other member in
- (11) his household, and it's a dog.
- (12) THE COURT: Is it a young dog.
- (13) MR. DIAMOND: No it's a dog.
- (14) THE COURT: I shouldn't be blaming Mr. Owens.
- (15) MR. DIAMOND: I just wanted to make sure, there is a
- (16) potential of some confusion with respect to Mr. Davila who is
- (17) going to call.
- (18) THE COURT: I'm a little confused.
- (19) MR. DIAMOND: He also needs to check with the
- (20) university of Kansas - you're not going to make him postpone
- (21) his course until the fall, he can either take it later in the
- (22) day or he's excused.
- (23) THE COURT: Yes. I'm not going to make him postpone
- (24) his course until the fall. If he can do it in the afternoon,
- (25) which I doubt, he - maybe we can get around this problem, if

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- (1) we can't, I'm not going to fool around with it.
- (2) MR. DIAMOND: We'll see him tomorrow morning.
- (3) THE COURT: That's fine.
- (4) MR. STOLL: I'm not trying to be -
- (5) THE COURT: I'm not blaming you, if I were you, I
- (6) might take your position, I don't know. I'll see you at - in
- (7) this courtroom at 4:15 on the other issue.

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(1) STATE OF ALASKA)

(2) : Reporter's Certificate

(3) DISTRICT OF ALASKA)

(6) I, Leonard J. DiPaolo, a Registered Professional

(7) Reporter and Notary Public;

(8) DO HERBY CERTIFY:

(9) That the foregoing transcript contains a true and

(10) accurate transcription of my shorthand notes of all requested

(11) matters held in the foregoing captioned case.

(12) Further, that the transcript was prepared by me

(13) or under my direction.

(14) DATED this day

(15) of , 1994.

(21) LEONARD J. DiPAOLO, RPR

Notary Public for Alaska

(22) My Commission Expires: 2-3-96

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re) Case No. JAN-89-2533 Civil
) Anchorage, Alaska
 (5) the EXXON VALDEZ) Wednesday, June 29, 1994
) 8:30 a.m.
 (6))
 (8) VOLUME 7 Pages 1030 through 1180
 (10) TRANSCRIPT OF PROCEEDINGS (Continued)
 (11) TRIAL BY JURY - JURY SELECTION
 (12) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge

(16) APPEARANCES:

(17) FOR THE PLAINTIFF:

(18) N. ROBERT STOLL
 Stoll, Stoll, Berne & Lokting
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUMENOS
 (21) Birch, Horton, Bittner & Cherot
 1127 West Seventh Avenue
 (22) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 (24) Fortier & Mikko
 2550 Denali Street, Suite 604
 (25) Anchorage, AK 99503
 907/277-4222

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(1) FOR THE DEFENDANTS:
 CHARLES P. DIAMOND
 (2) M. RANDALL OPPENHEIMER
 LINDA JAHE SMITH
 (3) O'Melveny & Myers
 400 South Hope Street
 (4) 213/669-6000
 (5) JOHN F. CLOUGH III
 Clough & Associates
 (6) 431 N. Franklin St., #202
 Juneau, AK 99801
 907/586-5777
 (8) Reported by:
 LEONARD J. DI PAOLO, RPR
 (9) Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99503
 (11) 907/258-7100

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(1) PROCEEDINGS
 (2) (Jury out at 8:45 a.m.)
 (3) (Call to Order of the Court.)
 (4) THE COURT: We're ready to go, counsel.
 (5) MR. DIAMOND: We are.
 (6) THE COURT: Mr. Davila is not here yet. I don't know
 (7) why, but, so I was thinking we should go ahead with the next
 (8) one.
 (9) MR. DIAMOND: Did the clerk give you our message about
 (10) juror number?
 (11) THE COURT: 76?
 (12) MR. DIAMOND: Yes.
 (13) THE COURT: What was the message?
 (14) MR. DIAMOND: We were starting off the morning with a
 (15) light note.
 (16) THE COURT: You figure this juror ought to be the only
 (17) juror.
 (18) MR. DIAMOND: Right. Did you read the questionnaire?
 (19) THE COURT: I was thinking this juror could tell us
 (20) what was going to happen and we could settle the case.
 (21) MR. STOLL: And then we could leave.
 (22) THE COURT: So do you want to - we could leave. I'm
 (23) not going to let you leave, counsel. It's such a pleasure, you
 (24) would have to stay here anyway.
 (25) MR. STOLL: Oh, well, forget it then.

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(1) THE COURT: Where are we, what juror?
 (2) THE CLERK: The next one is Keith Fernandez, number
 (3) 74.
 (4) MR. DIAMOND: We have a stipulation for cause on 78.
 (5) THE COURT: So you're going to stipulate to excuse
 (6) him? I think that's probably wise, counsel.
 (7) MR. STOLL: Judge, could we have just a moment? I
 (8) want to try to get somebody to get a hold of Mr. Ruskin to see
 (9) if we can schedule our meeting.
 (10) THE COURT: That's a good idea, because I didn't bring
 (11) my notes in here, so I'm at a disadvantage.
 (12) MR. STOLL: You're not clairvoyant?
 (13) THE COURT: I'm clairvoyant. I've been trying to tell
 (14) you that throughout this case, but you just don't believe me.
 (15) MR. STOLL: No, we don't.
 (16) THE COURT: Off the record.
 (17) (Off the record.)
 (18) THE COURT: Back on the record.
 (19) Mr. Davila, why don't you tell us what your investigation
 (20) disclosed?
 (21) A Yesterday after I left I went back to work and I called up
 (22) the registrar, and she said there was a class at the same time
 (23) that had like a few openings from 9:00 a.m. to 11:00 and she
 (24) said the only other class is from 5 to 7:30 and they are either
 (25) full or cancelled.

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- (1) THE COURT: So you had no possibility to take the
 (2) class except in the time frame that the this trial is going on?
 (3) A Uh-huh.
 (4) THE COURT: Counsel, it appears - I don't want to
 (5) deprive somebody of a college education for one trial, so I'm
 (6) going to excuse Mr. Davila for cause.
 (7) MR. STOLL: All right.
 (8) THE COURT: You're excused, sir, and I appreciate you
 (9) doing the work to let us know what the true situation was.
 (10) A No problem.
 (11) MR. STOLL: We thought we would stipulate on
 (12) Mr. Owens' dog.
 (13) THE COURT: Because the dog is clairvoyant.
 (14) MR. STOLL: We're going to accept him.
 (15) (Keith Fernandez enters the room.)
 (16) THE COURT: Good morning, sir. Could you give your
 (17) name for the record?
 (18) A Keith Fernandez.
 (19) THE COURT: Mr. Fernandez, we're going to ask you a
 (20) few supplemental questions, to supplement your questionnaire
 (21) you filled out. Remember now the jury questionnaire answers
 (22) were given under oath and these answer will be also.
 (23) Mr. Stoll?
 (24) VOIR DIRE EXAMINATION OF KEITH FERNANDEZ
 (25) BY MR. STOLL:

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- (1) Q Good morning, Mr. Fernandez.
 (2) A Howdy.
 (3) Q I'm here today on behalf of the municipalities and the
 (4) native corporations that are plaintiffs in this case, and
 (5) Mr. Diamond is one of the lawyers for Exxon. I see that you,
 (6) from the questionnaire, you've read quite a bit about the Exxon
 (7) Valdez oil spill, or heard a lot about it?
 (8) A Certainly.
 (9) Q Now, it's pretty hard - you would have to be brain dead up
 (10) here not to have read or seen quite a bit about it.
 (11) A Uh-huh.
 (12) Q During the course of this did you formulate some opinions
 (13) though as to either what damages occurred or didn't occur as a
 (14) result of the spill?
 (15) A Well, being in the visitor industry I had a lot of contact
 (16) as well with people in the tourism industry who were affected
 (17) one way or another about it. So, yeah, I do have - you know,
 (18) I have some opinions about it, yes.
 (19) Q Do you want to share those with us?
 (20) A Well, I think it was, you know, a major disaster that
 (21) really affected a lot of tourism and fishing business in the
 (22) area. I got a friend who is a commercial fishermen who says
 (23) he's still being affected, he says, by it, and it's definitely
 (24) a major blow.
 (25) Q Now in this case the plaintiffs in this case are

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- (1) municipalities and Native corporations, they are not fishermen
 (2) as such, and the major claims are land damage claims. Have
 (3) you - and we're going through this process now, we're trying
 (4) to find out if people are biased or prejudice or cannot
 (5) evaluate the evidence in this case. Do you think that any of
 (6) your points of view would unduly affect your evaluation of the
 (7) evidence that would come in here?
 (8) A Yeah, I think - I'd have to say I think, again, because
 (9) I'm so involved in the visitor industry, I have a hard time
 (10) breaking stuff.
 (11) THE COURT: Mr. Fernandez, you're too close to the
 (12) mic, we're getting a lot of feedback.
 (13) A Okay. And that certainly does cloud how I look at things,
 (14) and whether if other people are involved, I still kind of come
 (15) at it from my viewpoint and vantage point and heard or talked
 (16) with other people.
 (17) BY MR. STOLL:
 (18) Q So you don't think you could, I mean, partially evaluate
 (19) the evidence here even if Judge Shortell instructed you that,
 (20) under the law, you're to consider only the evidence that's
 (21) presented here in the courtroom?
 (22) A I think I would have a hard time. Again, simply because of
 (23) all the people I know in the industry that have been affected.
 (24) It could, yes.
 (25) Q So you think that you would be biased?

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- (1) A I think that I could be. I can't say unless I'm actually
 (2) sitting there, but from where I am, yeah, I think I could be.
 (3) Q Have you sat on any other juries?
 (4) A Yes, I have, before, about ten years ago.
 (5) Q And what was the nature of those cases?
 (6) A The only other one I sat on was a drug case.
 (7) Q A drug case?
 (8) A Uh-huh.
 (9) Q Did you have any difficulty evaluating just the evidence
 (10) that was presented in the courtroom there?
 (11) A No.
 (12) Q The judge instructed you in that case, I'm sure, that you
 (13) are to consider only the evidence that was presented and
 (14) admitted into evidence?
 (15) A Uh-huh.
 (16) Q And you think that would be a problem for you in this case?
 (17) A I think it could be. I didn't have any dealings with drugs
 (18) in the past, so, you know, that didn't have any effect on me.
 (19) Q But the fact that the judge would instruct you, you think
 (20) even if he instructed you just to follow the law and the
 (21) evidence that was here, you can - you think that it would
 (22) still be a problem for you?
 (23) A I think it could be simply because, you know, I'm a human
 (24) being, you know, put all of what I know into, you know, the
 (25) deliberations. I mean, I can't just say, well, you know,

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- (1) that's out of here, it's not a part of what I'm thinking about.
- (2) Q Do you think that - may I have a moment, Your Honor?
- (3) (Discussion off the record.)
- (4) BY MR. STOLL:
- (5) Q None of the issues in this case - well, the claims in this
- (6) case are that, as I say, that the land has lost value in the
- (7) affected areas, lost value as a result of the spill, and the
- (8) subsequent public furor or public news about that -
- (9) A Uh-huh.
- (10) Q Are any of the people that you got your information from,
- (11) are they in the real estate business?
- (12) A No.
- (13) Q These are all commercial fishermen or people in the tourism
- (14) industry?
- (15) A Yeah, plus one person who was at Chugach, a Native
- (16) corporation.
- (17) Q I see, and who is that?
- (18) A Neil Anderson, he was their former CFE and CEO.
- (19) Q And what was your relationship with Mr. Anderson?
- (20) A He was a friend of mine. I work with his wife at my
- (21) office, and we would meet at various gatherings.
- (22) Q You don't have any personal knowledge, do you, about the
- (23) real estate values in the affected areas?
- (24) A No, not at all.
- (25) Q And have you - do you know anything about the effects of

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- (1) the oil spill on archeological sites of the Native
- (2) corporations?
- (3) A No, huh-uh.
- (4) Q So that's not going to affect you, either?
- (5) A No.
- (6) Q And with respect to individual claims of Cordova or some
- (7) village municipalities in Kodiak on some projects that claim
- (8) they were delayed or lost as a result of the oil spill, do you
- (9) know anything about any of those claims?
- (10) A No, I don't.
- (11) Q So those claims are not going to affect your
- (12) deliberations? You just have a feeling that the oil spill
- (13) caused a lot of devastation to the fishing industry?
- (14) A Yes.
- (15) Q And affected - and there was a lot of notoriety about it?
- (16) A Uh-huh.
- (17) Q Now, Mr. Fernandez, we can all agree, as I started out,
- (18) someone would have to be brain dead to not see that there was
- (19) a
- (19) lot of media coverage about the oil spill. Have you made
- (20) any - have you made any on-site visits to any of the shoreline
- (21) in the last year or two in the affected areas?
- (22) A No.
- (23) Q So that is not going to cloud you one way or another?
- (24) A No.
- (25) Q I think you wrote in here that you had done some fly-overs

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- (1) in the area?
- (2) A Uh-huh, some flightseeing tours in Prince William Sound,
- (3) and people would fly over, you know, where they would say the
- (4) Exxon Valdez either hit Bligh Reef or here is some areas that
- (5) were affected.
- (6) Q Have you done any of the those fly-overs recently?
- (7) A No, it was about a year-and-a-half ago, I think it was.
- (8) Q And you didn't make any - draw any conclusions or, if I
- (9) remember, conclusions at that point as to whether property
- (10) values had remained the same, decreased or increased or
- (11) anything of that nature?
- (12) A No.
- (13) Q That wasn't the subject.
- (14) So as far as the issues that are concerned in this case,
- (15) you haven't made any real determinations?
- (16) A Huh-uh.
- (17) Q Now you indicated on the questionnaire that you know Duke
- (18) Bertke?
- (19) A Uh-huh.
- (20) Q Now do you know him?
- (21) A Number one, he's on our board of directors, and I've worked
- (22) closely with him since he, you understand, joined the borough,
- (23) his company Chelatna Lodge, is a member of the borough.
- (24) We've
- (24) done trips, sales trips or board meetings and we've gotten
- (25) together and talked about all kinds of stuff.

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- (1) Q Is he a social friend as well as a business acquaintance?
- (2) A Business.
- (3) Q How do you know Peter Nagle?
- (4) A Pardon?
- (5) Q How do you know Peter Nagle?
- (6) A Again, I had worked with him to help bring a convention to
- (7) Anchorage, again, a business relationship. He and, gosh, I
- (8) can't remember his friend's name from Alyeska, we had worked
- (9) with them on, what is it, the international right-of-way
- (10) convention, which we won, thankfully, put that in the records,
- (11) and it was primarily just through that interaction that I know
- (12) him.
- (13) Q Then Dr. Middaugh, you said you had some -
- (14) A Years ago I met him and worked with him, a company that I
- (15) was working with at the time, public relations firm, had
- (16) contract with Dow Shell Petrochemical that was looking at
- (17) building a petrochemical plant up in Alaska and a lot of
- (18) hearings we were at and get together and talks about various
- (19) things. But that was years ago. I haven't really, you know,
- (20) seen him much since.
- (21) Q Well, if Dr. Middaugh testified in this case, would you
- (22) give his testimony a particular credence over some other
- (23) expert's testimony simply because you knew him? I mean as far
- (24) as the credentials are concerned, assume for right now that
- (25) their credentials were equal, but if Dr. Middaugh said one

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- (1) thing and another person said another, because of your past
 (2) association with him, would that color your evaluation of his
 (3) testimony, would you tend to favor him?
 (4) A Boy, I don't know. I mean since, you know, I dealt with
 (5) him before, I may, but I really couldn't say.
 (6) Q If the Judge instructed you that you're supposed to devoid
 (7) yourself of that, would you try to do that?
 (8) A Again, I could try, but the fact that I have dealt with him
 (9) in the past and stuff, I can't just say that's something that's
 (10) never existed.
 (11) Q I understand that, we're not going to play fantasyland
 (12) here. But you'd try to put that aside?
 (13) A Uh-huh.
 (14) Q And just listen to the testimony?
 (15) A Uh-huh.
 (16) Q And the same thing is true with these other potential
 (17) witnesses, if there was any conflict of what they are going to
 (18) say - I don't know what they are going to say or, frankly, if
 (19) they are going to be called as witnesses, but if they were
 (20) going to testify, you would try to put your past associations
 (21) aside?
 (22) A Sure, I think I could.
 (23) Q You think you could do that with those other folks.
 (24) You've got a friend that owns a fishing permit. Where does
 (25) he fish?

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- (1) A Out in Bristol Bay area, just out of Ugashik, I think, is
 (2) the name of it.
 (3) Q Have you ever gone commercial fishing?
 (4) A No, not myself.
 (5) Q Now in your questionnaire, one of the questions was on
 (6) 51XXX. It's on page 12.
 (7) A Uh-huh.
 (8) Q You wrote that you think that Exxon could do more to help
 (9) tourism in these areas. The affected areas I assume you mean
 (10) by that?
 (11) A Uh-huh.
 (12) Q What do you mean by that?
 (13) A I just think - I know several tourism entities, one of
 (14) them being the Valdez CVB, has asked for financial support in
 (15) terms of marketing to overcome the negative effects that
 (16) happened in the spill, and they haven't, to my knowledge, been
 (17) acknowledged, and I think that's a damn shame.
 (18) Q As far as that is concerned, tourism as such, there is no
 (19) claim in this case specifically for tourism.
 (20) A No, there isn't a claim specifically for tourism, but part
 (21) of what Alaska sells is the fact that we are pristine and a
 (22) wonderful, you know, place that's not like the Lower 48.
 (23) Q You like Alaska, don't you?
 (24) A I love it.
 (25) Q I'm gathering that's what you love about Alaska, like a lot

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- (1) of us do.
 (2) A Yeah, I he get paid for doing this, it's fabulous.
 (3) MR. STOLL: Sir, thank you very much.
 (4) VOIR DIRE EXAMINATION OF KEITH FERNANDEZ
 (5) BY MR. DIAMOND:
 (6) Q Good morning, Mr. Fernandez, how are you? I'm Chuck
 (7) Diamond. I'm one of the lawyers representing Exxon. I notice
 (8) you have a degree in journalism, have you ever worked as a
 (9) reporter?
 (10) A Yes.
 (11) Q Whereabouts?
 (12) A Back in Missouri for KOMU TV, and I can't remember what
 (13) the
 (14) FM station was. It was in part requirements for graduation
 (15) from a journalism school and part just working, because that's
 (16) what I thought I would make a career out of.
 (17) Q Doing news reporting?
 (18) A Yeah, it was all news reporting for the FM station. I was
 (19) a producer for the "all things considered" program. It was an
 (20) NPR affiliate in Missouri, and for KOMU I was an editor,
 (21) cameraman and reporter.
 (22) Q How long did you do that for?
 (23) A About a year-and-a-half total time. Split up time in both
 (24) of them.
 (25) Q And then you moved to Alaska?
 (26) A Yes.

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- (1) Q I got the impression reading through your questionnaire,
 (2) and I may have been inaccurate, but you had been out to the
 (3) Prince William Sound both before and after the spill; is that
 (4) correct?
 (5) A Uh-huh.
 (6) Q Tell us about the visits you made to the Sound before the
 (7) spill.
 (8) A All tourism related. We would head out with different
 (9) members of the bureau that offered tours of what they offered
 (10) so we could help sell them, so they were heading out to
 (11) Columbia Glacier, you know, touring around Resurrection Bay,
 (12) heading really throughout the Sound.
 (13) Q Were you out on the Sound at all immediately after the
 (14) spill when there was oil present in the area?
 (15) A No.
 (16) Q You mentioned some overflights after the spill.
 (17) A Uh-huh.
 (18) Q How soon after the spill?
 (19) A Again, that was about a year-and-a-half ago.
 (20) Q So that was fairly recent?
 (21) A Yeah, I took several flightseeing tours with some members.
 (22) Q You wouldn't consider yourself as having firsthand
 (23) knowledge of what happened out in Prince William Sound or
 (24) Kenai?
 (25) A No, not firsthand knowledge.

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- (1) Q You hadn't walked any oiled beaches?
- (2) A No.
- (3) Q Have you talked to any local residents down along the Sound
- (4) or out in Kenai or Kodiak about what happened?
- (5) A Gosh, I don't recall. I mean, I know I've talked to some
- (6) folks, you know, like Duke, who had some strong opinions about
- (7) it, but I can't recall specifically if I've talked to anyone
- (8) down there with firsthand knowledge.
- (9) Q The reason I'm asking, you're juror 74, we've talked to a
- (10) lot of people. We're looking for people who can be fair and
- (11) impartial and don't bring necessarily a lot of knowledge about
- (12) what happened in 1989 to the courtroom that they can set
- (13) aside. Has anybody given you information about the spill or
- (14) the impact of the spill on particular communities or particular
- (15) Native corporations that you think you would have trouble
- (16) disregarding?
- (17) A I mean, several of my friends and people that I've dealt
- (18) with who are, you know, either have filed litigation against
- (19) Exxon or part of this one have talked to me about their
- (20) feelings about Exxon and the whole process, so - and I
- (21) definitely have talked to people about, just in general, Exxon,
- (22) you know, and what the effects have been for them, or to them.
- (23) Q Have you gotten the impression from your talks with these
- (24) people that Exxon has been somewhat stingy?
- (25) A Yeah, definitely.

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- (1) Q Is Mr. Anderson one of the people that you've talked to?
- (2) A Yeah, that was many years ago that we talked. I haven't
- (3) really talked to him much since about it, but around that time,
- (4) yeah, he did.
- (5) Q When he was still chief executive officer of Chugach
- (6) Alaska?
- (7) A Yes.
- (8) Q And you know they are a plaintiff here?
- (9) A Yes.
- (10) Q Do you think that would make it more difficult for you to
- (11) be impartial than somebody that didn't have that relationship?
- (12) A Possibly. Because I mean right after it happened we sure
- (13) did talk a lot about it, because I would be talking about the
- (14) tourism end, how it affected us, and he would be talking about
- (15) some of the stuff that happened to his organization.
- (16) Q Who else have you talked to? You mentioned people who had
- (17) claims against Exxon and people who had litigation against
- (18) Exxon, who else did you have in mind?
- (19) A Duke Bertke, from my talks, I understand he's in litigation
- (20) against Exxon, maybe he isn't, but he is one that talked a lot
- (21) to me about it, because he has some real strong views. I think
- (22) if you know Duke, he's got strong opinions just about
- (23) everything.
- (24) Q I know he's on the witness list, so I'll probably get to
- (25) meet him at some point.

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- (1) A Lots of people in the industry, not on this list, but lots
- (2) of people in the industry, talked about Exxon and what's
- (3) happened.
- (4) Q Are you familiar with the fact that there was a lawsuit
- (5) brought on behalf of people in the tourism industry against
- (6) Exxon for losses?
- (7) A Uh-huh.
- (8) Q How do you feel about that?
- (9) A Well, you know, like I said earlier, I think - I don't
- (10) think Exxon has done enough to help people in the industry
- (11) overcome what happened five years ago. It's something that's
- (12) hard for us to sell in Alaska when people have this imagine of
- (13) an oil slick.
- (14) Q Was your organization at all connected with that
- (15) litigation?
- (16) A No, the bureau was not directly.
- (17) Q What specifically has Mr. Bertke told you about the impacts
- (18) that he has perceived of the spill?
- (19) A I mean I can't recall specifics. You know, we've talked
- (20) about the fact that he - he just thinks that it was a huge
- (21) disaster and, you know, we need to, you know, get it
- (22) straightened out and get Exxon to help straighten it out,
- (23) whether it be through a kind - whatever kind of support,
- (24) monetary would be certainly a way to look at it so we can
- (25) overcome the negative effects.

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- (1) He owns a couple of businesses that are - you know,
- (2) Chelatna Lake is one big one that's definitely tourism related,
- (3) had the effects of the spill. He's seen, from my conversations
- (4) with him, he's certainly seen his business affected by it, even
- (5) if the oil spill didn't directly affect him, which happened
- (6) throughout the oil industry, the oil didn't wash up on the
- (7) shores here in Cook Inlet, we were affected by calls and
- (8) cancellations and lots of other negative effects. So it was
- (9) more along those lines. Specifically I sure couldn't recall
- (10) any specifics to pick, but definitely it was a major problem
- (11) and that we, in the industry, weren't getting what we needed
- (12) out of Exxon to really help us out.
- (13) Q As an executive of the convention and visitors bureau, your
- (14) constituents or folks involved in tourism here in Alaska, and
- (15) do you generally see things pretty much the same way they do in
- (16) connection with the spill?
- (17) A Yeah, I sure do, because they are the folks that we need to
- (18) work with, to work with together, so, you know, help sell
- (19) Anchorage and Alaska tourism, so we certainly work along a lot
- (20) of common lines to get the job done.
- (21) Q Coming in to court, does that make you more likely than
- (22) somebody that doesn't have your point of view or your
- (23) experience, more likely to want to see Exxon pay money in this
- (24) litigation?
- (25) A Yeah, I would say so, I would say so, especially for the

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- (1) industry.
- (2) Q You said the spill was a major disaster to commercial
- (3) fishing and being affected and a major blow to the fishing
- (4) industry, what's that based on?
- (5) A It's based on conversations with my friend in the
- (6) commercial fishing industry.
- (7) Q Who is that?
- (8) A His name is Jim Tuttleason, and his wife also works at the
- (9) bureau, although she and I don't usually talk commercial
- (10) fishing. Whenever he comes in to pick her up at the office
- (11) we'll talk, and I mean not all our talks are about Exxon, but
- (12) certainly after the spill and for several years afterwards we
- (13) talk about it.
- (14) Q Do you know whether he's a litigant or member of the
- (15) fishermen class?
- (16) A I don't know.
- (17) Q But he's definitely told you in his view the catch has been
- (18) down as a result of the spill?
- (19) A Uh-huh.
- (20) Q There is some amount of difference of opinion, some people
- (21) say is that fish catching is up and down for other reasons,
- (22) unrelated to oil. I take it you would view yourself as being
- (23) the segment of the community who thinks the spill has had an
- (24) effect?
- (25) A I'm not an expert, but I would see Jim as one, and if he's

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- (1) saying that, I would think so.
- (2) Q The reason I guess I ask is because one of the disputed
- (3) things in this case is going to the effect of the spill on
- (4) marine life and fish and et cetera, and what it may have been
- (5) to commercial fish catches as well.
- (6) Do you think you bring a point of view that will be
- (7) difficult to set aside?
- (8) A Yeah, I would think so because I've known Jim and Denise
- (9) for about nine years now, and, you know, I consider them
- (10) friends, and again, I consider Jim to be much more
- knowledgable
- (11) than I would in that area. If that's what he's saying then I
- (12) would, you know, probably agree with what he's saying.
- (13) Q So that would - that might make you a little more
- (14) skeptical of an Exxon witness that tried to convince you there
- (15) was no effects from the spill on the fish catch?
- (16) A Yeah, because the witness may not be out there fishing, but
- (17) Jim is depending on his life-style.
- (18) THE COURT: You're about at the end of your time.
- (19) MR. DIAMOND: All right, thanks for your time. I
- (20) would like to be heard.
- (21) MR. STOLL: One or two questions.
- (22) THE COURT: Sure.
- (23) VOIR DIRE EXAMINATION OF KEITH FERNANDEZ (Resumed)
- (24) BY MR. STOLL:
- (25) Q Mr. Fernandez, the testimony on this science information is

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- (1) going to be from highly experienced experts.
- (2) A Uh-huh.
- (3) Q And if - are you going to evaluate their testimony based
- (4) upon what they say and how they say it and what their
- (5) credentials are, or do you think this friend of yours that has
- (6) given you some advice, I mean, do you think you can separate
- (7) that from what these scientists say here?
- (8) A I don't know. I mean he's the one out there as opposed to
- (9) the so-called experts. He's been affected by it directly.
- (10) Q Well, he may be affected, but the fact of the matter, is he
- (11) a scientist in the sense of having studied marine biology and
- (12) zoology and so on?
- (13) A No, he certainly hasn't studied that, but again he's the
- (14) one out on the front line, not these guys.
- (15) Q So do you think that that experience with him would affect
- (16) your evaluation of this scientific testimony?
- (17) A Yeah, because, like I said, he's the one that's there, he's
- (18) the one that's really affected by it.
- (19) Q So you think you would be biased and prejudiced in this
- (20) case and you couldn't evaluate fairly the evidence?
- (21) A If anything is a part of it, yeah.
- (22) Q What happened to the ecology system?
- (23) A Uh-huh.
- (24) Q No matter what the Judge says?
- (25) A I'm glad he'll tell me to forget all that stuff, but again,

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- (1) I know these folks and I trust them very much.
- (2) MR. STOLL: Thank you.
- (3) We'll stipulate, Your Honor.
- (4) THE COURT: I think on another case you might be a
- (5) fine juror, but not this case. So I'm going to excuse you,
- (6) sir, and you're no longer on jury duty, so you can simply
- (7) leave. Thanks very much for your time.
- (8) A Is there anyone I need to see before heading out?
- (9) THE COURT: If you accepted those stipulations a
- (10) little earlier, we could have saved some time.
- (11) MR. STOLL: I tried.
- (12) THE COURT: I heard you.
- (13) (Jay Jesclard enters the room.)
- (14) THE COURT: Good morning, sir. Could you give your
- (15) name for the record, please?
- (16) A Full name?
- (17) THE COURT: Your name.
- (18) A Jay Jesclard.
- (19) THE COURT: Mr. Jesclard, we're going to ask you some
- (20) brief supplemental questions to those on your questionnaire.
- (21) You understand everything you've answered here, including
- the
- (22) questionnaire, is under oath?
- (23) A Yes.
- (24) VOIR DIRE EXAMINATION OF JAY JESCLARD
- (25) BY MR. STOLL:

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- (1) Q Mr. Jesclard, my name is Bob Stoll and I'm here on behalf
 (2) of the municipalities and Native corporations. And this is
 (3) Mr. Diamond, he's one of the lawyers for Exxon. I just have a
 (4) few questions to follow up with you here.
 (5) There is a copy of your thing there, if you want to look at
 (6) it, or you can, if you want to or not.
 (7) On page 14, question 63 at the bottom of the page there,
 (8) you were asked whether you have any personal experience that
 (9) may have given you knowledge, and you say yes, and then you
 (10) said you tried to use my common sense; is that what you meant
 (11) by that?
 (12) A I didn't exactly know how to answer that question. Like I
 (13) said, I try to use my best judgments in situations of this sort
 (14) and figure that will -
 (15) Q Do you have any particular training?
 (16) A As far as - no, I've not gone to law school.
 (17) Q Or taken any law course?
 (18) A No.
 (19) Q The reason I'm asking that question, we're trying to find
 (20) out if people come into the courtroom with sort of preconceived
 (21) ideas or have some particular knowledge, you know, that they
 (22) are going to take into the jury room with them. As you can see
 (23) from your juror number 75, there is a lot of people that have a
 (24) lot of opinions about - particularly about this case, and so
 (25) it's - you know, people have a right to have opinions and

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- (1) that's part of our system, but it's also - it makes it more
 (2) difficult for us to find people that are completely neutral, so
 (3) to speak.
 (4) Now you have - another question, page 12, at the bottom of
 (5) that page, you said, what, if any, opinion do you have about
 (6) the municipalities or Native corporations suing Exxon for
 (7) damages in connection with the Exxon Valdez oil spill, and you
 (8) wrote, honesty and relevance should prevail. What did you
 (9) mean
 (10) by that?
 (11) A I think things that are relevant to this case ought to be
 (12) presented and something that has nothing to do or something
 (13) that's perhaps blown up, I don't think should be brought to
 (14) court. Like I said earlier, I've been out of state at college,
 (15) so I have very little background what's been going on for the
 (16) last six months, but, like I said, I think it should be
 (17) conducted in a fair manner and things that should be brought to
 (18) court, should be presented, and things that should be left out,
 (19) should be left out.
 (20) Q What do you have in mind, in particular?
 (21) A That's kind of my basic stance on most things involving the
 (22) legal system.
 (23) Q But do you have any particular views in terms of what
 (24) should be brought in to court in this case or not brought in to
 (25) court in this case?
 (26) A Well, based on the little I know, I think if the

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- (1) corporations suing Exxon have indeed lost money, then I think
 (2) they have a justifiable claim; if they haven't, then in my
 (3) opinion they don't have a claim.
 (4) Q So you're going to evaluate -
 (5) A And only things pertaining to, yes, they have a claim, no,
 (6) they don't have a claim should be presented.
 (7) Q Is there something you're thinking about -
 (8) A No.
 (9) Q - that somebody may try to bring into the case that you
 (10) think is irrelevant?
 (11) A No.
 (12) Q It's just - you just want to focus on what you consider to
 (13) be the relevant factors?
 (14) A Right.
 (15) Q The claims in this case are, if I can sort of categorize
 (16) them, this may be an oversimplification, but I'm trying to give
 (17) you sort of an idea. The Native corporations and the
 (18) municipalities, particularly Kodiak Island Borough, own quite a
 (19) bit of land in the affected areas - and by the affected areas
 (20) I mean Prince William Sound and the oil spill - flowed down
 (21) past Kodiak Island and down to southeast Alaska, actually?
 (22) MR. DIAMOND: Southwest.
 (23) MR. STOLL: Excuse me, southwest Alaska.
 (24) BY MR. STOLL:
 (25) Q So the first and largest claim from a dollar standpoint is

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- (1) the claims of these Native corporations and some of the
 (2) municipalities for loss of value of their property during the
 (3) affected period and during the - that are in the area. Is
 (4) there anything in your background that you think would - let
 (5) me back off for a second. Let me tell you another factor.
 (6) These municipalities and Native corporations still own the
 (7) land, they haven't sold the land. Now, I think you've
 (8) indicated you've taken accounting and finance?
 (9) A Uh-huh.
 (10) Q In accounting, there is accrual in accounting, even
 (11) though - there is not actually an accrual accounting, but in
 (12) the sense you agree that somebody can incur a loss even if they
 (13) haven't sold - they haven't liquidated that loss. In other
 (14) words, they haven't sold the piece of property or something
 (15) could be depreciated as a result of some kind of action, but
 (16) the person hasn't actually incurred the loss in the sense that
 (17) they have sold the property yet at a loss?
 (18) A I understand what you're saying.
 (19) Q Do you understand what I'm saying? Do you think that that
 (20) is - that type of a claim, I'm not asking you to prejudge the
 (21) evidence, because you haven't heard any evidence yet, but is
 (22) there anything about that type of claim that you think that
 (23) sounds like a lot of baloney?
 (24) A That appears to me, based on your explanation as a valid
 (25) claim.

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- (1) Q So as a question, you're not making the judgment as to
 (2) whether that claim is, in fact, valid, you don't know that
 (3) because you haven't heard any testimony?
 (4) A Right.
 (5) Q But there is nothing about the nature of that claim that
 (6) says out of here?
 (7) A Like I say, I suppose that would have some ground based on
 (8) what you're saying.
 (9) Q Now what - you're from Alaska, you've read a lot about
 (10) this case or heard about it. Even if you haven't been up here,
 (11) you've heard about it when you were in school. Are there some
 (12) claims you've heard about that you think is way out there, I
 (13) mean that's - you know, that you think are just specious -
 (14) A Claims against Exxon?
 (15) Q Yes.
 (16) A The only claims that I am familiar with are simply claims
 (17) of the sort that you're talking about, damage to property, loss
 (18) of capital, those types of things. I'm not familiar in detail
 (19) with the -
 (20) Q Fishermen claims and those sorts?
 (21) A Right.
 (22) Q Do you have any feelings - fishermen are not involved
 (23) directly in this case, but do you have any feeling about
 (24) fishermen claims?
 (25) A (Shakes head no.)

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- (1) Q Have you been out to any of the affected areas?
 (2) A My dad has a contract with the Alyeska Pipeline down at the
 (3) terminal, I've been down there. I haven't actually seen -
 (4) I've flown over it a couple weeks after it happened, but
 (5) recently I haven't been to the affected areas.
 (6) Q In 1989 you flew out over the spill?
 (7) A I was - right.
 (8) Q Where did you go then?
 (9) A I was going to Petersburg, I believe. I was going to
 (10) Seattle, and then I was down there for a few days just on a
 (11) maintenance to Valdez.
 (12) Q Now, as you know, the spill was way south of the town of
 (13) Valdez itself. Did you - when you flew out over the Sound,
 (14) did you see oil?
 (15) A Sure.
 (16) Q Did you see quite a bit of oil throughout that area?
 (17) A The clean-up process was going on, yeah.
 (18) Q How soon after this do you think this was, a month, two
 (19) weeks or -
 (20) A Two weeks to a month, in there.
 (21) Q So you saw a lot of people?
 (22) A There were activities.
 (23) Q Do you think that that would influence you in terms of
 (24) evaluating the evidence in this case?
 (25) A No.

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- (1) Q I'm just trying to find out.
 (2) A No.
 (3) Q What does your father do with Alyeska?
 (4) A He is a - he has a contract with them to maintain their
 (5) fire and halon systems in the terminals.
 (6) Q Right at the terminals?
 (7) A Uh-huh.
 (8) Q Has he talked to you about the Exxon Valdez oil spill?
 (9) A From a business standpoint or just as Exxon talk?
 (10) Q Just common talk.
 (11) A Sure.
 (12) Q And what - has he expressed any opinions as to any of the
 (13) claims or defenses that are being made either by Exxon or
 (14) people suing Exxon?
 (15) A He has a personal opinion outside of his business
 (16) orientation, sure.
 (17) Q What's that opinion?
 (18) A Concerning this?
 (19) Q Yes.
 (20) A That - I believe his personal opinion is that the people
 (21) involved making the claim have been reimbursed - have been
 (22) sufficiently reimbursed from Exxon through clean-up efforts and
 (23) things of that nature, that's about it.
 (24) Q And has he indicated that he thinks that these are - the
 (25) plaintiffs are greedy people or something to that nature?

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- (1) A (Shakes head no.)
 (2) Q What do you know about the Exxon payments to claimants?
 (3) A That's kind of a gray - I don't know that much. As far as
 (4) I'm aware, that they tried to involve a lot of people in their
 (5) initial clean-up effort. After that I've kind of - I haven't
 (6) followed the events particularly closely.
 (7) Q Do you think that your father's point of view - is that a
 (8) view that you share?
 (9) A I don't have sufficient information to know. I have more
 (10) of a neutral - I don't know. I know that there was a decision
 (11) a couple months ago that said that the people could seek legal,
 (12) but I haven't been in the state for that and I don't know the
 (13) proceedings in detail, so I can honestly say I don't have an
 (14) opinion.
 (15) Q You understand that in this case the issue is not whether
 (16) Exxon is liable, that's already been determined, the issue is
 (17) simply what are the amount of damages.
 (18) A Okay, I'm aware of that.
 (19) Q Can you accept that?
 (20) A Sure.
 (21) Q Now the amount of money that the Native corporations are
 (22) asking for in this case is a hundred million dollars. I mean
 (23) that's - it's not exactly a hundred million dollars, but it's
 (24) in that range. That's a lot of money. The municipalities are
 (25) asking for lesser sums, less than ten million dollars actually,

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- (1) the aggregate. That's still a lot of money, in my way of
 (2) thinking that's a lot of money.
 (3) In those sums, do you draw any conclusion simply from the
 (4) size of those claims that these must be either good or they are
 (5) bad or there is a lot of - go in with a skepticism about them?
 (6) A You just gave some dollar figures. I had actually expected
 (7) or was thinking that people would be asking for far in excess
 (8) of that.
 (9) Q I see.
 (10) A I guess if there is legitimate proof that we have lost this
 (11) money here, here and here, sure.
 (12) Q You wouldn't have a problem with that?
 (13) A No, not at all.
 (14) Q Now you checked in the boxes that you had somewhat -
 there
 (15) was one question, I think it's question 47, it's on page 11,
 (16) about your views on different organizations, and some of them
 (17) you rated somewhat favorably, somewhat unfavorably, and I'm
 (18) curious to know where, in the first place, you checked the box
 (19) somewhat unfavorable toward local government and
 (20) municipalities.
 (21) A That it is more based on my current political views and my
 (22) views on the city.
 (23) Q You mean the City of Anchorage?
 (24) A Right. I think the question is somewhat -
 (25) Q It's a general question?

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- (1) A Right.
 (2) Q That's fine. And have you had any dealings with either
 (3) Cordova or any of the municipalities in Kodiak?
 (4) A No.
 (5) Q So this view doesn't necessarily affect your views in any
 (6) other communities?
 (7) A This doesn't reflect my views of the state or local
 (8) governments outside of Anchorage, no. I thought that's what
 (9) you're implying.
 (10) Q What's your basis of your feelings towards Anchorage?
 (11) A My political views and expectations of certain things are
 (12) different than those of the current government.
 (13) Q The current mayor?
 (14) A Right.
 (15) THE COURT: Mr. Stoll, you're about at the end of your
 (16) time.
 (17) BY MR. STOLL:
 (18) Q Now, you also have somewhat unfavorable views towards
 (19) Native corporations. Could you tell us what the basis of that
 (20) is?
 (21) A Those are just based on personal experience.
 (22) Q What were those experiences? What Native corporations did
 (23) you have experiences with?
 (24) A I don't recall, just incidents out in - actually just
 (25) incidents out in villages that I witnessed, and things of that

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- (1) nature.
 (2) Q What are you thinking about here?
 (3) A Would you like a story?
 (4) Q Yeah, a story.
 (5) A We were on a job and a shipment of computer equipment
 (6) arrived, I guess it doesn't apply to Native corporations, but
 (7) villages. It was a shame because it rained, it snowed, no one
 (8) was there to get it. So my father asked some people and they
 (9) said, government will send another shipment. That's one, that
 (10) was about ten years ago.
 (11) Q Do you have, from that do you -
 (12) A I was just surprising, several thousand dollars worth of
 (13) equipment being unloaded and -
 (14) Q Nobody cared about it?
 (15) A Right.
 (16) Q From that, do you think that's the way most villages or
 (17) Native corporations -
 (18) A Like I said, perhaps I shouldn't have put that, it wasn't a
 (19) native corporation, it was a group of people, but these were
 (20) personal questions, and all I can base it on is personal
 (21) experience.
 (22) Q Sure, I can understand that. Have you ever had other
 (23) experiences where you thought a small village or a Native
 (24) corporation was wasteful?
 (25) A There have been other experiences to support this, and then

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- (1) there have been those that have been where there hasn't been a
 (2) problem at all.
 (3) Q They acted responsibly?
 (4) A Right. I guess if there is a middle column I should have
 (5) put that.
 (6) Q We're trying to find out what you personally believe and
 (7) your views.
 (8) Do you think, if you're evaluating the evidence in this
 (9) case as to whether or not a Native corporation or a municipal,
 (10) village municipality acted properly, do you think you can put
 (11) those experiences aside and just consider what you hear here
 in
 (12) the courtroom?
 (13) A Absolutely.
 (14) MR. STOLL: Your Honor, I have just a couple more
 (15) questions.
 (16) THE COURT: Just a couple.
 (17) BY MR. STOLL:
 (18) Q You made the statement in here that everything is back to
 (19) normal. That's on question 51, it's on page 12.
 (20) A Okay.
 (21) Q What do you base that opinion on?
 (22) A I believe there are no more clean-up efforts going on to
 (23) the extent there was in 1989. And I've been down there to
 (24) fish, I - there is not a big hoopla. I guess it's back to
 (25) normal. I haven't -

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- (1) Q Have you made any evaluation as to whether there is any
 (2) long-term ecological effects?
 (3) A No, I haven't.
 (4) Q Have you heard contradictory testimony, one expert gets up
 (5) there and says, it's all back to normal, and another expert
 (6) gets up and says, there is long-term effects on the ecology
 (7) killing marine life and other things, and affects the food
 (8) chain.
 (9) Do you think that your point of view and your own special
 (10) experience down there that everything looks like it's back to
 (11) normal, do you think that's going to affect your basis of
 (12) evaluating these two experts?
 (13) A No, I think I can be open-minded about - if someone can
 (14) come in and showed me in a suitable manner this, this and this,
 (15) of course I'll be open to it. When I went down there it was
 (16) with my family or for enjoyment. I'm not conducting an
 (17) ecological, stock response.
 (18) Q If there is two people that have contradictory testimony
 (19) here, will you evaluate only what they saw, say, or are you
 (20) going to go in and say I remember from my own experience, it
 (21) looks normal, I caught plenty of fish when I was down there, so
 (22) I think the thing that seems more sensible to me is the guy
 (23) that says everything is back to normal?
 (24) A No, my opinion would be based on the - if what they were
 (25) saying was true - how do I say this? I would be open-minded

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- (1) to both and make the decision accordingly.
 (2) Q Just on what you hear here in the courtroom?
 (3) A Right.
 (4) Q And the same thing is true, what I'll call your negative
 (5) experiences with these villages, if there is testimony, well,
 (6) this village didn't act the right way, and the other testimony
 (7) is, we acted this way because of the oil spill, you're going to
 (8) evaluate only what you hear here and you're going to
 (9) completely
 (10) forget about all that other stuff?
 (11) A Of course.
 (12) Q You really think you can do that?
 (13) A Sure.
 (14) Q A lot of people have doubts about whether they can or can't
 (15) in similar circumstances, but you think you can?
 (16) A (Nods head up and down.)
 (17) MR. STOLL: Thank you.
 (18) VOIR DIRE EXAMINATION OF JAY JESCLARD
 (19) BY MR. DIAMOND:
 (20) Q Good morning, Mr. Jesclard. My name is Chuck Diamond. I
 (21) introduced myself last Monday when you were in the
 (22) auditorium,
 (23) and I'm one of the lawyers.
 (24) Since Mr. Stoll used up most of my time, I'll be short.
 (25) You didn't answer for us question 18.
 (26) A Excuse me, I apologize.
 (27) Q We all had guesses, because you told us where you were

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- (1) going to school, but not the name of the school.
 (2) A So you want the -
 (3) Q Where are you attending school?
 (4) A At the University of Utah in Salt Lake.
 (5) Q And what are you studying?
 (6) A I'm currently studying finance and French.
 (7) Q First year?
 (8) A Third.
 (9) Q And you told us you lived in Bordeaux for a while?
 (10) A Yeah.
 (11) Q When was that?
 (12) A '90, '92.
 (13) Q Doing what kind of things?
 (14) A I was on a mission for my church. Not in Bordeaux the
 (15) entire two years, I was in other cities for brief periods of
 (16) time.
 (17) Q So you took a break between high school and college?
 (18) A Right.
 (19) Q You - on that question asking you your opinion of
 (20) everybody, complete the loop, you also checked unfavorable to
 (21) the Exxon Corporation, and I represent the Exxon Corporation.
 (22) I'm kind of curious, why did you check that box?
 (23) A Well, just because there is a spill, nothing more, nothing
 (24) less. There was some question concerning the captain and his
 (25) not fulfilling his responsibilities, and that's solely based on

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- (1) the fact that there was a spill and perhaps it could have been
 (2) avoided.
 (3) Q Are you of the view that Exxon probably didn't take as many
 (4) steps as it could have to ensure that the captain of the vessel
 (5) was top notch and in good shape?
 (6) A No, I'm not questioning that, I'm questioning more the
 (7) captain himself personally, perhaps. I'm not in a position to
 (8) make a policy declaration but perhaps he didn't fulfill his
 (9) responsibilities correctly.
 (10) Q As Mr. Stoll pointed out, we're not here fighting about who
 (11) was responsible for the spill or whether it was negligence or
 (12) pure accident, the issue here is solely compensation.
 (13) Do you think there is any possibility that the fact that
 (14) you hold Exxon in a somewhat unfavorable opinion might
 (15) influence your judgment as to whether the Native corporations
 (16) or municipalities were damaged, and if so by how much?
 (17) A No, that's just kind of an off-the-cuff response that's in
 (18) my mind. I'm sure that's in a lot of people's mind, they would
 (19) associate the spill with Exxon. It will come to mind like
 (20) that, I'll pull in to the gas station.
 (21) Q Do you have any viewpoint or opinions about whether Exxon
 (22) handled the clean-up responsibly?
 (23) A It appeared to me to be quite extensive. As to the success
 (24) of it, I can't say.
 (25) Q You strike me as fair and open-minded and that's what we're

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- (1) looking for in jurors. You're number 75, we've gone through a
 (2) lot of them. Another one of the qualifications is an ability
 (3) to judge the facts that are in dispute as jurors are the trier
 (4) of facts based upon the evidence that comes to court.
 (5) You flew over Prince William Sound shortly after the spill,
 (6) I take it at some fairly high altitude?
 (7) A Uh-huh.
 (8) Q Was it a commercial flight?
 (9) A One was Alaska - I don't know, MarkAir, and another one
 (10) was small charter from Anchorage to Petersburg.
 (11) Q One of the issues that we're going to be disputing is what
 (12) got oiled, whether - obviously there was a lot of oil out
 (13) there, it didn't hit all shorelines. The question of whether
 (14) it hit the shorelines of all of these Native corporations, and
 (15) if so where, and if so how much. You view yourself as fair and
 (16) open-minded?
 (17) A Ignorant more is the word. I'm not aware of what
 (18) shorelines it totally covered, so I don't know.
 (19) Q So you heard evidence that even in Prince William Sound
 (20) that there were many, many shorelines that were not oiled, and
 (21) many shorelines that were oiled but only very lightly. You
 (22) wouldn't reject that based on your own personal observations?
 (23) A Like I say, I don't know exactly what was hit and what
 (24) wasn't.
 (25) Q You'd just listen?

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- (1) A I'd be open-minded.
 (2) Q You'd listen to the evidence and decide on that basis?
 (3) A Right.
 (4) Q Mr. Stoll talked to you about your views and long-term
 (5) effects on the ecology, and I'm satisfied you could be
 (6) open-minded on that.
 (7) Another question we're probably going to dispute with
 (8) respect to many of these parcels, many of these shorelines is
 (9) persistence. We take the position and the witnesses will so
 (10) testify that in many of these shorelines the oil is gone. Is
 (11) that something that you could be open-minded on?
 (12) A Sure, if it's gone - hu -
 (13) Q I'm not saying that Mr. Stoll will agree with me, we want
 (14) to know whether you can judge that kind of information fairly
 (15) and impartially based on what you here in the courtroom?
 (16) A (Witness nods head.)
 (17) Q Mr. Stoll talked to you about the magnitude of the
 (18) plaintiffs' dollars claims approaching a hundred million for
 (19) the Native corporations and ten million for the municipalities,
 (20) and you said that you were not disturbed by those amounts. It
 (21) will be Exxon's position that some of these Native corporations
 (22) ought to get zero. Is that a proposition that you find totally
 (23) difficult to believe and would not accept it?
 (24) A I would expect that of the person who is in jeopardy of
 (25) paying that sum of money. Like I said to Mr. Stoll, my

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- (1) decision would be based on the validity of the claim. This
 (2) property got damaged, that is the cost incurred, you owe us.
 (3) If there is proof of that, well, sure. But if there is not,
 (4) then obviously perhaps five million, perhaps zero as you were
 (5) saying.
 (6) MR. DIAMOND: That you very much.
 (7) MR. STOLL: I have two.
 (8) VOIR DIRE EXAMINATION OF JAY JESCLARD (Resumed)
 (9) BY MR. STOLL:
 (10) Q I didn't notice this, and that is that you indicated - at
 (11) the end of your questionnaire there is a question about whether
 (12) there was difficulty in you serving for the term. Are you
 (13) going back to school in the fall?
 (14) A I am.
 (15) Q I'm sorry I didn't ask this at the beginning. When do you
 (16) go back to school?
 (17) A 20th of September.
 (18) Q Not until September?
 (19) A Right.
 (20) Q What about - there is some comment about your earnings
 (21) during the summertime. Are you dependent upon your summer
 (22) earnings to go to school?
 (23) A I don't know who I address this to.
 (24) Q To the Judge.
 (25) A I don't have any problem serving on the jury if needed, but

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- (1) I also have to send myself to school in the fall and winter.
 (2) THE COURT: You understand that the schedule of the
 (3) trial is 8:30 to 1:30, you're out every day at 1:30, and the
 (4) original estimates of this trial, both parties agree are -
 (5) were wrong. The trial will be substantially shorter, it's
 (6) going to be less than two months - well, two months or less,
 (7) and I suspect less, so it's not as extensive in terms of the
 (8) time it's going to take, and the reason that we do the 8:30 to
 (9) 1:30 is to let people out so they can go - do you have a
 (10) specific job?
 (11) A I do. I'm currently employed.
 (12) THE COURT: When do you work then?
 (13) A I work from 8:00 to 5:00, and I'm leaving the state this
 (14) next week to take a French test.
 (15) THE COURT: A French test?
 (16) A At the university.
 (17) THE COURT: Can that be rescheduled?
 (18) A What's that?
 (19) THE COURT: Can the French test be rescheduled?
 (20) A It could. I'm scheduled to leave the 11th of July for some
 (21) inspections on the North Slope Borough for my father with
 (22) whom
 (23) I'm employed.
 (24) THE COURT: You're employed by your father?
 (25) A Yeah. If there is someone else that is as available or
 (26) qualified, whatever you want to say.

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- (1) THE COURT: You're juror number 75, that should tell
 (2) you something. Actually, but that's not the problem. There
 (3) are lots of people on this jury who will suffer hardship if
 (4) they are on it. It's an inconvenience to serve on any jury,
 (5) but this is a longer case so there is more inconvenience. The
 (6) problem is I just can't let people go. I'm bound to be pretty
 (7) strict about letting people go. And I try to be as flexible as
 (8) I can about that, but one area of rigidity here is otherwise
 (9) qualified people sometimes have to suffer fairly substantial
 (10) inconvenience in order to get a fair cross-section of the
 (11) community, so I suspect I'm not going to let you go for the
 (12) hardship reason.
- (13) MR. STOLL: May I just follow up on that?
 (14) VOIR DIRE EXAMINATION OF JAY JESCLARD (Resumed)
 (15) BY MR. STOLL:
 (16) Q If you don't go, say we get done at 1:30, 2:30, would it
 (17) prevent you from going to school?
 (18) A It would put a strain on it.
 (19) Q Well, there is a difference between - I can - what the
 (20) Judge is getting at, a difference between a strain and not
 (21) being able to go to school.
 (22) A I could - I go to school based on my summer earnings.
 (23) Last year I earned enough to go for the year. This year I plan
 (24) on doing the same. I could go to school. I was just - how do
 (25) I say it, it would be a strain. I could certainly go to

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- (1) school, pay tuition, pay books, pay rent.
 (2) Q Do you think that the fact if you were here - plaintiffs
 (3) bring these lawsuits.
 (4) A I wouldn't be mad at you because I was sitting here instead
 (5) of working, I wouldn't hold that judgement, against you,
 (6) certainly not.
 (7) Q Let me ask one other question that related to the question
 (8) Mr. Diamond asked you, and that is the - do you think that
 (9) the - it's possible, I'm not asking - you haven't heard any
 (10) evidence yet, but do you think it's possible that the value of
 (11) real property could diminish because it was in an affected
 (12) area, whether that property was, in fact - whether it was
 (13) oiled - oil is lapping on its shores or not lapping on its
 (14) shores, do you think that's a theoretical possibility?
 (15) A You mean oil is not there?
 (16) Q The oil goes around and it - there is a lot of notoriety
 (17) about the oil in that area and, therefore, property values
 (18) diminish generally.
 (19) Do you think that's a theoretical possibility, or do you
 (20) think you would have to have oil actually touching the land,
 (21) that particular parcel, to affect the claim, having a claim?
 (22) A If an ecologist or petroleum engineer could explain to me,
 (23) yes, even oil was 40 feet away, sure, I would be susceptible to
 (24) that.
 (25) Q I'm not talking about an ecologist, I'm talking about a

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- (1) real estate appraiser, the value of land. Property has market
 (2) value.
 (3) A Sure.
 (4) Q Has it decreased because oil was in that area, whether it
 (5) was lapping on it or whether it was a mile away or whatever,
 (6) that it has an effect, it could have an effect in that area,
 (7) can you accept that a theoretical possibility?
 (8) A If it could be properly presented and shown and proved,
 (9) sure.
 (10) MR. STOLL: Thank you very much.
 (11) THE COURT: All right, sir. Mr. Jesclard, you'll be
 (12) happy to learn you're passed for cause. That doesn't mean
 (13) you're on the final jury, what it means is we still have some
 (14) people to talk to and this will be this morning and then
 (15) decisions will be made about who will be on the final jury. So
 (16) what I'd like you to know is this.
 (17) First, I'm going to excuse you for the day, and I will be
 (18) calling you back at some time in the very near future to tell
 (19) you what happens next, but since what happens next may be
 (20) that
 (21) you're on this jury, I need to tell you and make sure you
 (22) understand that you're not to talk about this case with
 (23) anybody, including people who are on the jury panel, or form or
 (24) express any opinion on it until it's submitted to you for
 (25) deliberation. I'm particularly concerned right now about the
 other jurors not being affected by any information from people

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- (1) who have been here and answered questions, so don't talk to
 (2) anybody as you leave.
 (3) A I understand.
 (4) THE COURT: Thanks very much for your time, we'll let
 (5) you know.
 (6) A So you're going to call me?
 (7) THE COURT: We're going to take a break.
 (8) MR. DIAMOND: The court reporter has requested a brief
 (9) time out.
 (10) THE COURT: Granted.
 (11) (Recess at 10:10 a.m.)
 (12) (Recess back at 10:30a.m.)
 (13) THE COURT: Counsel, first I want to do something with
 (14) you. I want you to check my numbers. We now have 28 passed
 (15) for cause.
 (16) MR. STOLL: Correct.
 (17) THE COURT: Now I've received, or my secretary
 (18) received a call from Mr. Bortnick, who is leaving town tonight
 (19) and won't be back until, as he told her, Tuesday or Wednesday.
 (20) Now that doesn't constitute a problem if it's Tuesday, but it
 (21) does if it's Wednesday - and, you know, Mr. Bortnick has
 (22) voiced great reluctance being on this jury panel, do you want
 (23) to hold his feet to the fire or do what?
 (24) MR. DIAMOND: Feet to the fire.
 (25) MR. STOLL: Your Honor, I think it's going to be - I

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- (1) think it's going to be very difficult with this particular
 (2) person. I'm concerned about keeping his attention, quite
 (3) frankly. I mean he's got these time zones in the east, he's a
 (4) sole practitioner, and -
 (5) THE COURT: I heard all that, counsel, I know that he
 (6) says those things.
 (7) MR. STOLL: I understand that. I think it's going to
 (8) be tough to keep his attention during the course of a two-month
 (9) trial or if he's going to go into the - start off early in the
 (10) morning, you know, focused on this case or focused on
 something
 (11) else, I just -
 (12) THE COURT: I mean, if I were predicting person, here
 (13) is what I would say, he'll be fine for about three weeks, and
 (14) then the effect of this is all going to hit him and he's going
 (15) to - there will be some acting out or request to excuse him or
 (16) something like that, that's almost inevitable.
 (17) MR. STOLL: I agree with that.
 (18) THE COURT: But as I said, there are lots of people on
 (19) this panel with hardships, I'm not sure that it's appropriate
 (20) for me to say, Mr. Bortnick, I accept everything you say as
 (21) absolute gospel, your whole life is going to be ruined, because
 (22) I - frankly, I'm a little skeptical about that.
 (23) MR. STOLL: Your Honor, it could be, but my concern
 (24) quite honestly is that he perceives that and the concern is
 (25) whether it's two or three weeks into the trial it's going to

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- (1) affect his attention what he's willing to put into this case,
 (2) and it's just a total wild card, and I don't know which way
 (3) that comes down. I don't know whether they are going to be
 (4) putting on their case and that be to my benefit, because he's
 (5) going to get upset with them going on, but I just don't think
 (6) that that I - I just don't want to have a juror that's got his
 (7) mind somewhere else.
 (8) THE COURT: Here is what I'm going to do. That's one
 (9) of the reasons I want to pass for cause more than 30 on the
 (10) panel, because he concerns me. So I'm going to have my
 (11) secretary call him back and say, it's no problem if you leave
 (12) and you're back here at 8:30 on Tuesday, but it's a problem if
 (13) you're back here on Wednesday, so you have to be prepared to
 (14) come back here for Tuesday, and we'll talk about it later.
 (15) Because I'm uncertain what I'm going to do about him.
 (16) MR. STOLL: Well, we need to know before we start
 (17) doing our challenges, though.
 (18) THE COURT: Well, frankly, I know that, and the
 (19) challenges sometimes take care of these problems, that's the
 (20) way I feel about that.
 (21) MR. DIAMOND: Just curious about if we pass, know that
 (22) I'm not having a good time today, but if we pass for cause more
 (23) than 30, what problem does that address?
 (24) THE COURT: Here is the problem that I can see. We
 (25) have a pool of jurors who might - who we've narrowed down to

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- (1) three, each of you use six preempts, I bring the jury panel in
 (2) and say, we've done a very good job and we've qualified 16 of
 (3) you and you're the jury, and suddenly, and I've seen this
 (4) happen in shorter trials than this, suddenly you get two jurors
 (5) that have some - have come up with things that they haven't
 (6) told you about that require you to excuse them, and then you've
 (7) got 16 instead of 18 and I've seen that happen too many times.
 (8) I used to ask jurors sort of like a wedding ceremony does,
 (9) is there any reason that you haven't given us that might
 (10) interfere with your service as jurors? Boom, hands go up
 (11) and - once the reality of being on this jury sinks in, I
 (12) suspect we're going to get some relatively strong statements
 (13) from some of these jurors that they shouldn't be sitting as
 (14) jurors on this case, and then I'll have to deal with that. If
 (15) I have 33 or 34 people or whoever we go through today, then
 (16) that's not going to be a problem. If I have to excuse
 (17) somebody, I can plug somebody in.
 (18) MR. STOLL: Can we have a moment, Your Honor, just to
 (19) confirm.
 (20) THE COURT: Uh-huh.
 (21) (Discussion off the record.)
 (22) MR. DIAMOND: But you tell him.
 (23) MR. STOLL: Judge, I think we're in agreement that if
 (24) we're - if you're going to tell them, you know, you're on. We
 (25) would rather have it - we want to get this all out at the very

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- (1) beginning, and it changes our whole calculus in terms of what
 (2) preemptories either one of us use if there is - after we go
 (3) through the preemptories there is a period where either you or
 (4) the jurors can change the composition of that group, because
 we
 (5) are trying to do this as scientifically, our Ouija boards -
 (6) our scientific Ouija boards as much as possible, and what we
 (7) would jointly prefer strongly is that you convey to the 30 that
 (8) they are - you know, maybe your secretary calls them or
 (9) something, but somehow they are told they are on the jury for
 (10) right now, and if they have got any - speak now or hold your
 (11) peace, because otherwise it goes into everyone's calculations
 (12) as to what challenges they use. I think that's very -
 (13) THE COURT: So what you want me to do -
 (14) MR. STOLL: We would like to quit at 30. You know, if
 (15) you're going to give them, you know, the decision of Mr.
 (16) Bortnick, or for that matter anybody else, we would like to
 (17) know before we start using our preemptory challenges.
 (18) THE COURT: I think what you're telling me, counsel,
 (19) is we want to go with the panel of 30 so that we know who we've
 (20) got, if we bump, and we're willing to run the risk that if we
 (21) get 18 and three of them suddenly come up with life-threatening
 (22) diseases that affect their service as jurors, we take that
 (23) risk. You're willing to do that? I try cases all the time, I
 (24) can start this one -
 (25) MR. STOLL: Do you want to do that?

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- (1) MR. DIAMOND: Yes.
- (2) MR. STOLL: I think so, Your Honor. Again, I do have
- (3) a concern about Mr. Bortnick.
- (4) THE COURT: I have concern about Mr. Bortnick, but if
- (5) there is anything I deeply resent it's giving lawyers a break
- (6) that you don't give other citizens.
- (7) MR. STOLL: I understand that. I'm not doing it
- (8) because I want to give him a break as a lawyer.
- (9) THE COURT: But I'm telling you why I don't magnify
- (10) the hardship to lawyers in order to get them off of juries when
- (11) I won't do that for ordinary citizens, and that's an issue that
- (12) I see here, and that I've already resolved in my mind, so he's
- (13) still on the panel.
- (14) MR. DIAMOND: Your Honor, one intermediate - well, I
- (15) guess things have been resolved. I won't open them up again.
- (16) THE COURT: So once we get the 30, we stop; right?
- (17) MR. DIAMOND: Correct.
- (18) MR. STOLL: Yes, Your Honor.
- (19) THE COURT: Okay. So we're at 28 now and Ms. Briseno
- (20) may be 29.
- (21) (Juliet Briseno enters the room.)
- (22) THE COURT: Hello, would you please give your name for
- (23) the record?
- (24) A Juliet Briseno.
- (25) THE COURT: You understand that you're going to be

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- (1) undergoing some brief supplemental questioning in addition to
- (2) that in your questionnaire?
- (3) A Yes.
- (4) THE COURT: And that all of the answers you give,
- (5) including the ones in your questionnaire, are given under oath?
- (6) A Yes.
- (7) THE COURT: Mr. Stoll?
- (8) VOIR DIRE EXAMINATION OF JULIET BRISENO
- (9) BY MR. STOLL:
- (10) Q Good morning.
- (11) A Hi.
- (12) Q My name is Bob Stoll. I'm here on behalf of the
- (13) plaintiffs, the municipalities and the Native corporations.
- (14) And this is Mr. Diamond, he's one of the lawyers for Exxon.
- (15) A Uh-huh.
- (16) Q I just have a few questions. You've been to Prince William
- (17) Sound since the oil spill?
- (18) A No.
- (19) Q You've just flown over it?
- (20) A Yeah, I haven't really seen it.
- (21) Q In one of your MarkAir planes?
- (22) A Yeah.
- (23) Q Have you been closer to the ground than those?
- (24) A No.
- (25) Q Have you formulated any opinions as to what the long-term

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- (1) effects of the spill have or have not been?
- (2) A I've just seen when they have been - done news programs,
- (3) and it looks like it's pretty much back to how it was before
- (4) the spill, to me. But I wasn't there before and I haven't been
- (5) there after, so -
- (6) Q Have you ever visited Prince William Sound or Kodiak?
- (7) A No.
- (8) Q And by saying it's back to normal, in other words it looks
- (9) like it's back to normal?
- (10) A Looks like it's back to normal.
- (11) Q Have you made any determinations as to, in your own mind,
- (12) as to what effects, if any, there were to the ecological
- (13) system?
- (14) A Well, it seems to me that there would be some things that
- (15) have happened because of all the oil, you know, but I don't
- (16) really know.
- (17) Q But again, you haven't made any decision one way or the
- (18) other as far as that's concerned?
- (19) A No, I haven't really thought about it.
- (20) Q Have you ever sat on a jury before?
- (21) A No.
- (22) Q Well, the Judge, I think, will instruct you at the end of
- (23) the case that you're to consider only the evidence that's
- (24) presented in the courtroom and nothing else. Do you think you
- (25) can do that?

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- (1) A Uh-huh.
- (2) Q You haven't - the issue in this case, it's already
- (3) determined that Exxon is liable for any damages that are -
- (4) that were caused by this spill. Do you have any problem with
- (5) that idea?
- (6) A No.
- (7) Q So the issues really are what the amount of damages are
- (8) that have been incurred by these municipalities and these
- (9) Native corporations.
- (10) A Uh-huh.
- (11) Q Is there anything about the nature of that that you
- (12) think - that you have any biases or prejudices with respect to
- (13) determining -
- (14) A I don't think so.
- (15) Q Do you know Don Emmal?
- (16) A Yeah.
- (17) Q How do you know him?
- (18) A I've known him for a long, long time. It's one of my best
- (19) friend's father.
- (20) Q And have you ever talked to him about the oil spill?
- (21) A No.
- (22) Q Who is your best friend?
- (23) A Tracy Emmal, his daughter. I also know his own son, Brian.
- (24) Q And the fact that you have these friendships, if Mr. Emmal
- (25) testified, would that influence you as to which side he

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- (1) testified for?
 (2) A No, I don't think so.
 (3) Q You could put that aside, that relationship that you have
 (4) with his children?
 (5) THE COURT: Mrs. Briseno, could you bring the
 (6) microphone a little closer to you?
 (7) A Sure.
 (8) THE COURT: Thanks.
 (9) BY MR. STOLL:
 (10) Q Now in the - one of the questions asked you to identify or
 (11) to categorize how you feel toward various organizations and
 (12) businesses. I don't know if you recall that question.
 (13) A Uh-huh.
 (14) Q And responses were pretty, I'll call pretty much in the
 (15) middle?
 (16) A Yeah.
 (17) Q In other words, they were somewhat favorable or somewhat
 (18) unfavorable and you checked that you were somewhat
 (19) unfavorable
 (20) towards Exxon. Do you think that that feeling - you haven't
 (21) made any determination though as to whether Exxon is liable
 (22) for
 (23) any damages or how much the damages are or anything of that
 (24) nature?
 (25) A No.
 (26) Q What do you base that opinion on?
 (27) A Just the whole Exxon.

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- (1) Q The whole mess?
 (2) A Yeah, comes to mind. It's not a favorable. You know, when
 (3) you think of Exxon you don't think of good things, I mean you
 (4) think of the oil spill and all the -
 (5) Q But you haven't prejudged the evidence in this case?
 (6) A No.
 (7) Q Do you like living in Alaska?
 (8) A Uh-huh.
 (9) Q What do you like about Alaska?
 (10) A I love the state. I just have always lived here and
 (11) probably always will. I like everything.
 (12) Q Do you like -
 (13) A It's home.
 (14) Q Do you like the outdoors, getting out in the outside?
 (15) A Yeah.
 (16) Q Do you like hiking?
 (17) A A little bit, not too much.
 (18) Q What do you do in the outdoors?
 (19) A I like fishing and camping and just getting out.
 (20) Q Where do you go camping or fishing?
 (21) A Kenai. We'll go out, sometimes we will take a flight out
 (22) to Fairbanks or King Salmon, all over.
 (23) Q Do you do a lot of fishing?
 (24) A Not too much, just sport fishing sometimes in the summer.
 (25) Q Do you know any commercial fishermen?

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- (1) A I don't think so.
 (2) Q And I notice you vacation in Seattle.
 (3) A Uh-huh.
 (4) Q What do you like about Seattle?
 (5) A Shopping. It's just close and it's easy to get there, it's
 (6) fun.
 (7) MR. STOLL: Thank you very much.
 (8) THE COURT: A few more questions.
 (9) VOIR DIRE EXAMINATION OF JULIET BRISENO
 (10) BY MR. DIAMOND:
 (11) Q Good morning, I'll try to keep it to a few. You said you
 (12) knew Don Emmal. Do you know what he does for a living?
 (13) A I think he's the president of one of the Native
 (14) corporations.
 (15) Q And I think, and you probably know better than I, I think
 (16) it's Port Graham or English Bay?
 (17) A I don't know which one.
 (18) Q He's the president of one of the plaintiffs in this
 (19) lawsuit, and the plaintiffs are suing my client Exxon. As I'm
 (20) sure you can appreciate, everybody involved in the process
 (21) wants jurors who can listen to the evidence and decide the
 (22) issues in dispute solely on what happens in the courtroom, and
 (23) not feelings of loyalty or disloyalty or like or dislike or any
 (24) of those other things that people sometimes bring to a
 (25) courtroom. Do you think your relationship with Mr. Emmal's

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- (1) children is going to cause you any discomfort?
 (2) A I don't think so, but -
 (3) Q Well, Mr. Emmal is, in effect, the party here, since he's
 (4) the head of a company.
 (5) MR. STOLL: I object to that, Your Honor.
 (6) THE COURT: If you listen, "in effect" is - that may
 (7) be Exxon's point of view, and they are entitled to then ask the
 (8) question.
 (9) MR. DIAMOND: I'll rephrase.
 (10) BY MR. DIAMOND:
 (11) Q Mr. Emmal will be a representative of a party that's
 (12) claiming they are entitled to millions of dollars from Exxon,
 (13) and I'm not suggesting that you couldn't evaluate claims
 (14) fairly, but is that going to make you uncomfortable? For
 (15) example, are you going to feel uncomfortable if you decide that
 (16) the evidence doesn't support that claim, or the evidence
 (17) doesn't support the amount of money Mr. Emmal says his
 (18) corporation is entitled to, is that going to make you
 (19) uncomfortable because you have a relationship with his
 (20) children?
 (21) A I don't think so, but it's a hard - I don't know. I mean
 (22) I would try not to, you know, he's on - this is one thing and
 (23) the friendship is another, but -
 (24) Q I think you need to tell us that you think in your heart of
 (25) hearts that you could -

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- (1) A It would probably make a difference. I think it would make
 (2) a difference, because I do know the family well.
 (3) Q Well, let me ask you some other things. You said when you
 (4) think of Exxon you don't immediately think of good things, you
 (5) tend to think of the oil spill?
 (6) A Uh-huh.
 (7) Q And I'm sure a lot of people are that way.
 (8) Again, Exxon is a party in this case and, like any other
 (9) party, if you were a party in a lawsuit, Exxon's entitled to
 (10) have the facts decided by people who can put aside those kinds
 (11) of feelings.
 (12) Forget the situation with the Emmal family for a minute.
 (13) Do you think you can put aside your initial reactions to Exxon
 (14) and decide the facts of the case?
 (15) A I think I could.
 (16) Q You said you suspect that there are ongoing ecological
 (17) effects in the environment from the spill, what do you suspect
 (18) might still be happening?
 (19) A I just don't know if the water is all the way cleaned up.
 (20) The fish, if there are still toxins and that kind of thing.
 (21) Q Have you read things or watched things on television about
 (22) that?
 (23) A I haven't lately, no.
 (24) Q That's an area of dispute, what effect, if any, the oil
 (25) spill still is having on the environment. There is going to be

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- (1) witnesses who can talk about that. Do you think you can listen
 (2) to that evidence as it comes in and decide those issues without
 (3) having your judgment tainted by any feelings that you bring
 (4) into the courtroom?
 (5) A I think so.
 (6) Q Could you tell us a little bit more about your relationship
 (7) with the Emmal children.
 (8) A I went to school with Tracy, and we were very good friends,
 (9) and still are now. The younger sisters babysit for me. Her
 (10) brother Brian is helping me with some legal matters.
 (11) Q Is he an attorney?
 (12) A Yes. I've known them for a really long time. And they
 (13) live a block away from my parents and we see each other quite
 (14) a bit.
 (15) Q Do you visit Mr. Emmal's home from time to time?
 (16) A Once in a while I do to pick up his daughters when they
 (17) babysit. It's always casual, not anything about this.
 (18) MR. DIAMOND: Thanks very much.
 (19) MR. STOLL: Can I ask just a couple more questions,
 (20) Your Honor?
 (21) THE COURT: Uh-huh
 (22) VOIR DIRE EXAMINATION OF JULIET BRISENO (Resumed)
 (23) BY MR. STOLL:
 (24) Q Do you think that - here is the question: You haven't
 (25) talked to Mr. Emmal about the - any of the claims in this

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- (1) case, have you?
 (2) A No.
 (3) Q Do you think that - do you think that your friendship with
 (4) his children is going to make you say, yes, he's got a good
 (5) claim, or, no - I mean, not him, but the company that he works
 (6) for has a good claim or doesn't have a good claim; do you think
 (7) that's going to give you a bias, or do you think you're going
 (8) to be able to follow the Judge's instructions that you are only
 (9) supposed to consider the evidence in the courtroom?
 (10) A I think - honestly, I think I would be judgmental a little
 (11) bit, I would lean a little more towards what he's saying.
 (12) Q So you think you would be biased no matter what the Judge
 (13) said?
 (14) A Probably. Although I would try not to, but just because
 (15) I've known them for so long I would tend to, you know, listen
 (16) to him and -
 (17) Q Well, I don't believe he's going to testify about what
 (18) happened to the value, he's not a real estate expert, for
 (19) instance, he's going to simply present his - I don't know that
 (20) for sure he's going to testify, but if he does testify, he's
 (21) going to be here as a representative of the company that he
 (22) works for, so are you going to listen to the experts as to what
 (23) they say about what happened?
 (24) A I would listen to everything.
 (25) Q Do you think that your friendship with his children, do you

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- (1) think that's going to affect how you evaluate what Exxon's real
 (2) estate experts or other experts say about the case?
 (3) A I don't know that it would or not. I mean I would - I do
 (4) know them, and I know the family and I know him and his kids,
 (5) and it would - I mean you can't just forget about that when
 (6) you're going -
 (7) Q The question is whether it would affect - the Judge is
 (8) going to instruct you at the end of the case, don't hold me to
 (9) everything he's going to say, but the essence of it is he's
 (10) going to instruct you at the end of the case that you are to
 (11) consider only the evidence that you hear in the courtroom, and
 (12) that he's going to tell you how to evaluate the witnesses, and
 (13) he's going to tell you not to use sympathy or other factors
 (14) that are not brought into the courtroom, not to consider those
 (15) things.
 (16) Now, the question is: Do you think you can follow the
 (17) Judge's instructions?
 (18) A Yes.
 (19) Q And do you think in that regard, do you think that you
 (20) could just consider that evidence, not the - not - because
 (21) it's not evidence, your relationship with the Emmal family is
 (22) not evidence in this courtroom.
 (23) A Right.
 (24) Q Do you think you can put that aside and just concentrate on
 (25) the evidence and the testimony here?

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- (1) A I think so, yes.
 (2) Q And you could be fair to both sides?
 (3) A Uh-huh.
 (4) Q Because Exxon is entitled to a fair trial just as the
 (5) plaintiffs are entitled to a fair trial, do you understand
 (6) that?
 (7) A Uh-huh.
 (8) Q But we are also entitled to have a fair cross-section of
 (9) the community on the jury, so do you think you could do that?
 (10) A I think so.
 (11) MR. STOLL: Thank you very much.
 (12) THE COURT: I need to know that any personal
 (13) relationships that you might have wouldn't intrude on the
 (14) fact-finding process, that's very important.
 (15) You've said things that might indicate that you might be -
 (16) that your bias might affect you and you have said things that
 (17) indicate that you can set it aside.
 (18) I have to know that you're certain that you can be
 (19) objective in this case and impartial in this case, even in view
 (20) of those -
 (21) A Honestly I don't think I could be totally impartial just
 (22) because I know them.
 (23) THE COURT: Counsel, I'm not going to let
 (24) Ms. Briseno - by the way, do you play on the MarkAir softball
 (25) team?

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- (1) A No.
 (2) THE COURT: I thought you had a grudge against me from
 (3) last year.
 (4) MR. DIAMOND: We wouldn't object.
 (5) THE COURT: As long as you have a grudge against the
 (6) Judge, it doesn't matter.
 (7) So you're excused, and you're excused from the jury
 (8) service.
 (9) (Juliet Briseno exits the room.)
 (10) (David Holsman enters the room.)
 (11) THE COURT: Sir, if you'd do me a favor and give your
 (12) name for the record.
 (13) A My name is Dave Holsman.
 (14) THE COURT: Mr. Holsman, we're going to give you some
 (15) brief supplemental questions in addition to those in the jury
 (16) questionnaire, and all these answers are under oath.
 (17) Mr. Stoll?
 (18) VOIR DIRE EXAMINATION OF DAVID HOLSMAN
 (19) BY MR. STOLL:
 (20) Q Mr. Holsman, my name is Bob Stoll, and I represent the
 (21) plaintiffs in this case, the municipalities and the Native
 (22) corporations. This is Mr. Diamond. He's one of the lawyers
 (23) for Exxon.
 (24) I just have a few questions to follow up.
 (25) Do you know - in this trial the issue of liability, in

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- (1) other words, whether Exxon is liable, is not an issue in this
 (2) case, so we're not going to be, you know, making - you're not
 (3) going to be asked as a juror to make any determination as to
 (4) whether or not they were at fault. Do you understand that?
 (5) A Okay.
 (6) Q So the only issue is whether there have been damages and
 (7) what the extent of those damages are, if there are any, okay?
 (8) Now the object of this process is to find people that will
 (9) come in to the courtroom and evaluate the evidence that is
 (10) presented in the courtroom in a fair manner, and follow the
 (11) Judge's instructions to only consider that evidence. Could you
 (12) do that?
 (13) A Well, yeah. I guess if I knew a little bit more about it,
 (14) I guess. I don't know exactly which parts you're talking
 (15) about, which areas.
 (16) Q Well, the material that you're to consider is the material
 (17) that will be presented during the course of this trial. It's
 (18) not something that somebody has heard outside of the
 (19) courtroom;
 (20) in other words, not some newspaper article or some movie or
 (21) anything you've seen about the oil spill is not evidence that
 (22) will be presented that is in the courtroom. Can you sort of
 (23) separate those two things?
 (24) A Yeah, I guess so.
 (25) Q Now you saw the Turning Point and HBO movies?
 (26) A Yeah.

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- (1) Q The fact that you saw those shows, we're not going to run
 (2) those movies in the courtroom, so that is not going to be
 (3) evidence that is appropriate for the jury to consider.
 (4) Can you separate whatever you saw on those shows from what
 (5) is going to be presented here; do you think you could do that?
 (6) A Well, sure, I could do that, it's just that - well, yeah.
 (7) Q And any feelings that you may have had towards Exxon or
 (8) towards the municipalities or the Native corporations, can you
 (9) divorce yourself from that and just judge the evidence as
 (10) presented in this courtroom?
 (11) A Well, I have opinions on both of them, probably, and it's
 (12) a - I don't really know - I could listen to both sides and
 (13) stuff.
 (14) Q That's all we're asking.
 (15) A Okay, but I have formed an opinion about what happened.
 (16) Q What's that opinion?
 (17) A Well, I believe that Exxon's at fault, and I believe
 (18) whatever damages are done, they should pay for.
 (19) Q Now, if I told you that is not an issue in this case, the
 (20) Court has already determined that Exxon is at fault.
 (21) A Okay, you guys are just -
 (22) Q The issue is what the damages are and how much of those
 (23) damages are damages. If they are damages, have you made up
 (24) your mind that there is *X* dollars of damages here?
 (25) A I haven't given much thought about it really.

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- (1) Q You haven't thought about that?
- (2) A No, I don't know. I don't actually know how much damage
- (3) has been done. I know there has been a lot in some areas, and
- (4) little in others. I'm not sure the extent of it.
- (5) Q That's the issue in this case, so since you haven't - you
- (6) have not formed any opinion in that area?
- (7) A Well, what do you mean by -
- (8) Q Well, do you have - if I asked you right now, do you know
- (9) that the Native corporations - do you know how much, if any
- (10) damages Chugach Native Corporation has incurred as a result
- of
- (11) this; do you have any opinion on that?
- (12) A Not really.
- (13) Q Do you know how many damages have been incurred by
- Kodiak
- (14) Island Borough?
- (15) A Just from what I've heard about - well -
- (16) Q I mean the borough as a municipality, not because
- somebody
- (17) lives there, but just the borough.
- (18) A I don't believe so, no.
- (19) Q Have you made any evaluation in terms of what the land
- (20) damages - Kodiak Island Borough owns land, that that claim
- was
- (21) devalued as a result of this oil spill.
- (22) Now, have you even thought about Kodiak Island Borough's
- (23) land, or did you even know that they owned any land?
- (24) A No, I had no idea that they owned land. I'm not too - I'm
- (25) not sure about where exactly or where they are even at on

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- (1) Kodiak.
- (2) Q You've never been to Kodiak?
- (3) A No, I've never been to Kodiak.
- (4) Q Have you made any evaluation as to the damage claims of
- any
- (5) Native corporations?
- (6) A Any Native corporations? It's been awhile since I've -
- (7) when it happened I was kind of up to date on it, but I really
- (8) can't recall now.
- (9) Q Do you think - in answer to one of the questions you said
- (10) that Exxon, you thought - you checked the box that said - you
- (11) said something about the fish coming back in four-year cycles,
- (12) and that if an oil spill kills all of them, the damage could be
- (13) permanent.
- (14) You haven't made a determination yet, have you, as to
- (15) whether or not, in fact, it did kill all the fish or what
- (16) happened there, have you?
- (17) A Well, nobody really knows, but it's a - the hatcheries and
- (18) the wild fish, you know, they all go out at a certain point,
- (19) they try to hit the salt water at a certain point, and nobody
- (20) knows when that is, but a major oil spill can wipe them out.
- (21) Q Have you made a determination yet that's, in fact, what
- (22) happened in this oil spill?
- (23) A It's a good possibility, but no one can know for sure.
- (24) Q And so you -
- (25) A Just got to wait.

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- (1) Q You're going to wait for the evidence to make your
- (2) decision?
- (3) A Well, I didn't think you guys were going - is that what
- (4) you're determining, too, like the ocean damage or that?
- (5) Q Well, there is going to be some testimony about ecological
- (6) effects, and there is going to be some testimony on behalf of
- (7) the plaintiffs that there are long-term ecological effects, and
- (8) there is going to be some testimony by Exxon or by their
- (9) experts, scientists, that the effects, there were some adverse
- (10) effects, but the adverse effects have largely been dissipated.
- (11) Under that circumstance, do you think you can put aside as
- (12) a result of your adverse feelings you have towards Exxon and
- (13) evaluate just the testimony that is brought in to the courtroom
- (14) here?
- (15) A Well, I believe that when the oil spill happened, I believe
- (16) that it did - I believe that it did do major damage to the
- (17) ocean and stuff. It was one of the biggest spills, one of the
- (18) biggest ones in history, and it's proven that, you know, it's
- (19) not good for them. And I believe that over all the distances
- (20) stretched across, I believe there is damage that has been
- (21) done. And maybe some of it is irreversible, and I don't have
- (22) proof or nothing like that, but it's just kind of obvious to
- (23) look at, and from people that have heard and seen the spill.
- (24) Q Mr. Holzman, I think that everybody agrees that there were
- (25) fish and wildlife killed, there is no issue about that, so

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- (1) that's not an issue in this case. The fact that there were
- (2) fish and other wildlife killed, I think you said that you're
- (3) not an expert or you don't know for sure what the long-term
- (4) effects are. The fact that there were some wildlife killed at
- (5) the time of the spill, in evaluating whether there is any
- (6) future effects, could you listen to the evidence on both sides
- (7) and be fair to both sides in evaluating that evidence?
- (8) A Yeah, I'd listen to the evidence, and if they could prove
- (9) to me that there wasn't any damage - like I said, I think
- (10) there was.
- (11) Q But you're going to keep an open mind?
- (12) A Yeah, I would keep an open mind.
- (13) Q You think you could?
- (14) A Yeah, listen to both sides.
- (15) Q That's all we're asking. People have all kinds of opinions
- (16) about what may or may not have happened, and what we're
- trying
- (17) to do is just get people that have you, you know, can keep an
- (18) open mind and listen to the testimony that is brought into the
- (19) courtroom, and, as I said before, the issue about whether there
- (20) is - who is at fault is not at issue in this case, it's a
- (21) question of what are the amount of damages, or if there are any
- (22) damages, because on some of the Native corporations, for
- (23) instance, I believe that Exxon is going to contend that they
- (24) weren't damaged at all; but you can listen to the evidence and
- (25) evaluate that, can't you?

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- (1) A Well, I believe in this area yes, and some areas no.
- (2) Q Some areas they could have been damaged and some areas they couldn't have been damaged?
- (3) A Like I said, if there was oil there, there was probably damage. Anyplace that there is that concentrated enough oil in that area or any areas that had that - I mean, there would be a few exceptions, but like I said, an oil spill is not good for the environment to that magnitude.
- (9) Q I think we can all agree on that. But the question is really what, if there is a - you know, what the - how long the effects are, whether the effects are relatively short term or whether, you know, and each area may vary?
- (13) A Yeah, it just - I just think that, like I say, I don't know which areas you're talking about. I have no idea what the magnitude, or how much concentration that area has got, and all that sort of thing, but it's kind of hard to answer questions when I don't know.
- (18) Q Sure, you haven't heard the evidence yet.
- (19) A Right.
- (20) Q Would you keep an open mind and wait until you hear the evidence?
- (22) A Yeah.
- (23) Q And you'd evaluate that based upon what the evidence is, do you think you could do that?
- (25) A Yeah, I think I could do that.

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- (1) Q That's all we're asking for, just to consider only the material that is presented here in the courtroom.
- (3) A Okay.
- (4) Q Can you do that?
- (5) A Yeah.
- (6) Q And you'll follow the Judge's instructions at the end of the case?
- (8) A Yes.
- (9) Q Have you been on a jury before?
- (10) A No, I just turned 18 - I just turned 19 last January, this is the first time.
- (12) Q Have you ever watched lawyer shows on TV where they have a courtroom scene or something like that?
- (14) A Sure.
- (15) Q And you've heard the Judge tell the jury on the TV just to consider the evidence that's presented to the Court?
- (17) A Yeah, but, you know, it's kind of - it would be a lot easier if it was something no one knows anything about.
- (19) Q Well, it's pretty hard to find somebody in Alaska that hasn't heard about the Exxon Valdez oil spill.
- (21) A Or newspapers, period.
- (22) Q That's why we're on number 78 right now. But you think that you can consider only the evidence that is considered here in the courtroom?
- (25) A Well, maybe not only. Like I said, I have my own opinions

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- (1) about stuff, and that sort of areas. If that area that you guys are talking about, and if I know somebody that's been there, I know what they have been saying about it and along with you guys, it just - I mean I know some people like to - like different, I don't know, like who want it protected are going to say different things, and people who want to say it's all right and all that sort of stuff. They are going to say different stuff, too, and basically if I'm confused on the matter, I'm probably going to rely back to what I've been told about - friends have told me.
- (11) Q All right, let me ask you about that then.
- (12) First of all, have you ever been to - since the oil spill have you been to Prince William Sound?
- (14) A No, not since then.
- (15) Q And I think you told me you didn't even know where Kodiak was.
- (17) A I know where Kodiak is. I didn't know if they owned land.
- (18) Q Have you been to Kodiak since the spill?
- (19) A No, I've never been to Kodiak.
- (20) Q Are any of your friends that you talk to, are they from Kodiak?
- (22) A No. I have friends in - that have fished out of Cordova, they do that every year. I have friends that have commercial licenses. I'm not exactly sure where they fish down there, but I know they fish in the Prince William Sound area.

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- (1) Q Have they told you about particular parcels of land that are - were either oiled or not oiled?
- (3) A They have. I can't recall. Like I say, it was a long time ago. My friends' dads, a few of them, have flown over and seen the whole thing, and it's -
- (6) Q Do you have any recollection of them telling you anything about particular - any particular island or any particular parcel of an island that was oiled?
- (9) A Well, they said pretty much wherever the oil was it was just horrible looking. They said, you know, that -
- (11) Q They didn't say this lagoon was oiled and that lagoon wasn't oiled or anything like that?
- (13) A Yeah, he was naming off some certain areas, but I can't remember.
- (15) Q You don't recall where those were?
- (16) A No, not really. It was five years ago or four years ago, whatever. When it happened, it was pretty devastating to a lot of people and I heard a lot of stuff from a lot of people.
- (19) Q Well, that's not an issue, that's not an issue. What I'm trying to find out is whether you can be fair in evaluating the evidence that is presented here, and it sounds like you don't know exactly where the oil was in Prince William Sound.
- (23) A Well, I used to.
- (24) Q But I'm talking about now though.
- (25) A Right now, I couldn't remember where actually the stretch

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- (1) was.
- (2) Q We're not going to run a quiz.
- (3) THE COURT: Time is up, counselor.
- (4) VOIR DIRE EXAMINATION OF DAVID HOLSMAN
- (5) BY MR. DIAMOND:
- (6) Q Good morning, Mr. Holsman.
- (7) A Good morning.
- (8) Q My name is Chuck Diamond. I'm one of the lawyers representing Exxon in the case.
- (9) I noticed you're in college.
- (10) A Yeah.
- (11) Q You wrote a note on page 16 of your questionnaire that you're supporting your school tuition and expenses?
- (12) A Yeah, I'm accepted to Montana State University. I'm going down there this August.
- (13) Q When are you leaving for school?
- (14) A Probably about the first week of August.
- (15) Q When does school start?
- (16) A I think it starts, August 25th it starts.
- (17) Q You're leaving early?
- (18) A Yeah, I need to find room accommodations and that sort of thing. I need to get down there, get settled.
- (19) Q Are you contributing to the payment of your tuition?
- (20) A Yeah, through loans. I'm not sure about the tuition. I think the loans are taken care of and other costs, yes.

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- (1) Q You wrote on your questionnaire that you're supporting school tuition next year by working this summer. Where are you working?
- (2) A I'm working at Carlisle. I used to work at K&W and they merged, and I'm working for K&W division of Carlisle.
- (3) Q What do you do?
- (4) A Warehouseman.
- (5) Q What hours do you work?
- (6) A Mostly during the day, usually from 6:00 to 6:00. I usually work four tens, from 6 - I'll actually end up working 6:00 to 6:00 on ship days, that's when the barges come in - I'll work from 6:00 to later and then come in. Like this morning, I had to be there at 2:00 and I'll work to whenever we get off, but usually during the day.
- (7) Q If you have to be here from 8:30 in the morning until 1:30 in the morning, is that going to interfere with your work?
- (8) A Yes, it will.
- (9) Q Is that going to cost you money that you need for school?
- (10) A Yes, very much so.
- (11) Q Is that going to present a problem with attending college next year?
- (12) A Yes, it will.
- (13) MR. DIAMOND: Your Honor, I have nothing further on that subject, if you want me to -
- (14) THE COURT: You can move on.

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- (1) BY MR. DIAMOND:
- (2) Q Mr. Holsman, I appreciate you being as frank, but both on your questionnaire and in response to Mr. Stoll's questions - it's a hard process and we're looking for people who are absolutely sure they can be fair and open-minded, that's how the system works, that's what makes the system work - you wrote on page 47 - I'm sorry, in response to question 47 in your questionnaire that you have an extremely unfavorable view of Exxon.
- (3) A Yeah.
- (4) Q Why do you have that opinion?
- (5) A Well, I might have some effects mixed up, but obviously they didn't - they went about it all wrong, and when it spilled that they were supposed to have a plan ready to clean up the oil immediately as soon as it happened, and I guess it was - I think it was under ice or something, their booms or something like that, and it just took forever before they actually started to clean up, and by that time it just kept spreading and spreading. I think they went about it all wrong, including when they ran aground, just all sorts of aspects.
- (6) Q So you think Exxon could have done more to prevent the spill from being -
- (7) A I think they could have done a lot more preventing it, and I think they could have done a lot more for cleaning it up.
- (8) That's just my opinion, too. I didn't really know what was

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- (1) going on with everything.
- (2) Q As a corporation, you hold the Exxon Corporation in pretty low regard?
- (3) A Excuse me?
- (4) Q Would it be fair to say you hold the company in pretty low regard?
- (5) A Yeah. At that point in time - I think they learned a lesson from it, but at that time, yes.
- (6) Q Don't you think that's going to put Exxon in a slight disadvantage at least with you as one of the jurors?
- (7) A Yes, I do.
- (8) Q Do you think that might influence your opinion on matters that you have to judge in this case?
- (9) A Well, to a point.
- (10) MR. STOLL: Your Honor, I'm going to object to the form of that question because he doesn't know what the matters are. I think he can ask him a specific question.
- (11) THE COURT: He said "to a point," so you can follow up, counsel?
- (12) BY MR. DIAMOND:
- (13) Q Do you think there is any substantial possibility that your feelings about Exxon would affect how you view the evidence in this case?
- (14) A It depends what evidence. My view of the environmental - of the environmental aspect of it is pretty low regards for

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- (1) Exxon, but other views, I mean I'm sure there are -
- (2) Q We're going to be debating environmental issues during the
- (3) course of this trial.
- (4) A Yes. Like I've already said, I have an opinion about the
- (5) environmental fact about it.
- (6) Q Do you think those opinions, and your low regard for Exxon,
- (7) might affect or influence your judgment on questions that this
- (8) jury will be called upon to make?
- (9) A To an extent maybe, yeah.
- (10) Q You said that you thought that Exxon deceived the public,
- (11) question 51XXB, you were asked about Exxon Corporation or
- (12) Exxon
- (13) Shipping. They deceived the public in a lot of different
- (14) ways. How do you think that Exxon deceived the public?
- (15) A They said they had a quick clean-up plan and that they were
- (16) ready for the spill, if ever one did happen, before the spill
- (17) happened. They said they had a way of getting it out and
- (18) getting it cleaned up as soon as possible.
- (19) Obviously they were a little wrong on that because it took
- (20) a long time. And then on the parts of - they kept - at the
- (21) point they said that there was a lot of - that damage
- (22) wasn't - at some places the damages weren't that bad, but on
- (23) the other case, like the environment lists and people who live
- (24) there said it's a disaster, and at that point I took the side
- (25) of the people that were living there because I believed, in my
- opinion, that they were just trying to keep a lower key on

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- (1) things and trying not to get everybody all panicked up, but
- (2) that's what I pretty much mean by that.
- (3) Q Is the fact that you think that Exxon deceived the public
- (4) one of the reasons you think Exxon hasn't paid enough money
- (5) yet?
- (6) A I think there is a lot of things. That's one of them,
- (7) yeah. And then just like, I mean that they weren't ready and
- (8) that they said that they would be able to clean it up, and it
- (9) took them a long time to get moving on the thing, and then lack
- (10) of responsibility and the crash itself, it's just -
- (11) Q Mr. Holzman, don't you think that those views about Exxon
- (12) deceiving the public and the other things you've told us are
- (13) probably going to make you a lot more fast to award damages
- (14) in
- (15) this case than somebody who didn't have those opinions?
- (16) A Probably.
- (17) Q Mr. Stoll was asking you about whether you had already
- (18) made
- (19) up your mind about the amount of damages that anyone of
- (20) these
- (21) Native corporations should get or what Kodiak Island Borough
- (22) should get, and I understand you haven't heard evidence on
- (23) those subjects, but it's true, is it not, as you sit here
- (24) today, don't you think that the Native corporations and the
- (25) municipalities were probably hurt by the oil spill?
- A Probably, yes.
- Q So you've already made up your mind that they have
- probably
- been damaged?

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- (1) A Yeah, probably.
- (2) Q So the question for you would be figuring out how much?
- (3) A To the extent, yeah.
- (4) Q I'm sorry?
- (5) A To the extent, yeah, how bad the damages were. Like I
- (6) said, I don't know which places you're talking about.
- (7) Q You were one of the people who said you saw the Turning
- (8) Point program last week. Was it - I guess it was the week
- (9) before last now?
- (10) A I thought I saw it awhile before then.
- (11) Q I may be confused with my television programs.
- (12) MR. STOLL: No, it was two weeks ago.
- (13) BY MR. DIAMOND:
- (14) Q The program I have in mind is the ABC program with Diane
- (15) Sawyer. It was on a couple weeks ago.
- (16) A I don't know, it might have been. I just remember seeing a
- (17) lot of shows. I knew there was only a few.
- (18) Q Let's make sure we're all on the same page. I used to have
- (19) this questionnaire memorized. On page 9 we asked you: Did
- (20) you
- (21) see last week on channel 13 ABC's program Turning Point with
- (22) Diane Sawyer regarding the Exxon Valdez? And you checked
- (23) yes.
- (24) A Okay.
- (25) Q Does that come back?
- A I've seen a lot of shows. I'm not sure if it was last week
- or whenever.

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- (1) Q You said that you formed an opinion as a result of watching
- (2) that Exxon should have taken more care in the act and in the
- (3) clean-up. Do you remember - does that refresh your
- (4) recollection about the television program you saw recently?
- (5) A I've probably seen parts of it. I've seen so much of
- (6) everything about Exxon and this oil spill, it just - you get
- (7) all of them pretty much -
- (8) Q There was a segment on the ABC program that I remember,
- (9) and
- (10) I'll ask you whether you remember it. It dealt with the hot
- (11) water washing of shorefront that Exxon did?
- (12) A I'm familiar with that.
- (13) Q Did you see that on television recently?
- (14) A I probably did.
- (15) Q In that program they suggested that hot water washing
- (16) killed everything that was living on the beach, do you remember
- (17) that?
- (18) A Yeah, I think I heard something like that, too, and then
- (19) articles or news or something like that. It sounds familiar.
- (20) Q Was that one of the things that you think Exxon did that
- (21) wasn't a good idea in connection with the cleanup?
- (22) A I really don't have any basis if that was a good or bad
- (23) idea.
- (24) Q What problems were you referring to - you could take a
- (25) look, put it in front of you, it's on page nine of your
- questionnaire in the middle, you said - I'll wait until you

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- (1) get to the page. 38C, Exxon should have taken more care?
 (2) A Okay.
 (3) Q How do you think they should have taken more care in
 (4) connection with the way the cleanup was done?
 (5) A Well, I meant like parts where they would go and start
 (6) cleaning up some of the beaches and then they would look
 (7) exactly like it did before they got there, that's what I was
 (8) referring to. I was referring to - I've seen newscasts and
 (9) that sort of stuff before and after clean beaches, and I really
 (10) couldn't tell the difference.
 (11) Q Did you think Exxon did something wrong in the way they did
 (12) that?
 (13) A Well, I think Exxon was in charge of the cleanup and, I
 (14) don't know, I think the cleanup was - well, they said they
 (15) were cleaning, they didn't look clean to you.
 (16) Q It didn't look clean to you?
 (17) A No.
 (18) Q So you don't think Exxon got the beaches clean?
 (19) A I think a lot of the beaches were just kind of skimped
 (20) over, maybe taken most of it off. Doesn't really matter, oil
 (21) is still oil.
 (22) Q And you suspect that there is oil still out there?
 (23) A Yeah, I'm sure there is to some extent.
 (24) Q Are you going to be skeptical if Exxon calls a witness in
 (25) to court that says on most, if not virtually all of these

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- (1) shorelines, there is no oil out there, are you going to count
 (2) that?
 (3) A I got kind of - I really have a thing about - I don't
 (4) really believe anything until I see it with my own eyes anyway,
 (5) and if someone is going to tell me the beaches are clean, it
 (6) doesn't mean I'm going to believe them. If he showed pictures
 (7) of which beaches which he was talking about, but if someone
 (8) just comes in here and says all the beaches are clean and there
 (9) is no oil out there, then I'm going to have to say, you know,
 (10) it's kind of hard to believe.
 (11) Q Well, what if an expert came in and told you that the oil
 (12) spill really didn't effect the commercial fisheries in Alaska,
 (13) would you be prepared to accept that?
 (14) A No, not at all.
 (15) Q Do you think that's kind of crazy?
 (16) A Yeah, I believe there is damage to both the commercial fish
 (17) and - because, I mean, I believe that the oil spill just
 (18) doesn't kill fish, it kills everything it eats, everything to
 (19) do from every part of the food chain. If they didn't get all
 (20) the fish, it would hurt something else. I mean, you take out
 (21) different organisms in the sea and pretty soon the whole chain
 (22) collapses, so you wipe out something totally distinctly or -
 (23) THE COURT: Counsel, your time is up.
 (24) MR. DIAMOND: I would like to be heard.
 (25) THE COURT: I'm going to send you out and then, and I

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- (1) am going to bring you right back in. If you'd just go to the
 (2) jury room.
 (3) David Holsman left the room.)
 (4) MR. DIAMOND: Your Honor, I think we all heard the
 (5) same things. He's a young man with a viewpoint and clearly a
 (6) viewpoint he said is going to taint his judgment as to disputed
 (7) issues. I don't think I need to say anything further.
 (8) There is also the question of hardship to him, but I think
 (9) that's really the Court's problem, not mine.
 (10) MR. STOLL: Your Honor, equivocated on these things.
 (11) I think the point here is that he said that he was open to
 (12) listen to the evidence on the damage. He didn't know anything
 (13) about the damage. The things that he has strong views on are
 (14) things relating to fault, and I don't think - I think he's
 (15) indicated he would keep an open mind on the point of
 (16) damages,
 (17) that's, you know-
 (18) THE COURT: Motion is granted.
 (19) (Ed Bennett enters the room.)
 (20) MR. STOLL: What about Mr. Holsman?
 (21) THE COURT: I granted the motion, we just let him go.
 (22) You wanted to hear the -
 (23) MR. STOLL: We were just - we're set in our ways.
 (24) THE COURT: We're all creatures of routine.
 (25) MR. DIAMOND: We had no problem if he was leaving
 (26) immediately, I couldn't tell.

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- (1) THE COURT: You're Mr. Bennett?
 (2) A Yes.
 (3) THE COURT: Would you give your full name for the
 (4) record?
 (5) A Edward Charles Bennett.
 (6) THE COURT: Mr. Bennett, you're going to get some
 (7) brief supplemental questions to your juror questionnaire. You
 (8) understand that all the questions, including the juror
 (9) questions, are under oath.
 (10) VOIR DIRE EXAMINATION OF EDWARD C. BENNETT
 (11) BY MR. STOLL:
 (12) Q Mr. Bennett, good morning. I'm Bob Stoll. I represent the
 (13) municipalities, and I'm here on behalf of the Native
 (14) corporations, who are plaintiffs in this case, and this is
 (15) Mr. Diamond. I just have a few follow-up questions on your
 (16) questionnaire.
 (17) Have you formed any opinions - let me back up here, first
 (18) of all. The purpose of this jury selection process is to try
 (19) to find people that will follow the Judge's instructions, and
 (20) consider - make their decision based upon the evidence that's
 (21) presented here in the court and not some other theory that they
 (22) have got that's not in evidence.
 (23) Have you ever been on a jury before?
 (24) A No.
 (25) Q Do you think you can follow the Judge's instructions and

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- (1) accept the law as I just discussed it with you?
 (2) A Yes.
 (3) Q You think you can be fair to both sides?
 (4) A Yeah.
 (5) Q Now, in this case there is no issue as to facility. In
 (6) other words, you're not going to be asked to determine whether
 (7) Exxon is liable or not liable, that's already been determined,
 (8) okay? So the issue is have these plaintiffs been damaged and,
 (9) if so, how much?
 (10) A Okay.
 (11) Q Now, have you already made a determination on any of those
 (12) issues?
 (13) A No.
 (14) Q You can be fair and listen to all the evidence?
 (15) A Yeah, I think so.
 (16) Q Have you ever been to Prince William Sound or to Kodiak?
 (17) A No.
 (18) Q Have you any personal friends that are from Prince William
 (19) Sound or Kodiak?
 (20) A No.
 (21) Q And I notice in the questionnaire one of the questions,
 (22) number 47 - it's on page 11. There is a question there about,
 (23) based on your experience and knowledge, what is your general
 (24) response to each of the follow organizations. And I gather
 (25) from this you're pretty much down the middle. There is no

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- (1) neutral column there, but some organizations you're a little
 (2) more - somewhat favorable to, and some others you're
 somewhat
 (3) unfavorable to, but you don't have any strong feelings one way
 (4) or the other?
 (5) A No, not particularly.
 (6) Q If you felt more favorable to, for instance,
 (7) municipalities, does that necessarily mean that you're going to
 (8) be more favorable to us in this lawsuit, or you're just going
 (9) to evaluate the evidence as you hear it? Are you biased
 (10) towards municipalities?
 (11) A No, not really. I see there is a need for them, a use for
 (12) them.
 (13) Q Sure. And you checked here that you're somewhat
 (14) unfavorable towards Exxon. Is that as a result of the spill or
 (15) some other experience you had?
 (16) A Just because of the spill.
 (17) Q But since fault has already been determined that Exxon is
 (18) liable for this, does this mean that you have prejudged the
 (19) amount of damages, or if there are any damages for any of
 these
 (20) particular plaintiffs?
 (21) A No. To be honest, I wasn't even aware that it was done and
 (22) they were found guilty. I haven't really followed.
 (23) Q On page 15 there was a question, it was a general question
 (24) about the size of damage awards being made today, about
 whether
 (25) you had an opinion as to whether they are too large or too

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- (1) small, and you said you had no opinion on that. It's question
 (2) 68.
 (3) A Yeah, I don't see how - I didn't really know if damages
 (4) had been given or not, for one thing, so I don't know how I
 (5) could have an opinion on it. I don't have any facts.
 (6) Q You're just going to consider the evidence that comes in
 (7) the courtroom?
 (8) A Yeah.
 (9) Q And the last question in this questionnaire is on page 17,
 (10) and asks if you knew any of the people that - whose names are
 (11) on the list that's attached to this, and you didn't check that
 (12) one way or the other.
 (13) By that did you mean that - did you not recognize any of
 (14) these names or did you just miss that?
 (15) A I didn't mean to skip that, but no, I didn't recognize
 (16) anybody's names. I should have checked that.
 (17) MR. STOLL: Thank you very much.
 (18) VOIR DIRE EXAMINATION OF EDWARD C. BENNETT
 (19) BY MR. DIAMOND:
 (20) Q Good morning, Mr. Bennett. We've already been introduced.
 (21) I notice your wife works for the Anchorage Daily News.
 (22) A Yes.
 (23) Q Can you tell us what she did?
 (24) A She's in charge of the news line. I think it comes out
 (25) about once a week for people to call in for, oh, like what

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- (1) certain teachers have assigned for kids, or if you need a
 (2) lawyer or a doctor or whatever. If you know what the news line
 (3) is, it's a big page of phone numbers and it lists it, and
 (4) that's what she's in charge of.
 (5) Q Those are not paid commercial advertisements?
 (6) A I think at some point they are, I'm not really sure.
 (7) Q Does she have much dealings with editorial staff, the
 (8) reporters and editors of the paper?
 (9) A No, I don't think at all. She sells. She tries to get
 (10) listings of the phone numbers for the news line, so she's more
 (11) of a salesperson than anything else.
 (12) Q How about you, do you know many of the reporters or
 (13) editorial staff people?
 (14) A No.
 (15) Q The two of you don't socialize or have friends that are
 (16) newspaper reporters?
 (17) A No.
 (18) Q I noticed you studied business accounting as part of your
 (19) college course of study, can you tell us about that?
 (20) A It was just required to go on to a finance degree. I was
 (21) very close to an accounting major just because they are
 (22) similar.
 (23) Q So you took all the basic accounting courses?
 (24) A Yeah.
 (25) Q Did you take any upper level accounting courses as well?

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- (1) A No.
 (2) Q What sort of finance studies have you done?
 (3) A What sort of finance studies?
 (4) Q Yeah.
 (5) A Business finance in general, not special.
 (6) Q Do you hold a degree in business?
 (7) A Uh-huh.
 (8) Q Any specialized courses dealing with real estate?
 (9) A No.
 (10) Q Know anything about real estate appraisal?
 (11) A No.
 (12) Q We've been told by other folks that we talked to that it
 (13) was hot and uncomfortable in the jury room when you were
 (14) filling these things out, and that may explain an answer that I
 (15) think you didn't mean to give us, but I'll ask you.
 (16) On question 46, on page 10, it's the last one, we asked you
 (17) about opinions or feelings that the positive effects of the oil
 (18) spill outweigh the negative effects, and you checked yes. You
 (19) didn't mean to tell us that you thought that the spill
 (20) unbalance was a possible one, did you?
 (21) A No, I don't see how it could have anything positive. I
 (22) think you're reading the question wrong.
 (23) Q I think you may have read the question right, but we may
 (24) have written it wrong. It's a little bit confusing now that we
 (25) read it.

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- (1) I think that some people think there were some favorable
 (2) effects of the spill, not environmental, obviously, but in
 (3) terms of employment and business and putting money in
 people's
 (4) pockets. You're not one of them, I take it?
 (5) A One of them who?
 (6) Q That believes there is positive -
 (7) A There is going to be some, obviously. I'm in business, so
 (8) I saw some of the people come in with money and spend it in
 my
 (9) store, so there is going to be some positive, but I don't think
 (10) that has much to do with it.
 (11) Q It's not something one would hope for as a means of
 (12) stimulating the economy?
 (13) A No.
 (14) Q What do you think the most serious negative effects are or
 (15) have been in the oil spill?
 (16) A Just the damage to the environment, I guess.
 (17) Q What damage to the environment do you suspect that's been
 (18) there?
 (19) A I don't really know. I guess I'm kind of confused on that
 (20) point. I've heard where things will be damaged for years and
 (21) years, and I've also heard things where they are back to
 (22) normal, so I guess I don't know anything for sure.
 (23) Q What sources of information do you have in mind when you
 (24) say you've heard both sides?
 (25) A Just through reading Outside magazine, Backpacking

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- (1) magazine, things like that. I don't really know one way or the
 (2) other.
 (3) Q Some of the backpacking magazines take the position that
 (4) things are all back to normal.
 (5) A I suppose they are trying to take a position, but maybe I
 (6) didn't pick up on it. I've just become more confused with the
 (7) information I've got, I guess.
 (8) Q Do you have any friends who fish or frequently travel down
 (9) to the Prince William Sound area or who have some specialized
 (10) knowledge who have voiced an opinion one way or the other on
 (11) the effects of the spill?
 (12) A No, not to that area, just around Anchorage.
 (13) Q So basically what you've concluded really comes from things
 (14) you've read?
 (15) A Yeah.
 (16) Q How about television, heard anything on television?
 (17) A I guess that would be kind of the same as the few things
 (18) I've read. It's been in everything, but I don't really know
 (19) one way or the other what the actual results are.
 (20) Q One of the issues in this case, since this is a case
 (21) involving damage to property along the water, is the effects,
 (22) if any, of the oiling along property and whether they
 (23) continued.
 (24) Is that something that you think you would say you have a
 (25) completely open mind on?

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- (1) A Yeah, as far as I know.
 (2) Q There may well be some testimony during the course of the
 (3) trial from experts that say that on many of the shorelines that
 (4) were oiled, virtually most the oil is gone and there are no
 (5) continuing or prospective continuing effects of the spill. Is
 (6) that a statement that strikes you as you sit here today, not
 (7) having heard anything, as incredible or unbelievable?
 (8) A No, but I have not heard it yet, I guess, to where it sat
 (9) in or maybe I just haven't heard that yet. I don't know if
 (10) it's true.
 (11) Q I'm just asking you whether you have any preconceived
 (12) notions that might influence whether you could accept a
 (13) statement like that?
 (14) A No.
 (15) Q Mr. Stoll pointed you to the answer on the top of page 11
 (16) that you have a somewhat unfavorable view of Exxon, and I
 think
 (17) you told him that was just because of the spill.
 (18) Do you have a view of the way Exxon reacted to the spill,
 (19) its response, its cleanup?
 (20) A No, not really.
 (21) Q Does the way Exxon dealt with the accident after it
 (22) happened, is that one of the reasons that you have somewhat
 (23) unfavorable view of the company?
 (24) A No, just basically because it's a large corporation. I
 (25) guess you're both corporations.

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- (1) Q Yeah, this is truly a case where it's corporation versus
 (2) corporation, but some larger than others.
 (3) Do you have general views disfavoring large corporations?
 (4) A Just in general, yeah, because I'm not a really employed by
 (5) one, so I don't -
 (6) Q You're employed by a small corporation?
 (7) A Yeah, I don't have any real problems or thoughts against
 (8) them.
 (9) Q In a dispute, for example, between an individual plaintiff
 (10) and a large corporation defendant, would you start off on the
 (11) side of the individual?
 (12) A No, I don't know anything about it.
 (13) Q So your feelings about -
 (14) A Size doesn't have anything, necessarily.
 (15) Q Why is it that you said - also said that you have a
 (16) somewhat unfavorable view of commercial fishing then?
 (17) A Because I have not had time to do this, but I want to be
 (18) just a sports fishermen, and a lot of time it's closed down
 (19) because of commercial fishermen seem to get their share first
 (20) and they don't necessarily give us a shot at it.
 (21) Q In response to question 1XX you were asked if you have any
 (22) opinions about how the spill affected municipalities, and you
 (23) said, the spill affected these people directly. Do you see
 (24) where I am?
 (25) A Uh-huh.

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- (1) Q What did you mean by that?
 (2) A Well, if you lived in Valdez and you were a commercial
 (3) fishermen, it had to affect you directly. You weren't getting
 (4) your business done. So that's what I mean by that, I guess.
 (5) Q Do you have a view as to how the spill may have affected
 (6) Mr. Stoll's clients, villages on Kodiak or the city of Cordova?
 (7) A I don't know how far the spill went out. I know it was
 (8) around the Valdez area.
 (9) Q This was just your inference. If you lived in the
 (10) community where the spill had some effect, then you as a
 member
 (11) of the community would have been affected?
 (12) A Yeah, of the area of the spill, you're - if it was
 (13) affected.
 (14) Q In response to the last question on this page on the bottom
 (15) you were asked about your opinion of the municipalities and
 (16) Native corporations suing Exxon. You said they are due some
 (17) monies. What's your basis for feeling that way?
 (18) A If fishing was their livelihood and that was hurt, then
 (19) they should be due something for that. They just shouldn't
 (20) have their backs to them if they were affected by it.
 (21) Q You understand in this case we're not dealing with
 (22) individuals, whether they were fishermen or engaged in some
 (23) other livelihood, we're dealing with property owners, Native
 (24) corporations who own property, municipalities that own
 (25) property, and essentially the claim is the spill affected the

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- (1) market value of the property.
 (2) A Yes.
 (3) Q Or the spill affected the owner's use of the property.
 (4) A Uh-huh.
 (5) Q Given that understanding, would you answer this question
 (6) the same way; do you still think that the landowners are due
 (7) some money?
 (8) A Yeah.
 (9) Q Why do you say that?
 (10) A If, and my example, because the fishermen are the easiest
 (11) ones to use, if they don't make money fishing, they don't have
 (12) money to spend.
 (13) Q How does that affect the land?
 (14) A Price of your land goes down and the salaries and people
 (15) won't buy it.
 (16) Q Do you think that happened?
 (17) A In the areas of the oil spill.
 (18) Q Why do you think that happened?
 (19) A Just because it makes sense to me that that would happen.
 (20) Q Do you feel reasonably certain that's the case?
 (21) A Yeah.
 (22) Q Well, that's one of the issues in this case, whether the
 (23) spill affected the value of the property for people who lived
 (24) along Prince William Sound and Kenai, and it sounds like you're
 (25) telling us that you do have a view that the spill did affect

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- (1) property values in that area?
 (2) A I would say that would be my guess, yeah.
 (3) Q As you listen to the evidence in this case do you think
 (4) that's something that's going to enter your mind, your view?
 (5) A Sure could, you bet, depending on what I hear, I guess.
 (6) Q The parties to a lawsuit, like this one, like anyone, like
 (7) the lawsuit you might be involved in, are entitled to jurors
 (8) who can listen to the evidence and weigh it, and leave outside
 (9) the courtroom, not consider their own viewpoints that they may
 (10) bring or their opinions that they may bring on subjects into
 (11) the courtroom. It sounds to me you think your views as to the
 (12) likely effects on the spill and property might affect the way
 (13) you evaluate the evidence in this case, is that true?
 (14) A I don't really know if anyone was affected - I guess it's
 (15) already decided that these areas were affected.
 (16) Q Well, we're dealing with 1200 miles of coastline owned by
 (17) these plaintiffs, so there was oil on them, many, if not most
 (18) of these parcels.
 (19) A So then I would have to say that they were affected. I'm a
 (20) businessman, my business sense would tell me obviously they
 (21) were affected. People were coming in and spending moaning
 in
 (22) my store that they made off of the cleanup. I also realize
 (23) that people weren't spending money who weren't making
 money
 (24) that were before because they weren't making money off of
 their
 (25) business.

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- (1) Q You're entitled to your viewpoint.
 (2) A So that would make sense to me. I guess that's where I get
 (3) my opinion from.
 (4) Q And really the question is: Are you telling us that you
 (5) might have some difficulty putting aside that opinion and just
 (6) simply deciding the effect of the spill on this property based
 (7) on what you hear in the courtroom?
 (8) A I don't know if it's necessarily an opinion. If you're
 (9) saying it, maybe it is. But I'm just realizing that this
 (10) happened, if some people made money one way, and it seems
 to me
 (11) people lost money another way, but that's my opinion.
 (12) Q My client, Exxon, is going to take the position in this
 (13) litigation that the plaintiff's claims are widely over blown,
 (14) and that, in fact, some of the plaintiffs who own land, Eyak
 (15) Corporation, for example, aren't entitled to anything. Their
 (16) land was not affected at all. Do you think that in evaluating
 (17) that position, your feeling that the spill must have had some
 (18) effect on land values is going to enter into the process?
 (19) A I would have to say it most certainly could. It depends on
 (20) where that land is, I guess.
 (21) Q Well, it's land in the Prince William Sound?
 (22) A Well, then if it was affected by the oil, then it would
 (23) have an obvious effect to me, yeah, I would think so.
 (24) Q May I have just a couple more minutes?
 (25) THE COURT: Just a couple.

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- (1) BY MR. DIAMOND:
 (2) Q I noticed you're an NRA member, are you a hunter?
 (3) A Yeah.
 (4) Q Where do you hunt?
 (5) A I've gone to different places every year in my six years up
 (6) here.
 (7) Q Anywhere down on the Kenai?
 (8) A No.
 (9) Q You're not a fisherman?
 (10) A Sports fisherman, yeah.
 (11) Q Because that's not one of the things you've listed as
 (12) hobbies?
 (13) A I haven't had time to do it, I say I'd like to be one.
 (14) Q You haven't fished since you've been in Alaska?
 (15) A Yeah, a little bit.
 (16) Q Where have you gone?
 (17) A Homer halibut fishing, and fresh water fishing in the area
 (18) around Anchorage, but not for a couple years now.
 (19) MR. DIAMOND: I would like to be heard.
 (20) MR. STOLL: Can I ask him one question?
 (21) THE COURT: Yes
 (22) VOIR DIRE EXAMINATION OF EDWARD C. BENNETT (Resume)
 (23) BY MR. STOLL:
 (24) Q With respect to this business about what you think in your
 (25) mind about the possibility of the effect, have you already made

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- (1) a conclusion that anyone that was anywhere near Prince
 William
 (2) Sound, whether they were - oil actually touched their property
 (3) or didn't touch that property, that that person has been
 (4) adversely affected, that landowner, have you prejudged this or
 (5) can you -
 (6) A Not necessarily adversely, maybe indirectly, for a short
 (7) period of time. I don't really know. I guess if somebody
 (8) owned a resort on the shoreline, they would be affected. Their
 (9) land would be affected, sure. It would be harder to sell for a
 (10) while in my mind.
 (11) Q But are you prejudging what the evidence is here that
 (12) you've already made up your mind that everybody in Prince
 (13) William Sound is necessarily adversely affected; you're not
 (14) doing that, are you?
 (15) A I would think indirectly that everybody living in that area
 (16) would be affected. I don't know how much or long. I don't
 (17) know how to decide that, I guess.
 (18) Q But on remote property, have you already made a decision
 up
 (19) on that?
 (20) A No.
 (21) MR. STOLL: Thank you very much.
 (22) THE COURT: Sir, I'm going to send you out to the jury
 (23) room, I'll bring you right back.
 (24) (Edward C. Bennett leaves the room.)
 (25) MR. DIAMOND: Your Honor, Mr. Bennett strikes us all

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- (1) as a fairly candid, level-headed individual with not unzealous
 (2) viewpoints, but nonetheless he's got some. He starts off
 (3) somewhat unfavorable to my client, and he acknowledges that.
 (4) But what really sort of triggered this was his response to
 (5) question 51XXX, that he was of the view that they, meaning the
 (6) municipalities and the Native corporations, are due some
 (7) monies, and that's really what caught my initial attention.
 (8) As he explained his answer, I was talking about individuals
 (9) who might have been affected and not corporations, but as we
 (10) pursued it, I think it became quite clear that he thinks the
 (11) property owners are due some monies. And he may well not
 have,
 (12) as Mr. Stoll listed, determined exactly how much, but he has a
 (13) thought process already in place that this spill led to a
 (14) succession of events ultimately culminated in a diminution of
 (15) property value.
 (16) That's a issue that is hotly contested. We're going to
 (17) have real estate people say that's not so. And I think Mr.
 (18) Bennett was honest in saying that he's strongly of that view.
 (19) He starts off with that predisposition, and it's going to
 (20) affect his judgment, and I just wonder if there is a real
 (21) estate appraiser from Kenai or Kodiak on the witness stand who
 (22) tells Mr. Bennett that he has seen no effect on real estate
 (23) values, despite the fact that the commercial fishermen claim
 (24) that they were hurt terribly and other sectors of the business
 (25) community claim that they were hurt terribly, I wonder if, in

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- (1) fact, Mr. Bennett isn't going to think that can't be so based
 (2) on a thought process that he already described to you.
 (3) Although Mr. Bennett may not be somebody who starts off on
 (4) somebody's sides, he's got a thought process and belief that
 (5) we're wrong and he's right, and I don't think we should have to
 (6) start with that disadvantage.
 (7) MR. STOLL: Your Honor, I think this juror was - he's
 (8) got some vague ideas about what follows from a theoretical
 (9) standpoint, but he reiterated on numerous questions, and my
 (10) questions were open-ended, he reiterated on numerous
 occasions
 (11) that he was going to consider only the evidence that was
 (12) presented here and he had not made a decision.
 (13) An earlier juror, Mr. Jesclard, said he made a
 (14) determination that everything was back to normal. That doesn't
 (15) mean that the juror is disqualified for cause, and he had been
 (16) out to Prince William Sound.
 (17) In the case of Mr. Bennett, Mr. Bennett says that he
 (18) thought if the property had been affected then he thought it
 (19) was - the effect would be adverse probably, but he didn't
 (20) know. He said that on several occasions, so I don't think just
 (21) because somebody has some vague idea of a hypothetical
 (22) situation that that disqualifies the jury.
 (23) I think this juror has - is going to - has expressed, and
 (24) I think believes, and I think will be fair minded and consider
 (25) only the evidence that's presented here in the courtroom.

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- (1) THE COURT: Counsel, I'm convinced that Mr. Stoll is
 (2) right on this one. This is a juror who is intelligent,
 (3) analytical, and he, like other people come in to court with
 (4) some idea, some preconceptions, but - and I got to say, the
 (5) examination of him was sort of vague.
 (6) To say that something is affected, or to say that it's even
 (7) detrimentally affected don't zero in on the issues in this
 (8) case, and to use that as a stepping stone to finding that the
 (9) juror is biased to where he can't be impartial to the issues in
 (10) the case, I think it's over reaching.
 (11) But I watched the whole examination. I find him to be very
 (12) impressive juror, candid, and I'm convinced that he can be fair
 (13) and impartial to all the parties in the case. So the motion is
 (14) denied.
 (15) Bring him back in.
 (16) (Edward C. Bennett enters the room.)
 (17) THE COURT: Mr. Bennett, you've been, what we call,
 (18) passed for cause. In other words, you passed the cause
 (19) process, there is no - I haven't seen any reason why, under
 (20) the rules of court that you should be disqualified from service
 (21) on this case. That only means that you are still on the jury
 (22) panel. It doesn't mean you'll be on the final jury, that's to
 (23) be determined later after we get the pool of jurors that have
 (24) been passed for cause that we need.
 (25) So I'm going to excuse you now and we will be in touch with

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- (1) you. You don't have to call in. We'll get in touch with you
 (2) either to bring you in or to give you further information, so
 (3) all you have to do is maintain contact with us by keeping your
 (4) phone line open on occasions.
 (5) A Okay.
 (6) THE COURT: I want you to understand since you are a
 (7) potential juror member, you're not to talk about this case with
 (8) anyone and you're not to form or express any opinion until
 (9) you're on the jury, and it's submitted to you for
 (10) deliberation. It's important that you not talk to any members
 (11) of the jury panel, what was said in here. I want them to be
 (12) free of any of that sort of communication, okay?
 (13) A Okay.
 (14) THE COURT: So I'll let you go and we'll be in contact
 (15) with you.
 (16) (Edward C. Bennett leaves the room.)
 (17) MR. DIAMOND: Your Honor, with respect to the next
 (18) prospective juror, Mr. Allen Brown, there is a chance that
 (19) he - his wife is a witness in the case. Mr. Brown, and his
 (20) wife is Margie Brown, there is a Margie Brown on the Native
 (21) corporation's witness list. I understand she has something to
 (22) do with Native corporation land selection, that's why she's on
 (23) the list, but since there is no representative -
 (24) THE COURT: I don't know.
 (25) MR. STOLL: I don't know the answer to that.

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- (1) THE COURT: Do you want to take a break?
 (2) MR. DIAMOND: That would be great.
 (3) MR. STOLL: Your Honor, there may be some other
 (4) questions. He's also color blind.
 (5) THE COURT: I saw that.
 (6) For some reason, counsel, your examinations are taking much
 (7) longer than they were yesterday. I guess it's just because
 (8) you're enjoying this process. I don't want to go through the
 (9) whole examination if this juror is going to be disqualified.
 (10) MR. STOLL: Do you want to skip to the next one?
 (11) THE COURT: No, I want you to find out the answer and
 (12) I'll come back and listen with great enjoyment your examination
 (13) of the next juror.
 (14) (Recess taken.)
 (15) MR. STOLL: Your Honor, I have talked to my
 (16) co-counsel, and we think that this next juror's wife is a
 (17) witness on a significant issue.
 (18) THE COURT: I'll just bring him in and find out.
 (19) MR. DIAMOND: I think all you need to ask him is if
 (20) he's married to the Margie Brown that works for the Native
 (21) construction company.
 (22) MR. STOLL: And we have a color blindness issue with
 (23) the next one.
 (24) THE COURT: I saw that. Got great handwriting. You
 (25) can actually read what he writes.

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- (1) (Allen Brown enters the room.)
 (2) THE COURT: Mr. Brown?
 (3) A Yes.
 (4) THE COURT: You're Allen E. Brown, right?
 (5) A I am.
 (6) THE COURT: You're under oath, do you understand that?
 (7) A Yes.
 (8) THE COURT: There is some concern raised in this case
 (9) because we believe your wife may be - now I've completely lost
 (10) it, counsel.
 (11) MR. STOLL: There is a Margie Brown that works for a
 (12) Native corporation, and she's going to be a witness in this
 (13) case; is that your wife?
 (14) A My wife is Margie Brown and she works for Cook Inlet
 (15) Region.
 (16) THE COURT: That's the witness?
 (17) MR. STOLL: Yes, I think so.
 (18) THE COURT: So you agree that Mr. Brown is
 (19) disqualified?
 (20) MR. DIAMOND: We agree.
 (21) THE COURT: This was quick, Mr. Brown. Most people
 (22) got to stay here for 20 minutes before they got excused, but I
 (23) didn't want to subject you to that, so you're excused.
 (24) A Thank you.
 (25) (Allen Brown leaves the room.)

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- (1) THE COURT: Quite a long day, counsel. How could I
 (2) have forgotten that in between the 30 seconds between what
 (3) you
 (4) told me to say and the time he came in the courtroom? I think
 (5) you're finally beating me down.
 (6) MR. DIAMOND: I think it's the prior six days.
 (7) (Carolyn Swanger enters the room.)
 (8) THE COURT: Could you give your name for the record?
 (9) A Carolyn Swanger.
 (10) THE COURT: You understand you're under oath?
 (11) A Yes.
 (12) THE COURT: And you were under oath when you answered
 (13) this questionnaire.
 (14) A Yes.
 (15) THE COURT: There are some brief supplemental
 (16) questions, and then I would let you know what happens next.
 (17) VOIR DIRE EXAMINATION OF CAROLYN SWANGER
 (18) BY MR. STOLL:
 (19) Q Ms. Swanger, I'm Bob Stoll. I'm here on behalf of the
 (20) Native corporations and the municipalities, and this is
 (21) Mr. Diamond. He's one of the lawyers for Exxon.
 (22) Now, I just have a few questions. We're trying to find
 (23) some juror who can be fair and impartial and follow the Judge's
 (24) instructions.
 (25) A Right.
 (26) Q Do you - did you know that in this case there is no issue

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- (1) about whether Exxon is at fault, that's already been
 (2) determined?
 (3) A I understand that.
 (4) Q And so the issues in this case are whether there are -
 (5) whether there have been damages and how much those
 (6) damages are?
 (7) A Right.
 (8) Q And have you made up your mind, or are you going to - or
 (9) are you going to wait until you hear the issues?
 (10) A I don't have an opinion on that, no.
 (11) Q I notice that you have been working for some period of time
 (12) in the banking and real estate area.
 (13) A Yes.
 (14) Q And as a consequence, you know a number of the people
 (15) that
 (16) are listed on this witness list, Mr. Ferrara and Mr. MacSwain,
 (17) Mr. Volkner?
 (18) A Right.
 (19) Q Now, if those people testify - first of all, could you
 (20) tell me a little bit about your relationship with those people?
 (21) A Volkner was part of the board of directors of the defunct
 (22) First Interstate Bank of Alaska, so I don't know him
 (23) personally, but as an employee there, he was one of the
 (24) directors. And he also - he had some loans with FDIC, and I
 (25) knew that.
 (26) MacSwain and Ferrara, Fred, are appraisers that I use.
 (27) They were contracts that I solicited work from.

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- (1) Q You mean you hired them on behalf of the bank?
 (2) A Well, FDIC, to do appraisals for us.
 (3) Q Did you talk to these gentlemen yourself?
 (4) A Oh, yeah.
 (5) Q Have you had - how extensive have you worked with them?
 (6) A I worked with MacSwain quite a bit in '88 and '89, a little
 (7) bit in '90, but not very much. And Ferrara, about a year
 (8) around that same time, '89 mostly. And Volkner I haven't dealt
 (9) with really.
 (10) Q Now, in this case we believe that Mr. MacSwain is going to
 (11) testify, and Mr. Ferrara - and these other witnesses may
 (12) testify also, and I believe that all of them, and certainly
 (13) Mr. MacSwain is going to testify for Exxon.
 (14) Now, the fact that because of your past experience with Mr.
 (15) MacSwain, do you think you're going to give Mr. MacSwain a
 (16) little more credibility than you would an appraiser that
 (17) testifies for the plaintiffs?
 (18) A No, I don't think so. He may be uncomfortable with me
 (19) being on the jury.
 (20) Q Why is that?
 (21) A Because he knows me.
 (22) Q Is there any - but do you think the - the question I -
 (23) are you going to give his testimony a little more weight or
 (24) less wait?
 (25) A No.

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- (1) Q You're going to listen to all the evidence?
 (2) A I will.
 (3) Q Do you think it's possible - I'm not asking you to
 (4) prejudice any of the evidence because you haven't heard it, but
 (5) do you think that what he says, he could be incorrect on an
 (6) appraisal?
 (7) A Based on what he's says, if he's discussing appraisal
 (8) matters, do I think he would be wrong?
 (9) Q Could he be wrong?
 (10) A I don't know how to answer that. I mean he's an MAI
 (11) appraiser, and he's bound by the laws of his group.
 (12) Q There is going to be other MAI people that are going to say
 (13) things that are not consistent with what he says in a
 (14) diametrically -
 (15) A I would have to take in both sides then. I don't know if I
 (16) would say his would be right or wrong more so than the other
 (17) side. I guess I would try to hear both, and I know all the
 (18) appraisers in town anyway, so that probably won't matter.
 (19) Q Now some appraisers are going to be from - do you know
 (20) Mr. Shorett, a firm called Shorett and Riley?
 (21) A In Washington, yes.
 (22) Q And he's going to be one of the appraisers in this case,
 (23) also.
 (24) A Well, I know Keith Riley better, but we did contract with
 (25) Shorett and Riley, also.

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- (1) Q Now with them - Mr. Shorett is going to testify on behalf
 (2) of the municipalities.
 (3) A Well, he's an MAI, so they would have both the same
 (4) bearing.
 (5) Q The fact that Mr. Shorett is going to testify or
 (6) Mr. MacSwain, your past experience - and they are going to be
 (7) on opposite - I don't know for sure that they are going to
 (8) testify on exactly the same parcel, but it's - their testimony
 (9) could be diametrically opposed to one another.
 (10) Now, based upon your past experience with these gentlemen,
 (11) do you think that this is going to be determinative of how you
 (12) would evaluate their testimony in your past experience?
 (13) A I know MacSwain and Appraisal Company of Alaska better. I
 (14) mean, I've had more dealings with him. I can't say, not
 (15) knowing what he's going to say, if I'll have - if it will have
 (16) more bearing on me than what Shorett & Riley would say. I
 (17) can't say that that would be true.
 (18) Q Do you have any opinion as to whether Mr. - as we sit here
 (19) right now, or at least as you sit here right now, do you have
 (20) an opinion as to, you know, frankly whether one of these
 (21) gentlemen is a better appraiser than the other person or one
 (22) firm is the better appraisal firm than the other?
 (23) A Working for FDIC, we accepted both companies as
 (24) appraisers
 (25) for any of the properties that we needed appraised. Alaska
 Appraisal Company of Alaska, who MacSwain contracted
 through,

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- (1) their fees were cheaper, so subsequently they received more of
 (2) the work. But I wouldn't think that one was better than the
 (3) other.
 (4) Q The appraisers are expressing their opinions?
 (5) A All the time.
 (6) Q Right.
 (7) A Right.
 (8) Q And sometimes you agree with their opinion and sometimes
 (9) you disagree with their opinion, am I correct?
 (10) A Yes.
 (11) Q And is that true of people both in Shorett & Riley and
 (12) sometimes -
 (13) A Every.
 (14) Q - sometimes MacSwain's firm?
 (15) A Everywhere.
 (16) Q Now there was - you said in your form that you had some
 (17) experiences as an EEO counselor.
 (18) A Yes.
 (19) Q Were you working for the government?
 (20) A Uh-huh, for FDIC.
 (21) Q And as a result of that, did you draw any conclusion - was
 (22) that - you indicated on here that you had somewhat negative or
 (23) unfavorable feelings toward Native corporations, and I'd like
 (24) to find out how, you know, what you think in that regard?
 (25) A That wasn't in the context of an EEO counselor, so that has

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- (1) nothing to do with it.
 (2) Q In what context?
 (3) A My husband worked for a Native corporation, the Barrow
 (4) natives, and he worked for them for a couple years, and they
 (5) laid him off, or they RIF'd him with a one-day notice, so I
 (6) wasn't very pleased about that.
 (7) Q As a result of that, do you have any - you think you would
 (8) be negative on Chugach or Chenega Bay or English Bay or any
 (9) of
 (10) the other -
 (11) A It's a different area. I just thought I'd be honest and
 (12) list that.
 (13) Q No, that's what we want you to be, frank and candid. I'm
 (14) just trying to find out if you're harboring any -
 (15) A No, I haven't dealt with anyone in southeast.
 (16) Q And you don't have any views that this is typical treatment
 (17) of Native corporations, that just happened in that one
 (18) instance?
 (19) A That was the only corporation that my husband worked for
 (20) that was a Native-owned corporation.
 (21) Q So you also indicated you had some unfavorable feelings
 (22) towards Exxon. Is that as a result of the oil spill or for
 (23) some other reason?
 (24) A What did I say?
 (25) Q Now on question 47, which is on page 11, you were pretty
 much in the middle, so I'm not -

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- (1) A Yeah, I guess, you know, you just hear an oil spill and
 (2) Exxon's name is out there. Everyone talks about it.
 (3) Q But you don't have any particularly strong feelings in that
 (4) regard?
 (5) A No.
 (6) Q And you've indicated that your husband has a possible
 (7) multi-million dollar contract with VECO?
 (8) A Well, he's applying for a job, and that hasn't been
 (9) settled.
 (10) Q I'm sorry, what kind of job is he applying for?
 (11) A Well, he's an estimator, and it would be for apartment
 (12) complexes in Fairbanks, just managing the construction of
 (13) those projects, and estimating. He would be an estimator.
 (14) Q Right. The cost of construction?
 (15) A Right. So someone from VECO contacted him two weeks
 (16) ago
 (17) and asked him to apply.
 (18) Q Based upon - there is going to be testimony in this case
 (19) that VECO was, of course, the primary contractor for Exxon
 (20) involved in the cleanup. Is that going to affect your
 (21) evaluation of the evidence in this case in any way?
 (22) A No. He's already working for someone else.
 (23) Q But I mean, the fact that he may have a job with VECO, if
 (24) somebody from VECO comes in and testifies, that's not going to
 (25) effect your evaluation of the evidence?
 (26) A No.

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- (1) Q And you mentioned he had a close friend that worked on the
 (2) cleanup.
 (3) A My husband's close friend.
 (4) Q I see. Where did this person work?
 (5) A I think it was out of Valdez. I don't know that much about
 (6) it.
 (7) Q Have you talked to this friend about the cleanup?
 (8) A Not really. I mean, he's talked to my husband, you know,
 (9) he was just gone a whole summer working, and he made good
 (10) money, you know, and the family was pleased, and that was
 (11) about
 (12) it.
 (13) Q This was back in 1989?
 (14) A Right.
 (15) Q Did he indicate how cleaned up the area became or didn't
 (16) become or anything of that nature?
 (17) A No.
 (18) Q You don't have any opinions in that area, or do you have?
 (19) A On how things are cleaned up in the Valdez area?
 (20) Q Well, in Prince William Sound or Kodiak.
 (21) A No, I haven't discussed it.
 (22) Q Have you been to any of those areas since the spill?
 (23) A We just went to Kodiak on Memorial Day for the first time,
 (24) and that's all we've done.
 (25) Q Did you talk to anybody in Kodiak when you were there?
 (26) A Regarding the spill?

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- (1) Q Yes.
 (2) A No.
 (3) Q Did you - did you just stay in the town of Kodiak, or did
 (4) you go to some outlying area?
 (5) A No, we just hiked along the beaches and the coast.
 (6) Q Nearby the town of Kodiak?
 (7) A Yeah, maybe 50 miles either way.
 (8) Q Have you made any evaluation as to what effect, if any, the
 (9) oil spill had on the real estate either in Kodiak or Prince
 (10) William Sound?
 (11) A No, we were on vacation, we didn't really discuss how that
 (12) impacted the area.
 (13) Q I don't mean necessarily on that trip, but the other
 (14) occasions, have you formulated any opinions as to what the
 (15) spill did to real estate values in those areas?
 (16) A No, I don't know anything about the real estate in that
 (17) area.
 (18) Q Or in Prince William Sound?
 (19) A No.
 (20) MR. STOLL: Thank you very much.
 (21) VOIR DIRE EXAMINATION OF CAROLYN SWANGER
 (22) BY MR. DIAMOND:
 (23) Q Hello, Mrs. Swanger, are you currently a student?
 (24) A Yes.
 (25) Q Where are you going to school?

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- (1) A UAA.
 (2) Q What are you studying?
 (3) A Social work.
 (4) Q What do you hope to do with it?
 (5) A That's a good question. I probably will have to go on for
 (6) my master's, but I'm more in the area of discrimination social
 (7) work, working with employee assistance programs, counseling
 (8) employees.
 (9) Q How come you left FDIC?
 (10) A Because they laid me off.
 (11) Q That's a good reason, or a bad reason.
 (12) If your husband lands the VECO job, that's estimating in
 (13) Fairbanks -
 (14) A Yes.
 (15) Q - Is he going to relocate?
 (16) A No, he'll be based here.
 (17) Q So if you serve on this jury, we're not going to lose you
 (18) midstream?
 (19) A No, but I'm going to school full time with a grant from the
 (20) state, and I'm in school full time this summer and in the fall,
 (21) and will that have - have a big impact on what I'm doing with
 (22) my school work.
 (23) Q You're enrolled in the summer semester?
 (24) A Yeah.
 (25) Q Or is it a quarter?

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- (1) A Well, there is two five weeks, little programs, and then a
 (2) ten week. I have five more weeks. It's not that much of a
 (3) problem this summer, but come August 28th, then I start full
 (4) time again.
 (5) Q Come August 28th we all hope to be done with this.
 (6) A I hope so.
 (7) Q Are you currently enrolled in any classes now?
 (8) A Yes.
 (9) Q We're going to be getting together here, I'm told, from
 (10) 8:30 in the morning until 1:30 in the afternoon. Is that going
 (11) to be a problem for you in the short run?
 (12) A I have finished three of my classes. I have one class I'm
 (13) taking that's evenings, which I wish I didn't have to tell you
 (14) that, but it's from 6:00 to 10:00 at night, but I have homework
 (15) during the day. I can rearrange that. I don't have a problem
 (16) with that, but August 28th, you know, it's very important for
 (17) me to be in school. I've been laid off since October, and the
 (18) State is paying for a two-year program for me to get my
 (19) bachelor's.
 (20) Q I think we all are very hopeful that we will be done by
 (21) August 28th.
 (22) THE COURT: More than very hopeful, counsel, it's a
 (23) good faith estimate that this case will absolutely be done by
 (24) then, right?
 (25) MR. DIAMOND: Yes, I think the lawyers agree.

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- (1) MR. STOLL: That's correct.
 (2) A Can I voice another concern?
 (3) THE COURT: Sure.
 (4) A I have a nonrefundable plane ticket.
 (5) THE COURT: Nonrefundable in the industry is a term of
 (6) art. If you tell the airlines - this has been my experience,
 (7) if you tell the airlines- who is it?
 (8) A Northwest.
 (9) THE COURT: If you tell Northwest that you're on a
 (10) jury, I think they will make a nonrefundable ticket
 (11) refundable. And if they don't do that, then you can turn the
 (12) problem over to me. I'll call and they will. I have done this
 (13) before and the airlines have been very flexible.
 (14) A So do I talk to you about those plans later?
 (15) THE COURT: I saw it in your questionnaire. What were
 (16) the dates; counsel, do you remember?
 (17) A I don't think I wrote it down.
 (18) MR. DIAMOND: 8/16 to 8/22.
 (19) THE COURT: Which, I think, is not a problem because
 (20) the case will probably be done by then, right?
 (21) MR. STOLL: We hope, Your Honor.
 (22) THE COURT: It's my estimate that the case will be
 (23) done by the 16th, so that may not be a problem at all. But if
 (24) it is a problem, you can let me know and I'll intercede on your
 (25) behalf, if in fact they don't just let you off, which I think

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- (1) they would.
 (2) A Okay. My concern is more with people I have to meet, since
 (3) I'm the one who is gathering all the people together, so then
 (4) no one will be able to meet if I don't go.
 (5) THE COURT: We have a lot of people that are in your
 (6) situation on the panel. There are a number of students on a
 (7) panel. That's the target date for all of them, so my estimate
 (8) and the lawyers are being conservative, because they don't
 want
 (9) to be bound to something that might not happen. The
 (10) circumstances can always arise where things take a lot longer
 (11) than they are going to, but my feeling with the alternates on
 (12) the jury and the - what I know about this case, that you will
 (13) not have a problem with the 16th.
 (14) A Thank you.
 (15) BY MR. DIAMOND:
 (16) Q Let's talk about real estate appraisers. How many are
 (17) there in town?
 (18) A Appraisers, companies?
 (19) Q Yes.
 (20) A Commercial, residential?
 (21) Q Of the type that you dealt with at the FDIC?
 (22) A I dealt with every one, every different kind, but mostly
 (23) commercial. I'd have to say there is probably 20 MAI
 (24) appraisers, two are women and the rest are men.
 (25) Q And Mr. MacSwain was one of them?

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- (1) A Yes.
 (2) Q And Mr. Ferrara was another?
 (3) A Yes.
 (4) Q Did - was it your decision as to who to hire, who to
 (5) engage for appraisal work?
 (6) A I would solicit the bids, and we would receive the bids,
 (7) and then we would take the lowest bid, and I was involved in
 (8) that decision.
 (9) Q But it was basically a price sensitive decision, whoever
 (10) the lowest price got the job?
 (11) A Right.
 (12) Q How frequently do you deal with Mr. MacSwain during the
 (13) period 1988 to 1989?
 (14) A Alliance Bank failed in April of '89, and there were 400
 (15) people there and they had a couple billion dollars worth of
 (16) assets, so I had to get about 800 appraisals by that fall - or
 (17) by Christmas, so we worked very closely with the whole
 (18) appraisal community. And so for the rest of '89 and the
 (19) beginning of '90, we probably talked with the appraisers on a
 (20) daily, weekly basis for months.
 (21) Q Did Mr. MacSwain's company have all of those appraisals or
 (22) just a portion?
 (23) A No, we had to have them come in and spread them out,
 maybe
 (24) 20 companies for 800 appraisals, and one commercial
 appraisal
 (25) usually takes two months, and we asked they have them done
 in

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- (1) three months.
- (2) Q Were your dealings with Mr. MacSwain satisfactory?
- (3) A Yes.
- (4) Q Do you respect his judgment?
- (5) A I didn't review his work, but it seemed to be respected by
- (6) everyone else who did, and his appraisals never turned down,
- (7) nor was he taken off the list.
- (8) Q Have you ever talked to people in the appraisal community
- (9) or the real estate community about Mr. MacSwain?
- (10) A Appraisers are very competitive, like any other group, and
- (11) everybody would say many different things to me about many
- (12) different things, oh, you're using so and so again. He's just
- (13) too cheap. He's probably not that great. Or why don't you use
- (14) me? I may be a little bit more expensive, but I'm better, that
- (15) sort of thing, but I work for a federal agency and, you know,
- (16) that just - I just blow that off, and whoever is on the list
- (17) is who we solicit from and if their work has been reviewed and
- (18) it's acceptable, then we continue to use them.
- (19) Q So you wouldn't be surprised if one of Mr. MacSwain's
- (20) competitors said something along the lines of a disparaging
- (21) comment about him?
- (22) A No, I wouldn't be surprised.
- (23) Q And I trust the same is probably true with Mr. Ferrara?
- (24) A True, and all the other MAIs.
- (25) Q You bring a unique perspective to this jury if you serve,

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- (1) because you are going to be listening to a lot of real estate
- (2) people, a lot of real estate appraisers, and you probably
- (3) worked with them professionally, at least worked with some of
- (4) them professionally. Are you confident that your judgments
- (5) that you made of Mr. Shorett or Mr. Riley or Mr. MacSwain or
- (6) Mr. Ferrara are not going to enter into how you evaluate what
- (7) they say from the witness stand?
- (8) A Yes. They all knew what my capacity was at FDIC, and they
- (9) knew that I was not in position to review their work, but they
- (10) knew that I was the only person that they could call as a
- (11) contact to get work, but I also have to live and work in this
- (12) community when this is all over, and I do know those people. I
- (13) don't know what the outcome will be, but it's a very small
- (14) community and, you know, a lot of people will know who I am in
- (15) the real estate community.
- (16) Q Does that make you feel uncomfortable serving as a juror in
- (17) this case?
- (18) A A little.
- (19) Q You don't want to disappoint someone who is on one side or
- (20) the other?
- (21) A I guess. Although I'm not going back into the real estate
- (22) community, I'm not concerned about getting a job or a
- (23) reference
- (24) because I'm going into social services, which is a whole
- (25) different area, but I want to be credible. I have a good
- (25) reputation, you know, with all these people.

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- (1) Q Would you prefer serving on a case in which you had no
- (2) connection, would you feel more comfortable?
- (3) A Sure.
- (4) Q You said Mr. MacSwain's fees were cheaper than others?
- (5) A Well, depending on the project, or the time. Everyone
- (6) is - at one point was cheaper and that's why everybody got
- (7) different work at different time.
- (8) Q You don't categorize Mr. MacSwain as being in the budget
- (9) department?
- (10) A No, actually after '89 - well, the fees did start going
- (11) down when FDIC did come into the market, and the appraisers
- (12) were angry about that because, unlike banks, where banks
- (13) would
- (14) just go out and pick an appraiser and hire them, FDIC was more
- (15) economical and they were in the public viewing spectrum, we
- (16) did
- (17) competitive bidding, so that brought the prices down. So some
- (18) appraisers would complain to me, you're hiring so and so just
- (19) because he's willing to bid, where I won't do that.
- (20) Shorett & Riley's fees were a little higher, I'll have to
- (21) admit that, but still during the 1989, 1990 period, all the
- (22) appraisers got a lot of work.
- (23) Q Because there was so much?
- (24) A Because we had so much to get done.
- (25) Q The fact that Shorett & Riley was able to command a higher
- (25) price, did that attach, in your mind, a connotation that they
- (25) were a premium outfit?

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- (1) A No, no. An MAI is an MAI, as long as they are able to
- (2) practice and their work is still reviewed as being acceptable.
- (3) Q Do MAIs have to be licensed in the state of Alaska?
- (4) A Yes.
- (5) Q The appraisers that you dealt with, are they licensed in
- (6) the state of Alaska?
- (7) A Yes. Well, in the beginning of '87, '88 it wasn't so much
- (8) an issue, we would hire non-MAI appraisers to do some
- (9) commercial work if they had experience. For instance, we have
- (10) someone in southeast we did use quite a bit that didn't have an
- (11) MAI, and then Fire Ray (ph) came into play and that changed
- (12) where we couldn't be restrictive of that designation so you
- (13) have to be licensed, but you can use, you know, broad
- (14) spectrum
- (15) as long as someone has passed the test for the state.
- (16) Q Would you assume that an appraiser who is licensed in the
- (17) state of Alaska is a higher caliber appraiser than one who is
- (18) not?
- (19) A Well, if the state accepts them, you know - from the
- (20) standpoint of working for FDIC, we could only work from a list
- (21) that the state approved.
- (22) Q Well, the reason I ask is that there will be some
- (23) appraisers who testify in this case who are not licensed.
- (24) Would you view their opinions as somewhat less credible than
- (25) appraisers who were licensed in the state of Alaska?
- (25) A I personally wouldn't, no.

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- (1) Q You seem very confident in that, why is that?
- (2) A Well, I never reviewed anybody's work, all I did was work
- (3) for a corporation who set guidelines that I had to follow. You
- (4) know, I would have to hear the information first to make that
- (5) decision.
- (6) Q And whether an individual was licensed in the state would
- (7) not have any bearing on the weight that you might attach on his
- (8) opinion?
- (9) A No.
- (10) THE COURT: We're about there, counsel.
- (11) MR. DIAMOND: I think I spent most of my time dealing
- (12) with hardship issues. May I have about five more minutes?
- (13) There are a couple questions.
- (14) THE COURT: Yes.
- (15) BY MR. DIAMOND:
- (16) Q You answered one of the questions in our questionnaire,
- (17) 65XX, and it's on page 12 if you want to take a look at it. We
- (18) asked you what you thought the effect of the spill was on
- (19) various groups or entities, and you said that in your view the
- (20) municipalities listed in 51 were devastated. Do you see that,
- (21) 51XXA?
- (22) A Yeah.
- (23) Q What did you mean by that?
- (24) A Well, the Turning Point show, I saw that show. I haven't
- (25) seen any other shows. I don't know why I was watching that

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- (1) one, but I did, and I know Captain Hazelwood was devastated.
- (2) I feel that, you know, and Exxon, everyone was pretty upset
- (3) about
- (4) that. And I also feel the other side was, too. It's shocking
- (5) for everyone is the point I'm trying to make. It's impacted
- (6) everybody.
- (7) Q In what ways do you see it impacting the municipalities?
- (8) A I'm think of the people in the municipalities, the society
- (9) of how those people live, their life-styles.
- (10) Q That was one of the messages of the Turning Point program,
- (11) wasn't it?
- (12) A Yes.
- (13) Q Particularly villages that were heavily dependent on
- (14) fishing?
- (15) A Cordova is what I remember most.
- (16) Q What do you mean about the program in that regard?
- (17) A Well, they just had some very strong opinions. Maybe they
- (18) speak out more than the rest of the groups. You see families,
- (19) children, things like that, and how they feel, they have lost
- (20) their livelihood. They just don't know what to do, I guess.
- (21) Q Did you come away from the program feeling that, in fact,
- (22) the spill did cause folks in Cordova who depend on fishing to
- (23) lose their livelihood?
- (24) A No, I have not debated this topic with anybody, it would be
- (25) too consuming.
- (26) Q Let's talk about the Turning Point a little bit more. You

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- (1) said that - let me ask you first, why did you tune it in?
- (2) A I don't know. What night was it? I don't remember what
- (3) specific night, I'm not usually home.
- (4) Q It was the week before last, and I think it was a Tuesday
- (5) or a Wednesday.
- (6) A My husband likes documentary-type programs, and I think
- (7) he
- (8) actually is the one who left it on that channel.
- (9) Q Did you watch with him?
- (10) A Yeah.
- (11) Q The reason we're asking these questions is that things like
- (12) that you watch on television or read on the paper can influence
- (13) you or affect you and we're just interested in knowing whether
- (14) this did or how it did, if it affected you. You said that-
- (15) and this is on page 9 - that it did cause you to, the program
- (16) did cause you to form an opinion on an issue that it dealt
- (17) with, and we asked you what the opinion was and you said,
- (18) Hazelwood alone cannot be held responsible for the event that
- (19) occurred. What did you have in mind there?
- (20) A You know, we always, when something bad happens, we
- (21) always
- (22) want to blame someone because it makes us feel better
- (23) because
- (24) the spot light is not on us, so we picked one person,
- (25) Hazelwood, who does work for a company, he was working for
- (26) a
- (27) company when this happened, but it's really the society, you
- (28) know, that has to be held responsible. It's everybody, there
- (29) is many portions of a whole that need to be accounted for that,

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- (1) and he's taken most of the heat and, you know, that just pretty
- (2) much summed it up on Turning Point.
- (3) Q Who else do you think ought to share the responsibility?
- (4) A Well, I think that the rules in how the ships are made need
- (5) to be changed, the rules on how you take the tug boats and how
- (6) you escort them out need to happen. I think just everyone
- (7) involved in that industry need to be responsible.
- (8) Q Did you get a sense that Exxon was responsible for letting
- (9) Captain Hazelwood master the Exxon Valdez?
- (10) A I don't know. I don't know that.
- (11) Q Did you think that was one of the messages that the program
- (12) was trying to send?
- (13) A That Exxon is responsible.
- (14) Q That Exxon was at fault in letting Captain Hazelwood master
- (15) the ship?
- (16) A I think they tried to have that be the point of focus.
- (17) Q Let me ask you about a part of the program that sort of
- (18) gets closer to home for us trying this case. Did you watch the
- (19) program from beginning to end?
- (20) A I don't think so.
- (21) Q Do you remember where you turned it off?
- (22) A No.
- (23) Q Do you remember any discussion of the effects of the spill
- (24) on the environment, whether oil was still out in the
- (25) environment, how the cleanup was handled?

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- (1) A Yes, I do remember. I did see through to probably her
 (2) little end discussion where she surmises what happened, I
 (3) think. Well, they had different scientific personnel, really
 (4) talking on both sides, so I didn't seem to think this was more
 (5) important than that.
 (6) Q Did you think it was even-handed or balanced treatment of
 (7) the environmental issues?
 (8) A Well, I wanted to know more. I don't think, you know, it
 (9) gave me enough information.
 (10) Q There was one particular seen in the program dealing with
 (11) whether oil was still persisting on some of the shorelines that
 (12) had been touched by Exxon Valdez oil with two scientists
 (13) picking up rocks and looking at sheens. Do you remember
 that?
 (14) A Were they two women?
 (15) Q Yes.
 (16) A Yes.
 (17) Q One was identified as a U.S. government scientist?
 (18) A I don't know what their capacities were, who they worked
 (19) for.
 (20) Q Did you conclude from that that there probably still is oil
 (21) out in Prince William Sound?
 (22) A Well, yeah, they show that there was oil there.
 (23) Q And they made a pretty convincing case for it, didn't they?
 (24) A They did.
 (25) Q There is going to be testimony, I anticipate, in this case

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- (1) contrary to what those two scientists suggested was the
 (2) condition of the shoreline along Prince William Sound. Do you
 (3) think what you saw on television will at all affect or taint
 (4) your evaluation of what you hear from the witnesses?
 (5) A The oil spill hasn't impacted me personally, and I think
 (6) that for people who aren't impacted, they don't tend to pay
 (7) attention as much, and I think I need more information, you
 (8) know, it's not something I really researched that much to form
 (9) an opinion that I'm really concerned that there is that much
 (10) more oil out there or there isn't.
 (11) Q And I understand that, it's just you did see this program
 (12) and the program did deal with this subject. Do you think that
 (13) makes you sort of start off thinking that there probably is oil
 (14) still on shorelines that had been affected by the spill?
 (15) A It gives me that impression. I mean, that's the way the
 (16) program ended.
 (17) Q So at least representing Exxon, I would start off by having
 (18) to convince you that's not true?
 (19) A I would want to see some more information, some hard data.
 (20) Q But you haven't made up your mind?
 (21) A No, I haven't. Because it's not something that has
 (22) impacted me so much that I've gone and researched it.
 (23) Q There was another segment of the program dealing with
 beach
 (24) cleaning treatment, hot water washing versus other forms of
 (25) treatment, do you remember seeing that?

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- (1) A I do.
 (2) Q What messages did that convey to you?
 (3) A Let's see, they talked about the temperature, the heat
 (4) temperature of the water, and how it killed the
 (5) microorganisms. But then on the other side, I think they said
 (6) that that really didn't have as great of an impact as the other
 (7) scientist said it did.
 (8) Q What did you conclude from that presentation, if in this
 (9) case?
 (10) A I had never heard about the temperature thing before, you
 (11) know, how hot the water was cleaning the rocks. That was
 (12) interesting, something I - it was an aspect or a viewpoint
 (13) that had never been brought up.
 (14) Q Based on watching the program, do you think it more
 (15) probable than not that the beach cleaning had some adverse
 (16) environmental effects because the hot water wash probably
 (17) killed some of the microorganisms and other sea life?
 (18) A I don't know. I just don't know. Turning Point seemed to
 (19) be a summation, again, of what had happened in '89, and it
 (20) really wasn't something I went, Hey, I'm going to be on the
 (21) jury, I guess I better watch this or not watch it and, you
 (22) know.
 (23) Q I don't think you even knew you were going to be on the
 (24) jury.
 (25) A No, I didn't. It was just something I took in, and it

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- (1) wasn't that important to me, I guess, at that point.
 (2) THE COURT: Counsel, it's been more than five minutes.
 (3) MR. DIAMOND: Yes, it has. Thank you for your
 (4) indulgence. I would like to be heard.
 (5) THE COURT: I'll excuse you for just a minute.
 (6) THE COURT: This one can be brief, counsel.
 (7) MR. DIAMOND: Your Honor, I think anyone who saw that
 (8) program is obviously affected by it. I know you haven't seen
 (9) it, and I've talked with you about it before. I don't think
 (10) that it's possible to put aside all of the information that's
 (11) conveyed, and we do think that was a one-sided, bias
 (12) presentation. I also think there is a problem with this juror
 (13) inasmuch as I think she is going to be affected by prior
 (14) relationships with very important witnesses in the case. Maybe
 (15) not that she will prejudge them, but I think she's got some
 (16) concerns about how they might judge her depending on how
 the
 (17) outcome comes, and that could easily sway a juror, who is
 (18) thinking one extreme or another, into some compromise, so she
 (19) would be reasonable to save face with respect to both sides and
 (20) I think that's certainly a possibility based on what she told
 (21) us.
 (22) MR. STOLL: We oppose the motion.
 (23) THE COURT: Motion is denied. She's seems fair and
 (24) impartial and I don't think the television show hasn't affected
 (25) her impartiality. The word 'affect' has been used so many

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- (1) times in this case, it's like anything else that gets repeated
 (2) thousands of times, it sort of loses its effect. And the fact
 (3) that somebody is affected by something doesn't necessarily
 mean
 (4) that it doesn't translate to a finding of lack of
 (5) impartiality.
 (6) This is one of those jurors who seems very clear to me has
 (7) some life experiences that might affect her, but not in terms
 (8) of impartiality of state of mind that wouldn't let her be a
 (9) good juror. There may be concerns that cause one party or
 (10) another to worry about her, but that shouldn't make her a bad
 (11) juror.
 (12) I think she will be an excellent juror, and I am taking
 (13) into consideration the fact that she knows some of the people
 (14) in this case. Her answers have satisfied me that she can be
 (15) impartial.
 (16) MR. STOLL: Excuse me, Your Honor, I didn't mean to
 (17) interrupt.
 (18) THE COURT: No, I was following up on something.
 (19) MR. STOLL: I just, as I understand - we have 30
 (20) now. As I understand your prior comments, your staff has - is
 (21) going to talk to Mr. Bortnick about whether he's going to be
 (22) back on Tuesday.
 (23) THE COURT: No, I haven't done that, because when you
 (24) decided that 30 would be enough, I decided just to go ahead
 and
 (25) see what the preempt process did. And if it got rid of him,

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- (1) that's one thing; and if it didn't get rid of him, then that's
 (2) another.
 (3) MR. STOLL: What I think we indicated earlier, Your
 (4) Honor, we would like to find out if the 30 - you indicated
 (5) that sometimes people stand up and, you know, say they get
 some
 (6) hardship, so we would like to find out if this is, in fact, the
 (7) real 30.
 (8) THE COURT: It is.
 (9) MR. STOLL: So he's on the jury?
 (10) THE COURT: He's on the panel.
 (11) THE COURT: I said that at the end of the
 (12) conversation.
 (13) MR. STOLL: That's what I thought, I wasn't clear.
 (14) THE COURT: He's on the panel. I haven't counted
 (15) him - the preempt process will be over and I'll take what the
 (16) parties will give me.
 (17) MR. STOLL: Can we take a lunch break and come back
 (18) and exercise our preempts?
 (19) THE COURT: Sure, are you going to want - you'll come
 (20) in and give your first - are you going to want to caucus?
 (21) MR. DIAMOND: If we do, it will be briefly and we will
 (22) do it in the courtroom.
 (23) THE COURT: So I'll see you at -
 (24) MR. DIAMOND: Also he does something very surprising,
 (25) but I can't imagine.

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- (1) THE COURT: It's his trademark.
 (2) MR. STOLL: Plaintiff's being a butt, Your Honor.
 (3) THE COURT: Is 45 minutes too short?
 (4) MR. STOLL: I would like an hour, Your Honor.
 (5) THE COURT: All right, 2:15 then.
 (6) (Lunch recess at 1:15 p.m.)
 (7) (Court in session at 2:35 p.m.)
 (8) THE COURT: I hope you'll accept my apologies. I've
 (9) been playing musical courtrooms, just got out of the last one.
 (10) We're here at the preempt phase, counsel, and I would like
 (11) to know what you'd like to do. Mr. Stoll?
 (12) MR. STOLL: Your Honor, we'll challenge Ms. Charmely.
 (13) MR. DIAMOND: The defendants will thank and excuse
 (14) Sarah Josephson, number 18.
 (15) THE COURT: Thank you.
 (16) MR. STOLL: The plaintiffs will thank and excuse
 (17) Mr. Shaw.
 (18) MR. DIAMOND: The defendants will thank and excuse
 (19) Janice L. Bury, juror number 41.
 (20) THE COURT: Bury, there were two Burys, but we didn't
 (21) get to the second one, did we?
 (22) MR. DIAMOND: That's the only Bury we have on our
 (23) list.
 (24) THE COURT: We didn't get to the second one. Number
 (25) 41, at any rate.

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- (1) MR. STOLL: Plaintiffs will challenge Mr. Wichorer.
 (2) MR. DIAMOND: Defendants will thank and excuse Ann M.
 (3) Armstrong, juror number 21.
 (4) MR. STOLL: Plaintiffs will challenge Lenore Stewart,
 (5) number 48.
 (6) MR. DIAMOND: Defendants will thank and excuse Steve
 (7) T. Roberts, juror number 55.
 (8) MR. STOLL: Plaintiffs will challenge Mr. Jesclard,
 (9) number 75.
 (10) THE COURT: Hang on just a minute. How do you
 (11) pronounce that word?
 (12) THE CLERK: Jesclard.
 (13) MR. STOLL: He was the one this morning, Your Honor.
 (14) THE COURT: I got it, number 75.
 (15) MR. DIAMOND: Defendants will thank and excuse Charles
 (16) Sampson, juror number 1.
 (17) MR. STOLL: Plaintiffs will challenge Mr. Bortnick.
 (18) THE COURT: Somehow I knew he was going to be in the
 (19) last go around. How did I know that?
 (20) MR. STOLL: Clairvoyance.
 (21) THE COURT: Yes, I had a consultant.
 (22) MR. STOLL: You've been talking to some of the
 (23) jurors - one of the jurors.
 (24) MR. DIAMOND: Defendants will thank and excuse Edward
 (25) K. Morse, juror number 20.

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- (1) THE COURT: Let's repeat them so that we know that
 (2) we're all agreed as to the people that you've preempted. The
 (3) plaintiffs - I'm going to go down one through six. Plaintiffs
 (4) have disqualified the following jurors: Mrs. Charmely. She's
 (5) number 5, right?
 (6) MR. STOLL: Correct.
 (7) THE COURT: Mr. Shaw, what number was he?
 (8) MR. STOLL: 27.
 (9) THE COURT: Number 27. Mr. Wichorer, number 45. Was
 (10) it Stewart, number 48?
 (11) MR. STOLL: Yes.
 (12) THE COURT: Mr. Jesclard, number 75, and Mr.
 (13) Bortnick. What's his number?
 (14) MR. DIAMOND: 34.
 (15) THE COURT: Number 34.
 (16) MR. STOLL: Correct, Your Honor.
 (17) THE COURT: The defendants have challenged
 (18) Ms. Josephson, number 18, Ms. Bury, number 41 - what was
 (19) Armstrong's number?
 (20) MR. DIAMOND: 21.
 (21) THE COURT: Anna Armstrong, number 21; Steve Roberts,
 (22) number 55; Charles Sampson, number 1. What number was
 (23) Morse?
 (24) MR. STOLL: 20.
 (25) THE COURT: And Edward Morse, number 20, right?
 (26) MR. DIAMOND: Correct.

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- (1) MR. STOLL: Correct, Your Honor.
 (2) THE COURT: So we have 18 jurors.
 (3) In numerical order of the number drawn, the first 12 will
 (4) be the jury, the next six will be the alternates. The
 (5) alternates will be informed that they are the alternates, and
 (6) I'll probably simply tell them on the record when we next
 (7) convene what the alternates do as opposed to the jury and give
 (8) them the caution that they should assume that they are going to
 (9) be deliberating because someone might be excused.
 (10) We will call all the jurors, and if there is anything
 (11) unusual that occurs when we inform those jurors who are still
 (12) on the panel that they are on the panel, I'll let you know
 (13) about that, okay?
 (14) Is there anything else you want now?
 (15) MR. PETUMENOS: We just had a question, and that is,
 (16) not being in this courtroom, so we can keep track of which
 (17) jurors is where, do you seat from this corner or this -
 (18) THE COURT: One is the first seat furthest away from
 (19) the - in the front row, one, two, three, and it goes the same
 (20) way. So number 18 will be the back row furthest to the left,
 (21) if you face the jury.
 (22) MR. DIAMOND: I was told, I haven't personally been
 (23) here when the Barco was on, but the viewing is most difficult
 (24) from the seats to your extreme left.
 (25) THE COURT: I'm sure that's true.

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- (1) MR. DIAMOND: You may want to consider configuring the
 (2) jurors so the 12 who are the jurors have the best vantage
 (3) point.
 (4) THE COURT: I'd prefer to try to work with the problem
 (5) and make sure that there is no problem at all. Is there going
 (6) to be a significant problem.
 (7) MR. DIAMOND: I gather, we're also considering,
 (8) according to Mr. Clough, a small screen monitor.
 (9) THE COURT: Just as long as I don't break it in one of
 (10) my frequent recesses.
 (11) MR. STOLL: Your Honor, I haven't been consulted on
 (12) that, and frankly in the federal court where they have these
 (13) other monitors - I don't know what they are talking about the
 (14) small one, but in the federal courtroom they have got the big
 (15) Barco and they have got two other large monitors, and I think
 (16) it's a little bit like a candlestick park, it's a little bit
 (17) too much of electronics for me.
 (18) MR. CLOUGH: Your Honor -
 (19) THE COURT: Here's what I'm going to require, I can't
 (20) solve this, but I'm sure you can between now and the time the
 (21) jury is next in court. You've got free access to the court,
 (22) you can come in and make suggestions and I'll do whatever is
 (23) reasonable.
 (24) MR. DIAMOND: We'll work it out.
 (25) THE COURT: And I'm sure you can. If you have a

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- (1) dispute it's got to be resolved by the end of this week, I
 (2) don't want to have to deal with it on Tuesday.
 (3) MR. STOLL: Exactly. Your Honor, the other thing is,
 (4) I think, as we talked this morning, tomorrow morning, we would
 (5) like to come in and get resolved this issue on the - their
 (6) motion to sever on Cordova. And is there anything else we
 (7) have, the exhibits? They raised certain objections, Your
 (8) Honor, to some photographs of Natalie Fobes, who is a
 (9) photographer for National - she is a free-lance photographer
 (10) but she does some photographs for National Geographic and
 (11) she's
 (12) going to be our first witness.
 (13) THE COURT: You mean photographs taken by her, not
 (14) photographs of her?
 (15) MR. STOLL: No, taken by her shortly after the spill.
 (16) THE COURT: What's the objection?
 (17) MR. DIAMOND: The objection is on relevance grounds
 (18) and the objection is on prejudicial impact outweighing
 (19) probative value.
 (20) THE COURT: Do you have them here?
 (21) MR. DIAMOND: Your Honor, let me tell you what we
 (22) did. As required by the trial plan, the plaintiffs served us
 (23) with their cast of witnesses for the first week of trial, as
 (24) well as the exhibits that they will use. We had talked about
 (25) this informally but never reached any resolution about trying
 (26) to anticipate evidentiary objections and having you rule,

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(1) either the week before, or in some fashion the Monday of, and
 (2) we did not work out any game plan.
 (3) We went ahead, after we got those, and filed our objections
 (4) to the first week's exhibits. Now Natalie Fobes is just a part
 (5) of that, we have objections to many of the exhibits they intend
 (6) to use during the first week.
 (7) MR. STOLL: I think you filed objections to every
 (8) exhibit.
 (9) MR. DIAMOND: No, we didn't, just every objectionable
 (10) exhibit.
 (11) THE COURT: And just because they coincide.
 (12) MR. STOLL: One they missed, I'm advised by Mr.
 (13) Fortier, out of a hundred something.
 (14) MR. DIAMOND: I think it would make sense to have some
 (15) sort of routine practice, both for our exhibits and their
 (16) exhibits, because, as you know, we didn't work out exhibit
 (17) objections pre-trial in this case, unlike the federal case.
 (18) You know, we can argue all of the objections some time
 (19) tomorrow, there are quite a few. I think you're going to want
 (20) to spend some time before you listen to us argue, if you want
 (21) to listen to argue, but tomorrow or Friday, if we want to
 (22) resolve those before opening statements on this.
 (23) THE COURT: First, I haven't seen the objections, so I
 (24) don't know what the basis of them is, and how long it's going
 (25) to take to do it, but we have a hearing tomorrow, I have time

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(1) tomorrow, but I don't want to particularly take all my time and
 (2) your time on things that I can field in the trial. I can only
 (3) tell you that if you didn't work out a procedure prior to trial
 (4) to resolve those things, then I'm stuck with the way I normally
 (5) do it in trial, say your objection and get a rule.
 (6) MR. STOLL: Your Honor, the only one thing there is an
 (7) issue about- there is two issues we would like to get a
 (8) resolution on, and that is the opening statement, if there is
 (9) any objections to opening statement exhibits, and the second
 (10) issue is Natalie Fobes, and the only reason I'm bringing up -
 (11) we can get to you the hard copies of -
 (12) MR. DIAMOND: We've already submitted them.
 (13) THE COURT: I have them here.
 (14) MR. DIAMOND: We filed this early yesterday, so you
 (15) have -
 (16) THE COURT: They are here.
 (17) THE CLERK: I don't have them, I think they are
 (18) downstairs. I can deal with them tomorrow.
 (19) MR. STOLL: But what I would like to do is get them
 (20) resolved in the morning. We think the opening statements are
 (21) going to last an hour-and-a-half for each side, and so our plan
 (22) is to have her come back, they actually - we thought we were
 (23) going to start today. We sent her back to Seattle, she's from
 (24) Seattle. And so what we intend to do is put her on -
 (25) following the opening statements.

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(1) And what they did in federal court, which we think is the
 (2) easiest thing, instead of asking her a question each time, just
 (3) have her give a brief description of what's in the photograph,
 (4) and explain it that way, go a lot faster, otherwise it will
 (5) take an undo you amount of time, and they can cross-examine
 all
 (6) they want to do, but rather than go through each photograph,
 (7) there is about a hundred photographs, and rather than go
 (8) through each photograph, you know, offering one at a time, I
 (9) think it would be easier to do it the way they did it in
 (10) federal, that's why I'd like to get it resolved tomorrow.
 (11) THE COURT: Yeah, I'm sure I can do that. So I'll try
 (12) to find the photographs.
 (13) MR. STOLL: If you don't have them, Judge, I've got
 (14) hard -
 (15) THE COURT: Bring them to the hearing.
 (16) MR. STOLL: I will.
 (17) MR. DIAMOND: What time would you like to see us.
 (18) MR. STOLL: Is 8:30 okay.
 (19) THE COURT: No, 10:30 is okay.
 (20) MR. STOLL: Is there any chance of doing it any
 (21) earlier than 10:30?
 (22) THE COURT: How much.
 (23) MR. STOLL: Well, I'm thinking about going home for
 (24) the weekend.
 (25) MR. DIAMOND: You're not going to see our reply papers

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(1) until the morning on the Cordova issues.
 (2) MR. PETUMENOS: Can we have a moment to confer?
 (3) THE COURT: Sure. This is taking longer than the
 (4) preempts.
 (5) MR. STOLL: Whatever time you want to set, Your Honor,
 (6) but, as I said, I would prefer to do it as earlier as possible.
 (7) THE COURT: What did you say?
 (8) THE COURT: 10:00.
 (9) MR. STOLL: Fine, thank you.
 (10) MR. DIAMOND: See you in the morning.
 (11) (Proceedings recessed at 3:10 p.m.)

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(1) STATE OF ALASKA)
 (2) : Reporter's Certificate
 (3) DISTRICT OF ALASKA)
 (6) I, Leonard J. DiPaolo, a Registered Professional
 (7) Reporter and Notary Public;
 (8) DO HERBY CERTIFY:
 (9) That the foregoing transcript contains a true and
 (10) accurate transcription of my shorthand notes of all requested
 (11) matters held in the foregoing captioned case.
 (12) Further, that the transcript was prepared by me
 (13) or under my direction.
 (14) DATED this day
 (15) of , 1994.
 (21) LEONARD J. DIPAOLO, RPR
 Notary Public for Alaska
 (22) My Commission Expires: 2-3-96

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UNIQUE WORDS: 2,164
TOTAL OCCURRENCES: 8,880
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31,756

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (3) In re) Case No. JAN-89-2533 Civil
 (4)) Anchorage, Alaska
 (5) the EXXON VALDEZ) Thursday, June 30, 1994
 (6)) 10:00 a.m.
 (7))
 (8) VOLUME 1 Pages 1 through 38
 (9) TRANSCRIPT OF PROCEEDINGS (Continued)
 (10) TRIAL BY JURY
 (11) MOTIONS
 (12) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge

APPEARANCES:

(15) FOR THE PLAINTIFF:

(16) N. ROBERT STOLL
 ALLEN FIELD
 Stoll, Stoll, Berne & Lokting
 (17) 209 Southwest Oak Street
 Portland, OR 97204
 (18) 503/227-1600
 (19) TIMOTHY J. PETUMENOS
 Birch, Horton, Bittner & Cherot
 (20) 1127 West Seventh Avenue
 Anchorage, AK 99501
 (21) 907/276-1550
 (22) SAMUEL J. FORTIER
 Fortier & Mikko
 (23) 2550 Denali Street, Suite 604
 Anchorage, AK 99503
 (24) 907/277-4222

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(1) FOR THE DEFENDANTS:

(2) CHARLES P. DIAMOND
 M. RANDALL OPPENHEIMER
 LINDA JANE SMITH
 (3) O'Melveny & Myers
 400 South Hope Street
 (4) 213/669-6000
 (5) JOHN F. CLOUGH III
 Clough & Associates
 (6) 431 N. Franklin St., #202
 Juneau, AK 99801
 (7) 907/586-5777
 (8) Reported by:
 LEONARD J. DiPAOLO, RPR
 (9) Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99503
 (11) 907/258-7100

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(1) PROCEEDINGS
 (2) (Jury out at 10:25 a.m.)
 (3) (Call to Order of the Court.)
 (4) THE COURT: Sorry I'm late, counsel, I was actually
 (5) talking to the discovery master, what you're going to see the
 (6) discovery master at about 11:30.
 (7) Let's - you may have a number of things to talk about, but
 (8) the first thing I want to deal with is the defendant's motion
 (9) to separately try Cordova's claim for unreimbursed oil spill
 (10) expenses. I've read the motion and the response and the reply.
 (11) counsel, and the exhibits that are attached.
 (12) MR. DIAMOND: Your Honor, I brought two collections of
 (13) paper. I've already given copies to counsel. May I approach
 (14) and give these to you. The larger collection, that one is the
 (15) state of knowledge at the close of discovery prior to April
 (16) 26th of this year. This is the items that are now currently
 (17) claimed.
 (18) THE COURT: Let me just look at this to see if I can
 (19) make sense out of it. What are the yellow lines?
 (20) MR. DIAMOND: I just picked some random examples of
 (21) claims that were disclosed to us as having been reimbursed,
 and
 (22) therefore not in controversy. If you take a look at number
 (23) one.
 (24) THE COURT: I see, data base shows reimbursement.
 (25) MR. DIAMOND: Right, and this comes from Cordova

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(1) information that was supplied to us. They got our data base
 (2) return -
 (3) THE COURT: Hang on just a minute.
 (4) So if I look at the first document you gave me, it shows
 (5) reimbursement. The second one you're saying shows that they
 (6) are claiming it now.
 (7) MR. DIAMOND: Yeah. The second one, the thinner one
 (8) are schedules of items which they now claim are unreimbursed.
 (9) There were really two schedules here, Exhibit A and Exhibit B.
 (10) They are both collections of unreimbursed items, the only
 (11) difference is one is a list that was submitted to Exxon and
 (12) DEC, the other says items which are - which there was no
 (13) evidence of reimbursement.
 (14) THE COURT: I just want to compare a couple things
 (15) before you start talking.
 (16) MR. DIAMOND: Sure.
 (17) THE COURT: Can I ask you a question? The item that's
 (18) on page 3 of the second exhibit you gave me at the top,
 Cordova
 (19) public schools, \$70,000.
 (20) MR. DIAMOND: Item three, the one we've highlighted,
 (21) is Chempro Environmental.
 (22) THE COURT: No, Cordova Public Schools, Exxon housing,
 (23) \$70,000, 30 June, '89.
 (24) MR. DIAMOND: I'm sorry, I didn't hear you.
 (25) THE COURT: 30 June, '89. I just want to find out

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- (1) where that item is on exhibit - the first exhibit.
 (2) MR. DIAMOND: I'm told that's a mistake on the copy I
 (3) gave you.
 (4) THE COURT: So that \$70,000 is not now being claimed
 (5) when it wasn't previously claimed?
 (6) MR. DIAMOND: We were going to refer you to another
 (7) document, but I'm trying to keep this simple. What I picked
 (8) were just four examples, and they should be tabbed on the
 (9) thicker document, one through four.
 (10) THE COURT: So they are on the first page.
 (11) MR. DIAMOND: They are on the paper, a quarter of a
 (12) million dollars of claims that are now - that Cordova is now
 (13) seeking reimbursement for, the smaller document is having
 (14) shown
 (15) as being paid on the larger document. The larger document -
 (16) THE COURT: Is that what that motion boils down to?
 (17) MR. DIAMOND: Yes, a quarter million dollars, that
 (18) until April 26th, we understood - where he knew these
 (19) expenses
 (20) were incurred, but Cordova told us they were not in controversy
 (21) because they had been reimbursed.
 (22) THE COURT: So you knew on April 26th that \$250,000 in
 (23) claims was being claimed?
 (24) MR. DIAMOND: No.
 (25) THE COURT: No?
 (26) MR. DIAMOND: After we got their summary judgment
 (27) papers?

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- (1) THE COURT: Yeah.
 (2) MR. DIAMOND: Yeah, that was our first notice.
 (3) THE COURT: So you've known since April 26th?
 (4) MR. DIAMOND: Since we got the revised work papers on
 (5) April 26th. We didn't know it was being claimed until June 7
 (6) when they submitted revised interrogatory answers.
 (7) THE COURT: You didn't know they were being claimed.
 (8) Why didn't you know they were being claimed?
 (9) MR. DIAMOND: Because the only thing we had in
 (10) discovery was interrogatory answers amounting to \$192,000.
 (11) THE COURT: But you had a document that indicated to
 (12) you that more than that was being claimed in summary
 (13) judgment
 (14) practice, right?
 (15) MR. DIAMOND: In discovery pretrial, just before
 (16) trial, here, correct.
 (17) THE COURT: April 26th was when you knew that
 (18) certainly there was a substantial question that there would be
 (19) more than that \$192,000 being claimed, right?
 (20) MR. DIAMOND: Well, we didn't know that they were
 (21) going to claim that in this court - we didn't know they were
 (22) going to seek relief for that money until June 7th when they
 (23) filed supplemental interrogatory answers.
 (24) THE COURT: You mean you didn't have a statement in an
 (25) interrogatory answer that said, and this confirms the
 (26) information we gave you notice of on April 26th, right?

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- (1) MR. DIAMOND: There is a difference furnishing a
 (2) document that says this is our current list, and getting a
 (3) document in discovery which was a contention response that
 (4) says
 (5) this is our claim.
 (6) THE COURT: I agree with you there.
 (7) MR. DIAMOND: My only point is if you take the April
 (8) date or the June date, it's a matter of 45 days. In any event,
 (9) discovery had long since closed. Discovery closed, technically
 (10) closed December 31, 1992, but with respect to these DM
 (11) proceedings, discovery was over in the spring, or certainly by
 (12) the end of 1993. We have long known that Cordova has
 (13) allegedly
 (14) spent hundreds and hundreds of thousand of dollars because
 (15) of
 (16) the spill, some of it which was reimbursed, others which they
 (17) claim was not reimbursed. We spent two years conducting
 (18) discovery trying to figure out which was which. And then as to
 (19) the \$192,000 of claims, which they said were not reimbursed,
 (20) we
 (21) conducted discovery as to what those expense were, how they
 (22) related to the spill, whether they had been reimbursed from
 (23) some other source. And that's been the focus of our efforts in
 (24) discovery, and we were prepared then in April to meet a claim
 (25) of \$192,000, effective when they submitted the expert report 60
 (26) days ago. And I guess formally when they amended their
 (27) interrogatory answers three weeks ago, there is another quarter
 (28) million dollars on the table.
 (29) Now we've known that those expenses were incurred. We

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- (1) didn't care because there was no claim that they were not
 (2) reimbursed, so we don't know very much about them. But
 (3) we're
 (4) going to have to defend a trial absent some relief from this
 (5) Court f a quarter million dollars of claims.
 (6) THE COURT: Now you've had the electronic data base?
 (7) MR. DIAMOND: Electronic data base?
 (8) THE COURT: Yes, the back-up information that shows
 (9) you - first, you know what you've reimbursed, don't you?
 (10) MR. DIAMOND: It's not only us, and it's not that
 (11) simple. This is an accounting nightmare. The books and
 (12) records of Cordova are just sort of willy-nilly. That's why
 (13) we're only finding out now. I'm sure counsel has only found
 (14) out in April when the city of Cordova went out and hired
 (15) somebody to do this on an organized basis what kind of claim
 (16) they could come up with, but they have repeatedly claimed for
 (17) the same things. They put in claims to the state for
 (18) reimbursement. They weren't reimbursed. Turned around and
 (19) tried to get reimbursement from us. It has been an accounting
 (20) nightmare.
 (21) THE COURT: How many people are reimbursing them?
 (22) MR. DIAMOND: I'm aware of two, there may be more, the
 (23) state and Exxon.
 (24) THE COURT: And you know what you-
 (25) MR. DIAMOND: As Mr. Clough points out, there are many
 (26) different agencies of the state.

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- (1) THE COURT: No question about that, I won't go into that.
- (2) MR. DIAMOND: We actually don't know exactly what we've reimbursed them for. We know the amounts. This is - really a lot of these things were done on the fly. They were done quickly. They were done to put money in people's pockets,
- (3) the record keeping was not terrific. What we knew through the close of discovery that they had \$192,000 which they said they had not been paid from any source.
- (4) THE COURT: Counsel, will you concede me this, you know or you should know what you've reimbursed?
- (5) MR. DIAMOND: I don't think that's a fair characterization. We have - we know whether we've reimbursed
- (6) the \$192,000 that they claim was unreimbursed. We focused on what they claimed was unpaid. We looked through our records and whatever records we could find to see whether, in fact, that was true. We have done nothing with the new quarter million dollars, and what we would have to do is, just as a beginning point, find out whether any of the stuff was in fact paid, and we think that substantial amounts probably were.
- (7) We would have to get a CPA to sit down with this whole mess and try to sort it out. That would at least allow us to try to answer the first question, are these quarter million dollars in bills really outstanding or has, in fact, Cordova been repaid from some source. Maybe from us. I mean it is that sort of

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- (1) mess-up where I can't say, without further inquiry where - whether we paid them.
- (2) THE COURT: Can I ask you a question here? This first document you gave me, entitled City of Cordova data base with Exxon comments. This a document generated by Exxon?
- (3) MR. DIAMOND: The last column was generated by Exxon. The information in the other columns was generated by Cordova.
- (4) What we did is we processed their information, we added our comments, we produced this back to them in discovery, so that's
- (5) how we narrowed the field down to \$192,000.
- (6) THE COURT: So they gave you a data base that showed reimbursement on this \$250,000.
- (7) MR. DIAMOND: We didn't look any further. If that hasn't been reimbursed, that was the end of the inquiry. That's why we have 192 in controversy.
- (8) What they said now is - we said some of these things were reimbursed. But we don't think they were or we can't find confirmation that they were. So that's how this has grown by a quarter million dollars in the last 60 days. Our problem really is twofold.
- (9) We don't know whether, in fact, these claims were reimbursed, because once they admitted that they were, we weren't going to question Cordova saying they had already been repaid. But beyond that, if they hadn't been reimbursed, we don't know really what they are.

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- (1) We have conducted discovery of their witnesses as to what they said and were still due and owing. We obviously didn't ask them about bills they paid for which they were not making any claim to us, which they said had been reimbursed by one source or another. Some of this stuff I think probably we would find on inquiry is fairly attenuated. I don't doubt that the expenses were incurred. Who was there, what was that plane
- (2) ticket, who went where, why did they go, should we have to pay for that, is the jury going to be able to know.
- (3) This is a little one-sided. They can throw up whatever they want about the quarter of a million dollars. There has been much said about the 2500 pages of documents that mysteriously appeared on our doorstep. To my mind it's a little bit beside the point. Whether these are new documents or old documents, you know, we think they are, for the most part, new documents, and I can explain to the Court why we tracked the documents that we got out of Cordova, and they had stickers and numbers on them. These documents don't have any
- (4) of that, but it's beside the point.
- (5) You know, if we had documents in discovery, we would have never looked at it because, who cares, they have already said they have been reimbursed for it, they are not looking for reimbursement from Exxon. If it's not in controversy in this lawsuit, we wouldn't look at it.
- (6) Quite frankly, I think we could take a hard line position,

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- (1) and urge the Court simply to disallow an untimely claim. We have heard Mr. Stoll extol the virtues of court procedure on irregularity on getting things done, and why we shouldn't be allowed to use exhibits that were not on an April list there but on a June list. This is contention stuff that they had an obligation to expose years ago and we're hearing it for the first time 60 days ago.
- (2) I think the proposal that this be put on the back burner and that we be given an opportunity to inquire of the quarter million dollars is a very fair one and certainly far less harsh than the sanction the court would be empowered to afford.
- (3) Unless you have further questions?
- (4) THE COURT: Not now, thank you.
- (5) MR. STOLL: Your Honor, their idea of this motion to sever is really to knock out Cordova's claim. I don't know how much Cordova has spent on trying to prove this half million dollar claim, but I hate to think about it in terms of our attorney fee time. All of the documents that are relevant to this claim were produced at least a year-and-a-half ago, with one exception, and that is is that there was a manipulation of the data base by some people in preparation for trial. It's not a change of the data base, it was just putting the order - they previously had been provided to the defendants in terms of whether they had either been reimbursed according to our records or not reimbursed.

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(1) There was then a remanipulation of the data base to break
 (2) the claimed unreimbursed figures into the ten categories of
 (3) requests for reimbursement. In other words, they started in
 (4) June of 1989, the city of Cordova made requests to Exxon in the
 (5) first instance to reimburse them for oil spill expenses, and
 (6) these were in the form of a series of ten requests for
 (7) reimbursement, so all that happened this spring was that the
 (8) existing data base was categorized into which of these ten
 (9) requests, that's all that happened, that's the only - and the
 (10) work papers of the person doing that, that's the only thing
 (11) that is a new. They have had all these documents for at least
 (12) a year-and-a-half, all the backup on this, and this business of
 (13) this sort of benign thing, we will just go off and have the,
 (14) you know, sever this and we'll try this some other time.
 (15) The city of Cordova cannot afford to go through - I mean,
 (16) they can go through - we couldn't afford to sit around Cordova
 (17) and have lawyers and accountants. We just opened up all of
 (18) files of the city of Cordova, this is in the spring of 1993,
 (19) gave them an index to all the file cabinets, gave them access
 (20) to all of the department heads and said you can go and talk to
 (21) them on or off the record.
 (22) We don't want to spend the time and money and sit through
 (23) depositions, you can talk to them, ask them anything you want
 (24) to ask them, they had a free-for-all there. And we did not sit
 (25) there and say, copy this, don't copy that. They just had

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(1) complete access to everything, and the documents, as
 (2) indicated - I assume you received, Your Honor, we filed
 (3) actually two filings. One was a supplemental -
 (4) THE COURT: I have them both.
 (5) MR. STOLL: And that one, that's the material from
 (6) Martha Dawson, the attorney at Preston that represents the
 (7) state, and she says that these documents were, the data base
 (8) was produced actually twice, at least in disk form, and then
 (9) also hard copies were produced. And all we did, we got more
 (10) documents from her this spring and we gave them back. She
 (11) says
 (12) in her affidavit - and we didn't know this when we filed our
 (13) first response that they had already produced this. This is
 (14) all stuff that had been produced a long time ago.
 (15) THE COURT: I think that's fairly clear, that they had
 (16) the back-up information. I think the complaint now, after all
 (17) of this circling around, is okay, so we first got notice that
 (18) your claim wasn't \$192,000 in April. We had some sort of
 (19) notice because of your response to a summary judgment.
 (20) MR. STOLL: Right.
 (21) THE COURT: But, in fact, you never made that explicit
 (22) until you filed interrogatories a week after the trial was
 (23) initially scheduled?
 (24) MR. STOLL: I don't think that's correct, Your Honor.
 (25) We have told them that we had previously given them data
 showing the - what was unreimbursed. I mean I'm talking a

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(1) year-and-a-half ago we gave them that data, and if you added
 up
 (2) all those columns it would exceed \$192,000.
 (3) THE COURT: Did you file an interrogatory answer that
 (4) said, our claim was \$192,000?
 (5) MR. STOLL: Yes.
 (6) THE COURT: Did you change that a week after the
 (7) trial?
 (8) MR. FIELD: We changed that on June 6th. Wasn't that
 (9) in our opposition to summary judgment motion? We explained
 our
 (10) proceedings, this is our claim, and as an exhibit in April we
 (11) attached this detailed itemization by check number, by date,
 (12) vendor, description and amount, and all we did in June was
 (13) attach the same exact exhibit that they had in April.
 (14) THE COURT: I understand that, counsel.
 (15) MR. STOLL: What I'm saying -
 (16) THE COURT: On the other hand, you never filed a
 (17) formal Interrogatory answer that said -
 (18) MR. STOLL: That is correct, Your Honor, we never,
 (19) until June 6th, I believe, whatever the date was, we did not
 (20) amend our supplemental interrogatory answer. We thought it
 (21) was - as imminently clear to them what our claim was months
 (22) before that, if not a year-and-a-half ago. And so that's, you
 (23) know, if through all the paper that has, you know, that has -
 (24) we've had to respond to, we didn't respond to this one thing,
 (25) there is no prejudice to them.

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(1) This data base - I might add one other thing, Your Honor.
 (2) This data base that they gave you is a document that's totally
 (3) generated by Exxon. This is not where they added on the last
 (4) column. They have taken our data base and they have
 changed it
 (5) around somehow, so I don't know whether - this is the first
 (6) time I've seen this. Is that right - this came with their
 (7) summary judgment motion, but this is not a document that we
 (8) just produced to them. We've never produced this. This is
 (9) their document, so I don't think that there is any issue here.
 (10) They want to say that something has been paid they could do
 (11) it, they have had access to all these people. They have had
 (12) all that data and they have been able to do it. And if this
 (13) motion to sever is denied, you may as well dismiss the claim,
 (14) we have given them everything we possibly can. I don't think
 (15) there is any surprise here.
 (16) THE COURT: If you could just wait a second.
 (17) MR. STOLL: Your Honor, there is one other thing that
 (18) Mr. Field just advised me, and the reason we waited until June
 (19) 7th, it wasn't until the end of May that there was a final
 (20) resolution on the diverted services claim, and so we then had
 (21) to file our supplemental interrogatory answer following that,
 (22) and I think - my recollection is like May 28th, or something
 (23) like that. This supplemental interrogatory answer was filed
 (24) within a week after you denied our motion for reconsideration
 (25) on that. I don't know if you got this one-page sheet.

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- (1) THE COURT: I did.
- (2) MR. DIAMOND: The fact remains, that viewed most
- (3) favorably the claim has grown by a quarter of a million dollars
- (4) and it did so some time within the last 60 days. I would
- (5) suggest that we didn't take this real seriously until you
- (6) denied our motion for summary judgment on the Cordova
- (7) claim,
- (8) that was just about the same time that they filed supplemental
- (9) interrogatories. We promptly moved.
- (10) In any event, discovery had long since closed. Even if
- (11) they had supplemented their interrogatory answer in April, as
- (12) they should have, and I think they had this information even
- (13) before that, we would have come in and said you can't do that,
- (14) you can't change a claim after discovery has closed.
- (15) Mr. Stoll is just simply off base when he suggested there
- (16) is no prejudice. We - yes, we've known about hundreds and
- (17) hundreds and hundreds of thousands of dollars of alleged
- (18) expenses, but we have only known about 192,000 of them that
- (19) were unreimbursed, and we've only looked at 192,000, both as
- (20) to
- (21) whether, in fact, they had been reimbursed and whether they
- (22) were recoverable in this lawsuit. To put another quarter
- (23) million dollars on the table at what is most charitably the
- (24) ten-and-a-half, if not 11th hour, deprives of us any evidence
- (25) to meet this claim.
- (26) And as I said earlier, they are not prejudiced. There is
- (27) going to be a trial of Cordova on - maybe there is going to be

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- (1) a trial on Cordova's remaining claim. The same witnesses
- (2) involved in that that are involved in this. There is no
- (3) additional expense, but even if there were, this is a situation
- (4) they have created, we didn't create it. They had years to do
- (5) their accounting homework, and to wait until a couple days
- (6) after the schedule of trial date, I would suggest is simply
- (7) unconscionable and unfair to us.
- (8) THE COURT: Thank you, Mr. Diamond.
- (9) I'm going to take this under advisement and go back into
- (10) chambers and decide whether I'm going to give you a bottom
- (11) line
- (12) answer or give you some detailed rationale for the decision I
- (13) reach. And I'll probably compromise and do something in
- (14) between. I'm not saying I'm taking it under advisement for a
- (15) long time, I'll decide it this morning, but is there anything
- (16) else you wanted to discuss?
- (17) MR. DIAMOND: On this subject?
- (18) THE COURT: No.
- (19) MR. DIAMOND: The only other issues we had for this
- (20) morning, but we would prefer tabling it for this afternoon, are
- (21) the Natalie Fobes photographs. I think that has been submitted
- (22) to you. We discussed that briefly. We raised objections to
- (23) those photographs. The reason we would like a little
- (24) additional time is because the plaintiffs have just narrowed
- (25) the field. They have eliminated a large fraction of them, and
- (26) we're still trying to figure out what's in and out.

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- (1) THE COURT: So do you want me to set you a hearing
- (2) this afternoon?
- (3) MR. DIAMOND: But mindful of Mr. Stoll's schedule, I
- (4) guess we would like to do it shortly after lunch so he can make
- (5) his plane.
- (6) MR. PETUMENOS: There is a different problem. I
- (7) thought I made you aware in court yesterday, because of the
- (8) other motion that you filed, I have a deposition to conduct
- (9) this afternoon, which I have an out-of-state person here who is
- (10) disrupting his vacation to be at, and I have - was supposed to
- (11) be in a deposition at 9:00. I moved it to 1:30 principally so
- (12) I could discuss the Natalie Fobes photographs.
- (13) THE COURT: Tell me something, how much of these
- (14) photographs do you intend to use in opening statement?
- (15) MR. STOLL: Your Honor, there is not that many that
- (16) are going to be used in opening statement. The issue is that
- (17) her testimony is going to come immediately after the opening
- (18) statement, and that's why this is the only one, we thought we
- (19) would get this resolved.
- (20) THE COURT: Well, tell me something, are you going to
- (21) use the photographs in opening statement?
- (22) MR. PETUMENOS: Yes.
- (23) THE COURT: Which ones?
- (24) MR. PETUMENOS: I can give you a list. It's a small
- (25) number, I can show them to you.

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- (1) THE COURT: I just want to see the photographs. When
- (2) somebody asks me to keep photographs out of the record, you
- (3) got
- (4) to show me the photographs.
- (5) MR. STOLL: We have them right here, Your Honor, for
- (6) you.
- (7) MR. PETUMENOS: Mr. Stoll, just a moment, I need to
- (8) get with Mrs. Johnson so I can get the Judge a list of the ones
- (9) that I'm going to use in the opening. There are not many,
- (10) manageable, three or four or five, and I can show the Court
- (11) what they are.
- (12) THE COURT: I want the photographs, I don't want a
- (13) list. Are you going to use any of the photographs?
- (14) MR. STOLL: No, I'm not going to use any of these
- (15) photographs.
- (16) THE COURT: I mean, I see this breaking down into two
- (17) issues. One, do I let you use them in opening statement, the
- (18) four or five that you're intending to use. I think I can deal
- (19) with that today without any problem as long as both Mr.
- (20) Diamond
- (21) and I know what photographs these are.
- (22) As to the photographs that you might be using in - with
- (23) her testimony, I don't think that's much of a problem. First,
- (24) if they are being curtailed now, that's good. Second, when she
- (25) testifies, I can't imagine it's going to take too much time to
- (26) discuss, and I'll make a ruling on it in the presence of the
- (27) jury on that, that's fine, whether or not I let them be used.

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- (1) So what this one boils down to is: Do I let you use four
 (2) or five photographs in opening statement? Why can't I deal
 (3) with that today, now?
 (4) MR. STOLL: You can deal with that right now.
 (5) THE COURT: How long is it going to take you to get
 (6) those photographs out of your vest pockets?
 (7) MR. STOLL: It will take five minutes.
 (8) THE COURT: I'll take a break, and maybe I'll do my
 (9) detailed findings on this issue.
 (10) MR. STOLL: Your Honor, Mr. Field wants to say one
 (11) thing on Cordova.
 (12) MR. FIELD: Two things, as explained in our opposition
 (13) brief. The defendant's main defense on these is that there are
 (14) improper -
 (15) THE COURT: I saw that in your brief. So even if it's
 (16) \$250,000 extra in the categories, these expenses all go to they
 (17) have an adequate defense to that?
 (18) MR. FIELD: Yeah, and most of these expenses were
 (19) contained in itemizations - contained a year-and-a-half ago
 (20) and they deposed Mr. Daigger - they deposed him for three
 (21) days. The problem we've had is expenses paid by Exxon.
 Exxon
 (22) would give the city a check, here is money, we couldn't match
 (23) up what that went towards. So we asked Exxon, tell us what
 you
 (24) paid. We've attached these exhibits -
 (25) THE COURT: I've read your brief.

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- (1) MR. FIELD: That's all I had to add.
 (2) THE COURT: Is there anything else?
 (3) MR. DIAMOND: Now he opened the door. We did respond
 (4) to Mr. Jamin's letter, I can give them to you, I thought it was
 (5) a peripheral point, but we have given them as much information
 (6) as we have been able to. It's difficult to know what you're
 (7) reimbursing for when you don't know what the claim is. It's
 (8) been a two-way street. Everything else is in our papers.
 (9) THE COURT: Thank you.
 (10) THE CLERK: Please rise. The court stands in recess.
 (11) (Recess from 10:55 a.m. to 11:05 a.m.)
 (12) THE COURT: Counsel, on the Cordova severance motion,
 (13) I'm going to take the two documents you've produced for me
 (14) today, Mr. Diamond. I'm going to make them a court's exhibit
 (15) on this motion. They will be in the separate file. Each of
 (16) these motions generally goes in a separate case file, and these
 (17) exhibits will not be kept where exhibits are normally kept.
 (18) They will be in the file just as if you filed them with your
 (19) motion or reply, all right?
 (20) MR. DIAMOND: May I just substitute the thicker one
 (21) with one that was correctly marked rather than incorrectly
 (22) marked?
 (23) THE COURT: You can take both of them back. I want
 (24) them to be court's Exhibit 1 and 2 to this motion and they be
 (25) filed in the court file, which is motion file F-1.

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- (1) MR. DIAMOND: We'll make the earlier data base one and
 (2) the later data base two?
 (3) THE COURT: Fine. Do those have the yellow lines on
 (4) them?
 (5) MR. DIAMOND: Yes.
 (6) THE COURT: So you want these back?
 (7) MR. DIAMOND: I'll take those back.
 (8) THE COURT: Let's do the pictures first.
 (9) MR. STOLL: Your Honor, Mr. Petumenos has the
 (10) photographs that he wants to use in his opening statement and
 (11) has been provided to the defendants.
 (12) MR. PETUMENOS: Your Honor, in the course of shuffling
 (13) here, we have misplaced one. It is- I can tell you it's a
 (14) picture of live and well otters next to a rock in the ocean to
 (15) explain to the jury, or to show to the jury, who may not know
 (16) what an otter looks like. And it was here a minute ago, I
 (17) don't know where it is now. The rest I can approach the Court
 (18) and tell you what we have.
 (19) The other thing that I want to make sure the Court has
 (20) understood, we have exchanged a list of all of our opening
 (21) exhibits, of which this is a subset, and the parties were to
 (22) determine between us whether we could work out and resolve
 (23) disputes. The Natalie Fobes issue was to be dealt with this
 (24) morning. This is the photographs I intend to use in my opening
 (25) which are from Ms. Fobes.

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- (1) As you go through them, obviously when you want to show
 (2) harm to creatures in the water, you have to show harm to
 (3) creatures in the water, and the photographs are near the area
 (4) of Knight Island where Chugach and Chenega own properties,
 or
 (5) the ocean shots, the boat with the oiled otter, the oiled
 (6) seagull.
 (7) The photographs of the land that are near the end, there is
 (8) a rock with a person holding it, and then there is a picture of
 (9) a beach with oiled shoreline that you can't tell the location
 (10) of by simply looking at the photograph. Both are at Sleepy
 (11) Bay, the northeast corner of LaTouche Island, and that's owned
 (12) by the Chenega Corporation.
 (13) I don't know if there are any further questions the Court
 (14) has about what's been depicted there. I think they are pretty
 (15) self-explanatory. There is a mussel there that will be
 (16) testified to by Mr. Peterson.
 (17) THE COURT: That is this?
 (18) MR. PETUMENOS: Yes, I'm not sure if it's a Natalie
 (19) Fobes' photograph. I think it is, and it is used by the
 (20) shoreline ecologist to discuss oil and the mussels in the bay
 (21) and things like that in the testimony, and that will be shown
 (22) to the jury during opening.
 (23) THE COURT: All right. Who is going to be doing this
 (24) one?
 (25) MR. CLOUGH: Your Honor, if I could speak to these

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- (1) briefly.
- (2) First of all, to the Tesoro rock, we have no objection.
- (3) THE COURT: Hold on.
- (4) MR. CLOUGH: The number is 837-23, Your Honor, and
- (5) it's the hand and the pink colored glove.
- (6) THE COURT: This?
- (7) MR. CLOUGH: Yes.
- (8) THE COURT: No objection to that.
- (9) MR. CLOUGH: As to the photographs of the clean-up,
- (10) particularly I'm speaking here, sir, to 245-79 and 245-78 and
- (11) 245-80. We do object to those three photographs, because
- (12) none
- (13) of these are parcels at issue. We see here Eleanor Island,
- (14) which is 245-78, Green Island, which is 245-79, by the way, I
- (15) get this information from - the plaintiffs have provided us
- (16) log notes for the copies that they gave us which identify to a
- (17) certain degree where these are. The last one, 245-80 according
- (18) to log notes is either Smith Island or Naked Island, none of
- (19) those particular parcels are owned by the municipal or Native
- (20) corporations here, and the degree of oiling and the types of
- (21) clean-up varied greatly from parcel to parcel and we would
- (22) object to these because these aren't the lands at issue.
- (23) MR. PETUMENOS: The tie-in, this woman who has done
- (24) these photographs is a National Geographic photographer not
- (25) on
- (26) the contract to the Native corporations at the time the
- (27) photographs were taken. I will introduce evidence that these

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- (1) photographs of the clean-up types and techniques are
- (2) representative of those that were conducted on Native
- (3) corporation lands.
- (4) If you recall part of our claim with respect to, for
- (5) example, the confidentiality of archeological sites is the
- (6) photograph that has all the people on it that's in front of you
- (7) there, it's the mass amount of humanity that is on the beach in
- (8) conducting activities. The purpose for that illustration in
- (9) the opening statement is to show the jury the evidence that we
- (10) will present about that problem as it was created for the land.
- (11) THE COURT: Where was this photograph taken?
- (12) MR. PETUMENOS: I'm sorry.
- (13) THE COURT: Where was this photograph taken?
- (14) MR. PETUMENOS: I believe that photograph was taken in
- (15) western Prince William Sound. Counsel may be correct that it
- (16) wasn't specifically on a Native corporation property, but it
- (17) was near by, and it is - and I will have testimony that it is
- (18) representative of the kind of clean-up activities that were
- (19) conducted. The same is true of the hot water wash.
- (20) The purpose of that photograph is to show the jury how hot
- (21) water wash impacts the shoreline. We will have expert
- (22) testimony that hot water wash actual kills everything on the
- (23) beach. If you look at that picture, you will see steam rising
- (24) up from the application of the hot water on to the beach.
- (25) THE COURT: I see.

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- (1) MR. PETUMENOS: And the purpose of that photograph is
- (2) to show graphically to the jury how that hot water wash worked
- (3) on the beaches, and it was used routinely on Native corporation
- (4) properties. And we'll have extensive expert testimony how it
- (5) affects the biota on the beach and how it affects the land.
- (6) These photographs which are the clearest and best
- (7) photographs
- (8) that we can find were taken very shortly after the spill by
- (9) somebody who was not doing it for purposes of our litigation,
- (10) and that's the reason why she wasn't going specifically to
- (11) certain properties on the Native corporation land. But for
- (12) purposes of admissibility, I think it is illustrative and
- (13) exemplary of what did take place on the land. I will have
- (14) testimony to tie it up, and that sort of activity did happen on
- (15) Native corporation land, and to the extent that they want to
- (16) argue it's not representative, it goes to the weight, not the
- (17) admissibility and it should be permitted.
- (18) MR. CLOUGH: Just two things, Your Honor, it's a
- (19) parcel specific case, there are specific damages claims made
- (20) for each particularized parcel and different things occurred on
- (21) each individualized parcel. There is a wide variety in Prince
- (22) William Sound in terms of degree of oiling and the type of
- (23) clean-up that was conducted. I have here, which was also
- (24) produced to us by the plaintiffs, an exhibit showing a map of
- (25) where Ms. Fobes went during her photographic tour for
- (26) National
- (27) Geographic.

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- (1) THE COURT: I think I understand the issue. These
- (2) photographs are taken on parcels that are not Native parcels,
- (3) these are not Native parcels, and I think your contention is
- (4) these may not be representative of the clean-up that took place
- (5) on the Native parcels, is that right?
- (6) MR. CLOUGH: Certainly.
- (7) THE COURT: Counsel, I'm going to be conservative,
- (8) because I frankly don't think you need these photographs in
- (9) opening statement, and to the extent - they may very well come
- (10) into evidence, this is not a ruling, but I don't think you need
- (11) it. And if they were on Native parcels and you could say that,
- (12) that would be one thing, but since you can't, you don't get to
- (13) use them in opening statement. You don't get to use the other,
- (14) you don't get to use the sea. And I don't know whether you
- (15) want this or not. You can deal with those rulings - the clam
- (16) bed.
- (17) MR. CLOUGH: We were going to ask, Your Honor, where
- (18) it was located, because we weren't able to tell from that one.
- (19) If it was on a Native parcel, that would be different, as of
- (20) now we have no information.
- (21) MR. STOLL: Your Honor, can I be heard on this, also.
- (22) It's not just on the opening statement, I mean this witness -
- (23) these photographs, and we'll have testimony as Mr. Petumenos
- (24) indicated, if we're going to dissimilate this witness's
- (25) testimony -

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- (1) THE COURT: Hold it, counsel, didn't we start this
 (2) discussion with a question of whether I would deal with
 (3) admissibility at this point?
 (4) What I'm saying to you is you can't use them in opening
 (5) statement, it's not binding on me when I deal with the
 (6) admissibility questions. They may very well be admissible but
 (7) I'm going to listen to foundational testimony and I'm not going
 (8) to let you use these photographs until I admit them, got it.
 (9) MR. PETUMENOS: I have a perhaps proposed solution.
 (10) If I'm able to find photographs of clean-up technique that I
 (11) can put right on the property, I'm assuming the court will
 (12) permit us to use those photographs.
 (13) THE COURT: Yes.
 (14) MR. PETUMENOS: For purposes of opening statements, I
 (15) understand your ruling -
 (16) THE COURT: If you're able to find them, you have to
 (17) find them by 12:00 tomorrow and give them to the defendants,
 (18) otherwise you don't get to use them.
 (19) MR. PETUMENOS: We'll find them. I understand your
 (20) ruling is just limited to opening, I did want to - and I don't
 (21) want to take up extra time, but I did want to remind the Court
 (22) that we are intending, in the broad scheme of things, to be
 (23) introducing evidence of harm to surrounding areas often visited
 (24) for subsistence use and things like that.
 (25) THE COURT: I understand that completely, counsel.

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- (1) There is a difference between using exhibits that are not
 (2) admitted in opening statements and being able to get them in
 (3) when you give me the proper foundational testimony.
 (4) MR. PETUMENOS: I understand, I was just a little
 (5) frightened, that's all.
 (6) THE COURT: So that's resolved. Here is the decision
 (7) on the city of Cordova motion for severance. This is a very
 (8) sketchy list of facts, and I can go through the separate
 (9) affidavits and the proof that's been submitted with the motion,
 (10) but first I want to tell you that I read the motion and the
 (11) supporting documentation, and as far as factual presentation
 (12) on
 (13) this issue, it's clear the plaintiffs have presented clearer
 (14) factual material on this motion in support of their position,
 (15) there is no question to me about that.
 (16) There is a very sketchy affidavit in the opening that
 (17) convinces me of nothing, and there is a much more detailed
 (18) presentation made by the plaintiffs, and it may have some
 (19) bearing on my decision in this case, but these are the
 (20) important points on this motion.
 (21) The defendants were given notice of the extra amounts
 (22) claimed here in April. Now they weren't given notice by a
 (23) signed interrogatory, but they were given notes, and they knew,
 (24) or certainly should have known at that point that this might be
 (25) a factual issue in this case. They got formal confirmation of
 that notification in June. Perhaps that formal notification

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- (1) should have been given in April, but in terms of the very real
 (2) notice that the defendants got of this particular claim and its
 (3) extent, they got it in April, so they had two months before
 (4) trial to deal with the issue. There is no question, or very
 (5) little question in my mind that they have had the information
 (6) and back-up documentation on this claim for months before
 (7) trial. And repeatedly they have had it, not just one, it's
 (8) been delivered more than once, the basic substantial
 (9) information that backs the claim up.
 (10) There is no - I see no failure to provide discovery here.
 (11) What I do see is a fairly complicated record with lots of
 (12) bureaucratic maneuvering going on, but the defendants have
 (13) had
 (14) plenty of opportunity to get the back-up information and
 (15) investigate.
 (16) Now as I said, the defense knew or should have - certainly
 (17) should have known that factual issues were - had arisen in
 (18) this case on this claim, and they obviously knew since there
 (19) was a summary judgment pending that that might be denied,
 (20) and
 (21) in fact they would have to defend this claim factual, so to say
 (22) we sat on it, assuming it wouldn't be in the trial, is a
 (23) position that I don't think is a reasonable position, it's not
 (24) appropriate for them to have done that. I don't see why they
 (25) didn't have the opportunity at that time to say, hey, wait a
 minute, the claim has changed and it's passed discovery and
 we
 want you to shut off the claim or sever the claim or give us

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- (1) appropriate relief by getting us additional discovery, and they
 (2) didn't do that.
 (3) Now so under the circumstances that you've given me and
 (4) that the motion describes, the defendants had the time and
 (5) opportunity to respond and prepare their defense to the total
 (6) claim, I'm not talking about \$192,000, I'm talking about the
 (7) total claim here, and it could have asked for relief, new
 (8) discovery, preclusion, or severance before trial at that time,
 (9) not now. But what it did was it waited for something that
 (10) might not have been delivered at all in the formal form of
 (11) interrogatory answers, and once they came in you used that as
 (12) a
 (13) stepping stone to preclude this claim or sever it.
 (14) So I believe, firmly believe that the defendants have had
 (15) at their disposal all of the material necessarily to adequately
 (16) defend this claim. The defendants say their - gee, our
 (17) records are in disarray, well, whose problem is that. If their
 (18) records are in disarray, should I lay that off on the
 (19) plaintiffs. I don't think that's a rational position. Now to
 (20) the extent the plaintiffs' records are in disarray, and it may
 (21) very well be both these organizations' records are in disarray,
 (22) then the defense is enhanced, because the plaintiffs' records
 (23) are in disarray.
 (24) Also this is going to be a long trial, and there is time
 (25) for whatever defense the defendants have to prepare now.
 Because they may have sat on this issue for a while, they have

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- (1) plenty of time to prepare, and they certainly have the
 (2) resources to prepare the defense. So I expect that what I will
 (3) see here is a claim that is made in its entirety, vigorously
 (4) and effectively defended, and I see no reason, under these
 (5) circumstances, to sever this claim out, it's one of those
 (6) claims that has been in existence long enough and there has
 (7) been adequate opportunity on both sides to prepare.
 (8) If it's presented badly because the plaintiffs are
 (9) disorganized, then that's going to be bad for them. If it's
 (10) defended inadequately, it's not because the plaintiffs have
 (11) sinned. So the motion to sever is denied.
 (12) MR. DIAMOND: Your Honor, I'm not going to reargue all
 (13) the things, I just want to make sure you're fully informed of
 (14) the premise with respect to the chronology of this. After the
 (15) opposition to the summary judgment was filed, which it
 (16) discloses for the first time, we did ask the court for an order
 (17) of preclusion, it's in our reply brief, it's part of the
 (18) summary judgment record.
 (19) THE COURT: Yeah, and there was - obviously that
 (20) motion could have been denied, right?
 (21) MR. DIAMOND: And I believe it was denied when you
 (22) ruled on the summary judgment, and it was just a matter - it
 (23) was a short period of time between that and our raising it in
 (24) this proceeding, I just wanted you to know that.
 (25) THE COURT: Mr. Diamond, you know, I know you had an

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- (1) adequate opportunity to defend this claim, and I know you'll do
 (2) so effectively, I'm absolutely convinced of that matter.
 (3) MR. FIELD: If I could just raise one point.
 (4) Mr. Diamond pointed out that there was some expenses they
 (5) claimed they have proved that were paid. I've asked
 defendants
 (6) a few times, give us that proof, and if there is things we
 (7) agree with, we will agree to certain claims, certain of these
 (8) expenses and not waste the Court's time with proof of these
 (9) things we agree have been paid. We want a list of those
 (10) specific items that have been paid.
 (11) THE COURT: Can I tell you something about this. It's
 (12) nice you're flexible and will talk to each other about these
 (13) things, but really that's not my concern, the concern that I
 (14) have is that this trial go somewhat predictably, so when you
 (15) say we have made these offers back and forth, it's not
 (16) impressive to me that's been done, because frankly you've
 (17) largely wasted your time on many of these things that you could
 (18) have spent preparing for trial so you wouldn't come to me and
 (19) complain that you haven't had an adequate opportunity to
 (20) prepare. So fine, both of you may have done negotiations or
 (21) have sent some information back and forth that might have
 made
 (22) your jobs a little easier, but the fact is that you haven't
 (23) made your jobs easier, and that's, you know, that's not my
 (24) concern.
 (25) MR. DIAMOND: I would ask relief of court for one

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- (1) departure from the trial plan. If we're going to deal with
 (2) this, I think we need to reactivate one witness who is no
 (3) longer an active witness on our witness list.
 (4) THE COURT: Who is it.
 (5) MR. DIAMOND: Our accountant, Mr. Budge, who was
 (6) slated to testify on the municipal claim when they were
 (7) occurring.
 (8) THE COURT: He was on the witness list initially?
 (9) MR. DIAMOND: He was on the witness list initially.
 (10) THE COURT: I don't see any problem with that.
 (11) MR. PETUMENOS: Just make sure I understand. The
 (12) opening statement, you have excluded the picture of the otter,
 (13) the three pictures of the cleanup, that's where we are.
 (14) THE COURT: The rock is the only thing that appears to
 (15) be usable.
 (16) MR. PETUMENOS: No, there was a picture of the beach,
 (17) of Sleepy Bay, the oiled beach with a bucket.
 (18) THE COURT: I'm sorry, you didn't realize that.
 (19) MR. PETUMENOS: That was Sleepy Bay.
 (20) MR. CLOUGH: There is some confusion here.
 (21) THE COURT: I made a mistake, I thought it wasn't on
 (22) Native corporation.
 (23) MR. PETUMENOS: No, no, no, the one I said with the
 (24) bucket that you couldn't - perhaps we could just go through
 (25) them one more time, so I don't make a mistake in opening.

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- (1) THE COURT: This?
 (2) MR. PETUMENOS: That one, that's Sleepy Bay.
 (3) MR. CLOUGH: The log notes say Naked or Knight Island.
 (4) MR. PETUMENOS: No, that's Sleepy.
 (5) THE COURT: If this is on Native corporation land.
 (6) And first you have to correct any misimpression the defendants
 (7) may have been given, and I hate to say this, but it's got to be
 (8) corrected by 12:00 tomorrow. I mean the defense can come
 over
 (9) here again, and I'll deal with this, but if this is on Native
 (10) corporation land you can lay that foundation, then it can be
 (11) used.
 (12) MR. PETUMENOS: I understand the Court's rule, I'll
 (13) either use that one or substitute one that is on Native
 (14) corporation land.
 (15) THE COURT: I simply misunderstood, I didn't know this
 (16) was on Native corporation land. Tell me the number of that
 (17) Sleepy Bay.
 (18) MR. PETUMENOS: I have it at 245-80.
 (19) THE COURT: And the rock, what is that?
 (20) MR. PETUMENOS: Is rock is 737-23 and did you exclude
 (21) 737-22, which is the bird?
 (22) THE COURT: I did, and the otter, too.
 (23) MR. PETUMENOS: Is there some - because of the Native
 (24) corporation problem, land problem?
 (25) THE COURT: No. Basically, counsel, it's because if

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- (1) there is somebody around here that doesn't know that there are
(2) dead otters in the water or dead seagulls in the water with oil
(3) all over them, I haven't - I can't imagine that it's so
(4) important for you to use these pictures of grotesquely dead
(5) animals in your opening statement when the testimony, if it
(6) gets in, is going describe these things in deal. It's not
(7) necessary to use these pictures, and as I said, I'm being
(8) conservative about it.
(9) MR. PETUMENOS: I just wanted to understand, if I had
(10) other exhibits, so I understand what position to take so I know
(11) the Court's ruling.
(12) THE COURT: None of the rulings I've made on these
(13) filings are binding in dealing with the admissibility
(14) questions.
(15) MR. PETUMENOS: I understand.
(16) THE COURT: Now, what else is there we have to decide
(17) today?
(18) MR. STOLL: That's all, Your Honor.
(19) THE COURT: Wasn't there something about an afternoon
(20) proceeding that you might want? No?
(21) MR. CLOUGH: That was the photographs, which we just
(22) did.
(23) THE COURT: So it's done, thank you very much.
(24) (Proceedings recessed at 11:25 a.m.)

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- (1) STATE OF ALASKA)
(2) : Reporter's Certificate
(3) DISTRICT OF ALASKA)
(6) I, Leonard J. DiPaolo, a Registered Professional
(7) Reporter and Notary Public;
(8) DO HERBY CERTIFY:
(9) That the foregoing transcript contains a true and
(10) accurate transcription of my shorthand notes of all requested
(11) matters held in the foregoing captioned case.
(12) Further, that the transcript was prepared by me
(13) or under my direction.
(14) DATED this day
(15) of , 1994.
(21) LEONARD J. DiPAOLO, RPR
Notary Public for Alaska
(22) My Commission Expires: 2-3-96

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re) Case No. JAN-89-2533 Civil
) Anchorage, Alaska
 (5) the EXXON VALDEZ) Tuesday, July 5, 1994
) 8:30 a.m.
 (6))
 (8) VOLUME 8, Pages 1181 through 1326
 (10) TRANSCRIPT OF PROCEEDINGS (Continued)
 (11) TRIAL BY JURY
 (13) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge

(16) APPEARANCES:
 (17) FOR THE PLAINTIFF:

(18) N. ROBERT STOLL
 Stoll, Stoll, Berne & Lokting
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600

(21) TIMOTHY J. PETUMENOS
 Birch, Horton, Bittner & Cherot
 1127 West Seventh Avenue
 (22) Anchorage, AK 99501
 907/276-1550

(24) SAMUEL J. FORTIER
 Fortier & Mikko
 2550 Denali Street, Suite 604
 (25) Anchorage, AK 99503
 907/277-4222

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(1) FOR THE DEFENDANTS:
 CHARLES P. DIAMOND
 (2) M. RANDALL OPPENHEIMER
 LINDA JANE SMITH
 (3) O'Melveny & Myers
 400 South Hope Street
 (4) 213/669-6000

(5) JOHN F. CLOUGH III
 Clough & Associates
 (6) 431 N. Franklin St., #202
 Juneau, AK 99801
 (7) 907/586-5777

(8) Reported by:
 JOY S. BRAUER, RPR
 (9) Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99503
 (11) 907/258-7100

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(1) PROCEEDINGS
 (2) THE CLERK: All rise.
 (3) (Call to Order of the Court)
 (4) THE COURT: Good morning everybody. Before we bring
 (5) the jury in, counsel, there are a few questions that I want to
 (6) resolve and they involve jurors, so there'll be no filming of
 (7) this particular portion of the proceedings.
 (8) If you have preliminary matters to take up, you can do that
 (9) now. Did you have anything before we bring the jurors in?
 (10) MR. DIAMOND: There were two matters, Your Honor.
 (11) Mr. Petumenos caught a mistake in the preliminary jury
 (12) instructions.
 (13) MR. PETUMENOS: The instruction that describes the
 (14) claims of the clients includes administrative claims. It says
 (15) for three corporations. I'll see if I can find it for you.
 (16) It's at instruction page number 4, Roman, small Roman four in
 (17) the first full paragraph of the page.
 (18) THE COURT: How does it start?
 (19) MR. PETUMENOS: All six of the Native corporation
 (20) plaintiffs.
 (21) THE COURT: Yes, I have it.
 (22) MR. PETUMENOS: It says three of the Native
 (23) corporations, dash, that sentence. It should simply read the
 (24) Chugach Alaska Corporation claims additional damage for
 (25) administrative costs.

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(1) THE COURT: Well, shouldn't it read three of the
 (2) Native corporations and then name the corporations or -
 (3) MR. PETUMENOS: No, that should be deleted. The
 (4) entire sentence should read the Chugach Alaska Corporation.
 (5) THE COURT: So you delete from three to and?
 (6) MR. PETUMENOS: To just the Chugach Alaska
 (7) Corporation. That's the only corporation making that claim.
 (8) THE COURT: So now it reads Chugach Alaska Corporation
 (9) claims additional damages for administrative costs?
 (10) MR. PETUMENOS: That's correct.
 (11) MR. DIAMOND: That's correct.
 (12) MR. STOLL: Your Honor, I have one other matter. In
 (13) the same instruction, in the following paragraph, where it
 (14) describes the municipalities' claims, it says including
 (15) unreimbursed fees for legal services. Actually, that's part of
 (16) unreimbursed oil spill expenses. So you can just delete that.
 (17) THE COURT: So what do I delete?
 (18) MR. DIAMOND: Well, Your Honor, we're renegotiating
 (19) the document. I had understood it had been agreed to
 (20) yesterday
 (21) by all parties.
 (22) MR. STOLL: It's just part of the same thing.
 (23) THE COURT: I'll leave it the way it was. You
 (24) stipulated to it yesterday. That's fine.
 (25) MR. DIAMOND: Your Honor, the only other matter we
 wanted to take up with the Court before we start concerns one

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- (1) exhibit that I understand Mr. Petumenos wants to use during
 (2) opening statement. It is a videotape of what's been called the
 (3) Tesoro Subservice Testing. We learned some more information
 (4) about it over the course of the weekend, which suggests that
 (5) its use may be misleading. I tried to work it out with
 (6) Mr. Petumenos. We've been unsuccessful. Mr. Oppenheimer
 knows
 (7) that type better than I do, and if I could let him address it.
 (8) THE COURT: Sure.
 (9) MR. OPPENHEIMER: Good morning, Your Honor. I think
 (10) it is fair to say that what we ascertained over the weekend is
 (11) that there's something important we don't know about that
 (12) tape. It is a depiction of chemical cleansers being injected
 (13) into the ground and materials coming back out up. The
 (14) materials are quite ugly looking, very ugly looking. There's
 (15) no foundation whatsoever, though, for determining what, if any,
 (16) portion of that is actually oil, and without testimony
 (17) discussing the significance of the materials that have gone in
 (18) and what is coming out, it is - it has the potential for being
 (19) highly misleading.
 (20) It's going to be assumed to all be oil, which we don't
 (21) believe is true. There's no expert designated to testify on
 (22) that tape. I believe the intent is going to be to put that
 (23) through some sort of precipient testimony, but my argument to
 (24) the Court is any precipient testimony will be inherently
 (25) misleading because it will necessarily be interpreted, I

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- (1) believe, as a tremendous amount of oil coming up out of the
 (2) ground. I don't believe that's what it is, but I don't believe
 (3) there's any way to identify from the information - at least
 (4) that's been made available to us - what portion of it is, in
 (5) fact, oil. There is some sheen that appears, so the conclusion
 (6) I think would be reached. As I say, there is, as best we know,
 (7) no expert testimony that could possibly explain it. We have no
 (8) report.
 (9) THE COURT: All right, thank you.
 (10) MR. PETUMENOS: Your Honor, we went through a
 (11) procedure whereby the parties were to agree to what objections
 (12) exist on the various exhibits. I learned of this objection
 (13) about two minutes before you took the bench. We do have a
 (14) witness, Professor Tumeo, to testify to the procedure that was
 (15) undertaken at Sleepy Bay, one of the heaviest oiled beaches in
 (16) the oil spill area.
 (17) Mr. Fortier can provide you with the offer of proof as to
 (18) Mr. Tumeo's testimony here in a moment, and I would put it to
 (19) the Court that we believe that this testimony would be
 (20) admissible in the matters that Exxon is bringing up goes to the
 (21) weight and we are entitled to open as to what we expect to
 (22) prove and if they don't prove it. If they say we don't prove
 (23) it, they can argue in the final, but I believe it's an -
 (24) probably exhibit.
 (25) THE COURT: How long is this video excerpt?

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- (1) MR. FORTIER: Your Honor, the portion that
 (2) Mr. Petumenos shows, I think, is about a minute and a half.
 (3) The total video is actually in four parts. There is a 15-
 (4) minute video. It won't be shown today, and there are three
 (5) hours of video that are backup that have already been supplied
 (6) to the defendants.
 (7) Professor Tumeo is a professor at the University of Alaska
 (8) in Fairbanks. His specialty is environmental engineering.
 (9) Professor Tumeo will testify that he was contacted by the State
 (10) of Alaska in order to participate in the experiment of Sleepy
 (11) Bay in 1993. He will testify that he was at Sleepy Bay during
 (12) the time that the experiment was being run. He will explain
 (13) what was injected into the ground was a mixture of air and a
 (14) citrus-based chemical called PES-51, and when the
 citrus-based
 (15) chemical was injected into the ground through air, air pumps.
 (16) What happened was that Exxon Valdez oil, which was trapped
 (17) below the surface in the sediments, was pumped out of the
 (18) surface. That the PES-51, the chemical component works as a
 (19) surfactant, and the surfactant releases the oil from its
 (20) entombed position in the sediments. That mixture that is shown
 (21) on the tape consists of the oil that was trapped, together with
 (22) some of surfactant material.
 (23) THE COURT: All right, thank you. Counsel?
 (24) MR. OPPENHEIMER: Your Honor, I think what Mr. Fortier
 (25) has described is expert testimony. I agree with him that it is

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- (1) a surfactant. One of the consequences of that is, that is
 (2) designed to mix with molecular structure of the oil. It brings
 (3) it up, it disperses it, that's how it gets it out. The
 (4) analysis of what comes out of the ground, though, as opposed
 to
 (5) what you see necessarily requires chemical analysis and
 (6) scientific information.
 (7) No precipient testimony about that can dispel the
 (8) impression it's going to create that it's all oil. There is
 (9) much reason to believe that it is not. There is no expert
 (10) testimony designated for Mr. Tumeo. He's listed as a witness.
 (11) There's no report. He's not designated as an expert to the
 (12) extent he stands up and describes what he sees. He's adding
 (13) nothing to what the tape depicts, and what the tape depicts, I
 (14) would respectfully suggest, is going to invariably be viewed as
 (15) all oil
 (16) And, in fact, the other - the third component of what
 (17) comes up in addition to what amount of oil, if any, if it's
 (18) EVOS oil, if that's what it is, and the surfactant, which
 (19) clearly does press back up through the permeability of the
 (20) upper layer is just the muck underneath the layer and it's very
 (21) ugly. It's sheened because of surfactant spreads but, as Your
 (22) Honor is aware, that can be a miniscule amount which can
 spread
 (23) a sheen and what it looks like is an enormous quantity of oily
 (24) material is coming up, and I respectfully suggest if this were
 (25) the subject of proper expert testimony, it would be a highly

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- (1) controversial topic as to how much oil is coming out of the
 (2) ground. The film makes it like it's all oil.
 (3) THE COURT: I need to know what you're going to say in
 (4) opening statement about this tape.
 (5) MR. PETUMENOS: The point of the tape is that I think
 (6) both parties here when they open are going to be taking
 (7) opposite contentions as to how much oil persists in the area.
 (8) The point of this tape is to show - I have had another
 (9) videotape which was of a place nearby, Native corporation land,
 (10) and in view of your ruling a few days ago you want to restrict
 (11) opening not necessarily to admissibility but to tapes on Native
 (12) corporation lands. This type on Sleepy Bay on LaTouche was
 (13) used instead.
 (14) I am going to show - make a statement to the jury that
 (15) this tape will be played and we will have testimony stating
 (16) this is Exxon Valdez crude that is being placed upon the water
 (17) and that is being removed from the soil and put upon the water,
 (18) and that's what I expect the testimony to show. And that is
 (19) what I expect the testimony to show, and I expect the witnesses
 (20) to testify that a large amount of oil did, in fact, come out of
 (21) the ground, Alaskan crude oil at that, and it is not correct to
 (22) say they don't have a report.
 (23) THE COURT: You're going to say it was Exxon Valdez
 (24) oil, which witness?
 (25) MR. PETUMENOS: Professor Tumeo, who was there and who

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- (1) understands the process and who will be available for
 (2) cross-examination.
 (3) THE COURT: Is he designated as an expert?
 (4) MR. FORTIER: Your Honor, he was - he was designated
 (5) as a percipient witness. We filed a report in April of 1993 in
 (6) which we notified the defense that certain of our percipient
 (7) witnesses may also have sufficient background to provide
 (8) expert
 (9) testimony.
 (10) In July of 1993, we began supplying the defendants with the
 (11) results of the Sleepy Bay testing. In March of 1994, we
 (12) supplied them with the tapes. In April we supplied them with
 (13) an expert report that was written, okay, written by Professor
 (14) Tumeo.
 (15) So I guess in answer to your question, he is a percipient
 (16) witness. He is capable of providing expert testimony. They do
 (17) have reports. They've had all of this information now for
 (18) almost a year.
 (19) MR. PETUMENOS: And further, Your Honor, before the
 (20) discovery master, there were - it was understood and
 (21) stipulated that there will be times when people who are in the
 (22) field saw things and did things, and that they have certain
 (23) expertise such as archaeologists and so forth, who though they
 (24) were not retained for purposes of litigation, know sufficiently
 (25) about their science, about their discipline, to be able to give
 opinions about what they saw and perceived. And it was

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- (1) understood by both parties before the discovery master that
 (2) that was not contemplated by the discovery order for purposes
 (3) of people who are retained for litigation.
 (4) Professor Tumeo did this project for a reason other than
 (5) for the litigation. It turns out to provide relevant testimony
 (6) to this trial and, therefore, we have supplied all of this
 (7) information well before the two minutes ago that I received
 (8) notice of this objection.
 (9) MR. OPPENHEIMER: Your Honor, a couple of points.
 (10) First, Professor Tumeo, I think it's manifest that he is an
 (11) expert. He was designated as a percipient after the close of
 (12) discovery. The reports which we have to date, and I will
 (13) represent to the Court it is our information they are not the
 (14) complete set of reports. He's still working on his research on
 (15) this test reports he prepared in connection with a presentation
 (16) in Vancouver, and there were other scientists. Our scientists
 (17) heard some of it. It does not address half of the issues we're
 (18) talking about. For example, he is not, to the best of my
 (19) knowledge, and we do not have a report, though I believe he is
 (20) working on it, that goes to the issue of the volumetrics, how
 (21) much of this was oil, how much of it wasn't oil.
 (22) My understanding of the current data that's available to us
 (23) is that he's done what's known as a TPH analysis, which is
 (24) total petroleum hydrocarbon count. It's not a finerprinting
 (25) mechanism, at best it's a characterization mechanism. It

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- (1) doesn't tell you what the oil is. Respectfully, even if we had
 (2) that, we don't have the volumetric material, and we certainly
 (3) don't have him designated on the subjects.
 (4) The description that I heard Mr. Petumenos give is quite
 (5) detailed scientific information about the nature of the test
 (6) and the results of the surfactant being injected into the
 (7) ground. The notion that a party can reserve the right to put
 (8) on unadulterated expert testimony in the guise of percipient
 (9) lay testimony, I think to the extent it's applicable in the
 (10) courtroom at all and not a reservation of the type the Court's
 (11) cautioned us about doesn't fit this situation at all.
 (12) And the reason for that, I think it's becoming clear as we
 (13) talk, that you cannot tell from the pictures what you are
 (14) seeing. And the pictures, and I will be glad for the Court to
 (15) even have an in camera, the pictures are very prejudicial
 (16) unless you understand what you're seeing, and I would
 (17) respectfully suggest that Professor Tumeo himself does not yet
 (18) know exactly what he saw. He hasn't finished his volumetric
 (19) material.
 (20) THE COURT: Can you cue it up? I'd like to see it.
 (21) MR. FORTIER: Your Honor?
 (22) THE COURT: I'd like to see it. This is the first
 (23) test of your electronic advancement, Counsel.
 (24) MR. PETUMENOS: If we can't cue it up, the objection's
 (25) moot.

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- (1) (Videotape played.)
- (2) THE COURT: Does this have an exhibit number, this
- (3) tape?
- (4) MR. PETUMENOS: Yes, this is actually from
- (5) Exhibit 1111.
- (6) THE COURT: Is this small portion - this was it?
- (7) MR. PETUMENOS: This is it.
- (8) (Videotape concluded).
- (9) THE COURT: That was it in its entirety?
- (10) MR. PETUMENOS: That's what we're playing for opening
- (11) statement. That's not the entire exhibit.
- (12) THE COURT: This is just a portion of it, and I want
- (13) to make sure that the record reflects we have the portion
- (14) you're proposing to use in opening statement as opposed to the
- (15) whole tape.
- (16) MR. PETUMENOS: That's correct.
- (17) THE COURT: And what exhibit number is the portion?
- (18) MR. PETUMENOS: Exhibit 1111. I don't think he asked
- (19) for - you want the exhibit, itself. It is an excerpt from
- (20) Exhibit 1111.
- (21) MR. DIAMOND: Did you want the time codes, Your
- (22) Honor?
- (23) THE COURT: In order for anybody who's outside this
- (24) courtroom to understand what this discussion is all about, they
- (25) need to know what was just shown to me.

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- (1) Now, do we have a way of marking that separately?
- (2) MR. PETUMENOS: I see what you're saying. Yes, we do
- (3) have a way. There is a code that goes with these excerpts that
- (4) is recorded and we have a way of making a record for, yes.
- (5) THE COURT: If it was 1111, we'll mark it 1111-A; all
- (6) right?
- (7) MR. PETUMENOS: All right.
- (8) THE COURT: Now, counsel, you've seen the excerpt.
- (9) MR. OPPENHEIMER: I have, Your Honor.
- (10) THE COURT: I didn't see horrendous muck, do you?
- (11) MR. OPPENHEIMER: Your Honor, is that all going to be
- (12) described as oil is the question. I don't know what
- (13) Mr. Petumenos is going to refer to.
- (14) MR. PETUMENOS: Your Honor, I'm going to describe the
- (15) experiment as I believe that Professor Tumeo will describe it.
- (16) THE COURT: How is that?
- (17) MR. PETUMENOS: That is that they injected this
- (18) material into the ground and what came up was a large amount
- (19) of
- (20) Exxon Valdez crude and that the relevant to the opening
- (21) statement is in rebuttal of Exxon's contention that the cleanup
- (22) is done, that the beaches are back to normal, the oil no longer
- (23) persists in the environment.
- (24) THE COURT: Does the video, itself, show more supposed
- (25) crude than this, these excerpts?
- (26) MR. PETUMENOS: It may, yes.

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- (1) THE COURT: Do you know?
- (2) MR. PETUMENOS: Yes.
- (3) MR. OPPENHEIMER: Your Honor, the problem is that -
- (4) that that sheen, and that can be spread off a miniscule amount
- (5) of oil, and that which is rubbed off rocks can be dirt, and
- (6) that which kicks back from a nozzle spraying at a hundred
- (7) pounds per square foot, whatever it is, could be anything.
- (8) THE COURT: Yes. And, counsel, I think that the
- (9) excerpts that I was just shown allow you to state that the
- (10) evidence will show that, too. I mean, I don't see that this
- (11) exhibit is prejudicial at all. Certainly when I look at it, it
- (12) doesn't occur to me that that's prejudicial. To me, it looks
- (13) like a fairly small amount of oil.
- (14) So the issue is, first, do I let you use this excerpt in
- (15) opening statement? Mr. Petumenos, you got to be listening to
- (16) me. And the answer is yes, I'm going to let you use it in
- (17) opening statement. It's subject to Exxon's - Exxon in opening
- (18) statement explaining that the plaintiffs have to prove what
- (19) they're saying. And that this video is - simply contains
- (20) contested evidence, and there is - I don't really see
- (21) prejudice at all.
- (22) Now, if I don't let the video in, that's another issue, but
- (23) I think there's a probability I will. Maybe an edited version,
- (24) but I can see a probability right now that I will.
- (25) MR. DIAMOND: Your Honor, I just wanted our silence

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- (1) not to be construed as assent to a statement Mr. Petumenos
- (2) made
- (3) concerning proceedings before the discovery master.
- (4) THE COURT: I heard you. I saw you nodding your
- (5) head.
- (6) MR. DIAMOND: It wasn't nodding, it was shaking. We
- (7) do not understand that lay witnesses will be allowed to offer
- (8) expert testimony in this case and I'm not aware of any
- (9) agreement to that.
- (10) THE COURT: I'm not going to resolve that problem here
- (11) today. You both know - you all know the discovery
- (12) proceedings
- (13) have proceeded well into areas that the pretrial order would
- (14) have cut it off at. You've all been, in a sense, cooperative
- (15) and now the arguments are arising. I'll deal with those
- (16) arguments as they arise.
- (17) Now, with that out of the way, is there anything else you
- (18) wanted to bring up before I bring these jurors in?
- (19) Okay, let's talk about the preliminary jury instructions.
- (20) The packet you've given me today is stipulated to. You all
- (21) agree that I can read these preliminary instruction to the
- (22) jury? Right?
- (23) MR. DIAMOND: Yes, Your Honor.
- (24) MR. FORTIER: Yes, Your Honor.
- (25) THE COURT: Okay. Now, as we said, we talked about on
- (26) Friday, there are a couple of jurors who say they've - they'll
- (27) suffer terrible hardship if they're on this jury. That's

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- (1) exemplified by Mr. Kimura's letter, which is in the record as
 (2) court's Exhibit 4. He voices in his letter and he did, I think
 (3) in his examination such a strong – and by the letter he
 (4) strengthened his claim of hardship that I think that he needs
 (5) to be examined individually to see whether or not I should
 (6) excuse him. And, frankly, I'm on the verge of excusing him.
 (7) There are other jurors – Adad, Ms. Adad being one primary
 (8) one – really who are very strong in talking to my secretary,
 (9) but who has showed up today and she hasn't said anything, so
 (10) I'm proposing simply to go ahead without bringing her in.
 (11) There are others who have called and said it would be a
 (12) hardship, but they don't – they haven't provided me with
 (13) anything like Kimura has that strengthened the claim that he
 (14) already made in jury selection.
 (15) So my – and there's one juror who didn't show up,
 (16) Mr. Blumer, who my clerk reminds me is a bush pilot, left an
 (17) answering machine number. We left the message for him. He
 (18) hasn't shown, and I don't propose to wait for him, because who
 (19) knows how long it will take for him to show.
 (20) MR. PETUMENOS: Your Honor, I have a matter relating
 (21) to a juror. It is Kathy Wallingford, who is one of the jurors
 (22) I think who had talked to the Court about the person at her
 (23) employment who is a class member, I believe.
 (24) THE COURT: Oh, yes.
 (25) MR. PETUMENOS: I have learned since we last were

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- (1) together at hearing that my law firm represents Fred Meyer, and
 (2) we represent Fred Meyer in connection with certain
 occupational
 (3) safety and health matters, and I thought I understood her to be
 (4) a – in the personnel management area, herself. I don't think
 (5) that we have represented the Anchorage Fred Myers, but we
 could
 (6) in the future. We do represent them currently in the Fairbanks
 (7) office. I have some concern as to whether she knows our law
 (8) firm, what the relationship is there. I didn't know whether
 (9) she was on the slate for individual voir dire here this
 (10) morning.
 (11) THE COURT: She's not.
 (12) MR. PETUMENOS: But that is a fact.
 (13) MR. DIAMOND: Mr. Petumenos was good enough to share
 (14) that information with me on Friday. I don't see any reason why
 (15) we would object to Mrs. Wallingford on those grounds. If she's
 (16) unaware of any connection between her employer and one of
 (17) plaintiffs' counsel it certainly isn't going to be something
 (18) weighing on her mind, so we don't object to her service.
 (19) THE COURT: All right. She's – I'm not going to
 (20) question her at this point.
 (21) MR. PETUMENOS: My concern is that I – I think the
 (22) reason that I didn't know about it and the reason it did not
 (23) come up with the juror is that counsel is correct, that she's
 (24) unlikely to know about our firm's relationship with her firm.
 (25) The problem I see is, in the course of this trial that could

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- (1) change and if something were to occur and our representation
 (2) would have broadened or she would become a witness in some
 (3) respect. I wanted to court to know.
 (4) THE COURT: Sure, that's why we have alternates. If
 (5) something arises, you have to let me know.
 (6) MR. DIAMOND: Your Honor, may we just inquire of the
 (7) Court's plans with respect to Mr. Kimura's voir dire?
 (8) THE COURT: Well, I don't know, counsel. Do you have
 (9) any argument to make? I'm inclined to just excuse him,
 (10) frankly.
 (11) MR. DIAMOND: I certainly would like to be heard on
 (12) that, yes.
 (13) THE COURT: You'd like to be heard? You oppose
 (14) excusing him?
 (15) MR. DIAMOND: Yes, Your Honor, I read the letter you
 (16) shared with us, I believe it was on Thursday or Friday, and
 (17) other than conclusions that Mr. Kimura voices, there are really
 (18) no facts in this letter that were not disclosed at the time he
 (19) was questioned both by counsel and by court. I specifically
 (20) asked him the impact, likely impact of service on this jury,
 (21) and what he told me was that he would anticipate that his
 (22) billings would go down from currently 50 hours a week to 30
 (23) hours a week.
 (24) He mentioned the one client for whom he's doing a
 (25) installation of a computerized accounting system in his voir

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- (1) dire. It is Round Table Pizza. That was on the table.
 (2) There's no indication on this letter that he has discussed the
 (3) situation with the Round Table Pizza people, no indication
 (4) that, in fact, he can't work around his service here in the
 (5) mornings and provide them whatever assistance they need in
 the
 (6) afternoons.
 (7) You know, I share concern that Mr. Kimura is worried that
 (8) he's not going to be able to devote as much time to his
 (9) accountancy practice as he would if he weren't serving as a
 (10) juror, but that's ultimately what this comes down to, and I
 (11) think the conclusions in the June 30th letter are simply not
 (12) borne out by specific factual information. If there are facts
 (13) which he didn't disclose when we met with him a week ago, that
 (14) could conceivably change the picture. I think those facts
 (15) ought to be brought to bear, but they're not in this letter.
 (16) We have concerns with excusing Mr. Kimura because it really
 (17) does upset the demographics of this jury. If Mr. Kimura's
 (18) excused, half of the college graduates on this jury will leave
 (19) us. All – there are only two college graduates. All of the
 (20) professionals on the this jury will leave us. There are no
 (21) other professional people. All of the folks who are
 (22) self-employed and running their own business will leave us.
 (23) I don't want to overemphasize the importance of Mr. Kimura
 (24) as anchoring this jury, but he certainly provides a perspective
 (25) and a point and a background that's simply not shared by the
 11

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- (1) other jurors or any of the alternates, and I think it would be
 (2) quite unfair to the parties to deprive him of - deprive us of
 (3) his service as a juror, particularly on what is a thin and
 (4) conclusory showing right now.
 (5) With respect to the voir dire, however, for obvious
 (6) reasons, I would prefer that the Court question him and he not
 (7) be questioned by counsel. I want to avoid being put in a
 (8) position where it is obvious to Mr. Kimura that it is the
 (9) defendants who are desirous of his service and the plaintiffs
 (10) desirous of seeing him excused. I don't think it should be
 (11) done to our detriment and suggest that the Court ask
 (12) specifically of Mr. Kimura what particular problems he has with
 (13) what particular clients, and if there's anything - there's not
 (14) anything more forthcoming than he's already disclosed to us, I
 (15) don't think he ought to be excused.
 (16) I think as an intermediate step, the Court can certainly
 (17) inquire if Mr. Kimura tells us what his problems are, and I
 (18) think you probably could talk to the chief financial officer of
 (19) Round Table up here and see if, in fact, this is a real problem
 (20) for him or not, but I think the Court ought to do that and not
 (21) counsel for the parties.
 (22) MR. PETUMENOS: Your Honor, we, I believe, move to
 (23) excuse Mr. Kimura at the time that he was voir dired on the
 (24) ground of hardship, and I believe it was a very close question
 (25) for the Court at that time. My impression of his voir dire at

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- (1) that time was that Mr. Kimura was a very polite and very
 (2) unassuming person in terms of the vigor with which he
 (3) pressed - with his demeanor, but that what he said was really
 (4) strong. And what is different about this letter that wasn't in
 (5) the voir dire, he has now told the Court it has upset him to
 (6) such an extent he doesn't believe he's going to be able to
 (7) concentrate on the case or listen to the evidence without
 (8) worrying about his personal affairs.
 (9) And now that moves from the area of his - just his
 (10) personal hardship and the concerns that the litigants have.
 (11) Exxon is not entitled to the juror of its choice. It is
 (12) entitled to jurors who can pay attention and who don't have
 (13) hardship claims under the statute, and his writing of the
 (14) letter and his statement to us, what is a close question before
 (15) now pushes him over the line and he ought to be excused.
 (16) THE COURT: Anything else from the plaintiffs' side?
 (17) Mr. Diamond?
 (18) MR. DIAMOND: Nothing further.
 (19) THE COURT: Well, Mr. Diamond, you make a very
 (20) articulate case. I - you're right, he was very strong in the
 (21) jury examination, and if anybody articulately gave a claim of
 (22) hardship, it was him. And it was a relatively close question,
 (23) although I'm not as close to Mr. Petumenos as you might think.
 (24) The thing I was worried about was the mention of foreclosure
 (25) here that I don't recall being mentioned in his jury

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- (1) examination. And, of course, it does concern me that he's
 (2) telling us, gee, I'm going to be so preoccupied I won't be able
 (3) to concentrate on this case. But I've heard that before from
 (4) jurors, and Mr. Kimura doesn't seem to be a person that would
 (5) likely shirk his duties.
 (6) So actually I think what I'm going to do is simply I'm
 (7) going to empanel this jury, swear them and proceed. If, in
 (8) fact, something happens with him during the course of this
 (9) case, I'll deal with it when it arises, but I think on
 (10) reflection, that Mr. Diamond is right, this is - this is
 (11) basically a restatement of what he told you during the jury
 (12) examination, so I'm going to go ahead, then. We'll - bring
 (13) them in, do the preliminary jury instructions, swear the jury
 (14) and go ahead.
 (15) Now, tell me about your opening statements, counsel. Who's
 (16) going to give the plaintiffs' opening statement.
 (17) MR. PETUMENOS: I will be giving the most of it, and
 (18) there will be short openings from Mr. Stoll and Mr. Fortier as
 (19) well. I'll be giving an opening in excess of an hour. I will
 (20) need a short period of time to arrange the courtroom after
 (21) you've done the instructions, if that's permissible.
 (22) THE COURT: After the instructions?
 (23) MR. PETUMENOS: Whatever you like.
 (24) THE COURT: I think I prefer you to arrange the
 (25) courtroom first.

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- (1) MR. PETUMENOS: All right.
 (2) THE COURT: All three plaintiffs are going to do some
 (3) portion of the opening?
 (4) MR. DIAMOND: Your Honor, I will have the privilege of
 (5) listening to Mr. Clough do the opening statement on behalf of
 (6) the defendants.
 (7) THE COURT: Mr. Clough will be doing it and that's
 (8) all?
 (9) MR. DIAMOND: Right.
 (10) THE COURT: Is there anything else?
 (11) MR. PETUMENOS: One minor detail. I'm told that the
 (12) Court normally keeps that door closed for the proceedings,
 (13) however I will be doing slides from time to time during the
 (14) opening, and the light switch is right outside. Can we leave
 (15) the door open?
 (16) THE COURT: Yes, unless its becomes a problem.
 (17) Sometimes it's noisy out there.
 (18) Don't forget, counsel, on that video, I want that excerpt
 (19) marked separately and admitted for the purposes of this
 (20) particular discussion so that any reviewing court can see this
 (21) small excerpt of that video.
 (22) MR. OPPENHEIMER: Your Honor, just a point of
 (23) clarification, admitted for any future argument with respect to
 (24) opening and not as evidence.
 (25) THE COURT: Exactly, only for purposes of this

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- (1) discussion. It's like a court's exhibit.
 (2) MR. OPPENHEIMER: Thank you.
 (3) THE COURT: If there's nothing else, then, we'll
 (4) recess. You can set up the courtroom and I'll come in. When I
 (5) come in I'm going to want to give the preliminary jury
 (6) instructions and fire right into your opening statement,
 (7) Mr. Petumenos. We'll probably take a break after your hour
 (8) because these statements sometimes can - as interesting as
 (9) they are, can sometimes cause some juror fatigue. All right?
 (10) THE CLERK: Please rise, court stands in recess.
 (11) (Recess from 9:32 a.m. to 9:52 a.m.)
 (12) (Jury in at 9:52 a.m.)
 (13) THE COURT: Good morning everybody.
 (14) Those of you who are sitting in the jury box are the people
 (15) finally selected to be the jurors in this case. I'm going to
 (16) give you some preliminary jury instructions. I'll be reading
 (17) them to you and then we'll do the opening statements of the
 (18) parties. I'll explain more about that later, but now the
 (19) preliminary jury instructions.
 (20) Twelve of you have been chosen as jurors in this case.
 (21) That will be the first 12 of you. Another five have been
 (22) selected as alternates. Before I give the jurors' oath to you,
 (23) I want to impress upon you the seriousness and importance of
 (24) being a member of the jury.
 (25) Trial by jury is a fundamental right in Alaska. It assures

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- (1) that each case will be decided by citizens who are fairly
 (2) selected, who come to a case without bias, and who will attempt
 (3) to render a fair verdict upon the evidence presented.
 (4) You took one oath before your qualifications to be jurors
 (5) were examined. Now you are called upon to take a second
 (6) oath.
 (7) By this oath you will swear or affirm that you will decide the
 (8) case on the evidence presented according to the law that I will
 (9) give you.
 (10) When you state the oath, you accept serious and important
 (11) obligations. The jury system depends on the honesty and
 (12) integrity of individual jurors. You affirm that your answers
 (13) to questions put to you concerning your qualifications to sit
 (14) on this jury were complete and correct. You affirm that you
 (15) are truly impartial in this case. You affirm that there is
 (16) nothing to your knowledge that I or the parties should know
 (17) about your ability to sit as a juror in this case.
 (18) I will now administer the oath, or the clerk will.
 (19) THE CLERK: Ladies and gentlemen, would you all please
 (20) stand up and raise your right hand for the oath.
 (21) (The jurors were sworn.)
 (22) THE COURT: Now that you have taken your oath, you are
 (23) ready to serve as jurors and alternate jurors. To assist you
 (24) in your tasks, I'm going to summarize for you the way in which
 (25) the trial will be conducted.
 (26) Members of the jury, before the trial there are certain

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- (1) instructions you should have in order to understand what will
 (2) be presented and how you should conduct yourselves during
 (3) the
 (4) trial.
 (5) The parties who bring a lawsuit are called plaintiffs. In
 (6) this trial, several lawsuits have been combined for
 (7) presentation in a common trial. As you heard before the jury
 (8) selection, the plaintiffs who will participate in this trial
 (9) are six Native corporations, Chenega Corporation, Chugach
 (10) Alaska Corporation, English Bay Corporation, Eyak
 (11) Corporation,
 (12) Port Graham Corporation, and Tatitlek Corporation, and six
 (13) municipalities Kodiak Island Borough and the cities of Cordova,
 (14) Old Harbor, Ouzinkie, Larsen Bay and Port Lions.
 (15) The parties against whom the suit are brought are called
 (16) defendants. In this case they are Exxon Shipping Company
 (17) and
 (18) Exxon Corporation. They will be referred to throughout the
 (19) trial as the Exxon defendants or Exxon, and may, for purposes
 (20) of this trial, be considered one party.
 (21) The plaintiffs seek recovery for compensatory damages as a
 (22) result of the oil tanker Exxon Valdez having run aground on
 (23) Bligh Reef on March 24, 1989 and discharging 11 million
 (24) gallons
 (25) of North Slope crude oil into Prince William Sound and other
 (26) geographical areas. This event will be referred to throughout
 (27) the trial as the Exxon Valdez oil spill, or the oil spill.
 (28) You must take as true the following facts: Exxon
 (29) Corporation is liable in this litigation for the acts and

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- (1) omissions of Exxon Shipping Company, its agents and
 (2) employees,
 (3) Captain Hazelwood, an employee of Exxon Shipping Company,
 (4) Captain Hazelwood, an employee of Exxon Shipping Company
 (5) was
 (6) negligent in leaving the bridge of the Exxon Valdez on or about
 (7) 11:53 Alaska standard time on March 23, 1989. That such
 (8) negligence was a proximate cause of the grounding of the
 (9) Exxon
 (10) Valdez.
 (11) The Exxon defendants are liable for that act and are
 (12) strictly liable for all damages legally caused by the oil
 (13) spill. Thus your role in this trial will not be to determine
 (14) who, if anyone, was at fault, rather your job will be to
 (15) determine what, if any, actual damages were caused to the
 (16) plaintiffs by the discharge of oil from the Exxon Valdez.
 (17) All six of the Native corporation plaintiffs seek damages
 (18) for harm to their land. Four of the Native corporations,
 (19) Chenega corporation, English Bay corporation, Port Graham
 (20) corporation and Chugach Alaska Corporation, seek damages
 (21) for
 (22) alleged injuries to archaeological sites. Chugach Alaska
 (23) Corporation claims additional damages for administrative
 (24) costs.
 (25) Five of the municipalities, Kodiak Island Borough,
 (26) Ouzinkie, Larsen Bay, Port Lions and Old Harbor own land,
 (27) including shoreline property, that was oiled. These
 (28) municipalities are seeking lands damages and other additional
 (29) damages for economic losses arising out of the oil spill.

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- (1) These claims for damages include unreimbursed oil spill
- (2) expenses, unreimbursed fees for legal services, loss of
- (3) municipal revenues, loss or delayed municipal projects.
- (4) At the beginning of the trial, the plaintiffs will make an
- (5) opening statement outlining their case. Exxon will also make
- (6) an opening statement outlining its case immediately after the
- (7) plaintiffs' statements. Following the opening statements, the
- (8) plaintiffs will then present their evidence. When they are
- (9) finished, the defendants will have an opportunity to present
- (10) their evidence.
- (11) Some of the evidence will be testimony by witnesses who
- (12) will be present in court. Each witness who testifies will
- (13) first be questioned by the party who calls the witness. This
- (14) is called direct examination. Then the other side is permitted
- (15) to question the witness. This is called cross-examination.
- (16) Other evidence may be presented by exhibits, such as
- (17) documents
- (18) or pictures which will be read or shown to you.
- (19) It is possible that I will decide that the law requires you
- (20) to accept certain facts as true. If so, at the appropriate
- (21) time, I will tell you the facts that you must accept as true.
- (22) As evidence is offered, the parties may make objections. The
- (23) parties also may make requests that I do something or not do
- (24) something in conducting the trial. It is their right to make
- (25) objections and requests that they believe are legally proper.

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- (1) should be granted.
- (2) Once the evidence is presented to you, your job is to
- (3) decide how to evaluate it in light of the law that I will give
- (4) you at the end of the case. The law relies on you to fairly
- (5) evaluate the evidence you have heard. You must not be
- (6) governed
- (7) by mere sentiment, unsupported conjecture, sympathy,
- (8) passion,
- (9) prejudice, public opinion or public feeling. You should
- (10) consider the evidence in light of your own observations and
- (11) experience in everyday life. You may not consider any other
- (12) sources of information not presented to you in this court.
- (13) At the conclusion of the trial, I will give you additional
- (14) instructions on the law. Each of the parties will present
- (15) closing arguments to you as to what they consider the evidence
- (16) has shown and as to the inference which they contend you
- (17) should
- (18) draw from that evidence presented during the trial. Then you
- (19) will be asked to retire and deliberate on the questions
- (20) presented and return a special verdict dealing with the claims
- (21) for actual damages which were addressed in the trial.
- (22) Some jurors prefer to take notes as evidence is being
- (23) presented. Other jurors prefer not to do so. You have been
- (24) provided with trial notebooks which contain the names of
- (25) parties and attorneys conducting the trial. It is for you to
- (26) decide individually whether or not you wish to take notes in
- (27) the trial notebook. If you do so, you may use the pad
- (28) contained within the notebook that I've asked the bailiff to

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- (1) place on your chairs each morning. I caution you that it is
- (2) not necessary for you to take notes, but it is necessary that
- (3) you carefully consider all the evidence in the case. Do not
- (4) let notetaking interfere with your consideration of the
- (5) evidence.
- (6) Each time you are excused from the courtroom, the bailiff
- (7) will collect your notebooks. They will be returned to you when
- (8) you return to the courtroom. When you begin your
- (9) deliberations
- (10) you may have your notebooks with you, but one juror's notes
- (11) are
- (12) not necessarily to be given more weight in your deliberations
- (13) than a memory of another juror who chose to carefully consider
- (14) the evidence without taking notes. When the case is over, your
- (15) notebooks will be collected and kept as confidential material
- (16) in the records of the Court.
- (17) That concludes the preliminary instruction in this case.
- (18) Now, you're about to hear the opening statements, and let
- (19) me tell you what they are and what they are not. What they are
- (20) not is evidence. As you'll probably hear repeatedly during
- (21) this trial, arguments, statements and remarks by lawyers are
- (22) not evidence. So what I want you to understand is what you're
- (23) going to be hearing is a brief statement of the claims in the
- (24) case and a brief - relatively brief because of the complexity
- (25) of this case - statement of the defenses in the case. The
- (26) parties at this point are not allowed to argue the case to you,
- (27) either. In other words, they're not allowed to try to persuade

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- (1) you.
- (2) Lawyers like to call this - the opening statement process
- (3) - sort of a road map of the case to come. So they'll be
- (4) describing the evidence that they expect will be presented and
- (5) the issues, legal and factual, that that evidence presents to
- (6) you.
- (7) You will be judging the facts in this case and I'll give
- (8) you the law that applies to the case. You simply apply the law
- (9) that I give you to the facts and that's how you come to your
- (10) decision.
- (11) So remember, you're about to hear about three hours of
- (12) opening statements. What you hear will not be evidence, but
- (13) it's extremely important that you concentrate on it because it
- (14) gives you a good description of what you'll then hear in the
- (15) evidence as the case progresses.
- (16) Now, the opening statements, since the plaintiff has -
- (17) generally has the burden of proof on most issues in the case,
- (18) the opening statements first are done by the plaintiffs and
- (19) then by the defendants. Mr. Petumenos will be giving about an
- (20) hour's opening statement. Mr. Fortier and Mr. Stoll will give
- (21) some brief supplemental statements also. Then the defense
- (22) will
- (23) proceed, and Mr. Clough will be giving the defense opening.
- (24) All right, counsel, are you ready?
- (25) MR. PETUMENOS: I am, Your Honor.
- (26) MR. PETUMENOS: May it please the Court, Mr. Clough,

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(1) co-counsel, and members of our trial jury:
 (2) It's hard to decide where to begin this story. Perhaps a
 (3) place to begin the story is March 23rd, 1989 when the very
 (4) large crude carrier, the Exxon Valdez, left port at the Alyeska
 (5) Terminal, Valdez, Alaska, proceeded through the Valdez
 Narrows,
 (6) as you see here, as I follow the orange line, entered the
 (7) outgoing shipbound lane, crossed the inbound shipbound lane,
 (8) much like a highway on the sea, continued abeam Busby light,
 (9) began to turn back to the shipping lanes, crashed into Bligh
 (10) Reef and began spilling her cargo into the water.
 (11) The Exxon Valdez, the very large crude carrier as she's
 (12) classified, is classified that way for a reason. She carries
 (13) an enormous amount of cargo and she spilled 11 million
 gallons
 (14) of it into the waters of Prince William Sound. To give you
 (15) some idea, this model here before you is a scale model of the
 (16) Exxon Valdez. And what we have here is a to-scale car -
 (17) perhaps, you can barely see in my hand - a to-scale small
 (18) boat, in comparison to the very large crude carrier, Exxon
 (19) Valdez.
 (20) Perhaps the way to begin this story is to begin with our
 (21) first witness, Mr. Keith Gordaoff. Mr. Keith Gordaoff has been
 (22) the president of the Chugach Alaska Corporation, one of the
 (23) plaintiffs herein, and Mr. Gordaoff is a man comfortable in a
 (24) board room, comfortable doing business, and Mr. Gordaoff is a
 (25) man who, if you were to find yourself stranded on a beach in

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(1) Prince William Sound in bad weather, will help you survive,
 (2) because he knows the land.
 (3) Mr. Gordaoff knows the land because when he was a child, as
 (4) the eldest son of many children, it was his job to set the
 (5) table for his family while his father went out and got what
 (6) cache he could. He hunted and he fished and he learned the
 (7) land.
 (8) Could I get my moving people with suits to help me with
 (9) this? And could I have the maps of Prince William Sound?
 (10) Mr. Gordaoff was born and raised in Cordova, Alaska, which
 (11) is in this eastern side of the Sound, and he would frequently
 (12) make voyages across the Sound.
 (13) I have here a pointer I've never used before. I'll try not
 (14) to shoot anybody with it.
 (15) There, Cordova is where Mr. Gordaoff was raised, and he
 (16) would frequently travel throughout the Sound into the various
 (17) parts of the Sound to find food. He's done it many, many
 (18) times. He knows the land very well, and is a pilot, commercial
 (19) fisherman. And in the spring of 1989, he made that voyage, and
 (20) it was very different, because in the spring of 1989 is when
 (21) things get moving in Prince William Sound. It's when the
 (22) herring arrive. It's when the birds feed on the herring. It's
 (23) when the sea mammals come to feed on the herring, followed by
 (24) the salmon, and nature begins to phase in its product.
 (25) And when Keith Gordaoff took the voyage in the spring of

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(1) 1989, there was something very different about it, because
 (2) usually the Prince William Sound is filled with noise, and on
 (3) this occasion it was quiet. The usual sounds of nature were
 (4) stilled. And he's been back again and again for his
 (5) corporation to report on what he has found there.
 (6) This case is about the land, and perhaps - could we have
 (7) the picture of Knight Island and Sleepy Bay, please. Knight
 (8) Island, which is about to come on the screen is this island
 (9) right here. The land tells another story and perhaps causes us
 (10) to want to begin the story at a different place.
 (11) In the time that the Russians bought Alaska, there was a
 (12) statement made that the United States would treat the Indians
 (13) as they would other Indians, but the issue of how Alaska Native
 (14) claims were to be settled didn't happen in 1867. It didn't
 (15) happen in 1900, it didn't happen in 1930, and it didn't happen
 (16) in 1940. The next mention of it of note was at the Statehood
 (17) Act in 1958, in which the Alaska Natives were granted
 (18) aboriginal rights to hunting and fishing. And in 1969 it
 (19) became the case that people became interested in building a
 (20) pipeline with a terminal in Valdez, where the Exxon Valdez
 (21) departed. And the Alaska Natives laid claim to Valdez and they
 (22) said, we won't let go of that claim. And they passed a
 (23) resolution and they said, we won't let go of that claim until,
 (24) among other things, we are assured that state-of-the-art
 (25) pollution control and pollution prevention measures are taken.

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(1) And there were meetings and the Natives were wined and
 (2) dined in 1969 and they were assured in a meeting on June 18,
 (3) 1969, that that would be the case. And the Natives talked to
 (4) the oil company representatives that were there, including
 (5) representatives of people from Exxon, and they told them about
 (6) the importance of making sure that where they set their table,
 (7) where they have their livelihoods, for these are people who
 (8) don't go back to Seattle at the end of the fishing season.
 (9) They stay there the year round. They bury their parents there
 (10) and they raise their children there. And they said to the oil
 (11) companies, please do not let anything bad happen, and they told
 (12) them why and they told them what could go wrong.
 (13) And in the mid-1970s, the Alaska Native Claims Settlement
 (14) Act was passed and the - Alaska Natives came into the land.
 (15) Do you have a picture of the land? Sleepy Bay, on the north
 (16) end of LaTouche Island, this is about Alaska. It's about what
 (17) Alaska lands is worth. It's about what it means to own land
 (18) like this, and the Alaska Natives selected their land so that
 (19) it could be near the abundance of the Sound and the herring
 and
 (20) all of the things that set the table. And Sleepy Bay is right
 (21) here on the map, and here is what happened when the Exxon
 (22) Valdez spilled her cargo on March 24th, 1989.
 (23) This is Cordova where - Cordova area where Mr. Gordaoff
 (24) would begin his trips, and this land on this part of the map
 (25) belongs to the Eyak corporation. Ms. Clubb is here from the

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- (1) Eyak corporation, representing the corporation. Ms. Clubb, are
 (2) you here? She has been a representative of the corporation for
 (3) ten years.
 (4) The Eyak corporation brings claim for damages to their land
 (5) and the right to enjoy the surrounding environment and seeks
 (6) damages to Exxon for the oil spill.
 (7) The Tatitlek corporation owns land here and here where
 (8) Bligh Reef was struck by the Exxon Valdez, the epicenter of the
 (9) spill. The Tatitlek corporation is represented here by Carroll
 (10) Kompkoff, who has been on the board and the president. He's
 (11) 68 years old. Under vigorous cross-examination he'll admit that
 (12) he's one of the Native elders.
 (13) As the oil progressed west, it went towards this area,
 (14) where Knight Island and LaTouche Island are, which are owned
 by
 (15) the Chugach Alaska Corporation. The Chugach Alaska
 Corporation
 (16) is represented here by John Christensen, who is present in the
 (17) courtroom. He is chairman of the board. He's another fellow,
 (18) by the way, if you find yourself stranded in the middle of
 (19) nowhere will get you out alive. He lives in Chenega village,
 (20) which is nearby, and the Chenega corporation is represented
 (21) here by Mr. Charles Totemoff, and an enormous amount of oil
 (22) washed ashore in this area here.
 (23) And then in the words of an Exxon official, what happened
 (24) was our worst fears, and that was very high winds last night.
 (25) We had gusts up to 73 miles an hour, which essentially

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- (1) stampeded the slick out of the center of Prince William Sound
 (2) over the western edge and down in an essentially southwesterly
 (3) direction. It's unbelievable. That slick is moving like it's
 (4) on a super highway. And it did, through the lands of English
 (5) Bay and Port Graham.
 (6) English Bay is at the tip of this peninsula at the Kenai
 (7) fiords. English Bay is represented here today by Mr. Don
 (8) Emmal, who has been the president of English Bay for ten
 (9) years. English Bay brings damages claims in this lawsuit for
 (10) damage to the lands and surrounding waters.
 (11) And finally there is Port Graham, around the corner. Port
 (12) Graham is represented here today by Mr. Pat Norman, ten years
 (13) as president of the Port Graham corporation. And Port Graham
 (14) and English Bay own lands throughout some of the most
 beautiful
 (15) country in Alaska, the Kenai fiords.
 (16) The Exxon Valdez oil spill covered hundreds and hundreds of
 (17) miles of coastline. If the spill were to have occurred off of
 (18) the east coast and were spilled off of Cape Cod, it would have
 (19) reached Virginia. If it were spilled off Seattle, the Seattle
 (20) area, it would cross the border of Oregon and be off the shore
 (21) of California. Members of the Jury, if you were to get in a
 (22) boat and travel the distance of the spill, it would take you a
 (23) very long time.
 (24) Now as Judge Shortell has told you, this case is not about
 (25) fault. That has been determined and there has been a

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- (1) stipulation that Exxon is negligent. The only issue for this
 (2) jury is to determine what damages are to be awarded for what
 (3) has happened with this thing.
 (4) Eleven million gallons, of which 40 to 45 percent hit the
 (5) beaches of Prince William Sound is like 500 or so tanker cars
 (6) full on a train.
 (7) Now, the land that we are talking about here, 76,400 acres
 (8) for English Bay, 111,677 acres for Port Graham, 76,093 acres
 (9) for Chenega, 135,677 acres of subsurface estate for Chugach,
 (10) 100,000 acres from Eyak, and 82,000 from Tatitlek for a total
 (11) of 582,000 acres of land which was impaired by the Exxon
 Valdez
 (12) oil spill.
 (13) Now, in the mid-1970s, when the Statehood Act was passed,
 (14) the Native corporations were divided into regional
 (15) corporations, large corporations which covered different
 (16) regions of Alaska and village corporations which were normally
 (17) at the location of an individual village at various locations.
 (18) The Native corporations have three important duties to
 (19) their people. The first is to bring economic opportunity to
 (20) their people. The second is to preserve the heritage and
 (21) lifestyle of the people, to preserve the ways of the Native
 (22) people so that they are not lost. And the third is to preserve
 (23) the cultural and archaeological resources. The history of the
 (24) people of their state, and sometimes those duties are very hard
 (25) to weigh and balance. Sometimes economic development may

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- (1) contradict or be an issue with respect to preserving the
 (2) lifestyle. But these are the three things that the Native
 (3) corporations must do. They must, for example, select lands
 (4) near the village sites where they live, and the reason for that
 (5) is because, in order to preserve the lifestyle, it's important
 (6) that the hunting and fishing and the things that take place at
 (7) the village, that there be lands nearby that they can conduct
 (8) those activities for.
 (9) There is a saying that when the tide is out, the table is
 (10) set, and where the land and the air and the water meet is an
 (11) area of rich and sensitive environmental and life activity.
 (12) And it is that area where the Exxon Valdez oil, as well as on
 (13) the waters, struck.
 (14) The very symbol of the land for years, since the Russians
 (15) first showed interest, the sea otter, 4,000 sea otters
 (16) perished. They became coated with oil on their fur. They
 (17) became cold for the first time in the waters that they had
 (18) lived in all their life, became hypothermic and drowned.
 (19) Hundreds of thousands of fish couldn't breathe for the oil in
 (20) the water, their gills clogged and they drowned. The effects
 (21) of oil on the embryos of herring will be shown, and the issue
 (22) that we will present to you in this courtroom is not that once
 (23) the oil is gone from the surface of the rocks, it's not gone,
 (24) it's there. And it continues to persist.
 (25) Which brings us to the concept of how we're going to value

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- (1) this case for you. We know that the oil spill was a large oil
 (2) spill and we know some of the things that happened, but how
 (3) are
 (4) we going to translate this into something that we can
 (5) understand in terms of a - of a damage claim for you?
 (6) We're going to start talking about the fate and persistence
 (7) of oil. Now, the fate of oil is just as it sounds, where did
 (8) it go? What was its fate? And the persistence of oil is a bit
 (9) of a trickier concept, and that is: How long, once it's there,
 (10) is it going to stay there? And there's two kinds of
 (11) persistence.
 (12) One kind of persistence is the kind of persistence that you
 (13) can - where you can see the oil and find it somewhere and dig
 (14) in the rocks and see that it remains. And the other kind of
 (15) persistence is how long will it stay in the ecosystem. How
 (16) long will it stay in the animals? How long will it stay and
 (17) affect us and our land and our people in the future?
 (18) The issue of persistence is a complicated one, and it
 (19) relates to such things as you can see here, Montague Island.
 (20) You can see here Hinchinbrook Island, and the shores of
 (21) Hinchinbrook and Montague take the full brunt of the sea, and
 (22) of the Gulf of Alaska, enormous storms. But as you get into
 (23) these islands in here, one can see that the full brunt of the
 (24) sea doesn't reach certain areas, nooks, crannies and bays
 (25) where
 (26) a lot of the activities of the Alaska Natives take place.
 (27) There isn't the washing, there isn't the movement, and a lot

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- (1) depends upon what kind of a beach you have. Is it rock, is it
 (2) cliff, is it tidal, and sometimes a storm can wash sand up on
 (3) top of oil and hide it.
 (4) And it happened. It happened a lot in Prince William Sound
 (5) and the evidence will show that the Exxon appraiser will rely a
 (6) lot on things called beach surveys that were conducted during
 (7) the beach treatment phase after the oil spill, and these
 (8) surveys consisted of people walking along the beach and
 (9) looking
 (10) for oil and making decisions about where to place men and
 (11) material. They were never designed, the evidence will show, to
 (12) determine how long the oil would be there and where it would
 (13) be.
 (14) The folks that were running the beach treatment program
 (15) were in a stuff spot. They had a lot to do. They had a lot of
 (16) men and material to move, and they had to make decisions fast
 (17) and they created the system of beach surveys so that they
 (18) could
 (19) make those kinds of decisions, and it was never intended to be
 (20) the kind of survey that would result in how long will the oil
 (21) persist in the environment. And there were times when a storm
 (22) would come across and put a swath of sand on the beach and the
 (23) beach
 (24) surveyor would walk across the sand and he would say, the
 (25) beach
 (26) is clean, we don't need to come back, and the next storm would
 (27) come and the sand would be gone and the oil was back. Did
 (28) we
 (29) have another oil spill?
 (30) Well, this is not to be critical of the beach surveys.

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- (1) They were working under time constraints and tremendous
 (2) logistical pressures, but it is to say that it was never
 (3) designed to be a test for persistence or a measure of damages.
 (4) We will present testimony to you from a scientist as to
 (5) what the physical persistence of the oil on the beaches is.
 (6) And we're talking here solely about where you can find it,
 (7) we're not talking about how long is it in the environment. But
 (8) you will hear from others that the oil does persist in the
 (9) environment more than just what you can find on the beach. Do
 (10) we have the post sand pictures?
 (11) Members of the Jury, this is a herring larvae before the
 (12) Exxon Valdez oil spill. This is a herring larvae after. This
 (13) is how oil can persist where you can't see it in the rocks, and
 (14) the evidence will show that things have happened in Prince
 (15) William Sound since the oil spill that demonstrate that the
 (16) oil's persistence isn't just what you can see. It doesn't
 (17) simply wash back into the water after a storm.
 (18) And Exxon will show you dramatic footage of waves crashing
 (19) on the beaches and talk about how it cleans everything and it
 (20) all goes away, and there are two things. One is the evidence
 (21) will show that despite the waves crashing and the winter
 (22) storms, the oil is still there, and the evidence will show that
 (23) we - just because you can't see it, doesn't mean it isn't
 (24) there.
 (25) There will be evidence of sores that have appeared on

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- (1) herring and poor runs of herring and salmon in the years
 (2) following the spill. Evidence that the quiet that Mr. Gordaoff
 (3) experienced immediately after the spill continues in a
 (4) insidious way.
 (5) Now, when anyone talks about land, one of the things about
 (6) land and environmental harm to lands, one of the things that
 (7) anyone looks for when thinking about land valuation is to what
 (8) extent has there been shown to be uncertainty about what is
 (9) going to happen. To what extent are people uncertain about
 (10) their future and the future of the land and what it will do in
 (11) the future and what the surrounding waters will be like in the
 (12) future?
 (13) Now, the Exxon appraisal will say that the willing buyer/
 (14) willing seller test for market value in appraising land assumes
 (15) a knowledgeable buyer and a knowledgeable seller. And the
 (16) evidence will show that, at best, there is substantial
 (17) uncertainty that you will see right here in this courtroom
 (18) between scientists, who will disagree about what the future
 (19) bears for this area, and that spells trouble for land values.
 (20) Now, the other way in which the appraisers will differ is,
 (21) you saw a picture a moment ago - Could we have the Knight
 (22) Island picture back or can we get the Knight Island picture? -
 (23) Increasingly in our country, land like this, the oceans and the
 (24) pristine mountains and land for its natural beauty are becoming
 (25) valuable as the natural land decreases in availability. And

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(1) when people obtain land, whether it's a Native corporation or a
 (2) government for a park, sometimes the land, the way it is, is
 (3) what they are purchasing. Not because they want to put in a
 (4) settlement or a subdivision or lodges or condominiums or
 (5) McDonald's, but because there need to be places where the
 land
 (6) can be left alone and that land begins to have value for that
 (7) reason.
 (8) The appraisers in this trial are going to differ about
 (9) that. Some of the appraisers for the plaintiffs are going to
 (10) tell you that there are transactions in natural land. There
 (11) are purchases made between governments and others, and
 that
 (12) these lands, as they are, have value, and that they'll be sold
 (13) just as they were given to the - just as they were
 (14) transferred, according to law, to the Native community, as an
 (15) island, as a unit parcel, but that's the way natural lands is
 (16) transacted.
 (17) The Exxon appraisers will tell you that we want to just
 (18) follow the coating, the band of oil around. We only want to
 (19) count parcels if they're close to where the oil is, and will
 (20) criticize those plaintiffs' experts who say, oh, you want money
 (21) for the mountaintops and you want money for the glaciers, and
 (22) you'll see dramatic footage of snow-covered uninhabitable
 land,
 (23) and they will say, we don't owe you anything. But the lands of
 (24) the Native peoples, the value of the land is that this is a
 (25) maritime, this is a seagoing, a seafaring people. This is not

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(1) like land in Denali park on the interior. This is not like -
 (2) this land has value because it is on the sea. And all of its
 (3) activity is on the sea, and this isn't anything new. This has
 (4) been true for centuries in the way the land has been used.
 (5) The appraiser for the Native corporations will, therefore,
 (6) take the amount of persistence that has been determined by the
 (7) scientists. He will divide up the amount of money to a yearly
 (8) income stream, which is the way you do temporary damages,
 and
 (9) he will track a period of time during which the land is
 (10) impaired, based upon what the scientists tell him. And when he
 (11) does that, he's going to do it not on the basis of the biology
 (12) and on the basis of where it is inside the little herring fry.
 (13) He's only going to consider the physical persistence of the oil
 (14) on the land and, in doing so, the evidence will show he will
 (15) understate the real persistence of the oil in the environment.
 (16) Uncertainty will be shown in another way. In 1989, the
 (17) government and Exxon came to the conclusion that there
 should
 (18) be zero tolerance. The word was zero tolerance, that not one
 (19) contaminated fish, not one, get into the commercial fishing
 (20) market, and yet some of the Natives were told that it was all
 (21) right to eat some of the same foods that in the commercial side
 (22) they were told couldn't get into the market. And there were
 (23) conflicting studies and many studies stated don't eat the
 (24) shellfish, stay away from it. There were lots of publications
 (25) that went out to the villages relating to some of these issues

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(1) and there was tremendous uncertainty, and that uncertainty
 (2) remains as to what is and what isn't whole some.
 (3) Could we have the hot water wash, please?
 (4) Now, after the spill took place, there was a huge
 (5) mobilization of people, men and material to try to go out to
 (6) the Sound and do something about it. And this is a site on an
 (7) archaeological land and it is an example of what is called hot
 (8) water wash. Remember that we said that where the land and
 the
 (9) water and the air meet is a sensitive place? It is temperature
 (10) sensitive. It is a finely balanced place where the food chain
 (11) begins and where some creatures eat other creatures, who eat
 (12) other creatures.
 (13) Hot water - this is steam that you see, which is why you
 (14) can't see the background. At high pressure, hot water sprayed
 (15) upon the intertidal zone, this evidence will be, sterilizes
 (16) everything in sight. And that very often, the treatment that
 (17) was put on the beaches was a cure worse than the disease.
 (18) The decisions that had to be made about what kind of
 (19) treatment to put on what kind of beaches are critical, but the
 (20) problem is the beaches don't always cooperate because they're
 (21) not always uniform and homogeneous across the entire beach,
 and
 (22) the wrong kind of cleanup on the wrong kind of beach can be
 (23) very harmful.
 (24) I'll want to see that again in a little bit.
 (25) Now, we are going to call an appraiser who is a professor,

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(1) Dr. Mundy, to the stand, and Dr. Mundy has worked extensively
 (2) in the State of Alaska, and he's worked extensively in the area
 (3) of contaminated properties, and he'll talk to you about what
 (4) happens to a contaminated property once it becomes known
 that
 (5) the contamination has occurred.
 (6) One of the things that's important to know when the
 (7) contamination occurs is how widespread is the contamination
 (8) known, and that's important because very often, bankers,
 others
 (9) won't lend on property where the thought is that there's been
 (10) contamination and where there's this uncertainty. When the
 (11) market gets uncertain, the land, whether it is - got a
 (12) physical band of oil around it or not, but it is the thought
 (13) that the area around the land is polluted, the land values are
 (14) in jeopardy.
 (15) Now, it is important to also say a little something about
 (16) subsistence. Because subsistence means different things to
 (17) different people, and in the Native community, subsistence is
 (18) not something new. It's something that's been around, of
 (19) course, for hundreds of years, and we don't always understand,
 (20) happened to me, what subsistence can be. We see a photo of a
 (21) lost - of an oiled seagull, for example, and the seagull has
 (22) died or oiled beach grass and we say, so what. But in point of
 (23) fact, the Native peoples in Prince William Sound gather and eat
 (24) seagull eggs. They make salad from some of the grasses that
 we
 (25) look at. They eat herring roe on kelp. And there's going to

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(1) be scientific testimony that the kelp hasn't come back. Now,
 (2) the significance of that for these people is that this land is
 (3) like a farm. It is what it produces. It is its reason,
 (4) remembering the three duties of a Native corporation, one of
 (5) which is to preserve the culture.
 (6) There is also in the Chugach Alaska Corporation a
 (7) subsurface estate that we have, what is called a split estate
 (8) between the village corporations and the regional
 (9) corporations. Everything below the surface, much of where the
 (10) oil is, is owned by the regional corporation. The dispute that
 (11) we will have is that Exxon will tell you that, well, if you
 (12) can't mine it, if there's not mineral resources there, if it's
 (13) just sand and gravel, there's oil there. So what, we owe you
 (14) nothing for that. But the evidence will be that a transaction
 (15) often fails to occur unless the subsurface component goes with
 (16) it, and it makes sense.
 (17) If someone were to want to buy property for a park or
 (18) natural purposes or to preserve in its pristine state, they
 (19) don't want to know that it can be mined in the next year. They
 (20) want the entire estate, and to the extent that the land has
 (21) lost its value and transactions don't occur, both the surface
 (22) and the subsurface estate are affected and the evidence will so
 (23) show.
 (24) Now, it brings me back a little bit to the beginning of
 (25) another place where we can begin the story, which is what

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(1) exactly is a Native corporation. You don't go and buy stock in
 (2) a Native corporation on the New York Stock Exchange the way you
 (3) buy stock in Exxon. A Native corporation has stock by virtue
 (4) of the fact that the people in 1974, 1975, the mid '70s when
 (5) this was put together, who were in the villages, who were
 (6) invited to a village, and who selected to be with that
 (7) corporation, were invited by the corporation or signed up with
 (8) the corporation and became one of its members. And the - the
 (9) significance of that is that the Native corporation really is
 (10) how we in the 1970s as opposed to the Indian reservation
 (11) solution of the turn of the century, determined the Native
 (12) problem, or to solve the Native problem in Alaska and the
 (13) Alaska Natives, Alaska Native Claims Settlement Act passed,
 (14) gave up that thing that the Alaska statehood had, gave them,
 (15) which was their aboriginal hunting and fishing rights to all of
 (16) the Alaska, because in return, they received what they were
 (17) always entitled to, was their land and the land exists for the
 (18) people, and the people are what the land is about. It is how
 (19) Alaskan Native - part of Alaska Native independence is to be
 (20) ensured, that they own the land and that it be preserved.
 (21) Now, Exxon is going to show you that the spill wasn't that
 (22) bad and was blown out of proportion.
 (23) Now, Exxon is going to show you that the spill wasn't that
 (24) bad and was blown out of proportion.
 (25) We're going to show you something like this. This is a
 film clip in 1989 from the shores of LaTouche Island. And it

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(1) was taken some weeks after the Exxon Valdez spill. And when
 (2) you see it, remembering the life that abounds at the intertidal
 (3) zone, think about how the creatures survived this. The oil you
 (4) are about to see has begun to coagulate and become thick and
 (5) oxygen won't penetrate and sunlight won't penetrate.
 (6) How are we doing?
 (7) The amount of land that we're talking about, the amount of
 (8) oil that was spilled has led these plaintiffs to claim damages
 (9) on a per-acre basis of over 80 million dollars. It is the
 (10) largest oil spill in the history of North America, covering an
 (11) enormous amount of land, and it is uncertain at this point
 (12) whether Prince William Sound in some respects will ever
 (13) recover, whether the fishing stocks will ever be the same. And
 (14) some of the evidence will suggest that in some of the
 (15) intertidal zones that the nature of the way the system
 (16) interacts will never be returned.
 (17) Your Honor, I wonder if I could have five minutes or ten
 (18) minutes to cure my technical difficulties here so that I can
 (19) show the clip that I so desperately want.
 (20) THE COURT: Sure we'll take about ten minutes.
 (21) THE CLERK: Please rise, this court stands in recess.
 (22) (Jury out at 10:44 a.m.)
 (23) (Recess from 10:44 a.m. to 11:07 a.m.)
 (24) (Jury in at 11:07 a.m.)
 (25) MR. PETUMENOS: Thank you, judge. How am I doing on

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(1) my time?
 (2) THE COURT: Well, you're a little over time, now
 (3) that - no, I'm kidding. You were about 45 minutes out when
 (4) the machinery broke.
 (5) MR. PETUMENOS: I know I needed a break. The jury
 (6) probably needed the break. The individual operator needed a
 (7) break. So why don't we try and roll the film.
 (8) (Videotape played.)
 (9) MR. PETUMENOS: As I said, this is the eastern edge of
 (10) LaTouche Island, properties owned by the Chugach Alaska
 (11) Corporation and the Chenega corporation down here in this
 (12) section of the map. The intertidal zone, a stream and the oil
 (13) along, Exxon Valdez crude, about four inches thick; no
 (14) sunlight, no oxygen.
 (15) Now, Exxon will suggest to you that this is 1989, but that
 (16) in the years that have come by, or fairly quickly I think their
 (17) appraiser will say that nothing after 1990 or 1991, or
 (18) something like that, is relevant anymore because it's all
 (19) clean.
 (20) (Videotape concluded).
 (21) Can we have the clean beach photo, please?
 (22) And they will show you lots of photos of clean cobble,
 (23) things that look bright and shiny, and they'll look something
 (24) like what Ms. Johnson is going to show you.
 (25) Help us out here.

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- (1) And the evidence that we're going to present you, some of
 (2) which from 1993, some of which from 1994 is going to show that
 (3) the oil remains.
 (4) While he's getting that up, perhaps you can show me the
 (5) slide of the rock from Sleepy Bay.
 (6) This photograph, one of several we'll show you, was a rock
 (7) turned over that looks pretty good on the other side of it and
 (8) that's what it looks like in 1993 in Sleepy Bay. And in a few
 (9) minutes here, I will point out, and this is what we're likely
 (10) to see in the Exxon presentation is clean-looking cobble. And
 (11) just a few inches below the surface, in some beaches you'll see
 (12) oil just like that.
 (13) Could we have the lights back?
 (14) Now, I'm going to talk a little bit about - well, you
 (15) heard a little bit and the Judge talked about the
 (16) archaeological claims of the corporations, four of the
 (17) corporations. Remember the third function of the Native
 (18) corporation is to preserve the history and the culture, and not
 (19) all of us in Alaska know it, but there is a rich history in
 (20) Prince William Sound. There is a rich prehistory in Prince
 (21) William Sound, and those archaeological sites consist of
 (22) different kinds of places, some places where tremendous
 (23) wealth
 (24) of information is stored in the form of artifacts and in the
 (25) form of ancient house pits and things like that that are titled
 (26) to the Native corporations, and they have the duty and

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- (1) responsibility to preserve them and learn what's there.
 (2) There's another kind of archaeological site which are
 (3) basically sacred in nature. It causes me to want to tell the
 (4) story about Carroll Kompkoff, the gentleman you met here just a
 (5) minute ago. When Mr. Kompkoff was ten years old, he lost his
 (6) dad to a fishing accident, which is - which is common in
 (7) Prince William Sound, and when he was an 11-year-old boy, he
 (8) found himself with some relatives and some family members
 (9) struggling onto a beach after a really bad storm in an attempt
 (10) to weather in and to be safe for the night. And they went into
 (11) a cave and they made a fire to keep themselves warm, and in the
 (12) firelight for this little boy were the bones and remains of
 (13) Native ancestors in a place that he had never been before.
 (14) And in years later, in the 1970s, when the Native
 (15) corporations got started in this duty of the Native corporation
 (16) became known, they went to Mr. Kompkoff and others and
 (17) asked
 (18) about where some of these places were and how to find them,
 (19) and
 (20) you can imagine how that place for that little boy is important
 (21) or becomes sacred to a people. It would become sacred to
 (22) anybody. And that is a third kind of archaeological site, or a
 (23) third place where the Natives, Native corporations are given
 (24) the duty to preserve.
 (25) There will be substantial evidence that the principal
 (26) protection for these archaeological sites is their
 (27) confidentiality, is their secrecy and that there is a black

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- (1) market in the trafficking of archaeological material and that
 (2) it can bring quite a dollar, if you know the right people.
 (3) When the oil spill took place in 1989 -
 (4) Do we have a picture of the people, that 14-H-1 site for
 (5) me, please?
 (6) Once again, folks were in a tough spot, because they didn't
 (7) want to clean archaeological sites and destroy them, and they
 (8) also didn't want people finding things and carting them away.
 (9) But they were in a tough spot, because they had to get the job
 (10) done and they had to get it done quickly. But the problem is
 (11) that we had scenes like this. In the oil spill environment,
 (12) the oil spill treatment team environment, there was sufficient
 (13) activity that a Coast Guard cutter was necessary to manage the
 (14) air traffic. The huge barges full of people descended upon an
 (15) area that before held just a very few, and as a consequence,
 (16) much of the confidentiality of these archaeological sites was
 (17) lost, and with the loss of the confidentiality of
 (18) archaeological sites comes the loss of the site.
 (19) Expert archaeologists will testify to you that they believe
 (20) it is now inevitable that these sites will continue to decrease
 (21) with their information and with the material that is on the
 (22) sites, and that the proper thing to do now is to excavate the
 (23) sites, preserve the information, and make sure that these sites
 (24) aren't lost.
 (25) Now, there are two things to remember about the

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- (1) archaeological site remediation claims that we bring. The
 (2) first is these sorts of claims, as you can imagine, are not
 (3) cheap. They are very labor intensive. They are being
 (4) conducted in the wilderness, have huge logistical support
 (5) problems, just keeping people comfortable and fed.
 (6) And the second is that once you take an archaeological site
 (7) in, you dig it up, you take the material out, it's gone. It's
 (8) lost. The information there, that site that the people once
 (9) held to themselves and held quietly to themselves is lost. And
 (10) for a site like the one that I've described to you that
 (11) Mr. Kompkoff experienced - and there are more - you can see
 (12) that there has been a loss in value to the people who own the
 (13) land.
 (14) The way that will be calculated is there is a value that
 (15) can be given to archaeological sites, and what the appraisers
 (16) call the highest and best use of a grave site or archaeological
 (17) site is that, archaeology. But when it's excavated, taken
 (18) away, it then drops to its next highest and best use. And the
 (19) difference in the value between the highest and best use as an
 (20) archaeological site and what's left is what will be claimed
 (21) before you, the jury.
 (22) Exxon will say archaeological sites are merely a
 (23) restriction on development. They limit what you can do with
 (24) the land and, therefore, they're not an asset but a liability.
 (25) We will say that these sites have value and that we are

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(1) entitled to the cost of remediating them, in view of the
 (2) spill.
 (3) To cover some of the distances between us, Members of the
 (4) Jury, Exxon won't want to view the oil spill as an ecosystem
 (5) event. Exxon will want to find the ribbons of oil where they
 (6) are. We will argue about how long they will remain, and they
 (7) will want to pick segments of land closely following the
 (8) shoreline, and they will want to compensate for that. And when
 (9) that compensation is calculated and reached, the evidence will
 (10) show that it wouldn't buy very much in Anchorage, Alaska.
 (11) That is a dispute between us. Exxon will claim that oil is
 (12) not a hazardous substance. There are people who will say that
 (13) and that will be, we anticipate, covered by a jury
 (14) instruction. Exxon will say that, well, it's not so clean
 (15) after all. I mean, fishing boats spill oil, there are natural
 (16) oil seeps from a local oil field, and they will say that the
 (17) spilling of 11 million gallons after a few years washed back
 (18) into the sea, out of sight, out of mind, is no cause for a
 (19) substantial damage claim.
 (20) Exxon will say that you are not to be swayed by emotions,
 (21) that this is a corporate claim, that it's a land claim, and to
 (22) a degree, we agree with that. But land, particularly in the
 (23) context of how we have come to know it in this case, is for the
 (24) people. And while perhaps it's wrong to have an emotional
 (25) reaction, it is still the case that land is a heritage, it is a

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(1) history, it is a way that we put food on the table. And if the
 (2) land can't be viewed as the people use it, and as it takes its
 (3) meaning for these Native corporations, then perhaps the land
 (4) isn't worth the struggle, after all.
 (5) But to close, there will be no dispute that a terrible
 (6) thing happened in Prince William Sound and its history has
 (7) changed largely forever, but we seek whatever justice that this
 (8) jury wishes to mete out. We have waited for five years to
 (9) speak to you, the first jury that will hear these claims, and
 (10) we are eager to begin.
 (11) Thank you.
 (12) THE COURT: Thank you Mr. Petumenos.
 (13) Counsel, which of you will take the next portion.
 (14) MR. FORTIER: Your Honor, I will.
 (15) THE COURT: Thank you, Mr. Fortier. We'll take a
 (16) break after the plaintiffs, all of the plaintiffs' openings are
 (17) over, and then we'll begin with Exxon's.
 (18) MR. FORTIER: Thank you.
 (19) Judge Shortell, Exxon counsel, co-counsel, Ladies and
 (20) Gentlemen of the Jury, my name is Sam Fortier. I represent
 (21) some Native corporations in this case, too. I'd like to
 (22) introduce you to a few of them now.
 (23) In the back of the room are some people from Chenega
 (24) corporation, which you've heard about recently. Besides
 (25) Chuck
 (26) Totemoff, I believe that Gayle Evanoff, the vice-president of

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(1) the corporation, is also present. Gail, are you here? Thank
 (2) you. Carol Ann Wilson is present, as well. She is a board
 (3) member. Carol Ann? She was here. Paul Kompkoff, Jr. is also
 (4) back there. Paul? And Phillip Totemoff, I believe is here,
 (5) but Phil must have not gotten back in the room.
 (6) We also have representatives of Port Graham corporation.
 (7) Port Graham corporation again is located down here in the
 Kenai
 (8) Peninsula area and they own land up in the Kenai fiords area.
 (9) From Port Graham is the chairman of the board, Lydia Robart.
 (10) Lydia? We also have a Mary Malchoff, who is the vice chairman
 (11) of the Port Graham corporation. Thank you, Mary. And Walter
 (12) Meganik, Junior, who is seated by Mary.
 (13) Now, you met Don Emmal from English Bay. One of the other
 (14) board members, Emily Swenning was supposed to be here
 today,
 (15) but she got fogged in, and you will be hearing from her later
 (16) in this case.
 (17) Ladies and gentlemen, this case is a simple case. It is a
 (18) lot of evidence, but is really a simple case. There are some
 (19) undisputed facts in this case. There was a vessel, the Exxon
 (20) Valdez, which on March 24th, 1989, shortly after midnight, hit
 (21) the rocks at Bligh Reef, and 11 million gallons of oil was
 (22) spilled out of the Exxon Valdez into Prince William Sound. And
 (23) came down Prince William Sound and touched - not only did the
 (24) oil contaminant the water, but it also contaminated lands in
 (25) the southwestern portion of Prince William Sound. Down here

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(1) where my hand is are lands owned by Chenega corporation.
 (2) Mr. Petumenos indicated that Chenega corporation owned
 (3) lands on LaTouche Island, on Knight Island. Chenega
 (4) corporation also owns a lot of Evans Island over here, Chenega
 (5) Island, which we will hear about in a moment, and the
 (6) mainland.
 (7) Now, besides contaminating those lands, the oil spill also
 (8) contaminated lands of Port Graham and English Bay
 corporation
 (9) over here on the Kenai fiords. It moved down the Kenai fiords
 (10) and it kept moving down the Kenai fiords, and this 11 million
 (11) gallons of oil also contaminated portions of the lower Kenai
 (12) Peninsula. And you will hear that it even got up into Cook
 (13) Inlet, which is on the upper part of Port Graham and English
 (14) Bay lands.
 (15) So, there are some undisputed facts in this case. One of
 (16) them is the oil contaminated the land. The other is the oil
 (17) contaminated the waters. What I would like to do now is -
 (18) Judge Shortell indicated lawyers are fond of saying that they
 (19) want to give a road map. I do want to give a road map to you.
 (20) Mr. Petumenos talked about the evidence you will hear. I want
 (21) to talk to you about some of the testimony and some of the
 (22) people who will be talking to you in this case.
 (23) Among the people that you're going to be introduced to
 (24) fairly early on during the first week is Mr. Chuck Totemoff of
 (25) Chenega corporation. Now, Chuck is the president of Chenega

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(1) corporation. Chuck is also a survivor of an earthquake.
 (2) Many of you indicated that you were up here in 1964. If
 (3) you were up here in 1964 and you lived in south central Alaska,
 (4) it is highly unlikely that you would ever forget the natural
 (5) disaster that struck that year on a Good Friday, on March 27th,
 (6) 1964. The earth - the earth quaked in Anchorage for three
 (7) minutes. It generated a huge tidal wave, what the scientists
 (8) call a tsunami, and that tidal wave raced through Prince
 (9) William Sound and it struck this little island right here
 (10) called Chenega.
 (11) Now, there was a community on Chenega island down here on
 (12) the southern part in 1964. And that community was known as
 (13) Chenega. It was, at the time, the oldest continually inhabited
 (14) village in Prince William Sound. It was there when Vitus
 (15) Bering came through. Mr. Totemoff will testify what his life
 (16) was like when he was nine months old and his village was
 (17) demolished by the tsunami and what happened to the Chenega
 (18) people. For 20 years the Chenega people lived scattered in
 (19) places like Tatitlek and Cordova and Anchorage, and then in
 (20) 1984, after the Claims Act had passed, the Chenega people
 (21) finally acquired title to their land and they were able to move
 (22) back to southwestern Prince William Sound. And they
 (23) consulted
 (24) with the government and they found a place that was safe for
 (25) them. They were told and that place was on Evans Island, a
 (26) little bay known as Crab Bay within a larger bay known as

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(1) Sawmill Bay.
 (2) Now, the Chenega corporation established, helped the
 (3) village establish at Crab Bay in 1984, and for five years the
 (4) community returned. Everybody came back from where they
 (5) were
 (6) living in Tatitlek and Cordova and places like that. There was
 (7) 69 Chenega shareholders and they began using the land again.
 (8) Now, we all know what happened on another Good Friday, 25
 (9) years after the earthquake. On March 24th, 1989, there was an
 (10) oil spill and the Chenega people experienced a man-made
 (11) disaster. Mr. Totemoff will tell you about what became known
 (12) as the battle of Sawmill Bay. It was chaos and confusion and
 (13) it was like a war zone down in that area of the world.
 (14) Now, we will also present evidence from several
 (15) consultants. One of those consultants is a fellow by the name
 (16) of Jack Morris. Mr. Morris has worked with the village
 (17) corporations of Chenega, Port Graham and English Bay for a
 (18) number of years, assisting with the complexities of land, land
 (19) management. Mr. Morris will explain to you what a village
 (20) corporation does, and the life that a village corporation plays
 (21) in the life of a community of a village.
 (22) After those discussions, we will also present scientists to
 (23) you. Among the scientists we're going to present to you is
 (24) Dr. Peterson. Dr. Peterson is a professor from the University
 (25) of North Carolina. He studied the oil spill for a number of
 (26) years. He received a contract from the United States in order

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(1) to determine what the impact to subsistence natural resources
 (2) was on account of the oil spill, and he'll testify and tell you
 (3) as to the interrelationship of those - of the subsistence
 (4) resources, the little clams and the mussels and the things that
 (5) live within - within the beach area, and how they relate to
 (6) the things above and the things below and how it's all tied
 (7) together into an ecological system.
 (8) In addition to Dr. Peterson, we will also present the
 (9) testimony of Dr. Kocan, the herring scientist. You will hear
 (10) from Mr. Bush, who studied the persistence of the oil.
 (11) You will also hear from a Dr. Bakus. Dr. Bakus is a
 (12) professor from the University of California, and his specialty
 (13) is in marine biology. Now, Dr. Bakus has studied whether or
 (14) not subsistence natural resources are returning. You see, from
 (15) a village corporation standpoint, the land is important, most
 (16) important because it is a - because it was able to sustain the
 (17) populations. People go out and they hunt and they fish on
 (18) corporate lands. Dr. Bakus looked at what happened in the
 (19) oil-polluted areas, and he will tell you that in the
 (20) oil-polluted areas, things aren't there that used to be there.
 (21) And those things that aren't there are part of the food chain,
 (22) and they're part of a complex sort of society that human beings
 (23) need in order to live, and that also make things important in
 (24) Prince William Sound. People live in Prince William Sound and
 (25) they've lived there for thousands of years because of that

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(1) which the land provided and that which the sea provided.
 (2) That's what gave them subsistence and sustenance. It also
 (3) gives value to their lands.
 (4) Finally we'll hear from Dr. Brdgen. Dr. Pam Brdgen is a
 (5) biochemist. She's got a doctorate in biochemistry and she's
 (6) got advanced degrees in risk analysis. One of the issues that
 (7) you're going to hear throughout this trial is Exxon insists
 (8) that everything is okay to eat now. The Native people say no,
 (9) it's not. We saw the 11 million gallons of oil come through
 (10) there. We saw what happened when the 11 million gallons of
 (11) oil
 (12) touched living things. We saw things suffocate. We saw seals
 (13) scratching their eyes out. We know that there's something
 (14) wrong out there. We don't see things that we used to before
 (15) the oil spill. And that which remains, we believe, is
 (16) polluted, too.
 (17) Dr. Pam Brdgen has studied risk analysis and she will tell
 (18) you that those concerns of the Native people are reasonable,
 (19) they're rational. They're a normal reaction to what - to the
 (20) risks that are presented.
 (21) Now, Mr. Petumenos mentioned - raised the concept of zero
 (22) tolerance policy. Again, the zero tolerance policy was
 (23) something that the State of Alaska set up in early 1989, began
 (24) with the herring fishery. What was it? The idea was: You
 (25) don't let contaminated fish or fish possibly tainted by oil
 (26) into the marketplace. Why not? Why wouldn't you do that?

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(1) Well, you recall that the fishing industry in this state is
 (2) the second or third biggest industry. If you let tainted
 (3) salmon into the marketplace, or salmon that are potentially
 (4) oiled, you're going to – you're going to kill the salmon
 (5) industry. You could also be threatening consumers that eat
 (6) that salmon.
 (7) Now, we will show you that Exxon supported that policy.
 (8) Exxon supported the zero tolerance policy. It made sense to
 (9) Exxon, too. Don't let tainted salmon into the market. Don't
 (10) let salmon that may have oil on them into the marketplace. At
 (11) the same time, Native people were being told it's okay to eat
 (12) those salmon. There was a double standard.
 (13) Then we're going to present to you some of the testimony of
 (14) the Native corporations. I want to touch on just three of
 (15) those Native corporations, the village corporations of Chenega
 (16) corporation, Port Graham corporation, and English Bay
 (17) corporation just for a minute. The value of Chenega's lands to
 (18) the people or to the corporation lies in their usefulness. It
 (19) lies in the fact that these lands weren't developed, and they
 (20) aren't developed now. They are maintained and used for
 (21) specific purposes. Among those purposes is to supply
 (22) subsistence and sustenance to the people of Chenega.
 (23) Recall that Chenega just returned home five years before
 (24) the oil spill. Gayle Evanoff will tell you what it was like
 (25) after the oil spill. Gayle was living in Nome at the time.

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(1) She moved away from Chenega for a few years, and when she
 heard
 (2) that the Exxon Valdez went on the rocks, she and her husband,
 (3) Larry, both returned home and for the next three years. Gayle
 (4) Evanoff waged her own private battle with Exxon, because you
 (5) see, Gayle believed in zero tolerance, too. Gayle had zero
 (6) tolerance for oil on her land or contaminating or presenting a
 (7) threat to her people.
 (8) We will also hear from Patrick Norman. Mr. Norman is the
 (9) president of Port Graham corporation. Mr. Norman also waged
 (10) his own battle against Exxon and also declared Port Graham's
 (11) zero tolerance policy. Port Graham's zero tolerance policy was
 (12) the same as Chenega's. We never had oil on our lands in this
 (13) quantity, we don't want it on our land, it presents a risk of
 (14) harm to our people who depend upon our land for their
 (15) sustenance.
 (16) Now, with regard to both Port Graham and Chenega, there was
 (17) something else that was happening during the years 1989 to
 (18) 1992 – or 1991, and that was in many of these areas, Exxon was
 (19) using chemical fertilizer. Now, the people of Chenega and Port
 (20) Graham were nervous about those chemical fertilizers. It was
 (21) another risk added to their land besides the oil that they
 (22) didn't understand, another violation of their own zero
 (23) tolerance policy, another violation of their right as
 (24) landowners to say who could do what on their property.
 (25) English Bay corporation also waged its war against the oil

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(1) and declared its zero tolerance policy to oil on its property.
 (2) You'll hear from Emily Swenning concerning English Bay's life.
 (3) You'll hear Ms. Swenning testify that in 1989, the people of
 (4) English Bay were sent over to an area known as – as Port
 (5) Chatham, which was heavily oiled, and they began working at
 (6) Port Chatham, and they worked there for six weeks before
 (7) anybody said to the people, to those people working there, did
 (8) you know that oil is hazardous? Did you know that you're
 (9) supposed to have – you're supposed to have coveralls on? Did
 (10) you know that you're supposed to have your hands covered
 before
 (11) you touch it? Well, they didn't know. And they'd been working
 (12) in it for six weeks.
 (13) I told you that English Bay had a zero tolerance policy.
 (14) When they heard of the dangers of oil, the fact that you're not
 (15) supposed to touch it, it became more ludicrous to them that you
 (16) could eat things that had eaten it.
 (17) Now, after the Native corporations testify, we're going to
 (18) hear from the appraisers. Mr. Petumenos has told you about
 (19) Dr. Mundy. It's Dr. Mundy's theory that this oil and the oil
 (20) spill itself, caused two harms to the land. One of those harms
 (21) was direct contamination, which is continuing. And another
 (22) harm was taint.
 (23) When the oil spill – when the oil spill occurred, there
 (24) was a taint throughout all of Prince William Sound because
 (25) nobody knew where that oil was going and there was a taint, as

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(1) the oil went like a super highway down the Kenai fiords and
 (2) over around the Kenai Peninsula, a taint, and that taint lasted
 (3) for up to three years. Dr. Mundy will call that taint stigma.
 (4) Now, Dr. Green is a professor at the University of Alaska
 (5) in Anchorage. He teaches real estate business law at the
 (6) University of Alaska in Anchorage. Dr. Green looked at the set
 (7) of events which occurred from 1989 to 1992. That was a period
 (8) of time that Exxon was conducting its beach treatment
 (9) operations on the lands of Chenega, Port Graham and English
 Bay
 (10) corporations.
 (11) What Dr. Green did was to look at what – what Exxon's own
 (12) figures were. Eleven thousand oil workers in 1989 coming into
 (13) Prince William Sound, hundreds of vessels, airplanes,
 (14) helicopters, hot water washing, heavy equipment, sterilizing
 (15) beaches. He looked at whether or not landowners such as Port
 (16) Graham, Chenega and English Bay were ever asked, or
 whether or
 (17) not Chenega corporation and English Bay were able to keep
 (18) people off their lands, were able to keep oil off their lands.
 (19) And Dr. Green will testify to what the rights of an owner of
 (20) real property are. The rights of exclusivity, the rights to
 (21) use that property for what you want to use it for. The right
 (22) to exclude others. The rights not to have chaos and confusion
 (23) happening on your property. And Dr. Green will tell you that
 (24) for the first three years, that the Native – the village
 (25) corporations of Port Graham, Chenega and English Bay
 suffered a

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(1) loss of use. That for the first year that loss of use was
 (2) complete. They didn't know where the oil was, they didn't know
 (3) what it was doing, and they - they had no idea of what was
 (4) going to happen. For the second and third years, he will tell
 (5) you that the loss of use was not as complete.
 (6) Then you're going to hear from Mr. - Mr. Homan,
 (7) Mr. Charles Homan. Mr. Homan was a banker in this state for
 (8) about 30 years. He worked at a number of banks in Anchorage.
 (9) Now, what Mr. Homan did - what Mr. Homan did in his past life
 (10) as a banker was to look at - look at applications for loans
 (11) and make decisions about whether or not the collateral offered
 (12) was good or not. One of the things Mr. Homan has done since
 (13) retiring from banks is to assist troubled borrowers. One of
 (14) the ways he assists troubled borrowers is to ask them: Is
 (15) there any contamination on your land? And if there is, then he
 (16) knows that banks aren't going to be interested in getting that
 (17) property back and generally you can do a workout loan.
 (18) Now, what Mr. Homan is going to testify is that it is his
 (19) opinion that with regard to those lands that are contaminated
 (20) by Exxon oil, the Chenega lands, Port Graham lands and
 (21) English
 (22) Bay lands that are contaminated by Exxon oil, that those lands
 (23) are not bankable. That if Chenega corporation had an
 (24) economic
 (25) development idea and it wanted to use as collateral lands that
 (26) were contaminated by Exxon oil, the bank would say no, and he
 (27) will show you environmental risk, risk questionnaires that

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(1) local banks use in order to make decisions on whether or not to
 (2) loan money.
 (3) Ladies and gentlemen, that is another damage that the
 (4) Native corporations will assert was caused on account of the
 (5) Exxon Valdez oil spill. It's another indicia of the damage
 (6) that was caused.
 (7) Then, ladies and gentlemen, we're going to turn to the
 (8) archaeological and cultural sites. It's what the people of the
 (9) village corporations call their special places. It's those
 (10) sites that they went to when they were very young with their
 (11) fathers and their grandfathers and their grandfathers before
 (12) them in order to do certain things. In the old days, Native
 (13) people knew where the best fishing was, and they knew where
 (14) the best hunting was and where to gather berries, and they left
 (15) things of where they'd been. Those special places also include
 (16) old village sites and there are legends associated with them.
 (17) As a for instance, the people of Chenega corporation, the
 (18) people of Chenega talk about an area of their lands that legend
 (19) holds that people first emerged from a glacier, from under a
 (20) glacier and established a beach head. The Chenega people
 (21) began
 (22) living on Prince William Sound.
 (23) There are areas up in the Kenai fiords that are special
 (24) places to the people of Port Graham and English Bay. There's
 (25) the last village up in the Kenai fiords before the people of
 (26) Port Graham and - who now live in Port Graham and English
 (27) Bay

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(1) were moved out by the Russians and established at Port - at
 (2) English Bay in the 1790s about the time that George
 (3) Washington
 (4) was being inaugurated as President for the first time.
 (5) Now, there's also a teaching among these, the people of
 (6) Chenega, Port Graham and English Bay, what are referred to as
 (7) the Aleutic people, and that is that you don't disturb those
 (8) old things. Those are their natural museums. Those are the
 (9) places that they can go and they don't need a lock and key.
 (10) Why not? Because their lock and key was confidentiality. It
 (11) was secrecy before the oil spill. They were special places.
 (12) Following the oil spill, Exxon set up a cultural resources
 (13) program, because they recognized that as a result of the oil
 (14) spill, these special places were threatened. And the places
 (15) were threatened, and what Exxon did was to go and start
 (16) picking
 (17) up things where Exxon felt there was true - there was truly a
 (18) threat, and in picking up those things, Exxon also curated
 (19) them.
 (20) Now, based upon field notes, movies, pictures that we have
 (21) obtained through Exxon, and shown to our archaeologists, it is
 (22) their opinion that many of the sites, the secret places of long
 (23) ago are threatened. They're threatened because 11,000 oil
 (24) spill workers were through the area and many of those workers
 (25) were able to identify where the sites were, and if they weren't
 (26) able to identify where the sites were, they soon learned about
 (27) them.

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(1) We will also present the eyewitness testimony of Rita
 (2) Miraglia, who was an oil spill - excuse me, was an oil spill
 (3) response archaeologist for Chugach Alaska corporation. And she
 (4) will testify to what she saw.
 (5) We will present the testimony of Rita - excuse me, Lora
 (6) Johnson. Dr. Johnson is a Chugach Alaska Corporation
 (7) shareholder, but she went to Brown University and obtained a
 (8) degree in clastics and studies in Greece and Turkey and
 (9) participated in site digs over there before the Exxon Valdez
 (10) oil spill. When it occurred, she returned home to Prince
 (11) William Sound. And she will testify as to her experience in
 (12) Prince William Sound.
 (13) One of the things that Lora Johnson noticed between Greek
 (14) archaeology and Chugach archaeology was that the Chugach
 (15) people
 (16) did not have a written language, so everything that is in a
 (17) site is all that will ever be written. That's the entire
 (18) book. Once that get disturbed, you lose the context.
 (19) We will also - we will provide a proposal to repair those
 (20) sites.
 (21) So, ladies and gentlemen, you can see that overall, it is a
 (22) simple case. There is a lot of evidence, but there are a
 (23) number of things that are uncontroverted. The oil spill, the
 (24) 11 million gallons, it polluted lands and waters and caused
 (25) damages, thank you.
 (26) MR STOLL: Ladies and Gentlemen of the Jury, I

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(1) represent the six municipalities that are bringing this
 (2) action. They have had to bring this action to recover the
 (3) damages that the oil spill caused these municipalities, and I'd
 (4) briefly like to go through with you some of the - some of
 (5) these areas.
 (6) First of all, - if I can get this thing to work - this is
 (7) a map of the affected areas. And the oil spill occurred up
 (8) here in Prince William Sound, the City of Cordova and town of
 (9) Cordova is located here. The oil spill spread all around this
 (10) area, down to Kodiak Island - this is Kodiak Island here - on
 (11) down along the Alaska peninsula. Covered this entire - or
 (12) areas in this entire area.
 (13) As I mentioned to you, Cordova, which is located right
 (14) about here, is one of the plaintiffs in this case, Margy
 (15) Johnson - Margy could you stand? - is the Mayor of Cordova,
 (16) and you'll hear testimony from her. I have some photographs
 (17) of
 (18) Cordova. As I mentioned to you, the oil spilled and then
 (19) spread to Kodiak.
 (20) I'm having a problem with this thing.
 (21) Here on Kodiak are the various communities. Port Lions
 (22) here, and Frank Carlson is a representative from Port Lions,
 (23) Ouzinkie, Zack Chichenoff - Zack would you stand up, please?
 (24) Larsen Bay - Charles, would you stand up? Charles
 (25) Christensen. And Old Harbor - and Jim Nesting, would you
 stand up, please, sir? And from Kodiak Island Borough, which

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(1) consists of the entire island of Kodiak is Jerome Selby, the
 (2) mayor of Kodiak. Thank you.
 (3) I'll show you - get all this equipment straightened out
 (4) here. Some of the pictures of some of these communities. This
 (5) is Port Lions. Another picture in Port Lions. Ouzinkie.
 (6) The significant thing, ladies and gentlemen, is that this
 (7) entire area from Prince William Sound on down through Kodiak
 (8) and onto the southwest Alaska peninsula was oiled, and that's
 (9) the way Alaskans saw it, that's the way the world saw it.
 (10) There's a reason for that. This was the largest oil spill
 (11) in North American history, 11 million gallons. Commercial
 (12) fishing was closed in Prince William Sound, commercial fishing
 (13) was closed in Kodiak, commercial fishing was closed in other
 (14) areas. These are some of the - normally, some of the most
 (15) productive fishing grounds in the world. The closure scared
 (16) the people because they wait all year for their fishing
 (17) season. This is what they wait for the entire rest of the
 (18) year. And you'll hear from these folks.
 (19) My clients are not politicians, they are ordinary people
 (20) working and living in these communities. They are the
 (21) representatives of and they're elected by these communities.
 (22) Fishing is their economy, their way of life. The sea and land
 (23) and the interaction between the sea and the land, this
 (24) connection is what makes these communities. It's a hard way of
 (25) life, but it's a vigorous way of life, and it's a vigorous

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(1) community that they live in.
 (2) The decisions of these communities are made, frequently
 (3) made and usually made in town hall meetings, the entire
 (4) community is involved. The communities have limited
 resources,
 (5) but they have to preserve those resources, and that's one of
 (6) the reasons why we are here today.
 (7) The evidence will be that in the fall of 1989, when the
 (8) winters came, Exxon left town and left these communities to
 (9) fend for themselves and left them with a number of unpaid
 (10) bills. I think it's important to discuss a little bit about
 (11) what a municipal community is. A municipality is a voluntary
 (12) association of people. People form municipalities - and these
 (13) are small towns, some of them are only a few hundred people,
 (14) but they form these communities to create and build facilities
 (15) for the community as a whole and to preserve and protect those
 (16) facilities. The municipality has a responsibility to its
 (17) citizens to have their assets used in a way that the community
 (18) decided they wanted to have those assets used, and used in a
 (19) way chosen by the community. If a community's assets are
 (20) damaged or taken, it's the responsibility of the municipality,
 (21) the responsibility of that municipality to its citizens to
 (22) recover for that loss against the person that caused that
 (23) loss.
 (24) Among the valuable assets of these communities in these
 (25) municipalities is the land that they own. Other assets are

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(1) municipal community projects. Money was chosen by these
 (2) communities to be spent on these projects. In March of 1989
 (3) these communities were getting ready for the fishing season to
 (4) begin. The municipalities bring these claims because although
 (5) they were severely impacted and you'll hear a lot of testimony
 (6) from these folks about that, Exxon left town, as I mentioned,
 (7) in the fall. At the end of this case, the judge will instruct
 (8) you as to the law, and I'm not going to go into that, but there
 (9) are some things that I need to give you a little context on.
 (10) By Alaska statute, oil is defined as a hazardous waste.
 (11) Municipalities can bring claims for damages to their land.
 (12) They can bring - they can seek recovery of costs and losses
 (13) associated with responding to oil spills. They can bring
 (14) claims for losses from projects or grants that are lost or
 (15) delayed as a result of an oil spill. These Alaskan laws are
 (16) designed for situations exactly as what happened in the Exxon
 (17) Valdez oil spill. They can bring claims for municipal revenues
 (18) that are lost as a result of the oil spill.
 (19) Now, the largest claims are damages to the land, and the
 (20) land damage claims are by those municipalities on Kodiak
 (21) Island. This is Kodiak Island Borough, and you'll see larger
 (22) maps as we progress through the trial of the parcels that are
 (23) owned by Kodiak Island Borough. You'll also see maps of the
 (24) land owned by each of the four individual municipalities, Port
 (25) Lions, Ouzinkie, Old Harbor and Larsen Bay.

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(1) Kodiak Island Borough owns tens of thousands of acres. The
 (2) other municipal villages own lesser amounts of land. After the
 (3) spill, land on Kodiak became unmarketable. You'll see and
 hear
 (4) testimony as to how property in Kodiak could not - there just
 (5) weren't any transactions for a period of time.
 (6) I think that it's - you're going to be called upon to use
 (7) your common sense. Would you rather have property with oil or
 (8) without oil? And most people would like to have it without
 (9) oil. Another factor is that a buyer, a potential buyer, does
 (10) not want uncertainty. Uncertainty creates a depreciation in
 (11) value. Land's value, and particularly in an area as pristine
 (12) as Kodiak and Prince William Sound, is affected by the future
 (13) prospects for that area. Is this property susceptible to other
 (14) oil spills, future oil spills? What will happen if there's
 (15) another oil spill? What is the productivity of that property
 (16) and the surrounding area? Are we going to have future fish
 (17) closures in the future from other spills? These economies
 (18) depend upon the environment and the fishing prospects for
 their
 (19) value.
 (20) Stigma, Mr. Fortier referred to and Mr. Petumenos, I
 (21) believe, referred to Dr. Mundy's study on stigma, and you'll
 (22) hear testimony as to the stigma or taint that was caused to the
 (23) entire area by the oiling. And in the popular view, this
 (24) entire area was oiled. And this was shown, of course, by the
 (25) closing of the fishing season, the commercial fishing season.

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(1) Such a drastic action, costing fishermen millions of dollars,
 (2) would not have happened if it wasn't a serious - if there
 (3) wasn't serious pollution involved.
 (4) You may recall and the evidence will be that substantial
 (5) sums were spent on an advertising program trying to get
 (6) tourists to come back to Alaska after the oil spill. Well,
 (7) people wouldn't spend money for an airplane ticket to come to
 (8) Alaska, why would they spend thousands of dollars or millions
 (9) or dollars more for land. It's the same idea of stigma.
 (10) The municipalities have had to hire appraisers to come and
 (11) present evidence to you as to quantification of these land
 (12) damages. And these appraisers have taken, I think you'll find
 (13) the evidence to be, a very conservative view. They have
 (14) estimated what the loss was on the lack of marketability and to
 (15) the value of this land for only a one-year period of time.
 (16) There can be no question that for one year, at least one year,
 (17) and actually years after that, the value of property in this
 (18) area went down substantially.
 (19) Notwithstanding the fact that there is evidence that oil
 (20) persists and the effect of oil persisting for many years
 (21) thereafter, these appraisers have taken this conservative
 (22) view.
 (23) Now, one of the things that happens when you lose a year,
 (24) is that you can never recapture time. Exxon, I think the
 (25) evidence will show, has a number of excuses, defenses they

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(1) claim for not paying any - any land damages.
 (2) First, their first excuse is there's no oiling or very
 (3) light oiling on Kodiak. But you will hear evidence and see
 (4) photographs and hear testimony that not only was oil - was
 (5) Kodiak oiled, but the peninsula, the Alaska peninsula past
 (6) Kodiak was oiled. And as you can see, to get to Kodiak, to get
 (7) past Kodiak, you got to go through Kodiak.
 (8) Excuse number two. Well, you weren't going to sell the
 (9) property and you didn't sell it, thus you have suffered no
 (10) loss. I think that common sense is, and the evidence will be,
 (11) that whether property is on the market or not, you can have a
 (12) loss in value. I think the evidence will be that Exxon is
 (13) trying to penalize these municipalities because these
 (14) communities are holding land for the future.
 (15) Excuse number three, you can't have a loss of value to land #
 (16) not actually touched by oil. They will say, well, if a piece
 (17) of property, if each foot of the piece of property wasn't
 (18) oiled, then that foot of property isn't damaged. This is more
 (19) or less like having a neighbor that has a very unsightly piece
 (20) of property next to yours, and I think we all know that that
 (21) may affect the property values where you are.
 (22) This entire region was oiled and that's the reason there
 (23) were fish closures, commercial fishing closures.
 (24) The fourth excuse. This is only a temporary taking. It's
 (25) not permanent. You were only oiled for a while, and it's

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(1) all - everything is going to go fine in the future. I think
 (2) this is more or less like saying, well, it shouldn't matter if
 (3) you use or take your property only for a period of time.
 (4) That's not the way the law works, and I think that you'll see
 (5) that the evidence is that these communities have been
 damaged
 (6) by this taking.
 (7) Another excuse that I think you'll hear, the damages are to
 (8) the environment or to the ecological system and not to the
 (9) land. Well, this is a lack of understanding of what Alaska is
 (10) all about and what these communities are about. Because the
 (11) land and the environment and the ecological system are all one
 (12) part of a total system. The land is just one component of that
 (13) system.
 (14) Finally, they're going to argue, I think the evidence will
 (15) be, that other areas of the country where there have been
 (16) spills have recovered, so therefore, nothing to worry about.
 (17) Ladies and gentlemen, I submit to you that there has never
 (18) been an oil spill like the Exxon Valdez oil spill. I'd also
 (19) submit to you that the evidence will be that there's no
 (20) environment as pristine as the Alaskan environment in Prince
 (21) William Sound and Kodiak Island that was affected in this way.
 (22) Now, the damages to the land range from tens of thousands
 (23) of dollars to the smaller municipal villages to nearly seven
 (24) million dollars to the tens of thousands of acres owned by
 (25) Kodiak Island Borough.

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(1) There are other municipal claims I'd like to just talk
 (2) about briefly. They're much smaller, but they're very real to
 (3) these communities. Alaska law allowed municipalities to
 (4) recover, in addition to land damages, costs of response,
 (5) dollars that they actually spent responding to the oil spill.
 (6) They can recover those from the person that caused the oil
 (7) spill. It's to cover a situation exactly like we have here.
 (8) Alaska law provides that a municipality can recover for the
 (9) costs of municipal projects or grants a lot of these
 (10) communities are able to do their capital improvements as a
 (11) result of having grants, that the municipalities can recover
 (12) the costs of municipal projects or grants that are either lost
 (13) or delayed as a result of responding to an oil spill.
 (14) And finally, Alaska law provides that municipalities can
 (15) recover lost municipal revenues that result from an oil spill.
 (16) I'd like to refer you briefly to Cordova. Cordova was very
 (17) near the center of the activity in Prince William Sound and it
 (18) became a staging area to a large degree for many of the
 (19) clean-up workers. Cordova was turned inside out by this oil
 (20) spill. Cordova depends totally upon the commercial fishing
 (21) industry for its livelihood. The town of Cordova has a very
 (22) limited staff. It is not a fat billion-dollar bureaucracy
 (23) waiting for an oil spill to happen so they can ship people out
 (24) and do cleanup. It doesn't operate that way in these
 (25) communities.

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(1) If you can remember the intense concern that there was in
 (2) Anchorage, hundreds of miles away from this spill, the evidence
 (3) will be that in Cordova and these smaller fishing village
 (4) municipalities, the concerns, the fear of what the future
 (5) lay - if there was a future - was overwhelming.
 (6) Because of its central location, Cordova became a center of
 (7) operations for the cleanup. Cordova incurred many expenses,
 (8) buying boom, buying equipment, boom meaning boom to
 contain the
 (9) oil spill. It incurred legal expenses, not litigation, not
 (10) fees for lawyers here in court, but other legal expenses
 (11) associated with responding to the spill.
 (12) When Exxon left Cordova in September, '89, it left Cordova
 (13) with a number of these bills, hundreds of thousands of dollars
 (14) of these bills. Now, in the overall context of the other
 (15) claims in this case, these may seem like small potatoes, but
 (16) these are very real dollars to the town of Cordova.
 (17) Cordova had a community center called the Bidarki Community
 (18) Center. When the clean-up workers came to Cordova, there
 was a
 (19) housing shortage in Cordova, so part of the costs, one of the
 (20) costs that was incurred by Cordova was losing their community
 (21) center. The community center, the basketball court in the
 (22) community center became a dormitory. Walls were built in
 (23) there, little rooms were built, and the Bidarki center was
 (24) turned over from a community center - for the community to
 (25) enjoy - to a bunk house. Now, Exxon paid the cost of building

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(1) the walls in the Bidarki center. Two or three dollars a night
 (2) was charged for if you wanted to a bunk - to bunk there. But
 (3) other than that, Cordova received nothing for the use of its
 (4) community center for the five months that it became a bunk
 (5) house, and it didn't receive anything for reconverting, tearing
 (6) the walls down of the bunk house, back into a community center
 (7) at the end of the summer.
 (8) Cordova seeks simply the depreciation on the building for
 (9) the five months that it was a bunk house. Pretty small matter,
 (10) you might say, in the overall context of the thing, but these
 (11) are real dollars to this community.
 (12) You'll hear testimony about projects delay. In the case of
 (13) Cordova, there was a computer system that was being updated.
 (14) As a result of the oil spill, the finance director spent all
 (15) his time dealing with bills on the oil spill and was not able
 (16) to do this computer upgrading.
 (17) In the fall, the enrollment of the school dropped down with
 (18) the prospects dropping in Cordova and in the town of Cordova
 (19) lost over a hundred thousand dollars in school revenues as a
 (20) result.
 (21) What we're asking for here is simply repayment to the
 (22) communities of the costs and damages that would not have
 (23) occurred but for the Exxon oil spill.
 (24) Now, within weeks, the villages in Kodiak were oiled and
 (25) they, like Cordova, are totally dependent upon fishing. And

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(1) they, like Cordova, responded valiantly to try to save their
 (2) spawning beds and their fisheries. They saw their way of life,
 (3) the closures of the fishing, commercial fishing in these
 (4) communities, they saw their way of life slipping by. They
 (5) dropped everything to respond to the oil spill. As a
 (6) consequence, projects that the community had decided to
 proceed
 (7) with were either lost or delayed.
 (8) And you'll hear testimony in the case of Port Lions. They
 (9) were building a new community center. They had lumber, they
 (10) had the equipment, they had the material. The oil spill came.
 (11) Everyone was forced to go and work on the oil spill, not forced
 (12) in the sense it was forced labor, but in the sense they had
 (13) their priorities right. They had to save their community. The
 (14) wood was left on the docks. The wood rotted in the wintertime
 (15) the following winter, and they lost the value of the hundred
 (16) thousand dollars of equipment and material that they had
 (17) purchased. That's a lost project within the meaning of the
 (18) Alaska statute.
 (19) Ouzinkie had \$75,000 it was building - it was spending on
 (20) building a fire hall. Nearly identical facts happened there.
 (21) The oil spill came - this was in the summer of 1989. The oil
 (22) spill came, the citizens of Ouzinkie responded, the fire hall
 (23) didn't get built, and they lost the value of that \$75,000.
 (24) Larsen Bay was building a new hydro project, a small little
 (25) hydro project. Before 1989, Larsen Bay was dependent upon

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- (1) diesel generators for its electric - for its electricity, and
 (2) it had a plan and had the funding together to build a hydro
 (3) project in 1989.
 (4) The oil spill came and Larsen Bay responded to that oil
 (5) spill valiantly. The hydro project got put on the back burner
 (6) for obvious reasons. All that Larsen Bay seeks is the cost of
 (7) having to expend on diesel fuel for another year before they
 (8) could get - get back onto production and build their hydro
 (9) project.
 (10) Now, what is the evidence that Exxon claims as excuses for
 (11) not paying these relatively modest sums? First of all, is to
 (12) prove it, you don't have good enough records.
 (13) Ladies and gentlemen, you're going to hear testimony from
 (14) the mayors and other people from these communities that are
 (15) going to explain to you what happened and you decide whether
 (16) or
 (17) not these claims are justified.
 (18) The second defense I think you'll hear from Exxon is it's
 (19) your job to clean up. Well, I don't think that it is the job
 (20) of the municipality to clean up Exxon's mess. That's not the
 (21) way our system works.
 (22) The final defense, as far as I can figure it out, is these
 (23) are small claims and we have bigger things to deal with. That
 (24) may be true, that they have bigger things to deal with, but to
 (25) these small communities, these are real dollars and cents that
 (26) were lost. And now is the time, after five years, for Exxon to

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- (1) focus on these problems, as well.
 (2) You're going to hear testimony, you're going to see
 (3) evidence of Exxon with all its resources, with its Army of
 (4) lawyers and its dramatic graphics and its high-priced
 (5) out-of-state experts here to testify, but I ask you to go
 (6) beyond these colorful graphics that you're going to see and
 (7) listen to the testimony of these mayors and others. The
 (8) mayors, Jerome Selby, Margy Johnson, Zack Chichenoff and
 (9) the
 (10) others still have to live with the consequences of Exxon's
 (11) spill.
 (12) I believe that the evidence will show that the land of the
 (13) municipalities lost value as a result of the spill, that there
 (14) were substantial expenses incurred by the municipalities as a
 (15) result of the spill, and that there were a number of lost or
 (16) delayed projects, all as a result of the spill, which the
 (17) municipalities are entitled to be repaid by Exxon under our
 (18) law.
 (19) Finally, I want to thank you for your attention and your
 (20) time. Our American system of justice is based upon the jury
 (21) system. And everyone is equal before a jury. The most - the
 (22) largest corporations in the world are equal before a jury.
 (23) With the jury system, the people speak.
 (24) Thank you very much for your attention and your time.
 (25) THE COURT: Thank you all, counsel. We'll take a
 (26) break. We'll come back in here at 12:30.

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- (1) (Jury out at 12:21 p.m.)
 (2) (Recess from 12:21 p.m. to 12:37 p.m.)
 (3) (Jury in at 12:37 p.m.)
 (4) THE COURT: Mr. Clough, your opening will take about
 (5) an hour and a half; is that right?
 (6) MR. CLOUGH: Your Honor, I'm going to try and keep it
 (7) shorter than that.
 (8) THE COURT: I tell you what, why don't you find a
 (9) place out there. If it's going to go more than, say, 1:30 or
 (10) 1:40, find a place to break that's an obvious place for you,
 (11) that will be comfortable with you, and I'll give you a break at
 (12) that time. All right?
 (13) MR. CLOUGH: Thank you, Your Honor.
 (14) May it please the Court, Your Honor, Ladies and Gentlemen
 (15) of the Jury and opposing counsel. My name is John Clough. I
 (16) am here today representing Exxon Corporation in this lawsuit.
 (17) I'd like to start my opening at a place where I agree with
 (18) Mr. Petumenos.
 (19) This is a case about lands. That is why we are going to be
 (20) here over the next six weeks. It's about lands owned by the
 (21) municipal corporations represented by Mr. Stoll. It's about
 (22) lands that are owned by the Native corporations owned (sic) by
 (23) Mr. Petumenos and Mr. Fortier. It's about lands which those
 (24) plaintiffs claim were badly damaged by the oil spill. And you
 (25) heard them describe their version of the events during their

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- (1) opening statement and it's about a case where they are
 (2) claiming, they are asking you to award scores of millions of
 (3) dollars for what they allege was the harm to those lands.
 (4) I'd also like to agree with Mr. Petumenos on another
 (5) point. The Exxon Valdez oil spill was a terrible accident that
 (6) should never have happened, and I am certain that every
 (7) person
 (8) in this courtroom, whether an Alaskan or from outside, shares
 (9) that belief. But fortunately, and let me emphasize
 (10) fortunately, this spill did not do lasting harm to the lands
 (11) owned by these plaintiffs.
 (12) Now Mr. Stoll has indicated that I will stand before you
 (13) and offer excuses. I offer none. Instead, I would like to
 (14) take this opportunity to tell you about the evidence and what
 (15) the facts will show as they are presented to you over the
 (16) course of the next six to eight weeks. Because that evidence
 (17) will show that the lands of Prince William Sound which were
 (18) touched by oil have today, largely, in fact entirely, recovered
 (19) from the spill, that today, those shorelines are clean. That
 (20) today, yes, there are traces of the spill out there and if you
 (21) knew what to look for, and if you know where to go to look for
 (22) it, and if you know just where to go on a beach where you'd
 (23) expect to find it and what type of rock to turn over, you might
 (24) find a trace. But those traces are all that's left, and the
 (25) evidence will show that those traces are not harming the lands,
 (26) not harming the environment.

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(1) Now, if I were sitting in your chairs, those statements
 (2) might be somewhat surprising to me. They are certainly quite
 (3) contradictory to the information just presented to you by the
 (4) three attorneys representing the plaintiff corporations. They
 (5) would clearly have you believe that these lands owned by their
 (6) clients were devastated by the Exxon Valdez oil spill. Ladies
 (7) and Gentlemen of the Jury, it just is not so.
 (8) In the course of this trial, you will see the evidence of
 (9) both the cleanup and the recovery of this spill with your own
 (10) eyes.
 (11) Now Mr. Petumenos made a number of remarks during his
 (12) opening that Exxon will be showing you clean shoreline
 (13) pictures and showing you a lot of pretty pictures. Well, we are going
 (14) to be showing you a lot of pictures in this case. We're going
 (15) to show you photographs. We're going to show you videotape.
 (16) Some of the photographs will be blown up, some will be on the
 (17) Barco screen. Every single photograph and every single
 (18) second
 (19) of videotape presented to you over the course of this trial,
 (20) and the course of this opening statement, will be of the
 (21) parcels and shorelines actually owned by these plaintiffs. And
 (22) why are we presenting you that information? So that you can
 (23) see with your own eyes how these lands were impacted
 (24) originally
 (25) with the spill and how they have recovered over time and their
 condition as of today, the time at which you are being asked to
 award damages.

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(1) Now, having made those remarks, let me start by showing you
 (2) a photo. I think I'm probably committed to do that at this
 (3) point. I'd like to start showing you a photo of a place called
 (4) Point Helen. And let me show you where Point Helen is and tell
 (5) you about it.
 (6) Let's just leave this up here for just a second, Pete.
 (7) This is a map of Prince William Sound, and the areas you
 (8) see in gray are the areas owned by the plaintiff corporations.
 (9) Everything you see in green is obviously land, but it's owned
 (10) by people who aren't here in this courtroom, and there's no
 (11) claim for any of those areas before you in this trial.
 (12) Now, the spill happened up here, about Bligh Reef. This is
 (13) Bligh Island right here, the tanker as they indicated during
 (14) their opening came down from Valdez. And the oil eventually,
 (15) after about three days, began - due to the storm - to wash
 (16) down in this direction. One of the areas it hit was Knight
 (17) Island, and you can see it, there are certain gray areas on
 (18) Knight Island. These are the specific parcels on Knight Island
 (19) owned by a plaintiff in the this case. In this particular
 (20) case, Chugach Alaska Corporation owns this parcel called
 Knight
 (21) Island north. Chenega corporation owns Knight Island south. I
 (22) don't know how well you can see it from there, but you can see
 (23) there's a tip right at Knight Island at the end there. That
 (24) tip has a name and it's called Point Helen, and that's the
 (25) place where I'd like to start telling you the story of what

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(1) actually happened with the Exxon Valdez oil spill and the
 (2) recovery of these shorelines over time.
 (3) Point Helen got absolutely blasted by the Exxon Valdez oil
 (4) spill. There is no nice way to put it. It was inundated with
 (5) crude oil.
 (6) Pete, let's show them what Point Helen looked like.
 (7) I'm not starting with a pretty picture, folks. Let's start
 (8) with what it actually looked like when it happened. This is a
 (9) closeup of Point Helen taken in 1989 after the spill.
 (10) Now, Point Helen got so much crude oil on it for two
 (11) reasons. One, remember it was at that long sweep of Knight
 (12) Island there. Well, the winds brought the oil the whole way
 (13) down from where the tanker had grounded and literally washed
 it
 (14) up against that shore, but at Point Helen, something else
 (15) happened which made the oil pileup even higher. The clean-up
 (16) folks ran a boom off the very end of Point Helen. They call it
 (17) a diversionary boom. If this is Point Helen here, they strung
 (18) it off the end like this and made a big catcher's mitt. And
 (19) the reason they did that about down where my knee is is
 Sawmill
 (20) Bay and a hatchery, where the local residents, including quite
 (21) a few individuals who are members of these plaintiff
 (22) commissions were very concerned about protecting that
 hatchery
 (23) and keeping the oil away with it - away from it. So they ran
 (24) a boom off that point at Point Helen and they kept the oil away
 (25) from the hatchery. But what they did is they piled it all up

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(1) on Point Helen. That's one of the reasons why you see that
 (2) Point Helen looks as ugly as it did at that time, and there's
 (3) no other word for it. It was ugly.
 (4) In fact, you're going to find, we've heard a lot of stuff
 (5) about subsurface oil out there. Well, there is a little
 (6) subsurface oil out there and according to the testimony
 (7) presented to you at this time, 55 percent of all the subsurface
 (8) out there anywhere in Prince William Sound is right here at
 (9) Point Helen, and it's because of the geography of the location,
 (10) all the oil was swept down there on the way out of the Sound.
 (11) And, too, because you ran that diversionary boom off the
 bottom
 (12) and literally intentionally piled the oil off there, and for a
 (13) darn good reason, to protect the hatchery at Sawmill Bay.
 (14) This is what Sawmill - excuse me, Point Helen looked like
 (15) back in 1989. Let's take a look at what it looks like now in
 (16) 1994. This is - this photograph is taken from precisely the
 (17) same spot on Point Helen. In fact, in this particular
 (18) instance, we're looking north back up the shoreline in the
 (19) direction of Valdez and eventually past that, Bligh Reef. This
 (20) large rock here you can see coated with oil. This is what it
 (21) looks like today. In fact, you can see back here this tree,
 (22) this log here. It's been moved a little bit by the storms over
 (23) time, but it's still there today.
 (24) This is Point Helen in 1994 as if you or I were to walk
 (25) that beach this afternoon.

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(1) Now, Pete, what I'd like to do now, is if we could, bring
 (2) the '94 photo a little closer to the jury so I can point some
 (3) things out about it.
 (4) Now, first thing I noticed when I looked at this photograph
 (5) is there are a lot of dark areas on the rocks. Well, first of
 (6) all, let me clear up any misimpression some of you might have.
 (7) There is no - no visible oil in this photograph. Dr. Page,
 (8) one of our experts who has been studying Prince William Sound
 (9) and the effects of this oil spill on it for the last five
 (10) years, participated with the project in which this photograph
 (11) was taken. He will literally take you on a walking tour of
 (12) Point Helen, through these photographs, through the
 videotapes,
 (13) and he will tell you there is no oil here. What you see is
 (14) mostly a bunch of wet rocks. This was taken on a rainy day and
 (15) the rocks are still in the process of drying out. This is just
 (16) water on the rocks. There is absolutely no visible oil.
 (17) Now, what else do you see about these rocks? You see that
 (18) they all have rounded edges. They're surrounded by small,
 very
 (19) smooth stones around them. The reason they're all so rounded
 (20) is the effect of weather, Mother Nature and winter storms in
 (21) Prince William Sound. Storms beat the living heck out of most
 (22) of the shorelines of Prince William Sound and you're seeing the
 (23) evidence of that with your own eyes. Even boulders this size
 (24) get moved around on occasion. These smaller cobble-type
 rocks
 (25) grind against them, get bumped up against them in a storm.

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(1) That's why so many of the rocks have rounded edges, why so
 many
 (2) of them are small down here.
 (3) You'll also see in this particular picture very little
 (4) evidence of what's called intertidal biota, or which my
 (5) daughter would call seaweed and beach critters, the kind of
 (6) stuff you find on a lot of beaches throughout Alaska. You
 (7) don't see that here, but the reason you don't see it is it
 (8) naturally doesn't occur in this particular location, because
 (9) this is such a high energy shoreline right around here that the
 (10) rocks literally grind up anything that would try and form a
 (11) bed, like a seaweed, or try to live in there.
 (12) If you look in the background, back here, you'll see some
 (13) green, some orange. We're going to look at those photos in
 (14) just a second here. This is a slightly more protected area,
 (15) just around the corner, 30, 40, yards away. And where that
 (16) area is protected, you're going to see that the marine life is
 (17) alive and well and flourishing.
 (18) Now, this is another picture of Point Helen. It's the same
 (19) beach, literally if we had taken the first picture pointing
 (20) north, we've now turned around and are facing south. This is
 (21) what's called the sea stack at Point Helen. It's at the very
 (22) end of the point. If you can look carefully, you may even see
 (23) this line out here in the water. That's what's left of the
 (24) diversionary boom. This was taken back in 1989 when they still
 (25) had the boom. They started pulling it back at this point, but

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(1) you can see how they literally ran the boom off the end of the
 (2) point. The idea was to intentionally catch the oil and trap it
 (3) there. Again, you can see generally just a thick, heavy
 (4) coating of oil across the entirety of the beach all the way
 (5) down into the intertidal area down here.
 (6) Pete, let's go to the next one.
 (7) This is that photograph from 1994 in that same location as
 (8) it looks today. Again, up in this area, you've got mostly
 (9) rounded stones. We call them boulders or - excuse me,
 cobbles
 (10) is, I guess, the technical term. Beyond and to the -
 (11) Pete, let's bring this one up closer. I want to be able to
 (12) show them the marine life.
 (13) MR. PETE CHRISTENSEN: '94 one?
 (14) MR. CLOUGH: Yes.
 (15) This is again a picture which Dr. Page will tell you and
 (16) explain to you. There is no visible oil. Anything you see in
 (17) there that looks dark or that looks like it might be a patch of
 (18) something is natural. Of course, any Alaskan who's walked the
 (19) beach on any of our shorelines knows there's all sorts of
 (20) things living out on the beaches which look like this.
 (21) For example, let's look at the sea stack. See all that
 (22) black area at the top of the sea stack? That's lichen. It's
 (23) alive, I hate to say. It's slimy stuff on the edge of the
 (24) rocks. Scrape it with your fingernail, it's a living
 (25) substance. It coats the shorelines throughout most of Alaska

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(1) from southeast up to Prince William Sound and around into the
 (2) gulf.
 (3) This browner, brownish-greenish area in here, that's called
 (4) fucus. Fucus is another fancy word for rockweed. It's a type
 (5) of seaweed. The fucus, when it gets to a more protected area,
 (6) literally starts growing onto the rock and forms essentially an
 (7) ecological bed, and all the bugs and little blennies and hermit
 (8) crabs live in. That's what they live in, the fucus.
 (9) The greenest area of all that you might see is the algae.
 (10) Again, as you walk the beach in Alaska you see that really thin
 (11) - again, it's sort of slimy green algae. It's easy to slip
 (12) on when you're walking on the rock, it's algae. Nothing to do
 (13) with crude oil. It's a naturally occurring ecological
 (14) phenomena, and it's throughout this area, that same area that
 (15) was so heavily coated with oil back in 1989.
 (16) You saw the photograph a second ago. This whole intertidal
 (17) area was deep in oil. It has recovered and Dr. Page and Dr.
 (18) Gilfillan and the other experts working with Exxon, who have
 (19) been studying oil spills for years, will tell you that this
 (20) shoreline is essentially in the same condition today, both from
 (21) an appearance standpoint and more importantly from an
 (22) ecological and environmental standpoint, as if the oil spill
 (23) had never occurred.
 (24) Are there places somewhere on this beach that you might
 (25) find a trace of oil that you might be able to dig down and find

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(1) a little bit of something? Yes, there are. We're not going to
 (2) deny that. But of critical importance is the fact that the
 (3) lands have, in fact, recovered. The intertidal life is back,
 (4) the shorelines are clean, and it's primarily due to the amazing
 (5) work of Mother Nature over the past four years taking these
 (6) beaches and working them through storm after storm and the
 (7) process of the regeneration of life.
 (8) Now, this is sort of the entirety of Point Helen as you
 (9) would see it today. This is an example of - as a matter of
 (10) fact, this is probably the example of the worst of the worst
 (11) oiled shorelines in 1989, for the reasons that I mentioned to
 (12) you earlier.
 (13) Looking at it from a distance, you can see this brownish
 (14) tinge all along the edge there. That is the intertidal life.
 (15) That is the fucus. The rockweed, the algae, the little
 (16) critters walking through it. That's alive. That's - well,
 (17) that's healthy and it's flourishing, and we will present the
 (18) evidence to you over the course of six weeks that this is not
 (19) an isolated example. This is instead representative of the
 (20) recovery of the lands in Prince William Sound and the outlying
 (21) areas.
 (22) Now, as the Judge has instructed you and has been mentioned
 (23) during earlier in the opening statements today, there is no
 (24) question as to liability in this case. Exxon has accepted
 (25) responsibility for this spill on the very first day, and your

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(1) role here as jurors is to determine the fair value of actual
 (2) damages proven at trial to these lands.
 (3) We believe in order for the plaintiffs to recover monetary
 (4) damages, really must do really one of two logical things.
 (5) First, the market value of properties like these went down;
 (6) their value dropped as if your house or my house dropped in
 (7) value. Or, second, if they can't show that, that the oil spill
 (8) interfered with some use they were making of the property.
 (9) Because remember, this is a case about lands, and damages to
 (10) lands involve either a drop in the market value or, if that
 (11) doesn't occur, an interference with use. Those are the
 (12) critical questions which you as jurors are going to be asked to
 (13) resolve at the end of the case. I would like to now, at this
 (14) point in my opening statement, tell you three critical facts
 (15) which I think will bear on that determination.
 (16) First, most of the oil - excuse me, most of the land owned
 (17) by these plaintiffs was never, never touched by oil from the
 (18) Exxon Valdez oil spill. Let me repeat that. The evidence will
 (19) show that most of the land owned by these plaintiffs was never
 (20) touched by oil. This is a - not only a critical fact, but a
 (21) great example of why you, as jurors, have to - just have to
 (22) really concentrate on, listen to the evidence.
 (23) Mr. Petumenos in his opening statement said you will hear
 (24) that 582,000 acres of our land were impaired, impaired by this
 (25) spill. He didn't say they were oiled, didn't say they were

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(1) touched. He didn't say they looked like Point Helen, heavy.
 (2) He said impaired.
 (3) What the evidence will show, because what the facts are, is
 (4) that only about 50,000 of those acres were actually touched by
 (5) the spill. Only 50,000. Less than ten percent of the total.
 (6) So the first fact that I'd like you to remember as you listen
 (7) to the evidence is that most of the shorelines owned by these
 (8) plaintiffs and most of the land - excuse me, owned by these
 (9) plaintiffs was never, ever touched by oil.
 (10) Second, equally important, some - some shorelines were
 (11) touched. They were oiled. We've all seen the pictures. We
 (12) know it's true. I've just shown you Point Helen. But of those
 (13) that were touched by oil, only a small percentage got nailed
 (14) like Point Helen. The technical term for that is heavy
 (15) oiling. That's what the Coast Guard and all the agencies used
 (16) when they developed their mapping systems to decide, you
 know,
 (17) what was hit and how hard things were hit. They had a system
 (18) they built up to try to keep track of all the oil out there.
 (19) Point Helen is the classic example of heavy oiling. Within
 (20) Prince William Sound only about 15, 16, 17 percent -
 depending
 (21) on whose numbers you go by - of the beaches were heavily
 (22) oiled. About 70 percent, by contrast, were only lightly or
 (23) very lightly oiled.
 (24) Third - now that's not a - let me make this clear, so I
 (25) don't confuse things myself. I'm not saying that 70 percent of

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(1) all the lands in Prince William Sound were lightly oiled.
 (2) Remember most of Prince William Sound shorelines never got
 (3) touched at all, but of that small percentage which was touched
 (4) by oil, most of them were only lightly oiled and the evidence
 (5) will show that this is true.
 (6) Third point, third critical factor I want you to keep in
 (7) mind as we go through these properties and what happened to
 (8) them. Those lands which were touched by oil are now clean
 and
 (9) have largely recovered from any effects of this oil spill.
 (10) Most importantly, that the oil spill did not permanently harm
 (11) those lands. And you will see the evidence of that with your
 (12) own eyes and hear it from the mouths of experts who have been
 (13) studying the Sound for five years and have walked mile after
 (14) mile of shoreline after shoreline.
 (15) I'd like to start by giving you a little bit more detail on
 (16) what I call the first key point, the fact that most of the
 (17) shorelines were never touched by oil. I think it's fair to say
 (18) there's a general misconception out there in the world that
 (19) Prince William Sound was oiled in its entirety and it was
 (20) basically sort of knee deep in oil or close to that, at least
 (21) like Point Helen, anywhere you went in the Sound. It just
 (22) isn't true. It's just not so, and the evidence will show that
 (23) it's not so.
 (24) All the parties, plaintiffs and defendants, agree that
 (25) somewhere between 80 to 85 percent of the shorelines in Prince

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- (1) William Sound were never, ever touched by oil. Let me give you
 (2) just a couple of examples here. I'm going to take my first
 (3) journey into the electronic universe here.
 (4) For example, let me show you these orange parcels here in
 (5) this area. These are all owned - and maybe you can read on
 (6) the screen up there - by Eyak corporation, one of the Native
 (7) corporation plaintiffs. Eyak Corporation has admitted for the
 (8) purposes of this trial that none of their lands were ever
 (9) oiled, none of them, not even one acre.
 (10) In fact, the evidence is going to show that there's no real
 (11) dispute that throughout this whole area down here, none of that
 (12) was ever touched by oil. Some other examples, this is the -
 (13) oh, I'm getting - this is the Patton parcel owned by Chugach
 (14) Alaska Corporation. It's going to show that that wasn't oiled,
 (15) and maybe the best example of all was Nellie Juan. Nellie Juan
 (16) parcel obviously was never oiled because it's landlocked. It
 (17) has no shoreline whatsoever. In fact, any particular point in
 (18) its boundary is miles from the shore. Nevertheless, plaintiffs
 (19) are asking you to award them substantial sums of money for
 (20) damages to that parcel even though it's entirely landlocked and
 (21) nowhere near shore.
 (22) In general, although the plaintiffs may quibble with our
 (23) mapping data versus their mapping data, there really isn't any
 (24) dispute about the fact that most of the shorelines in Prince
 (25) William Sound were never touched by oil. We're going to say

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- (1) our mapping data shows 85 percent was never touched.
 They're
 (2) going to say, no, you're wrong, it's only about 80 percent
 (3) wasn't touched. Why quibble? Key thing is most of the
 (4) shorelines in Prince William Sound were never touched by oil.
 (5) Now, beyond Prince William Sound the same story really
 (6) continues. You can see how the oil essentially traveled over
 (7) time here. The storm you heard about started to blow the oil
 (8) south through - or actually southwest through the Sound. On
 (9) about day four it reached the 40-mile level. Continued out of
 (10) the Sound about day seven. By day 19, it reached Kodiak, and
 (11) day 56, in fact, some remnants of it had gotten as far as 470
 (12) miles away, as shown in the graph. This oil was changing over
 (13) time.
 (14) What the evidence will show you is while it was back up in
 (15) Prince William Sound, like areas around Prince William Sound,
 (16) it looked and had the physical properties of what we all think
 (17) of as crude oil. I mean, it was, you know, it was thick. It
 (18) was, you know, it was oily. It was black and washing up on
 (19) everything. But that crude oil was doing something called
 (20) weathering, with every passing day it was out there in the
 (21) environment and every passing day it was being exposed to the
 (22) weather. Weathering process means a substantial portion of the
 (23) oil actually was evaporating away into the air and what was
 (24) left was essentially beginning to consolidate and congeal, and
 (25) that process continued the farther south the oil went. So by

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- (1) the time it was getting towards the Kenai area it was not some
 (2) giant oil slick out there, it was a blob of oil instead. It
 (3) was getting more congealed and concentrated in particular
 (4) areas, and in Kenai the statistics will show, depending whose
 (5) numbers you want to use, somewhere between 80 percent to 90
 (6) percent of the shorelines were never touched by oil.
 (7) Once we get to Kodiak, the oil by this time has been on the
 (8) environment for quite some time, and it really has changed a
 (9) lot. By this time, it's become - you're going to hear a lot
 (10) of talk about things called tar balls and mousse patties and
 (11) splatters and things like that, but essentially by the time it
 (12) hit the Kodiak shorelines it was not coating any shorelines to
 (13) the degree you saw Prince William Sound and Point Helen.
 (14) Instead there were blobs, sort of lump them all together.
 (15) Some of the people with more knowledge than I will explain
 (16) to you the difference between a tar ball and mousse patties,
 (17) but they'll look like blobs of oil, and these blobs were
 (18) scattered over the course of the shoreline. And, yes, some
 (19) shorelines in Kodiak were hit by the blobs of oil, but the
 (20) evidence will show between 70 to 85 percent, depending on
 whose
 (21) numbers you want the take, 70 to 85 percent of the shorelines
 (22) in Kodiak were never touched by any oil, not even the blobs.
 (23) The second key point I had mentioned I wanted to go through
 (24) with you is the fact that for those areas which were oiled,
 (25) most of them were oiled quite lightly. I'd like to try and

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- (1) give you some information on that.
 (2) I usually hate bar graphs and all that kind of stuff, but
 (3) I've got a couple of them in here where I really do think they
 (4) help explain what was going on. And if you look at 1989, what
 (5) this is is a compilation of essentially what the shorelines
 (6) were like in terms of the shoreline survey. What percentage -
 (7) or, excuse me, what number of miles were oiled in Prince
 (8) William Sound - excuse me, this is not just Prince William
 (9) Sound, this is all the areas. What number of miles were oiled,
 (10) and by color code, what degree of oiling.
 (11) So if you look at 1989, what you see here is that there's a
 (12) small percentage. That's this part right here. The blue,
 (13) there's a small percentage of the total shorelines that were
 (14) heavily oiled, little bit that were moderately oiled there,
 (15) then we start getting a larger percentage were lightly oiled,
 (16) and the bulk of it was very lightly oiled. And then, of
 (17) course, the overwhelming majority, no oil at all.
 (18) So you can see, even though for those portions that were
 (19) oiled, that's what's represented by the color code here, only a
 (20) small percentage were heavily oiled and even only a small
 (21) percentage were moderately oiled. Most of them were lightly or
 (22) very lightly oiled.
 (23) Now, we say things like lightly and very lightly oiled,
 (24) what does that mean?
 (25) Let's go ahead and put Shuyak up there.

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(1) This is a photograph taken on a piece of property owned by
 (2) one of Mr. Stoll's clients, Kodiak Island Borough. This is
 (3) Shuyak island. It's the single largest property for which
 (4) they're claiming damages in this case. What you see before
 you
 (5) is a man's boot, a pen to give some perspective and a dark spot
 (6) on the ground. On the beach, which represents where a blob of
 (7) oil came there and essentially soaked only that particular
 (8) number of rocks. I could probably count them if I got a little
 (9) closer. It looks like about 20 or 30 pebbles there.
 (10) Now, that blob, that stain, was enough under the standards
 (11) applied by the mapping folks, to qualify the beach as very
 (12) lightly oiled. Now I'm not going to try and tell you all the
 (13) beaches out there or all the shorelines out there only had one
 (14) little stain like that. That's not the truth.
 (15) We've seen Point Helen, you all know that, but I'm trying
 (16) to give you an idea, some perspective, when we do talk about
 (17) very lightly oiled, just how lightly we can be talking about.
 (18) By the way, the way that particular location like that would be
 (19) cleaned up, easy, take a trowel, scoop it up, put it in a bag
 (20) and it's gone. That's how you clean up the very lightly
 (21) oiled. The technical term the Coast Guard and those guys
 came
 (22) up with is Type A manual cleanup, which means literally you
 (23) have people walk the lengths of the shoreline looking for spots
 (24) like that. They've got shovels and trowels, they find a spot
 (25) like that, they find some seaweed that's got some oily debris

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(1) tied in it, anything else, anything on there that looks like it
 (2) might have to do with the spill, you get the shovel, you scoop
 (3) it up, put it in a bag and take it away. That's how - that's
 (4) called Type A manual cleanup. That's how these beaches that
 (5) were very lightly oiled were treated, Type A manual cleanup,
 (6) pretty thorough method.
 (7) Put up our bar chart again, please. So again, just to
 (8) reiterate the point here, for those shorelines that were oiled,
 (9) most of them were either lightly or very lightly oiled, and
 (10) those shorelines were subject to basically a manual type of
 (11) cleanup. Didn't have to do hot water washing, didn't have to
 (12) do the kind of steam pressure hoses, or any of that stuff.
 (13) That was used in some locations - and we're going to talk
 (14) about that in just a minute - not in most locations, you send
 (15) a crew of people out there that walked the beaches, walked the
 (16) shorelines and they'd pick it up.
 (17) Now, the third key point I wanted to discuss with you as
 (18) sort of a critical underlying fact to your determination was
 (19) recovery. Really that's what a lot of this is about. The
 (20) evidence will show you, ladies and gentlemen, that those lands
 (21) which were touched by this oil, whether they were heavily
 (22) impacted like Point Helen or only very lightly impacted by like
 (23) the great majority of the shorelines that were touched, the
 (24) shorelines and the lands have recovered. They simply have
 (25) recovered.

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(1) Now, during the jury selection process, as we talked to
 (2) each of you, quite a few of you expressed some understandable
 (3) skepticism on this point. Basically said, wait a second. I
 (4) know a lot of oil got spilled out there and I've seen a lot of
 (5) ugly pictures and you were honest to share your skepticism, but
 (6) you also gave us your commitment that you would listen to the
 (7) evidence and give us your decision on what the evidence
 (8) actually showed. And I will tell you now the evidence will
 (9) show you that these shorelines have recovered. They've
 (10) recovered for two reasons.
 (11) First, we've all heard a lot on the - about the clean-up
 (12) program here, the cleanup and all the workmen out there in
 1989
 (13) and subsequent years. Well, that is part of the reason because
 (14) the cleanup got out there and identified where the oil was and
 (15) cleaned up the bulk oil off the beaches the best it could under
 (16) the circumstances.
 (17) Let me just say a word or two about the cleanup, and even
 (18) before I do that, maybe this is my opportunity. I'd like to do
 (19) a personal introduction here. Mr. Harrison, ladies and
 (20) gentlemen, of the jury, I'd like to introduce you to Otto
 (21) Harrison of Exxon. Mr. Harrison, it's been my privilege to
 (22) work with him for the past five years. He lived with us up
 (23) here in Alaska for most of '89 and '92 he is the man that
 (24) managed Exxon's entire spill response effort starting about ten
 (25) days or so after the spill up through 1992 when, according to

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(1) the United States Coast Guard and the State of Alaska, no
 (2) further cleanup was necessary and the program was
 terminated.
 (3) Now, I mention the Coast Guard because it was actually not
 (4) an Exxon cleanup going on out there. The Exxon will show you
 (5) that the entire cleanup, whether it was the Type A walking down
 (6) the beach picking it up manly, or the hot water washing that
 (7) Mr. Patumenos showed you the black and white photos of a
 moment
 (8) ago. The entire cleanup was conducted under the direction of
 (9) the federal on-scene coordinator. That's the FOSC you see in
 (10) the middle there. It's the Coast Guard's responsibility to
 (11) direct this cleanup, and the Coast Guard didn't do the job on
 (12) its own either, it had the advice and consent and support of
 (13) every state and federal environmental agency that's out there.
 (14) I mean, let's go through the federals: Department of Interior,
 (15) Environmental Protection Agency, the National Marine Fisheries
 (16) Commission, NOAA, United States Forest Service, Fish and
 (17) Wildlife. The State was there in course. The Department of
 (18) Environmental Conservation, Division of Emergency Services,
 (19) Fish & Game, Natural Resources, the State Historical
 (20) Preservation Office, which was out there just to make sure that
 (21) archaeological sites were safe and not harmed, that's why they
 (22) were out there. It also took in a ton of comments, the helpful
 (23) advice from members of the fishing community, Native
 (24) corporations, environmental groups and the municipal
 (25) communities, including the communities that are actually

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- (1) plaintiffs in this courts - in this courtroom. The evidence
 (2) will show that this cleanup, and every stage of it was
 (3) conducted under the direction of the Coast Guard with the
 (4) advice of all these agencies. Everybody affected was trying to
 (5) make the best decisions they could under the circumstances and
 (6) do the best job they could under the circumstances, and
 despite
 (7) the criticisms we've heard about some things, for example, the
 (8) hot water washing in the opening statement here, it was also
 (9) done with the input and consultation of the plaintiffs that are
 (10) here before you in this courtroom, because it was an
 (11) organizational structure set up to solicit information from
 (12) every landowner out there in Prince William Sound, and their
 (13) input was part of the process as well.
 (14) In 1992, that whole process came to an end, and the reason
 (15) was because the federal on scene coordinator and the
 (16) Commissioner of the Department of Environmental
 Conservation
 (17) for the State of Alaska jointly determined that no further
 (18) cleanup work was necessary. They had gotten the job done,
 the
 (19) Sound was well on its way to recovery.
 (20) But let me tell you something, the real hero of the
 (21) recovery story is not Exxon. It's not the Coast Guard. It's
 (22) not all those agencies. The real hero of the recovery story is
 (23) Mother Nature and the rugged Alaskan environment because,
 (24) Ladies and Gentlemen of the Jury, that's what has gotten the
 (25) job done.

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- (1) During the voir dire process some of you indicated you'd
 (2) actually been down to Prince William Sound, some of the other
 (3) areas, many of you indicated that you had not. You will hear a
 (4) lot of testimony and evidence in this trial as to just what
 (5) that rugged environment is like. How rugged the shorelines
 (6) are. How severe the weather conditions are, especially during
 (7) the winter, during the time of the winter storms.
 (8) One of the things that you're going to hear about is the
 (9) flushing action, if I may use that term, in Prince William
 (10) Sound. You may be aware we've got something called the
 Alaska
 (11) current down here. Well, the Alaska current, as it runs by the
 (12) coastline, basically runs in like this into Prince William
 (13) Sound. It goes through - got the name of it someplace -
 (14) Hinchinbrook entrance between Montague and Hinchinbrook
 island,
 (15) pours through there, very heavy current. And once it's in
 (16) there. It basically works in a giant - get this going here -
 (17) counterclockwise circle, and over the course of every three
 (18) weeks it completely flushes out all of the waters of Prince
 (19) William Sound. All those billions and billions and billions
 (20) and billions of gallons of water in Prince William Sound are
 (21) totally replaced and regenerated by nature every three weeks,
 (22) and that goes on in the three-week cycle, 52 weeks a year, year
 (23) after year after year. So the first part of the recovery story
 (24) is Mother Nature's just natural flushing of the Sound.
 (25) The second part is what Mother Nature does to those

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- (1) shorelines. Now, I have some video footage here I'd like to
 (2) show you.
 (3) Don, if you could get the lights for this.
 (4) We're going to start at Point Helen here, which I picked
 (5) this one because you've got the picture up there and we saw it
 (6) earlier. I want you to especially pay attention to the various
 (7) rounded rocks you're going to see here.
 (8) (Videotape played.)
 (9) This is the same sea stack we saw earlier. Now again, we
 (10) see all the boulder, the cobble-type rocks, and they're so
 (11) smooth because through those storms they just get pounded
 and
 (12) ground against each other. And if you look at the logs, you're
 (13) going to see how many of them these storms have thrown up on
 (14) the high part of the beach, and they're all rounded along the
 (15) end of it. There's one that looks like it got timbered along
 (16) the way. They're rounded and timbered up because literally
 (17) battering rams, and in a moment we're going to see how the
 (18) storms throw the logs along the beaches and throw the actual
 (19) rocks of the beaches around. There's incredible grinding and
 (20) bumping and beating action, and that action naturally takes
 (21) these beaches, and literally if you were going to scour them
 (22) like this, pounds the rocks, flushes the water through them,
 (23) and it's the most effective cleaning process in the world and
 (24) it's all due to Mother Nature.
 (25) (Videotape concluded).

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- (1) If we could have the next video here.
 (2) (Videotape played.)
 (3) What you're going to see here - it's hard, by the way, to
 (4) take video footage in Prince William Sound in the winter
 (5) because the storms are bad. This is time lapsed photography
 in
 (6) Prince William Sound's Sleepy Bay. Some of the examples of
 the
 (7) more typical winter storms - watch the beach carefully - the
 (8) actual beach moves around, not just the rocks but some point
 (9) you'll see it's more rounded, some points less rounded. The
 (10) actual beach is being moved by these winter storms, and when
 (11) you see this, you can understand the job that Mother Nature
 has
 (12) been doing cleaning up the shorelines at Prince William Sound
 (13) and the outlying areas.
 (14) (Videotape concluded).
 (15) Now, plaintiffs would have you not believe -
 (16) Let me have the lights back up, please, and Joel if you
 (17) could darken the screen for a second; got a lot of people to
 (18) keep track of.
 (19) The plaintiffs would essentially have you not believe what
 (20) you saw with your own eyes, and they mentioned we're going to
 (21) show you some storm footage and pretty beach pictures.
 They're
 (22) essentially asking you not to believe that, and they're trying
 (23) to ask you to believe that these lands were devastated, and
 (24) they're saying ignore what you see on the surface, that there's
 (25) more oil and it's all lurking underground.

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(1) Well, ladies and gentlemen, we think that the evidence is
 (2) going to show that this just is not so. There are some places
 (3) in Prince William Sound where, if you know the type of location
 (4) to go to and just where to go, again it's going to be a
 (5) function of nature. Some little cove is going to be more
 (6) protected than others. It would have been heavily impacted in
 (7) the first place, and Mother Nature hasn't finished its beating
 (8) action yet and, yes, in those places, if you try and select the
 (9) places where you expect to find the oil, you'll find some
 (10) subsurface oil, but there's not much out there and it's not
 (11) doing any harm to the environment.
 (12) They showed you some video of that test on Sleepy Bay, did
 (13) we show that video?
 (14) MR. PETUMENOS: The machine wasn't working too well.
 (15) MR. CLOUGH: Did that actually get up there or not?
 (16) MR. PETUMENOS: It did not.
 (17) MR. CLOUGH: They will show you some video.
 (18) Everybody's working real hard with the equipment here. They
 (19) will show you video of a test on Sleepy Bay where they tried to
 (20) get some oil to come out of the ground, when you see that
 (21) video, you're going to see it took a heck of a lot of effort to
 (22) do it. They literally had to put high pressure hoses into the
 (23) beach that had to turn it up a hundred pounds per square inch
 (24) and squirt a toxic chemical down into the shoreline. You know
 (25) what brown gook came out. Nobody really knows what that brown

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(1) gook is. When you see that video you would know, in your own
 (2) mind, that no reasonable person would ever try to do this on
 (3) shorelines to get out whatever little bit might be left in
 (4) there, it just doesn't make sense. And, of course, that's the
 (5) conclusion reached by the federal and state environmental
 (6) agencies who were monitoring the cleanup and monitoring the
 (7) recovery, because they terminated the cleanup program in 1992
 (8) and made a conclusion that no further cleanup was necessary
 (9) for the environment.
 (10) Now, plaintiffs made it very clear in their presentation
 (11) that they believe that these shorelines were essentially
 (12) devastated and are suffering - if not permanent then very,
 (13) very long-term - impacts to the spill. Now, that may have
 (14) been surprising to you, but it wasn't surprising to those
 (15) scientists who have made a lifetime of their academic careers
 (16) in studying oil spills throughout the world and how, in fact,
 (17) nature has recovered over time.
 (18) We're going to present a whole slough of scientists to
 (19) you. They're all going to have great credentials they're all
 (20) going to be providing you, I hope, very helpful testimony. I'm
 (21) not going to run through each one of their names for you now
 (22) and give you a test later, just doesn't make sense that I
 (23) would, though, I ask you to remember one guy's particular
 (24) name. He's going to be up there for us for a while. His name
 (25) is Dr. David Page and Dr. David Page has been studying oil

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(1) spills throughout the world; in fact, 15 different spills
 (2) throughout the world over the course of the past 20 years.
 (3) This has been his academic field of choice. He studied oil
 (4) spills doing work for the United Nations, studied oil spills
 (5) doing work for the United States Congress, and he studied
 (6) Prince William Sound's spill at the request of Exxon.
 (7) Dr. Page has made Prince William Sound his academic
 (8) laboratory for the past five years. Every summer he goes out
 (9) there. Every summer he goes in a little boat from shoreline to
 (10) shoreline to shoreline to shoreline. He spends, over the
 (11) course of the last five summers, well over one hundred days out
 (12) there in Prince William Sound, in good weather and in bad, and
 (13) his only mission in life has been to determine how much oil was
 (14) out there, how much oil is left, and how are the beaches
 (15) recovering.
 (16) Now, Dr. Page is going to essentially take you on a tour of
 (17) his lab, which is Prince William Sound, and he's going to show
 (18) you just how well these shorelines have recovered. He's also
 (19) going to show you how the plaintiffs' experts went about their
 (20) analysis of the Sound.
 (21) Now, Mr. Bush, Jim Bush, is going to get up in front of
 (22) you. He's a geologist and a fine person and he's going to tell
 (23) you about a couple dozen sites throughout these areas that we
 (24) went to where he found oil today in 1994. But what Dr. Page
 (25) will do is give you context from Mr. Bush's testimony because,

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(1) as I said to you at the beginning of this opening, there are
 (2) still out there some traces of this oil spill, a very few on
 (3) the surface, some more in some locations beneath, and if you
 (4) knew what to look for and just where to go to look for it, you
 (5) will find it, and that's just what the evidence will show that
 (6) Mr. Bush did. He knew what to look for and he knew where to
 (7) go
 (8) to look for it, and so he went to those locations where he or
 (9) any other scientist studying the spill would have expected to
 (10) find the oil. And he found traces. He's going to show you
 (11) close-up pictures of those traces. A good example might be
 (12) that rock we saw the video of, pick it up, turn it over,
 (13) obviously that particular rock must have been in a pretty
 (14) protected location because we've seen how nature turns these
 (15) things over and over and over again for most of the shorelines,
 (16) so he'll take you and show you close-up pictures of some of the
 (17) locations. What Dr. Page will do is show you not the closeup
 (18) of the individual rock, he'll show you the entire site from
 (19) which that sample was taken and he will show you the entire
 (20) shoreline along that area.
 (21) I'd like to show you a little bit of what Dr. Page will
 (22) tell you about those areas right now.
 (23) Pete could we have the next two blowups here?
 (24) And, Your Honor, looking at how this is structured,
 (25) probably at the conclusion of this segment would be a good
 time
 (25) for us to take our break.

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(1) THE COURT: Okay.
 (2) MR. CLOUGH: The first one we have to show you here is
 (3) called Eshamy Bay. This is on the Chenega Corporation land,
 (4) the clients represented by Mr. Fortier here. We have this
 (5) picture before you because this is one of the sites where
 (6) Mr. Bush went to, to try and find traces of oil. And, in fact,
 (7) he did find some traces of oil when he went out there.
 (8) According to my notes here, in fact, I should say, Dr. Page
 (9) will tell you that when Mr. Bush went out there he found a few
 (10) isolated tar patches of oil right along here, at the top of
 (11) this beach here, right along in that area below, below the
 (12) rocks, above the tide line above where most of the weather
 (13) impact would be. But what this photograph shows you –
 (14) And, Pete, why don't we bring it closer now.
 (15) What this photograph shows you is not the particular little
 (16) tar patch. It shows you the entire area. This is a beautiful
 (17) area. There is a lagoon back behind it which is active sport
 (18) fishing, recreational camping going on now. This, there is –
 (19) everything you see in this picture, all the dark stuff, no
 (20) visible oil. None. The dark stuff is the good stuff. This is
 (21) the stuff that is alive and well. This is the fucus, this is
 (22) the seaweed, this is the algae, and this is the lichen. This
 (23) is the stuff that has all the little stingy flies and all the
 (24) blennies and stuff, my kids go to the beach they like to hunt
 (25) them in the tide pools. This is a healthy and flourishing

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(1) marine environment.
 (2) Yes, there are traces you'll find if you go look and know
 (3) what to look for and just where to look you'll find traces of
 (4) the oil spill here. This shoreline was moderately to heavily
 (5) oiled back in 1989 but, ladies and gentlemen, it's not that way
 (6) anymore and those traces that Mr. Bush will show you are not
 (7) representative of this stretch of shoreline and they are
 (8) certainly not representative of the 3,000 miles of shoreline
 (9) out there in all of Prince William Sound.
 (10) Why don't we bring the next one up here? Leave it back
 (11) there for just a second to give some perspective.
 (12) This is one I particularly wanted to show you. This is on
 (13) north Chenega, this is another site, north Chenega Island.
 (14) This is another site Mr. Bush went to where, in fact, he was
 (15) able to locate some traces of oil and a little bit of
 (16) subsurface oil. This was a heavily oiled beach in 1989. The
 (17) place was one of the prettiest places in all of Prince William
 (18) Sound before the oil spill. Fortunately, for all of us, the
 (19) place is one of the prettiest places in Prince William Sound
 (20) today, after the oil spill. You can see that with your very
 (21) own eyes.
 (22) Let's bring this one closer now so I can show them some of
 (23) the marine life stuff in here.
 (24) Heard a lot of stuff about hot water washing. This beach
 (25) was approved for hot water washing by the U.S. Coast Guard.

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(1) Does it look sterile? Does it look like a sterilized beach?
 (2) You can see the green of the algae all the way around the
 (3) edge. This beach had heavy clean-up operations conducted on
 (4) it. You can see the green of the algae. You can see the black
 (5) of the lichen. You can see the rockweed. You can see this
 (6) dark patch. Dr. Page will tell you that's a mussel bed
 (7) underneath the ground, mussels, alive and well. There's
 (8) mussels patches – Dr. Page will show you all these areas
 (9) here. Mr. Fortier's clients are asking for six and a quarter
 (10) million dollars in damages to this piece of property. I don't
 (11) want to misrepresent, not just to the spit of the shoreline you
 (12) see, but to the entire parcel, which is a part of the
 (13) shoreline, this is what it looks like today. This is the
 (14) condition of it today. This is a healthy and flourishing
 (15) marine environment. It has dense rockweed. It has dense
 (16) seaweed. It's got this – if you get an opportunity perhaps
 (17) later in the jury room to get really close to this, there's an
 (18) entire bed of kelp down here in the pocket lagoon. These types
 (19) of lagoons generally got nailed worse of all by the oil spill
 (20) because oil gets in there. It's harder for it to get flushed
 (21) out, but again with the cleanup and especially Mother Nature
 (22) over time, recovery does happen and, ladies and gentlemen,
 (23) you
 (24) will see the evidence of that recovery in this trial with your
 (25) own very eyes.
 (26) Thanks, Pete.

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(1) Now, I said I'd try and finish by 1:30, but it doesn't look
 (2) like that's going to happen, but I did want to make one more
 (3) point before we moved on today.
 (4) I've just shown you – I don't know, a total of what seven
 (5) of eight blowup photographs over the course of the first part
 (6) of the opening here. Those photographs are not representative
 (7) of the shorelines of Prince William Sound. Not because they
 (8) show roughery. That is representative. But because most of
 (9) the shorelines in Prince William Sound don't look like this.
 (10) They don't have these type of shorelines, and here you actually
 (11) have a beach that you could like pull a little boat up to.
 (12) Most of the shorelines in Prince William Sound are rocks
 (13) and Kenai are rocks that go down to the sea like this, and get
 (14) just pounded by the waves. You couldn't even pull a boat up to
 (15) them. 70 percent of all the shorelines in Prince William Sound
 (16) are basically a rock face going down to the beach.
 (17) And I'd like to close today by showing you what most of the
 (18) shorelines in Prince William Sound and Kenai look like today
 (19) after the spill. And, again, you'll see for yourself one, lots
 (20) of evidence that the environment's doing just fine; and, two,
 (21) you can see why, because you can see, given the nature of
 (22) these
 (23) shorelines, it's just wave after wave after wave pounding into
 (24) them, day after day, week after week, month after month and
 (25) year after year.
 (26) If we could have the video, please?

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- (1) (Videotape played.)
 (2) This is starting up in Knight Island.
 (3) Why don't you freeze that for just a second, Joel, if you
 (4) could?
 (5) Again, just so that there's no confusion, this whole area
 (6) down here, that's not oil or anything else, that's rockweed,
 (7) that's seaweed, that's the good stuff. That's - I think the
 (8) scientist will call it the intertidal biota, that's marine life
 (9) alive and well. What happens it flourishes. The line below
 (10) the mean high tide line and above that have pretty much just
 (11) rock, that's the natural process. That's what the shorelines
 (12) look like throughout Prince William Sound. Not little beach
 (13) places you could pull a boat up and take a picnic, but harsh
 (14) rugged rock faces going down to the ocean.
 (15) Go ahead.
 (16) This is also on Knight Island in 1994. Remember, this -
 (17) the Coast Guard, just like they came up with sort of magic buzz
 (18) words for each of the degrees of oiling. They also had code
 (19) words for each of the various types of shoreline faces. This
 (20) one is called rock. That's the word for the shoreline
 (21) classification. All these are called rock face shorelines. 70
 (22) percent of the shorelines in Prince William Sound are rock
 (23) faced like these you see here.
 (24) This is LaTouche. This is down at the Kenai Peninsula now,
 (25) and again, freeze it just for a second. We heard all of this

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- (1) stuff in the plaintiffs' opening statement about life, about
 (2) the oxygen, the oil being on top of the beaches and oxygen
 (3) extinguishing life, but when we go around the shorelines we're
 (4) going to see throughout Prince William Sound the shorelines
 (5) have flourishing tidal life, flourishing intertidal
 (6) communities. I know it sounds awkward phrasing it that way,
 (7) but Mother Nature is regenerating itself and the evidence will
 (8) show that the shorelines are alive and well.
 (9) Okay, continue.
 (10) This is again down on Kenai, now. All of these are
 (11) parcels, by the way, owned by the plaintiffs in which they are
 (12) claiming millions of dollars in damages.
 (13) (Videotape concluded).
 (14) So I guess I'd like to wrap up for today by concluding on
 (15) the point that the evidence will show you that first most of
 (16) the shorelines in Prince William Sound were never - and the
 (17) outlying areas were never touched by any oil at all. Second,
 (18) those that were, most of them were only lightly oiled. And,
 (19) third, the oiled shorelines have recovered and today are alive
 (20) and doing well.
 (21) Tomorrow morning I'd like to talk to you about the
 (22) plaintiffs' claim for damages to these properties and what we
 (23) feel is the best way to go about evaluating those claims.
 (24) Thank you for your attention and look forward to seeing you
 (25) tomorrow.

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- (1) THE COURT: Counsel, how much further do you have to
 (2) go in your opening.
 (3) MR. CLOUGH: 15 to 20 minutes, perhaps.
 (4) THE COURT: Actually, I'd like to finish the openings
 (5) today. What I had said when we came in here, I'd give you a
 (6) break and I'd let you finish up, unless you want to keep going
 (7) and finish up now.
 (8) MR. CLOUGH: Take a short break now, perhaps I've put
 (9) these folks -
 (10) THE COURT: That's great, we'll take about a five or
 (11) ten minute break, no more, counsel. I want everybody in the
 (12) courtroom so we're ready to go in ten minutes.
 (13) (Jury out at 1:30 p.m.)
 (14) (Recess from 1:30 p.m. to 1:38 p.m.)
 (15) (Jury in at 1:38 p.m.)
 (16) THE COURT: We don't stand on ceremony, there, when
 (17) you come in, you can just sit down. The jury is here,
 (18) counsel. You can proceed.
 (19) MR. CLOUGH: Thank you, Your Honor. Hello again.
 (20) Well, quicker than we expected there.
 (21) Okay, talked a lot about the shorelines, a lot about the
 (22) recovery. Why is this all relevant? Well, it's relevant
 (23) because this is a case about lands. This is a case about
 (24) corporations asking for a lot of money, scores of millions of
 (25) dollars for damages to their lands. You recall that earlier in

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- (1) opening we said that to get that money, to award them that
 (2) money, they need to show that either their property values went
 (3) down or that the oil spill in some way interfered with their
 (4) use of those properties.
 (5) Now, on these points, the evidence is going to show you
 (6) three more things. Tend to work in threes here, organize
 (7) things for myself. First point, the evidence will show you,
 (8) ladies and gentlemen, that the market value of these
 (9) properties, these lands owned by the municipal and Native
 (10) corporations were not permanently harmed from the oil spill.
 (11) Second, the evidence will show you that the oil spill did
 (12) not, did not - let me rephrase that, that any interference
 (13) with the use of these properties as a result of the oil spill
 (14) was limited in both location and duration. So there was some
 (15) interference, and obviously you can't own a property like Point
 (16) Helen and have that oil wash up on it and have to have a crew
 (17) come on and spend a lot of time cleaning it up, you can't have
 (18) that happen without having it interfere with your use of the
 (19) shoreline. There's no dispute about that, but we're going to
 (20) see that those interferences were limited in location and
 (21) limited in duration generally to the length of time that it
 (22) took to do the cleanup.
 (23) And lastly, the evidence will show, ladies and gentlemen,
 (24) that these plaintiff corporations' claims for damages are
 (25) greatly exaggerated. You heard in opening statement - we

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(1) obviously have a huge dispute here. You heard in opening
 (2) statement both Mr. Petumenos and Mr. Stoll said the evidence
 (3) will show that their claims are greatly understated. We
 (4) believe the evidence will show and you will find that these
 (5) claims are greatly exaggerated.
 (6) Start - because I want to get everybody home, move through
 (7) this quickly - the properties are not worth less as a result
 (8) of the oil spill. They just plain aren't, and the evidence is
 (9) going to show that they're not. There's going to be no
 (10) evidence presented to you at this trial to show that the real
 (11) estate market for these particular parcels was harmed as a
 (12) result of the oil spill.
 (13) You've heard the buzz word that the plaintiffs are going to
 (14) present to you, stigma. Their expert, Dr. Mundy, is going to
 (15) talk about stigma this and stigma that and say as a result
 (16) either market values were impaired or went down, probably be
 a
 (17) little fuzzy on it. We're going to do just the opposite.
 (18) We're going to present you the evidence as to what actually
 (19) happened in the real estate market out there.
 (20) Now, if the plaintiffs and their experts are correct, if in
 (21) fact there's this fog of stigma all over the lands of Prince
 (22) William Sound affecting the real estate market, what do you
 (23) expect would happen? You'd expect to hear that the real estate
 (24) market had been turned upside down, inside out and sideways
 all
 (25) at once. Oh, my gosh there's an oil spill, the whole market is

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(1) blown away.
 (2) That's just not the case, and it's not what actually
 (3) happened. Let me show you some examples of the evidence
 that's
 (4) going to be presented to you in this trial of what did happen.
 (5) If we could have the Kodiak Island Borough, please?
 (6) Mr. Stoll was talking to you about real estate effects out
 (7) in Kodiak. Well, here's my adventure with the pointer again.
 (8) One thing he didn't mention to you on Kodiak was the place
 (9) called Onion Bay, right there.
 (10) Now, in the fall of 1990, just a year after the spill, the
 (11) Kodiak Island Borough put five lots up for sale out in Onlon
 (12) Bay. You know what happened, they all sold in a matter of a
 (13) few days. All sold, no problem. Overall, you will see
 (14) throughout the areas of the spill that generally the real
 (15) estate market was not affected and certainly not permanently
 (16) affected as a result of this oil spill.
 (17) Let me give you another example, this one back up in Prince
 (18) William Sound. I hope I hit the right spot here. If I'm not,
 (19) I'm sure someone will correct me. Somewhere in this area here
 (20) is an area called Port Fidalgo. It's on land owned by the
 (21) Tatitlek Native Corporation. In 1992, private developer sold
 (22) over 50 recreational lots in Port Fidalgo. The market
 (23) operated, the market worked, and there's no evidence that the
 (24) prices for which those lots or other lots throughout Prince
 (25) William Sound went down as a result of the oil spill.

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(1) So in other words, we're going to tell you two things.
 (2) One, properties were still selling; and, two, they were selling
 (3) for the prices they would have sold for otherwise. Got some
 (4) real good evidence to present to you on this point.
 (5) If we could have Kenai, please.
 (6) We've got a statute in the state - and it's probably a
 (7) good one - heard a lot of talk about statutes, let me tell you
 (8) about one. It's a statute that is out there to protect
 (9) property owners from the effects of disasters. In other words,
 (10) if there's a disaster in your area, you can go and get your
 (11) house reassessed or your real estate reassessed to see if, in
 (12) fact, the assessed area might be too high because there was a
 (13) disaster around you, and pursuant to that statute, the assessor
 (14) for the Kenai Peninsula Borough - and this is the chart
 (15) showing the Kenai Peninsula and the properties owned by
 Native
 (16) corporations there, virtually everything you see in yellow and
 (17) more around it is part of the Kenai Peninsula Borough -
 (18) pursuant to that statute, the assessor of the Kenai Peninsula
 (19) Borough went out there. You know what he did, he reassessed
 a
 (20) bunch of properties just for the purpose, see if people should
 (21) essentially be cut a break if the property values had, in fact,
 (22) been decreased because of the oil spill. He was going to lower
 (23) their assessed value and lower their property taxes. Know
 (24) what? Didn't adjust any valuations because what he found was
 (25) the property values had not gone down. He didn't adjust a

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(1) single one of them.
 (2) Similarly, out in Kodiak they had their assessor run
 (3) around. You know what happened in Kodiak? None of the
 (4) property assessments in Kodiak were reassessed downward as
 a
 (5) result of the spill. None of them. That has been some of the
 (6) best evidence. You're going to hear in this case that, in
 (7) fact, property values just plain didn't go down as a result of
 (8) this oil spill, and they're simply - to give you one more
 (9) example.
 (10) There's a 270 - if we could have Kodiak here. There's a
 (11) 270-acre parcel out in Kodiak that the plaintiffs claim was
 (12) oiled. It got - went through the negotiations, started
 (13) getting the paperwork together prior to the spill. It didn't
 (14) close until after the spill. Know something? It closed for
 (15) the same price that had been discussed and negotiated before
 (16) the spill.
 (17) Now, you know the people in that situation, if they really
 (18) thought, oh, my gosh, my real state has gone down because
 there
 (19) might be some light or very light oiling on or around it. You
 (20) know, he would have been there screaming about the property
 (21) valuations, but that lot, you're going to hear from the
 (22) evidence in this case, sold for the same price negotiated prior
 (23) to the spill. There simply isn't going to be any evidence of
 (24) the impact of market value in this case. There's no market
 (25) value for these plaintiffs to recover funds for damages to

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(1) their lands. They're going to have to show you some
 (2) interference with use of the property.
 (3) Most of this property, ladies and gentlemen, is really not
 (4) usable for much other than recreational resources, some of the
 (5) shorelines for subsistence use, some for camping and fishing,
 (6) and a lot of it is not usable at all. It is beautiful. It is
 (7) inherently Alaskan, and all of us are proud to live in a state
 (8) with property like this.
 (9) Let's go ahead and put up the Silver Lake video to start us
 (10) off here. This is going to be - Pete if we could have that
 (11) one billboard up there, too.
 (12) It's wonderful property, but is not being actively used by
 (13) the corporations. Literally you are going to see that the
 (14) corporations are going to ask you to award them millions of
 (15) dollars for damages to mountaintops and even to glaciers. Now
 (16) the video we're going to show you here is of a parcel called
 (17) Silver Lake. You can see it there. It's owned by Chugach
 (18) Alaska Corporation.
 (19) (Videotape played.)
 (20) Chugach Alaska is asking you to award them over two and a
 (21) half million dollars in damages. This video is taken from a
 (22) helicopter flying about 50 to 60 miles an hour. First of all,
 (23) let me be clear here. We're not on the parcel yet. We're
 (24) about three or four miles past the shoreline. Where we are
 (25) right now, we're just about to go over Billy Goat Mountain,

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(1) which is on the other parcel - let me back up so you all can
 (2) see. We're just about to go over the crest of Billy Goat
 (3) Mountain, and one we get on the other side of Billy Goat
 (4) Mountain, there's going to be more of this area here before we
 (5) get to Silver Lake parcel, the one Chugach is going to ask you
 (6) to arrive at 2.62 million dollars, I think is the amount.
 (7) Let's go fast forward.
 (8) Frankly, I don't have time in the opening statement to show
 (9) you in real time how long it will take you to go here to
 (10) there. We've now jumped speeded the helicopter up to
 (11) somewhere
 (12) around hundred to hundred and twenty miles an hour. In a
 (13) minute you're going to see a little clock come on in the corner
 (14) of the screen. When that happens that, for the first time, is
 (15) when you're actually going to be over property owned in the
 (16) Silver Lake parcels. Everything before that, all these
 (17) literally miles of mountains and miles of snow between that and
 (18) the ocean. We still aren't even there yet. In the distance.
 (19) There, now for the first time we've just now crossed into
 (20) the Silver Lake parcel. We're flying about a hundred and
 (21) twenty miles an hour or so - excuse me - and in the distance
 (22) you can see there a mountain, it's five - it's Mt. Denison,
 (23) the one in the distance. It's 5,886 feet high. The
 (24) plaintiffs, Chugach Alaska Corporation, are asking you to award
 (25) them money damages for damages to that mountain as a result
 of
 (25) the spill. It's miles from the shoreline. It's covered with

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(1) snow. It's covered with glaciers. You know something, look at
 (2) the map, it's only about halfway through the parcel. There's
 (3) still miles of parcel left after that.
 (4) Now, to give you some sense of perspective, we have to take
 (5) our helicopter and give it an after burner and kick it up to
 (6) about five or 600 miles an hour, if we could do that. Now
 (7) we're just zooming. Now stop it. Now we're back at normal
 (8) speed about alongside Mt. Denison. Give you some idea of the
 (9) nature of the terrain. It's beautiful. This is why we live
 (10) here. We all like it. But it's also impossible to imagine the
 (11) plaintiffs showing interference with the use of this property.
 (12) And that's what they're asking you to do.
 (13) Then if we can again slip into after burner. This would be
 (14) as if you were going about 600 miles across the parcel here,
 (15) mountain after mountain, glacier after glacier, and finally, at
 (16) this point, we finally reach the top. The end of the Silver
 (17) Lake parcel for which they're raising their claim.
 (18) (Videotape concluded).
 (19) Now, historically, these plaintiffs have made little use,
 (20) other than in some instances, allowing the properties to be
 (21) used for subsistence of most of these parcels. We're talking
 (22) about the whole shoreline areas here. I'd like to say one word
 (23) for you - probably two or three - quickly on subsistence
 (24) because my time is running short.
 (25) If we could go to the subsistence charts, please.

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(1) MR. TWELKER: Bar charts?
 (2) MR. CLOUGH: Yes. These are the charts that show the
 (3) actual subsistence harvests conducted in three of the
 (4) villages. We're going to see them in a minute here. Start
 (5) with just Chenega during the years before and after the spill
 (6) and you can see two things from this chart.
 (7) First, you can see that the harvest definitely declined
 (8) during 1989, '90 and the following year 1990, '91 - by the way
 (9) all these numbers are compiled by the Alaska Department of
 Fish
 (10) and Game. They've got something called Subsistence Division,
 (11) got offices over near C Street. This is what they do for a
 (12) living, they keep track of this stuff. This is all state and
 (13) federal data, not Exxon numbers.
 (14) Obviously, there is a decrease in subsistence use in this
 (15) particular community for the two years after the spill.
 (16) Anybody looking at it can see that. But I ask you to look at
 (17) two other things.
 (18) First, you can see subsistence decreased, but didn't stop.
 (19) Didn't stop at all. Only went down about halfway. And second,
 (20) starting in the third year, the subsistence uses rose back up
 (21) to the preexisting levels. And we're going to see in the next
 (22) one that the same trend occurs in the other village communities
 (23) in the area.
 (24) This is English Bay subsistence harvest. The drop in '89
 (25) goes back up some in 1990. In Port Graham, 1989, 1990 and
 then

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- (1) by 1991 to '92 it's back to earlier levels, so the two points I
 (2) want you to remember about subsistence is it never stopped
 (3) entirely and it returned to normal levels after two years. I'd
 (4) also like to make two points on the plaintiffs' archaeology
 (5) claims.
 (6) First of all, I don't want there to be any - we can kill
 (7) that screen, please.
 (8) I don't want there to be any confusion on one point. These
 (9) plaintiff corporations are not asking you to award any damages,
 (10) any money for actual damages to actual artifacts on these
 (11) sites. They're not asking you to do that, to the degree that
 (12) the cleanup uncovered or impacted any artifacts out there on
 (13) the archaeological sites. Exxon has already paid to repair,
 (14) paid to curate, that's the museum's words.
 (15) MR. PETUMENOS: Objection, I object to that.
 (16) THE COURT: Bypass the issue of payment, counsel.
 (17) MR. CLOUGH: Thank you.
 (18) There is no claim for damages before you for any damages to
 (19) actual artifacts. Instead, what is before you is essentially a
 (20) hypothetical claim, and I'd like to use just one of the
 (21) examples to show how that's working.
 (22) MR. PETUMENOS: I'll object to argument in opening
 (23) statement in respect to hypothetical claim.
 (24) THE COURT: The objection's overruled. Go ahead.
 (25) MR. CLOUGH: If I could have the Verdant Cove picture,

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- (1) for you and the real dispute in this case is: How are you
 (2) going to go about calculating that?
 (3) If I could put my final thing on the screen here.
 (4) This is a - a breakdown, we call it a stack chart of the
 (5) claims being asserted by the plaintiffs, according to their
 (6) experts. You can see this particular total lives up to about
 (7) 86 million dollars. Six million dollars of that is for
 (8) totally landlocked properties, according to their own experts.
 (9) That little beacon you see on the side, that's an example of
 (10) the Nellie Juan property owned by Chugach. Remember that
 was
 (11) way over the western side of Prince William Sound, doesn't
 (12) touch on any shorelines at all. They're asking you for six
 (13) million dollars plus for damages for properties, no shoreline
 (14) whatsoever.
 (15) Next they're asking for about 15 million dollars in damages
 (16) for other properties which were unoiled. They're asking for
 (17) over five million dollars of damages for nothing on the
 (18) shoreline at all, for underground interests.
 (19) Then, they're asking you to award - and this is a big one
 (20) - 35 million dollars in damages for the upland portions of
 (21) oiled properties. And let me explain to you what that means.
 (22) We saw all those pictures of the shoreline. We could see,
 (23) basically where the tide goes in and out and what parts of the
 (24) shoreline are essentially interacting with nature in Prince
 (25) William Sound and the waters outside. The plaintiffs have

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- (1) please.
 (2) This is a picture of one of the archaeological sites. It's
 (3) at Verdant Cove.
 (4) Joel, could you put a circle around one of the trees
 (5) there?
 (6) Now, at this particular site, there is some evidence of
 (7) human habitation over some period of time in that spot where
 (8) the trees - where you can see there. It's also clear that the
 (9) oil spill, the oil from the spill never got up in those trees
 (10) and never touched any artifacts that are there.
 (11) What these plaintiffs are asking you to do is to award them
 (12) an amount of money sufficient, according to their expert's
 (13) calculations, to essentially do an archaeological dig on
 (14) everything you can see in this picture, the beaches, the
 (15) uplands, the trees, on the suspicion that there might be some
 (16) artifacts out there. Artifacts which, if they exist, were not
 (17) impacted by oil, or which we believe would not have been
 (18) impacted by oil. That is the nature of the claim that they're
 (19) asking you to award dollars for.
 (20) I don't want to close my opening without - with leaving
 (21) you the impression that the plaintiffs are entitled to no award
 (22) of damages. That would not be appropriate. Clearly some of
 (23) the shorelines owned by these corporations were impacted and
 (24) they are entitled to an award representing the fair value of
 (25) actual damages proven at trial to those parcels. The question

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- (1) never limited their claim to that. Instead, they've included
 (2) the mountains behind and the forests behind and the sides of
 (3) the hills.
 (4) Testimony we will present to you from our experts and from
 (5) the people who were out there will show you, one, that those
 (6) lands were never impacted by the oil spill; two, that the use
 (7) of those upland properties was never interfered with by the oil
 (8) spill; and, three, that it's inappropriate to award any damages
 (9) for those upland portions; and, last, last is where the nub
 (10) is. This is where the real dispute is.
 (11) There are shoreline portions, parcels owned by these
 (12) corporation plaintiffs that were touched by the oil. And their
 (13) experts have claimed that it's 25 million dollars is what they
 (14) should receive in damages for those. We're going to dispute
 (15) that. Dr. Dorchester, our appraiser, will take you parcel by
 (16) parcel, island by island, shoreline by shoreline, and for each
 (17) one, show you how much it was oiled in the first place, how
 (18) that oiling interfered with any use of the property, if in fact
 (19) the property was being used at all prior to the spill, and
 (20) finally, his calculation of what is the fair value for the
 (21) damages for the interference with any such use.
 (22) So that's where we believe the nub of the dispute here is,
 (23) in that last category right there.
 (24) In sum, the evidence will show that most, the greater
 (25) percentage of all the shorelines in these areas were never

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- (1) touched by oil. The evidence will show that of those that were
 (2) touched by oil, most were only lightly touched. The evidence
 (3) will show that these shorelines and these lands have recovered
 (4) from the oil spill. And we believe the evidence will show that
 (5) the plaintiffs have exaggerated and, in fact, greatly
 (6) exaggerated their claim for damages and are seeking damages
 for
 (7) mountaintops, glaciers, landlocked parcels, underground
 (8) interests, and thousands of acres located miles from coastline
 (9) and thousands of acres for shorelines which were never even
 (10) touched by the oil.
 (11) During the voir dire process many of you gave either
 (12) Mr. Diamond, my co-counsel, or myself your commitment that at
 (13) this trial you would make your very best efforts to limit the
 (14) award to the fair value for actual damages proven at trial. I
 (15) respect you for making that commitment. I respect you for
 (16) being willing to sit through this process for the next six to
 (17) eight weeks, and I'm confident at the conclusion of this case,
 (18) after hearing from both sides, you will be able to fulfill that
 (19) commitment.
 (20) Thank you all very much.
 (21) THE COURT: Thank you, Mr. Clough.
 (22) I'm going to - without much further adieu, I'm going to
 (23) let you go for today. I'm sorry we went overtime. I'll try to
 (24) limit the presentation to 1:30 from now on, but I wanted to get
 (25) the opening statements in so that we could start with the

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- (1) evidence tomorrow.
 (2) I want you to understand now it's - you're under strict
 (3) duty not to talk about this case with anyone and not to form or
 (4) express any opinion on it until it's submitted to you for
 (5) deliberation, so I'm going to let you go today and I'll expect
 (6) you back here at 8:30 tomorrow.
 (7) Thank you very much for your time.
 (8) THE COURT: Counsel, the jury is not present. Did you
 (9) have anything to make.
 (10) MR. PETUMENOS: I have two motions.
 (11) (Jury out at 1:58 p.m.)
 (12) MR. PETUMENOS: Let's close the door.
 (13) THE COURT: Yeah, could we shut the door, please?
 (14) MR. PETUMENOS: Your Honor, some time ago Mr. Stoll
 (15) approached the Court with problems that he believed he was
 (16) having with the system that was coming into this courtroom, and
 (17) our concern that we would not be granted equal access to the
 (18) technology in the courtroom. I can tell you that prior to
 (19) coming in here with the opening statement we worked through
 (20) every single exhibit that we had in this case, working with a
 (21) trial link system and that we were going about one for six or
 (22) one for seven this morning working with these folks to try to
 (23) get these before the jury. We were at an incredible
 (24) disadvantage during the opening statements. And I think that
 (25) there's just simply no excuse for it.

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- (1) We weren't able to call up videotapes. We weren't able to
 (2) call up documents. I had to abandon portions of the opening
 (3) statements, and I would like the Court to contrast the ease and
 (4) the smoothness with which the Exxon material came up. If this
 (5) continues, I have - we have no other alternative but to ask
 (6) that the material be taken out of the courtroom because we
 (7) can't put the kind of event that we had here today -
 (8) THE COURT: What's the reason you were not able to use
 (9) the stuff?
 (10) MR. PETUMENOS: We have not a clue. When we use the
 (11) system in our offices we have duplicate systems in our offices
 (12) that we audit, practice on, make sure the material is ready to
 (13) go when we come in to court, and we came prepared ready to
 do
 (14) that.
 (15) THE COURT: Did it work in your offices?
 (16) MR. PETUMENOS: It worked in our offices to a tee. We
 (17) were not able to bring up documents on occasion here this
 (18) morning, and that simply can't stand for the rest of the trial
 (19) when we have witnesses.
 (20) I also have a motion for mistrial. I believe there was a
 (21) direct violation of a court order in connection with payments,
 (22) not only was a - was there a violation offer court order with
 (23) respect to payments made by Exxon in the opening statement
 and
 (24) a direct payment. I don't even think it was accurate.
 (25) I'm not aware of any dollars that have been paid to a

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- (1) Native corporation for any archaeological artifacts at any
 (2) point and the jury has been left, first of all, with a
 (3) statement about materials that were paid by Exxon which this
 (4) court ruled was not admissible; and, secondly, they were told
 (5) something that wasn't true, and -
 (6) THE COURT: All right, counsel, I understand what your
 (7) motions are. You can put them in writing. And then the
 (8) defendants will have an opportunity to respond.
 (9) I don't want the equipment to be malfunctioning even on the
 (10) first day of trial, so if there's a problem with it, you have
 (11) to let me know. But counsel, you know, we had lots of time to
 (12) deal with these issues. If the machines are going wild on you,
 (13) that may not be some - someone else's problem. It may be
 (14) yours, so you're going to have to work with it.
 (15) MR. STOLL: Your Honor, if I can explain this, how
 (16) these - this equipment works, each of these segments have,
 (17) either video or the hard copy have a bar code on them, like in
 (18) a supermarket. We have, as Mr. Petumenos indicated in our
 (19) office, a duplicate system, essentially, of the monitors, the
 (20) laser reader for the bar code, et cetera. We test - before we
 (21) made our opening statements, we tested each of the bar codes
 to
 (22) make sure that they weren't erased or there wasn't some
 (23) difficulty with them. Each of them worked perfectly in the
 (24) system in our office.
 (25) Now, we agreed that Exxon could have their technician

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- (1) operate the system as long as he acted in an impartial manner
 (2) and as long as the system operated correctly. But the problem
 (3) we're having is that for some unknown reason, when we come
 to
 (4) this courtroom and we utilize their technician, the material
 (5) does not come up as it does using the exact same bar code, the
 (6) same piece of paper with the same bar code with the same -
 (7) with essentially the same scanner in our office, and it works
 (8) yesterday, and we come in today and it doesn't work. And
 (9) there's - I have no explanation for it. And I don't - I
 (10) mean, this whole deal was put together on the basis that Exxon
 (11) was going to have a technician that was impartial, that the
 (12) system was going to work. It worked flawlessly, I think is a
 (13) safe statement, flawlessly for Exxon. It did not work
 (14) flawlessly for the plaintiffs and, in fact, as Mr. Petumenos
 (15) indicated, the whole so-called Tesoro tape, the segment of the
 (16) 1111-A had to be scrapped because of technical difficulties
 (17) that they purported to have in bringing up bar tapes.
 (18) I noticed they had absolutely no problem bringing up their
 (19) tapes and stopping and starting their tapes whenever they
 (20) wanted. So we've done everything we possibly can, Your
 Honor,
 (21) and we're not - we're just laying a - you know, we hope that
 (22) this doesn't continue, but we cannot have a situation where
 (23) they can play their tapes, we can't play our tapes.
 (24) THE COURT: I agree with you. I agree with you, but
 (25) the causation of the problems is not clear to me. I don't know

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- (1) why it's not working.
 (2) MR. STOLL: We don't have an explanation.
 (3) THE COURT: Let's find out. I've got the afternoon.
 (4) You come back here at 3:30. We'll do a run-through and see if
 (5) things work. It doesn't have to be with things you're actually
 (6) going to be presenting. I just want to see something working.
 (7) If it doesn't work and Exxon's does, then I'll consider taking
 (8) action.
 (9) MR. STOLL: Thank you, Your Honor.
 (10) THE COURT: So it's in Exxon's best interests to make
 (11) sure that it works just as well for you as it does for them.
 (12) MR. STOLL: Your Honor, could we also take up at that
 (13) time this matter that Mr. Petumenos, the mistrial, we raise
 (14) that at that time also because either we'd like to have this
 (15) considered, or we'd like to have it cured by instruction, at
 (16) the very least.
 (17) THE COURT: Sure, I'll take it up.
 (18) MR. STOLL: There's another matter they made, that is
 (19) the statement that Exxon has accepted responsibility from the
 (20) very first day. They didn't accept responsibility. They
 (21) didn't accept responsibility until you entered a judgment
 (22) against them on our motion for judgment mental pleadings.
 (23) THE COURT: Term of art, counsel. You may find it
 (24) misleading and you may be able to use that in your closing.
 (25) Accepting responsibility is vague in the sense that's it has a

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- (1) number of meanings. It doesn't necessarily mean that what
 (2) you've done is stipulated to your liability. But I'll talk
 (3) about that at 3:30.
 (4) Is there anything else?
 (5) MR. DIAMOND: Your Honor, we had -
 (6) MR. FORTIER: I have one more matter, if I could.
 (7) Your Honor, depending on how the other two motions go, we
 (8) renew our request that there be a confidentiality instruction
 (9) to the jury with regard to the archaeological sites. It was
 (10) the pinpointing of where a site was.
 (11) THE COURT: Write me one. Write me one that I can
 (12) instruct them on.
 (13) MR. FORTIER: I have, Your Honor.
 (14) THE COURT: I'm frankly bewildered by how I'm going to
 (15) tell them to keep this all a secret.
 (16) MR. FORTIER: I'll resubmit it, Your Honor.
 (17) MR. DIAMOND: Your Honor, you suggested that if there
 (18) were a offers of evidence that we had problems with could be
 (19) handled, I think your world was doctrinally, I think we should
 (20) bring them to your attention in advance. There were two areas,
 (21) you already dealt with dead birds and otter pictures for
 (22) opening statements, but I understand that that comes up again
 (23) with respect to the first witness tomorrow morning. We filed a
 (24) brief memorandum attaching photographs that we understand
 the
 (25) plaintiffs expect to use. We would like a ruling on those

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- (1) before Ms. Fobes testifies.
 (2) THE COURT: Sure, we can do that at 3:30.
 (3) MR. DIAMOND: Secondly, we have served on counsel for
 (4) trial and court a brief memo on the area we think you can deal
 (5) with doctrinally. That's misrepresentations to Natives'
 (6) claims, that's statements made by Alyeska back in the '70s, 12
 (7) exhibits being proffered by witnesses. We think those can be
 (8) handled out of the presence of the jury. And our argument is
 (9) or comment to all of them, and they either come in or don't
 (10) come in. We suggest that might be ready for a ruling before
 (11) the evidence comes up.
 (12) THE COURT: You want that done at 3:30?
 (13) MR. DIAMOND: We'd be happy to do that. I'll submit a
 (14) brief memorandum to the clerk.
 (15) THE COURT: Make sure I get it in chambers.
 (16) MR. PETUMENOS: I'm concerned about the procedure we
 (17) were going to follow. We were served with written motions
 (18) while we were in court here during the day that are now going
 (19) to hearing at 3:30. Just so long as the Court understands that
 (20) we're being hit with paper here an hour and a half before we're
 (21) going to argue the matter, I haven't had a chance to read them
 (22) yet and the evidence is going in tomorrow. So I don't know
 (23) what the solution is. I want the Court to understand that we
 (24) don't have - we haven't read the materials served on us.
 (25) THE COURT: You will have by 3:30. If I see some

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- (1) overreaching, counsel, I'll deal with it, but I don't see it.
- (2) MR. PETUMENOS: The Court would have no way of knowing
- (3) I got served with the papers until I tell you. That's what I
- (4) want you to know.
- (5) THE COURT: I just got served with the papers.
- (6) Question is whether you want me to take up the matters at 3:30
- (7) or you want me to wait a day or two.
- (8) MR. PETUMENOS: I'd like to read them.
- (9) THE COURT: We'll recess until 3:30.
- (10) (Recess at 2:10 p.m.)

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- (1) STATE OF ALASKA)
- (2) : Reporter's Certificate
- (3) DISTRICT OF ALASKA)
- (6) I, Joy S. Brauer, RPR, a Registered Professional
- (7) Reporter and Notary Public;
- (8) DO HERBY CERTIFY:
- (9) That the foregoing transcript contains a true and
- (10) accurate transcription of my shorthand notes of all requested
- (11) matters held in the foregoing captioned case.
- (12) Further, that the transcript was prepared by me
- (13) or under my direction.
- (14) DATED this day
- (15) of , 1994.
- (21) JOY S. BRAUER RPR
- Notary Public for Alaska
- (22) My Commission Expires: 5-10-97

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re:) Case No. 3AN-89-2533 Civil
) Anchorage, Alaska
 (5) The EXXON VALDEZ) Wednesday, July 6, 1994
) 8:45 a.m.
 (6))
 (8) VOLUME 9, Pages 1327 through 1490
 (10) TRANSCRIPT OF PROCEEDINGS (Continued)
 (11) TRIAL BY JURY
 (15) BEFORE THE HONORABLE BRIAN C. SHORTELL
 Superior Court Judge

(16) APPEARANCES:

(17) FOR THE PLAINTIFF:

(18) N. ROBERT STOLL
 Stoll, Stoll, Barne & Lokring
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUMENOS
 (21) Birch, Horton, Bittner & Oerot
 1127 West Seventh Avenue
 (22) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 (24) Fortier & Mikko
 2550 Denali Street, Suite 604
 (25) Anchorage, AK 99505
 907/271-4222

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(1) PROCEEDINGS
 (2) (Call to Order of the Court).
 (3) THE COURT: We're on the record and the jury is not
 (4) present.
 (5) Counsel, we have another letter. Have you read it?
 (6) MR. DIAMOND: Your Honor, it was just handed to me. I
 (7) have read it. I have not yet read the enclosures. I've just
 (8) given it to my client.
 (9) THE COURT: Here's what I propose. I don't think it
 (10) makes much difference if we go ahead today. We can go ahead
 (11) today and I'll consider at the end of the trial day; all
 (12) right?
 (13) MR. DIAMOND: That would be fine.
 (14) THE COURT: What do we have to talk about outside the
 (15) presence of the jury before I bring them in?
 (16) MR. DIAMOND: We had two matters. Number one we would
 (17) move for the exclusion of lay witnesses during the course of
 (18) the trial.
 (19) THE COURT: Except for representatives and clients,
 (20) yes.
 (21) MR. PETUMENOS: We'll need a moment to ascertain what
 (22) we have in the courtroom.
 (23) THE COURT: This could be a problem, but it's your
 (24) business to keep your witnesses out of the Court, each of you.
 (25) MR. STOLL: That's fine, Your Honor. Your Honor,

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(1) FOR THE DEFENDANTS:

(2) CHARLES P. DIAMOND
 M. RANDALL OFFENHEIMER
 LINDA JANE SMITH
 (3) O'Melvey & Myers
 400 South Hope Street
 (4) 213/669-6000
 (5) JOHN F. CLOUGH III
 Clough & Associates
 (6) 431 N. Franklin St., #202
 Juneau, AK 99801
 907/586-5777
 (8) Reported by:
 JOY S. BRALER, RFR
 (9) Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99505
 (11) 907/258-7100

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(1) could we maybe, if the - well, I think if the jury could be
 (2) told that that's what happened, I mean so that they understand
 (3) why there's no - you know, a lot of these people are people
 (4) that are from the communities and that are - they may not be
 (5) the representative of the community, but they -
 (6) THE COURT: Let's see how many of them are out.
 (7) MR. PETUMENOS: Judge, the motion to exclude witnesses
 (8) has now raised an issue for me while we're on that topic.
 (9) There is a single document that I wish to enter into evidence
 (10) that I have - we've been pressing for a stipulation for
 (11) foundation on from Exxon, and I don't think we have it. That
 (12) sealed document was - requires Mr. Chuck Flynn from Burr,
 (13) Pease and Kurtz to provide testimony for foundation. I think
 (14) he'd like to be in the courtroom when we get the stipulation
 (15) from Exxon. As to the foundation, he can stay, but the - the
 (16) matters to which he would testify to would be the following:
 (17) We were at a deposition. At the deposition, a witness says, I
 (18) have a box of documents of TAPS records in my home. I will
 (19) see
 (19) that they're produced to you and brought to your office. They
 (20) were produced and brought to Mr. Flynn's office, whereupon
 (21) they
 (21) were produced to us, whereupon Mr. Flynn has ascertained
 (22) they
 (22) do, in fact, match records of TAPS that he is aware are in the
 (23) files to - which established the authenticity and foundation
 (24) for that record. That's all Mr. Flynn is going to testify to.
 (25) Either I would like to have him allowed to remain for

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- (1) professional reasons if that's the scope of his testimony, or
 (2) I'd like the stipulation from Exxon. All other objections to
 (3) relevance and so forth obviously are preserved, I would just
 (4) get the foundation issue.
 (5) MR. DIAMOND: We have no objection to Mr. Flynn
 (6) remaining in the courtroom despite his status as a prospective
 (7) witness. There is some dispute as to the matters just
 (8) discussed.
 (9) THE COURT: This isn't on the foreseeability issue, is
 (10) it?
 (11) MR. DIAMOND: I think it's the foundation for certain
 (12) documents that go to the foreseeability issue.
 (13) THE COURT: He can stay in the courtroom.
 (14) MR. DIAMOND: The only other matter we wanted -
 (15) THE COURT: Go ahead. You're up.
 (16) MR. DIAMOND: The only other matter we wanted to raise
 (17) with the Court was the extent to which witnesses who will be
 (18) describing the videotapes or lay witnesses will be describing
 (19) videotapes and photographs give a narrative answer that has
 (20) proved to be a little bit difficult in federal court. I think
 (21) Mr. Clough has got some suggestions for how to deal with that.
 (22) THE COURT: When did - hold on, when do the
 (23) videotapes go on.
 (24) MS. KATZKE: Pardon?
 (25) THE COURT: I'm not talking to you. Mr. Petumenos,

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- (1) when do the videotapes come on?
 (2) MR. PETUMENOS: There is a videotape coming on with
 (3) the first witness.
 (4) THE COURT: When?
 (5) MR. PETUMENOS: With the first witness, Your Honor.
 (6) THE COURT: Go ahead.
 (7) MR. CLOUGH: Your Honor, my suggestion would be either
 (8) for the slide presentations or for video presentation, if
 (9) they're going to do a narrative, the witnesses, since they are
 (10) precipient witnesses given a precautionary instruction to limit
 (11) the narrative to the dates locations and describing the scene
 (12) not to go beyond that. Otherwise, since there will be no
 (13) questions pending, it will be impossible for us to exert an
 (14) objection, for example, they start volunteering an opinion
 (15) testimony or testifying facts not depicted in the scene. This
 (16) came up a little bit in federal court, brought up in chambers
 (17) over there. I think the agreement was roughly along these
 (18) lines if they wanted to do it for Ms. Fobes and the slides and
 (19) have her do essentially a slide show. That's okay if she's
 (20) instructed to limit her testimony to the date, the screen, and
 (21) not go beyond that, because otherwise we're in no position to
 (22) phrase an objection before the words come out of her mouth.
 (23) THE COURT: Counsel?
 (24) MR. PETUMENOS: I don't think that's a problem. I
 (25) think it's the standard narrative form of testimony objection

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- (1) that would be in any testimony. I don't have a problem with
 (2) that. I think if we want to describe what we've seen beyond
 (3) the video, we can freeze the video and ask questions so that
 (4) the counsel can object to them. That would be my plan.
 (5) THE COURT: I think that can be handled by, first, you
 (6) can tell you witness what the limits are and if she's -
 (7) appears to be exceeding the limits, then I'll - I'll come in;
 (8) all right?
 (9) MR. CLOUGH: Thank you, Your Honor.
 (10) THE COURT: When are we going to get to the witnesses
 (11) on the - on what Exxon calls the misrepresentation testimony?
 (12) MR. PETUMENOS: Probably the third witness this
 (13) morning. We have Mr. Gordaoff testifying first, and then
 (14) Ms. Fobes, who is the National Geographic photographer, and
 (15) then I believe we'll start.
 (16) THE COURT: Counsel, I would like to do something a
 (17) little unusual. You said you couldn't reach a stipulation.
 (18) Did you have different drafts?
 (19) MR. CLOUGH: Yes, we did, Your Honor. Mr. Diamond
 (20) prepared a draft and submitted it to Mr. Petumenos.
 (21) MR. DIAMOND: Are you talking about the foreseeability
 (22) issue?
 (23) THE COURT: Yes.
 (24) MR. DIAMOND: We had several different drafts.
 (25) THE COURT: Did you have final drafts?

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- (1) MR. DIAMOND: We never have a final position. We're
 (2) always willing to negotiate. We had a draft that sort of led
 (3) nowhere. But I could collect - I could collect the, sort of
 (4) the latest incarnation of those things and bring them to court.
 (5) THE COURT: Having reviewed this issue, it seems to me
 (6) that you should stipulate and, therefore, I think that what I
 (7) ought to do first is look at the two versions and see why it is
 (8) you can't stipulate. Because it frankly mystifies me why you
 (9) can't.
 (10) MR. DIAMOND: That would be - I think the best way to
 (11) put that before you is - do you have a copy of yours?
 (12) MR. PETUMENOS: I think we have the competing
 (13) stipulations, Judge, that we can hand in, and there were two
 (14) drafts, one of them was mine and we have them in the Court, I
 (15) think.
 (16) THE COURT: That's fine. You give them to me and we
 (17) can deal with this before the witness goes on.
 (18) MR. PETUMENOS: Actually, I think I was in error. I
 (19) think there are three witnesses that will testify before that
 (20) happens. So there will be some time.
 (21) THE COURT: Sure.
 (22) MR. McCALLION: Your Honor, this morning we submitted
 (23) responding papers on that particular matter.
 (24) THE COURT: I read it, I read it. Other than this, is
 (25) there anything else before the first witness goes on?

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- (1) MR. FORTIER: Your Honor, there may be a couple of
 (2) other matters, matter of fact. One of them is a proposed jury
 (3) instruction regarding confidentiality concerning testimony on
 (4) archaeological sites.
 (5) THE COURT: This issue isn't going to come up now,
 (6) counsel, I'm not going to take it up.
 (7) MR. FORTIER: It'll come up in about a week, Your
 (8) Honor.
 (9) THE COURT: That's fine. Somewhere in this week we'll
 (10) find a time to discuss that. Is there anything else?
 (11) MR. FORTIER: Yes, Your Honor, another matter is that
 (12) there are - there is a witness, Mr. Charles Totemoff. I would
 (13) like to file a motion in limine with regard to certain papers
 (14) the defense has indicated they intend to use in
 (15) cross-examination.
 (16) THE COURT: When's Mr. Totemoff scheduled to testify?
 (17) MR. FORTIER: He is scheduled to testify today, Your
 (18) Honor, in about two and a half hours.
 (19) THE COURT: You can file your motion.
 (20) MR. FORTIER: Thank you.
 (21) THE COURT: Is there anything else?
 (22) MR. FORTIER: That's all, Your Honor.
 (23) THE COURT: Counsel, I will not consider from now on
 (24) papers that are filed on the day the witness testifies.
 (25) That's - that's going to be a rule that I will find hard to

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- (1) break. Okay?
 (2) MR. FORTIER: Your Honor - okay, fine. Can I file -
 (3) THE COURT: Yes, you may.
 (4) MR. FORTIER: Thank you.
 (5) THE COURT: Is there anything else before we get the
 (6) jury in? Thank you.
 (7) THE CLERK: Please rise. This court stands in
 (8) recess.
 (9) (Recess from 8:54 a.m. to 8:56 a.m.)
 (10) (Jury in at 8:56 a.m.)
 (11) THE COURT: Counsel?
 (12) MR. PETUMENOS: Your Honor, the plaintiffs call as
 (13) their first witness, Mr. Keith Gordaoff.
 (14) THE CLERK: Sir, would you please step up into the
 (15) witness box. There's a microphone there, would you clip that
 (16) below the knot in your tie and remain standing for the oath.
 (17) Would you raise your right hand.
 (18) (The Witness Is Sworn)
 (19) THE CLERK: Thank you, you may be seated. Sir, for
 (20) the record, would you please state your full name.
 (21) THE WITNESS: Keith H. Gordaoff.
 (22) THE CLERK: Would you spell your last name.
 (23) THE WITNESS: Yes. G-o-r-d-a-o-f-f.
 (24) THE CLERK: What is your occupation?
 (25) THE WITNESS: Commercial fisherman and businessman.

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- (1) THE CLERK: Thank you.
 (2) MR. PETUMENOS: May I inquire?
 (3) THE COURT: Yes.
 (4) DIRECT EXAMINATION OF KEITH H. GORDAOFF
 (5) BY MR. PETUMENOS:
 (6) Q Mr. Gordaoff, where do you live?
 (7) A I live in Anchorage, Alaska.
 (8) Q And what do you do for work right now?
 (9) A I work as the president and chairman of the board of
 (10) Chugach Alaska Corporation. I also commercial fish.
 (11) Q And when you commercial fish, where do you normally fish
 (12) from?
 (13) A Cordova, Alaska.
 (14) Q Where were you born and raised, Keith?
 (15) A I was born and raised in Cordova, Alaska.
 (16) Q And how many brothers and sisters did you have?
 (17) A I've got three brothers and two sisters - three sisters.
 (18) Q And how many children were in your family when you were
 (19) growing up?
 (20) A There was a total of ten. Some have passed away.
 (21) Q What was life like in Cordova for you as a boy growing up?
 (22) How would you spend your time?
 (23) A I spent a lot of my time learning about the - the area
 (24) where I grew up and subsistence fishing, hunting and things.
 (25) Q What did your dad do for a living?

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- (1) A My father was a commercial fisherman and tender operator.
 (2) Q And when you were, say, in your teens, what did you do to
 (3) contribute to the family?
 (4) A I did most of the subsistence, providing subsistence foods
 (5) for the family while my father was working.
 (6) Q How old were you when that started?
 (7) A Very young age. I believe I was nine years old.
 (8) THE COURT: Mr. Gordaoff, that cord, you know, when
 (9) you do this with it, that's all we get, is the crackling sound.
 (10) THE WITNESS: Sorry.
 (11) MR. PETUMENOS: It'll calm down here in a minute once
 (12) we get some of the questions out of the way.
 (13) BY MR. PETUMENOS:
 (14) Q And a nine-year-old boy in Cordova doesn't drive a fishing
 (15) boat all over the Sound, does he?
 (16) A No.
 (17) Q So what kinds of things did you do?
 (18) A I went with relatives of mine to various places and was
 (19) taught by my Uncle Harry and other members of my family a
 (20) little bit about the life in the Cordova area and hunting and
 (21) fishing.
 (22) Q When you first began gathering and hunting for your family,
 (23) was it mostly in the Cordova area?
 (24) A Yes.
 (25) Q And then as you got older, where did you go?

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- (1) A As I got older, I ventured further into the Prince William
 (2) Sound and the Copper River area.
 (3) Q Now, when we use the term "subsistence," what does that
 (4) term mean to you, Mr. Gordaoff?
 (5) A Subsistence to me means a way of life, living off the land
 (6) and utilizing what Mother Nature put out there for us.
 (7) Q And can you give the jury some idea of when we're talking
 (8) about subsistence foods, what kind of foods that your family
 (9) might gather that some of us might not be as familiar with?
 (10) A Well, there's several different types that we used, wild
 (11) celery, shellfish of different types, salmon, several species
 (12) of salmon, porcupine, grouse, oh, deer, goat, sea birds.
 (13) Q Now, if we were to see something like - if I were to see
 (14) something like a seagull, I wouldn't think of anything to eat.
 (15) Does a seagull make you think of something to eat, in your
 (16) family, you growing up?
 (17) A Absolutely, yeah. A seagull egg is what - like a chicken
 (18) egg, I guess to the - to the Native people in Prince William
 (19) Sound. We utilize seagull eggs a lot. It was - we used them
 (20) for baking and cooking and different things, yes.
 (21) Q If I were to see a piece of seaweed on the beach, would I
 (22) be looking at a subsistence food, potentially?
 (23) A Yes.
 (24) Q And how might seaweed and sea grasses be used by the
 (25) Native community?

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- (1) A We use it for various things. Herring spawn on seaweed,
 (2) kelp, Pacific kelp, salads, things like that.
 (3) MR. PETUMENOS: Could I have the map on the screen,
 (4) please?
 (5) MR. PETUMENOS: Mr. Gordaoff, there's a little TV
 (6) screen there for you to watch. Is this the light pen that's on
 (7) now?
 (8) BY MR. PETUMENOS:
 (9) Q This is where you started out as a boy?
 (10) A Yes.
 (11) Q Can you tell us anything about how the community of
 (12) Cordova and the Eyak Corporation relate? Is there a village of Eyak
 (13) like there's a village of Tatitlek, village of Chenega, village
 (14) of English Bay?
 (15) A Yes, there is.
 (16) Q Where is it located?
 (17) A Approximately around, the first location was around the
 (18) Eyak Lake area.
 (19) Q Okay. And is there a story that goes with the location of
 (20) the Eyak village that you can tell us about?
 (21) A Well, yes. The Eyak village, like all of our native people
 (22) pretty much lived in and around areas of the water, on land
 (23) adjacent to the water, because we're seafaring people and
 (24) dependent on the different marine life to - was part of our
 (25) dining room table, I guess you'd put it, and we use that to -

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- (1) those areas to seek out our foods and utilize them.
 (2) Q If one were to go to Cordova today, is there a separate
 (3) village of Eyak that we could find?
 (4) A I don't know if you call it a separate. I think that
 (5) there's an area known as Eyak village area called the old town
 (6) site, which has now moved to new town in a different location.
 (7) Q And how did that happen?
 (8) A Well, years ago, they brought in the Guggenheimer Railroad
 (9) and people lived along that side of the Eyak Lake, and when
 (10) they went in to put the railroad in, they moved the Native
 (11) people from that area so they could utilize it to put their
 (12) round house and other things in there. And, eventually, the
 (13) Natives were split and moved to various parts throughout the
 (14) City of Cordova.
 (15) Q So when the railroad was punched through, there was an
 (16) independent village of Eyak, where the Eyak people lived?
 (17) A Yes.
 (18) Q And what happened?
 (19) A They moved them. They went in and - like they had done in
 (20) other big developments and moved the Natives, split the
 (21) families and they moved wherever they could find places to
 (22) live.
 (23) Q Do you remember - do you know from your history when
 (24) about that was?
 (25) A Not exactly, no, but -

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- (1) Q Years before the Native corporations were formed?
 (2) A Yes.
 (3) Q And before there were any Native claims to land
 (4) recognized?
 (5) A Yes.
 (6) Q Now, in addition to engaging in subsistence activities, do
 (7) many of the Native peoples commercial fish?
 (8) A They used to, yes.
 (9) Q And was commercial fishing, the principal cash opportunity
 (10) for people in the Cordova area?
 (11) A Yes.
 (12) Q When did you start commercial fishing?
 (13) A I was first exposed to it, I guess, when I was nine or ten
 (14) years old and I made trips with my father and relatives from
 (15) Eyak Lake down Eyak River into the Copper River area.
 (16) MR. PETUMENOS: If I could get the light pen
 (17) transferred to the witness stand, please. Remember how to do
 (18) this?
 (19) THE WITNESS: Yes, but I don't have a pen.
 (20) MR. PETUMENOS: There's no pen up there?
 (21) THE WITNESS: No.
 (22) MR. PETUMENOS: Let's see if we can find one.
 (23) THE WITNESS: Here it is.
 (24) MR. PETUMENOS: There we go. There's your color on
 (25) right there. Just tap it until you see the color come on.

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(1) There you go, now you got a pen.
 (2) BY MR. PETUMENOS:
 (3) Q I wonder if you could tell us as you began to expand your
 (4) horizons in Prince William Sound and began to gather for your
 (5) family and began to commercial fish what the areas were that
 (6) you became familiar with and where you conducted your
 (7) activities.
 (8) A Well, as a young man, I guess I started in this area here.
 (9) Q And as you began to get a little braver, what did you do
 (10) next?
 (11) A Well, as more than technology came into existence and we
 (12) had boats and seaworthy boats and stuff, and the influx of the
 (13) people that were in Cordova, it was getting more difficult to
 (14) be able to get the necessary subsistence foods, so we started
 (15) moving out into Prince William Sound in different areas here
 (16) and eventually in this area, and then as I grew older, then
 (17) eventually ventured out into all of this area.
 (18) Q And this is while you lived in Cordova?
 (19) A Yes.
 (20) Q And I think I'm going to have to ask you, Mr. Gordaoff, so
 (21) I can have a frame of reference here, could you tell us how you
 (22) expanded your horizons. How old are you, sir?
 (23) A I'm 51 years old.
 (24) Q So when you say that you were first starting out, modern
 (25) technology was such that you became more able to cross the

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(1) Sound, what sorts of things are you talking about? When you
 (2) say the modern technology allowed you to -
 (3) A Safer boats and speed and horsepower and things like that.
 (4) Q Weather reports?
 (5) A Weather reports, things that we didn't have in the earlier
 (6) days, where we had radio stations and weather reports, we
 (7) can - forans, all these other new radar and all these other
 (8) new technology items that helped very much in being able to
 (9) reach out into other areas.
 (10) Q Radios?
 (11) A Yes, radios.
 (12) Q Is this sort of activity that you do in Prince William
 (13) Sound dangerous at times?
 (14) A Yes, it is.
 (15) Q Now, in the 1960s, let me ask you first, were you pretty
 (16) close to your mom and dad?
 (17) A Yes.
 (18) Q And in the 1960s, did your mom and dad become active in
 (19) Native affairs?
 (20) A Yes, they did.
 (21) Q And could you describe that to the jury, please?
 (22) A Yes. Mother and father were very involved in creating and
 (23) being a part of the Chugach Native Association, which was a
 (24) Native association that was formed in the earlier years. And
 (25) they, along with other people in the Cordova, Prince William

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(1) Sound area, were able to start concentrating on some of the
 (2) concerns to the Native people and were trying to put together
 (3) an association to address those concerns.
 (4) MR. SHAPIRA: Your Honor, if I may, we're proceeding
 (5) pretty far afield. A certain amount of background about the
 (6) witness is certainly permissible, but now we're talking about
 (7) his mother and father's personal activities. I would object on
 (8) the basis of relevance and hearsay.
 (9) THE COURT: Well, the objection's overruled for now,
 (10) counsel.
 (11) BY MR. PETUMENOS:
 (12) Q And Mr. Gordaoff, what was - was there a concern with
 (13) respect to the Native communities' position with respect to
 (14) ownership of land?
 (15) A Yes. That was one of the reasons for forming the Chugach
 (16) Native Association was to address that, plus other things.
 (17) Q And the Chugach Native Association, which you were familiar
 (18) with then, is it - does it have a, basically a successor now
 (19) that performs the functions the Chugach Native Association did
 (20) then?
 (21) A Yes.
 (22) Q What is it?
 (23) A It was - later became Chugach Native - or Chugach
 (24) Natives, Inc. under the land claims, and after that the name
 (25) was changed to Chugach Alaska Corporation.

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(1) Q And when was the name changed to the Chugach Alaska
 (2) Corporation?
 (3) A I can't remember the exact dates, but I believe it was in
 (4) the '80s.
 (5) Q And you mentioned that in the 1960s there were concerns
 (6) about claims for land, and what precipitated that issue of
 (7) wanting a claim for land in the late 1960s.
 (8) A I didn't understand that.
 (9) Q Well, was there - did anything happen in the Prince
 (10) William Sound area that led the Chugach Natives to begin
 (11) making
 (12) claims for land?
 (13) A Yes, there had been discussions earlier on about the
 (14) pipeline coming through into the Valdez area.
 (15) Q And what concern did the Natives have?
 (16) MR. SHAPIRA: Objection, Your Honor, foundation of the
 (17) witness' personal knowledge.
 (18) THE COURT: You can lay a foundation.
 (19) BY MR. PETUMENOS:
 (20) Q How do you know that?
 (21) A Because I was - I mean, it was in the news and everything,
 (22) and there was discussion in our house among some of the
 (23) Native
 (24) leaders, Chugach Native Association, and I happened to be
 (25) living in the house where they held the meetings.
 (26) Q And as the discussions progressed, did those discussions
 (27) get more and more serious resulting in the Alaska Native Claims

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- (1) Settlement Act?
 (2) A Yes, they did.
 (3) MR. SHAPIRA: Objection, Your Honor, hearsay.
 (4) THE COURT: The objection's overruled.
 (5) BY MR. PETUMENOS:
 (6) Q And the Alaska Native Claims Settlement Act resulted in
 (7) some land being conveyed; didn't it?
 (8) A Yes, it did.
 (9) Q Were you involved as one of the leaders for the Chugach
 (10) peoples in selecting lands in connection with these
 conveyances
 (11) and seeing that title passed to the Chugach people?
 (12) A Yes, I was.
 (13) Q What sorts of considerations did the Native people in the
 (14) Chugach area take into account when they decided which lands
 to
 (15) pick in the Prince William Sound area?
 (16) A Well, they wanted to preserve our native lifestyle and
 (17) culture, and also be able to use certain types of development
 (18) and also choose lands that they'd eventually utilize as trades,
 (19) highly sensitive areas that -
 (20) Q All right. Now, what is a regional corporation?
 (21) A A regional corporation is made up of shareholders from
 (22) Chugach - I can only speak to the Chugach - made up of
 (23) individuals who live and reside in the Prince William Sound
 (24) area at one time or another, and individuals who had moved
 from
 (25) that area and now live in other parts of the country. They're

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- (1) shareholders. They each own a hundred shares.
 (2) Q When you become a shareholder in the Chugach Alaska
 (3) Corporation, is that something that you can buy in the market,
 (4) like IBM or some other stock like that?
 (5) A No.
 (6) Q What did you have to do to qualify to be a member of the
 (7) Chugach Alaska Corporation? How would one get stock?
 (8) A You had to be one-quarter Native blood in order to qualify
 (9) as a - to be determined by the Bureau of Indian Affairs
 (10) several years ago.
 (11) Q What is a village corporation?
 (12) A A village corporation is separate from a regional
 (13) corporation. It's Native individuals who reside or live in
 (14) certain areas of Prince William Sound.
 (15) Q Does the - is a village corporation a subsidiary of a
 (16) regional corporation?
 (17) A No.
 (18) Q How does one become a shareholder of a village
 corporation?
 (19) A Pretty much the same way. It was determined by the people
 (20) who were living in those different areas. Living in Port
 (21) Graham, you became a Port Graham shareholder if you were
 (22) one-quarter blood or more.
 (23) Q When a village corporation selects land, what sort of
 (24) considerations go into or even requirements go into the
 (25) selection of land by a village corporation?

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- (1) A They would, being involved with the regional aspect of it,
 (2) I don't know exactly what the villages did, but I would assume
 (3) it was under the same type of scenario that the regional went
 (4) in.
 (5) Q When you talk about the Chugach people being a seafaring
 or
 (6) maritime people, did that enter into the selection process?
 (7) A Absolutely. Being seafaring people, we were trying to
 (8) obtain lands adjacent to the different bodies of water in the
 (9) Cook Inlet, Prince William Sound area.
 (10) Q Now, when you say you were interested in selecting lands
 (11) that were in the maritime area, are we just talking about
 (12) maritime activities that take place on the land that was
 (13) selected, or are we talking about maritime activities that take
 (14) place on lands that are nearby, lands that are selected, as
 (15) well?
 (16) A Everywhere. We utilized all the lands in Prince William
 (17) Sound in one fashion or another.
 (18) Q When you talked about taking trips across the Sound, did
 (19) you ever go to the village of Chenega when you were looking
 for
 (20) subsistence foods and commercial fishing?
 (21) A Yes.
 (22) Q And could you give us an idea on the map here, if you've
 (23) still got your pen on, where Chenega is currently?
 (24) A Yes, it's down in this area here.
 (25) Q And when you went to the village of Chenega, did you meet

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- (1) people from the Chenega village and get to know them?
 (2) A Yes.
 (3) Q How about the village of Tatitlek?
 (4) A Yes.
 (5) Q Did you - when you were at the village of Tatitlek, did
 (6) you meet people from the village of Port Graham and from
 (7) English Bay that might be in the area?
 (8) A I had met individuals in the Prince William Sound area from
 (9) those areas, yes.
 (10) Q And were there times in the undertaking of subsistence that
 (11) the harvest, the things the land can provide, are shared
 (12) between these peoples?
 (13) A It's our way of life. We shared everything.
 (14) Q People from Chenega, with the people from Cordova, people
 (15) from Tatitlek with the people from Port Graham, if they meet in
 (16) Chenega, things like that?
 (17) A Absolutely.
 (18) Q Now, we talked a little bit about the selection of lands
 (19) being near the water. Are you familiar with how the
 (20) subsistence activities in a given season would begin and how
 (21) they'd progress throughout the spring and summer?
 (22) A Yes.
 (23) Q Is there a progression?
 (24) A Yes.
 (25) Q When the spring first comes, and what do we - in your

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- (1) mind, what months are we talking about when the winter breaks
 (2) and the spring first happens?
 (3) A Oh, I guess like all Alaskans know it's in March, April,
 (4) when things start happening, the Sound starts coming alive
 (5) and –
 (6) Q What is the first thing that you think of when the Sound
 (7) comes alive?
 (8) A Activity, lots of it.
 (9) Q Is there a specific species or a specific event that takes
 (10) place in the Sound that comes first before the others?
 (11) A Well, usually your herring start moving into the Sound in
 (12) various places throughout the Sound, and with that brings other
 (13) predators and mammals, birds and everything else that follow
 (14) them.
 (15) Q Why don't we dump the color that you've got here, just
 (16) click it twice in the bottom, bottom corner there. The next
 (17) one down, there you go.
 (18) When you went looking for herring, when the herring runs
 (19) came in to Prince William Sound, what areas were you looking
 (20) for – what areas of the Sound would you venture out to find
 (21) it?
 (22) A Well, I would go into the Tatitlek area for sure, and other
 (23) areas down in this area here.
 (24) Q Now, those are areas that you believe are good spots for
 (25) harvesting herring and herring roe: right?

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- (1) A Yes, they were. As they developed the commercial harvest
 (2) in these different areas and years we pretty much went all over
 (3) Prince William Sound. We didn't try to get into the big
 (4) harvest areas because there was so much activity. We went in
 (5) different areas in Prince William Sound to do that.
 (6) Q Well, that's the point I want to make, every person, or
 (7) every group of people or every family might have different
 (8) parts of the Sound that they believe are the spots to be in for
 (9) herring or whatever fish or game you're looking for; is that
 (10) right?
 (11) A That's true, yes.
 (12) Q And the herring, are they limited to these places, or do
 (13) they go all over the water in the Sound?
 (14) A Like everything else, they travel all over Prince William
 (15) Sound.
 (16) Q And what species, what animals follow it or follow the
 (17) herring?
 (18) A Well, as I said earlier, the birds and mammals and other
 (19) fish species.
 (20) Q Do herring swim under the water all the time and never come
 (21) to the surface as they go around the Sound?
 (22) A No.
 (23) Q Do they, in fact, touch the surface of the Sound
 (24) frequently?
 (25) A Yes, they come up and usually in the evening, nights, they

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- (1) surface.
 (2) Q And you've seen that?
 (3) A Yes.
 (4) Q On many occasions?
 (5) A Yes.
 (6) Q Now, after the activities take place in the spring relating
 (7) to the herring and the animals that feed on the herring that
 (8) you might hunt, what might you do next in Prince William
 Sound,
 (9) what might be the next species that come in that you would be
 (10) interested in?
 (11) A Well, your – your mammals and stuff follow those, and not
 (12) too long after that your salmon start to arrive.
 (13) Q And that would be a commercial fishing venture as well as a
 (14) subsistence activity; right?
 (15) A Yes.
 (16) Q The same kind of salmon all arrive at once?
 (17) A No, different species at different times.
 (18) Q Now, you have been a director of the Chugach Alaska
 (19) Corporation?
 (20) A Yes.
 (21) Q For how many years?
 (22) A Off and on several years. I can't remember the exact
 (23) amount of years, but off and on for several years.
 (24) Q You have been the chairman of the board of directors?
 (25) A Yes, I have.

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- (1) Q You've been the vice chairman of the board of directors?
 (2) A Yes, I have.
 (3) Q On a number of occasions?
 (4) A Yes.
 (5) Q In your mind, what are the duties or the functions of the
 (6) regional corporation for their shareholders? What are the
 (7) things that the regional corporation is to do for their
 (8) shareholders?
 (9) A Well, they – do some types of development, they also
 (10) provide different things for the shareholders, some of them are
 (11) jobs, some of them are development projects where they get
 (12) dividends or hope to get dividends, protect the lands.
 (13) Q And by "protect the lands," what do you mean?
 (14) A Protect the lands from being taken, and various other
 (15) things.
 (16) Q Does the Chugach Alaska Corporation have a duty to – well,
 (17) does the duty of protecting the lands and the duty to provide
 (18) economic development sometimes compete in land
 management for
 (19) the corporation?
 (20) A Yes.
 (21) Q Could you explain what you mean by that?
 (22) A Well, I guess one of the areas I can specifically talk
 (23) about is the Nellie Juan area, which is located down in here.
 (24) And when we chose that land, we knew it was a highly sensitive
 (25) area. It's an area we used frequently throughout the years,

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- (1) and when we chose that area, we knew that there was interest in
 (2) other parties to acquire that, and so we chose that in hopes
 (3) that we could eventually work out some kind of a trade for that
 (4) parcel with either a government entity or interested parties.
 (5) Q Is there a provision in the Alaska Native Claims Settlement
 (6) Act specifically authorizing and describing land exchanges?
 (7) A Yes.
 (8) Q And have there been times when the government of, either
 (9) the federal government or sometimes the State government
 (10) tries
 (11) to purchase Native land for conservation reasons or for parks?
 (12) A Yes.
 (13) Q And when that happens, how does that benefit the Native
 (14) corporations in terms of the duties that they have to their
 (15) shareholders?
 (16) A Two-fold, I think, or even possibly three. Economically,
 (17) of course, when they sell it, and they still have use to it and
 (18) other people have access to that and it's preserved, so several
 (19) different ways they could - are able to benefit by that.
 (20) Q And when you selected this land that you have down in this
 (21) corner here with the circle around it, the Nellie Juan area,
 (22) was that an idea, the idea that you could sell it as
 (23) conservation lands or that you could exchange it for other
 (24) lands one that was contemplated at the time of the selection?
 (25) A Yes.
 (26) Q That was something people were thinking about then?

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- (1) A Yes.
 (2) Q Did you, therefore, understand that as you selected that,
 (3) there was some sort of a market for that kind of land or there
 (4) could be some sort of market for that land?
 (5) MR. SHAPIRA: Objection, foundation, Your Honor.
 (6) THE COURT: Can you lay a foundation, counsel?
 (7) MR. PETUMENOS: I guess I don't understand the
 (8) objection.
 (9) THE COURT: Well, that's not the question, counsel.
 (10) Can you lay a foundation?
 (11) BY MR. PETUMENOS:
 (12) Q The reasons why, I guess we're looking for, that you
 (13) thought that there was - there were going to be these
 (14) opportunities to sell or exchange the land, why do you say that
 (15) that would be something you could look forward to doing
 (16) perhaps
 (17) in the future?
 (18) A That couldn't -
 (19) Q Why do you say that there was an opportunity in general to
 (20) sell land like this in the market to the federal and state
 (21) governments?
 (22) A Well, I don't know if there was a sell, but for trades, I
 (23) think is correct, because it was a highly sensitive area and
 (24) the environmental community and everybody worrying about
 (25) preserving that, along with ourselves, we could preserve that
 (26) area and capitalize on trades and utilize it.

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- (1) Q Let me ask you this: What was the date that the actual
 (2) selections took place for the Chugach Alaska Corporation?
 (3) Was
 (4) it in the mid-'70s when ANCSA was passed, or was it later?
 (5) A There had been discussions about those for several years.
 (6) The actual discussions on the trades with the different
 (7) government entities happened when I came on board and spent
 (8) a
 (9) lot of time in Washington, D.C., paring out the land
 (10) acquisition with the different agencies in '82.
 (11) Q And by land acquisition agencies, what do you mean?
 (12) A Oh, the Forest Service, the land - different agencies. I
 (13) can't remember right off the top of my head all of them at this
 (14) point. It seemed like everybody was interested in acquiring
 (15) those lands.
 (16) Q Mr. Gordaoff, March 24th, 1989; do you remember that day?
 (17) A Very well, yes.
 (18) Q Were you vice chairman of the Chugach Alaska Corporation
 (19) on
 (20) March 24th, 1989?
 (21) A Yes, I was.
 (22) Q Were you sent to Prince William Sound by your corporation?
 (23) A Yes, I was.
 (24) Q For what purpose?
 (25) A To assess the damages of the - that the oil spill had
 (26) caused on our lands.
 (27) Q Where did you go?
 (28) A I flew from Anchorage through the Whittier area, down

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- (1) through here, up in this area and all over through here.
 (2) Q Okay, in the aftermath of the Exxon Valdez oil spill, were
 (3) you ever out there on a boat?
 (4) A Yes, I was.
 (5) Q Were you out there on an airplane?
 (6) A Yes, I was.
 (7) Q You have spent a lot of time on boats. Are you a pilot, as
 (8) well?
 (9) A Yes.
 (10) Q And did you go - did you perform any functions in
 (11) connection with the aftermath of the Exxon Valdez? Did you -
 (12) was your boat used, did you run your boat?
 (13) A Yes, I did.
 (14) Q What did you do, starting with the first thing you
 (15) remember?
 (16) A Pardon me?
 (17) Q What did you do, starting with the first thing that you
 (18) remember doing?
 (19) A With my boats?
 (20) Q Yes.
 (21) A Yes, we had two boats on the oil spill, one was my own
 (22) personal vessel, the Indian Summer, a high speed gillnetter
 (23) that was utilized in the cleanup. And then we had a tender, my
 (24) father owned that, and it was called the Marine Venture, and he
 (25) housed the divers that tied up to the Exxon Valdez at the time

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- (1) of the spill or immediately after the spill had occurred. He
- (2) housed the divers that were going down to assess the problems
- (3) with the Exxon Valdez.
- (4) Q And where was the Exxon Valdez at the time that – were you
- (5) on the boat during this period of time?
- (6) A Which one?
- (7) Q The boat that housed the divers.
- (8) A No.
- (9) Q Were you present then?
- (10) A No.
- (11) Q Were you in that area during that period of time?
- (12) A I was in a float plane, yes.
- (13) Q Where was the Exxon Valdez when that was going on?
- (14) Where
- (15) was she located?
- (16) A Hard up on the Bligh Reef.
- (17) Q Bligh Reef. Did you get close to the Exxon Valdez while
- (18) she was on Bligh Reef?
- (19) A Yes.
- (20) Q How many days after the spill?
- (21) A The next day.
- (22) Q What was it like?
- (23) A Terrible. There was oil seeping, a lot of confusion. I
- (24) couldn't – being in an airplane, it was terrible to see from
- (25) the air.
- Q What direction was the oil headed?

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- (1) A At that time, was heading in a southerly and westerly
- (2) direction.
- (3) Q Could you clearly see it from the air?
- (4) A Yes.
- (5) Q Did you land in any parts of the Prince William Sound where
- (6) Native corporations own their land shortly after the spill?
- (7) A Yes.
- (8) Q Where did you go?
- (9) A Well, I flew all over the area, starting with the tanker
- (10) when it was hard aground, over to Naked Island.
- (11) Q Can you show us where – can you dump the color for us and
- (12) show us where Naked Island is?
- (13) A Sure. Naked Island's here, and through where it was
- (14) aground, through this area.
- (15) Q Now, is this the first voyage that you took?
- (16) A I made several voyages.
- (17) Q In some of the later voyages that you took, did you take
- (18) any after the oil had struck the shores of the western part of
- (19) the Sound?
- (20) A Yes.
- (21) Q And I assume that much of the water in between Bligh Island
- (22) and the western part of the Sound was covered with oil, as
- (23) well?
- (24) A The southwestern part, yes.
- (25) Q What did you see on the beaches?

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- (1) A Animals, oil, birds, destruction.
- (2) Q What did you smell?
- (3) A Oil.
- (4) Q What did it smell like?
- (5) A Terrible. It was nauseating, but even worse than that was
- (6) the stillness, the quietness of an area. As I grew up, this
- (7) time of year used to be so full of life, the herring, the
- (8) birds, the seals. There was a quietness in that sound, and I
- (9) thought to myself, you've awoken a sleeping giant here.
- (10) Everybody in the world's going to know, you know, what's
- (11) happened here, and I was afraid of the consequences of that.
- (12) Q Did you work, do work to try to clean up some of these
- (13) lands that were – you were visiting?
- (14) A Did I, personally?
- (15) Q Yes.
- (16) A Yes.
- (17) Q Did you observe firsthand what it was like when the
- (18) treatment teams came in to western Prince William Sound?
- (19) A Yes.
- (20) Q Describe it for the jury.
- (21) A They were mobilized and had taken in different equipment to
- (22) try to clean up the affected areas, and to me, some of the
- (23) things, methods they used shocked me. I don't think there was
- (24) a basic understanding of – or thought given to the process of
- (25) how they should approach the cleanup. I don't think they used

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- (1) local knowledge, people who lived all their lives in these
- (2) areas, has – do know a little bit about the area and the tides
- (3) and the winds and Mother Nature, and I think that those
- (4) individuals should have been utilized to assess and determine
- (5) how to approach this.
- (6) Q Did there come a time when the Exxon Valdez was moved
- (7) from
- (8) Bligh Reef to another part of the Sound?
- (9) A Yes.
- (10) Q Tell us what you remember about that.
- (11) A It was moved approximately April 5th or thereabouts. I
- (12) don't have the exact date, but I don't recall who they
- (13) discussed this with or whether local knowledge was used when
- (14) they did make the move; however, they did move it from Bligh
- (15) Reef – I just lost my picture here.
- (16) Q Just tap it twice. Let me give you a hand. History tells
- (17) me I'm not much better at this than anybody, but we'll see if
- (18) we can – okay. Now, what would you like to do?
- (19) A I wanted to show the – where they moved the Exxon Valdez
- (20) from Bligh Reef to, moved the vessel from this point here, from
- (21) this point here to this point here, called Outside Bay on Naked
- (22) Island.
- (23) Q When the Exxon Valdez was moved from Bligh Reef to the
- (24) Naked Island area, was she still leaking oil?
- (25) A Yes.
- Q How do you know?

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- (1) A We observed oil in those areas when it was moved, and then
 (2) several days after it was moved there was oil showing, coming
 (3) from the stern of the Exxon Valdez, anchored, moored in that
 (4) area and moving in this direction, slicks.
 (5) Q Did you see that yourself?
 (6) A Yes.
 (7) Q Now, it has been said in this courtroom that Prince William
 (8) Sound has recovered. Based upon all your years in the Sound
 (9) and all that you've seen and all the hours you've spent on it,
 (10) do you agree with that?
 (11) A To some degree, yes.
 (12) Q Tell us what you mean.
 (13) A Well, there's areas that I believe have recovered
 (14) somewhat. There's other areas that have not. And I just know
 (15) from my own experience that it's bad.
 (16) Q In what ways do you think that Prince William Sound has not
 (17) recovered?
 (18) A Well, being a commercial fisherman, I guess I've been
 (19) through the good years and the bad years. We've had years
 when
 (20) salmon didn't show up like they were supposed to on various
 (21) years, but since the oil spill, other than the one year that a
 (22) few fish showed up, it's been pretty dismal.
 (23) Q What about other animals besides fish?
 (24) A Yeah, the herring, same thing. Sea birds, marine mammals,
 (25) they're not back. The mussel beds have not fully recovered
 and

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- (1) some of the other Native shellfish groups.
 (2) Q Do you believe that the productivity of the land that your
 (3) corporation owns is the same as it was before the oil spill?
 (4) A No.
 (5) Q Do you believe that the productivity of the land
 (6) surrounding the land that your corporation owns is the same as
 (7) it was before the oil spill?
 (8) A No.
 (9) Q Are you sure?
 (10) A Absolutely sure.
 (11) Q We have a short videotape, if I could have Exhibit 1111 to
 (12) show the jury.
 (13) Mr. Gordaoff, one of the times you took a trip into Prince
 (14) William Sound, did you film part of it?
 (15) A Yes.
 (16) Q On your monitor, you're going to start to see that come
 (17) up.
 (18) (Videotape Played).
 (19) Could you explain to the jury what we're seeing, confining
 (20) yourself to that day in May of 1989? And I think we start with
 (21) some aerial runs.
 (22) A Yes. Yes, we flew from Anchorage down in Prince William
 (23) Sound area, looking at the devastation there of, as you'll go
 (24) through this picture, you'll see the oil spill apparently on -
 (25) very apparent on the water and on the shore, on some of the

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- (1) beaches at the high water level and, being low water, you'll
 (2) see on the splash zones on the cliffs as we go through the
 (3) contaminated areas.
 (4) Q As we are going across the water, now, we're going to be
 (5) going over then to the western side of the Sound?
 (6) A Yes. This is the western end of the Sound. We were on our
 (7) way to the Crab Bay, Chenega, the village of Chenega now, and
 (8) en route, we were surveying the damage.
 (9) Q Now, those - is that what you're talking about when we see
 (10) that on the water? Is that - what is it?
 (11) A A lot of it is the - majority of it is oil.
 (12) Q And what are we seeing here?
 (13) A You can see the oil on the beaches. It's on a high tide
 (14) line there you'll see and then the area above the high water
 (15) line is a splash zone. You can see the kelp, the mussel beds,
 (16) as you go through there.
 (17) Q What are we seeing now?
 (18) A This is Chenega, Crab Bay, and we're circling back into
 (19) Sawmill Bay where the hatchery is located. This is right down
 (20) the main part of Chenega, the main road. And this is one of
 (21) the gillnetters owned by Bill Hammer out of Cordova. He was
 (22) working the oil spill. It was a gillnetter, and you can see
 (23) the oil on the hull of the vessel and on the buoys. In order
 (24) to get oil up there, as you know when the boat's running
 (25) through that, you can visualize the amount of oil it had to be

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- (1) going through in order to get that high above the water line of
 (2) the vessel. This is young salmon right in Chenega in a oiled
 (3) area. That's an eagle that was brought in as we were at the
 (4) dock by an individual on a vessel that was oiled and dying.
 (5) Q Where are you now, Mr. -
 (6) A This is Homan Bay on Knight Island, land that Chugach
 (7) owns. At this point, I was digging down below the surface to
 (8) show that the oil was below the surface.
 (9) Here is different types of kelp. On the left, my left
 (10) hand, you can see the dry, natural state of it, and on the
 (11) right you can see the oil on my fingers of the contaminated,
 (12) and there I'm - on the surface it looks nice and white on the
 (13) rock beaches and as you stick your hand into there, you can
 see
 (14) the oil had penetrated down into the beach, into the soil.
 (15) Q What are we seeing here, what's this fellow talking about
 (16) here?
 (17) A This is a kelp area here and you can see that it's -
 (18) MR. PETUMENOS: Could you stop that so he could just
 (19) explain that more? Go ahead.
 (20) A Yeah, there's pop weed there and kelp, and you'll see it in
 (21) the natural state, and then I'll show you a piece that I took
 (22) off the rocks in that area that had been oiled. You can see
 (23) how the mousse and everything that's in the oil in there and
 (24) the clarity and how good it looks in my right hand, natural.
 (25) (Video concluded.)

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- (1) Q Mr. Gordaoff, I'm going to show you some photographs?
- (2) MR. PETUMENOS: Your Honor, I'll be showing the
- (3) witness the Fobes photographs as we discussed.
- (4) THE COURT: Okay.
- (5) BY MR. PETUMENOS:
- (6) Q Could you take a look at the notebook in front of you
- (7) there, Mr. Gordaoff, and start with exhibits 245-1 through 5.
- (8) A Yes.
- (9) Q I will tell you that in testimony we will present that
- (10) these are photographs of the Eleanor Island area. Could you
- (11) take a look at them, please, and first tell me whether or not
- (12) the nature and extent of the oiling you see in the Eleanor
- (13) Island area is typical of and similar to the oiling that you
- (14) saw on Native corporation land?
- (15) A Yes.
- (16) Q Further, the Eleanor Island area, is that an area that the
- (17) Native shareholders utilized for purposes of gathering foods
- (18) and taking the production of the land?
- (19) A That's one of many.
- (20) Q I'd like to show you 245-6 through 8, which is in that
- (21) book, and ask you the same questions. Are they typical of the
- (22) oiling that you saw on Native corporation land, and is Eleanor
- (23) Island bay, which I'll tell you those photographs depict, an
- (24) area the Natives from your corporation utilized?
- (25) A Yes, we used all of the lands, various different

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- (1) subsistence foods.
- (2) Q 245-9, Mr. Gordaoff, is a photograph of an area between
- (3) Block Island and Eleanor Island. Was this a typical scene in
- (4) and around Native corporation lands?
- (5) A Yes, it was and the pompoms with the oiling material and
- (6) the contaminated booms, absorbent booms, yes.
- (7) Q Exhibit 245-10 and 11, Chenega by the village at Crab Bay.
- (8) Now that's actually at Chenega village or near it?
- (9) A Yes, it is.
- (10) Q 245-12 and 13, that's near Knight Island; is that typical
- (11) of what you saw?
- (12) A Yes.
- (13) Q And is that near Native corporation lands?
- (14) A Yes.
- (15) Q What about Herring Bay, 245-15? Is Herring Bay a place
- (16) that the Natives utilized?
- (17) A Yes.
- (18) Q For subsistence activities as you described?
- (19) A Yes, that's where it got its name, herring.
- (20) Q And is this photograph typical of the type of oiling that
- (21) you saw on Native corporation land, as well?
- (22) A Yes.
- (23) Q Photographs 245-16, -17, and -18?
- (24) A Yes.
- (25) Q And I'll tell you that that is the Bay of Isles. In

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- (1) fact, do you recognize it?
- (2) A Yes, that is the Bay of Isles. The first picture looks
- (3) like the entrance on the southern side of the isles, which is
- (4) regional corporation land.
- (5) Q 245-19 through -21 I will tell you is Northwest Bay. Do
- (6) you know where Northwest Bay is?
- (7) A Yes, I do.
- (8) Q And is Northwest Bay a place that Natives utilized?
- (9) A Yes.
- (10) Q And is the oiling that you see in Northwest Bay typical of
- (11) the oiling of Natives land that you'd seen?
- (12) A Yes.
- (13) Q 245-27, I will tell you, is a picture of Naked Island?
- (14) A Yes.
- (15) Q Same questions.
- (16) A Looks like it's the southeastern tip of Naked Island, well,
- (17) where you have the big boulders.
- (18) Q Is it typical of the oiling that you saw on Native
- (19) corporation lands?
- (20) A Yes.
- (21) Q 245-80 and 245-23, -24 and -25, I there tell you, is the
- (22) Smith Island area. Is that typical of the oiling that you saw
- (23) on Native corporation lands?
- (24) A Yes, it is.
- (25) Q And is Smith Island an area that the Natives utilized

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- (1) for -
- (2) A Yes.
- (3) Q - the production of the land?
- (4) A It's a known area for haul out, yes.
- (5) Q 737-1 and -2, I will tell you, is an area behind Naked
- (6) Island. Is that typical of the kind of oiling on the water
- (7) that was near Native corporation land?
- (8) A Yes.
- (9) Q 737-1 and -2 - yes, 737-2 and 737-1?
- (10) A Yes, this is - it doesn't look as heavy as the other
- (11) areas, so I'm assuming that this - by looking at the oil, that
- (12) it's - it looks like it might have been a second oiling.
- (13) Q What do you mean by that?
- (14) A Well, when I was flying in the Naked Island area where -
- (15) Outside Bay where they had moved the Exxon Valdez,
- (16) sometime
- (17) after that, a sheen was noted in our flights in that area and
- (18) my understanding is that the Coast Guard, which this picture
- (19) is, had followed that sheen to the stern of the Exxon Valdez,
- (20) and I believe it's documented in there by the Coast Guard.
- (21) Q 245-26, do you recognize that area?
- (22) A 245-6?
- (23) Q 26.
- (24) A 26? Oh, yes.
- (25) Q Is that typical of the kind of oiling that you saw in the
- (26) Native corporation land?

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- (1) A Yes.
- (2) Q 245-27, I will tell you is the Smith Island area. Is that also typical? You've already told us that Smith Island was used by the Natives, yes?
- (5) A Yes.
- (6) MR. PETUMENOS: Your Honor, I wonder if I could approach the bench with counsel.
- (8) (Bench conference off the record)
- (9) BY MR. PETUMENOS:
- (10) Q Do you have in front of you the - oh, there it is, okay, thank you.
- (12) I'd like you to take a look at 245-56, and I think it might be in this one here. Did when you get 245-56 in front of you, would you let me know?
- (15) A Yes.
- (16) Q I will tell you that this is a photograph of the Block Island area. Could we have the map back, please? Where would Block Island be on the map there?
- (19) A Right in this area here.
- (20) Q Okay. And does the oiling that you see in this picture, is it typical, similar to the kinds of oilings that you saw on Native corporation lands?
- (23) A Yes, it is.
- (24) MR. PETUMENOS: Now, in this instance, Your Honor, I would like to publish this particular exhibit to the jury

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- (1) because of his special knowledge about the photograph. I could show the Court what it is.
- (3) THE COURT: I'd like to see the photograph, please.
- (4) MR. PETUMENOS: Just pull it right out of there, but hold the other place so I don't get in trouble.
- (6) MR. SHAPIRA: Is this the photograph of the hand?
- (7) MR. PETUMENOS: Correct. Okay, great. Just don't lose my place for me.
- (9) THE COURT: I've seen it, counsel, I know about this one.
- (11) MR. PETUMENOS: Subject to connecting it up with the photographer, herself, I would wish to publish to the jury at this time so I can have Mr. Gordaoff explain what it is the jury is seeing.
- (15) MR. SHAPIRA: I'm sorry, Your Honor, I was conferring and I didn't hear.
- (17) THE COURT: He wants to have it shown to the jury.
- (18) MR. SHAPIRA: That's fine, Your Honor.
- (19) MR. PETUMENOS: Mr. Gordaoff, you're not wearing a microphone? Could you unclip it and -
- (21) THE COURT: Actually it can travel in the thing. It's always a problem the first time, but the witnesses get used to it.
- (24) MR. PETUMENOS: Don't strangle yourself.
- (25) THE WITNESS: It's very short.

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- (1) THE COURT: How short is it?
- (2) THE WITNESS: Just five feet, six feet.
- (3) THE COURT: There is more, isn't there?
- (4) MR. PETUMENOS: We're getting a stenographic record.
- (5) Would it be all right for him just to remove the mike?
- (6) THE COURT: No, I want to get both.
- (7) MR. PETUMENOS: Want to get both, all right.
- (8) BY MR. PETUMENOS:
- (9) Q Mr. Gordaoff, why don't you hold it so your hand can hold the hand. What is this, does this photograph show the jury?
- (11) A Well, it's a Native food that we eat a lot of. It's called gum boots or otherwise known as bidarki, depending on what area you're from. This is an oiled - is an oiled -
- (14) Q Oiled bidarki?
- (15) A Bidarki. And usually it's a lot more pink and vivid in its color when you first pick them, and they're very good eating and we enjoy eating them.
- (18) Q Where do they grow?
- (19) A On the rocks on low water mark, below the low water mark on the different rocks throughout Prince William Sound.
- (21) Q Are they normally plentiful?
- (22) A Yes.
- (23) Q And how plentiful were they in 1989?
- (24) A They were plentiful, yes.
- (25) Q And did a lot of them die?

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- (1) A Yes.
- (2) MR. PETUMENOS: Thank you, you can be seated, resume the witness stand.
- (4) (Witness resumes the stand.)
- (5) MR. PETUMENOS: Mr. Gordaoff, bear with me, I'll check my notes and I may be finished with your examination.
- (7) BY MR. PETUMENOS:
- (8) Q One final question, Mr. Gordaoff.
- (9) In your mind, what is the most important asset that the Chugach Alaska Corporation owns?
- (11) A The land.
- (12) Q And one more question. Lawyers never, ever keep their promise when they say one more question. Archaeological sites,
- (14) when you had your tenure as chairman and when you served on the board of directors, did the Chugach Alaska Corporation have a policy with respect to the confidentiality of such sites?
- (17) A Yes.
- (18) Q What was it?
- (19) A They were never to be released. No one was to know where they were.
- (21) Q Why?
- (22) A It was handed down through generations from our ancestors, that they just did not want that exposed to the world. It's a very sacred thing to be protected, our archaeological sites, from other people.

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- (1) MR. PETUMENOS: Your Honor, I have no further
 (2) questions.
 (3) THE COURT: Counsel, would you like to take a break
 (4) now? We'd normally do it at 10:30. I'm trying to go an hour
 (5) and a half and take a break, but I'll take it at your
 (6) convenience, for this one.
 (7) MR. SHAPIRA: That would be fine, Your Honor,
 (8) Mr. Petumenos mentioned before he was going to request a
 break
 (9) between direct and cross to talk about exhibits, and I don't
 (10) know if he still wants to do that.
 (11) THE COURT: That would be fine. That would be fine.
 (12) We'll take a 15-minute break.
 (13) (Jury out at 10:06 a.m.)
 (14) (Recess from 10:06 a.m. to 10:23 a.m.)
 (15) (Jury in at 10:23 a.m.)
 (16) THE COURT: I'm sorry to keep you waiting, counsel.
 (17) The phone rang just as I was walking out the door.
 (18) MR. SHAPIRA: Your Honor, there is one matter we could
 (19) properly discuss at side bar before I begin.
 (20) (Sidebar discussion out of the hearing of the jury.)
 (21) MR. SHAPIRA: Your Honor, there has been motions on
 (22) the subject of where we - we were about to address claims,
 (23) litigation pending in other courts, not commercial fishermen,
 (24) the fact that the commercial fishermen are pursuing a case in
 (25) other courts and the fact that subsistence fishermen are

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- (1) pursuing a case in other courts. This witness has opened the
 (2) door. He has complained extensively about harm to
 subsistence
 (3) interests and the Natives and he has - he went out of his way
 (4) of saying the Natives used to be commercial fisherman, but he
 (5) sort of indicated not anymore was the effect. I think it is
 (6) very important that this jury be aware that this case is not
 (7) about those losses, and that if those losses, and those losses
 (8) are being prosecuted elsewhere, otherwise they could have the
 (9) misleading impression that they are being called upon to
 (10) rectify those losses. It is prejudicial to us. If we cannot
 (11) point out at least in a very shorthand way that claims of
 (12) subsistence fishermen are an issue in another lawsuit and
 (13) claims of commercial fishermen likewise.
 (14) MR. PETUMENOS: I don't think we opened the door at
 (15) all, Your Honor.
 (16) THE COURT: I think the decision is important here. I
 (17) don't see any problem with exploring it.
 (18) MR. PETUMENOS: What I would propose is rather than
 (19) the vigorousness of what may be elicited in the response of
 (20) the witness, which I have no idea what would happen, is the
 (21) Court simply indicate to the jury, the Court informing an
 (22) instruction or something simply enter to the jury that the
 (23) fishing -
 (24) THE COURT: I think - I reserve the right to listen
 (25) to your questioning on that, but what you going to, to the

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- (1) leading questions, I don't see a problem, okay
 (2) (Sidebar was concluded.)
 (3) MR. SHAPIRA: Good morning, Your Honor, Ladies and
 (4) Gentlemen of the Jury, opposing counsel and Mr. Gordaoff. My
 (5) name is Ralph Shapira and I'll be conducting on
 (6) cross-examination.
 (7) CROSS EXAMINATION OF KEITH H. GORDAOFF
 (8) BY MR. SHAPIRA:
 (9) Q Mr. Gordaoff, we haven't met before this morning, and in
 (10) preparing for your cross-examination, I read some other
 (11) testimony about you, including some sworn testimony that you
 (12) were the single best hunter and fisherman in the entire Prince
 (13) William Sound. That impressed me greatly. I noticed the
 (14) deponent was your mother, Mary Gordaoff, and I was then
 doubly
 (15) impressed by your hunting and fishing skills and your mother's
 (16) justifiable pride.
 (17) Sir, you described to some, including with reference to
 (18) maps and videotapes, the voyages that you made around
 Prince
 (19) William Sound during 1989 in which you saw a great deal of oil;
 (20) correct?
 (21) A That's correct.
 (22) Q And these were many trips and some of them must have
 been
 (23) lengthy trips by the boat: correct?
 (24) A Pardon? I couldn't hear the last part.
 (25) Q I'm sorry, I'm just recovering from a cold. I'll do my

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- (1) best.
 (2) You took a number of different trips around Prince William
 (3) Sound in 1989 by both float plane and by boat; correct?
 (4) A Correct.
 (5) Q And some of the trips by boat must have been lengthy trips
 (6) covering a great - a wide geographic area; is that right?
 (7) A Not a wide geographical area, I wouldn't say, no.
 (8) Q Where did you go, sir?
 (9) A On the outside, would be the eastern end of Knights (sic)
 (10) Island, from I believe it was Block Island in a southerly
 (11) direction around Point Helen and around to I believe it was
 (12) just this side of Drier Bay.
 (13) Q With the exception of the parcel of land owned by Chugach
 (14) Alaska Corporation on Knights (sic) Island, did you actually
 (15) see any other land in 1989 that belonged to Chugach Alaska
 (16) Corporation?
 (17) A Did I see the land?
 (18) Q Yes, sir.
 (19) A Yes, I did.
 (20) Q And which other parcels of land did you see?
 (21) A I saw parcels all the way from Prince William Sound, all
 (22) the way down into Cook Inlet, up into English Bay, Port
 Graham,
 (23) Homer, and back into Anchorage.
 (24) Q Now, have you taken any of those kinds offer extensive
 (25) trips around Prince William Sound since, say, fall of 1992?

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- (1) A Since '92.
 (2) Q In which you toured the condition of Chugach Alaska
 (3) Corporation land?
 (4) A I've made trips into specific areas. I have not made a
 (5) complete tour of the whole Prince William Sound.
 (6) Q Have you toured specific parcels of land owned by Chugach
 (7) Alaska Corporation in the Prince William Sound area since the
 (8) fall of 1992?
 (9) A I don't know what you mean by tour, but I did do a flyover
 (10) of several areas, yes.
 (11) Q Now, your deposition was taken in this action in the fall
 (12) of 1992; correct?
 (13) A I believe so, yes.
 (14) Q And a deposition - just because I'm not sure the jury has
 (15) heard an instruction on this yet - is your sworn testimony
 (16) taken before a court reporter, using the same oath to tell the
 (17) truth as you've taken in this same court; correct?
 (18) A That's correct.
 (19) Q Now, sir, isn't it true that after 1990 you have not
 (20) personally seen oiling on any shoreline in Prince William
 (21) Sound?
 (22) A No, that's not true.
 (23) Q Okay. Now, during your deposition, and let me show you -
 (24) do you have a copy of your deposition in front of you?
 (25) A No, I don't.

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- (1) MR. SHAPIRA: Can we get a copy of the deposition?
 (2) BY MR. SHAPIRA:
 (3) Q For your convenience, sir, if you want to look at any part
 (4) of your deposition, I'm putting a copy before you.
 (5) Now, sir, in your deposition -
 (6) MR. PETUMENOS: Can I have a page reference, counsel?
 (7) MR. SHAPIRA: Yes, I'm sorry. Page 298 to 290 - I'm
 (8) sorry, 297 to 298.
 (9) MR. PETUMENOS: May I have a moment to find it?
 (10) MR. SHAPIRA: Yes, sir.
 (11) THE COURT: Can you all read this?
 (12) Counsel, are you ready?
 (13) MR. PETUMENOS: Yes, sorry.
 (14) BY MR. SHAPIRA:
 (15) Q Now, sir, in your deposition in the fall of 1992, you were
 (16) asked the question, "Now, after 1990, have you seen any oil on
 (17) shorelines in Prince William Sound?" And you answered,
 (18) "Personally, I have not."
 (19) Now, I take it that answer was true when you gave it then?
 (20) A Yes, I thought it was true.
 (21) Q And has your view changed since then?
 (22) A Up to date?
 (23) Q Yes, sir.
 (24) A Yes, I've seen oil in Prince William Sound as of today,
 (25) yes.

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- (1) Q And where have you seen that oil?
 (2) A I've seen oil in Point Helen and other areas on - I
 (3) believe it was on the south, southeastern end of Knights (sic)
 (4) Island.
 (5) Q And was this oil that was laying on the surface?
 (6) A No, it was a sheen. You could see it there from the rocks
 (7) and stuff in that area.
 (8) Q Where - were you on the ground when you saw it?
 (9) A I was in the air.
 (10) Q This was from the airplane?
 (11) A Yeah.
 (12) Q You saw a sheen on some of the rocks?
 (13) A Coming off some of the rocks, uh-huh.
 (14) Q This is a fixed-wing craft?
 (15) A Yes.
 (16) Q And you felt you could tell a sheen from just wetness or
 (17) other matter from the air?
 (18) A I don't understand what you mean by wetness. Water is
 (19) wet.
 (20) Q Yes, sir, water is wet.
 (21) A I don't understand what you -
 (22) Q Okay. Now, were those on Chugach Alaska Corporation
 lands?
 (23) A Some of them are, some of them are Chenega land.
 (24) Q Where did you see the sheen on Chugach Alaska
 Corporation
 (25) lands?

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- (1) A Right out of Homan Bay.
 (2) Q And this was again from the airplane?
 (3) A Yes.
 (4) Q About when was that?
 (5) A Pardon me?
 (6) Q About when was that?
 (7) A I believe it was in '90.
 (8) Q And -
 (9) A '90 - I'm not sure, maybe it was '91 or thereabouts. I'm
 (10) not sure of the exact dates.
 (11) Q The sightings of the sheen were in '90 or '91?
 (12) A Uh-huh.
 (13) Q So they had already occurred then when you gave this
 (14) testimony that said personally you hadn't seen any oil?
 (15) A Yes.
 (16) Q And what accounts for the - did you just have a refreshed
 (17) recollection since then by some means?
 (18) A Yeah, a lot of things were happening, and when I was taking
 (19) that deposition, I was very uneasy and being hit from every
 (20) side and, yeah, I said that, and I was incorrect in my response
 (21) in that deposition.
 (22) Q Actually, you said it a second time in the deposition, sir,
 (23) on page 293. You were asked - you made the statement in the
 (24) deposition that there was still oil out there, meaning Prince
 (25) William Sound, and you were asked, "That's what I'm trying to

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- (1) pinpoint. Where is it?" And you said, "Well, I don't know
 (2) personally where its – or I have no personal knowledge other
 (3) than listening third hand."
 (4) So you've thought better of that answer also since then?
 (5) A There was a sheen. I don't personally know where the oil
 (6) was coming from, but when you see a sheen at the tidal area
 (7) that's in Prince William Sound, that's oil, can be coming from
 (8) several different places.
 (9) Q It isn't necessarily Exxon Valdez oil?
 (10) A Oh, how would I know that, flying from an aircraft, sir?
 (11) I'm not an expert in that area.
 (12) MR. PETUMENOS: Your Honor, we're getting an echo on
 (13) that Mike over here. We're getting an echo off that Mike. I'm
 (14) not sure what it is.
 (15) THE COURT: Can you calm that down a little bit?
 (16) MR. SHAPIRA: I don't know what to do, Your Honor,
 (17) first I was too soft and now I'm too loud.
 (18) MR. PETUMENOS: It's not you, counsel, it's the
 (19) witness.
 (20) THE COURT: No accusations here.
 (21) MR. PETUMENOS: You're just right.
 (22) BY MR. SHAPIRA:
 (23) Q Now, sir, the jury has heard a number of times both in
 (24) opening statements – I don't know if you were present for
 (25) openings statements, but both in opening statements and in
 your

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- (1) testimony about subsistence, and you have explained
 eloquently
 (2) the kind of subsistence lifestyle that you have lived since you
 (3) were a child in Cordova; correct?
 (4) A Yes.
 (5) Q And subsistence lifestyle to you is a lifestyle that
 (6) enables you, gives you the ability to get wild food of various
 (7) types and to eat them as part of your regular diet; correct?
 (8) A Yes.
 (9) Q And you've done that since you were a child?
 (10) A Yes.
 (11) Q Now, in 1982, you left Prince William Sound to relocate to
 (12) Anchorage; correct?
 (13) A That's correct.
 (14) Q And you've lived in Anchorage continuously since 1982;
 (15) correct?
 (16) A Yeah.
 (17) Q Sorry, was there a time when you moved back to Prince
 (18) William Sound?
 (19) A Well, I don't know if you want to call it move. I go back
 (20) frequently to commercial fish out of Cordova and Prince William
 (21) Sound, the western half.
 (22) Q But your residence, you have lived in Anchorage since 1982?
 (23) A Yes.
 (24) Q And while you've lived in Anchorage you've had a full-time
 (25) job much of the time with the Chugach Alaska Corporation;

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- (1) correct?
 (2) A No.
 (3) Q I may have misunderstood. Mr. Petumenos said, asked you
 on
 (4) direct examination whether you were a director or chairman of
 (5) the board of directors, I think the chief executive officer of
 (6) Chugach Alaska Corporation. Those were positions that you
 (7) held; correct?
 (8) A That's correct.
 (9) Q But were they not – was that not a full-time job?
 (10) A On occasions they were and on occasion they weren't,
 (11) depending on the situation. At one time, vice chairman, I'm
 (12) not a paid employee. As a director, I'm not a paid employee.
 (13) As a period of time as chairman of the board, I was a paid
 (14) employee, and when I was chief executive officer for a very
 (15) short period of time, I was paid then, yes.
 (16) Q Indeed when you were chief executive officer –
 (17) MR. STOLL: Excuse me, Your Honor, we can't hear the
 (18) witness.
 (19) THE COURT: Your voice is soft. If you could keep,
 (20) just try to keep it up a little bit.
 (21) MS. KATZKE: The microphone's turned off.
 (22) MR. STOLL: The microphone's turned off?
 (23) THE COURT: Well, there was an echo, counsel.
 (24) MR. STOLL: I'm sorry, Your Honor. I'm sorry.
 (25) MR. PETUMENOS: First there was an echo and now

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- (1) there's nothing at all.
 (2) THE COURT: We'll try to work out the middle ground,
 (3) counsel. It may take some time.
 (4) BY MR. SHAPIRA:
 (5) Q Indeed, Mr. Gordaolf, when you were chief executive officer
 (6) of Chugach Alaska Corporation you were paid a salary of
 \$54,000
 (7) a year; correct?
 (8) A I don't remember the exact amount, but that sounds –
 (9) Q That sounds accurate; doesn't it?
 (10) A Yeah.
 (11) Q And when you were chairman of the board of the Chugach
 (12) Alaska Corporation, you were paid a salary, an annual salary of
 (13) about \$60,000; correct?
 (14) A Yeah. I don't remember the exact amount.
 (15) Q But that's in the ballpark, isn't it, and that wasn't a
 (16) full-time job?
 (17) A Yeah. I mean the question, as I understood it, when it was
 (18) presented to me that I was working full-time from 1982 and my
 (19) answer was yes and no, because the various positions that I
 (20) held from 1982 to present, I was not the chairman of the board
 (21) all that time, nor was I chief executive officer all that
 (22) time. I held various positions, some paid, some not.
 (23) Q Now, once you moved to Anchorage and took a job with
 (24) Chugach Alaska Corporation, your subsistence activities, the
 (25) ones you eloquently described yourself participating in since

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- (1) your childhood, they tailed off considerably; didn't they?
- (2) A Yes.
- (3) Q Because you can't really do that when you have a job and
- (4) live in Anchorage to nearly the same extent; correct?
- (5) A I couldn't hear the last part.
- (6) Q Because you can't do those activities to nearly the same
- (7) extent when you live in Anchorage and have a job; correct?
- (8) A Well, in my case, partly correct, yes.
- (9) Q And it's also partly correct that you can't do those
- (10) activities as much as you might like and as much as you're used
- (11) to them from your childhood when you're a commercial
- (12) fisherman;
- (13) correct?
- (14) A No, that's not correct.
- (15) Q Sir, in that same deposition that I referred to before, you
- (16) were asked -
- (17) MR. PETUMENOS: I wonder if counsel could give me the
- (18) page reference so I could determine the foundation.
- (19) MR. SHAPIRA: I'm sorry, I did that again. I'm
- (20) terribly sorry. It's Page 468.
- (21) MR. PETUMENOS: Bear with me until I can get there,
- (22) counsel.
- (23) I would have to view the foundation of - 106 foundation
- (24) unless the following question also was in -
- (25) THE COURT: You want the whole - I'm sure it will be
- (26) fully explored, counsel.

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- (1) The witness has the passage on the screen; don't you?
- (2) THE WITNESS: Yes.
- (3) THE COURT: Have you read it all?
- (4) THE WITNESS: Yes.
- (5) BY MR. SHAPIRA:
- (6) Q Now, sir, you were asked in your deposition - well, what
- (7) I'm trying to get at, sir is you stated when you worked in
- (8) Anchorage, as part of a cash economy, you were prevented
- (9) from
- (10) subsistence gathering when you worked as a commercial
- (11) fisherman, during those years you worked as a commercial
- (12) fisherman. Have you also been prevented as a result of that
- (13) occupation from subsistence gathering to the extent you
- (14) wanted
- (15) to, and you answered yes. That's the question you were asked
- (16) and that's the answer you gave?
- (17) A Yes. And I might explain that, if I may.
- (18) THE COURT: Yes, you may.
- (19) BY MR. SHAPIRA:
- (20) Q Please, sir.
- (21) A Yes. Your question was whether or not I subsisted on a
- (22) full-time basis. Absolutely not. On a season, season by
- (23) season, and as state and federal law allows, I subsisted when I
- (24) could get away from my job. I took time off to go do those
- (25) things, the same with commercial fishing. It's against the law
- (26) to go out and hunt deer in May of any given year. They have
- (27) certain seasons and that's why I was not able to do those

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- (1) things.
- (2) Q And that is a third factor, isn't it, sir, it was your job,
- (3) the fact that you lived in Anchorage, far from Prince William
- (4) Sound, the fact that you were busy as a commercial fisherman
- (5) and the fact that there are game laws that you have to obey;
- (6) correct?
- (7) A That's correct.
- (8) Q And those things kept you from doing subsistence hunting
- (9) and fishing since 1982 to the extent you did when you were a
- (10) villager; correct?
- (11) A Well, I don't know what you mean by "villager," but when I
- (12) lived in Cordova, yes.
- (13) Q And, in fact, while you lived in -
- (14) MR. PETUMENOS: Excuse me, was the witness completed
- (15) with his answer? I'm not sure.
- (16) THE COURT: He answered. The jury heard the answer;
- (17) didn't you? Go ahead.
- (18) BY MR. SHAPIRA:
- (19) Q And, in fact, sir, while you lived in Anchorage, you did
- (20) very little of it, isn't that correct, hunting and gathering
- (21) and subsistence activities since 1982?
- (22) A That's correct.
- (23) Q Now, during these years since 1982 when you haven't had a
- (24) chance to do much hunting and gathering in the Prince William
- (25) Sound, did you feel you were letting your corporation, Chugach

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- (1) Alaska Corporation, down in some way?
- (2) A In what respect?
- (3) Q Did you feel that you owed it to Chugach Alaska Corporation
- (4) to hunt and fish in Prince William Sound?
- (5) A That I owed it to the corporation to hunt and fish?
- (6) Q Yes, sir.
- (7) A No.
- (8) Q You didn't feel you were letting your corporation down in
- (9) some way?
- (10) A No.
- (11) Q You didn't think it was your duty to Chugach Alaska
- (12) Corporation to hunt and fish on their lands?
- (13) A No, it was not my duty.
- (14) Q And didn't it cost them money in some way that you didn't
- (15) hunt and fish on their lands?
- (16) A In what respect?
- (17) Q Well, I don't know. When a shareholder hunts and fishes on
- (18) their lands, do you pay the corporation some money for the
- (19) right to hunt and fish on their lands?
- (20) A No, it's our land. Why would we want to pay the
- (21) corporation?
- (22) Q So they weren't out any money because you weren't hunting
- (23) and fishing; correct?
- (24) A Rephrase that. Whether I was hunting or fishing they were
- (25) out money, is that what -

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- (1) Q Yeah, that's the question. Did it hurt your corporation,
 (2) Chugach Alaska Corporation, the corporation you were the
 (3) chairman of the board of, chief executive officer of,
 (4) shareholder of, did it hurt them when you stopped hunting and
 (5) fishing?
 (6) A No.
 (7) Q On their land since 1982?
 (8) A No, not to my knowledge, it didn't.
 (9) Q Okay. Now, when you were a chairman and chief executive
 (10) officer of Chugach Alaska Corporation, did you try to make sure
 (11) that all the shareholders hunted and fished on their land?
 (12) A That's their choice. We never interfered with the hunting
 (13) and fishing. That's their right. If they want to go on the
 (14) land to hunt and fish, whether it be corporation land, state or
 (15) federal land or private land, that's their choice. That's not
 (16) my decision to make whether they should or should not.
 (17) Q That's their business; correct?
 (18) A That's correct.
 (19) Q That's their individual right to hunt or fish, it's not any
 (20) of the corporation's business; correct?
 (21) A That's every - everybody in the country's right.
 (22) Q All right. And there are about 1,700 shareholders of
 (23) Chugach Alaska Corporation; correct?
 (24) A No, that's not correct.
 (25) Q What is the number?

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- (1) A Approximately 1900.
 (2) Q 1,900?
 (3) A Yeah.
 (4) Q And many of them live outside the Prince William Sound;
 (5) correct?
 (6) A Yes.
 (7) Q Most of them live outside the Prince William Sound, like
 (8) yourself; correct?
 (9) A Yes.
 (10) Q When you were the chairman, chief executive officer of
 (11) Chugach Alaska Corporation, did you think - did you ever put
 (12) in as part of your business plan, marketing plan for the
 (13) corporation, that it should encourage all of its shareholders
 (14) to come and hunt and fish on Chugach Alaska Corporation
 (15) lands?
 (16) A In a business plan?
 (17) Q Yes, sir.
 (18) A Evidently, you don't know much about Native corporations,
 (19) because we do not have a business plan that states whether
 (20) you
 (21) can or cannot hunt. That's a - your given right to hunt and
 (22) you don't need the permission from the regional corporation or
 (23) anybody else that you're a member of to ask or call the
 (24) chairman of the board if I can go hunt. That's ridiculous. I
 (25) don't understand the question.
 (1) Q So do you mean whether the shareholders hunt and fish on
 (2) the land has no financial impact one way or another on the

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- (1) Chugach Alaska Corporation?
 (2) A Not to my knowledge, it doesn't.
 (3) Q Now, sir, you were asked in your deposition - and this may
 (4) be different now, that's why I'm posing the question in this
 (5) way - about what percentage of your foods that you eat as part
 (6) of your regular diet are subsistence gathered foods as opposed
 (7) to what you call their store bought foods. And you said in
 (8) your deposition that about 60 percent of your foods are store
 (9) bought foods and 40 percent of your foods are foods that you
 (10) hunt and gather for, or that are given to you by other people
 (11) in the community in the sharing tradition that you described;
 (12) correct?
 (13) A Uh-huh.
 (14) Q And is that about the same percentage true today?
 (15) A I don't know. It varies from year to year, depending on
 (16) the situation. You know, if I'm not able to do some of that
 (17) and, you know, some of the other shareholders of the
 (18) corporation have offered me as culture, if I didn't have any
 (19) claims or something, they would provide me with that, or
 (20) smoked
 (21) fish or whatever it might be. We share with each other.
 (22) Q So it changes from year to year, the amount, based on your
 (23) opportunities to go hunting and fishing and whatever; correct?
 (24) A Uh-huh.
 (25) Q But you did estimate then in 1992 - and I'll show it if
 you need your recollection refreshed - about 60 percent store

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- (1) bought, 40 percent that you go and gather yourself, and do you
 (2) have any reason to believe that percentage doesn't roughly
 (3) hold
 (4) true today?
 (5) A No, I'd have to correct you on that. You said 40 percent
 (6) by myself and that's not correct. I said 40 percent
 (7) approximately. Of that 40 percent, some was given to me and
 (8) some I had gotten myself.
 (9) Q Okay, and when you described that in your deposition,
 (10) you - and this was in October of 1992, you said that that
 (11) percentage, 60 percent from the store, 40 percent from the land
 (12) and sea was unchanged from what it had been about five years
 (13) before that; do you remember that?
 (14) A I don't, but you -
 (15) Q You don't have any reason to doubt that that's true?
 (16) A No, I don't have any reason to doubt that.
 (17) Q All right. So for the last five - or now since it's been
 (18) two years since your deposition was taken, seven years, the
 (19) percentage of food that you eat that's bought from the
 (20) supermarket, roughly 60 percent with some variation from year
 (21) to year and the percentage of food that you either harvest
 (22) yourself from the land and seas or that are shared with you by
 (23) other Native Alaskans that are harvested from the land and seas
 (24) has stayed roughly the same; correct?
 (25) A Roughly, yeah.
 (1) Q Now, sir, you know, don't you, that over the last three

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- (1) years the shareholders – I withdraw that.
 (2) You know, don't you, that over the last three years, the
 (3) Natives living in the communities in the Prince William Sound
 (4) have returned to their subsistence harvesting patterns of the
 (5) past; correct?
 (6) A Yes.
 (7) Q And it's also true that you don't personally know any facts
 (8) about how the Native people in Prince William Sound's
 (9) subsistence practices and activities are different today than
 (10) they were in 1988; correct?
 (11) A I don't quite understand that question. Could you restate
 (12) it?
 (13) Q Yes, sir. I'm asking you whether you know whether the
 (14) Native people living in the Prince William Sound have different
 (15) subsistence activities or have more or less of their
 (16) subsistence activities today than they did before the oil
 (17) spill, 1988?
 (18) A I don't know for a fact what those are.
 (19) Q You don't know, do you, whether your own brothers and
 (20) sisters and their children, your nephews and nieces, whether
 (21) they're actively engaged in subsistence activities from day to
 (22) day; do you?
 (23) A From day to day?
 (24) Q As part of their regular routine. You described the
 (25) regular cycle.

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- (1) A Yes, I'm aware.
 (2) Q And has that changed – have you gained greater familiarity
 (3) with that since your deposition in the fall of 1992?
 (4) A Yes, I think I have.
 (5) Q You've spent more time with them and you now know what
 (6) they
 (7) do more –
 (8) A Yes.
 (9) Q – than you did then?
 (10) A I don't know about then, but I do now.
 (11) Q Well then, sir, let me represent to you – and I'll be glad
 (12) to show you on your screen if you want to go to your deposition
 (13) – you said you didn't know one way or another whether your
 (14) brothers and sisters, nieces and nephews, were engaged in
 (15) subsistence harvesting because you didn't live with them and
 (16) you just didn't know.
 (17) A I didn't know then, but I do know now.
 (18) Q You do know now?
 (19) A Yes. And, in fact, my brother and I both went out, yes.
 (20) Q Sir, you don't have any scientific knowledge what the
 (21) impact of oil on the beaches of Prince William Sound was to the
 (22) ecology, the ecosystem; do you?
 (23) A I missed the first subject, do I know of any scientific?
 (24) Q Yes, sir.
 (25) A I'm not a scientist, no.
 (26) Q And you're not an expert on the toxic effects of oil on the

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- (1) environment; correct?
 (2) A No, I'm not. I just know what I see.
 (3) Q And you're not a biologist; correct?
 (4) A No.
 (5) Q Now, when we – when we spoke to you in your deposition,
 (6) we
 (7) tried to get your views about – I'm sorry, it wasn't myself,
 (8) it was a different lawyer from Exxon who took your deposition,
 (9) we haven't met before today – but when your deposition was
 (10) taken, the lawyer who took it asked you about the activities in
 (11) the areas, the subsistence activities in the areas of the
 (12) various villages in the Prince William Sound, and you said,
 (13) really who you should talk to is the chiefs and elders of those
 (14) villages to get the best information; correct?
 (15) A Yes, I think I said that. It's a known between the village
 (16) leaders that as a – you were asking me at that – I believe at
 (17) that time as a representative of the parent corporation that I
 (18) do not represent the villages in any way, shape or form as to
 (19) what their activities and things are. That's – that's a
 (20) courtesy that we do not get into. The villages do what they
 (21) want to do, and I don't speak on behalf of them. They speak
 (22) for themselves.
 (23) Q Indeed, you, by choice, are not a shareholder in any of the
 (24) Native village corporation, correct, because as you – you're
 (25) only a shareholder in the regional corporation, Chugach –
 (26) A No, I'm not.

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- (1) Q Well, I think you've jumped one ahead of me. You are a
 (2) shareholder in Chugach Alaska Corporation, correct, the
 (3) regional corporation?
 (4) A That's correct.
 (5) Q But, by choice, you did not become a shareholder in any of
 (6) the village corporations, like the Eyak Corporation, the town
 (7) that you were from; correct?
 (8) A No, that's not correct.
 (9) Q Have you become a shareholder in Eyak Corporation since
 (10) your deposition was taken?
 (11) A Yes.
 (12) Q And when you were one of the elders in the Eyak
 (13) Corporation – I'm sorry, in the Eyak village, who you said was
 (14) particularly knowledgeable about the subsistence lifestyle as
 (15) practiced in Eyak was a woman named Agnes Nichols, who's
 (16) on the
 (17) witness list for later this week; is that correct?
 (18) A Yes, one of them.
 (19) Q And I want to talk to you a bit about Chugach Alaska
 (20) Corporation's selection of lands. But before I do that, I'm
 (21) going to change folders.
 (22) Now sir, during the entire time that you were involved as a
 (23) director of Chugach Alaska Corporation, chief executive
 (24) officer, chairman of the board, there were discussions from
 (25) time to time as to whether Chugach Alaska Corporation should
 (26) sell any of its lands; correct?

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- (1) A That's correct.
- (2) Q And the decision was always a very strong no; isn't that right?
- (3) right?
- (4) A That's correct.
- (5) Q And you supported that; correct?
- (6) A Yes.
- (7) Q And you believed that the policy of Chugach Alaska Corporation was not to sell its lands, no matter what; correct?
- (8) Corporation was not to sell its lands, no matter what; correct?
- (9) A Yes.
- (10) Q But you did want to make some economic use of your lands; correct?
- (11) correct?
- (12) A That's why we chose them, yes.
- (13) Q Right, you wanted to get some payouts, some dividends, you wanted to earn some money for the benefit of your shareholders;
- (14) wanted to earn some money for the benefit of your shareholders;
- (15) correct?
- (16) A That was the intent of Congress.
- (17) Q Chugach Alaska Corporation is a for-profit corporation; isn't that right?
- (18) isn't that right?
- (19) A That's correct.
- (20) Q And as we've already discussed, the subsistence activities that are conducted on Chugach Alaska Corporation lands don't pay anything to the corporation; correct?
- (21) that are conducted on Chugach Alaska Corporation lands don't pay anything to the corporation; correct?
- (22) pay anything to the corporation; correct?
- (23) A That's correct.
- (24) Q So you also, when you selected the lands, you selected them with a view toward their economic usefulness; correct?
- (25) with a view toward their economic usefulness; correct?

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- (1) A That's one of the reasons, yes.
- (2) Q Yes, sir. I'm going to show you an exhibit, defendants' Exhibit 15218, and ask you, Mr. Gordaoff, is that a copy of the 1983 annual report of Chugach Natives, Incorporated, of which you were then chairman of the board?
- (3) Exhibit 15218, and ask you, Mr. Gordaoff, is that a copy of the 1983 annual report of Chugach Natives, Incorporated, of which you were then chairman of the board?
- (4) 1983 annual report of Chugach Natives, Incorporated, of which you were then chairman of the board?
- (5) you were then chairman of the board?
- (6) A Yes.
- (7) Q If you'll look at Page 3, the message to our shareholders, is that a picture of you and is that your signature at the bottom, sir?
- (8) is that a picture of you and is that your signature at the bottom, sir?
- (9) bottom, sir?
- (10) A Yes, it is.
- (11) Q And is this a copy of the annual report of Chugach Natives, Inc., which was sent to its shareholders?
- (12) Inc., which was sent to its shareholders?
- (13) A Yes, it is.
- (14) Q And Chugach Natives, Inc., as I think you testified on direct, is an earlier name of what is now Chugach Alaska Corporation, the plaintiff in this case; correct?
- (15) direct, is an earlier name of what is now Chugach Alaska Corporation, the plaintiff in this case; correct?
- (16) Corporation, the plaintiff in this case; correct?
- (17) A That's correct.
- (18) Q Now, let me ask you to turn -
- (19) MR. SHAPIRA: Your Honor, I move the admission of 1521 - 218.
- (20) - 218.
- (21) THE COURT: Say it again.
- (22) MR. SHAPIRA: I move the admission into evidence of Exhibit 15218.
- (23) Exhibit 15218.
- (24) (Exhibit 15218 offered)
- (25) THE COURT: 15218. Any objection, counsel?

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- (1) MR. PETUMENOS: Not at this time. I would like to reserve the opportunity to read the whole thing and see if there's any portion I -
- (2) reserve the opportunity to read the whole thing and see if there's any portion I -
- (3) there's any portion I -
- (4) THE COURT: Sure. I'll admit it. That's conditioned on your ability to read it and see if there's anything that shouldn't come out.
- (5) on your ability to read it and see if there's anything that shouldn't come out.
- (6) shouldn't come out.
- (7) (Exhibit 15218 received)
- (8) BY MR. SHAPIRA:
- (9) Q Is that a photograph of you, sir?
- (10) A I can't see it.
- (11) Q Very bad copy, trying to figure out what you looked like before I met you and I couldn't tell from that photo.
- (12) before I met you and I couldn't tell from that photo.
- (13) Sir, on page - if I haven't gotten my pages out of order - on the fourth page of that document, there's a description of the land settlement by which Chugach Alaska Corporation obtained its lands from the federal government; correct?
- (14) - on the fourth page of that document, there's a description of the land settlement by which Chugach Alaska Corporation obtained its lands from the federal government; correct?
- (15) of the land settlement by which Chugach Alaska Corporation obtained its lands from the federal government; correct?
- (16) obtained its lands from the federal government; correct?
- (17) A Yes.
- (18) Q And you were involved in that very intimately, correct, in that settlement?
- (19) that settlement?
- (20) A That's correct.
- (21) Q And it says that you - looks like you had personally negotiated with United States Secretary of the Interior, James Watt and the United States Secretary of Agriculture in connection with the acquisition of Chugach Alaska Corporation's lands; correct.
- (22) negotiated with United States Secretary of the Interior, James Watt and the United States Secretary of Agriculture in connection with the acquisition of Chugach Alaska Corporation's
- (23) Watt and the United States Secretary of Agriculture in connection with the acquisition of Chugach Alaska Corporation's
- (24) connection with the acquisition of Chugach Alaska Corporation's
- (25) lands; correct.

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- (1) A No, it's not correct.
- (2) Q You were involved in those negotiations; weren't you?
- (3) A Yes, but you had stated I had direct negotiations with the Secretary of the Interior, James Watt and John Block, and that's not right.
- (4) Secretary of the Interior, James Watt and John Block, and that's not right.
- (5) that's not right.
- (6) Q You negotiated with other federal bureaucrats?
- (7) A People that work for those individuals, yes.
- (8) Q And were you present at a signing ceremony?
- (9) A Yes, I was.
- (10) Q With those individuals?
- (11) A Yes.
- (12) Q And this annual report, Exhibit 15218, is your report as chairman to your shareholders about this momentous, this landmark settlement; correct?
- (13) chairman to your shareholders about this momentous, this landmark settlement; correct?
- (14) landmark settlement; correct?
- (15) A That's correct.
- (16) Q And this was the deal, the settlement which brought Chugach Alaska Corporation the lands about which you're suing in this case; correct?
- (17) Alaska Corporation the lands about which you're suing in this case; correct?
- (18) case; correct?
- (19) A The potential lands, yes.
- (20) Q To the extent that lands were eventually obtained, these were the lands; correct?
- (21) were the lands; correct?
- (22) A Yes.
- (23) Q And you wanted to tell your shareholders about this important development; correct?
- (24) important development; correct?
- (25) A That's correct.

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- (1) Q Let me ask you to turn to the next page, and I want to read
 (2) into the record some of the things you told your shareholders
 (3) about that land. You said land acquired in the settlement
 (4) presents CNI - is that Chugach Natives?
 (5) A Yes.
 (6) Q - with a number of opportunities for successful natural
 (7) resource development, a variety of natural resources which
 have
 (8) development potential occur on the lands to be conveyed to
 CNI;
 (9) correct?
 (10) A That's correct.
 (11) Q You said the lands at Icy Bay, Cape Yakataga, Controller
 (12) Bay and Katalla have promising oil and gas potential; correct?
 (13) A That's correct.
 (14) Q You said the Bering River coal field is one of the most
 (15) significant coal deposits in Alaska, and the LaTouche and
 (16) Knight Island complex contain some of the most valuable hard
 (17) rock minerals in the region; correct?
 (18) A Yes.
 (19) Q You said the best commercial timber potential in the entire
 (20) Chugach national forest is located in Patton Bay on Montague
 (21) Island and commercial recreation and tourism potential exists
 (22) throughout the selected lands; correct?
 (23) A Correct.
 (24) Q The next paragraph cites for potential of commercial and
 (25) industrial development; correct?

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- (1) A That's correct.
 (2) Q And that's how you - it was through these potentials of
 (3) the land that you expected to earn money to pay dividends to
 (4) your shareholders; correct?
 (5) A That's correct.
 (6) Q There's not a mention in here of subsistence uses of the
 (7) land; is there?
 (8) A Well, it'll be the first time in history that I've ever
 (9) heard of or seen in an annual report from a corporation to
 (10) reflect subsistence or anything to do with it. I thought this
 (11) was a document used to give a financial information about the
 (12) condition of your company.
 (13) As you look, in my knowledge and being involved with
 (14) Chugach, consistently, the annual reports never reflected
 (15) anything about subsistence, to my knowledge.
 (16) Q And it's because that's not part of the business activities
 (17) that generate profit for the corporation; correct?
 (18) A At that time, it wasn't, no.
 (19) Q And it isn't today; is it?
 (20) A Pardon me?
 (21) Q It isn't today, either, subsistence activities have never
 (22) been part of the business offer Chugach Alaska Corporation,
 the
 (23) plaintiff in this action, to make money for its shareholders in
 (24) any way?
 (25) A That's correct.

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- (1) Q Now, sir, it's true, isn't it, that you have no knowledge
 (2) whether there is any parcel of lands of Chugach Alaska
 (3) Corporation land that can't be developed because of the oil
 (4) spill?
 (5) A No, I don't.
 (6) Q And it is true, isn't it, that you do not know of any
 (7) development plans for Chugach Alaska Corporation properties
 in
 (8) 1989 that were canceled or postponed because of the oil spill?
 (9) A I don't know if I can be fair to say yes or no on that
 (10) question, because all of our efforts at that time were directed
 (11) toward responding to a catastrophe. So it's hard for me to say
 (12) yes or no on that situation. All of our energies were
 (13) concentrated on the oil spill.
 (14) Q Now, it's true, isn't it, that you don't know of any offers
 (15) to buy or sell Chugach Alaska Corporation land since 1980?
 (16) A Do I know personally?
 (17) Q Yes.
 (18) A I think there was on occasion that people were interested
 (19) in doing developments on a larger magnitude on our lands,
 yes.
 (20) Q And were any of those development plans in existence in
 (21) 1989?
 (22) A I don't know if they were in 1989 or not, but one of the
 (23) reasons, and I'll go back to what you stated earlier, if I may,
 (24) is one of the reasons we chose this land was due to the
 (25) development, along with other things and if there was an

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- (1) interest, we usually listened to those individuals on their
 (2) interest on acquiring some of those lands or whether it be
 (3) lease or semi-development or what.
 (4) Q Now, sir, it is true, isn't it, that you do not know of any
 (5) archaeological sites that were disturbed by the oil spill on
 (6) Chugach Alaska Corporation land?
 (7) A My understanding is that there were some disturbances
 (8) during the oil spill. I am not aware personally or have seen
 (9) any of those disturbed or nondisturbed sites.
 (10) Q And -
 (11) A As mentioned earlier, that was an area that we as Native
 (12) people did not discuss amongst ourselves and we preserved -
 (13) tried to keep that - those archaeological sites very quiet.
 (14) They were near and dear to our shareholders' hearts.
 (15) Q And isn't it true, sir, that you don't know of any injuries
 (16) to Chugach's archaeological sites as a result of the oil spill?
 (17) A Personally?
 (18) Q Personally.
 (19) A I'm not aware of any, no.
 (20) Q Now, sir, you mentioned during your direct examination that
 (21) you had chartered your fishing boat, Indian Summer, to assist
 (22) with oil spill clean-up work; correct?
 (23) A That's correct.
 (24) Q You chartered it to a company called Veco, which worked on
 (25) behalf of Exxon as the clean-up contractor; correct?

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- (1) A That's correct.
- (2) Q And you were paid \$153,000 in 1989 -
- (3) MR. PETUMENOS: I will object to that testimony. It's
- (4) in violation of the Court order.
- (5) THE COURT: Approach the bench.
- (6) (Sidebar held out of the hearing of the jury.)
- (7) MR. PETUMENOS: I think we've done it again. This is
- (8) another payment by Exxon. I think that Exxon payments to third
- (9) parties -
- (10) MR. SHAPIRA: 1989 was the most profitable year in
- (11) this witness' financial data. He has painted a picture that he
- (12) was devastated by the oil spill in his commercial fishing and
- (13) in his subsistence fishing. 1989 he had three times as much
- (14) money as he had ever made before in his career.
- (15) THE COURT: The objection is sustained.
- (16) MR. PETUMENOS: May I get a cautionary instruction,
- (17) please, to the jury right now at this time? I think the Court
- (18) needs to intervene promptly.
- (19) THE COURT: How much further do you have to go in your
- (20) examination?
- (21) MR. SHAPIRA: About another two minutes, but it may -
- (22) let me check, Your Honor, it may all be on this subject.
- (23) THE COURT: Okay, let me know.
- (24) MR. SHAPIRA: You mean I'm not allowed to ask him?
- (25) THE COURT: What I am going to do is I'm going to do

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- (1) it out of the presence of the jury.
- (2) MR. SHAPIRA: Give me one minute. I'm just going to
- (3) check my notes.
- (4) MR. PETUMENOS: Just a minute, counsel. Could the
- (5) jury please be told the objection's sustained?
- (6) (Sidebar concluded.)
- (7) THE COURT: I sustained the objection, the jury is to
- (8) disregard the question.
- (9) MR. SHAPIRA: I have no further questions, Your Honor.
- (10) THE COURT: I have an evidentiary point to determine,
- (11) so I'm going to send you out. This will be just a ten-minute
- (12) break. You can go back to the jury room.
- (13) (Jury out at 11:14 a.m.)
- (14) THE COURT: Stay where you are, please.
- (15) THE WITNESS: What?
- (16) THE COURT: Just stay where you are.
- (17) THE COURT: Counsel, the bench conference, I believe,
- (18) the Court reporter got it all; right? Including what I said so
- (19) it's on the record. I sustained the objection. Do you want to
- (20) discuss the matter any further?
- (21) MR. PETUMENOS: I do.
- (22) THE COURT: Either of you. I'm going to give you both
- (23) the opportunity.
- (24) MR. PETUMENOS: That's fine.
- (25) We started out with a motion in limine which this court

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- (1) granted. Then in a status hearing, just before we began trial,
- (2) Exxon came forward with a document that talked about
- (3) payments
- (4) being made of 900 million dollars to the State of Alaska. They
- (5) were going to use it in their opening statement and we raised
- (6) it again and the Court forcefully informed Exxon that payments
- (7) to other parties were not to be introduced in the case.
- (8) Then in opening statement, Mr. Clough stated that artifacts
- (9) were paid for by Exxon, which wasn't even true, with respect to
- (10) the artifacts of the - of the Native corporations, and I moved
- (11) for a mistrial, which we were considering over the evening last
- (12) night.
- (13) Now, in the first witness, a deliberate examination was
- (14) just conducted of this witness stating that he obtained a
- (15) hundred and something thousand -
- (16) MR. SHAPIRA: 53.
- (17) MR. PETUMENOS: \$153,000 for services that he
- (18) performed and was entitled to be paid for, not because of any
- (19) relevant inquiry to this case at all. He went out in the Sound
- (20) and did something that he - for Exxon - gave his boat, gave
- (21) his time, gave his labor, and the order has been violated
- (22) again.
- (23) The Court has sustained the objection and you sustained the
- (24) objection during the opening statement. At some point, the
- (25) objections and sustaining of the objections do no good as more
- and more material comes before this jury without - without

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- (1) cease, and I think I - the Court needs to be given a
- (2) cautionary instruction at best right now, and we are, will take
- (3) this under advisement with respect to our other motions, which
- (4) was what we did yesterday which we're still reviewing to
- (5) determine.
- (6) Now, what this does to it cumulatively because it seems
- (7) absolute at this the case that Exxon is intent upon getting
- (8) before this jury payments which are totally unrelated to the
- (9) claims being made. In this instance it couldn't be more
- (10) unrelated because it has to do with this witness' labor and
- (11) work for which he was compensated, that Chugach Alaska
- (12) Corporation also catered and provided food to oil spill workers
- (13) and were paid for their services. Is that going to be the next
- (14) thing that we're going to hear? I don't know how to stop it,
- (15) Judge. We've raised it three times.
- (16) I believe Mr. Stoll wanted to address the Court, too.
- (17) MR. STOLL: Your Honor, I'd like to make a motion for
- (18) mistrial at this time.
- (19) THE COURT: Hang on, counsel, motions for mistrial are
- (20) something that are considered at length and are not - they're
- (21) not an evidentiary issue. If you want to make a motion for
- (22) mistrial, make it at the end of the day.
- (23) MR. STOLL: Okay, I will, Your Honor.
- (24) MR. SHAPIRA: Your Honor, may I be heard?
- (25) THE COURT: Yes.

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(1) MR. SHAPIRA: This witness was asked and testified
 (2) that his subsistence productivity and the productivity of the
 (3) lands and the productivity of the people was reduced as a
 (4) result of the oil spill. The witness was asked and testified
 (5) that the productivity of the people in the area, as parts of
 (6) their commercial fishing activities, had lessened. He made a
 (7) reference on the stand to that they don't do it much anymore,
 (8) as if the oil spill had destroyed their commercial fishing
 (9) abilities. He referred to the fall-off in commercial fish
 (10) catches as evidence of the devastation that the oil spill has
 (11) wrought.
 (12) The plaintiffs' own expert witnesses describe, in
 (13) attempting to relate all this to the question of land value,
 (14) and, Your Honor, as you know, we have filed motions that
 (15) indicate that none of the subsistence stuff has anything to do
 (16) with land value, but in attempting to relate this to land
 (17) value, and attempting to relate commercial fishing losses to
 (18) land value. Plaintiffs' experts have said the reason it's
 (19) related to land value is because we have to understand the
 (20) general economic prosperity in the area and how that was
 (21) affected downward by the oil spill. The oil spill knocked the
 (22) heck out of the commercial fishing industry, therefore there
 (23) wasn't money in these communities and, therefore, land value
 (24) dropped. If there is any linkage to all these things we've
 (25) been trying to keep out of this case it's because it supposedly

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(1) has something to do with the amount of money in the
 (2) communities
 (3) and -
 (4) THE COURT: Where does this witness live, counsel?
 (5) MR. SHAPIRA: This witness lives -
 (6) THE COURT: As you established at length.
 (7) MR. SHAPIRA: Anchorage.
 (8) THE COURT: Is Anchorage suing in this case?
 (9) MR. SHAPIRA: No, sir.
 (10) THE COURT: Which communities, then, are you talking
 (11) about?
 (12) MR. SHAPIRA: I am talking about the communities of
 (13) Prince William Sound that we want to raise with -
 (14) THE COURT: You want to say that this witness made a
 (15) hundred and fifty-three - this witness, who lives in
 (16) Anchorage, made \$153,000 to show that the communities that
 (17) are
 (18) the plaintiffs in this case are prosperous?
 (19) MR. SHAPIRA: This witness was proffered for some
 (20) reason, Your Honor, and allowed to testify to his personal,
 (21) what amounted basically to an emotional distress claim, his
 (22) personal angst at the fall-off in fishing and other distress
 (23) obtained, resulting from the oil spill. The fact that -
 (24) THE COURT: Your premise is because he made a
 (25) substantial sum of money that he could not possibly have felt
 (26) that angst; is that it.
 (27) MR. SHAPIRA: I think it's relevant to the amount of

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(1) angst he would feel.
 (2) THE COURT: The question is what your premise is. Is
 (3) that the premise?
 (4) MR. SHAPIRA: The premise is that it is relevant to
 (5) the amount of economic distress which this witness felt from
 (6) the oil spill.
 (7) THE COURT: He didn't testify to his own economic
 (8) distress. Where can you find that in the transcript?
 (9) MR. SHAPIRA: He testified to commercial - the fact
 (10) that he was a commercial fisherman, didn't do it much anymore
 (11) since the oil spill.
 (12) THE COURT: How does the payment of \$153,000 for oil
 (13) spill cleanup impeach that statement?
 (14) MR. SHAPIRA: The jury might get the mistaken
 (15) impression that they were to award this - these plaintiffs, if
 (16) they relate at all to this witness, for the economic losses
 (17) from commercial fishing. In fact, the economic losses from
 (18) commercial fishing have been offset by two sources.
 (19) Number one, the enormous amount of revenue pumped into all
 (20) the plaintiff communities as a result of oil spill cleanup
 (21) work. And, number 2, the pending claims in another court
 (22) where
 (23) these - these witnesses will be fully compensated to the
 (24) limits allowable under the law for the very matters as to which
 (25) they are pleading for this jury's sympathy.
 (26) THE COURT: All right. Is that it?

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(1) MR. SHAPIRA: Yes, sir.
 (2) THE COURT: The objection is sustained.
 (3) Now, I'm going to make a respective ruling, and I want you
 (4) all to understand it. If there are any lawyers in here who are
 (5) going to be questioning witnesses about these payments, I
 (6) want
 (7) them informed. There will be no - I repeat, no questions that
 (8) state that payments were made to these witnesses without
 (9) informing me and opposing counsel and letting them request a
 (10) hearing out of the presence of the jury. I hope you understand
 (11) that. No more. Don't ask the question. I don't want the
 (12) information in front of the jury until I okay it. Exxon
 (13) payments, payments by Veco, payments because of the oil spill
 (14) cleanup are not to be mentioned until I okay it. Now, you
 (15) understand that; don't you?
 (16) MR. SHAPIRA: Yes, sir.
 (17) MR. PETUMENOS: I have request for relief, and short
 (18) of the mistrial business and the request for relief is this. I
 (19) wish the Court to instruct the jury that whether or not this
 (20) witness was compensated for work that he did has nothing to do
 (21) with the land values which are being tried before this -
 (22) before them and that they should disregard the testimony in
 (23) that respect and that the questioning was improper.
 (24) THE COURT: You need to think this through, counsel.
 (25) I'm not going to give such an instruction now because I need to
 (26) think it through, too. An overbroad instruction or an

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- (1) instruction that would be inappropriate under the circumstance
 (2) is not the way to respond to a thing like this.
 (3) MR. DIAMOND: Your Honor, I was simply going to point
 (4) out, before this cascaded, that the only motion in limine that
 (5) was made – and we ultimately did not object to it – was a
 (6) motion in limine to exclude testimony concerning payments by
 (7) Exxon to the Native corporations.
 (8) THE COURT: Yes, I reviewed that yesterday, counsel.
 (9) It's the only written order that I issued. I believe that
 (10) there was some verbal communication to you, but counsel, the
 (11) only reason I said this is this, you can't misunderstand the
 (12) ruling I made today; can you?
 (13) MR. DIAMOND: No, we have no, no misunderstanding.
 (14) You have already ruled, however, that we can present overall
 (15) testimony about the economic health of these regions because
 (16) it
 (17) does go to the question of whether we've impaired the market,
 (18) whether we've reduced the number of buyers.
 (19) I would suggest that if that is appropriate testimony, the
 (20) fact that individuals similarly situated to Mr. Gordaoff had
 (21) substantial cash in their pocket as a result of the spill also
 (22) goes to the same underlying premise, that: Were there people
 (23) around who were potential buyers of this property who had
 (24) economic prosperity which was as great, if not greater after
 (25) the spill than before.
 (26) THE COURT: And I'm not categorically saying you're

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- (1) wrong about that, counsel. What I'm saying is and what I have
 (2) to do in any trial is rule on the direct examination and
 (3) whether the cross-examination was proper. It was improper in
 (4) this case. The question should not have been asked.
 (5) Now I've given you an order. I'll review these things
 (6) specifically, if I have to do them with every witness, but I
 (7) will not review them after you've put the damaging information
 (8) into the record by means of a question that can – then I have
 (9) to tell the jury to disregard.
 (10) MR. DIAMOND: And I don't think Mr. Shapira
 (11) anticipated that there would be an objection to that question.
 (12) THE COURT: Should have. Is there anything else?
 (13) I'll take a little break, myself.
 (14) THE CLERK: Please rise. This court stands in
 (15) recess.
 (16) (Recess taken at 11:26 a.m.)
 (17) (Jury in at 11:38 a.m.)
 (18) THE CLERK: Please rise, this court now resumes its
 (19) session. Please be seated.
 (20) THE COURT: Counsel?
 (21) MR. PETUMENOS: Okay.
 (22) REDIRECT EXAMINATION OF KEITH H. GORDAOFF
 (23) BY MR. PETUMENOS:
 (24) Q Mr. Gordaoff, do you remember those questions on
 (25) cross-examination where Exxon's lawyer asked you about
 (26) whether

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- (1) or not the Chugach Alaska Corporation made money from the
 (2) subsistence activities of the corporation, remember those
 (3) questions?
 (4) A Yes.
 (5) Q Now, as you testified, you've had some experience working
 (6) on the business side of the Chugach Alaska Corporation and
 (7) you've worked with other kinds of corporations in joint
 (8) ventures and in things like that that the corporation might
 (9) become involved in; haven't you?
 (10) A (Nods head up and down.)
 (11) Q Can you think of any other for-profit corporation other
 (12) than a Native corporation that has an interest or a duty to
 (13) preserve lands for a Native lifestyle?
 (14) A No.
 (15) Q And have there been times in your experience that the
 (16) Native corporations have decided to not become involved in a
 (17) particular activity or enterprise because of their concern that
 (18) the land be kept in its natural state?
 (19) A Yes.
 (20) Q Are there times when the Native corporation foregoes money
 (21) and profit because of that?
 (22) A Yes.
 (23) Q And when you do that for the Native shareholders so that
 (24) they can use the land for these purposes that you've described,
 (25) do the shareholders pay you any money for doing that?

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- (1) A No, they do not.
 (2) Q Do you remember those questions on cross-examination in
 (3) which there was some discussion about whether commercial
 (4) fishing and subsistence are inconsistent; do you remember
 (5) those
 (6) questions?
 (7) A Yes.
 (8) Q How does the Native community combine, if they do,
 (9) commercial fishing with subsistence activities, if you can
 (10) explain to the jury?
 (11) A Yes. As a commercial fisherman, I go out and I catch
 (12) salmon and I take salmon home. To me, that's a form of
 (13) subsistence. At that point, I – and other Natives do the
 (14) same.
 (15) Q When you go commercial fishing, is there an opening that
 (16) starts and stops?
 (17) A Yes, there is.
 (18) Q And are there opportunities for the fisherman when he's out
 (19) there to gather other kinds of foods while he's on a commercial
 (20) fishing run, like shellfish or things like that?
 (21) A Yes, there is.
 (22) Q Is that a common experience?
 (23) A Yes.
 (24) Q And finally, based upon your experience, do you know how
 (25) long it would take to run a fishing boat from the arca, say
 (26) around Bligh Island to the Shelikof Straits?

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- (1) A Yes, Shelikof Straits, approximately 51 hours.
 (2) Q 51 hours?
 (3) A Thereabouts.
 (4) MR. PETUMENOS: I have no further questions.
 (5) THE COURT: Anything?
 (6) MR. SHAPIRA: No further questions, Your Honor.
 (7) THE COURT: You can step down, Mr. Gordaoff. Watch
 (8) that microphone.
 (9) MR. STOLL: Your Honor, our next witness is Natalie
 (10) Fobes. My assistant is getting her right now.
 (11) THE CLERK: Ma'am, could you attach the microphone to
 (12) your jacket lapel. Raise your right hand.
 (13) (The witness is sworn.)
 (14) THE CLERK: Please be seated. Ma'am, for the record,
 (15) can you state your full name, spelling your last name.
 (16) THE WITNESS: My name is Natalie Fobes and my last
 (17) name is spelled F-o-b-e-s.
 (18) THE CLERK: And your occupation?
 (19) THE WITNESS: I'm a freelance photographer.
 (20) THE CLERK: Thank you.
 (21) DIRECT EXAMINATION OF NATALIE FOBES
 (22) BY MR. STOLL:
 (23) Q Good morning, Ms. Fobes.
 (24) A Good morning.
 (25) Q Would you tell the jury, please, a little bit about your

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- (1) background, what do you do?
 (2) A Well, I'm a photographer. I'm a freelancer, and I work out
 (3) of Seattle. I work for a number of different magazines and
 (4) some small companies, and the magazines that I work for
 include
 (5) National Geographic, Geo, U.S. News, Time.
 (6) Q Newsweek and some others?
 (7) A Newsweek, Audubon, yeah, and a number of smaller ones.
 (8) Q And how long have you been a professional photographer?
 (9) A I became a professional photographer in 1977, and I became
 (10) a freelance photographer in 1986.
 (11) Q And have you been to Alaska on a number of occasions?
 (12) A I've done a number of stories up here for National
 (13) Geographic and also other magazines, and I've been here
 every
 (14) year at least once since 1983.
 (15) Q And on several occasions more than once a year?
 (16) A On several occasions more than once a year.
 (17) Q And did you happen to come to Alaska with respect to doing
 (18) some photography involving the Exxon Valdez oil spill?
 (19) A Yes, I did.
 (20) Q And this was before there was any litigation or anything?
 (21) A Absolutely.
 (22) Q Any claims made or anything of that nature?
 (23) A Yes.
 (24) Q And when did you first come to Alaska?
 (25) A On the Exxon Valdez?

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- (1) Q Yes.
 (2) A I came to Alaska the day of the spill. I was in Anchorage
 (3) that night, and I arrived in Valdez the next day on the first
 (4) flight out.
 (5) Q That would be March 25th?
 (6) A Yes.
 (7) Q And thereafter, did you take some photographs in the area
 (8) of Prince William Sound and elsewhere?
 (9) A Yes, I did.
 (10) Q Ms. Fobes, I want to show you what has been marked for
 (11) identification as Exhibit 755-B, and could you tell the jury,
 (12) please, what this is?
 (13) A This is a chart of Prince William Sound and it - the red
 (14) areas are areas that I photographed intensively and from the
 (15) Valdez - from the town of Valdez down through the island
 (16) group.
 (17) Q Now, this is Valdez up here?
 (18) A Yes.
 (19) Q Okay. And did you go elsewhere in Prince William Sound?
 (20) A Yes, I did. I flew over Prince William Sound quite a lot
 (21) during the time that I was there. And I also was on some boats
 (22) and traveled throughout the Sound that way.
 (23) Q And the areas - what are the areas that are in red? What
 (24) do those indicate?
 (25) A The areas in red are areas where I have photographs from or

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- (1) where I spent a lot of time photographing.
 (2) Q Those are particular areas that you photographed as
 opposed
 (3) to all the other areas you covered?
 (4) A Yes.
 (5) Q Those are - are the red areas the areas - are those
 (6) limited to the areas that you visited or flew over?
 (7) A No, they're not. They're - I flew over all over the
 (8) Prince William Sound in my travels and also flew - or also
 (9) again, I was on the boats out there, but we had a little
 (10) problem trying to figure out how to draw all the little - the
 (11) flights and the boat trips and things like that.
 (12) Q Just for illustrative purposes now, this shows some of the
 (13) land owned by the Native corporations in Prince William Sound,
 (14) the green areas. This is Exhibit 1161, and did you - can you
 (15) see that all right from -
 (16) A Yes.
 (17) MR. STOLL: Your Honor, could she come down in the
 (18) well here?
 (19) THE COURT: Sure, but can you see it? I don't want
 (20) her jumping up and down.
 (21) THE WITNESS: I can see it.
 (22) THE COURT: That's not necessary. I think you can
 (23) move it around a little bit and everybody can still see it.
 (24) MR. STOLL: I don't know if the jury can see that.
 (25) BY MR. STOLL:

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- (1) Q And did you – the areas, maybe I should move this over
 (2) here – did you go in some of the areas that are marked in
 (3) green on Exhibit 1161?
 (4) A Yes, I did.
 (5) Q And some of those areas are exactly the same as the ones
 (6) that you photographed intensively and others are adjoining
 (7) areas?
 (8) A Yes, they are.
 (9) Q Okay. And with respect to – you've selected some
 (10) photographs to show the jury, at my request, today?
 (11) A Yes.
 (12) Q And are these – would you tell the jury, please, whether
 (13) the photographs that you're going to show, how typical or
 (14) untypical they are of the beach scenes and other areas of
 (15) oiling that you saw in Prince William Sound?
 (16) A Yes, they are very typical of what I saw while I was in
 (17) Prince William Sound during that time.
 (18) Q And I now show you what has been marked for identification
 (19) Exhibit 755-A and this is a – what is 755-A?
 (20) A This is a chart of Kodiak Island and some of the Alaska
 (21) peninsula.
 (22) Q And what does the red area depict there?
 (23) A These are also areas where I have photographed, or where I
 (24) photographed during the spill. The photograph – or the big
 (25) blob of – over Kodiak Island – I'm sorry, the City of Kodiak

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- (1) is, just shows that I stayed there. I photographed a little
 (2) bit around there, but mostly I stayed there.
 (3) Q Now, some of the photographs or some of the areas that are
 (4) in red are over here in the – past Kodiak Island on the Alaska
 (5) peninsula?
 (6) A Yes.
 (7) Q And did you observe any oiling in those areas?
 (8) A Yes, I did.
 (9) Q And some of the photographs that you have today that you
 (10) identified and you're going to show the jury, are those from
 (11) those areas?
 (12) A Yes, they are. And this chart doesn't show, but there's a
 (13) couple bays further down the peninsula that I photographed in,
 (14) also.
 (15) Q Down the peninsula, down this way?
 (16) A Yes.
 (17) MR. STOLL: Your Honor, maybe I could just show this
 (18) just for – I'm not using this for any purposes other than to
 (19) just show the position of – this is Exhibit 1364, just to show
 (20) the position of Prince William Sound.
 (21) BY MR. STOLL:
 (22) Q This is Prince William Sound up here, here's Kodiak here
 (23) and then this is the Alaska peninsula?
 (24) A Yes.
 (25) Q And you traveled down not only Prince William Sound, but

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- (1) Kodiak and then along the peninsula?
 (2) A Yes.
 (3) Q And on this map, which is Exhibit 1354-A, this shows
 (4) various areas in green, that I'll tell you happen to be
 (5) properties owned by Kodiak Island Borough, and then these
 (6) areas
 (7) that are marked in yellow are the villages of Ouzinkie, Port
 (8) Lions, Larsen Bay. Some of your photographs are actually from
 (9) Larsen Bay?
 (10) A Yes, they are.
 (11) MR. CLOUGH: Your Honor, before the response on that,
 (12) I have no objection to these being used purely for illustrative
 (13) purposes so that the jury understands the only reason these are
 (14) up there with little green things, but quite frankly, these are
 (15) difficult to see. And if you'd like –
 (16) MR. STOLL: That's correct.
 (17) MR. CLOUGH: – I think we could put up on the Barco
 (18) one that shows the jury better.
 (19) MR. STOLL: This is just for illustrative purposes.
 (20) THE COURT: I'm sure that's understood after your
 (21) discussion, counsel, go ahead.
 (22) BY MR. STOLL:
 (23) Q And are the photographs that you are going to show of the
 (24) Kodiak area and the area on the Alaska peninsula, would you
 (25) tell the jury, please, how those are? Are those typical or not
 typical of what you saw in the area of Kodiak?

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- (1) A Yes, they are.
 (2) Q They are what?
 (3) A Oh, I'm sorry, they are typical of what I saw.
 (4) Q And did you – in addition to these areas where you did
 (5) some concentrated photography, the areas marked in red on
 (6) Exhibit 755-A, did you fly over or go by boat in other areas
 (7) around Kodiak?
 (8) A Yes, I did. I was flying in a helicopter along, around
 (9) Kodiak, and then also on the – on the Alaska peninsula, and I
 (10) was also going by boat. Later on I went by boat from Kodiak
 (11) over to Alaska peninsula and up and down the coast by – by
 (12) boat.
 (13) MR. STOLL: Your Honor, we'd offer Exhibits 755-A and
 (14) B. Those are these two charts that show the areas that she
 (15) intensively photographed.
 (16) (Exhibits 755-A and 755-B offered)
 (17) MR. CLOUGH: No objection to those, Your Honor.
 (18) THE COURT: All right, they're admitted. What were
 (19) the numbers again?
 (20) MR. STOLL: 755-A and 755-B.
 (21) THE COURT: 755-A and 755-B are admitted.
 (22) (Exhibits 755-A and 755-B received)
 (23) THE COURT: And 15218 has previously been admitted.
 (24) BY MR. STOLL:
 (25) Q Now, you have gone through your slides and compared
 these

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- (1) to some eight and a half – I don't know if they're eight and a
 (2) half, but they're – they look to me about eight-by-eleven or
 (3) eight-by-twelve photographs?
 (4) A Yes, I have.
 (5) Q And those are contained in these two notebooks?
 (6) A Yes, they are.
 (7) Q And you compared the numbers on these with the – I mean,
 (8) these pictures with your slides?
 (9) A Yes.
 (10) MR. STOLL: Your Honor, I'll represent to the Court
 (11) that these are Exhibits 228-1 through -4, 245-1 through -80.
 (12) THE COURT: One through 80?
 (13) MR. STOLL: 80, eight zero. 737-1 through -8 and
 (14) 737-10 through -23.
 (15) (Exhibits 737-1 through -8 and 737-10 through -23 offered)
 (16) THE COURT: All right.
 (17) BY MR. STOLL:
 (18) Q And these are the photographs that you identify as being
 (19) representative of what you saw in these respective areas?
 (20) A Yes.
 (21) MR. STOLL: Your Honor, we would offer those exhibits
 (22) (Exhibits 245-1 through -80 and 228-1 through -4 offered)
 (23) MR. CLOUGH: Your Honor, we haven't seen them on the
 (24) slide projector yet, and I haven't had a chance to track the
 (25) numbers versus the ones we did earlier. I would recommend
 the

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- (1) offer be made at the conclusion of the presentation just in
 (2) case we have a screw-up in the slide and misnumbered.
 (3) THE COURT: Is she going to describe specific
 (4) photographs –
 (5) MR. STOLL: Yes.
 (6) THE COURT: – in her testimony?
 (7) MR. STOLL: Gentlemen, she's going to –
 (8) THE COURT: I tell you what, I'll admit them. It's
 (9) 228-1 through -4, 245-1 through -80 and 737-1 through -8 and
 (10) 737-10 through -23.
 (11) (Exhibit 228-1 through -4, 245-1 through -80 and 737-1
 (12) through -8 and 737-10 through -23 received)
 (13) THE COURT: And to the extent her examination picks up
 (14) things that haven't been mentioned, you should make that clear
 (15) on the record. I don't see any problem with this, and to the
 (16) extent that there are some that are excludable, and counsel,
 (17) you can let me know and I'll deal with them then, all right?
 (18) MR. CLOUGH: Fine, Your Honor.
 (19) MR. STOLL: I just wanted to move their admission
 (20) before I started showing them to the jury.
 (21) THE COURT: I understand, counsel.
 (22) MR. STOLL: Let's see if I can operate this
 (23) correctly. This is the test.
 (24) MR. PETUMENOS: You want help, Mr. Stoll?
 (25) MR. STOLL: Yeah, I need some help. Me and mechanics

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- (1) don't really do it.
 (2) MR. STOLL: Your Honor, if we may, we'd like to turn
 (3) the lights down.
 (4) BY MR. STOLL:
 (5) Q Now, Ms. Fobes, what I'd like you to do is tell the jury,
 (6) please, the date that you took a picture, and if there's a
 (7) series of them you can just tell the first date and then
 (8) subsequent pictures that were taken on that particular day.
 (9) You don't need to tell each day. But then when you change a
 (10) date, if you'd tell that date, and then simply a description of
 (11) what – what the picture is of.
 (12) A Yes, sir.
 (13) MR. CLOUGH: Your Honor, if I may interpose, if she
 (14) could also include the location wherever she's aware of
 (15) location, it will save unnecessary objection.
 (16) MR. STOLL: I meant to suggest that also.
 (17) THE COURT: That's fine.
 (18) MR. STOLL: That's fine.
 (19) BY MR. STOLL:
 (20) Q Go ahead.
 (21) A This was taken on the 26th of March, and it shows the
 (22) Alyeska Terminal, with the tankers there.
 (23) This was taken on the 25th, and the next series of
 (24) photographs you'll see of that tanker on Bligh Reef were all
 (25) taken on the 26th – I'm sorry, the 25th of March.

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- (1) Q Now let me ask this question. Is that – what tanker is
 (2) that?
 (3) A The larger tanker on the left is the Exxon Valdez and then
 (4) the other one is off-loading the oil.
 (5) Q And what's – what is that in the Sound there?
 (6) A This is the oil that was out of the Exxon Valdez. You can
 (7) see the varying thicknesses of the oil and the different
 (8) colorations of it.
 (9) This is another shot of the Exxon Valdez. When I – when I
 (10) photograph, I try to move around and get as much different
 (11) angles, and so that's why you'll see a few showing different
 (12) things. Here you can see that the oil has gone to the beaches
 (13) and, again, the varying in the thicknesses of the oil. There
 (14) is a boom in the water there, but you can see that the oil is
 (15) right at the – I'm assuming the down current end of it and is
 (16) escaping. And, also, this is a boat leaving a clean water wake
 (17) through the oil.
 (18) Here you can see a little bit more of the oil on the – on
 (19) the shoreline and behind the island there and also around the
 (20) Exxon Valdez. Here again is that same boat going through the
 (21) water leaving a clean – clean wake.
 (22) Q This was the day – the day after the spill?
 (23) A This is the day after the spill.
 (24) Q This photograph was taken on Eleanor Island just around the
 (25) point, Eleanor, just on the other side of Point Eleanor and

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- (1) this was taken on the 29th of March. This bay was full of oil
- (2) that had been stacked up there to very - the very deep
- (3) thickness. When we entered this bay, we - when I say "we," I
- (4) mean the people I was with on the boat. We all experienced a
- (5) headache, almost immediately, from the fumes.
- (6) This shows one of the workers putting in this - the boom
- (7) into the water and the oil on the boom there.
- (8) Now you can see - what you're seeing here is all oil. You
- (9) can't see clear water anywhere in this bay.
- (10) Again, a little different angle showing some of the rocks
- (11) that are covered with the oil and, again, this is all oil.
- (12) There's no water in there at all. When we traveled through
- (13) this on our - with our - again, when I say "we," I mean the
- (14) people I was traveling with. When I traveled through on the
- (15) skiff, the wake could not be seen the oil was so thick.
- (16) MR. CLOUGH: Your Honor, that last commentary was not
- (17) referencing anything in the picture, and this is the concern
- (18) that I had and there's no way for me to anticipate that
- (19) particular testimony. If she could be asked to just restrict
- (20) her testimony to what is depicted in the slides.
- (21) THE COURT: I think that's fair enough, counsel.
- (22) MR. STOLL: That's fine.
- (23) THE COURT: You understand that, don't you?
- (24) THE WITNESS: Yes, I do. Thank you. Sorry.
- (25) BY MR. STOLL:

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- (1) Q Go ahead, Ms. Fohes.
- (2) A This is a detail of that same bay showing again how the oil
- (3) is stacked into the - into the beach and the windrows, I call
- (4) them, along the top, making this rhythmic composition there.
- (5) The beach is full of oil.
- (6) Again, this photograph is oil throughout the frame and a
- (7) boom going through it with the thick oil on the boom.
- (8) This was another bay down the coast of Eleanor Island, and
- (9) it was taken on the same day. You can see the oil on the
- (10) surface - I'm sorry, on the beach up to where the tide had
- (11) pushed it and you can also see oil in the water throughout it.
- (12) This is a detail of that same bay showing the fucus and the
- (13) mussels and the barnacles on one of the beach areas. Also in
- (14) the water is - that's completely oiled, that's all oil in
- (15) there.
- (16) This shows one of the boats coming around, again that same
- (17) beach, the same bay and the high tide line there full of oil
- (18) down below and in the water.
- (19) This was between Block and Eleanor Island and this was
- (20) taken on the 30th of that month, March, and you can see the oil
- (21) in the water and on the boom and then the pompom. Back here
- (22) is
- (23) the mussel beds.
- (24) Q Ms. Fohes, how do you know that that was mussel beds
- (25) there?
- (1) A Because I walked on it and I saw the mussel beds.
- (2) Q How did you know that that was fucus in the picture before

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- (1) that?
- (2) A Because I understand - I know it's a seaweed that I have
- (3) seen a number of times and I saw it on the beach again with oil
- (4) on it.
- (5) Q Thank you. Go ahead, please.
- (6) A This is at the village of Chenega, and they're laying out
- (7) booms at this point. And here's the village right back there.
- (8) And this was taken on the 30th or 31st.
- (9) Q Is there oil visible in this picture?
- (10) A No, there's no oil visible in this photograph.
- (11) Q This is one of the plaintiffs?
- (12) A Yes.
- (13) Q Yeah.
- (14) A Yes. This is out by the - on this side off the frame is
- (15) the hatchery where the Koerning Hatchery and they were laying
- (16) out boom to prevent the oil from getting to the hatchery.
- (17) And this shows again in Chenega the - this was taken on
- (18) the 4th of April, this shows the boom on the water and the oil
- (19) in - in the boom.
- (20) Q Is that oil - what is that on top of?
- (21) A This is on top of the water. And then this is oil on top
- (22) of the boom and between the booms.
- (23) I did some aerial flights from Chenega up the coast of
- (24) Knight Island and back, and so I can't be real specific about
- (25) where I photographed this, except it was on that flight from

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- (1) Chenega up the east coast of Knight Island and then back
- (2) down.
- (3) This shows oil throughout the bay, all over there. And
- (4) some sort of vessel in the middle of it.
- (5) Q And this area, was this typical of the - you said you
- (6) didn't know exactly the place where this was taken in the
- (7) Sound, but was this typical of what you saw there?
- (8) A To my recollection, it was typical.
- (9) Q Thank you.
- (10) A This was - this series of aerals was taken on the 2nd and
- (11) 3rd of April.
- (12) Now, this shows, again, on that same aerial trip, shows oil
- (13) throughout this large area. The sun reflection is dulled
- (14) because of the oil and it's very hard to see, but right up
- (15) there are two boats with a boom between them trying to boom
- (16) up
- (17) the oil to skim the oil.
- (18) Q Could you - let me ask you a question. Are they trying
- (19) to - looks sort of like a foam coming around in sort of a half
- (20) moon. Yeah, is that - what is that?
- (21) A That is all oil.
- (22) Q And these two little boats, the two - I guess they're not
- (23) little boats, but those two up there, and they're trying to
- (24) stem that?
- (25) A Yes.
- (1) This is Herring Bay and this photograph was taken, again,
- (2) on the 2nd or 3rd of April, and you can see the oil on the

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- (1) surface of the water into the base.
 (2) Bays into the shore around, all of this is oil that we're
 (3) looking at.
 (4) And this shows a little bit different angle showing the oil
 (5) in the bay, along the beaches.
 (6) MR. CLOUGH: Your Honor, if we could ask the witness
 (7) to state when this was taken, please.
 (8) THE WITNESS: This was on that aerial trip on the 2nd
 (9) or 3rd of April.
 (10) MR. CLOUGH: Thank you, Ms. Fobes.
 (11) THE WITNESS: You're welcome.
 (12) A (Continuing) This was Bay of Isles on Knight Island.
 (13) Again, the time on that was, looks like the 4th of April. You
 (14) can see the oil going into the Bay of Isles in the water here.
 (15) reaching up into the beaches.
 (16) Little bit different angle. Again the lighter colored area
 (17) in this picture is the - where the oil is, and then back down
 (18) here is a different level of - different thickness of oil.
 (19) The same location and same day, more of the, showing the
 (20) beaches with the oil coming right into them.
 (21) Q This is the Bay of Isles?
 (22) A Yes, this is the Bay of Isles.
 (23) Q Now, if I may just have a moment. I know the jury can't
 (24) probably see this, but on this exhibit, 1161, the Bay of Isles
 (25) is the green area here, this is where Bay of Isles is?

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- (1) A Yes, that's correct.
 (2) Q And this is right opposite some Native corporation
 (3) property, if this is - if that is it in green?
 (4) A That's - yes, and I can't say looking at these photographs
 (5) and not knowing that particular parcel, I, you know -
 (6) Q But it's typical of that area?
 (7) A It's very typical of that area and it was all throughout
 (8) the bay.
 (9) Q Go ahead.
 (10) A This is Northwest Bay. What you're looking at is a number
 (11) of oiled areas and a number of boats with booms between them
 (12) and this photograph was taken on - actually five, May 22nd.
 (13) This is a crew of workers trying to clean Naked Island, and
 (14) this was taken on the 8th of April, and you can see that the
 (15) oil is all over the boulders here.
 (16) MR. CLOUGH: Mr. Stoll, if we could have
 (17) clarification, 8th of April of what year?
 (18) THE WITNESS: 1989.
 (19) A (Continuing) This is also Naked Island that same day and
 (20) the same crew. They're using Sorbent pads to wipe down the
 (21) rocks.
 (22) This was a - on one of the rocks there. It's a limpet,
 (23) and there is oil all around it. This is very common to see the
 (24) barnacles and the limpets covered with the oil like this.
 (25) The crew went to Smith Island. This is the same day, the

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- (1) 8th of April, 1989. and this was a beach that was totally
 (2) covered with oil and the workers were scooping it up with their
 (3) hands and putting it in these buckets.
 (4) And this is a detail photograph showing that same beach
 (5) looking straight down with the oil on the rocks.
 (6) This was also on that same beach showing the oil floating
 (7) in the water, and also the fucus, that seaweed, out a little
 (8) bit.
 (9) This was a duck of some sort that was covered with oil and
 (10) sand.
 (11) Q Did you see - did you see many ducks?
 (12) A This - I saw two in the initial days.
 (13) MR. CLOUGH: Mr. Stoll, if I could ask the witness the
 (14) location and the date, please.
 (15) THE WITNESS: I'm sorry, sir, that's on that same
 (16) beach on Smith Island and it's on the same day on the 8th of
 (17) April, 1989.
 (18) MR. CLOUGH: Thank you.
 (19) THE WITNESS: You're welcome.
 (20) A (Continuing) Now, this was taken on a Coast Guard buoy
 (21) tender, the Sedge, and this photograph was taken on the 9th of
 (22) April, 1989.
 (23) This shows oil in the water and it's a - it was unlike oil
 (24) that we had seen in the past few days. It was - appeared
 (25) fresh, to my eyes.

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- (1) Q How did you happen to - why did you take this picture?
 (2) A I took this picture because we, as we were moving along
 (3) Eleanor Island, I noticed that - or I actually was sleeping. I
 (4) was so exhausted, and the skipper asked me to come above
 (5) deck
 (6) to take a look at this, and I looked at it. It appeared fresh
 (7) and it appeared to be a slick in the - just coming off what we
 (8) thought was Eleanor, but we followed the slick and we found
 (9) that it went to the - to Naked Island and in the bay, to the
 (10) bay where the Exxon Valdez was - was stored at that point.
 (11) Q This was a place where this was from the Exxon Valdez on
 (12) the 9th of April?
 (13) A This - we followed this slick back to the - to the stern
 (14) of the Exxon Valdez, yes, sir.
 (15) This shows a little bit more of the detail of that. This
 (16) is our - is our wake, is the boat's wake and this shows some
 (17) of the different characteristics of the fuel - or the crude.
 (18) Q This was taken that same day when you came, found the
 (19) Exxon
 (20) Valdez in Naked Island?
 (21) A Yes, this was taken on day 9th of April, 1989.
 (22) This photograph shows an island in Prince William Sound
 (23) with oil coming off of it, and this was taken also on the 16th
 (24) of April. You can see the - the oil streamers.
 (25) Q Which island was that; do you know, Ms. Fobes?
 (26) A I can't honestly say I know what island it was. We were
 (27) traveling on a helicopter from Valdez and we went to the -

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- (1) over the glacier and on the – on the western part of the Sound
 (2) and then back to Eleanor.
 (3) Q Was this typical of what you saw in your overflight?
 (4) A This – the streaming was not typical of what I saw in
 (5) other areas at that time. This was unusual for this date.
 (6) Early on, I saw similar things, but not on this date.
 (7) This is by Smith Island and this was taken on the 5th of
 (8) April and this was more typical of what I'd see, with a
 (9) thicker, browner oil.
 (10) Now, the next series of photographs were taken on Seal
 (11) Island and they were taken also on the 5th of April, and this
 (12) photograph shows the oiled seaweed, the fucus, and the
 (13) barnacles and the rocks.
 (14) And again, this was taken looking straight down showing a
 (15) tide pool with the grass and the barnacles and rocks and some
 (16) mussels and the oil.
 (17) And this is a detail of one of the rocks with the barnacles
 (18) and the oil.
 (19) And again, looking straight down, a detail showing the oil
 (20) and the water and on the seaweed.
 (21) Now, the next series of photographs were taken at Hallo Bay
 (22) on the Alaska peninsula and they were –
 (23) Q Excuse me, go ahead.
 (24) A I'm sorry, they were taken on the 10th of – the 10th of
 (25) May.

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- (1) MR. CLOUGH: What year, please?
 (2) THE WITNESS: 1989.
 (3) BY MR. STOLL:
 (4) Q And where is Hallo Bay, this is – it's past Kodiak?
 (5) A Yes, it is.
 (6) Q Is it down in this area?
 (7) A I'd have to look at it closer, but it is past –
 (8) Q That's okay, go ahead.
 (9) A And this shows the oil on that beach. This is all oil in
 (10) the sand.
 (11) This is an overflight of it from when we were flying in and
 (12) that shows striations, the discolorations that were the oil.
 (13) And again, a closer look at one of the striations with
 (14) people in the background.
 (15) And they were shoveling the sand and the oil into these
 (16) bags.
 (17) This is a detail on that beach showing the oil in the sand
 (18) and the fucus, the seaweed.
 (19) Now, I was – as I was photographing the beach, I walked
 (20) over the sand here and I sunk down, and when I backed off, I
 (21) noticed that the oil was – was oozing into my footprint.
 (22) I also do underwater photography, and I photographed in the
 (23) intertidal zone on that beach.
 (24) And this, I believe, was a few days later on the 18th of
 (25) May, and this is a person scooping up oil and sand from the

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- (1) intertidal zone under the water.
 (2) This is a bird carcass with oil on it at Wide Bay and that
 (3) was taken on the 11th of 1989, and Wide Bay is down the coast
 (4) on the Alaska peninsula. It's further down than our chart
 (5) shows.
 (6) This is an aerial photograph of the village of Larsen Bay
 (7) on Kodiak Island and this photograph was taken on the 5th of
 (8) May.
 (9) Q Larsen Bay is one of the plaintiffs in this case.
 (10) A Now, the next series of photographs were taken on the 14th
 (11) of May, which was Mother's Day, and the villagers were out
 (12) cleaning, trying to clean their subsistence shellfish areas and
 (13) they were using spoons and paper towels at that point. You can
 (14) see the oil in the rocks between the rocks.
 (15) And again, trying to dab up the oil when they could find it
 (16) with these towels.
 (17) Shoveling, shoveling some of the smaller rocks, also.
 (18) This was a little crab that I photographed on the same –
 (19) that same beach on Larsen Bay on that same day. You can see
 (20) the oil on its back and on its little legs there and then on
 (21) the – on the rocks surrounding it.
 (22) And this is a close-up photograph of one of the spoons that
 (23) they were using for – to try to recover this oil.
 (24) And a technique, you know, using the spoon and pushing the
 (25) oiled stuff into the spoon.

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- (1) MR. CLOUGH: Ms. Fobes, if you could try to remember
 (2) to tell us the dates of the photographs.
 (3) THE WITNESS: I'm sorry, sir, these were all on that
 (4) same day in the same place.
 (5) MR. CLOUGH: When you say a series, it's sometimes
 (6) hard for us to tell where you stopped. Which day was it?
 (7) THE WITNESS: This was again on Mother's Day, the 14th
 (8) of May. Okay, sorry about that. I'm a little nervous.
 (9) A (Continuing) This is Green Island, and this photograph was
 (10) taken on the 22nd of May. You can see booms in the water, oil
 (11) on the beach.
 (12) And this was a crew of about 180 people working with the
 (13) high pressure hoses and hot water and other techniques to
 (14) work
 (15) on this part of the beach.
 (16) Again, this is Green Island, again on the 22nd of – of
 (17) May. That's a high – hot water wash there.
 (18) This was on Eleanor Island and they're working on that, you
 (19) can see the oil on the beach.
 (20) This is what was called an omni boom, again, working on
 (21) Eleanor Island, and this one was taken on the 27th of May using
 (22) the high pressure hot water treatment.
 (23) The next series of photographs were taken on – in Herring
 (24) Bay. Let me get the – and these were taken on the 28th of
 (25) May, 1989. This shows an oiled beach, rocky beach with the
 (26) oiled fucus on it.

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- (1) And again, the oiled fucus, the seaweed and the rocks with
 (2) the oil on them, and in that pool is sheen from oil.
 (3) This is the mouth of a little stream that was at the back
 (4) end of the Herring Bay, again on that same date. You can see
 (5) the oil sheen in the water coming into the bay.
 (6) This shows a - let me focus here. This shows oiled fucus
 (7) and that seaweed and the mussels. This was also taken in
 (8) Herring Bay and also on that same date.
 (9) Now the next series of photographs were taken on Block
 (10) Island and this was - this was taken - these were taken on
 (11) the 25th of May, and they show a beach that had been worked
 on
 (12) and yet you still can see the oil here on the rocks and also in
 (13) the water right under the surface there are drops of oil
 (14) floating in it.
 (15) This is chiton and you can see that it has oil on it and
 (16) oil on the fingers of the person holding it. This is on that
 (17) same beach on Block Island.
 (18) BY MR. STOLL:
 (19) Q This exhibit was shown earlier to the jury, Ms. Fobes, by
 (20) Mr. Gordaoff.
 (21) A Okay.
 (22) Q This was taken by you?
 (23) A This was taken by me. This is on the same beach and it
 (24) shows the seaweed and that is oiled, coming in with the next -
 (25) with each wave. This is again on the - on the 25th of May.

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- (1) This is a detail shot of that same beach with the oil in
 (2) the water and then some of the oil on the rocks.
 (3) This is again on Block Island on the 25th, on that same
 (4) beach, showing the oiled fucus, the seaweed, with the oil -
 (5) this is oil here throughout the photograph.
 (6) Q That's about two months after the wreck?
 (7) A On the 25th of May.
 (8) Okay, could we have the next tray, please?
 (9) Q I'm going to let you do it.
 (10) A Thank you.
 (11) This photograph is near Eleanor Island right off the bay
 (12) that was thick with the oil, and this is taken again on the
 (13) 29th of the month of March. This shows a little bird that is
 (14) fully covered with oil trying to fly.
 (15) This is again the - that little bird, or a bird, with oil
 (16) on it trying to fly through the oiled water.
 (17) This is another bird, an oiled bird trying to fly. This
 (18) one was taken on the 29th of March.
 (19) This is a bird near Applegate rocks trying to fly and this
 (20) was taken on April 4th.
 (21) This is an oiled bird carcass that is over on - it's on
 (22) the Alaska peninsula at Dry Bay, and this was taken on the 11th
 (23) of May.
 (24) This is a bear track in oil over at - again, the Alaska
 (25) peninsula in Dry Bay. You can see the oil around here and then

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- (1) the track that he left in the sand.
 (2) Q This is past Kodiak?
 (3) A This is past Kodiak.
 (4) And again, another bear print in a blob of oil that was on
 (5) the beach, and you can see his print in it. This was also
 (6) taken at Dry Bay and it was also taken on the 11th of May.
 (7) This is a photograph of a bear running in Dry Bay on the
 (8) 11th, and you can see oil on his back and on his haunches and I
 (9) saw oil on his forehead and on his front paws and legs.
 (10) This is a bear that is at Hallo Bay on the Alaska peninsula
 (11) and you can see the oil on the - on the logs here and on the
 (12) beach there, and he was - I photographed him for a little bit
 (13) of time.
 (14) The next shows that same bear and he's sniffing something.
 (15) He's scavenging something on that beach, or looking into it
 (16) anyway.
 (17) And then I saw him go up the bank and start eating
 (18) something. This was also taken on the 16th at Hallo Bay.
 (19) Now, this was taken at Katmai National Park. This shows
 (20) seals hauled out on a rookery and this is on the 16th of May.
 (21) You can see the seal color is normally like that with kind of
 (22) the lighter color with some spots; occasionally you'll see the
 (23) spots, but these seals had been oiled. You can see the darker
 (24) areas there.
 (25) This was taken in Herring Bay and this was taken on the

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- (1) 28th of May. Now, this photograph shows a seal that is more
 (2) the natural color, although if you look closely, you'll see the
 (3) oil on his jowl, I guess, his checks. This shows what was more
 (4) typical of that time in that bay, a seal that's totally oiled,
 (5) totally dark.
 (6) This photograph also was taken on the 28th of May and it
 (7) shows a totally oiled seal.
 (8) This is a haulout in Herring Bay. You can see the - this
 (9) one is lighter, lightly oiled or lighter oiled than the rest of
 (10) them. This is more their natural color, but then you see the
 (11) dark oiled seals and also, the - this one has a ring around
 (12) both of his eyes and within that ring is his more natural
 (13) color. Again, on the 28th.
 (14) This was during the pupping season and there were a lot of
 (15) moms and pups that were totally oiled. Again, this is Herring
 (16) Bay and this was on the 29th of May.
 (17) This is a pup that is totally oiled. They're normally
 (18) white at this stage. And this is Herring Bay on that day, the
 (19) 29th.
 (20) This is a - this is a photograph of an otter that was
 (21) pulled aboard near Applegate rocks and this was taken on the
 (22) 4th of April, 1989.
 (23) This is a - a pile of - a partial pile of the animals
 (24) that the crew, these people had picked up and they were
 tagging
 (25) them and bagging them and getting them ready to go back to

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- (1) Valdez for – I don't know what exactly, but that was on the
 (2) 4th of April.
 (3) This shows the collection point where the animals were laid
 (4) out and sorted. You can see two otters there and then a
 (5) number
 (6) of birds.
 (7) Now, this photograph was taken on the 5th of April and this
 (8) is on Applegate Rocks, and the next three photographs are also
 (9) on – on that same day, at the same location. It's kind of
 (10) actually hard to see, but there's a bird, an oiled bird that
 (11) was lying on the – on the rocks in the oil.
 (12) This is a better – you can see the oil on him.
 (13) We put this little bird in a little box to take it back to
 (14) the boat. This is also taken on that same day.
 (15) This was taken on Seal Island and it shows an otter being
 (16) carried by a worker. I'm sorry, that date was the 5th of
 (17) April.
 (18) MR. CLOUGH: 1989?
 (19) THE WITNESS: 1989, yes, sir.
 (20) A (Continuing) This is a little bit closer shot of the
 (21) otter.
 (22) This is a tide rip, or this is where they were collecting
 (23) the carcasses and other things that were floating in the tide
 (24) rips along Green Island, and this is some sort of a bird. This
 (25) was taken on the 5th of April, 1989.
 (26) And this is a gull, oiled gull that they collected on –

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- (1) near Channel Island on the 4th of April, and you can see the
 (2) oil all over him.
 (3) This was a photograph taken at the Sound Love memorial
 (4) service in Cordova and they – the community got together
 (5) and – came together to – to be together. There were people
 (6) giving talks and people singing songs about what they had
 (7) experienced. This was taken on the 23rd of – of April, 1989.
 (8) Now, the next series of photographs were photographs I took
 (9) in 1993, and I went up to the Sound on my own with no – I
 (10) was – I wanted to do a story to sell to a magazine to see what
 (11) had happened in the four and a half years after I left the
 (12) Sound.
 (13) This is on Sleepy Bay and this is a rock that was turned –
 (14) picked up and turned over and that is all oil there. That
 (15) would be Sleepy Bay on LaTouche Island.
 (16) BY MR. STOLL:
 (17) Q I'm sorry, what island was that?
 (18) A It's Sleepy Bay on LaTouche.
 (19) Q That's on Native corporation property; isn't it?
 (20) A Yes.
 (21) Q Thank you.
 (22) A There was a – an experiment of beach cleaning technique
 (23) that was going on on this bay further down the beach that I
 (24) also photographed.
 (25) MR. CLOUGH: Objection, Your Honor may we approach the

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- (1) bench?
 (2) THE COURT: Yes.
 (3) (Sidebar held out of the hearing of the jury.)
 (4) MR. CLOUGH: Your Honor, I'm not sure that these were
 (5) in the package that was returned to us. My recollection is
 (6) that there was only one of the 1993 photos, the one of the rock
 (7) turned over. My recollection could be wrong. She has no
 (8) qualifications to testify as to what went on on that site.
 (9) That's highly controversial.
 (10) THE COURT: I don't know that she is going to do
 (11) that.
 (12) MR. CLOUGH: She was starting to describe what was
 (13) there, characterizing what was going on.
 (14) MR. STOLL: She can testify as to what it appears to
 (15) her to be.
 (16) THE COURT: She can't give her opinion, can she? She
 (17) can certainly describe what she saw.
 (18) MR. STOLL: Right.
 (19) THE COURT: But she doesn't know the distinction.
 (20) MR. CLOUGH: She has done no testing. She said she
 (21) saw something like indicating –
 (22) MR. STOLL: You can do that on cross-examination.
 (23) THE COURT: I think what I'm going to have to do is
 (24) turn the lights on and send the jury out to this room and we
 (25) can have the discussion and then go on, all right? Because –

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- (1) how much further does she have to go?
 (2) MR. STOLL: She's just about done.
 (3) THE COURT: So I'll send her out, and I'd like to see
 (4) if we can't get the cross-examination full. You think you can
 (5) finish by 1:30.
 (6) MR. CLOUGH: I'd like to. I really don't think these
 (7) were submitted to us in advance.
 (8) (Sidebar concluded.)
 (9) THE COURT: I tell you what, there's a room right here
 (10) that I'm going to –
 (11) THE CLERK: There is a jury in there.
 (12) THE COURT: I'll have to send you out to your normal
 (13) jury room, then. I'm probably going to bring you right back in
 (14) so it won't take us too long. So if you'll just go back to the
 (15) jury room. We'll let you know when you come back in.
 (16) (Jury out at 12:40 p.m.)
 (17) MR. STOLL: John, every one of these photographs was
 (18) checked on the side.
 (19) MR. CLOUGH: I'm not following – I think our – well,
 (20) the Court is here.
 (21) THE COURT: Listening, too.
 (22) MR. CLOUGH: Your Honor, I'm trying to track down the
 (23) exact history of it. Mr. Stoll may be correct. My personal
 (24) recollection, we went through these with the practice before is
 (25) that there was a '93 rock turned over. I remember that one

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- (1) quite well. I don't remember a series of additional '93
 (2) photographs beyond that. Certainly I prepared my
 (3) cross-examination with the expectation of a single 1993
 (4) photograph. That was my understanding, so I'm not certain
 (5) about the notice issue, but completely notwithstanding that, we
 (6) would object to Ms. Fobes being allowed to characterize any of
 (7) this material as oil or anything remotely resembling oil. She
 (8) has done no testing of it, as I understand.
 (9) She's not an expert on that issue. She's not in any
 (10) position to offer information to this jury which would be
 (11) helpful on that topic. I think you know from the prior
 (12) discussions it's highly controversial test, highly
 (13) controversial as to what, if anything, of oil came back out of
 (14) the ground when they pumped in a hundred pound per square
 (15) inch
 (16) of highly toxic chemical. We feel this information would be
 (17) potentially highly prejudicial.
 (18) They indicated at some point they're going to present
 (19) somebody to talk about this test. I assume that person will
 (20) also have photographs of it. We'll have an opportunity to -
 (21) perhaps outside the presence of the jury - to determine
 (22) whether or not competent evidence can be offered as to what, if
 (23) anything, came out of the ground relating to the Exxon spill
 (24) that day. I suggest Ms. Fobes simply isn't the right person
 (25) and this isn't the right time to do it.
 (26) THE COURT: Counsel?

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- (1) MR. STOLL: Your Honor, could we do a little voir dire
 (2) of the witness?
 (3) THE COURT: Sure.
 (4) MR. STOLL: Lay a foundation.
 (5) VOIR DIRE EXAMINATION OF NATALIE FOBES
 (6) BY MR. STOLL:
 (7) Q Ms. Fobes, there's a series of photographs that - of 1993
 (8) that you have in this series; is that correct?
 (9) A Yes.
 (10) Q How many are there, incidentally?
 (11) A I count 11.
 (12) Q Okay, 11 photographs.
 (13) THE COURT: That's counting the one with the rock?
 (14) THE WITNESS: Yes, it is.
 (15) MR. STOLL: Your Honor, I might, just preliminarily,
 (16) say that I think the confusion Mr. Clough may have had is that
 (17) the one photograph that was from 1993 was one that was going
 (18) to
 (19) be used in opening statements. We gave them the complete -
 (20) this is the complete set. They've had this and they returned
 (21) it - in fact, I've got a transmittal letter from them
 (22) returning the same photographs back to us two days ago, so -
 (23) let me finish my voir dire, though.
 (24) THE COURT: I tell you, unless I'm shown - and it
 (25) hasn't been shown yet - that these were not delivered, then
 (26) I'm simply going to accept it as true, that they were.

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- (1) MR. STOLL: That's right.
 (2) MR. CLOUGH: I'm not in a position to guarantee to you
 (3) they were not. Your Honor.
 (4) THE COURT: Well, you're not in a position to have me
 (5) make a finding that you didn't have these findings. In fact, I
 (6) make just the contrary finding unless you show me that's
 (7) untrue.
 (8) MR. CLOUGH: I have someone from the rear telling me
 (9) the contrary. That's fine.
 (10) THE COURT: What?
 (11) MR. CLOUGH: That's fine. I'm not able to make a
 (12) showing to the contrary, Your Honor.
 (13) THE COURT: There's no discovery issue here you were
 (14) provided with the photographs. Let's go on to the other
 (15) issue.
 (16) BY MR. STOLL:
 (17) Q Now, in 1993, when you went to Sleepy Hollow - Sleepy Bay,
 (18) excuse me, Sleepy Hollow, I'm getting my literature mixed up
 (19) here, Your Honor.
 (20) You went to Sleepy Bay. You identified in this one
 (21) photograph, you said that you turned the rock over, somebody
 (22) turned the rock over and you saw oil on it?
 (23) A Yes.
 (24) Q How do you know that was oil?
 (25) A Smelled like oiled, looked like oil, felt like oil when I

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- (1) put my finger on it.
 (2) Q Have you seen oil before?
 (3) A Yes, sir.
 (4) Q In your life experience?
 (5) A Yes, I have.
 (6) Q And when you went to - incidentally, when you went to
 (7) Naked Island and you saw the Exxon Valdez and you followed
 (8) this
 (9) oil slick -
 (10) A Yes.
 (11) Q - going up to the Exxon Valdez, did you see anything
 (12) coming overboard from the Exxon Valdez?
 (13) A Yes, I did.
 (14) Q What was that?
 (15) A I saw a stream of water coming from a hose off the stern of
 (16) the Exxon Valdez.
 (17) Q And that was where you saw - what you identified in the
 (18) water as oil?
 (19) A That was, the oil led up to the stern of the Exxon Valdez
 (20) and the water was coming off of the back of the Exxon Valdez.
 (21) Q They were pumping it, pumping out?
 (22) A They were purposing something from the hose, yes.
 (23) Q And so you're familiar with any way you're familiar with
 (24) oil?
 (25) A Yes, I am.
 (26) Q And this - this - the material that you saw on - in

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(1) these photographs in 1993, the rock, et cetera, is this any
(2) different from the oil that you saw in the photographs you took
(3) in 1989?
(4) A It depends on what stage during the spill. It was - it
(5) was that lighter brown oil, yes, but it was the oil that I
(6) saw.
(7) MR. STOLL: That's all.
(8) VOIR DIRE EXAMINATION OF NATALIE FOBES
(9) BY MR. CLOUGH:
(10) Q Are you aware that there's been other spills of oil
(11) throughout Prince William Sound over the years, both before
and
(12) after the oil spill, the Exxon Valdez oil spill?
(13) A Yes.
(14) Q And do you understand there's been significant quantities
(15) of diesel and marine oil spills over the years in Prince
(16) William Sound?
(17) A Do you mean bilge pumping or -
(18) Q And diesel fuel spills from grounded fishing vessels and
(19) stuff?
(20) A I was not as aware of that, no, sir.
(21) Q But you do know that there have been other spills of non-
(22) Exxon Valdez crude in Prince William Sound?
(23) A Yes, sir.
(24) Q Have you had any training in the fingerprinting or
(25) identification of crude oil?

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(1) A No, sir.
(2) Q And is there anything in your academic background which
(3) would provide you with any information with which you could
(4) take a particular sample of oil and determine its source?
(5) A No, sir.
(6) Q So you have no idea as to the source of the - whatever
(7) material it was from a scientific standpoint, that you were
(8) taking those photographs of?
(9) A From a scientific standpoint, I don't have a background in
(10) that, no, sir.
(11) Q And you said this looked somewhat similar to oil you'd seen
(12) in May of 1989?
(13) A Yes, sir. I didn't say somewhat similar. It was similar
(14) to the oil. It was identical to the oil, as far as I could
(15) see.
(16) Q Identical to the oil from May of 1989?
(17) A Uh-huh.
(18) MR. CLOUGH: Your Honor, what she has just described
(19) as oil that had been weathered for about two or three months
(20) four years past from the time of the oil spill until she saw
(21) this particular material out there. It's going to be
(22) demonstrated in this case by competent evidence -
(23) THE COURT: Counsel, the only thing she's done is said
(24) she saw oil there. That's all she's said on the offer of
(25) proof. You're the one that went into detail. So the question

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(1) is: Do I let her describe what she saw as oil? And the answer
(2) is yes. You go ahead and cross-examine if you want to. It's
(3) up to you.
(4) MR. STOLL: Thank you.
(5) THE COURT: She hasn't identified it as particularly
(6) coming from - being a particular type of oil or coming from
(7) any particular thing. She just described a similarity to what
(8) she saw in 1989.
(9) MR. CLOUGH: To avoid unnecessary objections in her
(10) testimony, may I ask one further voir dire question, Your
(11) Honor?
(12) THE COURT: Sure.
(13) BY MR. CLOUGH:
(14) Q With respect to any sheening from the Tesoro test, do you
(15) have any training or experience to identify what that is from?
(16) A I'm sorry, do you mean sheening from -
(17) Q Do you understand what I mean when I say the Tesoro test?
(18) A Yes, the PES-51.
(19) Q And the PES-51 is the chemical they pumped down there; is
(20) that correct?
(21) A Yes.
(22) Q Something came back up?
(23) A Yes.
(24) Q Do you have any idea whether the chemical itself could have
(25) been the source of any sheening you observed?

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(1) A If the chemical smelled like oil, the sheening that I saw
(2) smelled like oil.
(3) Q But my question for you is: Do you have any knowledge as
(4) to whether what you saw, but as to -
(5) MR. STOLL: Your Honor, I don't think it's proper to
(6) have him take a deposition now while the jury's -
(7) THE COURT: Is she going to describe sheening?
(8) MR. STOLL: Pardon me?
(9) THE COURT: Your direct examination, is she going to
(10) describe sheening.
(11) MR. STOLL: She's just going to say - no, she's not
(12) going to describe.
(13) MR. CLOUGH: If she's not going to describe sheening,
(14) it's a nonissue, Your Honor.
(15) THE COURT: Let the record reflect it's a nonissue for
(16) him. It's a nonissue for me, too.
(17) MR. CLOUGH: So long as she's not going to describe
(18) the sheening.
(19) THE COURT: Right, and she's not. Can I get the jury
(20) back in here, please?
(21) MR. STOLL: Yes, you may.
(22) THE COURT: Thank you.
(23) MR. STOLL: Thank you, Your Honor.
(24) (Jury in at 12:50 p.m.)
(25) THE COURT: You can be seated.

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- (1) MR. STOLL: Before we turn the lights down. I think we
 (2) can proceed now, Your Honor.
 (3) THE COURT: All right, go ahead.
 (4) MR. STOLL: Now, before we go back to where we were, I
 (5) just want to point out one thing with the witness.
 (6) DIRECT EXAMINATION OF NATALIE FOBES (Resumed)
 (7) BY MR. STOLL:
 (8) Q Sleepy Bay is this area here on LaTouche Island?
 (9) A Yes, it is.
 (10) Q And it's right across from Hallo Bay - Point Helen?
 (11) A Yes.
 (12) Q And on this map, that has the green areas. Sleepy Bay is
 (13) here, this is LaTouche Island?
 (14) A Yes.
 (15) Q And if this is - if green, this - all of this is Native
 (16) corporation property?
 (17) A Yes.
 (18) Q And then Point Helen is across the way here?
 (19) A Yes.
 (20) Q And this is also Native corporation property?
 (21) A Yes.
 (22) MR. STOLL: Could you turn the lights -
 (23) BY MR. STOLL:
 (24) Q Okay, now we were back, before the interruption, we're back
 (25) to where you were in July, 19 - what year, 1993?

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- (1) A Yes, it was in July of 1980 - I'm sorry, 1993.
 (2) Q This is last summer?
 (3) A This is last summer. It was taken between the days of the
 (4) 5th and the 8th of July.
 (5) Q All right. And so what do we have, you showed the rock,
 (6) would you just back up to that, where we were?
 (7) A Certainly. Whoops.
 (8) Q Okay, this is a rock that - one of the rocks that was
 (9) turned over?
 (10) A Yes, this is one of the rocks turned over on Sleepy Bay.
 (11) Q And you identified this as oil. How do you know this is
 (12) oil?
 (13) A Well, it smelled like oil, it looked like oil, and it felt
 (14) like oil when I rubbed my hand in it and I had a hard time
 (15) getting it off.
 (16) Q Okay, you're familiar with oil?
 (17) A Yes, I am, sir.
 (18) Q What do we have here?
 (19) A We have a pit that was dug in the beach at Sleepy Bay. It
 (20) was part of this experiment and it shows oil floating on the
 (21) top of the water.
 (22) Q Did you smell this, also?
 (23) A Yes, I did.
 (24) Q What did it smell like?
 (25) A It smelled like oil.

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- (1) Q All right, go ahead.
 (2) A And this is - shows the top of the water down at the
 (3) bottom of the beach and the oil on the water.
 (4) Q Now, is this again in July, 1993?
 (5) A Yes, it is.
 (6) Q And is this also at Sleepy Bay, where this experiment was
 (7) being done?
 (8) A Yes, it is, sir.
 (9) Q And what is this of, I'm sorry?
 (10) A This is - shows the oil on the surface of the water at the
 (11) base of Sleepy Bay.
 (12) Q And how do you know this is oil?
 (13) A Well, it smelled like oil and it felt like oil and it
 (14) looked like oil.
 (15) Q All right.
 (16) A This shows the - the line of the oil, that the oil affixed
 (17) itself to the rock during the experiment and a worker taking
 (18) a - feeling the oil.
 (19) This is also Sleepy Bay.
 (20) Q July, 1993?
 (21) A Yes.
 (22) Q Thank you.
 (23) A Now, this is a photograph of Disk Island. This is a mussel
 (24) bed and I dug down a little bit, not even very far at all, and
 (25) the oil floated onto the top of the water that was in the pit

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- (1) that I dug. These are all mussels surrounding it.
 (2) Q Go ahead.
 (3) A This was on Riou Cove in 1993. This is, again, during July
 (4) of 1993. This is on Knight Island and it shows a seam of oil
 (5) lying right on the surface of the beach here in this rock, in
 (6) these rocks.
 (7) This is again a photograph from that seam of oil, a worker
 (8) is taking a sample of it, and it is in 1993.
 (9) A little tighter shot showing the consistency of the oil
 (10) from that seam.
 (11) This is in Bay of Isles in the marsh at the very head of it
 (12) and this shows a worker digging in the ground and the oily
 (13) debris here.
 (14) Q When was this taken?
 (15) A This was taken in 1993.
 (16) This again is a beach in Knight Island and the seam of oil
 (17) that the worker is looking at.
 (18) And this shows a rock covered with oil from Riou cove.
 (19) Q This is the same time in July of '93?
 (20) A July of '93, yes, sir. That's it.
 (21) MR. STOLL: Could we have the lights, please?
 (22) Your Honor, we offer all those - I think maybe you already
 (23) put those in. That's all.
 (24) THE COURT: The photographs are admitted.
 (25) MR. STOLL: Thank you.

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- (1) MR. CLOUGH: Hi, Ms. Fobes. I am John Clough. I'm
 (2) with Exxon, and I need a second to grab a couple things off the
 (3) table.
 (4) CROSS EXAMINATION OF NATALIE FOBES
 (5) BY MR. CLOUGH:
 (6) Q Now, I want to start out by clarifying one thing. You
 (7) mentioned a lot in those pictures at the end about Sleepy Bay,
 (8) about an experiment?
 (9) A Yes, sir.
 (10) Q Now, is this what's called the Tesoro test that was done in
 (11) Sleepy Bay in 1993?
 (12) A Yes, sir.
 (13) Q Now, let's - let's look at where Sleepy Bay is again, if I
 (14) may.
 (15) MR. CLOUGH: May I approach the witness, Your Honor.
 (16) THE COURT: Sure.
 (17) BY MR. CLOUGH:
 (18) Q And using the map that Mr. Stoll stuck up here for us, you
 (19) noted that - first of all, Sleepy Bay is right across the way
 (20) from Point Helen?
 (21) A Yes, sir.
 (22) Q Are you aware that Point Helen was about the worst,
 (23) heaviest hit place from the Exxon Valdez oil spill?
 (24) A I did not know that.
 (25) Q Did you note that Sleepy Bay, according to the experts, was

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- (1) determined to be about the second worst hit from the entire
 (2) spill?
 (3) A I did not know that.
 (4) Q Did you know that Sleepy Bay had been identified by
 (5) government agencies as one of those few locations where you
 (6) could find subsurface oil?
 (7) A I did not know that.
 (8) Q Now this test that you went out there and observed in 1993,
 (9) the Tesoro test, isn't it true that what they did is they
 (10) brought a bunch of high pressured pumps out there?
 (11) A I don't believe that's entirely correct.
 (12) Q Well, let me ask you this: They used a chemical for this
 (13) test; didn't they?
 (14) A Yes.
 (15) Q And what - do you know the name of that chemical?
 (16) A Yes.
 (17) Q What is it?
 (18) A PES-51.
 (19) Q And are you aware if that's a toxic chemical or not?
 (20) A In - in talking to the DE -
 (21) MR. STOLL: Wait just a minute, Your Honor, if the
 (22) witness is qualified to answer this question, I think it would
 (23) be fine, but if she's not - she can go ahead. Never mind, I
 (24) withdraw the objection.
 (25) THE COURT: Withdraw the objection, all right. You

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- (1) may answer.
 (2) THE WITNESS: Okay.
 (3) A In the interviews I conducted and in reading some of the
 (4) literatures later, literature later that came out, I didn't get
 (5) that indication.
 (6) BY MR. CLOUGH:
 (7) Q Let me ask you this: There were a bunch of people working
 (8) with this chemical; weren't they?
 (9) A Yes.
 (10) Q Didn't they have on all the fancy protection gear to keep
 (11) it away from their face and eyes and skin?
 (12) A Not all of them, no. Some did.
 (13) Q But the ones that were actually putting this chemical into
 (14) the ground were wearing that, weren't they?
 (15) A The ones that were injecting it had it on, as I recall.
 (16) Q And what they had on was stuff protecting their faces and
 (17) their hands and basically all their skin from this chemical?
 (18) A Yes.
 (19) Q And you said they inject it into the ground. Didn't they
 (20) take hoses to inject it into the ground?
 (21) A I didn't see them taking hoses to inject it into the
 (22) ground.
 (23) Q How did it get in there, did they just pour it on the
 (24) beach?
 (25) A No, I'm sorry. There was a - what they called an air

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- (1) knife and that was - then they were injecting that into the
 (2) ground and - I'm sorry, you're right, the hose was connected
 (3) to the air knife, but as I recall, the air knife -
 (4) Q And this air knife basically took this PE - I'm sorry, I
 (5) forgot the designation.
 (6) A PES-51.
 (7) Q PES-51 chemical and put on the protective gear and used
 (8) the
 (9) air knife to pump it real hard down into the shoreline, didn't
 (10) they?
 (11) A Again the people who were operating the air knife had the
 (12) protective gear on, as I recall.
 (13) Q That's the guys I'm talking about?
 (14) A Right.
 (15) Q And they used that air knife to pump the PE-151 (sic) down
 (16) into the ground?
 (17) A That's my understanding.
 (18) Q And they did that at high pressure, didn't they?
 (19) A I don't know what the pressure was.
 (20) Q If I were to say to you it was done at a hundred pounds per
 (21) square inch, would you be in a position to disagree with that?
 (22) A I would not, I'm sorry.
 (23) Q And what happened? Isn't it true that when they did that,
 (24) eventually some brown gook came back up out of the ground;
 (25) isn't that true?
 (26) A Yes.

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- (1) Q It was that brown gook that you showed to the jury here in
 (2) those photographs; isn't that true?
 (3) A It was the -- in the photographs from the -- during the
 (4) treatment -- during the experiments, yes, but the one of the
 (5) rock being overturned was taken in a place that was not being
 (6) used for the experiment.
 (7) Q I'm talking about the ones you showed about the
 (8) experiment.
 (9) A Okay. Yes.
 (10) Q Now, you yourself didn't do any testing to see whether that
 (11) brown gook was chemicals that pumped back in, beach sand,
 (12) oil
 (13) or anything else; did you?
 (14) A The chemical did not smell like that. The chemical smelled
 (15) like more citrus and did not smell like oil and the stuff
 (16) coming out of the ground did smell like oil.
 (17) Q Perhaps I spoke too quickly. Did you, yourself, take any
 (18) of that material, that gook, and do any testing of it to see
 (19) what it was afterwards? I mean --
 (20) A No, sir, I did not.
 (21) Q And you're not trained to do that type of testing; are you?
 (22) A No, sir.
 (23) Q Now, I'd like to jump back in time, if I could, to when you
 (24) first -- most of the photographs we saw today, the ones back
 (25) from '89?
 (26) A Yes.

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- (1) Q Now, please correct me if I misheard. I thought I heard you
 (2) tell Mr. Stoll yesterday that you had shot 400 rolls of film
 (3) during your time in Valdez in 1989.
 (4) A Yes.
 (5) Q And that those were basically all, the 36 rolls per -- 36
 (6) shots per exposure?
 (7) A Yes, sir.
 (8) Q Per roll?
 (9) A Yes, sir.
 (10) Q And if my math is correct, and I did this at the table over
 (11) here, that would be about 14,000 images you shot?
 (12) A I'm going to have to count on your math.
 (13) Q Not always a good idea.
 (14) A Okay.
 (15) Q For the purposes of this, roughly 14,000, and it was from
 (16) that collection of 14,000 that you selected the 70 or 80 of
 (17) 1989 that you showed the jury here today?
 (18) A Yes, sir.
 (19) Q Now, I tried to keep as best notes as I could on my cards
 (20) here, but the places where you showed the closeups from, at
 (21) least most of the closeups from 1989, the ones you mentioned --
 (22) MR. CLOUGH: If I may approach the map, Your Honor.
 (23) And, Your Honor, if I could beg the Court's indulgence for a
 (24) second. I have a larger parcel map showing the pictures of
 (25) the -- the jury really couldn't see on the one Mr. Stoll was

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- (1) using, if I could bring that out.
 (2) THE COURT: Sure.
 (3) MR. CLOUGH: Having brought it out, I now have the
 (4) challenge of setting it up. Let's move this one over here.
 (5) Okay. Are you able to see that from there?
 (6) THE WITNESS: Not really.
 (7) THE COURT: If you want to walk around.
 (8) MR. CLOUGH: It would probably be easier if she could,
 (9) Your Honor.
 (10) THE COURT: You're going to have to get it out of the
 (11) way.
 (12) MR. CLOUGH: Yes, that would be good.
 (13) THE WITNESS: Do I take this?
 (14) THE COURT: Yes, take that. Thank you very much.
 (15) BY MR. CLOUGH:
 (16) Q Okay, during your direct examination -- and if we could,
 (17) move this back so we can show -- you identified this, which is
 (18) plaintiffs' Exhibit 755-B, these orange areas are the areas in
 (19) Prince William Sound that you took your photographs; is that
 (20) correct?
 (21) A No, that's not entirely correct. These were areas that
 (22) some of the photographs were taken in and, as I explained,
 (23) then
 (24) I had traveled throughout the Sound.
 (25) Q But the ones you showed us here today in the courtroom,
 (26) those photographs were taken from these areas in orange; is

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- (1) that correct?
 (2) A Yes. Except for at first, you can't see where -- I was in
 (3) a helicopter, an airplane flying over a beach or in that area.
 (4) Q Now I'd like to direct your attention, first of all, if we
 (5) could look over to what is defendants' Exhibit 13198. It's the
 (6) map of Prince William Sound with the parcels. Do you see all
 (7) these parcels over here, Silver Lake, Raging Creek, the
 (8) properties owned by Eyak, do you see those there?
 (9) A Yes, sir.
 (10) Q Were any of the photographs you showed the jury here taken
 (11) from those areas?
 (12) A Yes, sir.
 (13) Q Which one was that?
 (14) A There were photographs up in this area.
 (15) Q That's up at Bligh Island and. I'm sorry, maybe again I
 (16) misspoke. I was pointing essentially from Tatitlek all the way
 (17) down to the southeast here, all of these parcels you see, most
 (18) of which I believe are owned by Tatitlek and Port Graham and
 (19) Eyak. Maybe not Port Graham. I may have misspoke on that
 (20) one. Did you show the jury pictures of any of those?
 (21) A Not that I recall, sir.
 (22) Q Did you take any pictures of any of them, of the 14,000?
 (23) A I think when I was -- as I recall, when I was flying over
 (24) from Chenega to Cordova, I photographed quite -- or a few on
 (25) the way.

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- (1) Q And you didn't select any of those to show to the jury?
- (2) A There were just a few of them and they were mostly for
- (3) other purposes.
- (4) Q And, in fact, you didn't take any pictures of any oil in
- (5) any of those areas at all; did you?
- (6) A No, sir.
- (7) Q Now, one of the places you also showed us a lot of closeups
- (8) of - or excuse me, let me back up just a second.
- (9) You didn't take any pictures, did you, of this parcel here,
- (10) the Nellie Juan parcel?
- (11) A Not that I recall.
- (12) Q And did any of your pictures show the stuff over here in
- (13) Patton Bay?
- (14) A Not that I recall.
- (15) Q Now again, according to my notes here, the places you did
- (16) show us, most of the closeups were, first of all, Eleanor
- (17) Island. Can you locate Eleanor Island somewhere between the
- (18) two, the two maps?
- (19) A It's easier if it's named, but this is Eleanor.
- (20) Q And looking now over to the parcel map, can you point to
- (21) it?
- (22) A (Witness complies.)
- (23) Q Right.
- (24) MR. CLOUGH: And if the record can reflect, Your
- (25) Honor, the witness has indicated Eleanor Island, and Eleanor

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- (1) Island is not one of the parcels for which the plaintiffs own
- (2) and there's any damages claimed here at all.
- (3) BY MR. CLOUGH:
- (4) Q The next one you showed us a lot of photographs about was
- (5) Naked Island. Can, on either of the maps, you indicate Naked
- (6) Island to us?
- (7) A This is Naked.
- (8) Q And you had a whole bunch of close-up photographs of
- (9) Naked
- (10) Island, as I recall, during the first week to ten days or so
- (11) after the spill; is that correct?
- (12) A Are you referring to when the people were out there with
- (13) the rocks?
- (14) Q I can't remember exactly which ones, but some on April 8th,
- (15) I know that's when you had -
- (16) A May I look in my notes?
- (17) Q Sure.
- (18) A Yes, that was when the crew was out there with the
- (19) absorbent rags.
- (20) Q Now, is Naked Island one of the parcels that's owned by the
- (21) Native corporations here, according to this map, at least?
- (22) A According to that map, no.
- (23) Q You also showed us a whole bunch of closeups of Smith
- (24) Island, those were some of the ones you selected to show to the
- (25) jury; is that correct?
- (26) A Yes, sir.

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- (1) Q Is that correct?
- (2) A I hope I wasn't confusing, but the selection was made to
- (3) show mostly what it looked like all over. I mean, it was a
- (4) general selection.
- (5) Q I understand that, but you selected about 80 or 90 out of
- (6) 14,000; isn't that true?
- (7) A Well, yeah.
- (8) Q And you selected a number from Smith Island; isn't that
- (9) true?
- (10) A Yes, I did.
- (11) Q And could you show for us whether Smith Island is one of
- (12) the parcels which is at question here?
- (13) A Smith Island is here and it's here also, so no.
- (14) Q The other one that I have any notes down that you showed a
- (15) lot of close-up shots for for 1989 was Green Island. Can you
- (16) locate Green Island for us on the maps?
- (17) A Yes.
- (18) Q And is Green Island one of the parcels owned by the Native
- (19) corporations which are at issue in this case?
- (20) A Not according to this - this chart, no.
- (21) Q Do you have any other information which would lead you to
- (22) believe that Green Island is owned by one of the plaintiff
- (23) Native corporations?
- (24) A I do know - I've - I don't have any - any knowledge that
- (25) will - that I can disagree with you on that. So no.

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- (1) Q I think we can let you return back to the witness stand now
- (2) if you'd like to.
- (3) You also showed us a lot of very distressing photos of
- (4) wildlife that was impacted by the spill?
- (5) A Actually, I - I edited out a lot of them because they were
- (6) too distressing.
- (7) MR. STOLL: Too what?
- (8) THE WITNESS: Distressing.
- (9) BY MR. CLOUGH:
- (10) Q And certainly it was distressing to you to see wildlife in
- (11) that condition in 1989; wasn't it?
- (12) A It was distressing to everyone, myself included.
- (13) Q Myself included, too. In your collection of photographs,
- (14) did you have photographs of wildlife today out there in Prince
- (15) William Sound showing any evidence of the oil?
- (16) A I have photographs of black oyster catchers during a study
- (17) that was being done on the birth - or the weights. There had
- (18) been - and I - during the interview process, I learned that
- (19) there had been some differences between the black oyster
- (20) catcher chicks during the oiled areas or unoiled areas, but no,
- (21) I did not photograph seals in Prince William Sound last summer
- (22) within the area where the oil was. In the Herring Bay, I went
- (23) back to see if there were seals there. I didn't see the
- (24) seals. I saw one sea otter. That was all, in that
- (25) particular - the area of the concentration, though.

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- (1) Q Just so there's no confusion here, though, you didn't
 (2) present to the journey photographs whatsoever of wildlife
 (3) except those that you really took in the first three months
 (4) after the spill; isn't that correct?
 (5) A I'm trying to think. That is correct.
 (6) Q And, in fact, you said you got to Prince Will- well you
 (7) got to Anchorage the first day; correct?
 (8) A Yes.
 (9) Q That was March 24th and you made it to Valdez the 25th; is
 (10) that correct?
 (11) A Yes.
 (12) Q Same day I made it there.
 (13) A The Saturday.
 (14) Q Yeah. And then, as I recall your testimony, at some point
 (15) was it mid or late May that you finished your assignment and
 (16) left?
 (17) A I left because I was still working on a salmon story, and I
 (18) came back in the end of June - I left actually in June, the
 (19) first part of June, and I came back at the - in July for a
 (20) little bit more coverage.
 (21) Q So with the exception of those few photographs that we
 (22) discussed earlier that you showed at the end, all of the rest
 (23) of your photographs were taken in 1989; is that correct?
 (24) A Yes.
 (25) Q And, in fact, they were all taken within about the first

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- (1) three months after the spill occurred; is that correct?
 (2) A From - until about June 15th, I recall, is when I left.
 (3) Q So that would have been - three months and a week or so?
 (4) A Yeah.
 (5) Q Okay, and within that group, many of those were actually
 (6) taken within the first two or three weeks after the spill;
 (7) weren't they?
 (8) A Well, we could go through and go through. I'm not sure
 (9) that I can agree with you unless I look through the logs.
 (10) Q Have you gone back and taken any photographs of Naked
 (11) Island and shown what it looks like today on those shores?
 (12) A I did not go to Naked Island this summer, no, or last
 (13) summer.
 (14) Q My question to you was: Have you taken any photographs of
 (15) Naked Island to show what it looks like today?
 (16) A No.
 (17) Q Have you taken any photographs to show what Eleanor
 (18) Island
 (19) looks like today?
 (20) A I did take some last summer.
 (21) Q And did you bring any of those in here to the courtroom?
 (22) A I did not.
 (23) Q Have you taken any photographs to show what Smith Island
 (24) looks like today?
 (25) A I did not go back to Smith.
 (26) Q Have you ever taken any photographs to show what Green

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- (1) Island looks like today?
 (2) A I did not go back to Green Island last summer either. I
 (3) was working on my own with my own money and I didn't have
 (4) enough money to charter a plane or a boat to get me to these
 (5) places, so I had to, you know, basically go where I could.
 (6) Q So for those other places, you just don't know what they
 (7) look like today, do you?
 (8) A I'm not testifying to what they look like today. I did go
 (9) on Riou cove, and I did go up Knight Island with the
 (10) interagency team, and I did see oil. And I did go to Eleanor
 (11) Island and I did see oil. And I did go to Sleepy Bay and I did
 (12) see oil.
 (13) Q And Sleepy Bay, you went there with the interagency team?
 (14) A No, I went there on my own, and I photographed the
 (15) experiment. And then I also went back there with a Native
 (16) person from Chenega.
 (17) Q And that location had, in fact, been identified by that
 (18) same interagency team as a place, one of the few where one
 (19) could go still in Prince William Sound and expect to find some
 (20) oil on the beach?
 (21) A That may be so, sir, but I didn't know it at the time.
 (22) Q I understand.
 (23) A I hooked up with the interagency team later on my trip.
 (24) Q I understand that.
 (25) MR. CLOUGH: Thank you very much.

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- (1) MR. STOLL: I have a few questions.
 (2) THE COURT: All right.
 (3) REDIRECT EXAMINATION OF NATALIE FOBES
 (4) BY MR. STOLL:
 (5) Q Ms. Fobes, Mr. Clough apparently, and maybe some other
 (6) Exxon lawyers, showed up on March 25th in Valdez, but no
 (7) lawyers, no plaintiff lawyers talked to you about which
 (8) photographs to take, what to take and whatnot to take back
 (9) then
 (10) in 1989, am I correct?
 (11) A Oh, no, no, not at all.
 (12) Q Were these photographs ever taken for litigation purposes?
 (13) A Not at all. I was - I'm a freelance photographer. I was
 (14) under a contract with the National Geographic magazine for the
 (15) initial oil spill coverage. I went back in 1989 - or, I'm
 (16) sorry, 1993 with the anticipation of selling the story to a
 (17) couple other magazines and I actually have sold parts of the
 (18) story to a couple other magazines.
 (19) Q And these photographs you took, this lasted about an hour
 (20) to show this group that you selected, you selected this?
 (21) A Yes, I did.
 (22) Q And what criteria did you use to select this?
 (23) A Well, there were two instructions that initially were given
 (24) to me by the attorneys and that was to show the terminal and
 (25) then to show the establishing shots of the Exxon Valdez on
 (26) the - on the reef, and after that, you - I was instructed to

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- (1) show photographs that showed the – what was typical of what I
 (2) saw during those three months, four months that I was there.
 (3) Q So if we had shown 14,000 photographs, we'd be here for a
 (4) long time?
 (5) A Yeah. Yeah.
 (6) Q And Mr. Clough can – can get any of these other 14,000
 (7) photographs if he wants to get them; isn't that right?
 (8) A I guess, yeah.
 (9) Q And you said something about this protective gear on this
 (10) one – one of the beaches that you went on in 1993, that you
 (11) saw – where you saw oil last year?
 (12) A Yes.
 (13) Q Now, there was only one of those beaches, those various
 (14) places that you described, Eleanor Island, Riou Cove, and I
 (15) think a couple other places, that – where the so-called Tesoro
 (16) experiment was going on; isn't that right?
 (17) A I'm sorry, could you repeat the question?
 (18) Q Well, you described I think it was four or five areas that
 (19) you went to in 1993?
 (20) A Yes.
 (21) Q Where you saw oil?
 (22) A Yes.
 (23) Q You saw oil in all those places?
 (24) A Yes, I did.
 (25) Q And in one of – the so-called Tesoro experiment, what you

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- (1) described as a citrus smelling chemical?
 (2) A Yes.
 (3) Q Was that in all these areas or was that just one area?
 (4) A No, sir, that was only at the Sleepy Bay area.
 (5) Q Okay, and where the rock was turned over, you know, and
 (6) you
 (7) said that – did you see other rocks that were turned over
 (8) where there was oil on them?
 (9) A Yes, I did.
 (10) Q Was that typical?
 (11) A That was typical.
 (12) Q Now in answer to one of the questions by counsel,
 (13) Mr. Clough, he said something about you saw one sea otter in
 (14) an
 (15) area. I can't remember where it was. This was last summer?
 (16) A Yes.
 (17) Q And you saw a few seals, I think you said.
 (18) A I saw in Herring Bay, I believe I only saw one. I didn't
 (19) see many at all.
 (20) Q Okay. And in the same time period in 1989, did you see
 (21) more seals and otters?
 (22) A Yes, actually in Herring Bay I saw a number of seals, and
 (23) outside of Chenega village I saw a number of sea otters.
 (24) Q That was back in '89?
 (25) A That was in '89.
 (26) Q And that's where some of these photographs, these otters
 (27) and seals that were oiled?

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- (1) A Yes, sir.
 (2) MR. STOLL: Thank you, that's all.
 (3) MR. CLOUGH: Nothing further here, Your Honor. Thank
 (4) you.
 (5) THE COURT: You may step down. Thank you very much.
 (6) THE COURT: Counsel, should I let the jury go today?
 (7) MR. STOLL: Your Honor, since it's 1:20, I think we
 (8) might as well quit for the day.
 (9) THE COURT: So your day is at an end, at least here.
 (10) Remember, don't talk about this case with anyone and don't
 (11) form
 (12) or express any opinion on it until it's submitted for your
 (13) deliberation. I'll let you go for today. I'd like you back
 (14) here at 8:30 tomorrow morning.
 (15) (Jury out at 1:20 p.m.)
 (16) THE COURT: All right, counsel, we have a few things
 (17) to discuss, I think. The question is whether we discuss them
 (18) now or we do it later?
 (19) MR. STOLL: Your Honor, I'd prefer to do it, if we
 (20) could do it a little bit later.
 (21) THE COURT: 2:30?
 (22) MR. STOLL: That would be fine.
 (23) MR. DIAMOND: See you then.
 (24) MR. PETUMENOS: Do we have the list of things we want
 (25) to discuss?
 (26) THE COURT: Here's my list. I want to see those

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- (1) stipulations, the proposed stipulations. And we'll discuss
 (2) that. I'd like to discuss the plaintiffs' motion that was
 (3) filed this morning. I've reviewed it and it doesn't look to me
 (4) like Exxon should have any problem arguing it, but if you do,
 (5) just let me know.
 (6) MR. DIAMOND: Haven't seen it yet.
 (7) THE COURT: You haven't seen it yet?
 (8) MR. FORTIER: I think I gave them a copy this morning,
 (9) Your Honor, when I asked permission to file it with the Court.
 (10) THE COURT: I won't rush you into it, but I'd like to
 (11) resolve it because it doesn't look to me to be that
 (12) complicated, okay. And then do you have a list?
 (13) MR. STOLL: Your Honor, we do need to talk about
 (14) this – the – we'll do it before we get here, this is a
 (15) practical problem that you indicated this order this morning
 (16) which we appreciate not filing things on the day that something
 (17) comes up. The way the pretrial order works now, we're going to
 (18) work something out to try to, is that cross-examination – we
 (19) don't receive the cross-examination exhibits sometimes until
 (20) the night before, and so that's why we had to file this motion
 (21) this morning, but we'll work out a procedure so we can do this
 (22) in an orderly manner so you don't –
 (23) THE COURT: It's working out procedures that I'm
 (24) trying to encourage. I just want you to understand when I get
 (25) a memo just before I walk into court with the jury, highly

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- (1) unlikely I'm going to be able to give it any thought before I
 (2) talk about it.
 (3) MR. STOLL: We understand, Your Honor. That was the
 (4) first opportunity we had to present it. We're going to work
 (5) out a procedure in the meantime because it's going to be a
 (6) problem for both sides. We'll work it out.
 (7) THE COURT: Now, one other thing. This is for the
 (8) filmmaker. The media rule precludes filming juries. I saw you
 (9) filming the jury.
 (10) MS. KATZKE: Oh, you mean the exit?
 (11) THE COURT: Don't film the jury because I can't let
 (12) you film the jury.
 (13) MS. KATZKE: I just did a fade-out on the exit, I'm
 (14) sorry.
 (15) THE COURT: I'm sorry?
 (16) MS. KATZKE: I just did a fade to black on their
 (17) walking out.
 (18) THE COURT: That's fine. I don't care what the
 (19) technical term is, don't film the jury.
 (20) MR. STOLL: Your Honor, I also want to bring up the
 (21) issue about these payments, the statements of counsel about
 the
 (22) payments and some other things that we think were -
 (23) THE COURT: We can - we can discuss that. I -
 (24) MR. STOLL. I understand.
 (25) THE COURT: Yesterday, I reviewed that order that

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- (1) Mr. Diamond referred to, and I saw the hole there, and I am
 (2) irritated at myself for not plugging that hole before that
 (3) question was asked, and I think the record may reflect that I
 (4) plugged that hole sometime on the record. But then counsel
 (5) sometimes isn't here when those things are said, so you know,
 (6) assigning blame under the circumstances may be difficult. All
 (7) I want to know is if there's a hole there and that you see -
 (8) you let me know about it and I'll see whether or not it should
 (9) be plugged.
 (10) MR. STOLL. I think you - I think if it wasn't
 (11) explicit before - I think it was explicit before, but I think
 (12) you certainly were explicit this morning, and I don't think -
 (13) I can't imagine having a repeat of what we've had the last two
 (14) days.
 (15) MR. PETUMENOS: My concern is let's keep aside for the
 (16) moment how it happened and all that, that's behind us, but to
 (17) make sure our clients aren't prejudiced by it, what, if
 (18) anything, should we tell the jury? And I would like perhaps to
 (19) work on a draft of something if that would be of assistance to
 (20) the Court.
 (21) THE COURT: That's what I encouraged you to do because
 (22) you can't just react to these things and come up with a third
 (23) draft while you're under the pressure of the moment. So fine,
 (24) give me a composed instruction, I'll be happy to consider.
 (25) MR. PETUMENOS: Part of the problem now for us, Judge,

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- (1) is the careful drafting versus doing it at the time that the -
 (2) that the potential impact happens and sometimes counsel feel
 as
 (3) if something needs to be acted on immediately.
 (4) THE COURT: I agree with that, but then I heard your
 (5) proposed instruction.
 (6) MR. PETUMENOS: You didn't like it?
 (7) THE COURT: No way would I give it.
 (8) MR. STOLL: Can we come back at three o'clock?
 (9) MR. SHAPIRA: Your Honor, may I just say I was told
 (10) and was aware that there was an order regarding payments to
 the
 (11) Native corporations. I was never told that there was an order
 (12) about payments to individual witnesses. And I now understand
 (13) that there is no such order. But in any event, I was not aware
 (14) if Your Honor had closed that, put that loophole on the record.
 (15) THE COURT: Yeah. And thus far, counsel, I'm not
 (16) jumping harder than I was, but next time, I'm only setting it
 (17) up so that if jumping on somebody is appropriate, I can do it.
 (18) MR. SHAPIRA: There's a variant of the same question
 (19) that arises out of the motion that's been filed, so I guess
 (20) we'll be talking about it at 2:30.
 (21) THE COURT: That's fine. We can talk about it at
 (22) 2:30.
 (23) MR. STOLL: Your Honor, could we come at 3:00 instead
 (24) of 2:30?
 (25) THE COURT: No, counsel, you're going to come at

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- (1) 2:30.
 (2) We're going to have to talk about Kimura at 2:30, also.
 (3) (Recess at 1:25 p.m.)

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(2) : Reporter's Certificate
(3) DISTRICT OF ALASKA)
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(7) Reporter and Notary Public;
(8) DO HERBY CERTIFY:
(9) That the foregoing transcript contains a true and
(10) accurate transcription of my shorthand notes of all requested
(11) matters held in the foregoing captioned case.
(12) Further, that the transcript was prepared by me
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(14) DATED this day
(15) of , 1994.
(21) JOY S. BRAUER RPR
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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re:) Case No. 344-89-2533 Civil
) Anchorage, Alaska
 (5) The Exxon Valdez) Thursday, July 7, 1994
) 9:00 a.m.
 (6))
 (8) VOLUME 10 Pages 1491 through 1638
 (10) TRANSCRIPT OF PROCEEDINGS (Continued)
 (11) TRIAL BY JURY
 (13) BEFORE THE HONORABLE BRIAN C. SCOTTELL
 Superior Court Judge

(6) APPEARANCES:

(7) FOR THE PLAINTIFF:

(8) N. ROBERT STOLL
 Stoll, Stoll, Berne & Locking
 209 Southwest Oak Street
 (9) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUNOS
 Birch, Horton, Bittner & Chertok
 1127 West Seventh Avenue
 (10) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 Fortier & Mikko
 (11) 2560 Denali Street, Suite 604
 Anchorage, AK 99508
 907/271-4222

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(1) PROCEEDINGS
 (2) (Call to Order of the Court)
 (3) THE COURT: You may all be seated. I've been informed
 (4) that there's a power failure.
 (5) MR. STOLL: Just the electronic monster again, Your
 (6) Honor. It's taken over.
 (7) THE COURT: Well, we've got a record; right? It's
 (8) just the -
 (9) MR. STOLL: It's just high tech.
 (10) THE COURT: Your stuff that's not working.
 (11) MR. STOLL: Not our stuff, their stuff.
 (12) THE COURT: At least we can use some of this time
 (13) productively. I've told the jury to come back at 9:30 because
 (14) I've been through this before and I know it's at least a half
 (15) an hour. The stipulation resolving objections to
 (16) foreseeability witnesses, I've received it and in view of that
 (17) stipulation, do we have witnesses, especially with the power
 (18) failure, that will take us through the day?
 (19) MR. FORTIER: Your Honor, we may have one witness with
 (20) regard to a - a part of the foreseeability matter, but it -
 (21) you know, it's not directly addressed to it.
 (22) MR. STOLL: That's not the question. The question is
 (23) do we have enough witnesses to fill the day.
 (24) MR. FORTIER: Yes, we do, Your Honor.
 (25) MR. STOLL: We could have filled the day with the hour

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(1) FOR THE DEFENDANTS:

(2) CHARLES P. DIAMOND
 M. RANDALL OPPENHEIMER
 LINDA JAYE SMITH
 (3) O'Melveny & Myers
 400 South Hope Street
 (4) 213/669-6000
 (5) JOHN F. CLOUGH III
 Clough & Associates
 (6) 431 N. Franklin St., #202
 Juneau, AK 99801
 907/585-5777
 (7) Reported by:
 JOY S. SPALER, FR
 (8) Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2560 Denali Street, Suite 1506
 Anchorage, Alaska 99508
 (11) 907/258-7100

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(1) we lost, Your Honor.
 (2) THE COURT: Sorry we've lost the hour, then.
 (3) What do you want me to do about this stipulation? Do you
 (4) want me to just save it and use it in the instructions at the
 (5) end of the case?
 (6) MR. DIAMOND: That was our idea, Judge.
 (7) MR. FORTIER: No, Your Honor, actually, we don't want
 (8) you to do that. We will be presenting several witnesses,
 (9) Mr. Totemoff and Mr. Sieber. After Mr. Sieber testifies, we'd
 (10) ask that you publish it to the jury.
 (11) THE COURT: I'll do it when you tell me that it's
 (12) appropriate, if there's no objection.
 (13) MR. DIAMOND: I don't see why this is not read to the
 (14) jury along with all the other instructions. I thought it would
 (15) seem to highlight it.
 (16) MR. FORTIER: Your Honor, it's not really a
 (17) highlighting. It would follow logically with our presentation.
 (18) THE COURT: I'll do it. It's not going to - it's not
 (19) unfairly prejudicial and it tells them something, so I like to
 (20) inform juries, so I'll do it at the time when you tell me that
 (21) it's appropriate; all right?
 (22) MR. FORTIER: Thank you, Your Honor.
 (23) THE COURT: Okay, let's talk about the cautionary
 (24) instruction that counsel simply couldn't come up with a version
 (25) that was acceptable on yesterday so I said I'd do it. Here it

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- (1) is.
- (2) I sustained an objection yesterday to a question regarding
- (3) how much Mr. Gordaoff may have earned in 1989 in assisting in
- (4) the Exxon Valdez spill cleanup. The question asked for an
- (5) answer I determined to be inadmissible because it was
- (6) irrelevant. That is, it did not tend to establish any material
- (7) proposition in this case. When an objection to a question like
- (8) this is sustained, you must disregard the question entirely and
- (9) you must not speculate as to what answer might have been
- (10) given. Questions by lawyers are not evidence. Therefore, you
- (11) cannot consider them in your fact-finding inquiry. It is
- (12) important that you understand this now to guarantee that
- (13) inadmissible statements or questions are not considered by you
- (14) for any purpose.
- (15) MR. STOLL: That's fine, Your Honor.
- (16) MR. SHAPIRA: That's fine, Your Honor.
- (17) MR. STOLL: Your Honor, could we add one - there's
- (18) one little thing I'd like to suggest, though. That is that the
- (19) figure that they gave, the 153,000 was actually not just for
- (20) him; it was for him, his crew and his boat.
- (21) THE COURT: Was that the question?
- (22) MR. STOLL: That was not the way the question was
- (23) phrased, but the \$153,000, that sum was the amount paid to
- (24) him.
- (25) I believe, for all of that -
- (26) THE COURT: That may be so, counsel, but the question

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- (1) was not phrased that way. Why should I give them extra
- (2) information about it? I sustained an objection and, therefore,
- (3) they're not to consider any of it.
- (4) MR. STOLL: Your Honor, what about the opening
- (5) statement?
- (6) THE COURT: I'm not going to say anything about the
- (7) opening statement. I don't think it's appropriate to do so.
- (8) Is there anything else that we can do now?
- (9) MR. DIAMOND: Can we talk whales for a moment?
- (10) THE COURT: Yeah, that's good.
- (11) MR. DIAMOND: I understand Mr. Sieber, who is a
- (12) videotape authentication witness, will be used to proffer
- (13) PX1269, which is a composite made by the plaintiffs of various
- (14) clips in and around LaTouche Island in, I believe, April of
- (15) 1989.
- (16) We viewed the tape. Other than as to objections you've
- (17) already ruled on concerning graphic images, we don't have any
- (18) other objections, except with respect to the very closing
- (19) portion of the tape which depicts a dead humpback whale,
- (20) severely bloated, floating on the shore front. It then
- (21) documents a crew tying up the whale and attempting to tow it
- (22) out to sea and sink it.
- (23) The tape is highly suggestive of a fact that the whale was
- (24) a casualty of the oil spill. I understand that there is no
- (25) evidence being offered by the plaintiffs that this or any other

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- (1) humpback whale was a casualty of the oil spill.
- (2) In fact, it's my understanding that the scientific evidence
- (3) is just to the contrary, that no whales, humpback or otherwise,
- (4) were injured or killed as a result of the oil spill. We object
- (5) to that piece of the tape, because it suggests something which
- (6) is contrary to fact, will not be supported by any evidence, and
- (7) under 403, if it comes in, we're obligated to go to the trouble
- (8) of start rebutting the inference that the oil spill was
- (9) responsible for at least one casualty among the whale
- (10) population, which would require calling witnesses with that
- (11) expertise.
- (12) I think nobody wants to suffer through additional
- (13) scientific testimony if it's unnecessary. If of my factual
- (14) premises are wrong, Mr. Petumenos can correct me.
- (15) MR. PETUMENOS: Your Honor, here is the problem. This
- (16) is a tape of about ten minutes' duration.
- (17) THE COURT: The whole thing?
- (18) MR. PETUMENOS: Yes. And it was - it's a continuous
- (19) clip. It's not a bunch of different segments. The tape was
- (20) served on Exxon in March. I first learned of this objection to
- (21) the whale during court yesterday. I have no idea whether what
- (22) Mr. Diamond says is correct or not, and I'm making inquiries
- (23) about whether what he says is correct or not.
- (24) The problem is that when you do a videotape, as the Court
- (25) can imagine, you have to cut and put it together, and ready to

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- (1) go today, we have Mr. Sieber from Seattle. They didn't raise
- (2) this with me until yesterday. I will tell the Court that if it
- (3) should turn out there is credible evidence that this whale died
- (4) by being run over by a boat or something like that, I will
- (5) stipulate, but I have no idea whether what Mr. Diamond says is
- (6) true. Simply because opposing counsel comes up to you the
- (7) day
- (8) before and says we have an investigation which I know nothing
- (9) about, and we have witnesses which I don't - haven't been
- (10) disclosed to me stating that this whale didn't die of the oil
- (11) spill, it seems to me it is inappropriate now to try to cut up
- (12) a tape the morning of trial after it's been with them for three
- (13) months.
- (14) That was the reason for - four months was the reason for
- (15) serving the exhibit. So I'm in the position at this point of
- (16) being asked to accept their representation whole that a whale
- (17) that was dead on an extremely heavily oiled beach with other
- (18) circumstances that looked like the whale was in a terrible
- (19) environmental mess is now, because they say so, unrelated to
- (20) the oil spill. I had no idea, and if there was an objection to
- (21) this whale in the tape, it should have been made weeks and
- (22) weeks ago so we could do something about it. But on the
- (23) morning of the evidence to come in, I think it's untimely at
- (24) this point and there's no way that we can cut a tape the
- (25) morning of the trial.
- (26) THE COURT: Well, the inference you have the jury draw

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(1) is that because this whale is dead on the beach, that the oil
 (2) spill did it?
 (3) MR. PETUMENOS: Well, I will certainly not argue that
 (4) unless I can --
 (5) THE COURT: If you can't argue that, what's the point
 (6) of having the whale?
 (7) MR. PETUMENOS: Well, it was -- there was certainly
 (8) circumstantial evidence that the wildlife was -- again, if you
 (9) were to see the tape and see the state of the shoreline and the
 (10) state of the water surrounding the shoreline, there was
 (11) certainly circumstantial evidence in the tape that the animal
 (12) was harmed by the oil spill and was simply a matter of a
 (13) videographer going on a day, not knowing what he'd find, and
 (14) going up to the shoreline and there it was.
 (15) And my problem is: This is our time to play the tape.
 (16) What if it turns out, in fact, that everything Exxon's saying
 (17) is not true or inconclusive? I only have representation of
 (18) counsel at this point and I have no notice, no opportunity to
 (19) respond, and if their objection is sustained, we have just lost
 (20) the ability to play this tape, because it's part of a tape
 (21) and --
 (22) THE COURT: Why have we lost the ability to play it?
 (23) Can't you just turn it off at the appropriate time?
 (24) MR. PETUMENOS: Well, that's going to be pretty
 (25) difficult, I think, and very risky if, in fact, you don't want

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(1) the whale on there. I'm not sure how to do it, frankly.
 (2) What we've done is we've taken a duplicate of the videotape
 (3) that's there and we've prepared a 35-millimeter film because
 (4) the videotape doesn't show oil very well, no videotape does.
 (5) In fact, and we have the 35-millimeter film here prepared to go
 (6) with the projector, and I'm just not sure how to do it,
 (7) frankly.
 (8) Technically, at this point, the right way to do it is to
 (9) clip the film and splice it out, but I don't even know if that
 (10) should happen at this point. All I have is Mr. Diamond
 (11) standing up and saying, we don't like the whale because we
 (12) don't think it's connected to the oil spill. I have no other
 (13) offer, no other evidence, no other witnesses presented to me on
 (14) a tape that's been around for four months and it's troubling.
 (15) THE COURT: I hear you, go ahead.
 (16) MR. DIAMOND: Your Honor, quite frankly, I had assumed
 (17) that there was going to be scientific evidence tying up the
 (18) injury to the whale -- the oil spill to the injury to the
 (19) whale. That was the connection, and it wasn't until I sat down
 (20) with my own expert and reviewed the videotape two days ago to
 (21) start developing some rebuttal to the death of this whale that
 (22) I found out that the National Marine Fisheries Administration,
 (23) NOAA, had conducted indepth research of every whale
 (24) casualty
 (25) and concluded that there was no linkage between the spill and
 the death of any whales in 1989.

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(1) THE COURT: And where is the hard copy of that
 (2) evidence so that Mr. Petumenos can see it?
 (3) MR. DIAMOND: I spent all last night and all this
 (4) morning trying to do that. We've been on the phone to NOAA
 (5) down in Seattle. We've been on the phone to NOAA in
 Anchorage
 (6) with the archivist trying to come up with a record of the
 (7) inspection of this whale. We have not been able to put our
 (8) fingers on this one.
 (9) I can get -- at a break I can get Mr. Petumenos reports
 (10) that were issued, I think, by the Trustees concerning the
 (11) absence of injury to any of the whale population as a result of
 (12) the spill. I think it's a generally accepted fact among
 (13) scientists, that's what I discovered the day before yesterday,
 (14) that there is no controversy among scientists that the whale
 (15) population was not impacted by the oil spill.
 (16) So it's difficult to put your hands on a lot of research
 (17) specifically pointed to this particular whale on this
 (18) particular shore, because nobody -- nobody connects the two.
 (19) With respect to the technical difficulties, I was not aware
 (20) that they were going to show this clip on film. All we had was
 (21) a videotape. This is the only thing that's been identified,
 (22) but in any event, the whale scene occurs at 141 into the tape.
 (23) It is virtually the last scene depicted on the tape. It plays
 (24) for about three minutes. I think the easy solution is just
 (25) turn off the projector at 141.

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(1) The only other image beyond that -- and we can screen it as
 (2) soon as the power comes on -- at the very end of the tape after
 (3) the whale scene is the scene of a partially oiled otter
 (4) swimming on the shoreline, and then the tape fades to black, as
 (5) they say. In terms of loss of any important information, all
 (6) of the oiling information about LaTouche precedes the whale
 (7) coverage.
 (8) Again, I simply assumed that there was some connection that
 (9) Mr. Petumenos would draw and that there would be a
 foundation
 (10) for this video, simply beyond the testimony of the photographer
 (11) who was out there on the beach, and perhaps I was remiss in
 not
 (12) doing my homework sooner, but as soon as I found out that
 there
 (13) was no connection, I did notify him.
 (14) They've had 24 hours to snip out this portion of the
 (15) videotape or make the duplicate so they could avoid the
 (16) problem, and I don't think it is a problem, because we'll just
 (17) stop the film in an hour and 41 minutes.
 (18) THE COURT: Tell me something, if the tape plays,
 (19) you'll feel it's necessary for you to put on evidence that no
 (20) whales were hurt by the spill; right?
 (21) MR. DIAMOND: Or some sort of clarifying instruction
 (22) to the jury, although I think once they see the image, you
 (23) know, it's a rather pathetic scene of a very large dead mammal
 (24) being carted with a helicopter following a tow boat way out in
 (25) Prince William Sound. And it's moving and it's disturbing and

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(1) it's purposeless because there is no evidence connecting that
 (2) death to the oil spill, and Mr. Petumenos has told us that he's
 (3) not going to offer any.
 (4) I don't see how I could not offer some sort of rebuttal to
 (5) that, because it clearly leaves the inference, and I think
 (6) that's why this portion of the videotape was included in the
 (7) composite that they want to show to the jury. In the absence
 (8) of some connection, I think it's misleading.
 (9) THE COURT: All right. First, the technical problems
 (10) wouldn't cause me to say, oh, well gee, we can't turn off the
 (11) projector, so you'd get to play everything. So let's bypass
 (12) that because all I can say to you is you have to solve the
 (13) technical problems. This appears to me to be an untimely
 (14) objection.
 (15) But the question is whether I want to waste time on this
 (16) kind of evidence if, in fact, it's clear that scientifically,
 (17) the consensus is no whales got hurt by this - they weren't
 (18) hurt by this spill. So if that's true, then my instructions to
 (19) you are: Solve the technical problems and get the whale out.
 (20) If it's not true, then I'll let you play the tape.
 (21) MR. PETUMENOS: My concern is until Mr. Diamond just
 (22) spoke about the NOAA business and all of that, that's the first
 (23) detail that he's given me. And the detail he's given me in
 (24) that initial presentation gives me some pause for alarm.
 (25) Because what I think I heard was the whale population was not

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(1) I mean, if - Mr. Petumenos challenges my assertion and I
 (2) will - I will clear the record, I have been informed that NMFA
 (3) of NOAA, which is the administration, conducted a necropsy of
 (4) all of - not all of, most of the beached whales found in
 (5) Prince William Sound. I don't know about this one. They did a
 (6) whole host of others and concluded there was no connection
 (7) between the spill and the deaths of the whales, and that
 (8) information we can provide to counsel.
 (9) With respect to the whale objection, I'm corrected by one
 (10) of my colleagues. We filed objections to plaintiffs' exhibit
 (11) list shortly after it was observed. We objected to the whale.
 (12) THE COURT: You did?
 (13) MR. DIAMOND: When we received their exhibit list and
 (14) we objected again in motion papers that were filed two weeks
 (15) ago, so they have been on notice of these objections for some
 (16) time, Your Honor.
 (17) MR. PETUMENOS: I have the objections here. They give
 (18) us little notice of anything relating to the whale. I have it
 (19) in my hand. Every single one of these exhibits says on every
 (20) one, lack of foundation, more prejudice than probative,
 (21) misleading, argumentative, no identification of source
 (22) materials for exhibit, incomplete document rule, lacks
 (23) authenticity and cumulative. And I can read you every single
 (24) exhibit down the list, it reads similar.
 (25) MR. DIAMOND: Had they inquired they'd found the

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(1) affected and they cannot find any evidence relating to this
 (2) particular whale.
 (3) Now, that's my concern when opposing counsel comes up and
 (4) says -
 (5) THE COURT: I'd be concerned, too, counsel. I'm not
 (6) saying to you accept the representations of opposing counsel.
 (7) What I'm saying to you is check this because I don't want to
 (8) waste time on something I should exclude.
 (9) MR. PETUMENOS: May I offer another possibility,
 (10) because I have the witness out of state and the objection is
 (11) untimely.
 (12) THE COURT: Sure.
 (13) MR. PETUMENOS: I will represent to the Court that if
 (14) the investigation reflects that's the whale was not harmed by
 (15) the oil spill, that we will stipulate to that so that he
 (16) doesn't have to prove it and not waste time. But it seems to
 (17) me, in view of the untimeliness of the objection, that if -
 (18) that that should be an appropriate remedy under the
 (19) circumstances, rather than requiring us to stop the tape, send
 (20) the witness home and bring the witness back if we want to play
 (21) what sounds like a three-minute portion of the tape.
 (22) THE COURT: First you wouldn't have to bring the
 (23) witness back. Under these circumstances why would you ever
 (24) have to bring the witness back?
 (25) MR. DIAMOND: I don't know that it would be required.

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(1) objection was motivated at least in part with regards to the
 (2) whale.
 (3) MR. STOLL: I think it's incredible that Mr. Diamond
 (4) is such a straight man with such a straight face and all.
 (5) MR. DIAMOND: I accept the compliment of opposing
 (6) counsel, but again, if it's not in dispute, not a legitimate
 (7) dispute - and I don't think the plaintiffs are saying that
 (8) they have any evidence at all. It is a little bit unfair to
 (9) poison the whale and then come in later and clean it up.
 (10) People will remember this image.
 (11) THE COURT: Co-counsel. What did I just say? Check
 (12) it out. If there's no legitimate inference to be drawn that
 (13) that whale was hurt by the spill, the whale is out. On the
 (14) other hand, if there is some, the whale is in. Got it?
 (15) MR. DIAMOND: Correct.
 (16) THE COURT: Thanks. Is there anything else?
 (17) MR. FORTIER: Couple other things, Your Honor.
 (18) One has to do with about a 3,000-page report that I was
 (19) just shown this morning that the defense intends to use in
 (20) cross-examination of Mr. Totemoff. I haven't had a chance to
 (21) look at it. They inform me there's only two pages or three
 (22) pages they intend to use out of the three or 4,000 pages of the
 (23) report.
 (24) What I'd request is because it's been shown to us so late
 (25) that they've precluded us from using that report at this point.

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- (1) THE COURT: What's the report? What is it?
- (2) MR. SHAPIRA: It's this thing, Your Honor. It's been
- (3) pre-designated as an exhibit. It is the most recent Subsistence
- (4) Harvest Survey Report from the Alaska Department of Fish and
- (5) Game. I proposed with the witness, who is the head of
- (6) Chenega
- (7) Corporation to show two bar graphs concerning the Chenega
- (8) Corporation subsistence harvest. They are similar to what
- (9) Mr. Clough showed in opening statement, but may I approach the
- (10) bench?
- (11) THE COURT: Yes. Let's clear up one point, all
- (12) right? It's a big report, I can certainly see that. Was it
- (13) delivered? I mean, was fair notice given that you were going
- (14) to use this report?
- (15) MR. SHAPIRA: This is a pre-designated - number one,
- (16) Your Honor -
- (17) THE COURT: When was it designated?
- (18) MR. SHAPIRA: It was designated a couple weeks ago as
- (19) an exhibit for the defendants in the case. We did not let them
- (20) know that we were using it for this witness, but we have the
- (21) opportunity to use three lined exhibits. It was not a late
- (22) designated exhibit.
- (23) THE COURT: Let me see it.
- (24) MR. SHAPIRA: You don't want to see the whole thing;
- (25) do you?
- (26) THE COURT: I certainly don't. Just like I really

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- (1) don't want to see that whale.
- (2) MR. SHAPIRA: Your Honor, I was proposing to show the
- (3) first page, which just establishes what it is. This is a
- (4) report by Mr. Fall, who is one of the plaintiffs' witnesses who
- (5) is the head of the Subsistence Division of the Department of
- (6) Fish and Game, and those are the two of the department's
- (7) surveys, graphs.
- (8) THE COURT: I see it. Counsel, you've got - this
- (9) exhibit was designated.
- (10) MR. FORTIER: Your Honor, it was designated as a
- (11) defendant's exhibit. It wasn't designated as an exhibit that
- (12) the defense intended to use for the cross-examination of
- (13) Mr. Totemoff. I have an obligation -
- (14) THE COURT: Is that the procedure you've been using;
- (15) here's an exhibit, we're going to use it with the following
- (16) witnesses?
- (17) MR. DIAMOND: Your Honor, may I address that question,
- (18) because this is covered by the trial plan?
- (19) MR. FORTIER: Well -
- (20) MR. DIAMOND: May I? The trial plan provides that
- (21) each side, in connection with cross-examination, may not
- (22) furnish any exhibits that are going to be used on the
- (23) cross-examination in advance to the other side more than 24
- (24) hours. The requirement is 24 hours before the
- (25) cross-examination, or if the document is selected for use in

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- (1) cross-examination, as soon as practical - practicable, prior
- (2) to the examination. And I think Mr. Shapira can speak for
- (3) himself, but the decision to use this was made last night. We
- (4) gave notice this morning.
- (5) THE COURT: I see, okay.
- (6) MR. FORTIER: Your Honor, I believe the rule is 24
- (7) hours for the pre-designation of cross exam and on the day - on
- (8) the day of the testimony, I believe the rule is up to three for
- (9) impeachment purposes on the other side.
- (10) MR. DIAMOND: The rule provides that you don't have to
- (11) give advance notice of any kind for use of up to three exhibits
- (12) for impeachment purposes. The rule I just cited deals with
- (13) nonimpeaching documents. Any other document used in
- (14) cross-examination is supposed to be 24 hours notice prior to
- (15) the examination, or if it's selected after that 24-hour window,
- (16) as soon as practicable after it's decided it's going to be used
- (17) in the cross-examination.
- (18) In addition to that, each party is allowed to bring in
- (19) three impeachment documents and use them cold with no
- (20) advance
- (21) notice to the other side. We've been trying to work out a
- (22) modification of that, but only with respect to the three
- (23) totally blind documents.
- (24) MR. FORTIER: Your Honor, I do have a copy of the
- (25) trial plan. It's pages 48 and 49, if I could approach the
- (26) bench.

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- (1) THE COURT: Sure. Your Honor, you'll note it begins
- (2) at the bottom paragraph, Your Honor.
- (3) THE COURT: All right, now I've read it, so you get -
- (4) any party may use without prior identification up to three
- (5) impeachment documents during cross-examination. What is
- (6) this
- (7) but an impeachment document?
- (8) MR. STOLL: Your Honor, if I may, I think there's two
- (9) issues that may be raised on this, on this question.
- (10) First of all is this document that Mr. Shapira wants to use
- (11) an impeachment exhibit. And secondly, is one page of a 4,000
- (12) page document itself an exhibit? In other words, are you
- (13) impeaching on the report 4,000 pages, which has got hundreds
- (14) of
- (15) graphs and so on? Is each - is that - is that one exhibit?
- (16) I mean, I don't know. I mean, that's an interesting issue,
- (17) because if it is, then we can have one exhibit that is boxcars
- (18) full of paper -
- (19) THE COURT: I thought we did have a few.
- (20) MR. FORTIER: We do have one of those.
- (21) MR. STOLL: I don't think that the idea of three
- (22) impeachment exhibits is that you can go in and take out of
- (23) there a graph from this or a chart from that, you know. I
- (24) mean, each one of those, I would submit, is a separate
- (25) exhibit.
- (26) Now if they want to use up, you know, their three pieces of
- (27) paper out of 4,000, then - and if it's an impeachment exhibit,

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(1) I don't know whether - what they propose to use an
 (2) exhibit or what the purpose of the exhibit is, so I don't know
 (3) whether the - that portion of the order applies or not. I'm
 (4) just not -
 (5) MR. DIAMOND: I think it's important that we establish
 (6) some common language here. We don't view this as an
 (7) impeachment document. An impeachment document is a
 document -
 (8) typically a prior statement that's admissible, that you know is
 (9) inconsistent with what you expect a witness to testify to at
 (10) trial. The reason the three impeachment rule exception was put
 (11) in here was so that you wouldn't have to give notice to the
 (12) other side such, that they would have the witness correct the
 (13) statement or avoid making the misstatement prior to the time he
 (14) testified. That's what impeachment document is. This is not a
 (15) document that's going to be used for impeachment purposes.
 (16) You read the first sentence of the rule that deals with the
 (17) exception to the rule. The rule starts with the sentence,
 (18) ordinarily, exhibits to be used, and goes on to say, shall not
 (19) be identified less than one full trial date prior to the day on
 (20) which the witness party expects to use such exhibit, and if
 (21) less than 24 hours before such anticipated use, as soon as
 (22) practical after the decision to use the document has been
 (23) made. And Shapira tells me the decision to use this document
 (24) was made last night when we were doing final preparation of his
 (25) cross-examination.

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(1) THE COURT: I'm going to cut through this. This is -
 (2) these graphs, I can't imagine that they're unfairly prejudicial
 (3) to use them in the examination of this witness. It may be
 (4) unfair to allow the selection out of a 3,000-page document of
 (5) three pages without giving counsel enough time to review the
 (6) document, but I can't make that affirmative finding now.
 (7) - So my inclination is to let him use the document at this
 (8) point, but you're going to have to change your rules, counsel.
 (9) This doesn't make any sense to me, any of it. Your definition
 (10) of impeachment is not my definition of impeachment.
 (11) MR. DIAMOND: I agree that these rules -
 (12) THE COURT: And there's more than that I find
 (13) objectionable about this, unfortunately, but nobody brought it
 (14) to my attention as a controversial item until now
 (15) The issue, the issue that I don't want to be faced with
 (16) every day at trial is, gee, they produced 5,000 new pages and
 (17) now under this sloppy language in the order that you signed off
 (18) on, Judge, you've got to let them use it or you've got to
 (19) strike it. The issue to me is: Is it fair, has there been
 (20) fair notice and is the exhibit such that it's unfair to let a
 (21) party use it without giving more than six minutes' notice, and
 (22) I really don't want to be faced with that every day of this
 (23) trial.
 (24) MR. DIAMOND: Nor do we, Your Honor, and we began
 (25) discussing the subject yesterday morning on this side of the

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(1) courtroom. In fact, I raised it with Mr. Petumenos and
 (2) Mr. Stoll, because this seemed to be a little squirrely.
 (3) Unfortunately, no one on this side of the courtroom had
 (4) anything to do with these rules. We've been trying to
 (5) interpret them and trying to negotiate changes to them to make
 (6) this fair to both sides. We're going to be faced with the same
 (7) problem when they start cross-examining our -
 (8) MR. STOLL: That's not true, you said you didn't want
 (9) to change the rule. You said you thought it was fine to have
 (10) three wild cards, as you put it, brought up in the middle of
 (11) trial.
 (12) MR. DIAMOND: I have no problem with three impeachment
 (13) documents.
 (14) MR. STOLL: Don't suggest to the Court that we were
 (15) trying to hold up something because that's not the fact
 (16) MR. DIAMOND: I wasn't suggesting Mr. Stoll was trying
 (17) to hold up anything. What I suggested was we deal with this
 (18) 24-hour problem, when do we - documents we are going to
 use,
 (19) when do we exchange them. I think we all think that a more
 (20) orderly procedure is called for. The problem is in crush of
 (21) last-minute preparation of a case like this, some things do get
 (22) done the last minute. Unfortunately, many things do get done
 (23) last minute. We would all appreciate your guidance on how you
 (24) think we ought to deal with it.
 (25) THE COURT: You would?

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(1) MR. DIAMOND: Serve them before midnight the night
 (2) before, 10:00 the night before. A lot of these
 (3) cross-examinations are not being really - the final touches
 (4) are not put on them until -
 (5) THE COURT: That may be so, but maybe a bright line
 (6) rule would be appropriate, and say you don't get to use
 (7) anything you haven't given 24-hour notice of. That's the
 (8) easiest one for me, so now would you appreciate my guidance?
 (9) MR. DIAMOND: Well, I think that - that creates a
 (10) practical problem, because lawyers get nervous and they start
 (11) overdesignating and pretty soon they'll be sending us boxes
 and
 (12) we'll be sending them boxes.
 (13) THE COURT: And have done, but it's a little late to
 (14) be designating anything; isn't it?
 (15) Counsel, all I can - the only guidance I can give you is
 (16) don't face me with these problems every day. This is
 (17) ridiculous.
 (18) And the second is, if I have to, I'll deal with each
 (19) problem individually. This one is clear to me, that it's not a
 (20) serious problem. There may be a serious problem comes along
 (21) later that requires you not to use an exhibit. So be careful
 (22) MR. SHAPIRA: In that light, it may be appropriate,
 (23) since I assume we still have time before our technical problem
 (24) is fixed, we were intending to use in the cross-examination of
 (25) Mr. Totemoff a minute and a half of videotape, which is

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(1) excerpts of outtakes from the videotape that we understand he's
 (2) going to use during his testimony to back up larger videotape,
 (3) from which his testimony videotape was excerpted, was
 produced
 (4) to us on July 1st, and we reviewed voluminous tapes and put
 (5) together a minute and a half about it.
 (6) THE COURT: Counsel, you distract me. Sit down,
 (7) please. Sit down, there's another counsel talking.
 (8) MR. FORTIER: I'm sorry.
 (9) MR. SHAPIRA: And we have put together this videotape
 (10) to try to put in context the other videotape that they are
 (11) showing. It is excerpts of the outtakes produced to us on, I
 (12) believe, July 1st by Mr. Fortier.
 (13) THE COURT: What's the question?
 (14) MR. SHAPIRA: I wanted to - in case anybody has a
 (15) problem with that, I wanted to give notice and we were planning
 (16) to do that during the cross-examination.
 (17) THE COURT: Well, certainly isn't 24 hours' notice.
 (18) MR. STOLL: It was a shot across the bow, Your Honor.
 (19) THE COURT: So, nobody standing up. You see, it was
 (20) much easier, counsel. Do you want to stand up now?
 (21) MR. FORTIER: No, that's fine.
 (22) MR. PETUMENOS: May I stand up, Your Honor? I wanted
 (23) to get the order back. I also wanted to raise, I think, a
 (24) noncontroversial matter.
 (25) You recall that you asked me to make a new exhibit of the

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(1) tape following the hearing relating to opening statements,
 (2) Tesoro segments, the Exhibit 1111. You wanted it marked
 (3) 1111-A.
 (4) THE COURT: Yes.
 (5) MR. PETUMENOS: After the plaintiffs lost confidence
 (6) in the system that was being used here during opening
 (7) statement, that tape was not played. I would like to be
 (8) relieved of the obligation of making that record since it's
 (9) not -
 (10) THE COURT: That's fine, sure. Sure, I hadn't thought
 (11) about that.
 (12) Is there anything else before we take a much deserved
 (13) break? Counsel, you will all be required to take off your
 (14) coats and fix the electronic problem yourselves.
 (15) MR. DIAMOND: The record should reflect that I
 (16) repaired the Court's clock.
 (17) THE CLERK: Please rise, this court stands in recess.
 (18) (Recess from 9:35 a.m. to 9:49 a.m.)
 (19) (Jury in at 9:49 a.m.)
 (20) THE CLERK: This court now resumes its session.
 (21) THE COURT: Good morning. We're hoping that the
 (22) lights don't go out in the next ten minutes, but we had a power
 (23) failure this morning and we've fixed it, either temporarily or
 (24) permanently, we don't know which. So try to bear with us on
 (25) that. There's a lot of new demands on the electricity system

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(1) that we didn't have previously.
 (2) I want to tell you something now, it's - I give -
 (3) frequently I give in trial instructions so that when I think
 (4) you need some guidance about things that occur during a trial
 (5) and this is one of those. You may recall that I sustained an
 (6) objection yesterday to a question regarding how much
 (7) Mr. Gordaoff may have earned in 1989 in assisting in the Exxon
 (8) Valdez oil spill cleanup. The question asked for an answer I
 (9) determined to be inadmissible, it was irrelevant. That is, it
 (10) did not tend to establish any material proposition in this
 (11) case.
 (12) When an objection to a question like this is sustained, you
 (13) must disregard the question entirely and you must not
 speculate
 (14) as to what answer might have been given. Questions by
 lawyers
 (15) are not evidence. Therefore, you cannot consider them in your
 (16) fact-finding inquiry. It is important that you understand this
 (17) now to guarantee that inadmissible statements or questions are
 (18) not considered by you for any purpose, and now I - there will
 (19) be times during this trial when I'll sustain objections to
 (20) questions that are already out. I want - when I sustain an
 (21) objection like that, you disregard the question.
 (22) Remember, I gave you that instruction yesterday, but I
 (23) thought it was important to give you a fuller instruction so
 (24) you'd understand the whole dynamic of how objections are
 made
 (25) and what happens when I sustain them.

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(1) All right, counsel.
 (2) MR. FORTIER: Thank you, Your Honor. Plaintiffs call
 (3) Mr. Chuck Totemoff.
 (4) THE CLERK: Sir, would you please step up into the
 (5) witness box? There's a microphone there, would you clip that
 (6) to your shirt collar and remain standing for the oath? That's
 (7) fine. And would you raise your right hand?
 (8) (The witness is sworn)
 (9) THE CLERK: Thank you, you may be seated.
 (10) Sir, for the record, would you please state your full name?
 (11) A Charles W. Totemoff.
 (12) THE CLERK: Would you spell your last name.
 (13) A T-o-t-e-m-o-f-f.
 (14) THE CLERK: And what is your occupation?
 (15) A President and CEO.
 (16) THE CLERK: Thank you.
 (17) DIRECT EXAMINATION OF CHARLES TOTEMOFF
 (18) BY MR. FORTIER:
 (19) Q Morning, Mr. Totemoff. You indicated that you're president
 (20) and CEO. What is that of?
 (21) A Chenega Corporation.
 (22) Q And is Chenega Corporation an Alaska village corporation?
 (23) A Yes, it is.
 (24) Q Mr. Totemoff, can you tell the jury what you do as
 (25) president and chief executive officer of Chenega Corporation?

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- (1) A Well, the job of Chenega Corporation, especially my job, is
 (2) to – first of all, to protect the traditional cultural.
 (3) lifestyle and heritage of our people. And also to own, hold,
 (4) use and develop our lands and its resources for the economic
 (5) and social well-being of our shareholders.
 (6) Q And, Mr. Totemoff, how long have you been the president
 and
 (7) chief executive officer of Chenega Corporation?
 (8) A For the past six years.
 (9) Q And are you on the board of directors of Chenega
 (10) Corporation?
 (11) A Yes.
 (12) Q And how long have you been on the board of directors of
 (13) Chenega Corporation?
 (14) A Eight years.
 (15) Q How many directors are there?
 (16) A Five.
 (17) Q And can you tell the jury how many shareholders there are
 (18) in Chenega Corporation?
 (19) A Currently we have 81 shareholders.
 (20) Q And, Mr. Totemoff, what was the original number of
 (21) shareholders in Chenega Corporation?
 (22) A Sixty-nine.
 (23) Q Now, you're a shareholder of Chenega Corporation; aren't
 (24) you?
 (25) A Yes.

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- (1) Q Can you tell the jury whether or not you can sell your
 (2) shares?
 (3) A No.
 (4) Q You cannot sell your shares; is that correct?
 (5) A No.
 (6) Q Now, can a shareholder – can somebody buy shares of
 (7) Chenega Corporation?
 (8) A No.
 (9) Q Mr. Totemoff, where were you born?
 (10) A I was born originally in Cordova, Alaska. And the only
 (11) reason why that was, was because my parents wanted the
 proper
 (12) facility for me to be born in at the Cordova hospital. My
 (13) family had always lived in the old village of Chenega on the
 (14) southern end of Chenega Island, which was destroyed in the
 1964
 (15) earthquake and tidal wave. A third of our population was
 (16) killed and one 90-foot tidal wave that happened on Good
 Friday,
 (17) 1964. And myself, I experienced a loss not only of my oldest
 (18) brother, but many relatives, and in all, it was a third of our
 (19) people that were killed by the 90-foot tidal wave, the old
 (20) village site of Chenega, Chenega Island
 (21) Our people had to, overnight and the next day, the Coast
 (22) Guard flew over and they reported that there was a little
 (23) problem because they didn't see anything down in the village
 (24) site. The reason why they didn't see anything, because
 (25) everything was gone. Destroyed earlier, the day before, by the

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- (1) 90-foot tidal wave. It wasn't until the following day that our
 (2) people had to – were finally evacuated to the village of
 (3) Tatitlek, which is across the Sound in Prince William Sound.
 (4) The BIA set up a tent camp initially that – for the
 (5) remaining survivors and, eventually, they built some housing
 (6) for us. My family remained in Tatitlek until I was in the
 (7) fifth grade, then we moved to Cordova, but that was a pretty
 (8) tough time for me growing up, because I grew up with the
 legacy
 (9) of having your entire village, which was there for thousands of
 (10) years, being wiped out in one – one instant.
 (11) And I can remember my early, early years of my growing up,
 (12) especially in Tatitlek, of my mother crying for her son, and
 (13) that continued for many years after, even when we moved to
 (14) Cordova, but – and it still continues today. Nobody's ever
 (15) forgotten that incident.
 (16) Q Mr. Totemoff, what I'd like for you to do, if you could, is
 (17) step around, and you mentioned a few places and including
 (18) Chenega, and if you can walk over here.
 (19) MR. PETUMENOS: I'm not sure all the jurors can see
 (20) from that angle.
 (21) MR. FORTIER: Yes.
 (22) BY MR. FORTIER:
 (23) Q What I'd like you to do, Mr. Totemoff, is point out for the
 (24) jury – you mentioned Chenega Island. Can you show where
 (25) Chenega Island is?

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- (1) A Right here
 (2) Q And whereabouts was the village of Chenega that you
 (3) described?
 (4) A The old village site of Chenega, which was destroyed in
 (5) 1964, is at the southern end of Chenega Island here
 (6) Q And you mentioned you were evacuated to Tatitlek. Can you
 (7) show the jury where Tatitlek is, please?
 (8) A Tatitlek's across the Sound, right here.
 (9) Q Then you mentioned that your family moved to Cordova?
 (10) A Yes.
 (11) Q Can you show the jury where Cordova is?
 (12) A Cordova is over here.
 (13) Q Now, Mr. Totemoff, you also mentioned that you're president
 (14) and chief executive officer of Chenega Corporation. You're
 (15) familiar with Chenega Corporation lands; aren't you?
 (16) A Yes.
 (17) Q Can you point out to the jury where Chenega Corporation
 (18) lands are?
 (19) A It's these areas here, from the bottom of Knight Island all
 (20) the way out to Eshamy, comes down around here, down to
 Evans
 (21) and the lower part of LaTouche.
 (22) Q Can you point out to the jury where Point Helen is?
 (23) A It's right here, southern end of Knight Island
 (24) Q Now, does Chenega Corporation own Point Helen?
 (25) A Yes

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- (1) Q And there was – there's been testimony in this case
 (2) concerning Sleepy Bay. Can you show the jury with – where
 (3) Sleepy Bay is on the map?
 (4) A It's on the northern part of LaTouche, right here.
 (5) Q And does Chenega Corporation own Sleepy Bay?
 (6) A Yes.
 (7) Q There has also been testimony, Mr. Totemoff, concerning a
 (8) place called Evans Island. Can you point out to the jury where
 (9) Evans Island is?
 (10) A It's this island right here.
 (11) Q Okay, and does Chenega Corporation own the
 (12) green-shaded
 (13) area on Evans Island?
 (14) A Yes.
 (15) Q There has also been discussions concerning a place called
 (16) Sawmill Bay. Can you point out to the jury where Sawmill Bay
 (17) is?
 (18) A Sawmill Bay is located right here.
 (19) Q And, Mr. Totemoff, can you tell the jury whether or not
 (20) Chenega Corporation owns that area, Sawmill Bay, owns
 (21) Sawmill
 (22) Bay?
 (23) A Yes.
 (24) Q That's on Evans Island?
 (25) A That's correct.
 (26) Q Thank you, Mr. Totemoff. Now, Mr. Totemoff, you mentioned
 (27) that one of the things the village corporation does is to

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- (1) protect the cultural and economic needs of the shareholders.
 (2) Can you tell the jury how Chenega Corporation attempted to do
 (3) that before the oil spill?
 (4) A Well, what we commonly do is that every year – this is
 (5) just one example – every year the entire village goes over to
 (6) the old village site of Chenega and holds a memorial service.
 (7) We spend the entire day over there. We hold a service in
 (8) memoriam for those that were lost; and not only that, but the
 (9) entire village.
 (10) Q How many people were lost on account of the earthquake in
 (11) 1964, Mr. Totemoff?
 (12) A A third of our population, which amounted to 23.
 (13) Q And did you lose any relatives?
 (14) A Yes, I did. My oldest brother. And –
 (15) Q I'm sorry, go ahead.
 (16) A And many other relatives.
 (17) Q Now, is there anything else that Chenega does or did before
 (18) the oil spill with regard to its cultural – its protection of
 (19) cultural things of the Chenega people, besides go to Chenega
 (20) Island for Memorial Day?
 (21) A One of the things that's always been told to me and as far
 (22) back as I can remember, my parents have said this, my
 (23) grandparents who are still alive have always said this, is that
 (24) to always leave our cultural and historical sites alone. Some
 (25) of the reasons behind that is that, you know, that's – you

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- (1) know, that's all they had, so just leave it alone.
 (2) So what we've tried to do is to try to honor their wishes.
 (3) You know, this is ever since anybody can remember, it's been
 (4) passed down through generations. And another way that we try
 (5) to preserve that is by keeping it – these special sites,
 (6) Chenega Island is one of the most revered sites that we have on
 (7) our lands. We try to keep those sites secret and
 (8) confidential.
 (9) Q-Mr. Totemoff, did there come a time when the people of
 (10) Chenega reestablished a village?
 (11) A Yes.
 (12) Q Can you tell the jury about that?
 (13) A After the 1964 earthquake and tidal wave – if you recall,
 (14) I said that the entire remaining surviving population moved,
 (15) was evacuated to the village of Tatitlek. Some housing was
 (16) built there and, after the years, some people, like my family,
 (17) moved to Cordova, others moved to Valdez, Anchorage and
 (18) Seattle, and some remained in Tatitlek. But, you know, we
 (19) never ceased being Chenega people. You know, we've always
 (20) had
 (21) our identity and our own distinct culture, and we – who we
 (22) always were.
 (23) So during the 20 years from 1964 to 1984 when we
 (24) established our new village at its present location on Evans
 (25) Island, which is at Sawmill Bay, my people embarked on a
 (26) planning effort, which took many years, a lot of coordination

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- (1) and a lot of effort by a lot of Chenega shareholders. They had
 (2) a dream that they wanted to reestablish their home again. That
 (3) meant building a new village site.
 (4) Like many Native people, we don't believe in going back to
 (5) a place that your home was destroyed, so we selected a site
 (6) in – on Evans Island, which is in Sawmill Bay, which I just
 (7) pointed out, and one of the reasons why we picked that site was
 (8) because of its protection against any further tidal wave
 (9) actions that may occur, because of another earthquake; and, in
 (10) addition, there was more building space and more economic
 (11) potential.
 (12) Q And this was in 1940 – 1984, Mr. Totemoff?
 (13) A That's correct. That's when ground breaking was at
 (14) Chenega.
 (15) Q Now, did you move back to Chenega?
 (16) A Yes, I did. As a matter of fact, there were no houses
 (17) before 1984. As a matter of fact, I went out a little bit
 (18) early and I spent a winter out there, winter of 1983, me and
 (19) two others did. And what we did is I think we wanted to go
 (20) back home and we were willing to pretty much be there till the
 (21) construction season happened the following year in 1984. So
 (22) what we – basically lived off the land, you know, during that
 (23) winter and it sustained us pretty well. We had a good time.
 (24) Q And, Mr. Totemoff, can you tell us how many people from old
 (25) Chenega returned to the new village when it was rebuilt in

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- (1) 1984?
- (2) A At that time there was about right around 70 or 80 people.
- (3) Q And can you tell us where those people came from?
- (4) A Those people, again, primarily Chenega shareholders, they
- (5) came from the Tatitlek, Cordova and some from Anchorage.
- (6) Q And when they moved back into the village, back into the
- (7) new village, Mr. Totemoff, did they begin subsistence
- (8) activities again?
- (9) A Yes, they did. As soon as the houses were built, which was
- (10) in late 1984, everybody started moving in, and during the five
- (11) years from 1984 to 1989, we had started enjoying using our
- (12) lands again. The resources were plentiful and we had -
- (13) basically, the people were really glad that they were back
- (14) home. You know, they - they loved the land, I guess the whole
- (15) reason why they moved back.
- (16) Q Now, Mr. Totemoff, before 1984, did you ever go down into
- (17) the Chenega lands?
- (18) A Yes, I did.
- (19) Q Can you tell the jury about your trips into the Chenega
- (20) lands before the village was reestablished in 1984?
- (21) A Yeah, my family used to go seining. Some of you may know,
- (22) the southwestern district of Prince William Sound is pretty
- (23) good spot for fishing - at least it used to be. My family
- (24) would go down seining, and during the closures or when we
- (25) anchored up at night, we would sometimes anchor off, right off

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- (1) the old village site of Chenega on Chenega Island. And I can
- (2) remember going up and picking berries, stuff like that, and we
- (3) had actually used one of the old steam bath sites that was -
- (4) that happened to survive at the old village, and I can still
- (5) remember that.
- (6) Q Mr. Totemoff, you mentioned you used to go seining. Where
- (7) did you used to go seining?
- (8) A We used to go seining down around where the current
- (9) Chenega
- (10) Corporation inholdings are, and also the areas around
- (11) Tatitlek.
- (12) Q Did you ever go seining down in the Point Helen area?
- (13) A Right off Point Helen, I think it's - I don't recall ever
- (14) seeing any fishing boats out there that made sets there. I
- (15) think the tide is too strong.
- (16) Q Are you generally familiar with the currents in the Point
- (17) Helen area, Mr. Totemoff?
- (18) A Yes.
- (19) Q Now, Mr. Totemoff, before the oil spill, did Chenega
- (20) Corporation have policies with regard to protection of its
- (21) lands?
- (22) A Yes.
- (23) Q Can you tell the jury what those policies were?
- (24) A Again, our first and foremost policy is that - that we
- (25) wanted to keep our sites confidential and secret. But, in

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- (1) lands and, in some cases, we had to remove a couple of
- (2) trespassers because they did not want to participate in our
- (3) license to enter the land.
- (4) Q Mr. Totemoff, you mentioned the term "sites," you said that
- (5) you wanted to keep your sites confidential. Can you tell us
- (6) what you meant by that? What are sites?
- (7) A Well, there is a whole number of different sites that are
- (8) very special to the Chenega people. As I said, the most sacred
- (9) to us is the - is the entire village, entire island of
- (10) Chenega, and there are many other sites that, you know, my
- (11) parents and grandparents, so on, have told us, you know, just
- (12) leave them alone, and don't disturb them.
- (13) Q Was that a Chenega custom not to disturb these special
- (14) sites, Mr. Totemoff?
- (15) A That's what I've always been told, yes.
- (16) Q And were you ever told what the reason for that Chenega
- (17) custom is?
- (18) A Well, what I've heard from one of our elders, that has
- (19) since passed on, that's - you know, that's basically all they
- (20) had, so they don't want anybody to take it away from them.
- (21) Q Now, did Chenega Corporation, before the oil spill, have
- (22) policies regarding shareholder uses of the land?
- (23) A Yes.
- (24) Q Can you tell us what those were, please?
- (25) A Well, the policy before the oil spill was that our

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- (1) shareholders had the right to go onto our lands and subsist,
- (2) and do other subsistence activities at no charge.
- (3) Q Mr. Totemoff, was that profitable to Chenega Corporation to
- (4) allow your shareholders to use the land without charge?
- (5) A I don't understand what you mean by "profitable."
- (6) Q Did Chenega Corporation - what did Chenega Corporation
- (7) receive, if anything, for its shareholders using its property
- (8) without charge?
- (9) A Well, I think that's one of our duties as a corporation is
- (10) to protect those subsistence interests, and that's the reason
- (11) why we have the policy, no charge. You know, we try to protect
- (12) and preserve those uses.
- (13) Q Now, you mentioned that it's one of your duties?
- (14) A Yes.
- (15) Q And that's as a village corporation?
- (16) A Yes.
- (17) Q Mr. Totemoff, let me switch to another area. I'd like to
- (18) talk to you a little bit about the oil spill. Do you recall
- (19) when the oil spill occurred?
- (20) A Yes, I do. It was the - it was the next morning after the
- (21) night it happened, and I had a neighbor come over. It was in
- (22) the early-morning hours. It was before my regular work time,
- (23) and what I did was I got dressed and went up to the offices to
- (24) try to figure out what was going on. It was - I couldn't
- (25) figure out what was going on.

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(1) Q How did you attempt to figure out what was going on,
 (2) Mr. Totemoff?
 (3) A The only way I was able to was to - news broadcasts on the
 (4) news, I had, first of all, find out - try to find out who was
 (5) in charge, and that didn't happen. It took me about two or
 (6) three months to even figure that out.
 (7) Q Now, what information, if any, did you receive during the
 (8) first week of the oil spill, first week after the oil spill?
 (9) A Again, the only information I received was through news
 (10) broadcasts and people on the street just saying there was a big
 (11) oil spill coming.
 (12) Q Did anything happen during that first week which alerted
 (13) you to the oil spill other than the news reports?
 (14) A I recall that - that a big 70-knot wind, and it was a
 (15) pretty big storm. After that, after the storm subsided, we
 (16) started seeing, some of the oil started showing up.
 (17) Q And that would be in Crab - in Sawmill Bay, Mr. Totemoff?
 (18) A Yes.
 (19) Q And then can you tell the jury what happened?
 (20) A Well, the - all of a sudden these fishing boats started
 (21) showing up. I didn't know exactly who they were working for,
 (22) but I knew they were fishing boats. The first people that
 (23) showed up were fishing boats, and then the very next day we
 (24) were inundated with helicopters flying all over the place,
 (25) fixed-wing aircraft flying all over the place. And soon after

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(1) that, there was people flooding the village, people we'd never
 (2) seen before, that includes state and federal agencies, all
 (3) different types of boats. To me, it was just chaos, and here I
 (4) was trying to figure out what was going on and - go ahead.
 (5) Q How much longer after the oil spill was it, Mr. Totemoff,
 (6) that all of this started happening?
 (7) A I would say after the first week.
 (8) Q Now, where were - where was all this activity taking place
 (9) that you just discussed, the boats showing up, and the
 (10) individuals?
 (11) A It was right in Sawmill Bay.
 (12) Q And what, if anything, did you observe was being
 (13) attempted?
 (14) A Well, what I saw them trying to do is that they were trying
 (15) to deploy a boom to try to protect the hatchery. That's what I
 (16) was told.
 (17) Q What hatchery is that, Mr. Totemoff?
 (18) A That's the Armin F. Koerning Hatchery. That's two miles
 (19) away from us, which is at the head of Sawmill Bay.
 (20) Q Did it ever come to your attention that there was a name
 (21) for this - for these activities that you were observing
 (22) shortly after the oil spill?
 (23) A Well, from the news and what the - by that time, scores of
 (24) people and boats that were in Sawmill Bay, they were referring
 (25) to it as the Battle of Sawmill Bay.

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(1) Q And Mr. Totemoff, can you tell us what happened over the
 (2) course of the summer? Did the activity level continue?
 (3) A The activity level continued, and the more - I don't know
 (4) how I should say it, more frenetic pace. It was my concern
 (5) that I was watching all of this news coverage of all of these
 (6) dead animals, and I knew that our lands were being impacted,
 (7) but nobody was contacting me.
 (8) Q Did you see oil in Sawmill Bay?
 (9) A-Yes.
 (10) Q Can you describe to the jury what you saw in terms of the
 (11) oil in Sawmill Bay, Mr. Totemoff?
 (12) A Well, it was this black crude that was swirling around in
 (13) Sawmill Bay. And some of the boats that showed up were
 (14) attempting to round it up with boom.
 (15) Q Now, during the first three months of the oil spill, or
 (16) after the oil spill, did it ever come to your attention that
 (17) Exxon may not know where Chenega was located?
 (18) A Yes. It became very obvious to me. For example, I was
 (19) listening on the marine VHF one time early in the spill there,
 (20) and one of their barges, I guess, was carrying some equipment
 (21) for the response effort, was told to go to Chenega and the
 (22) barge went to Chenega, but they went to the old village site of
 (23) Chenega, which was abandoned for 25 years, and so they were
 (24) told to go back to the present site of Chenega Bay.
 (25) Q Now, this is the old village site on Chenega Island; is

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(1) that correct, Mr. Totemoff?
 (2) A Yes, that became very obvious to me that they didn't know
 (3) where Chenega was, where it even existed.
 (4) Q Now, did anybody from Exxon contact you to find out where
 (5) the barge should go?
 (6) A No.
 (7) Q Now, we've - you were here when Mr. Clough gave his
 (8) opening statement, weren't you, Mr. Totemoff; you were in the
 (9) courtroom?
 (10) A Yes.
 (11) Q And you heard a discussion concerning Point Helen; didn't
 (12) you?
 (13) A Yes.
 (14) Q Now, Mr. Totemoff, what is your understanding of a boom at
 (15) Point Helen?
 (16) A Well -
 (17) MR. SHAPIRA: Objection to foundation, Your Honor.
 (18) THE COURT: I don't understand the question.
 (19) MR. FORTIER: Let me make the question clear.
 (20) BY MR. FORTIER:
 (21) Q Mr. Totemoff, prior to Mr. Clough's opening statement, had
 (22) you ever heard of a deflection boom anchored at Point Helen?
 (23) MR. SHAPIRA: Objection, hearsay, Your Honor,
 (24) foundation and personal knowledge.
 (25) THE COURT: Ask him what he saw, or is that the issue,

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- (1) did -
- (2) BY MR. FORTIER:
- (3) Q Did you ever see an oil boom at Point Helen?
- (4) A Well, I had learned there was one attempted to be placed at
- (5) Point Helen. I've heard this from Eric Prestergard, who is the
- (6) hatchery manager at the Armin FK Hatchery in Sawmill Bay.
- (7) MR. SHAPIRA: Objection, Your Honor, this appears to
- (8) be hearsay.
- (9) THE COURT: It is hearsay, counsel.
- (10) BY MR. FORTIER:
- (11) Q Mr. Totemoff, do you have any direct information?
- (12) THE COURT: Hold on, the jury is - hearsay is a funny
- (13) doctrine that lawyers use, but generally what it means is you
- (14) can't use the statement of an out-of-court declarant to prove
- (15) the truth of what's being asserted. So I've sustained an
- (16) objection here because this is inadmissible hearsay, so you're
- (17) to disregard what Mr. Totemoff has said someone else said to
- (18) him. All right.
- (19) MR. SHAPIRA: Your Honor, it might be helpful here if
- (20) we had some foundation whether the witness has personal
- (21) knowledge of what was or was not there.
- (22) THE COURT: That's what I was looking for.
- (23) BY MR. FORTIER:
- (24) Q Mr. Totemoff, you're familiar with Point Helen area; aren't
- (25) you?

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- (1) A Yes, I am.
- (2) Q And you've been to Point Helen since the oil spill; haven't
- (3) you?
- (4) A Yes.
- (5) Q And you've also, as a part of your duties as president,
- (6) dispatched other persons from the corporation to view Point
- (7) Helen; have you not?
- (8) A Yes.
- (9) Q Now, in doing so, did it ever come to your attention as to
- (10) the amount of oil at Point Helen?
- (11) A The amount of oil?
- (12) THE COURT: Come to your attention, counsel, that's
- (13) kind of a vague phrase, doesn't put it down. Let's find out
- (14) what he, himself, observed; all right? What he actually
- (15) witnessed.
- (16) BY MR. FORTIER:
- (17) Q Did you actually witness oil in the Point Helen area?
- (18) A Yes.
- (19) Q Can you tell the jury what you saw?
- (20) A Well, it was a very -
- (21) MR. SHAPIRA: Could we have a foundation as to time,
- (22) Your Honor, how close to the oil spill this was?
- (23) THE COURT: Sure.
- (24) BY MR. FORTIER:
- (25) Q Tell the jury when you saw it, and then tell them what you

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- (1) saw, Mr. Totemoff?
- (2) A I believe it was in April or May of 1989, was an
- (3) overflight. There was a thick band of black oil on the beach.
- (4) the entire beach.
- (5) Q Now, when you performed this overflight, Mr. Totemoff, did
- (6) you see a boom?
- (7) A Well, no, I didn't.
- (8) Q Now, Mr. Totemoff, do you know whether or not there were
- (9) beach treatment activities that occurred on Chenega lands in
- (10) 1989? Excuse me, let me withdraw that.
- (11) Did you see beach treatment activities on Chenega lands in
- (12) 1989?
- (13) A Yes.
- (14) Q And can you tell the jury what you saw, please?
- (15) A Well, by that time there was all of these boats out there,
- (16) there was thousands of workers, from what I hear, hundreds of
- (17) boats that were moving around in task forces. And from what I
- (18) observed, their primary method was hot water washing and
- (19) wiping
- (20) of rocks.
- (21) Q Now, in 1989, did anybody from Exxon ask Chenega - ask
- (22) you, Mr. Totemoff, any questions concerning Chenega lands?
- (23) Did
- (24) they consult with you at all?
- (25) A Not in the first few months, no.
- (1) Q Now, do you have personal knowledge of how long the
- (2) beach
- (3) treatment exercises continued on Chenega lands?

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- (1) A I think they ended in 1989. They ended in the fall time.
- (2) Q And in 1990, were there more beach treatment exercises?
- (3) A Yes.
- (4) Q And do you have personal knowledge of beach treatment
- (5) exercises in 1991?
- (6) A Yes.
- (7) Q And in 1992?
- (8) A Yes.
- (9) Q Now, can you tell the jury whether or not there's -
- (10) whether or not you observed oil on Chenega lands since 1992?
- (11) A Yes.
- (12) Q And can you tell the jury with where you've observed the
- (13) oil on Chenega lands?
- (14) A I've been out to Sleepy Bay. I've been out to the
- (15) northeast corner of Evans Island where oil is present.
- (16) Q Any other places, Mr. Totemoff?
- (17) A Those are - I think they've been the only two places I've
- (18) been to since 1992.
- (19) Q Now, has Chenega changed the way in which it's conducted
- (20) business since the oil spill?
- (21) A Yes.
- (22) Q Can you tell us how, what it's done differently?
- (23) A Well, first of all, the thousands of workers and all of
- (24) this beach activity that was happening since 1989 alarmed us.
- (25) You know, we became - first of all, we became very concerned

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(1) with the protection of our cultural historical sites and we
 (2) required anybody that we dealt with which included state and
 (3) federal agencies and parties to enter into a confidentiality
 (4) agreement regarding those sites.
 (5) Q Now, has there been a change in the way that Chenega
 (6) shareholders have used the lands of Chenega Corporation
 since
 (7) the earthquake - excuse me, since the oil spill?
 (8) A I think there's been a drastic change, with - the only
 (9) reason why Chenega moved back in the first place was to enjoy
 (10) the land and its resources, and I think that's not present
 (11) anymore in its previous form. Chenega people are still fearful
 (12) and skeptical about the foods that they try to harvest out
 (13) there. A lot of the species aren't recovering.
 (14) Q Can you tell the jury what you mean by that, Mr. Totemoff?
 (15) A Well, I mean things like seals, sea lions, which used to be
 (16) right outside the village there, they're no longer there. The
 (17) sea otters are pretty much wiped out. The birds, the ducks
 (18) that we depend upon are virtually nonexistent still and the
 (19) clams have not come back and things that we call gum boots. I
 (20) think the other guys called chitons, those are fewer in
 (21) numbers, and the fish, that used to be plentiful in and around
 (22) the Chenega area, has experienced drastic low returns. Also,
 (23) there's been a decline in the deer population.
 (24) Q And what, if anything, has Chenega Corporation attempted
 to
 (25) do in order to address the situation you've just described.

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(1) Mr. Totemoff?
 (2) A Well, we've - we've attempted to tell our shareholders,
 (3) you know, that there's been some - some of these tests
 (4) conducted by various agencies, and they usually come out to
 (5) say, if you smell or see oil, don't eat it. We think that's
 (6) pretty absurd, you know. First of all, we're not seeing a lot
 (7) of wildlife out there to begin with, and we're reluctant to
 (8) take anything that there is, because we want to give them time
 (9) to recover, and so far they haven't.
 (10) Q Mr. Totemoff, I'm going to show you, if you can step back
 (11) down here again, an exhibit marked 1364. Mr. Totemoff, have
 (12) you seen this exhibit before?
 (13) A Yes.
 (14) Q Mr. Totemoff, on the exhibit, can you point out where
 (15) Chenega is located?
 (16) A Right here.
 (17) Q And can you point out where - where Sleepy Bay is
 (18) located?
 (19) A Here.
 (20) Q And Point Helen?
 (21) A (Indicating).
 (22) Q And Chenega Island?
 (23) A (Indicating).
 (24) Q Thank you.
 (25) Now, Mr. Totemoff, are you involved with the public

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(1) advisory group, the Trustees Council?
 (2) A Yes.
 (3) Q And what is your position with that?
 (4) A I currently serve on the public advisory group as a Native
 (5) landowner representative.
 (6) MR. FORTIER: Thank you, Mr. Totemoff, I have no
 (7) further questions. Your witness.
 (8) MR. SHAPIRA: Your Honor, I wonder if this is a good
 (9) time for a break?
 (10) THE COURT: If you want one, sure.
 (11) MR. SHAPIRA: I'd appreciate it.
 (12) THE COURT: Sure.
 (13) THE CLERK: Please rise, this court stands in recess.
 (14) (Recess from 10:30 a.m.)
 (15) (Jury out at 10:30 a.m.)
 (16) (Court resumed at 10:41 a.m.)
 (17) (Jury in at 10:41 a.m.)
 (18) THE CLERK: Please rise. This court now resumes its
 (19) session, please be seated.
 (20) MR. SHAPIRA: Good morning Your Honor, Ladies and
 (21) Gentlemen of the Jury, counsel and Mr. Totemoff. I had the
 (22) privilege of meeting you a few minutes ago before court
 (23) started. I'm Ralph Shapira and I'll be posing you a few
 (24) questions on cross-examination.
 (25) CROSS EXAMINATION OF CHARLES TOTEMOFF

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(1) BY MR. SHAPIRA:
 (2) Q Sir, I'd like to begin by talking about some of the ways
 (3) that Chenega Corporation uses its lands now. And I'd like the
 (4) start with what I believe is referred to as the mariculture
 (5) project. You have a mariculture project going on, don't you?
 (6) A Yes.
 (7) Q And would you explain to the jury, a mariculture project is
 (8) a project where you attempt to raise crops from the sea, so to
 (9) speak; is that right?
 (10) A Well, that's not entirely true, but what it is is that
 (11) we're trying to farm oysters.
 (12) Q And your oyster farming operation uses the waters of the
 (13) sea right off, next to Chenega Corporation lands; correct?
 (14) A Yes.
 (15) Q And you started your oyster growing project in - was it
 (16) about 1991?
 (17) A I think it was.
 (18) Q Now, has Chenega Corporation invested a good deal of its
 (19) money in developing this oyster growing operation?
 (20) A Well, we supported the project. It actually wasn't a
 (21) corporation project. It was an IRA Council project.
 (22) Q That's the village council; in other words, the village of
 (23) Chenega Bay has really two governing bodies, one is the
 Chenega
 (24) Corporation that you're the head of, and there's also an IRA
 (25) Council; correct?

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- (1) A No, it's not correct. There's only one local governing
- (2) body, that's the IRA Council.
- (3) Q And your job as head of the corporation is to manage
- (4) business affairs on corporation properties; correct?
- (5) A That's correct.
- (6) Q Now, when you say you supported the project, doesn't
- (7) Chenega Corporation have something to do with that oyster
- (8) growing operation?
- (9) A In the first couple years it was an IRA Council project,
- (10) yes.
- (11) Q What is it now?
- (12) A It still is an IRA Council project.
- (13) Q Is there any plan for the corporation to get involved in it
- (14) in any way?
- (15) A The only thing that we're doing is that we're assisting the
- (16) IRA Council in some of the management of it.
- (17) Q I see. And who is it that helps to manage that oyster
- (18) growing operation from the corporation?
- (19) A From the corporation, it's myself and Gail Evanoff.
- (20) Q So you're personally involved in the oyster growing
- (21) operation, then?
- (22) A In some respects.
- (23) Q Are you paid any kind of salary for working on the oyster
- (24) farm?
- (25) A No.

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- (1) has an oyster growing operation and they're using a brand
- (2) name
- (3) called Aleutic Pride. Is that the same brand name you're going
- (4) to use?
- (5) A Well, again, that's not entirely correct because Tatitlek
- (6) Corporation is not doing that project.
- (7) Q Then did I make a mistake again? Is that the Tatitlek
- (8) Village Council that's doing that project?
- (9) A That's correct.
- (10) Q And they do have the brand name Aleutic Pride, though, for
- (11) their oysters; you're aware of that, aren't you?
- (12) A Yes.
- (13) Q They actually have come to market already. They're
- (14) marketing their oysters commercially; correct?
- (15) A That's what I understand.
- (16) Q They're marketing them, for example, in Anchorage to
- (17) buyers
- (18) of oysters; correct?
- (19) A That's - that's what I understand, yeah.
- (20) Q And that's your plan, as well, to market it commercially
- (21) and through the same commercial channels when your oysters
- (22) come
- (23) to market later this year?
- (24) A We haven't actually gotten that far in the marketing plan.
- (25) Q But you're going to market them commercially somewhere
- (26) later this year?
- (27) A Yes.
- (28) Q Now, sir, these oysters that you're planning to market

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- (1) Q And what are your duties with respect to the oyster
- (2) growing?
- (3) A Just assisting in part with management with the growing of
- (4) the oysters.
- (5) Q Now, the oysters were planted in 1991; correct?
- (6) A I think that's correct, yeah, but I'm not sure.
- (7) Q And have they grown large enough yet to come to market?
- (8) A Some of them have.
- (9) Q You've actually commercially marketed some of these
- (10) oysters?
- (11) A No, we haven't.
- (12) Q Is that the plan, though, to commercially market the
- (13) oysters?
- (14) A Eventually.
- (15) Q And when you say "eventually," when is the first planned
- (16) commercial offering going to be?
- (17) A It - from what I understand, it's going to be later this
- (18) year.
- (19) Q Later this year you're going to come to market with your
- (20) oysters for the first time; is that right?
- (21) A Yes.
- (22) Q Do your oysters have a brand name or anything associated
- (23) with them?
- (24) A Not currently.
- (25) Q Because I know, for example, that Tatitlek Corporation also

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- (1) commercially later this year that are grown off the lands of
- (2) the Chenega Corporation, you expect them to be safe to eat;
- (3) don't you?
- (4) A These oysters are not grown on Chenega Corporation
- (5) property.
- (6) Q Are they not grown near Chenega Corporation land?
- (7) A Yes, they are.
- (8) Q And these oysters that are grown in the waters near Chenega
- (9) Corporation land, you expect them to be safe to eat; don't you?
- (10) A Well, we don't know yet. There's - the DEC has to do
- (11) their testing.
- (12) Q Yes, but you expect them to be safe to eat, don't you? You
- (13) don't think you're going to be facing a contamination problem
- (14) with your crop of oysters later this year; do you?
- (15) A Well, we're certainly aware of the risk.
- (16) Q Do you have any reason to believe that the Chenega oysters
- (17) are contaminated in any way and not fit for human
- (18) consumption?
- (19) A I don't know. They've never been tested yet.
- (20) Q Do you have any reason to believe that they may be
- (21) contaminated in any way?
- (22) MR. FORTIER: Objection, Your Honor. That's
- (23) argumentative.
- (24) THE COURT: Objection overruled.
- (25) THE WITNESS: State the question again.
- (26) BY MR. SHAPIRA:

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(1) Q Do you have any reason to believe that the oysters grown in
(2) the waters off the land owned by the Chenega Corporation may
(3) be
(4) contaminated or unfit for human consumption in any way?
(5) A Again, I don't know. They've never been tested.
(6) Q Are you planning to market them, when you market them, as
(7) oysters grown in contaminated waters?
(8) A Pardon me?
(9) Q Are you planning to advertise that they're oysters grown in
(10) contaminated waters?
(11) A I still don't understand the question.
(12) Q Do you believe that your oysters are being grown in
(13) contaminated waters?
(14) A Well, obviously, the waters were contaminated during the
(15) spill.
(16) Q I'm sure they were. Did you think they were contaminated
(17) in 1991 when you planted your first crop of commercial oysters
(18) there?
(19) A They may have been.
(20) Q And do you think the Chenega IRA Council would have
(21) invested its money in starting a commercial oyster growing
(22) operation off its lands in 1991 if it thought the waters were
(23) contaminated and that the oysters wouldn't be fit to eat?
(24) A Well, I think - I think in everything, you know, every
(25) business venture there's a risk.
(26) Q Now, sir, you have received a lot of reports from

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(1) government agencies which have tested the subsistence foods
(2) in
(3) the Chenega Bay area for safety; haven't you?
(4) A I've seen some of them.
(5) Q You don't pay particular attention to them?
(6) A The ones I do see, I read.
(7) Q Okay. Did you read this one?
(8) MR. SHAPIRA: Can I have the - should I try again?
(9) MR. FORTIER: Your Honor, I'd request that Mr. Shapira
(10) show it to the witness prior to it being published to the
(11) jury.
(12) MR. SHAPIRA: I have no objection to that.
(13) THE COURT: Sure, okay.
(14) MR. FORTIER: And if counsel could let me know what
(15) one he's going to show.
(16) MR. SHAPIRA: It's the one that was pre-designated for
(17) this particular witness.
(18) MR. FORTIER: Thank you.
(19) BY MR. SHAPIRA:
(20) Q Yes, sir, I'm showing you a copy of defendant's
(21) Exhibit 12125 entitled Subsistence Food Safety, Chenega Bay
(22) Sampling Area. I'd like you to leaf through it and tell me
(23) whether you received that document in around the summer of
(24) 1991.
(25) A The only time I've seen this document was a couple nights
(26) ago when you served it on our lawyers.

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(1) Q You didn't get this one?
(2) A No.
(3) Q You never saw this in 1991?
(4) A No.
(5) Q You are aware, aren't you, that since 1991, government
(6) agencies which have tested the subsistence foods around the
(7) Chenega Bay area have consistently declared that all the
(8) results indicate that subsistence foods are safe to eat; you
(9) knew that, didn't you?
(10) MR. FORTIER: Your Honor, objection, lack of
(11) foundation.
(12) THE COURT: Well, let's talk about the specific report
(13) first. You can certainly ask him about the language of that
(14) report, because we know he's read it; right. I just want to do
(15) it in a step-by-step process, counsel. I'm not sustaining the
(16) objection, I just - I want to have your examination a little
(17) bit - ask him about that report and then we'll go on.
(18) MR. SHAPIRA: Thank you, sir.
(19) BY MR. SHAPIRA:
(20) Q This report that you reviewed a couple of days go, sir, is
(21) it consistent with your recollection that since 1991 the
(22) government agencies which are responsible for conducting
(23) tests
(24) of subsistence foods have advised the people of Chenega Bay
(25) that subsistence foods are safe to eat?
(26) MR. FORTIER: Objection, Your Honor, hearsay.

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(1) THE COURT: The objection's overruled. You can answer
(2) the question. Do you remember the question?
(3) THE WITNESS: No, I don't know.
(4) I don't, Your Honor.
(5) MR. SHAPIRA: I'll try again.
(6) BY MR. SHAPIRA:
(7) Q You know, don't you, that government agencies responsible
(8) for testing the safety of subsistence foods have given a number
(9) of advisories to the people of Chenega Bay since 1991 that say
(10) subsistence foods are safe to eat?
(11) A I seem to recall that they've told us that, but they've
(12) also told us that if there's oil on the beaches you can smell,
(13) smell it or see it, don't eat it.
(14) Q Yes, sir. And that applies particularly with regard to
(15) shellfish. If you actually find shellfish with oil on it, that
(16) smell and taste of oil, it's unwise to eat it. And the
(17) government agencies have said that, too; correct?
(18) A Well, I think they applied it to everything.
(19) Q As - do you consider yourself one of the leaders of
(20) Chenega Bay, the village population?
(21) A Well, I'm the president, CEO of Chenega Corporation, yes.
(22) Q And you consider yourself one of the leaders of the Chenega
(23) people; correct?
(24) A Yes.
(25) Q What have you been telling the people since 1991? Have
(26) you

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- (1) been telling them not to eat the subsistence foods?
 (2) A The times that I was around and when these agencies came
 (3) around with their reports, I've never seen this one before, but
 (4) there's - I think there were some other reports. These
 (5) agencies would all be telling the people that everything's
 (6) okay, it's safe to eat, but it's - but it's real hard to, you
 (7) know, organize people and tell them there's a meeting, come to
 (8) the meeting, these people are going to tell you something about
 (9) the safety of these foods. But to this day, the perception is
 (10) is that there is still a lot of fear and doubt as to the safety
 (11) of these foods.
 (12) MR. SHAPIRA: I move to strike that as nonresponsive
 (13) and I'll ask you to listen to my question, sir.
 (14) THE COURT: Well, the motion to strike is denied, but
 (15) you can certainly follow up.
 (16) MR. SHAPIRA: Thank you.
 (17) BY MR. SHAPIRA:
 (18) Q You, as a leader of the people of your village, do the
 (19) people ever come to you and say, what should we do.
 (20) Mr. Totemoff - or Chuck, is that how you're referred to
 (21) commonly?
 (22) A Yes.
 (23) Q Do they say, what should we do, Chuck, we're worried about
 (24) the foods, do you think the foods are safe to eat? Has that
 (25) ever happened?

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- (1) A On occasion. But the people who have read these reports,
 (2) you know, have always consistently voiced the same concern,
 (3) that they're being told that everything's okay, but they don't
 (4) believe it is.
 (5) Q I think we are having a slight communication problem. I'm
 (6) not asking you what your people think. I'm saying, when
 (7) they've come to you since 1991 and they say, Chuck, is it safe
 (8) to eat our foods, what should we do, what advice have you
 (9) given
 (10) them?
 (11) A My response has been, you know, first of all, there's very
 (12) limited resources out there, and again, my people don't like to
 (13) harvest anything that won't replenish itself, and I mean,
 (14) what - what can I tell them?
 (15) Q I'm not asking you what you can tell them. I'm asking you
 (16) what you have told them. Have you told people since 1991 that
 (17) they shouldn't eat subsistence salmon because it's not safe?
 (18) A I don't think I've ever been asked that question.
 (19) Q Have you eaten subsistence salmon yourself since 1991 that
 (20) was taken off the waters near Chenega Bay?
 (21) A I think so.
 (22) Q All right. If people come to you and say, what should we
 (23) do, should we eat the deer that we shoot?
 (24) A People have never asked me that.
 (25) Q They haven't asked you that. Are people eating the deer
 (26) these days?

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- (1) A What little there is.
 (2) Q And you've eaten deer since 1991?
 (3) A I think so.
 (4) Q You think so? Or are you really quite certain that you
 (5) have?
 (6) A I have.
 (7) Q Now you, yourself, are not a subsistence hunter or
 (8) fisherman; correct?
 (9) A That's not correct.
 (10) Q Well, you had your deposition taken in 1992 here. And I'm
 (11) going to refer the witness to page 238 of his deposition.
 (12) Actually, sir, let me provide you with a full copy in the event
 (13) you want to look for any of these pages.
 (14) Now, you were asked in your deposition, sir, on July 20,
 (15) 1992 -
 (16) MR. SHAPIRA: Can I have the Elmo?
 (17) BY MR. SHAPIRA:
 (18) Q You were asked, "Are you personally a hunter or
 (19) fisherman - I'm sorry, "Are you personally a subsistence
 (20) hunter or fisherman?"
 (21) And you said, "No."
 (22) And then you said, "I'd like to correct that answer. Oh,
 (23) okay, I'll answer yes."
 (24) And then the question was asked, "What kind of subsistence
 (25) activities do you engage in now?"

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- (1) Answer, "Primarily I participate with the sharing portion
 (2) of subsistence resources when they come in."
 (3) Question, "Subsistence food is brought in by others and you
 (4) share in that."
 (5) Answer, "Yes."
 (6) Now, what you meant to say - those questions were asked of
 (7) you and you gave that testimony; correct?
 (8) A Yes.
 (9) Q And you were under oath, it was truthful testimony?
 (10) A Uh-huh.
 (11) Q Yes?
 (12) A Yes.
 (13) Q What you meant to say there is you don't hunt or fish
 (14) yourself, but you like to eat it when others bring it in;
 (15) correct?
 (16) A Well, first of all, I would - once in a while I would go
 (17) out and subsistence fish and participate in hunts, but these
 (18) are not normal occurrence, but I view a part of subsistence as
 (19) sharing in the catch when other people bring them in.
 (20) Q Yes, sir, and I'm not quibbling about that. I understand
 (21) that part of your subsistence tradition is to share the catch
 (22) when it was brought in. But the question I asked you is
 (23) whether you were a hunter or fisherman yourself.
 (24) A Yes.
 (25) Q Now, as the head of the Chenega Corporation, do you make
 (26) it

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- (1) your business to learn how much the other villagers are hunting
 (2) or fishing, how much they're harvesting, how much they bring
 (3) in; you try to keep track of that?
 (4) A No.
 (5) Q And it's true, isn't it, that Chenega Corporation doesn't
 (6) keep track of those figures at all?
 (7) A No.
 (8) Q We have a double negative and it's my fault.
 (9) It's true that Chenega Corporation doesn't keep track of
 (10) those figures at all; correct?
 (11) A Well, that's not entirely correct. You know, we - as with
 (12) everybody, we receive the reports of people at Fish & Game.
 (13) We
 (14) have them in our office.
 (15) Q Yes, that's correct. You get reports from the people who
 (16) do keep track of those statistics and that's the Alaska
 (17) Department of Fish & Game Subsistence Division; correct?
 (18) A That's one of them, yes.
 (19) Q And the Alaska Department of Fish and Game Subsistence
 (20) Division conducts surveys in Chenega, the village of Chenega,
 (21) quite frequently; don't they?
 (22) A Yes.
 (23) Q Now, you participate in those surveys yourself, you fill
 (24) out questionnaires and you get interviewed; correct?
 (25) A That's correct.
 (26) Q And so do most of the other households in Chenega;
 (27) correct?

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- (1) A Correct.
 (2) Q And when you're surveyed by the Department of Fish and
 (3) Game, you tell them the truth; don't you?
 (4) A Yes.
 (5) Q And as the village leader, you would encourage the other
 (6) members of the community to tell the Department of Fish &
 (7) Game
 (8) the truth when they survey about the harvest patterns; don't
 (9) you?
 (10) A I would assume they would tell them what the harvest
 (11) patterns were.
 (12) Q And, therefore, you believe the accuracy of the Department
 (13) of Fish and Game statistics on how much the people of
 (14) Chenega
 (15) Bay are harvesting their subsistence resources; correct?
 (16) A I think in most cases it's correct.
 (17) Q All right. Let me put it another way. As far as the
 (18) statistics of how much hunting and fishing subsistence
 (19) harvesting the people of Chenega Bay do, you don't know of
 (20) any
 (21) better statistics anywhere than the ones published by the
 (22) Alaska Department of Fish and Game Subsistence Division;
 (23) correct?
 (24) A I don't know if it's any better, but there's one source
 (25) that's available to us.
 (26) Q I'm saying, do you know a better source?
 (27) A It currently is, I think, the only source that we got.
 (28) Q Only source that we got, isn't that right, any of us?

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- (1) A Right.
 (2) Q Okay. Now, I want to show you the statistics that are the
 (3) most recent statistics published by the Alaska Department of
 (4) Fish and Game Subsistence Division published in November of
 (5) 1993.
 (6) MR. FORTIER: Your Honor, could I again ask counsel to
 (7) supply me with what he's referring to.
 (8) MR. SHAPIRA: This is what we discussed before court.
 (9) MR. FORTIER: Could he also supply a copy?
 (10) THE COURT: You haven't got a copy?
 (11) MR. FORTIER: I haven't, Your Honor. In addition to
 (12) that, I'd request that the witness be allowed to look at it
 (13) before it's published to the jury.
 (14) THE COURT: Sure.
 (15) MR. FORTIER: Thank you, Your Honor.
 (16) MR. SHAPIRA: Now, sir, these are the November 1993
 (17) harvest statistics and they're published under the name of
 (18) James A. Fall. Do you know that name?
 (19) A Yes.
 (20) Q And Mr. Fall is the head of the Subsistence Division; is
 (21) that correct?
 (22) A Yes.
 (23) Q And you know him personally?
 (24) A I've met him.
 (25) Q And you don't know of any better harvest statistics

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- (1) anywhere; or any more recent harvest statistics than those that
 (2) are published by Mr. Fall in his division of subsistence as of
 (3) November 1993; correct?
 (4) A Currently, that's the only one I'm aware of.
 (5) Q That's the best we've got.
 (6) Now, sir, I want to show you figure 10, Subsistence
 (7) Harvests in Prince William Sound, 1984 to 1992. And I want to
 (8) draw your attention - let's see if I can work this device -
 (9) to the statistics for Chenega Bay.
 (10) Now sir, these show the harvests, the subsistence harvests
 (11) in Chenega Bay from 1984 to '85, that's the first bar, and that
 (12) was 306 pounds per capita, do you see that?
 (13) A Yes.
 (14) Q And then the second bar was a survey taken in 1985 to 1986
 (15) and that showed 374 pounds per capita; correct?
 (16) A Yes.
 (17) Q And then the oil spill came along and the people of Chenega
 (18) Bay didn't do as much subsistence. The number dropped to
 (19) 148
 (20) pounds per capita; do you see that?
 (21) A Yes.
 (22) Q And the dip continued down a second year, through 1990,
 (23) '91
 (24) and then it was 139 pounds per capita; correct?
 (25) A Yes.
 (26) Q But in the next two years the subsistence harvests returned
 (27) pretty much to normal; didn't they? 1991, '92, they returned

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- (1) to 344 pounds per capita; correct?
- (2) A Well, these last two bar graphs here, I think, are
- (3) misleading.
- (4) Q You think the Division of Subsistence is wrong about this?
- (5) A I think the reason why it's misleading - and the Fish &
- (6) Game, I think, will admit that these may be the actual pounds
- (7) that were harvested, but it's a whole different mix of
- (8) traditional foods.
- (9) Q A whole different mix. So you mean they shifted from one
- (10) species of subsistence foods to another, maybe from deer to
- (11) bear or from clams to salmon, something like that?
- (12) A Well, I think all of our traditional foods, such as seals,
- (13) sea lions, clams, and ducks are still a very low percentage of
- (14) these last two bar graphs. The bigger percentage of the bar
- (15) graphs represent fish that have been brought in from the
- (16) outside areas and any which way that people can get them.
- (17) because these other resources, I think, are way down. And I
- (18) think the Fish & Game will also tell you the same thing.
- (19) Q How far do you think your subsistence fishermen in Chenega
- (20) Bay are traveling to get subsistence salmon?
- (21) A Some of them go as far as Copper River Flats.
- (22) Q Some of them. Who's that? Who goes there to get their
- (23) salmon?
- (24) A Sometimes the fishermen in Cordova would send some over,
- (25) you know, through relatives or whatever. We have, I think,

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- (1) one - one or two gillnetters that go over and send some back.
- (2) Q I can promise you we'll deal with salmon in more detail in
- (3) one minute. Right now let's stay with the bar chart that shows
- (4) the total amount of food harvested from the islands and the
- (5) waters, the subsistence harvests. You understand what that -
- (6) that's what this is, total pounds, it doesn't matter if it's
- (7) deer, salmon, clams, bear, seaweed, whatever. It's just the
- (8) total pounds harvest; you understand that?
- (9) A I understand that.
- (10) Q All right. Harvests, subsistence harvests in Chenega Bay
- (11) are back to normal, aren't they, at least according to the
- (12) Department of Fish and Game?
- (13) A Well, again, counsel, it's misleading. The Fish & Game
- (14) will tell you this if you ask them.
- (15) Q Well, sir, Fish & Game will testify here themselves.
- (16) They're on plaintiffs' witness list. But to my knowledge, they
- (17) say these are the best figures available?
- (18) MR. FORTIER: Objection, Your Honor, counsel is
- (19) testifying.
- (20) THE COURT: Sustained, sustained. Counsel's statement
- (21) is stricken from the record. The jury is to disregard it.
- (22) MR. SHAPIRA. Thank you, sir.
- (23) BY MR. SHAPIRA
- (24) Q Let me now talk about specific species of wild foods,
- (25) because I think you mentioned that the salmon were gone

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- (1) Didn't you say that in your direct testimony, the fishing used
- (2) to be good but now the salmon are gone? You said something
- (3) like that; didn't you?
- (4) MR. FORTIER: Objection, Your Honor, that
- (5) mischaracterizes the testimony.
- (6) THE COURT: Ask him the question directly, counsel.
- (7) BY MR. SHAPIRA.
- (8) Q Sir, in your direct testimony, you said the salmon runs are
- (9) down; didn't you?
- (10) A Yes, I did.
- (11) MR. FORTIER: Same objection, Your Honor.
- (12) THE COURT: What was the objection?
- (13) MR. FORTIER: The objection was that he's
- (14) mischaracterizing the testimony of the witness, Your Honor.
- (15) THE COURT: The witness can tell him that.
- (16) MR. SHAPIRA: The witness has answered that that's
- (17) what he said.
- (18) BY MR. SHAPIRA:
- (19) Q And you were here when Mr. Gordaoff testified yesterday
- (20) and
- (21) he said one of the reasons he knew that the Prince William
- (22) Sound was sick was that the salmon runs were weak. Do you
- (23) remember him saying that?
- (24) A Yes.
- (25) Q Now, sir, let's take a look at the Department of Fish and
- (26) Game's statistics for salmon harvests in Chenega Bay over the

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- (1) same time period, I'll see if I can do the same magic with my
- (2) pen. And I didn't get the full key, but you can see the key
- (3) down in the lower part of the document that I didn't blow up.
- (4) The bar to the right is 1992-'93, do you see that, the 185
- (5) pounds per capita. You see that, the lower - there's a legend
- (6) on the bottom that shows what the different bars are and it
- (7) shows that the bar on the right, the 185 pounds per capita is
- (8) the salmon harvest for the year 1992-'93, correct, subsistence
- (9) salmon harvest in the village of Chenega Bay?
- (10) MR. FORTIER: Your Honor, that mischaracterizes the
- (11) document, objection.
- (12) THE COURT: I can't - show me, counsel.
- (13) MR. SHAPIRA: Let me try to get it on. Okay, Your
- (14) Honor, try Number 2.
- (15) BY MR. SHAPIRA.
- (16) Q Okay, now we have the legend displayed, as well as the
- (17) various other categories of animals, correct? Can you see the
- (18) document, sir?
- (19) A Yes.
- (20) Q Okay. Can you see now?
- (21) MR. FORTIER: Your Honor, excuse me, can we approach
- (22) the bench for a moment? I have an objection I'd like to -
- (23) THE COURT: Sure.
- (24) (Sidebar held out of the hearing of the jury).
- (25) MR. FORTIER: Your Honor, what I'd request is a

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(1) hearing outside the presence of the jury, actually. Reasonably
 (2) this was presented today as an impeachment document. There
 (3) hasn't been any evidence of prior inconsistent statement.
 (4) THE COURT: Counsel, we had that discussion. I called
 (5) it impeachment document. They didn't.
 (6) MR. PETUMENOS: Since I represent a different client
 (7) here, Judge, sir, I want to make sure my objection is clear and
 (8) on the record.
 (9) This isn't - these are complex statistical information not
 (10) prepared by this witness and which were shown to him only in
 (11) the course of litigation over the last couple days. They are
 (12) not admissible as being a prior inconsistent statement. They
 (13) are not this witness' statements. He is in no position to
 (14) contradict the statistics of the Alaska Department of Fish and
 (15) Game. I don't see the evidentiary nature for this
 (16) cross-examination. These are statistics compiled by a witness
 (17) who incidentally will testify later.
 (18) MR. FORTIER: We are going to call the witness, Your
 (19) Honor.
 (20) MR. PETUMENOS: But this is hearsay until the issue is
 (21) laid. This is not this gentleman's business record nor
 (22) anything he relied on.
 (23) THE COURT: I understand your objection,
 (24) counsel. The objection's overruled. So where are we now?
 (25) MR. PETUMENOS: I have my record.

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(1) (Sidebar concluded.)
 (2) THE COURT: Okay.
 (3) Maybe you can help me here, counsel, I can't see from this
 (4) document where the statistics come from, according to the
 (5) document. I do see the year now. You got the year.
 (6) MR. SHAPIRA: Your Honor, these are -
 (7) THE COURT: You see what I mean? Look at the screen.
 (8) It isn't evidence on the screen itself.
 (9) MR. SHAPIRA: It's a black and white original.
 (10) MR. FORTIER: Your Honor, I don't believe the jury can
 (11) see either where the statistics come from.
 (12) THE COURT: I tell you what, just for this, he's got
 (13) the hard copy in front of him, doesn't he?
 (14) MR. SHAPIRA: Yes, sir.
 (15) THE COURT: He can look at the hard copy instead of
 (16) what's on the screen and you can ask questions about the
 (17) document, all right?
 (18) MR. SHAPIRA: Fine.
 (19) BY MR. SHAPIRA:
 (20) Q Taking a look at the hard copy of the exhibit, sir, you
 (21) see, don't you, that according to the Department of Fish and
 (22) Game, the last two years for which there's survey information,
 (23) 1991-'92 and 1992-'93, are the best years ever for salmon
 (24) harvest by the subsistence fishermen at Chenega Bay, you see
 (25) that?

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(1) A Yes.
 (2) Q All right. Now, you're not a hunter or fisherman yourself,
 (3) right? Correct? We've established that?
 (4) A No.
 (5) Q Do you have any basis to think that this is wrong, that the
 (6) people from Chenega Bay aren't harvesting salmon in record
 (7) numbers in the years 1991 to 1993?
 (8) MR. FORTIER: Your Honor, objection. I think if
 (9) counsel's referring to a prior statement, the objection is it
 (10) mischaracterizes the prior statement of the witness, Your
 (11) Honor.
 (12) THE COURT: You're not a hunter or - it's unfortunate
 (13) it is going to complicate things, the witness is not going to
 (14) remember your question, but the fact is, I don't recall him,
 (15) saying he wasn't a hunter and fisherman. In fact, he said he
 (16) was.
 (17) MR. SHAPIRA: I was referring to the deposition
 (18) statement, rather than the statement on the stand.
 (19) THE COURT: Even in that context, counsel, I think
 (20) that may be a misleading statement.
 (21) MR. SHAPIRA: My apologies. My apologies.
 (22) BY MR. SHAPIRA:
 (23) Q Sir, you don't do much hunting or fishing yourself; do you?
 (24) A Not currently.
 (25) Q And you haven't been out doing much salmon fishing in 1991

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(1) or 1992; have you?
 (2) A No.
 (3) Q In fact, sir, do you live in Chenega Bay now?
 (4) A I have a house down there, yes.
 (5) Q But you live in Anchorage; don't you?
 (6) A I'm up here on a - temporarily.
 (7) Q When you say you're up here temporarily, hasn't your
 (8) principal place of residence been Anchorage for the last year
 (9) and a half to two?
 (10) A No, my residence is still Chenega.
 (11) Q Where do you live here in Anchorage?
 (12) A Where at?
 (13) Q Yes. You have a house?
 (14) A No.
 (15) Q You rent an apartment?
 (16) A Apartment, yes.
 (17) Q You don't stay in a hotel when you're here?
 (18) A No.
 (19) Q About how much of your time, say, in the last year have you
 (20) spent in Anchorage as opposed to Chenega Bay?
 (21) A Well, I'd say about - I would spend a week out of a month
 (22) in Chenega.
 (23) Q So three weeks out of a month you live in Anchorage?
 (24) A Yes.
 (25) Q Is that true for the last two years?

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- (1) A Hasn't been quite two years.
- (2) Q Okay. Now, do you, based on your personal knowledge, have
- (3) any reason to doubt that the salmon harvest of the subsistence
- (4) fishermen of Chenega Bay have been record harvests, all-time
- (5) records, over the years 1991 to 1993?
- (6) MR. FORTIER: Objection, Your Honor, mischaracterizing
- (7) the document again.
- (8) THE COURT: I think the witness can clarify it. You
- (9) understand the question, sir?
- (10) THE WITNESS: Can you restate the question, please?
- (11) BY MR. SHAPIRA:
- (12) Q Do you have any reason of your own personal knowledge to
- (13) doubt that 1991 through 1993 have represented record harvests
- (14) of subsistence salmon by the fishermen of Chenega Bay?
- (15) A Well, according to these graphs, you know, there's no
- (16) doubt, but I still think it's misleading.
- (17) Q We talked a bit. I started off the cross-examination
- (18) talking about the way Chenega Corporation uses its lands and
- (19) we had a digression. I want to come back to that. We covered the
- (20) mariculture use, the oyster growing that is going on now in the
- (21) village. And now I want to talk about development of a new
- (22) dock and marina. Is there such a thing happening now in
- (23) Chenega Bay?
- (24) MR. FORTIER: Your Honor, objection. May I approach
- (25) the bench.

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- (1) THE COURT: Yes.
- (2) (Sidebar held out of the hearing of the jury.)
- (3) MR. FORTIER: Your Honor, this area of questioning is
- (4) going to get to third-party payment. The State of Alaska
- (5) settled with Alyeska back in 1993 and as a result of that. The
- (6) village of Chenega Bay received money for a dock.
- (7) 7-million-dollar dock. This series of questions is going to
- (8) open up and to violate your pretrial order.
- (9) THE COURT: All right.
- (10) MR. SHAPIRA: Your Honor, the issue is whether Chenega
- (11) Corporation's lands values have gone down after a spill. I
- (12) intend to show that land and business activities in Chenega are
- (13) booming after the spill. There's a new dock being built.
- (14) There are new tourist facilities being built. There's a new
- (15) airport being built. It is all pursuant to a plan to encourage
- (16) tourism and commercial agreements that predates the oil spill.
- (17) MR. FORTIER: Your Honor -
- (18) THE COURT: I'm going to hear this out of the presence
- (19) of the jury, counsel.
- (20) (Sidebar concluded.)
- (21) THE COURT: I'll send you out for a minute. I have to
- (22) decide an evidentiary question. Might take more than a minute.
- (23) too.
- (24) (Jury out at 11:23 a.m.)
- (25) MR. SHAPIRA: Your Honor, may I ask for the exclusion

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- (1) of the witness during this? I'm going to have to spell out my
- (2) strategy in cross-examination.
- (3) THE COURT: Yes. Mr. Totemoff, just leave the
- (4) courtroom, I'll bring you right back in.
- (5) (Mr. Totemoff left the room.)
- (6) THE COURT: All right, sir. Counsel, I'm sure your
- (7) objection's on the record, but you can restate it.
- (8) MR. FORTIER: I will, Your Honor. This area of
- (9) questioning directly violates pretrial order with regard to
- (10) third-party - third-party payments. The area of questions
- (11) that Chenega dock - counsel well knows was a part of an
- (12) express part of the Alyeska, State of Alaska settlement that
- (13) was entered into in 1993. The payment goes not to Chenega
- (14) Corporation, but to the - but to the State of Alaska in which
- (15) to construct a dock at Chenega Bay.
- (16) He indicated that he was going to inquire about an
- (17) airplane. The airport is not an Chenega Corporation property.
- (18) It is on Chenega Bay property and it is a third-party payment.
- (19) Your Honor, what I am most concerned about is the
- (20) Chenega - Chenega Bay dock, and I'm most concerned about
- (21) it.
- (22) Your Honor, because the dock - because the dock was funded
- (23) by
- (24) a settlement. It wasn't a settlement that inured directly to
- (25) Chenega Corporation, but it was a settlement out of the Exxon
- (26) litigation.
- (27) THE COURT: All right. I understand what your

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- (1) objection is. Go ahead.
- (2) MR. SHAPIRA: If I may, Your Honor, we could not care
- (3) less where the money came from to build the dock. I didn't
- (4) know the money came from a settlement. I wasn't intending to
- (5) ask about where the money came from. We have heard
- (6) precious
- (7) little in this case about - the only issue that's involved in
- (8) this case, which is the value of lands, and what's going on
- (9) with Chenega Corporation lands. In fact - and here's my offer
- (10) of proof, Your Honor - before the oil spill, Chenega
- (11) Corporation developed a plan to wrest itself out of economic
- (12) stagnation by encouraging tourism through a group of devices.
- (13) One was building a new dock, marina, curio shops, hotel and
- (14) restaurants. One was building a new airport. There have been
- (15) studies which have been completed and are being
- (16) implemented to
- (17) encourage tourism from a number of sources.
- (18) Pursuant to that plan, they have leased parts of their land
- (19) to tour operators and recreation operators of various kinds.
- (20) I'll establish this in cross-examination, and what's happening
- (21) here in Chenega Bay is a great burgeoning of economic activity
- (22) since the oil spill, whose focus is, build a new dock and
- (23) related facilities, the airport and other tourism activities.
- (24) These things directly contradict the poor mouthing that
- (25) plaintiffs would like the jury to believe, that these are
- (26) subsistence, borderline, marginal people who were dealt a
- (27) severe blow and are left in hunger by the oil spill. And, in

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01 fact, will establish that Chenega lands and business
 02 opportunities have gone nowhere but up since the oil spill. It
 03 is our defense.
 04 MR. FORTIER: Your Honor, if I can be heard for a
 05 moment, I stayed seated until it was my turn.
 06 THE COURT: I'm proud of you.
 07 MR. FORTIER: Thank you, Your Honor.
 08 Mr. Totemoff has said absolutely nothing about poor
 09 downtrodden people during his entire direct examination. So
 10 that can't be an issue.
 11 The second point that counsel raised was that Chenega
 12 Corporation had developed a plan for renovation purposes.
 13 That
 14 is not true, Your Honor. I have represented Chenega
 15 Corporation for over ten years. I have - I have also had
 16 personal knowledge of the Chenega IRA Council, because I've
 17 done work from time to time for them, part of my duties as a
 18 general counsel for - for the corporation. It was the Chenega
 19 Bay IRA Council, that in fact that developed a plan for - they
 20 call it an overall economic development plan. Every community
 21 in this state develops an overall economic development plan.
 22 Chenega Bay IRA Council isn't a part of these proceedings.
 23 It's not here. You ruled in a previous - in a previous
 24 pretrial order that evidence concerning state grants to the
 25 Chenega Bay IRA Council couldn't come into these
 proceedings.
 26 The State dock project is - you know, it's clearly all of

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01 this rolled up in one big bundle. It is a state grant to
 02 Chenega Bay IRA Council arising out of the Exxon litigation.
 03 It's a government contract. They have no business bringing it
 04 into this. It unduly complicates the situation.
 05 THE COURT: It might if it ever came in, but it
 06 doesn't sound to me like counsel's going to bring it in, are
 07 you?
 08 MR. FORTIER: I am not, Your Honor. But if he asks
 09 about a new dock going in -
 10 THE COURT: Only if the witness responds that we got
 11 that through a payment from the settlement of the case. That's
 12 the only way it comes in, if the witness brings it in,
 13 himself. But, you know, the issue here is the value of this
 14 land and whether or not it's been lessened, and that's a valid
 15 issue that counsel should have a fair opportunity to examine in
 16 cross-examination of these witnesses. He may - his
 17 characterization of poor mouthing may be exaggerated. On the
 18 other hand, it's a legitimate issue in this case.
 19 MR. FORTIER: Your Honor, I may not have been entirely
 20 clear. The Dock isn't going in on Chenega lands. It is
 21 going - it is in the community of Chenega Bay. The dock is
 22 going in on lands that are owned by the IRA Council.
 23 THE COURT: Counsel, that makes very little difference
 24 to me, and it shouldn't make any difference in this record.
 25 The question is the economic health of the community and how

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01 that relates to land values in the area.
 02 MR. FORTIER: Your Honor?
 03 THE COURT: I've heard it, counsel. The objection's
 04 overruled. Is there anything else?
 05 Now, the witness is the - the risk here. He might very
 06 well say what the source of those funds is. If you don't want
 07 him to do that, then you better caution him.
 08 Anything else?
 09 MR. SHAPIRA: No, Your Honor.
 10 THE COURT: Bring them in.
 11 (Jury in at 11:30 a.m.)
 12 THE COURT: Counsel, you can relax. This may take
 13 some time.
 14 MR. SHAPIRA: Thank you. I needed that, Your Honor.
 15 (Jury in at 11:31 a.m.)
 16 THE COURT: You can sit down as you come in, no
 17 problem.
 18 All right, the jury's present, counsel. You can proceed.
 19 MR. SHAPIRA: Thank you, Your Honor.
 20 BY MR. SHAPIRA:
 21 Q Now, Mr. Totemoff, you're building some kind of new dock or
 22 marina in Chenega Bay; correct?
 23 A I think the IRA Council is.
 24 Q New dock, and would you describe the new dock and related
 25 facilities that are now being built?

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01 A Well, from what I understand, it's going to be a ferry
 02 dock.
 03 Q A ferry dock?
 04 A Yeah.
 05 Q Does that mean it's going to be connected, a stop on the
 06 Alaska marine highway?
 07 A I - it may.
 08 Q And what else is being built besides a ferry dock? Are
 09 there any other facilities being built?
 10 A No, it's just a dock.
 11 Q Okay, no stores, no shops, nothing like that?
 12 A No.
 13 Q Are there plans to build facilities relating to the dock,
 14 and taking advantage of the traffic that the dock brings?
 15 A Right now there's no current hard plans, but it's been
 16 thought about.
 17 Q What are the soft plans?
 18 A Well, some of the ideas that have been tossed around is
 19 maybe a hotel-type operation.
 20 Q Hotel, restaurant?
 21 A Yes.
 22 Q Curio shops?
 23 A I think so.
 24 Q Marine service facilities?
 25 A Yes.

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- (1) Q And isn't it the case that the reason you moved to
 (2) Anchorage, something less than two years ago, is to help
 (3) develop these plans?
 (4) A What plans are you referring to?
 (5) Q The new dock and any related facilities that eventually
 (6) will be built.
 (7) A Well, I don't think that's entirely the whole reason. We
 (8) help coordinate it is a little bit, that's about it.
 (9) Q So you haven't been working on the new dock while you've
 (10) been in Anchorage?
 (11) A We've coordinated some.
 (12) Q Have you been working on the new airport while you've been
 (13) in Anchorage?
 (14) A With the land issues, yes.
 (15) Q Because there is a new airport being built in Chenega Bay
 (16) also; correct?
 (17) A It's currently under construction.
 (18) Q It's being built right now?
 (19) A Yes.
 (20) Q And is the dock being built right now also?
 (21) A No.
 (22) Q When's the dock scheduled to begin being built?
 (23) A Well, from what I understand, the bid hasn't even gone out
 (24) yet.
 (25) Q When - when is it supposed to happen, sir?

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- (1) A I don't know. They keep telling me next week, next week.
 (2) Q Now, one of the goals here of both the corporation and the
 (3) IRA Council is to encourage tourism in Chenega Bay; isn't that
 (4) right?
 (5) A Yes.
 (6) Q And the plans to encourage tourism industry in Chenega Bay
 (7) began in 1988; correct?
 (8) A I - yes.
 (9) Q And you participate - you participated in that planning,
 (10) yourself; correct?
 (11) A Yes.
 (12) Q And the plans - and these are plans that were before the
 (13) oil spill - that you participated in discussions about
 (14) included a new dock, a hotel, a restaurant and curio shops;
 (15) correct?
 (16) A Which plans are you referring to?
 (17) Q The plans to build a new dock, restaurant, hotel and curio
 (18) shops in the village of Chenega Bay.
 (19) A Well, I think those activities were IRA Council related.
 (20) Q Wasn't it in the business plan of Chenega Corporation to
 (21) develop these facilities?
 (22) A I think it was in the business plan in cooperation with the
 (23) area IRA Council.
 (24) Q It was in the business plan of Chenega Corporation, of
 (25) which you were the head, to participate in the planning and

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- (1) trying to bring about those developments in the village of
 (2) Chenega Bay; correct?
 (3) A That's correct.
 (4) Q And as of 1988, it hadn't been decided whether Chenega
 (5) Corporation would invest its own funds or would try to borrow
 (6) the funds to develop this - these facilities; correct?
 (7) A What was the question again?
 (8) Q The question is: As of 1988 there was no go-ahead because
 (9) Chenega Corporation was considering whether it should either
 (10) invest its own moneys to bring about this development or, on
 (11) the other hand, should try to find some other source of
 (12) funding; correct?
 (13) A That's correct.
 (14) Q Then there was a feasibility study, really a market demand
 (15) study done in 1991 and 1992; correct?
 (16) A For the corporation, that's - I don't recall anything like
 (17) that.
 (18) Q How about for the IRA Council?
 (19) A There may have been.
 (20) Q You know that there was; don't you?
 (21) A Yeah, I think I recall that was one done.
 (22) Q And as part of this study, the people of Chenega Bay
 (23) considered how their land was being used and by whom;
 correct?
 (24) Because you wanted to find if you had a market to bring in
 (25) these tourists that would be needed to make money off these new

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- (1) facilities; correct?
 (2) A I recall there was some effort being made.
 (3) Q To study the market?
 (4) A Yes.
 (5) Q All right. And to study the market, you took a survey - I
 (6) don't mean you, the Chenega Bay IRA Council took a survey of
 (7) all the people who were operating recreational facilities on
 (8) Chenega Corporation land; correct?
 (9) A (No response).
 (10) Q Tour operators, hunting and fishing operators, those kinds
 (11) of people; correct?
 (12) A I wasn't exactly sure who they took them of, but I know
 (13) they took some samplings of those type of operators.
 (14) Q And to figure out whether there was a market to bring down
 (15) the tourists who were mostly in the northern part of Prince
 (16) William Sound, to bring them down to these new commercial
 (17) facilities that were being planned for Chenega Bay; correct?
 (18) A Yes.
 (19) Q Now, one of the plans was to develop tourism sites - I'm
 (20) sorry, I withdraw that.
 (21) One of the plans that the corporation was considering to
 (22) help bring tourists to the Chenega bay area was to conduct
 (23) tours to Chenega Bay's sites of historical interest; isn't that
 (24) right?
 (25) A No, I don't think that's correct.

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(1) Q Okay, let me show you your deposition, sir, at page 19,
 (2) right at the beginning of your deposition.
 (3) MR. PETUMENOS: Excuse me, I'm awfully sorry to
 (4) interrupt, but if counsel could follow the procedure of giving
 (5) us the page reference before he displays to the jury. We're
 (6) not able to make a foundation objection prior to -
 (7) THE COURT: That's right.
 (8) MR. SHAPIRA: Page 19. Tell me when you're ready.
 (9) MR. FORTIER: I've got it, counsel.
 (10) MR. SHAPIRA: Yes?
 (11) MR. PETUMENOS: Go ahead.
 (12) BY MR. SHAPIRA:
 (13) Q Now, sir, I want to call your attention to page 19 of your
 (14) deposition where you were asked, "What else was in the
 (15) business
 (16) plan that you testified about besides this mention of the port
 (17) development?"
 (18) Answer, "The board was beginning to look at the
 (19) opportunities that may exist in tourism development."
 (20) Question, "What sort of opportunities?"
 (21) Answer, "Possibly charter boat operations, hunting,
 (22) fishing, guiding. Possibly, if I remember correctly, tours to
 (23) historical sites and the village."
 (24) Now, that was a truthful answer you gave in your deposition
 (25) on April 6th, 1992; wasn't it?
 (26) A Yes.

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(1) Q And the subject of tourism has been discussed with the
 (2) Chenega Corporation shareholders, correct, all 31 of them?
 (3) A No, I don't believe it was discussed at any annual meeting
 (4) that I'm aware of.
 (5) Q It was discussed with the shareholders; wasn't it, sir?
 (6) A I think I just gave you my answer.
 (7) Q Okay, well let me call your attention to your deposition at
 (8) pages 157 and 158.
 (9) MR. SHAPIRA: Just tell me when you're ready.
 (10) MR. FORTIER: Okay.
 (11) BY MR. SHAPIRA:
 (12) Q Now, sir - I may have to move this - you were asked, "Has
 (13) the question of conducting this kind of tourism, bringing
 (14) people into Chenega's lands to show them historic sites, has
 (15) that question ever been brought up with the shareholders of
 (16) Chenega Corporation?"
 (17) Answer, "Yes."
 (18) "When was that subject broached?"
 (19) "I think it's just the general interest of the
 (20) shareholders of Chenega Corporation to get involved in
 (21) tourism. It's - it's talked about on the street and sometimes
 (22) in this office, but there is this interest."
 (23) Question, "As president of the corporation do you think
 (24) that's the direction the shareholders want to go in, is to
 (25) develop tourism on Chenega land?"

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(1) Answer, "Yes."
 (2) Those questions were asked and you gave those answers
 (3) during your deposition; correct, sir?
 (4) A Yes.
 (5) Q And even the most sacred site of the Chenega people, the
 (6) old village, that you've described as the site of so many
 (7) painful memories and the annual Memorial Day service, that
 (8) was
 (9) included in what would be on the guided tour; correct?
 (10) A Well, that's not entirely correct. What we wanted to do
 (11) was to attempt to restore the old village site of Chenega and
 (12) we had known for some time that trespass activity was
 (13) happening
 (14) at the old village site.
 (15) Q Question was, "These tourism plans would include guided
 (16) tours of visitors to the old village; correct?"
 (17) A That was a consideration, but it was never set in stone.
 (18) Q Never set in stone?
 (19) A No.
 (20) Q But it was part of the plan, wasn't it?
 (21) MR. SHAPIRA: Page 156 of the deposition.
 (22) MR. FORTIER: Go ahead, I've found it.
 (23) BY MR. SHAPIRA:
 (24) Q Question, "So part of the plan of tourism would be to take
 (25) visitors to the old Chenega village on Chenega Island."
 (26) Answer, "Yes, but we - but we view that the old Chenega
 (27) site or rather the old Chenega Island as being sacred to the

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(1) Chenega people. As far as our preliminary tourism plans, if it
 (2) was going to be done, it would have to be done - done in a
 (3) respectful manner. Wouldn't be no people trodding all over the
 (4) place, maybe just from the - as far down from the beach and
 (5) have a tour guide down there."
 (6) Correct? That's what you said?
 (7) A Correct.
 (8) Q I want to change the subject now for a few minutes from
 (9) tourism plans to plans to sell - or more to the point not to
 (10) sell Chenega Corporation land. The subject of selling Chenega
 (11) Corporation land has come up from time to time since the
 (12) village was refounded; correct?
 (13) A That's not correct. It's, to my knowledge, only come up
 (14) one time.
 (15) Q Came up one time, and the one time was a proposal in the
 (16) early 1980s to subdivide lots on Chenega Corporation land at a
 (17) place called Jackpot Bay; correct?
 (18) A Right.
 (19) Q And you had a broker; right?
 (20) A Yes.
 (21) Q And the lots were subdivided; right?
 (22) A It didn't reach completion.
 (23) Q Well, the lots were subdivided and put on the market;
 (24) weren't they?
 (25) A I don't know what you mean by "put on the market." There

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- (1) was a flier put out if that's what you mean by putting on the
 (2) market.
 (3) Q Offered for sale, the lots were offered for sale, weren't
 (4) they, in the early 1980s?
 (5) A I think so.
 (6) Q And then there was a flap about it within the community;
 (7) correct? Because some people didn't think Chenega
 Corporation
 (8) ought to be selling its land; right?
 (9) A That's correct.
 (10) Q And you were one of those people; correct?
 (11) A That's correct.
 (12) Q And there was a vote taken among the shareholders of
 (13) Chenega Corporation, and the Articles of Incorporation of the
 (14) Chenega Corporation were amended to discourage sales of
 (15) corporate land; correct?
 (16) A I recall the motion, yes.
 (17) Q And the motion was passed; correct?
 (18) A Yes.
 (19) Q And it was determined that it would have to be a two-thirds
 (20) vote - two-thirds approval of all the shareholders before any
 (21) Chenega Corporation land could be sold; correct?
 (22) A Correct.
 (23) Q And then there wasn't any more effort to sell any lands
 (24) from the early 1980s when the Jackpot Bay deal was ended
 until
 (25) the time of your deposition was taken in 1992; correct?

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- (1) A Correct.
 (2) Q Now, aren't some of Chenega Corporation's lands for sale
 (3) today?
 (4) MR. FORTIER: Objection, Your Honor. Approach the
 (5) bench?
 (6) THE COURT: Yeah, I tell you what I'm going - I'm
 (7) going to hear this out of the presence of the jury. It's
 (8) almost time to take a break, then I'm going to take a break,
 (9) but the jury gets to take the first break. So you can go back
 (10) to the jury room.
 (11) (Jury out at 11:50 a.m.)
 (12) THE COURT: Yes, counsel.
 (13) MR. FORTIER: Your Honor -
 (14) THE COURT: You can all be seated.
 (15) MR. FORTIER: We're all trying to be polite, Your
 (16) Honor.
 (17) The objection, Your Honor, goes to where the funds would
 (18) come from, from the potential buyer of the land that Chenega
 (19) has. The question anticipates -
 (20) MR. SHAPIRA: Your Honor, could we exclude the witness
 (21) during this?
 (22) THE COURT: Sure.
 (23) (Witness leaves the room).
 (24) MR. FORTIER: Your Honor, the question anticipates the
 (25) Chenega Corporation is discussing with the Trustees Council the

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- (1) potential sale of some lands that Chenega Corporation owns.
 (2) The Trustees Council would pay for that money - or would pay
 (3) for those lands with money from the Exxon settlement; in other
 (4) words, restoration money.
 (5) Now, if counsel's question could perhaps be limited to
 (6) whether or not there's going to be a sale of the lands, but no
 (7) inquiry as to the funds, the source of the funds, you know, I
 (8) don't think we'd have a problem.
 (9) MR. SHAPIRA: Your Honor, Mr. Fortier is forgetting
 (10) his own case. It's in the expert witness reports that his
 (11) appraisers have submitted that these Trustees sales that are
 (12) going on now are considered as comparable sales. We are
 aware
 (13) that the lands are for sale. We want to know what price is
 (14) being negotiated.
 (15) There's a critical question in this case as to whether the
 (16) value of Chenega Corporation lands have, as they take the
 (17) position here, plummeted since the oil spill, or whether,
 (18) indeed, they haven't plummeted, but maybe are about to be
 sold
 (19) for a fabulously rich price. That would tend to completely
 (20) nullify any claimed damages.
 (21) The reason Mr. Fortier would like not to introduce this
 (22) evidence is because he doesn't want the jury to know how
 (23) valuable these lands are now after the oil spill. He would
 (24) prefer to leave an impression that because oil touched some of
 (25) them once, or came near some of them another time, that they

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- (1) are valueless and can't be sold. We are certainly entitled to
 (2) elicit that there's a sale going on now and what the price is.
 (3) THE COURT: Well, yes, and I don't think that that's
 (4) what counsel's objecting to. The source of the - of the money
 (5) to make the purchase is what he's objecting to. Are you
 (6) intending to explore that issue?
 (7) MR. SHAPIRA: Couldn't care less what the source of
 (8) the funds were. I want to know what the negotiations are. I
 (9) want to know what price Chenega Corporation has put on its
 (10) lands. I want to know what appraisals Chenega Corporation
 has
 (11) submitted in these negotiations and what the State of the bid
 (12) is.
 (13) THE COURT: All right. You know counsel, I think it's
 (14) the same problem we had the last time. We don't want these -
 (15) if you don't want the source of the funds to be mentioned, even
 (16) though it appears that they will be mentioned later on in your
 (17) own expert's reports, then - then I suppose you tell the
 (18) witness don't mention the source of these funds. On the other
 (19) hand, since the witness has been excluded, don't tell him any
 (20) more than that, okay.
 (21) MR. FORTIER: Okay, Your Honor, I will not.
 (22) THE COURT: Okay, we'll take a ten-minute break.
 (23) THE CLERK: Please rise. This court stands in
 (24) recess.
 (25) (Recess from 11:55 a.m. to 11:08 a.m.)

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- (1) (Jury in at 12:03 p.m.)
 (2) THE CLERK: This court now resumes its session.
 (3) Please be seated.
 (4) BY MR. SHAPIRA:
 (5) Q Mr. Totemoff, what's for sale?
 (6) A What do you mean, what's for sale?
 (7) Q Which Chenega Corporation lands are for sale today?
 (8) A Well, currently there's been no -- no action by Chenega
 (9) Corporation to sell land.
 (10) Q Is Chenega Corporation not in negotiations currently with a
 (11) buyer for the sale of some of its land?
 (12) A I wouldn't characterize them as negotiations, just
 (13) preliminary discussions.
 (14) Q And in the preliminary -- now, these preliminary
 (15) discussions, what lands are being discussed?
 (16) A The lands up around Eshamy, Jackpot.
 (17) Q Is it a number of different parcels of land?
 (18) A I think it's two parcels.
 (19) Q Two parcels. I don't know if we'll need the map, would you
 (20) please state the names of these parcels clearly enough so that
 (21) we can identify which ones they are?
 (22) A The Jackpot and Eshamy Bay parcels.
 (23) Q And those are two different parcels, Jackpot Bay and
 (24) Eshamy
 (25) Bay?
 (26) A Yes.

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- (1) Q How big is the Jackpot Bay parcel?
 (2) A I don't recall what the acreage was.
 (3) Q About, ten acres or 10,000 acres?
 (4) A Approximately ten.
 (5) Q Ten acres, okay. How about the Eshamy Bay parcel?
 (6) A About the same.
 (7) Q So that's all that's in discussion now, two ten-acre
 (8) parcels; correct?
 (9) A No, was two 10,000-acre parcels.
 (10) Q 10,000-acre parcels, I was -- I didn't hear you right.
 (11) Each of these parcels is 10,000 acres, roughly?
 (12) A Roughly. Yes.
 (13) Q Okay. Now, have you named your price?
 (14) A No.
 (15) Q Have you told the buyer what you would like to get for
 (16) either of these two parcels?
 (17) A No.
 (18) Q So these discussions are just sort of -- well, I withdraw
 (19) that. Has the buyer told you what it would like to pay for the
 (20) parcels, either one of them?
 (21) A No.
 (22) Q Now when you say there's preliminary discussions, doesn't
 (23) sound like much has been said yet; is that right?
 (24) A Yes.
 (25) Q Okay. Is Chenega Corporation willing to sell the land?

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- (1) A We haven't actually reached that conclusion yet.
 (2) Q The two-thirds vote hasn't been taken?
 (3) A It's far from approaching that yet.
 (4) Q Okay. Now, what has given -- are you the person who's
 (5) involved in these discussions?
 (6) A Yes.
 (7) Q What gave you the green light in light of this age-old
 (8) history that you described about not wanting to sell Chenega
 (9) Corporation lands, what made you think the corporation was
 (10) ready to sell two 10,000-acre blocks of its land?
 (11) A Well, at this point in time all I remember doing is
 (12) exploring the option.
 (13) Q Have you gotten an appraisal on the land?
 (14) A No.
 (15) Q Have you done anything whatsoever to name a price or to
 (16) suggest a range of prices that you would like to get for the
 (17) lands?
 (18) A Well, we think it's worth at least a thousand dollars an
 (19) acre.
 (20) Q And is that what you've told the buyer?
 (21) A No.
 (22) Q Have you indicated in any way, shape or form to the buyer
 (23) what you think -- what you thought you wanted to get for the
 (24) land in terms of a total acre price or an overall price?
 (25) A No, I don't think we've represented that to them.

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- (1) Q Okay. So this thousand dollars an acre that you think it's
 (2) worth, you haven't given any hint of that yet to the buyer?
 (3) A I don't know what you mean by "hint."
 (4) Q Have you let the buyer know in some manner what you
 (5) thought
 (6) you ought to be paid for the land?
 (7) A I don't think so.
 (8) Q And has the buyer let you know in any manner what it was
 (9) prepared to pay for the land or the range of prices for the
 (10) land?
 (11) A No.
 (12) Q Just clear this out of the way.
 (13) Is it your understanding or expectation that you're dealing
 (14) with a cash sale here if something goes through? When you
 (15) said
 (16) a thousand dollars an acre, you were talking about a thousand
 (17) dollars cash?
 (18) A Yes.
 (19) Q Let's talk a little about the leases and licenses that you
 (20) have granted for others to use Chenega Corporation land.
 (21) Now, there were a couple of licenses that were outstanding
 (22) to certain people before the oil spill; correct?
 (23) A Outstanding?
 (24) Q I'm sorry, that was not quite the right word. Chenega
 (25) Corporation had given licenses to some people to use some
 (26) parts
 (27) of its land before the oil spill; correct?
 (28) A Yes.

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- (1) Q And that includes a fellow named Roger Stowell (ph)?
 (2) A Yes.
 (3) Q He had a one-year - was it a license or a lease?
 (4) A It was a license to enter.
 (5) Q He had a one-year license to enter Chenega Corporation
 (6) land, and that existed in 1988; right?
 (7) A I'm what?
 (8) Q '88.
 (9) A I believe we actually entered into the formal agreement in
 (10) 1989.
 (11) Q Was he using it in 1988?
 (12) A Yes.
 (13) Q Okay, but the formal lease or license agreement was entered
 (14) into in 1989; correct?
 (15) A Correct.
 (16) Q Before or after the oil spill?
 (17) A I don't recall. It was in the early part of the year.
 (18) Q Might have been before, might have been after, you don't
 (19) know?
 (20) A I don't recall.
 (21) Q Okay. And were there any other - I'm sorry, what kind of
 (22) operation does Mr. Stowell run?
 (23) A What he does is just - primarily just sports fishing
 (24) operation.
 (25) Q And does he bring tourists in?

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- (1) A Yes.
 (2) Q He doesn't do the sports fishing himself, right? It's a
 (3) fee-generating operation for tourists?
 (4) A Right.
 (5) Q When you entered into the agreement in 1989, it was a
 (6) one-year license; correct?
 (7) A Yes.
 (8) Q But sometime after the oil spill, Mr. Stowell asked to have
 (9) it extended and you turned it into a five-year license;
 (10) correct?
 (11) A I think that's correct, sir.
 (12) Q Now, are there any other significant licenses or leases of
 (13) Chenega Corporation land in existence before the oil spill?
 (14) A I think there was - there was very few. There was one up
 (15) in Eshamy Bay, I think.
 (16) Q And who was the licensee on that one?
 (17) A Guy by the name of Grant Baker.
 (18) Q Grant - sorry, I missed the last name.
 (19) A Baker.
 (20) Q Baker, all right. So that's pretty much it. It's Roger
 (21) Stowell and Grant Baker before the oil spill?
 (22) A There may have been several others that I don't recall
 (23) right now.
 (24) Q Okay. Now, after the oil spill you've entered into a
 (25) number of other leases or licenses for use of Chenega

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- (1) Corporation lands; haven't you?
 (2) A Some.
 (3) Q There has been a new license for recreational use of
 (4) Chenega Corporation lands granted to Ketchum Air Service;
 (5) correct?
 (6) A That's correct, but that's been terminated.
 (7) Q Well, it was entered into for the first time after the oil
 (8) spill; wasn't it?
 (9) A Yes.
 (10) Q And you entered into a new license with the National
 (11) Outdoor Leadership School for a kayaking club, use of a
 (12) kayaking school; correct?
 (13) A Yes.
 (14) Q And that was after the oil spill; correct?
 (15) A That's my recollection, yes.
 (16) Q And did you lose any of your tenants because of your oil
 (17) spill? I mean, Roger Stowell, he's still there; right?
 (18) A Yes.
 (19) Q How about this fellow Baker?
 (20) A He's still there.
 (21) Q He's still there. So of the licenses or leases that you
 (22) had of Chenega Corporation land before the oil spill, none of
 (23) them canceled because of the oil spill; right? You understand
 (24) the question?
 (25) A Yeah, it's sort of vague, because there was terminations.

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- (1) We had to evict a couple of people before the oil spill.
 (2) Q Before the oil spill?
 (3) A Right.
 (4) Q Well, that's not really my question, sir. My question is:
 (5) Did you lose any of your paying business for Chenega
 (6) Corporation lands from any of these licensees or in any of
 (7) these licenses or leases because of the oil spill?
 (8) And the answer is the two that were there before, Roger
 (9) Stowell and Mr. Baker, right?
 (10) A Right.
 (11) Q They're still there?
 (12) A Right.
 (13) Q They didn't quit and walk off and say, I don't want the pay
 (14) money for this contaminated land anymore; did they?
 (15) A (No response).
 (16) Q Did they?
 (17) A Well, no, they - they renewed their request.
 (18) Q They renewed their request. And did you have to cut
 (19) anybody a break on the - on the rentals? Did you have to give
 (20) them back some of their money, or did they say, I'll do it this
 (21) year, but instead of a thousand dollars a year, I only want to
 (22) pay 500 because of the oil spill?
 (23) A (No response).
 (24) Q Didn't happen, did it?
 (25) A No.

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- (1) Q In fact, some of those leases, license rates, have gone up
 (2) since the oil spill; haven't they?
 (3) A Some. Not much.
 (4) Q I want to talk a bit about another witness who will be
 (5) testifying in this action, Gail Evanoff. Have I pronounced her
 (6) name correctly?
 (7) A Evanoff.
 (8) Q Evanoff, all right. Now, Gail Evanoff - you were here
 (9) during opening statement; correct?
 (10) A Yes, she was.
 (11) Q And Gail Evanoff was introduced as one of the
 (12) representatives of Chenega Corporation; correct?
 (13) A Yes.
 (14) Q And she's anticipated to be a witness for the plaintiffs in
 (15) this action; correct?
 (16) A That's what I understand.
 (17) Q Now, when the oil spill came in March 1989, you were the
 (18) head of Chenega Corporation; correct?
 (19) A Correct.
 (20) Q And you drew a salary; correct?
 (21) A Correct.
 (22) Q Now, when the oil spill came, you - you created a brand
 (23) new corporate position for Gail Evanoff; correct?
 (24) A Right.
 (25) Q And she was paid a salary; right?

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- (1) A Yes.
 (2) Q But there was a special condition on her salary; wasn't
 (3) there? The deal was she had to generate more money for
 (4) Chenega Corporation than her salary and expenses; correct?
 (5) A Well, I don't think that's entirely correct. I think there
 (6) was a - the condition was in place because of the increased
 (7) expense that we had to go through to creating that position,
 (8) but it wasn't necessarily a condition along her employment.
 (9) Q Sir, I'm reading from the corporate -
 (10) MR. SHAPIRA: Well, perhaps I should introduce this as
 (11) an impeachment document, Your Honor. Let me show you, to
 (12) attempt to refresh your recollection, resolution number 89-13,
 (13) Resolution of the Board of Directors of Chenega Corporation.
 (14) THE COURT: What's the Exhibit Number, counsel.
 (15) MR. SHAPIRA: Exhibit - I left my glasses, 7487. I
 (16) believe.
 (17) BY MR. SHAPIRA:
 (18) Q Now you recognize Exhibit 7487, sir?
 (19) A Yes.
 (20) Q That's the resolution that passed that created Gail
 (21) Evanoff's position in June 1989, correct, after the oil spill?
 (22) A Yes.
 (23) Q And is it the case that it was expressly - it was provided
 (24) in this resolution, and I quote: Be it further resolved that
 (25) the vice-president for corporation - for corporate operation's

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- (1) primary mission is to produce profits in excess of the
 (2) administrative expenses and costs incurred in creating the new
 (3) position; is that right?
 (4) A That's what it says.
 (5) Q And that was the deal; correct?
 (6) A Well, again, there was - there was an understanding that
 (7) this wasn't necessarily conditional on her employment, it was
 (8) just one of the duties that she was encouraged to perform.
 (9) Q In other words, you weren't going to fire her if she didn't
 (10) make enough money for you?
 (11) A No.
 (12) Q She was just supposed to try her best?
 (13) A Yes.
 (14) Q And she did try her best; correct?
 (15) A Yes.
 (16) Q And she did make more money for you than her salary;
 (17) correct?
 (18) A In some cases, I think so.
 (19) Q And she's still working at that job today?
 (20) A Yes.
 (21) Q Correct. And she's still - she's still making her target,
 (22) making more for the corporation than you're paying her?
 (23) A Well, since then, we've gotten - this resolution is
 (24) preceded or - we now have a contract with Gail Evanoff.
 (25) Q Isn't it true that the way she made money for the

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- (1) corporation in excess of her salary was to use contracts
 (2) relating to the oil spill as a means of generating money?
 (3) MR. FORTIER: Your Honor, objection.
 (4) THE COURT: What is it?
 (5) MR. FORTIER: Can I approach the bench?
 (6) THE COURT: No, just state the objection.
 (7) MR. FORTIER: The objection, Your Honor, is I believe
 (8) that there was a stipulation by the Court that before
 (9) Mr. Shapira entered into this area of questioning he was
 (10) supposed to notify the Court.
 (11) THE COURT: I don't understand the objection,
 (12) counsel.
 (13) MR. FORTIER: I believe it's in violation of an order,
 (14) Your Honor.
 (15) THE COURT: Well, the objection's overruled, go
 (16) ahead.
 (17) BY MR. SHAPIRA:
 (18) Q Now, sir, the way that she was supposed to make money was
 (19) by dealing with matters relating to the oil spill; correct?
 (20) A That was some of her duties.
 (21) Q Not just some of her duties, that's the way she was
 (22) supposed to make money for Chenega Corporation; correct?
 (23) A Yeah, as I've said, that's some - in some cases, yeah.
 (24) Q In some cases - let me call your attention to page 226 of
 (25) your deposition.

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- (1) MR. PETUMENOS: Could we see the -
 (2) MR. SHAPIRA: Oh, sorry, 226.
 (3) MR. PETUMENOS: Could we have the lines, please?
 (4) MR. SHAPIRA: I'll read lines 15 through 24.
 (5) MR. PETUMENOS: I have an objection. The objection is
 (6) the same as stated by counsel.
 (7) THE COURT: Bring it up here.
 (8) (Sidebar held out of the hearing of the jury.)
 (9) THE COURT: Which page is it? 224.
 (10) MR. SHAPIRA: I have a larger copy.
 (11) THE COURT: That's okay, I'll try to read it. Lines
 (12) 15 through 24.
 (13) MR. SHAPIRA: Yes, through 24.
 (14) THE COURT: Well, that's colloquy. Are you sure -
 (15) what page is it?
 (16) MR. SHAPIRA: Page 226, Your Honor.
 (17) THE COURT: Oh, I'm sorry, okay.
 (18) THE COURT: I'm afraid when I read this I can't
 (19) understand the context.
 (20) MR. PETUMENOS: I guess I'm lost, too, Judge. I
 (21) thought that for services rendered, the corporation - the
 (22) corporations got paid money for services rendered for contracts
 (23) in the oil spill if it was ruled irrelevant to the land values
 (24) and not to be addressed in the - in this court.
 (25) THE COURT: This is a different issue. Was she hired

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- (1) to make profits and did she make profits.
 (2) MR. PETUMENOS: Right.
 (3) MR. SHAPIRA: And the bias of the witness when she
 (4) takes the stand.
 (5) THE COURT: Reestablish her biases when she takes the
 (6) stand.
 (7) MR. PETUMENOS: We haven't established she is biased
 (8) yet until she takes the stand, number one. And number two, the
 (9) fact that she was paid money by the corporation is one thing,
 (10) but the fact that she was paid money for contracts that the
 (11) corporations made for the oil spill is now a backdoor attempt
 (12) to get around this court's order under the guise of impeachment
 (13) to values.
 (14) THE COURT: How does this relate to land values?
 (15) MR. SHAPIRA: Relates to the bias of an important
 (16) witness.
 (17) THE COURT: Whose bias?
 (18) MR. SHAPIRA: Gail Evanoff.
 (19) THE COURT: Establish that with her.
 (20) MR. SHAPIRA: I can't, Your Honor. How can I bring in
 (21) at one -
 (22) THE COURT: Counsel, I'll explain it to you when we
 (23) have more time, but I'm telling you don't go into this area
 (24) now.
 (25) MR. PETUMENOS: Could the jury be informed of the

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- (1) ruling?
 (2) THE COURT: The question of her bias will not be gone
 (3) into with this witness any further than it already has. That's
 (4) understandable, isn't it?
 (5) MR. PETUMENOS: Could the jury be informed of the
 (6) Court's ruling on the objections?
 (7) THE COURT: No, because everything on the record so
 (8) far that they've heard is in the record.
 (9) MR. PETUMENOS: Okay.
 (10) (Sidebar concluded)
 (11) BY MR. SHAPIRA:
 (12) Q Is Gail Evanoff still the corporate vice-president of
 (13) Chenega Corporation today?
 (14) A Yes.
 (15) MR. SHAPIRA: Now, sir, Your Honor I better approach
 (16) the bench. I have a few questions remaining and I better
 (17) approach the bench.
 (18) THE COURT: Come up here if you need to.
 (19) (Sidebar out of the hearing of the jury.)
 (20) MR. SHAPIRA: I would like to establish a number of
 (21) things. Now, there's a few questions remaining, but each of
 (22) them will be in a sensitive area, and I want to raise it with
 (23) you before shooting it out.
 (24) Number one, I would like to ask the witness a simple
 (25) question that he has been a salaried employee before and after

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- (1) the oil spill, that is his livelihood, his livelihood has not
 (2) been affected one iota by the oil spill.
 (3) MR. FORTIER: It's not relevant.
 (4) MR. PETUMENOS: I'll object beyond the scope of
 (5) direct, and as not relevant. He's not been proffered on the
 (6) livelihood.
 (7) THE COURT: What is the intent?
 (8) MR. SHAPIRA: Poor-mouthing and injury of the people
 (9) generally.
 (10) THE COURT: I believe that his salaried position is
 (11) legitimate and the fact that he works for the corporation may
 (12) very well be a legitimate bias on cross-examination.
 (13) MR. SHAPIRA: Okay.
 (14) THE COURT: On the other hand, whether he's been
 (15) personally affected and the income that he received from the
 (16) corporation doesn't strike me as really being relevant.
 (17) MR. SHAPIRA: I can't argue - but I can establish he
 (18) was salaried before and is still salaried?
 (19) THE COURT: Yes.
 (20) MR. SHAPIRA: Okay, that's fine. In light of what he
 (21) has said about commercial fishing problems and the life of the
 (22) people, subsistence being raised, I want to ask him - you said
 (23) I could last time we asked - which was I just want to
 (24) establish that he's aware that there is a class action being
 (25) brought on behalf of, number one, commercial fishermen,
 number

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01 two, subsistence users in another case where those individual
 02 injuries will be addressed. You said it was okay last time.
 03 THE COURT: I said it was okay to establish it.
 04 MR. SHAPIRA: With leading questions, you said.
 05 THE COURT: Counsel -
 06 MR. PETUMENOS: I - I admonish Mr. Shapira for -
 07 THE COURT: I'm going to instruct on this so you don't
 08 have to ask that question. I'll instruct that those - those
 09 issues, issues of individual compensation for oil spill
 10 damages, compensation for the individuals in these classes are
 11 not to be addressed in this case.
 12 MR. SHAPIRA: And are being addressed in another case.
 13 THE COURT: Maybe, we'll see what the instruction has,
 14 but I'm not going to let you establish, I'm not going to let
 15 you ask those questions of him.
 16 MR. SHAPIRA: Okay. And, third, this goes to the bias
 17 of this witness, Your Honor.
 18 MR. DIAMOND: Interest.
 19 THE COURT: He's on your side.
 20 MR. SHAPIRA: Interest, the Chenega Corporation, the
 21 damage claim has been provided to us. It's something like 25
 22 million dollars. I'd like to bring that out with him. I would
 23 like to bring out the fact that there is a total of 81
 24 shareholders in the Chenega Corporation.
 25 THE COURT: Already done that.

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01 MR. SHAPIRA: Of which he is one.
 02 THE COURT: You've already done that.
 03 MR. SHAPIRA: I don't know that I got he was one. I
 04 got 81. I don't know that he got he was one.
 05 THE COURT: You - yes, you got that he was a
 06 shareholder, too. I'll let you ask him again, though. You can
 07 ask him if he's a shareholder.
 08 MR. SHAPIRA: And they've requested 25 million dollars
 09 and there are a total of 81 shareholders and that that comes to
 10 \$400,000 per shareholder.
 11 THE COURT: You can ask if he's a shareholder. The
 12 other is simple argument and you'll have the record, if I
 13 allow, to make that argument, but you don't have to ask it with
 14 him.
 15 MR. SHAPIRA: Certainly, it goes to interest.
 16 THE COURT: Counsel, you've established the number of
 17 shareholders, you've established the size of the claim, it's a
 18 math problem after that. You don't have to have him do the
 19 math problem.
 20 MR. PETUMENOS: Judge, I'm not going to - I need to
 21 do it now because of the Court's ruling.
 22 THE COURT: I can't hear a word you're saying.
 23 MR. PETUMENOS: I'm not going to argue further about
 24 what ultimately happens with this evidence now because of the
 25 Court's ruling, but I want you to understand that we previously

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01 have suggested that arguing that the corporations aren't
 02 entitled to -
 03 THE COURT: I'll consider that argument. I'll decide
 04 whether I'll allow that argument later. But as far as I'm
 05 concerned, the amount of the claim can be established. The
 06 fact that he's a shareholder can be established and the number
 07 of shareholders can be established. The rest is a simple math
 08 problem, from which if I allow you to make that argument - I'm
 09 not saying I will, but I may - you'll have the record to do
 10 that.
 11 BY MR. SHAPIRA:
 12 Q You said, sir, that in your direct examination, and I don't
 13 mean to be paraphrasing your testimony, it's the best I can
 14 do. You said that your corporation changed the way it did
 15 business after the oil spill with respect to requiring
 16 confidentiality about your historical sites, things to that
 17 effect. Do you remember that testimony?
 18 A Yes.
 19 Q You weren't saying, were you, that at the time of the oil
 20 spill, or during the clean-up period that you had a contractual
 21 agreement with Exxon that it was not allowed to tell its
 22 clean-up workers where historical sites were so that they could
 23 be protected; are you?
 24 A I don't understand the question.
 25 Q All right. I just want to cut a pretty fine line here. I

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01 wasn't sure exactly what you meant on direct with that
 02 reference.
 03 Now, I understand that you said that after the oil spill,
 04 you entered into new kinds of contracts where you required
 05 people who do business with you to keep quiet about your
 06 historical sites; right?
 07 A I think that was largely pertaining to our licenses to
 08 enter that we have with the various entities.
 09 Q You weren't talking about Exxon and its clean-up activities
 10 when you said that; correct?
 11 A I think that we wanted to.
 12 Q I'm not asking what you wanted. I'm asking you whether
 13 you're saying there was such a contract between Chenega
 14 Corporation and Exxon during the clean-up period.
 15 A I don't recall if there was or not.
 16 Q You don't know of such a contract?
 17 A I don't know.
 18 Q Now, I didn't understand part of your direct when you were
 19 describing the tragic aftermath of the oil spill and how you
 20 learned about it. You described one day, I think, many fishing
 21 boats. I think it became hundreds of boats that descended on
 22 Sawmill Bay and what became known as the Battle of Sawmill
 23 Bay;
 24 right?
 25 A Right.
 26 Q All right. And then you described that you had overheard

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- (1) that a barge was sent to old Chenega village. That happened
 (2) after the Battle of Sawmill Bay?
 (3) A That was during.
 (4) Q It was during the Battle of Sawmill Bay, but it wasn't
 (5) before all those boats appeared in your harbor; was it?
 (6) A It was at the same time, I think.
 (7) Q It was at the same time?
 (8) A Right.
 (9) Q So one boat was sent to Chenega Island by mistake, but
 (10) these hundreds of fishing boats lined up to do the Battle of
 (11) Sawmill Bay at the same time; correct?
 (12) A They - the barge that I was pertaining (sic) to was one of
 (13) the first vessels that showed up.
 (14) Q Did you really think in light of the hundreds of vessels
 (15) that showed up at about this time that Exxon didn't know where
 (16) Chenega was, or were you just exaggerating when you said
 that?
 (17) A No, I'm not exaggerating. This is what I heard
 (18) Q That's what you heard?
 (19) A Yes.
 (20) Q You saw hundreds of boats, one went the wrong direction
 and
 (21) you thought that meant Exxon didn't know where your village
 was
 (22) located?
 (23) A Obviously, that whoever sent the barge there didn't know
 (24) where they were going.
 (25) Q Now, you also said on direct that Exxon didn't talk to you

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- (1) in the opening weeks or months of the clean-up operation,
 (2) something to that effect; right?
 (3) A Yes.
 (4) Q That's what you said?
 (5) A Yes.
 (6) Q All right. All right. Are you aware of an organization
 (7) called the Interagency Shoreline Clean-up Committee that was
 (8) established very soon after the oil spill and that consulted
 (9) with a number of agencies and hodies about clean-up activities,
 (10) have you heard of that?
 (11) A If you're referring to when it was set up, I wasn't aware
 (12) of when it was set up, but I heard about it at a later date.
 (13) Q Isn't it true that the Chenega Bay representative on that
 (14) committee was Chugach Alaska Corporation, a regional
 (15) corporation?
 (16) A It's my understanding that they - well, I don't understand
 (17) the reasons why, but I understood later that they were
 supposed
 (18) to have been a representative.
 (19) Q But you thought they weren't - that they should have been,
 (20) that Chugach Alaska Corporation should have been more in
 (21) contact with you about what they were doing; is that right?
 (22) A Yeah.
 (23) Q Just a couple more questions, sir.
 (24) There are 81 shareholders of Chenega Corporation, correct?
 (25) A Yes.

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- (1) Q You're one offer them?
 (2) A Yes.
 (3) Q And you have family members also who are shareholders?
 (4) A Yes.
 (5) Q And those 81 - the damage claim that Chenega Corporation
 (6) is making in this case on behalf of those 81 shareholders
 (7) totals 28.5 million dollars; is that right?
 (8) A I believe that's correct.
 (9) MR SHAPIRA: No further questions.
 (10) REDIRECT EXAMINATION OF CHARLES TOTEMOFF
 (11) BY MR. FORTIER:
 (12) Q Mr. Totemoff, do you remember when counsel for Exxon was
 (13) asking you questions about how Chenega uses its lands?
 (14) A Yes.
 (15) Q Now, during the oil spill, did - do you recall anybody
 (16) from Exxon contacted Chenega Corporation to ask if they could
 (17) anchor the boom off of - off of Point Helen?
 (18) A No.
 (19) Q Do you remember anybody from Exxon calling Chenega to
 ask
 (20) whether or not they could use Point Helen as the catcher's
 (21) mitt?
 (22) A Absolutely not.
 (23) Q How do you feel about Point Helen being used as a catcher's
 (24) mitt?
 (25) A Well, I think it's - I think it's a total outrage.

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- (1) It's -
 (2) Q Do you think that that's any way to use Chenega land?
 (3) A I think - I think I heard them say that they were using
 (4) this as a sacrifice area, you know, if that's the case, I - I
 (5) know for a fact, you know, it was very obvious that they - the
 (6) thing they wanted to protect was the hatchery at the head of
 (7) Sawmill Bay. As far as that goes, there was no fighting for
 (8) the rest of our lands so they were allowed to be sacrificed,
 (9) too.
 (10) Q Mr. Totemoff, do you recall a series of questions
 (11) concerning subsistence?
 (12) A By who?
 (13) Q By Mr. - By Mr. Shapira?
 (14) A Yes.
 (15) Q Can you tell the jury what subsistence means from the
 (16) Chenega's perspective?
 (17) A Well, from my perspective, I think subsistence means a
 (18) whole way of life. In my early years, I grew up in a
 (19) subsistence lifestyle living in Tatitlek and Cordova and what
 (20) it means to me is that it means the identity of our people, you
 (21) know, the pride we take in who we are. There's - it's much
 (22) more than just a mere gathering and hunting of our traditional
 (23) food. It's much more than that. It's a totally integrated
 (24) social network that goes along with it. And if that's
 (25) disturbed, you know, that - I have grave doubts that my people

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- (1) can continue as a distinct group now after these long years of
 (2) these resources that are not available, our traditional
 (3) resources, you know, our people are going to start forgetting
 (4) of how to go out and hunt and gather themselves, and they
 (5) can't
 (6) pass this on. It's something that can't be replaced.
 (7) Q You were shown a couple of charts, Mr. Totemoff, by
 (8) Mr. Shapira, do you remember that? There was a subsistence
 (9) harvest chart for Chenega Corporation - or for Chenega,
 (10) Chenega Bay; do you recall that?
 (11) A Yes.
 (12) Q Now, have you ever seen the report that that - that that
 (13) chart was taken out of?
 (14) A I think so.
 (15) Q Do you recall approximately how many pages that report
 (16) was?
 (17) A Three or 4,000 pages.
 (18) MR. FORTIER: Could I borrow this for a moment,
 (19) counsel?
 (20) MR. SHAPIRA: There's a couple pages out of order.
 (21) MR. FORTIER: That's fine, I just want to show it to
 (22) the witness, if I could, please.
 (23) BY MR. FORTIER:
 (24) Q Mr. Totemoff, do you know whether or not this chart came
 (25) out of what's been marked as defendants' Exhibit 21 - or
 (26) 2513?

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- (1) A Yes.
 (2) MR. FORTIER: Thousand, counsel.
 (3) BY MR. FORTIER:
 (4) Q Now, Mr. Totemoff, where do the people from Chenega get
 (5) their salmon today?
 (6) A Well, the last couple of years -
 (7) MR. SHAPIRA: Objection, foundation, Your Honor. The
 (8) witness - foundation.
 (9) BY MR. FORTIER:
 (10) Q Do you know where the people of Chenega get their salmon,
 (11) Mr. Totemoff?
 (12) A Largely in part from outside sources nowadays.
 (13) Q Do you know Mr. Paul Kompkoff, Jr.?
 (14) A Yes.
 (15) Q What does Mr. Paul Kompkoff, Jr. do?
 (16) A He is a commercial fisherman.
 (17) Q Does he bring fish to the village?
 (18) A Yes.
 (19) Q Where does he get them from? Do you know where he gets
 (20) them from?
 (21) A He gets them from across the Sound, Copper River.
 (22) Q And that's which way from Chenega?
 (23) A It would be east.
 (24) Q Mr. Totemoff, can you tell the jury how much it costs to
 (25) fly from Chenega to Anchorage and back?

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- (1) A You're talking about for a roundtrip airfare? Over a
 (2) thousand dollars.
 (3) Q And that's just one way; is that right, Mr. Totemoff?
 (4) A That's roundtrip. I think it's 550 one way.
 (5) Q Now, was it about - how much was it before the oil spill;
 (6) do you recall?
 (7) A I think it was more. It was more.
 (8) Q Now, before the - do you recall a series of questions by
 (9) Exxon counsel concerning this infrastructure development, the
 (10) dock and the airport at Chenega Bay?
 (11) A Yes.
 (12) Q Had the airport been planned before the oil spill?
 (13) A Yes.
 (14) Q And had the dock been planned before the oil spill?
 (15) A There was a lot of discussion about it before, yes.
 (16) Q And do you know whether or not the Chenega Bay IRA
 (17) Council
 (18) desired to have ferry service to Chenega Bay before the
 (19) earthquake - before the oil spill, I'm sorry?
 (20) A Yes.
 (21) Q And can you tell the jury why Chenega Bay wanted to have
 (22) ferry service to Chenega before the -
 (23) A Well, I think the first reason is obvious, you know, the
 (24) high cost of air transportation, and there's very limited
 (25) amounts of cargo you can bring in at any one time. And also,
 (26) people can travel very cheaply and bring goods in and out,

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- (1) things like that.
 (2) Q Now, Mr. Totemoff, do you recall a series of questions
 (3) concerning tourism by Exxon counsel?
 (4) A Yes.
 (5) Q Has Chenega Corporation ever conducted tours of its - of
 (6) its special places to outsiders?
 (7) A No.
 (8) Q To people not from Chenega?
 (9) A Absolutely not, no.
 (10) MR. FORTIER: I think I'm just about done. I have no
 (11) further questions. Thank you.
 (12) THE COURT: Counsel?
 (13) MR. SHAPIRA: No further questions, Your Honor.
 (14) THE COURT: You can step down, Mr. Totemoff. Remember
 (15) you've got the mike on you so you have to take it off.
 (16) Counsel, who's your next witness?
 (17) MR. PETUMENOS: Thank you, Your Honor. We have - I'm
 (18) sorry this didn't work out perfectly, but I'm going the need a
 (19) little time to set up the projector, if that's all right.
 (20) THE COURT: Oh, sure, certainly. We'll take a little
 (21) break.
 (22) THE CLERK: Please rise, this court stands in recess.
 (23) (Jury out at 12:50 p.m.)
 (24) (Recess from 12:50 p.m. to 12:58 p.m.)
 (25) (Jury in at 12:58 p.m.)

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- (1) THE CLERK: This court now resumes its session.
 (2) Please be seated.
 (3) MR. PETUMENOS: Judge Shortell, I took the liberty of
 (4) calling the next witness already so we could -
 (5) THE COURT: That's fine, appreciate it.
 (6) THE CLERK: Sir, would you please stand up. There's a
 (7) microphone laying there, would you clip that to the top of your
 (8) shirt. Would you raise your right hand.
 (9) (The Witness Is Sworn)
 (10) THE CLERK: Thank you, you may be seated.
 (11) Sir, for the record, would you please state your full name?
 (12) A Otto V. Sieber, S-i-e-b-e-r.
 (13) THE CLERK: And, sir, what is your occupation?
 (14) A I'm a filmmaker.
 (15) THE CLERK: Thank you.
 (16) DIRECT EXAMINATION OF OTTO V. SIEBER
 (17) BY MR. PETUMENOS:
 (18) Q Mr. Sieber, how long have you been a filmmaker over here?
 (19) A 25 years.
 (20) Q And have you done professional filming for a long time?
 (21) A Yes, for all -
 (22) Q All 25 years?
 (23) A Yes.
 (24) Q And where have you been - where have you done your
 work?
 (25) A I have worked around the world. I've - we have work right

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- (1) now on the English Channel tunnel in England and contracts in
 (2) China.
 (3) Q Probably will come as no surprise to the jury that you have
 (4) a film to show today, and where did you take that film?
 (5) A At - in April during the Exxon oil spill. Some of it is
 (6) at LaTouche Island.
 (7) Q And the film we're going to show today, all of it is at
 (8) LaTouche Island; am I right?
 (9) A That's correct.
 (10) Q And you took the film on April 10, 1989?
 (11) A Right.
 (12) Q Now, Mr. Sieber, filming oil on the water or on the land,
 (13) does video pick up the images of oil very well?
 (14) A Well, videos have never been able to pick up as much as
 (15) film. Film has a greater latitude, especially on reflective
 (16) surfaces and different light conditions.
 (17) Q When this jury looks at videotape of oiling in the course
 (18) of this trial, are they able to see all of what was there if
 (19) you were there in person?
 (20) A No.
 (21) MR. PETUMENOS: With the Court's permission, I would
 (22) like to have Mr. Sieber show his film of Sleepy Bay from April
 (23) of 1989 at this time. And also with the Court's permission,
 (24) because I want him to operate the projector and not me, for
 (25) many reasons. I have a microphone over here that I hope will

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- (1) pick him up by counsel table and we should be able to hear
 him;
 (2) is that all right.
 (3) MR. DIAMOND: No objection.
 (4) THE COURT: All right.
 (5) MR. PETUMENOS: And Mr. Sieber also tells me. Your
 (6) Honor, he'd like to have his film with the lights off. Can we
 (7) be in the dark for that ten-minute period of time?
 (8) THE COURT: Sure. Probably cut down on the power
 (9) output and we might even make it through the day.
 (10) MR. PETUMENOS: I make no promises.
 (11) MR. DIAMOND: I think Mr. Petumenos just wants to
 (12) deprive me of my ability to take notes.
 (13) THE WITNESS: You dim the lights and I'll turn this.
 (14) (Film was shown.)
 (15) BY MR. PETUMENOS:
 (16) Q What are we seeing here, Mr. Sieber? Is this all -
 (17) A This is on the beach at Sleepy Bay. This is logs and
 (18) rocks.
 (19) Q Are we in focus there, sir?
 (20) A There's the condition of the rocks and debris on the beach.
 (21) Q Who is the individual that's -
 (22) A This was the pilot. He's scooping some of this up.
 (23) Q Over what stretch of beach was the oil like that, in that
 (24) consistency and depth?
 (25) A It's practically in all the low lying areas. This is where

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- (1) the oil congregated at the mouths of creeks and in the
 (2) shallower areas, in more inland areas.
 (3) This is oil-coated pebbles.
 (4) Q Is this higher up on the beach than where we saw the
 (5) scooping you did?
 (6) A This is at high tide. It goes all the way to the snow
 (7) line.
 (8) This is on the water's edge. This is how it washes in.
 (9) That's Sleepy Bay. That's the end, comes in globs.
 (10) Now, this is a creek that feeds into Sleepy Bay, and it -
 (11) this is where the river water and the seawater meets.
 (12) Q Is that the same stream that you were showing us before?
 (13) A Yes, this is from further down the beach.
 (14) Now, that's Point Grace.
 (15) This is looking upstream, it goes inland maybe 200 yards.
 (16) This is the car. This is the view from the beginning, you
 (17) can see the shore.
 (18) Q All that brown, all the color we see is -
 (19) A All the black is oil floated in. The creek water is clear,
 (20) but all the rocks are coated.
 (21) Q What is that?
 (22) A That's just along the creek bank that's heavily coated.
 (23) We're looking downstream.
 (24) Q Is all that section of the stream going out oiled that
 (25) we're looking at?

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- (1) A Yes, it's all covered. It's all slick right now. There's
 (2) a boulder. The water is quite clear coming in from the
 (3) mountains, from the hills inside, and the rocks are saturated.
 (4) Here's a boat looking at the same thing.
 (5) Q Is that oil in the foreground there?
 (6) A Yes, all the beach is covered with oil, the logs covered
 (7) with oil and the rocks covered with oil. As you can see on his
 (8) boots. The entire beach and the shoreline was like that. We
 (9) couldn't cross the stream. We didn't want to jump.
 (10) (Film concluded).
 (11) MR. PETUMENOS: Thank you, Mr. Sieber, you may resume
 (12) the witness stand while we make everybody's eyes hurt here.
 (13) BY MR. PETUMENOS:
 (14) Q Mr. Sieber, the path that you took that day was along the
 (15) shore of LaTouche Island?
 (16) A Correct.
 (17) Q Was the scene that we saw in that area typical or not
 (18) typical of what you saw in your trip on LaTouche Island?
 (19) A It was -
 (20) MR. DIAMOND: It was -
 (21) THE COURT: You've got to be more specific than that,
 (22) counsel.
 (23) B MR. PETUMENOS:
 (24) Q On the shores of LaTouche Island that you personally
 (25) observed was the scenes that we saw in the film typical of the

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- (1) shores you saw on that day?
 (2) MR. DIAMOND: Could we have some foundation of what he
 (3) saw?
 (4) THE COURT: That's fair. Describe where you went and
 (5) what you saw.
 (6) A Okay, that day we first went to Montague Island, which is
 (7) across LaTouche and about 1400 we left McCloud Harbor on
 (8) Montague and we were headed for Sawmill Bay and we looked
 (9) down
 (10) on the - on this island at that time. I don't know what name,
 (11) but it's LaTouche. And we saw the beaches was probably one
 (12) of
 (13) the worst fouled beaches along the shore. We seen that all
 (14) day, so we went to Sawmill Bay, filmed the booming, and
 (15) around
 (16) 1600, we took off from Sawmill Bay and came back to LaTouche
 (17) and landed at sleepy - Sleepy Bay.
 (18) BY MR. PETUMENOS:
 (19) Q When you were traveling in the airplane, at what altitude
 (20) were you traveling?
 (21) A We were between 800 to 1,000 feet. We were relatively
 (22) low.
 (23) MR. PETUMENOS: Your Honor, I have no further
 (24) questions of Mr. Sieber.
 (25) MR. DIAMOND: Good afternoon, Mr. Sieber.
 (26) MR. PETUMENOS: Excuse me, counsel, I would move for
 (27) the admission into evidence of Exhibit Number 1269
 (28) (Exhibit 1269 offered)

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- (1) MR. DIAMOND: No objection as -
 (2) THE COURT: One - go ahead, no objection as to what?
 (3) MR. DIAMOND: As modified by a previous stipulation or
 (4) previous agreement.
 (5) THE COURT: It's admitted, then. That's 1269.
 (6) MR. PETUMENOS: So the jury understands, I have
 (7) substituted a videocassette for the film so if they ever want
 (8) to look at it, they haven't don't have to go through this, so
 (9) we'll have an individual cassette of it.
 (10) THE COURT: Fine.
 (11) (Exhibit 1269 received)
 (12) MR. DIAMOND: Good afternoon, Mr. Sieber. My name is
 (13) Chuck Diamond. I'm one of the lawyers representing Exxon
 (14) CROSS EXAMINATION OF OTTO V. SIEBER
 (15) BY MR. DIAMOND:
 (16) Q When was this film taken?
 (17) A Four - 10, 4.
 (18) Q I thought that was police code, 10-4. What day of the -
 (19) was this April 10?
 (20) A Yeah.
 (21) Q I tend to think of that as 4/10. Are you a Native Alaskan?
 (22) A No.
 (23) Q What brought you to Alaska?
 (24) A I work in Alaska a lot. I have been working here for 20
 (25) years, almost all my filming life. I've done a lot of filming

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- (1) in Alaska?
 (2) Q And what got you up in the air and photographing islands in
 (3) Prince William Sound on April 10th?
 (4) A The oil spill.
 (5) Q Were you hired to do that by anyone?
 (6) A Yes.
 (7) Q Who hired you?
 (8) A Mr. Weiss.
 (9) Q Who is Mr. Weiss?
 (10) A Mel Weiss, he's - he's a lawyer.
 (11) Q Okay. You understand he's one of the lawyers representing
 (12) plaintiffs in Exxon litigation?
 (13) A Yes.
 (14) Q Where had you been before you came up to Alaska?
 (15) A When you say "where have I been," in what time period do
 (16) you mean?
 (17) Q Immediately prior to April 10.
 (18) A Immediately prior, I was in Seattle. I came up from
 (19) Seattle.
 (20) Q Were you given any instructions by Mr. Weiss or anyone
 (21) working for him as to what to look for?
 (22) A No, he just said to go film what you see.
 (23) Q Did he suggest you start any particular place?
 (24) A No. He just told me to stay there as long as you need to
 (25) and film whatever you see of the oil spill.

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- (1) Q You understood that he was looking for a motion picture
 (2) footage showing the damage that the spill had caused?
 (3) A Well, I didn't know what he was using it for at that time.
 (4) Q Did you take any motion pictures of unoiled beaches?
 (5) A Yes.
 (6) Q How much footage in total did you shoot on April 10th?
 (7) A I shot about an hour and a half.
 (8) Q How much footage did we just watch?
 (9) A About 20 minutes. But this is all on LaTouche. I mean, we
 (10) shot all over Prince William Sound.
 (11) Q You said you were on Montague Island at 1440?
 (12) A 1400.
 (13) Q 1400, that's -
 (14) A 2:00 in the afternoon.
 (15) Q Thanks. And then you flew over to Sawmill Bay?
 (16) A Sawmill Bay, right.
 (17) Q Did you - was this in a sea plane or helicopter?
 (18) A Yes, sea plane.
 (19) Q Did you land in Sawmill Bay?
 (20) A Yes, I did.
 (21) Q Did you photograph on Sawmill Bay?
 (22) A Yes, we filmed the booming operations.
 (23) Q That's right, you told us that. I'm sorry.
 (24) And then you flew - how long did you stay on Sawmill Bay?
 (25) A About half an hour.

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- (1) Q And then you flew to Sleepy Bay, what we just saw?
 (2) A Right.
 (3) Q You said that during the - did you do any other flying on
 (4) any other days in April?
 (5) A Oh, yes. We were there for about a week, I think.
 (6) Q Was this the first day, the last day or in the middle?
 (7) A This is the last day, as a matter of fact.
 (8) Q How much footage did you shoot in terms of hours overall
 (9) during your week?
 (10) A That's it, I told you.
 (11) Q Hour and a half?
 (12) A Hour and a half, yeah.
 (13) Q And you said that while flying from Montague to Sawmill,
 (14) you flew over LaTouche?
 (15) A Yes.
 (16) Q What caught your attention about Sleepy Bay?
 (17) A The fact that there were huge slicks that were drifting
 (18) straight onto the beaches there and it was collecting as you
 (19) saw them.
 (20) Q Were there any clean-up activities underway?
 (21) A No.
 (22) Q And you could clearly see all this oil from the air?
 (23) A Yes, correct, uh-huh.
 (24) Q And this was about the worst you saw from the air?
 (25) A Yes.

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- (1) MR. DIAMOND: No further questions.
 (2) MR. PETUMENOS: I have nothing further.
 (3) THE COURT: You can step down, sir. Thank you very
 (4) much.
 (5) THE WITNESS: I can step down?
 (6) THE COURT: Counsel, I'm going to let the jury go
 (7) unless you've got a ten-minute witness. Okay, I'll see you
 (8) tomorrow at 8:30, and remember don't talk with anybody about
 (9) the case, don't form or express any opinion on it until it's
 (10) submitted to you for your deliberation. Thanks.
 (11) (Jury out at 1:21 p.m.)
 (12) MR. DIAMOND: I had one small matter to take up with
 (13) the Court.
 (14) MR. PETUMENOS: Are you going to congratulate me for
 (15) making sure the whale didn't get on the film?
 (16) MR. DIAMOND: That was one of the small matters.
 (17) MR. PETUMENOS: My heart was beating for sure.
 (18) MR. DIAMOND: Petumenos has fast hands. You have
 (19) heard a lot of discussions, but unfortunately mostly at the
 (20) side bar, concerning how we deal with the fact that a lot of
 (21) the damage testimony we are hearing or a lot of the damage
 (22) that is being discussed is the subject to compensatory damage
 (23) actions elsewhere. I think Mr. Clough has been party to some
 (24) of those conversations with you, but not all of us, and
 (25) Mr. Shapira has been, not all of us. And I understood from the

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- (1) last side bar that it's your intention, rather than to allow
 (2) inquiry of witnesses concerning whether they are seeking
 (3) recompense for these kinds of damages to deal with it by way of
 (4) some sort of jury instruction.
 (5) It would certainly be our preference to allow us to -
 (6) allow the defendants to develop this during the course of
 (7) testimony, because among other things, I think it goes to
 (8) questions of bias, prejudice and interest, but only aside from
 (9) that, I think there's agreement that in some fashion, this jury
 (10) needs to be aware that there are proceedings underway and, in
 (11) fact, concluded proceedings to compensate individuals for a lot
 (12) of the damage that's being described. It extends not only to
 (13) subsistence use of the land.
 (14) I understand that there were class actions and recently
 (15) refiled class actions dealing with subsistence lifestyle issues
 (16) in which individuals are seeking recompense for not only
 (17) description to subsistence harvests, but also more generalized
 (18) damages for disruption to subsistence way of life. We heard
 (19) quite a bit of that from Mr. Totemoff.
 (20) In addition, with respect to testimony about the wildlife
 (21) that was killed in and/or around Native corporation land, that
 (22) damage was the subject of litigation brought by the State which
 (23) ultimately owns the natural resources, and with respect to the
 (24) damaged and destroyed wildlife, Exxon has settled that claim,
 (25) that claim has already been compensated, at least the owner of

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(1) that claim has been compensated.
 (2) I thought it would be useful at some point to deal with
 (3) this directly rather than simply dealing with it as a side bar
 (4) issue. I understand you're interested in dealing with this or
 (5) trying to inform the jury by way of jury instructions. We
 (6) would like an opportunity to submit something quite promptly
 (7) and have it read to the jury now that the testimony is coming
 (8) in and not -- not months from now when it's all become stale.
 (9) THE COURT: That's not a bad idea, counsel, and here's
 (10) what I'm going to suggest, and I don't want to have an
 (11) afternoon session on this. You're so good at stipulating to
 (12) things now, I want you to see if you can't work out a
 (13) stipulation, okay? And then and we'll use the same old
 (14) procedure that we've been using, when your negotiations break
 (15) down, I'll want to see each of your last version and then we'll
 (16) see if I write what the jury hears or if you then go into a
 (17) room and resolve the problem by stipulation. How's that?
 (18) MR. DIAMOND: That's certainly fine, but you know, you
 (19) might consider the way the major league baseball arbitrations
 (20) work. You take a look at each party's first submission.
 (21) THE COURT: Right, and accept the high or the low.
 (22) MR. DIAMOND: Right.
 (23) THE COURT: That's a possibility. It would inject a
 (24) certain element of risk in it. You might be a little more
 (25) reasonable.

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(1) MR. DIAMOND: Mr. Petumenos and I will be delighted to
 (2) spend the afternoon in your jury room.
 (3) MR. PETUMENOS: Let's not speak for me too quickly.
 (4) THE COURT: Was that all?
 (5) MR. STOLL: Your Honor, I have a matter. I thought
 (6) there was plenty of lawyers up at the side bar, so I didn't go
 (7) up there.
 (8) THE COURT: You were absolutely right.
 (9) MR. STOLL: But -- and it wasn't my -- it wasn't a
 (10) municipal witness that was on the witness stand, but I didn't
 (11) think -- I don't want to reargue -- I wasn't even part of the
 (12) argument, but I don't know if we're going to get into what the
 (13) population is of each of these communities and --
 (14) THE COURT: I wanted to bring that up myself, because.
 (15) MR. STOLL: Because I don't understand the -- the
 (16) relevance of how many shareholders there are in these
 (17) municipal
 (18) corporations or how many -- and that it sounded to me, that 81
 (19) people are going to divide up 29 million dollars and I -- I
 (20) don't know what the relevance has just sort of escaped me. I
 (21) mean, these fellows' case, but when it gets to the
 (22) municipalities, I'm going to -- if they try to -- the
 (23) defendants try to say, well, there's "X" population of this
 (24) municipality and, therefore, they're going to get this much --
 (25) some kind of implication by a question, that they're going to
 get out a big carving knife and divide up the pie, you know, I

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(1) think it's totally improper.
 (2) THE COURT: Thank you. And that's what I was going to
 (3) bring up. Can you tell me what the theory is?
 (4) MR. DIAMOND: We have no intention of doing that with
 (5) respect to Mr. Stoll's clients.
 (6) THE COURT: No, let's talk about this, the 28.5
 (7) million dollars divided by 81 shareholders, what does that
 (8) prove?
 (9) MR. DIAMOND: Critical to every -- the credibility of
 (10) every witness and a legitimate way of impeaching the
 (11) credibility of every witness is a showing of bias, prejudice
 (12) and interest. As to witnesses who have a stake in the outcome
 (13) of this case, by virtue of the fact that they are shareholders
 (14) and what are essentially closely held corporations, they
 (15) clearly have a pecuniary interest with which a trier of fact
 (16) might, if disclosed, decide could color someone's testimony.
 (17) Not that it would make it perjurious, but it certainly would
 (18) affect a witness' testimony. This is a classic way of
 (19) impeachment, showing interest in the outcome of the litigation.
 (20) THE COURT: No question about that, counsel. The
 (21) question is whether it's improper argument to say, hey, look at
 (22) what happens here. You take these 81 shareholders and you --
 (23) each one of them gets a proportionate share of this 28.5
 (24) million dollar pie.
 (25) MR. DIAMOND: I -- I really hadn't thought about

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(1) arguing that; but what I might argue, and I'll ask the Court
 (2) whether you think that's -- this is improper argument, if I am
 (3) discussing the testimony of Charles Totemoff and want to
 (4) emphasize discrepancies between what he may have said on direct
 (5) versus what he said in cross-examination, what he said here
 (6) versus what he said in deposition. Certainly it's really, if I
 (7) am attacking his credibility as a witness to show that he has a
 (8) pecuniary interest in the outcome of this case and that he and
 (9) his family have a very, very large stake, a million dollar
 (10) stake, I mean, that certainly would be, I think, legitimate
 (11) argument as to the credibility of a witness.
 (12) THE COURT: How do you figure he and his family have a
 (13) million dollar stake?
 (14) MR. DIAMOND: His stake alone as a 1/81st shareholder
 (15) in the corporation, if the Chenega Corporation is awarded the
 (16) damages they seek exceeds \$400,000. He's got family
 (17) members.
 (18) THE COURT: Personal stake?
 (19) MR. DIAMOND: Personal stake.
 (20) THE COURT: You think that's the way it works?
 (21) MR. DIAMOND: I'm not saying that it would necessarily
 (22) be distributed to him, but it may well be. The corporations do
 (23) issue dividends. The corporation is -- it's a closely held
 (24) corporation, they're in a position to decide whether all of
 (25) this money is distributed as a dividend to the share holders,
 whether some of it's withheld, it was retained earnings for

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- (1) investment purposes, but \$400,000 of benefit inured to him.
 (2) either directly or indirectly.
 (3) Now, I think quite clearly, some of it will inure to him
 (4) directly. But in any event, he has benefitted by the outcome
 (5) of this case and we ask jurors when they fill out
 (6) questionnaires whether they –
 (7) THE COURT: I'm not disagreeing with you counsel.
 (8) MR. DIAMOND: Then I'll shut up.
 (9) THE COURT: All I'm talking about – all I'm talking
 (10) about is that somehow if you divide the amount of money that is
 (11) the maximum claimed by the number of shareholders, you get
 (12) the
 (13) benefit to each shareholder from this lawsuit. I don't believe
 (14) that's true. And I think that's an improper argument.
 (15) MR. DIAMOND: True, as a matter of fact, because the
 (16) corporations work in some other fashion.
 (17) THE COURT: I have a feeling if I allowed all kinds of
 (18) evidence on this issue, I would find that it was not true, but
 (19) I don't intend to allow all kinds of argument on this – all
 (20) kinds of evidence on this issue. Because to me, that's a –
 (21) that's a collateral and unprobative area of inquiry.
 (22) No question there's very large financial stake here, and
 (23) that's – that's a legitimate argument that these witnesses are
 (24) biased, but I don't think you need the division argument
 (25) that – frankly, I think it's a cheap argument and a misleading
 (26) one.

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- (1) MR. DIAMOND: I don't know that we would work the
 (2) division and use the number, but I think it is relevant that
 (3) there are 81 shareholders as opposed to 81,000 shareholders.
 (4) that this is a small group of people who will share in a large
 (5) sum of money.
 (6) THE COURT: So what you're saying is that you don't
 (7) have any intention to argue the division argument which was
 (8) made up here at the bench?
 (9) MR. DIAMOND: Not after this frank and candid
 (10) discussion. If the Court thinks that that's inappropriate,
 (11) obviously we'll stay away from it. I think we – but I don't
 (12) think that I should be deprived, although, of my ability to
 (13) argue that the credibility of these witnesses should be
 (14) adjudged by virtue of their stake in the outcome of the
 (15) litigation.
 (16) THE COURT: Yes, sir.
 (17) MR. DIAMOND: As members of very closely held small
 (18) corporations.
 (19) THE COURT: All right, I understand you. I'm not
 (20) necessarily disagreeing with you on that.
 (21) MR. PETUMENOS: Judge, in view of what happened today
 (22) and I – we all watched the jury, and I think you put it at the
 (23) bench, that it was a simple mathematical problem, after the
 (24) facts are put in and the way they were put in here today was
 (25) just in that order.

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- (1) This is the claim. This is how many shareholders, and you
 (2) could all see the jury dividing. This has created a very
 (3) serious issue for us as to how we're going to deal with it to
 (4) make sure that the jury awards to the plaintiff, the land
 (5) damages to which they are entitled, uninfluenced by
 (6) speculation
 (7) that they may make or what will happen to the money
 (8) thereafter. In fact, there are facts, there is evidence to
 (9) suggest that the inference that is being made, that we believe
 (10) has been made with the jury is false.
 (11) So we will have to determine among ourselves whether we now
 (12) need to put in evidence to rebut it because it's out, or
 (13) whether we need a jury instruction from the Court, I don't want
 (14) to decide that this afternoon.
 (15) THE COURT: No that's fine. Here we go again, here's
 (16) the prospective order. You're not to present any of that
 (17) evidence until you let me know, until I determine that you can.
 (18) MR. PETUMENOS: Very well. I fully intended to take
 (19) it up with the Court. It's a difficult issue. I understand
 (20) the bias arguments counsel has made under 613, but I also
 (21) understand the potential for it being taken not as bias
 (22) evidence, but for something far – in an outcome determinative
 (23) as to whether they would take it just for bias or not, or
 (24) whether it would affect the ultimate result is very
 (25) problematic.
 (26) THE COURT: You're entitled to think about the issue

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- (1) and bring it to my attention.
 (2) All right, I've got one other thing simply for the record.
 (3) We didn't get a hold of Mr. Kimura yesterday, so he showed up
 (4) at 8:30 to do his duty as a juror and then I cut him loose.
 (5) Counsel, I just want to put it on the record, Counsel and
 (6) I had a discussion in chambers, all counsel, and I said that my
 (7) view was that I should restrict all parties in this case from
 (8) questioning jurors who are excused. Who knows, there may be
 (9) more even, and counsel agreed that that would be appropriate.
 (10) So I am now saying that for the record, so that there's no
 (11) question that this restriction is placed on all parties of the
 (12) case. You're not to contact any of these jurors who are
 (13) excused – Mr. Kimura being one – and question them about
 (14) anything having to do with their jury service, unless you ask
 (15) me first and you tell me exactly what it is you're seeking to
 (16) elicit from them. This is a blanket prohibition. You can't
 (17) contact them and talk to them. That's essentially what we
 (18) discussed in chambers and what counsel agreed to.
 (19) Anything else? Okay, there's nothing else? Nothing else
 (20) this afternoon?
 (21) MR. STOLL: Kept on waiting for the paper, Your Honor,
 (22) we thought a couple more trees would come down this
 (23) afternoon.
 (24) THE COURT: All right then, I'm going to take a
 (25) break.
 (26) THE CLERK: Please rise, this court stands in recess.

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(1) (Recess at 1:34 p.m.)

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(1) STATE OF ALASKA)

- (2) : Reporter's Certificate
- (3) DISTRICT OF ALASKA)
- (6) I, Joy S. Brauer, RPR, a Registered Professional
- (7) Reporter and Notary Public;
- (8) DO HERBY CERTIFY:
- (9) That the foregoing transcript contains a true and
- (10) accurate transcription of my shorthand notes of all requested
- (11) matters held in the foregoing captioned case.
- (12) Further, that the transcript was prepared by me
- (13) or under my direction.
- (14) DATED this day
- (15) of , 1994.
- (21) JOY S. BRAUER RPR
- Notary Public for Alaska
- (22) My Commission Expires: 5-10-97

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(1) IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 (2) THIRD JUDICIAL DISTRICT
 (4) In re:) Case No. 344-89-2333 Civil
) Anchorage, Alaska
 (5) The EXXON VALDEZ) Friday, July 8, 1994
) 8:40 a.m.
 (6))
 (8) VOLUME 11, Pages 1639 through 1791
 (10) TRANSCRIPT OF PROCEEDINGS (Continued)
 (11) TRIAL BY JURY
 (13) BEFORE THE HONORABLE BRIAN C. SCOTTELL
 Superior Court Judge

(16) APPEARANCES:

(17) FOR THE PLAINTIFF:

(18) N. ROBERT STOLL
 Stoll, Stoll, Berre & Lokting
 209 Southwest Oak Street
 (19) Portland, OR 97204
 503/227-1600
 TIMOTHY J. PETUMENOS
 Birch, Horton, Bittner & Oerok
 1127 West Seventh Avenue
 (20) Anchorage, AK 99501
 907/276-1550
 SAMUEL J. FORTIER
 Fortier & Mikko
 (21) 2550 Denali Street, Suite 604
 Anchorage, AK 99503
 907/277-4222

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(1) PROCEEDINGS
 (2) (Call to Order of the Court)
 (3) (Jury in at 8:41 a.m.)
 (4) THE COURT: Good morning, counsel.
 (5) MR. PETUMENOS: Good morning, Your Honor.
 (6) For the next witness, the plaintiff's would call Dr. Charles
 (7) H. Peterson.
 (8) THE CLERK: Sir, would you please step up into the
 (9) witness box. There's a microphone there, would you clip that
 (10) below the knot in your tie and remain standing for the oath.
 (11) That's fine. And would you raise your right hand.
 (12) (The Witness Is Sworn)
 (13) THE CLERK: Thank you. You may be seated.
 (14) Sir, for the record, would you please state your full
 (15) name?
 (16) THE WITNESS: Charles Henry Peterson.
 (17) THE CLERK: Would you spell your last name.
 (18) THE WITNESS: P-e-t-e-r-s-o-n.
 (19) THE CLERK: What is your occupation?
 (20) THE WITNESS: My occupation is professor of - of
 (21) marine sciences at the University of North Carolina at Chapel
 (22) Hill.
 (23) THE CLERK: Thank you.
 (24) THE COURT: Go ahead.
 (25) MR. PETUMENOS: Thank you, Judge.

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(1) FOR THE DEFENDANTS:

(2) CHARLES P. DIAMOND
 M. RANDALL OPPENHEIMER
 LINDA JAYE SMITH
 (3) O'Melveny & Myers
 400 South Main Street
 (4) 203/669-6000
 JOHN F. CLOUGH III
 Clough & Associates
 (5) 431 N. Franklin St., #202
 Juneau, AK 99801
 907/586-5777
 (7) Reported by:
 (8) JOY S. SPAUER, PPR
 Registered Professional Reporter
 Midnight Sun Court Reporters
 (10) 2550 Denali Street, Suite 1505
 Anchorage, Alaska 99503
 907/258-7100

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(1) DIRECT EXAMINATION OF DR. CHARLES H. PETERSON
 (2) BY MR. PETUMENOS:
 (3) Q Dr. Peterson, could you tell the jury a little bit about
 (4) yourself.
 (5) A If you want to get a glass of water, I'd assist - can you
 (6) get that? I've had a bad experience with that.
 (7) Can you tell the jury a little bit about yourself and where
 (8) you live and how old you are?
 (9) A Yes. I live on the - on the outer banks of North
 (10) Carolina, which is where the marine laboratory for the
 (11) University of North Carolina is located. I'm 48 years old, and
 (12) have a wife and two kids.
 (13) Q And where do you work?
 (14) A I - I work - I have three jobs, if you will. One is that
 (15) I teach and do research as a professor at the University of
 (16) North Carolina at Chapel Hill. The second is that I work as a
 (17) peer reviewer for the Exxon Valdez Trustee Council. And the
 (18) final is that I work for the State as a manager of fisheries
 (19) resources and of environment. So I have three employers, if
 (20) you will.
 (21) Q Can you tell the jury a little bit about your post high
 (22) school education, please?
 (23) A Yes. I went, after high school, to college at Princeton
 (24) University and graduated in 1968. Then I got a masters in 1970
 (25) and a Ph.D. in 1972 from the University of California at Santa

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- (1) Barbara.
- (2) Q Did you receive any academic awards as an undergraduate?
- (3) A Yes, I - I was elected to Phi Beta Kappa, which is an
- (4) organization that rewards your academic performance, and I
- (5) received fellowships for study in graduate school from the
- (6) National Science Foundation, the Woodrow Wilson Foundation
- (7) and
- (8) the Ford Foundation.
- (9) Q How did you first decide to get interested in biology?
- (10) A Well, I guess it was - we lived or summered by the sea,
- (11) and I became interested in all the various organisms and pieces
- (12) of organisms that washed up on the beaches and just had
- (13) curiosity in trying to see whether I could make a vocation out
- (14) of an avocation of loving those things.
- (15) Q Since graduating from the University of California, how
- (16) have you been employed?
- (17) A I had my first job as assistant professor at the University
- (18) of Maryland, Baltimore County from 1972 to '76, and then was
- (19) hired by the University of North Carolina in 1976 as associate
- (20) professor, and promoted subsequently to full professor in 1983,
- (21) where I've been until now.
- (22) Q Are there a series of courses that you teach at UNC?
- (23) A Yes. I regularly teach a course in marine ecology, one in
- (24) coastal barriers ecology, and another in biological
- (25) oceanography.
- (26) Q Do you teach both undergraduates - I mean, people in

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- (1) college - as well as people pursuing graduate degrees?
- (2) A Yes. I teach undergraduates predominantly and graduate
- (3) students secondarily and, interestingly, high school students,
- (4) as well, on special projects.
- (5) Q Can you give the jury a general description of the field of
- (6) ecology and of marine ecology?
- (7) A Well, I would - I would define ecology as the study of
- (8) what controls the abundances and distributions of plants and
- (9) animals that involves the entire environment - the chemical,
- (10) physical and biological environment - and an understanding of
- (11) the role it plays in dictating abundance and distribution. For
- (12) marine ecology it involves looking at those issues in the
- (13) marine environment.
- (14) Q Now, when we talk about the study of living organisms, what
- (15) kind of life are we referring to?
- (16) A Well, all life forms. That is to say, from the smallest to
- (17) the largest, from bacteria and other microbes to whales at the
- (18) high end of the spectrum.
- (19) Q Have you written articles in this - in the field of marine
- (20) ecology?
- (21) A Yes, I have.
- (22) Q And about how many articles have you written in that area?
- (23) A Something like 85 articles. I've published in a variety of
- (24) areas. Most of them are in marine ecology, but others are in
- (25) other fields, as well.

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- (1) Q You mentioned that you have done some work in Alaska in
- (2) connection with something called peer review. Could you
- (3) explain to the jury what peer review is?
- (4) A Well, peer review is the process whereby academic
- (5) scientists are involved in evaluating the quality of each
- (6) other's work. That can be the quality of a proposal to get
- (7) funding for research. It can be evaluating the quality of the
- (8) finished product of the reports or papers that are created on
- (9) the basis of that work.
- (10) Q Have you served as a peer reviewer for professional
- (11) journals and learned publications?
- (12) A Yes, I do that very, very frequently.
- (13) Q Can you give us a rough idea of how many articles you have
- (14) served that function for?
- (15) A I think it might be as many as 2,000 articles that I have
- (16) reviewed for - for a variety of journals and publishers and
- (17) for a variety of organizations who publish material, science
- (18) material.
- (19) Q Now, you also mentioned that part of your work is for
- (20) government agencies. Could you describe what work for
- (21) government agencies you've done in this area?
- (22) A Well, I do reviewing of research proposals. These are
- (23) project proposals that individual scientists send in to an
- (24) agency, usually in response to a call for proposals, where the
- (25) scientist is describing the research plan that he or she would

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- (1) propose to solve whatever problem the agency had announced
- (2) when
- (3) they had the call for proposals. So I serve commonly in that
- (4) capacity.
- (5) I work for government agencies in a form of reviewing how
- (6) well some of their programs are working. In other words, I'm
- (7) brought in as a kind of an auditor, a scientific auditor to
- (8) assess with whether the program that they have in place is
- (9) functioning in the way that it is intended, and I've done that
- (10) for different areas of government. For the Environmental
- (11) Protection Agency, one of their programs involved in benthic
- (12) toxicology. I've done that, as well, for the National Science
- (13) Foundation, and reviewed the oceanography program of the
- (14) National Science Foundation.
- (15) Q You just mentioned the word "benthic toxicology." What is
- (16) benthic toxicology?
- (17) A Benthic refers to plants and animals on the sea floor, on
- (18) the bottom, and toxicology refers to various responses of those
- (19) organisms to chemicals in their environment and negative
- (20) responses to chemicals in the environment that may stress
- (21) them.
- (22) Q In connection with government work, are you familiar with
- (23) the term "problem-solving panels"?
- (24) A Yes.
- (25) Q What is a problem-solving panel?
- (26) A These are panels created by government organizations to -

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(1) typically by government organizations – to try to produce a
 (2) solution to some very important problems. And the problems
 (3) that I've worked on are environmental issues, in a broad
 (4) context, usually ones involved with the influence of activities
 (5) of mankind on natural ecosystems.

(6) Q Have you ever worked on a problem-solving panel like that
 (7) in Alaska?

(8) A Yes. I continue to work, in fact, for one that is
 (9) established by the National Academy of Sciences, National
 (10) Research Council, and it is a panel designed to understand the
 (11) causes of the long-term declines in certain marine mammals
 (12) and
 (13) sea birds in the Bering Sea and northern Gulf of Alaska
 (14) ecosystem.

(15) Q Now, you have mentioned that you have worked in the area
 (16) of
 (17) the impacts of man on the ecosystem. Could you describe for
 (18) the jury what sorts of impacts you've studied and have been
 (19) involved in?

(20) A Well, probably the major one is the impact of the Exxon
 (21) Valdez oil spill, on which I have been working for a period of
 (22) approximately a month and a half a year for each of the past
 (23) five years. I, as well, look at the influence of fishing on
 (24) these systems, and what fishing does directly and indirectly to
 (25) natural ecosystems.

(26) I have studies that look at runoff from land of various
 (27) sorts of materials that are released into streams that

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(1) ultimately make their way to the sea that can have influence on
 (2) natural systems, and there I look at such habitats as sea grass
 (3) beds, which are an important fishery habitat, and oyster reef
 (4) habitats in the southeast, where I do much of my work. Those
 (5) are a couple examples.

(6) Q Do you also do research on your own?

(7) A Yes, I – I do. That's a major part of my – my work as a
 (8) professor.

(9) Q In what areas have you concentrated your research?

(10) A My work is broadly in the area of marine ecology, but it
 (11) involves a whole variety of aspects of marine ecology. I
 (12) referred to one of those a moment ago where I'm interested in
 (13) the habitats and how they function to service the production of
 (14) fish and higher organisms in the ecosystem, so I look at – at
 (15) these vegetated habitats in the nearshore zone and oyster reef
 (16) habitats, for example.

(17) I have done studies and continue to study the – the lagoon
 (18) environments and how they work worldwide, and have
 (19) compared
 (20) ones in lagoons off the Pacific Ocean, the Atlantic, the Indian
 (21) and the southern ocean, and I've looked explicitly in those
 (22) environments at clams and the organisms that prey on clams,
 (23) so
 (24) organisms like the birds and fishes and the crabs that come to
 (25) the shore to eat those clams. So I try to understand how the
 (26) ecosystem is functioning in a broad context in those lagoon
 (27) environments.

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(1) I have right now one study that is looking at the Sargassum
 (2) ecosystem in the east coast. Sargassum is a floating plant in
 (3) the Sargasso Sea, and it is carried by the gulf stream along
 (4) the entire east coast up to North Carolina. And associated
 (5) with that plant are a variety of – of small animals, fishes,
 (6) birds that feed upon it, and sea mammals that feed in that
 (7) system. And we are looking at various attributes of how that
 (8) system functions, including the impact of harvesting of the
 (9) Sargassum, itself, and what influence that has on the ecosystem
 (10) that's built around it.

(11) Q So would it be fair to say that you have also done research
 (12) in the field of ecology that relates to lands that are next to
 (13) the sea?

(14) A Yes. That's been the major focus of my work over time.

(15) Q Have you served with the government on any management
 (16) boards or environmental management commissions and things
 (17) of
 (18) that sort?

(19) A Yes. I noted earlier when answering what I do for a living
 (20) that one of my duties, and it takes about 10 to 15 percent of
 (21) my time. One of my duties is to serve as a commissioner on our
 (22) Marine Fisheries Commission, which in North Carolina is the
 (23) commission that regulates and manages all the marine fisheries
 (24) in the State.

(25) As well, I am the vice chairman of our Environmental
 (26) Management Commission, which has the duty of regulating the

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(1) air, water and groundwater quality in the state, and I serve as
 (2) chairman of the Water Quality Committee, on that commission,
 (3) and all told, those commission duties take up about 10 to 15
 (4) percent of my time.

(5) Q Have you ever been appointed to represent the United States
 (6) government in any international fishing organizations?

(7) A I –

(8) Q Fisheries organizations?

(9) A Yes, I served at the request of the State department on a
 (10) body called ICES, the International Council for Exploration of
 (11) the Sea, and that is an organization of all the North Atlantic
 (12) countries, countries that have borders on the North Atlantic
 (13) and share interests in the fisheries resources there, and I
 (14) served for six or seven years for the State department on those
 (15) shell fisheries and on the aquaculture committees of that body.

(16) Q Earlier you mentioned you had been involved, I think you
 (17) said, a month and a half a year of the last five years on the
 (18) Exxon Valdez oil spill. How did you first become involved in
 (19) that work?

(20) A I was contacted – amidst of teaching a class and about to
 (21) go out in the field, I was contacted by representatives of the
 (22) Trustees and asked if I would serve as a peer reviewer, and was
 (23) told that my – their interest in me was to get me, along with
 (24) several other national and internationally recognized experts,
 (25) together to look at the program of research that they were

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(1) putting together to try to gain an understanding of the impacts
(2) of the Exxon Valdez oil spill, to then follow the recovery from
(3) that spill, and to understand what might be done possibly to
(4) restore populations in the state.
(5) Q You mentioned getting a call from folks called the
(6) Trustees. Who are the Trustees?
(7) A The Trustees are representatives of three federal
(8) government agencies and three state departments together
have
(9) the legal responsibility of understanding what the impacts of
(10) the oil spill were, and those departments are the federal
(11) level, the Department of - the Secretary of the Department of
(12) Commerce, or designee, the Department of Agriculture, and the
(13) Department of Interior.
(14) In the State of Alaska, it's the Department of Law, the
(15) Department of Fish and Game, the Department of
Environmental
(16) Conservation. So those are the people that have the legal
(17) responsibility to produce the understanding of what the impacts
(18) of that spill were on the natural ecosystem and its resources.
(19) Q Now, you mentioned that you were assigned the role of peer
(20) reviewer. Was it your job to go into the field and pick up
(21) samples and put them in jars and do that sort of thing?
(22) A No. In fact, there were a lot of people, of course, who
(23) did that. Now, I would say that it would be hard to estimate
(24) how many people were involved in these studies, but it's
(25) certainly in excess of 200, maybe more, who were experts on

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(1) particular aspects of the system who then conducted the field
(2) studies.
(3) I had the duty - along with three or four of the other key
(4) peer reviewers, I had the duty of helping organize those field
(5) programs, looking at the data that they - that they created
(6) when they did their work, and then synthesizing that
(7) information so as to get an understanding about the broader
(8) ecosystem and how it worked. That was based upon the work
of
(9) many, many of these people, and probably one of the biggest
(10) environmental programs ever. I would say. In fact, it is the
(11) biggest set of studies ever done.
(12) Q Could you describe the methods used by the scientific peer
(13) reviewers such as yourself to ensure that the science that was
(14) being done by the Trustees was of a high quality?
(15) A Yes. We would, of course, read the documents carefully as
(16) a starting point. These were the documents that describe the
(17) research that was to be done and then, subsequently, these
were
(18) the documents that describe what they learned, and made and
(19) drew conclusions.
(20) We would read those independently and then we would meet
(21) together in groups with those researchers and with other
(22) experts from government, both state and federal, who had
(23) expertise in these resources and in these natural ecosystems,
(24) and we would freely discuss the results, discuss the plan. We
(25) would examine the rigor of the work, whether the methods were

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(1) well done. We would examine the conclusions and challenge
(2) those openly and say, well, if you came to this conclusion,
(3) what about these other two: were they possibilities you
(4) considered. So that we would conduct an open debate about
the
(5) quality of the science, looking at things like the design, the
(6) statistical analysis, alternative explanations and so forth.
(7) Q Does your work with the other scientists for the Trustees
(8) continue through today?
(9) A Yes, I continue to work for the Trustees, even - even
(10) today.
(11) Q In what areas?
(12) A I continue to have responsibility for understanding the
(13) changes in the broader ecosystem of, especially Prince William
(14) Sound, but also the broader affected systems of the - of the
(15) northern Gulf of Alaska. There are projects that are being
(16) conducted that were started this summer called the Sound
(17) Ecosystem Assessment, which is a large ecosystem-based
project
(18) assessing the impacts of changes in - in pink salmon and
(19) herring on the ecosystem and how the ecosystem is affecting
(20) those species, and I'm the principal peer reviewer for that
(21) project.
(22) As well, there are continuing projects looking at many
(23) other aspects of the - of the land-based coastal ecosystems,
(24) the intertidal and subtidal shorelines, and the resources and
(25) species that use them, and I am principal peer reviewer in

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(1) charge of overseeing those, as well.
(2) Q So in summary, Dr. Peterson, would you say that in the
(3) field of marine ecology, you have studied ecology with special
(4) focus on how events caused by man can affect the ecosystem?
(5) A Yes, that is fair.
(6) MR. PETUMENOS: Your Honor, at this time I would
(7) tender Dr. Peterson as an expert witness in the field of marine
(8) ecology.
(9) MS. SMITH: No objection, Your Honor.
(10) THE COURT: The qualification - he is qualified to
(11) give expert opinion. There's a difference that you'll see in
(12) the instructions that I give at the end of this case between
(13) what we call expert witnesses and lay witnesses.
(14) A lay witness is - witnesses normally testify to things
(15) they observe or things like that. Expert witnesses are allowed
(16) to give opinions which lay people are generally not allowed to
(17) do in court. An expert has special qualifications, skills or
(18) knowledge, and this witness is qualified to give expert
(19) opinion.
(20) Now, experts frequently disagree in cases, . It's for you
(21) to determine which experts are better.
(22) MR. PETUMENOS: Thank you, Your Honor.
(23) BY MR. PETUMENOS:
(24) Q Dr. Peterson, what was the problem that was confronting the
(25) Trustees when you were hired and what were you asked to do

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(1) about it?

(2) A Well, in March of 1989, there was a large oil spill from

(3) the grounding of the Exxon Valdez tanker, and – and that oil

(4) spill was what initiated this process to understand what its

(5) impacts were upon the natural ecosystem and the resources,

(6) biological and otherwise, that are part of that ecosystem.

(7) Q In order for us to understand how an oil spill might affect

(8) a shoreline area, is it important for us to understand how a

(9) shoreline works?

(10) A Yes. I think that is critical to have an understanding of

(11) the processes by which animals and plants depend upon the

(12) shoreline to understand how those dependencies might be and,

(13) in fact, were affected by this activity of man.

(14) Q I'd like you to shift focus, then, for us, Dr. Peterson,

(15) just a bit and become a teacher for a little while and assist

(16) the jury in understanding some of those issues.

(17) Have you brought to court with you today an exhibit that

(18) would help you describe for the jury how the shoreline systems

(19) work?

(20) A Yes, sir.

(21) MR. PETUMENOS: May I have – Mr. Kende, may I have

(22) exhibit 250, please?

(23) Judge, we're going to be a little while setting up some

(24) rather cumbersome exhibits.

(25) Dr. Peterson, I think before we close you off from the

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(1) witness stand, you have a microphone there that I hope will

(2) follow you around, and you can come down from the witness

(3) stand, we'll try and set some of this up.

(4) MR. PETUMENOS: We have a juror going like this

(5) (indicating), which is language I understand, we may need to

(6) move it a little bit to the left.

(7) MS. SMITH: I think the far corner is not able to

(8) see.

(9) THE COURT: How we doing? If any of you really have

(10) problems seeing this, I'll either bring it close to you or I'll

(11) bring you close to it. Just let me know.

(12) MR. PETUMENOS: This is my favorite part of the trial,

(13) Judge, lawyers and easels. We need the easel, gentlemen.

(14) MR. KENDE: Need a marker, Tim?

(15) MR. PETUMENOS: No, I got three of them; a green one,

(16) a blue one –

(17) THE COURT: Would you like to help, Mr. Diamond?

(18) MR. DIAMOND: No, I was just going to say this reminds

(19) me of a joke about a light bulb.

(20) MR. PETUMENOS: Which is all true.

(21) We now have a classroom of sorts here.

(22) BY MR. PETUMENOS:

(23) Q Dr. Peterson, what have you shown us here in this picture?

(24) A I've taken an opportunity here to – to have a picture of

(25) what is a fairly typical sheltered rocky shore in Prince

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(1) William Sound or in a similar environment in the northern Gulf

(2) of Alaska. This particular one comes from – from Eleanor

(3) Island, but that's not critical. The issue is that it's a

(4) fairly typical rocky shore that might illustrate some of what

(5) I'd like to say about how the system works.

(6) MS. SMITH: Your Honor, may we know when this picture

(7) was taken, what year?

(8) A Yes. This picture was taken in 1989.

(9) BY MR. PETUMENOS:

(10) Q And can you first describe for the jury the general nature

(11) of the nearshore system in Prince William Sound and northern

(12) Gulf of Alaska?

(13) A Yes. I think that to do that, it's – it's somewhat useful

(14) to divide the system up sort of arbitrarily, but I'll pull it

(15) back together again into three different parts and explain how

(16) those different parts work. If my leash will let me.

(17) I'll first add this, which will help me explain what I mean

(18) and how I'm going to separate these three parts.

(19) The first part is the intertidal zone or the beach, and

(20) here I have it spelled. Intertidal simply means between the

(21) tide marks, so this is the zone that extends from the high tide

(22) mark on the shore down to the low tide mark, and this is, in

(23) fact, a low tide, so we are indeed looking here at the

(24) intertidal zone.

(25) The second zone that I talk about separately is the

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(1) subtidal sea floor. That extends from the low tide mark then

(2) on down into the sea floor, as far out as we wish to talk

(3) about.

(4) And the third zone that I'll talk about is the water,

(5) itself, that is covering the intertidal at high tide, covering

(6) this subtidal sea floor at all times.

(7) So those are the three separate zones that make it easier

(8) to explain how the system works.

(9) Q Which zone would you like to address first?

(10) A The intertidal, I think, is the place to start.

(11) Q Please.

(12) A This system, the coastal ecosystem of the northern Gulf of

(13) Alaska is exceptionally productive. And it is in part

(14) exceptionally productive of materials that lead to higher

(15) consumers in the food chain, to fishes, to sea birds, and to

(16) marine mammals. That productivity, and its exceptional nature

(17) is in part dependent upon the physical setting of this

(18) environment and the fact that this habitat, this intertidal

(19) habitat, is the conjunction of three major zones, if you will,

(20) It's where land, where air, and where water all come together,

(21) so we call this a triple interface.

(22) It's the interface, meaning the joining of zones, and this

(23) is a triple one where all three of these come together. That

(24) makes this system function as be very productive, biologically,

(25) for the following reasons: The land provides the substrate,

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(1) the home, the place where the plants and animals are attached.
 (2) The land also provides a source of nutrients, of
 (3) fertilizers that come and run off in the rivers and streams.
 (4) the glacial melt, and the rainfall of the land, and comes into
 (5) the coastal waters to help fertilize the plants of this zone.
 (6) The air is the medium for the passage of solar energy, the
 (7) source of energy that drives the engine of the ecology of this
 (8) system.
 (9) And the water is the vehicle whereby materials are moved in
 (10) and out of this zone and where production in the water is
 (11) brought into shore for all the animals to feed upon in this
 (12) environment. And the rise and fall of the tides and the energy
 (13) involved in that is translated into biological energy in this
 (14) intertidal shoreline.
 (15) Q Can you give us some -
 (16) THE COURT: Counsel, before you do that, Doctor, could
 (17) you move the clip down on your tie a little bit. Your voice is
 (18) very clear.
 (19) THE WITNESS: Too clear?
 (20) THE COURT: Just a little bit too loud for that mike.
 (21) but not for the courtroom.
 (22) BY MR. PETUMENOS:
 (23) Q Dr. Peterson, can you tell us about the principal types of
 (24) plants and animals which actually live and interact in that
 (25) intertidal zone?

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(1) A Yes. And that is really the purpose of this picture, to be
 (2) able to illustrate some of those.
 (3) In the foreground here, there is dense coverage by a plant
 (4) that is probably the most typical organism of this zone in the
 (5) northern Gulf of Alaska and that is the - the rockweed or
 (6) sometimes called pop weed or fucus. I'm afraid -
 (7) Q We'll have to give it a try, could we get 251-6 up, please?
 (8) A As a biologist, I tend to use some of these terms that I
 (9) shouldn't, but since I'll use it again inadvertently, seems
 (10) like now is a good time to -
 (11) MR. PETUMENOS: Judge, is it -
 (12) THE COURT: He's going to go down the tie just a
 (13) little bit more.
 (14) A So I'm ready. Fucus is my term for rockweed.
 (15) MR. PETUMENOS: Judge, so the jury understands, if
 (16) some of them can't see, I hope it's okay for them to move
 (17) around in the box or whatever.
 (18) THE COURT: Absolutely. Let us know. We'll move you
 (19) so you make sure all of you can see this.
 (20) A Or you can move me.
 (21) The fucus you can see here plays a number of roles. It,
 (22) first of all, produces carbon. It produces plant material that
 (23) the animals then feed upon. Not only the animals in this
 (24) environment, but that plant material is shed, the leaves are
 (25) shed, and that goes out into the ecosystem, falls to the sea

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(1) floor, and helps fuel the detritus, the detrital-based food
 (2) chain.
 (3) And detritus is my next problem, and detritus is decaying
 (4) organic matter. And much of the food chains of the subtidal
 (5) zone are based upon this input of detritus from the plant of
 (6) the nearshore, which includes prominently among them, the
 (7) fucus
 (8) and the intertidal, so fucus plays that role.
 (9) Fucus is also the bed on which herring lay their eggs. So
 (10) it's the bed that the eggs lie on for a period of about three
 (11) weeks during their development, as well as some other plants
 (12) which I'll mention when we get to the lower zones on shore.
 (13) Fucus also provides habitat in itself for a variety of
 (14) small invertebrate animals. Invertebrates are simply animals
 (15) without back bones. Invertebrates, no back bones. So these
 (16) are things like, in particular, things like amphipods and small
 (17) snails. Amphipods are a type of crustacean, shrimp-like
 (18) animal.
 (19) Q Just as long as you don't decline lawyers in this, we'll be
 (20) happy.
 (21) A Sort of the bugs of the sea, if you will. Put this in
 (22) analogy, that might make you happier.
 (23) MS. SMITH: Not the lawyers, right.
 (24) Your Honor, can we ask that this sort of tutorial take
 (25) place in at least a loose question-and-answer format so I can
 have an opportunity, if something is objectionable to come in.

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(1) If he just talks and there's no question and answer to and
 (2) fro -
 (3) THE COURT: Actually the only problem with that is I
 (4) have a feeling it'll just chop things up. So I'll tell you
 (5) what I will do: If I see a problem, I'll then require a
 (6) question, specific questions and answers: all right?
 (7) MS. SMITH: Okay.
 (8) BY MR. PETUMENOS:
 (9) Q All right, I think we were talking about the plants and
 (10) animals at the intertidal area and how they are important to
 (11) how an ecosystem functions. And I know that's a long answer,
 (12) but have you completed with it?
 (13) A No, I was giving the multiple roles, first, that fucus
 (14) plays, which is the dominant organism of all sorts. And, in
 (15) fact, is the plant that we find in this environment. It's
 (16) important because it produces material that animals feed upon
 (17) that fuel the system elsewhere. It's important because it's
 (18) the bed on which herring, in part, lay their eggs. It's
 (19) important because it provides the habitat in which a variety of
 (20) invertebrate animals live and grow, and the habitat - when the
 (21) water is covering - where a variety of fish swim around and
 (22) use those animals as prey in their diet, where the habitat is
 (23) actually providing shelter for these organisms. So it's
 (24) providing a home, if you will, especially for early
 (25) preproductive stages of a lot of the fishes that use this zone

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(1) for reproduction.
 (2) I'd like to try to illustrate the way that fucus creates
 (3) the three-dimensional by virtue of the picture on the screen.
 (4) I think - is that visible enough?
 (5) What this is a picture of is fucus with water sitting over
 (6) it, so that you can see as water is there, how the fucus comes
 (7) off the rocks. Otherwise, we would just have a flat rock
 (8) surface, but with the plant coming up off the rock, it creates
 (9) the structure, these spaces and, in fact, the very homes for
 (10) these small invertebrate, and then during tidal cover, fishes
 (11) to live among.
 (12) Q I know some of the jurors are having perhaps a hard time
 (13) seeing the screen here, but the way the picture is depicted
 (14) now, in what stage is the fucus in? Is it flat and got spaces
 (15) as well?
 (16) A The fucus is coming out at you here, there's water coverage
 (17) so that if you've got a good look at this picture, it gives you
 (18) a feel for the three dimensionality of the environment and
 (19) that's - that's really the point of it.
 (20) MR. PETUMENOS: Does the clerk's monitor spin around,
 (21) does it actually - can it turn?
 (22) MS. SMITH: You may be at the limit here.
 (23) MR. PETUMENOS: The answer is no.
 (24) BY MR. PETUMENOS:
 (25) Q Fucus, are we done or do we need to talk some more about

(1) Q Yes, you can.
 (2) A I'm dangerous with this. Should I draw right there?
 (3) Q You can. Take this pen and draw right out.
 (4) A Let me show you first an animal which is exceptionally
 (5) abundant on this picture. You may not see it terribly well,
 (6) but it's a barnacle. I've drawn - it's a sessile, a fixed
 (7) animal that sits in place and filters out the plankton that
 (8) come in, the phytoplankton in the water. So I've got
 (9) phytoplankton that I've got to introduce.
 (10) These are single-cell algae in the sea. They are the
 (11) fodder in the sea, in the water column. Let's put a few dots
 (12) and assume they are green. The barnacle is what I've shown
 (13) you
 (14) and illustrated.
 (15) As well, there is another animal which does something
 (16) similar ecologically in this picture, and that's the blue
 (17) mussel. There's only one in this particular picture, because
 (18) the blue mussel as well sits attached to the bottom on rocky
 (19) shores and filters phytoplankton from the water. Sort of looks
 (20) like that on the picture.
 (21) Now, other species that are significant to understanding
 (22) this are the grazers. These are herbivores, the cattle, if you
 (23) will, of this environment that go around grazing the algae.
 (24) One of these grazers is on the back of a bigger snail, riding
 (25) that bigger snail, and it's grazing algae off that bigger
 snail.

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(1) it?
 (2) A No, what I've focused now is the dominant organism, which
 (3) happens to be a plant in this environment, but I haven't
 (4) focused on the animals at all because we've taken a broader
 (5) perspective where the plant that provides the bulk of the cover
 (6) and appearance of this shore is the most evident thing.
 (7) If we focus more narrowly so we can see a smaller section
 (8) of this shore, and I've got a picture to help us to do that.
 (9) We can depict the animals that live in the intertidal zone, and
 (10) I can identify some number of those and tell you briefly what
 (11) they do in the system and what they do for the ecology.
 (12) MR. PETUMENOS: Could we see Exhibit Number 251-4,
 (13) please.
 (14) Judge, might I try something at the risk of causing power
 (15) outage or something else?
 (16) BY MR. PETUMENOS:
 (17) Q 251-4 now.
 (18) A This is intended to give you a field of close-up, narrower
 (19) perspective, so you can see the animals that dominate this
 (20) environment. Space is often a limited resource in the
 (21) intertidal zone and both plants and animals will compete for
 (22) that space, so there are strong interactions among the species
 (23) in this environment, so that one species will very often affect
 (24) another.
 (25) Can I actually draw on this?

(1) This particular grazer is a periwinkle snail, and it moves
 (2) around as its goes scraping the rock surface or, in this case,
 (3) the back of the other snail, to get its food. There is, in
 (4) addition, in this picture another important grazer - even I am
 (5) having trouble seeing. I can imagine everyone else is. The
 (6) best example of it is right there, and that's a limpet, and a
 (7) limpet is also a snail. So these two are both types of snails.
 (8) Q And how does the limpet pass his time?
 (9) A The limpet does the same thing the periwinkle does. It
 (10) moves around grazing off the very small algae in that
 (11) environment, and these are both snails of one sort or another.
 (12) And there's a final grazer which is important and not
 (13) illustrated in these pictures, and that final grazer is the
 (14) chiton or coat of mail shell. It's made of eight plates
 (15) attached to each other with a girdle around the edge that hangs
 (16) together and known locally as bidarkis in this particular
 (17) system. And the chiton is a third grazer that moves through
 (18) eating algae in this environment.
 (19) This picture shows you one more thing of substance.
 (20) Q Let me interrupt you right there, Dr. Peterson.
 (21) MR. PETUMENOS: Your Honor, I think the chiton was the
 (22) picture, for the jury's benefit, that I showed a little earlier
 (23) in Mr. Gordaoff's testimony.
 (24) BY MR. PETUMENOS:
 (25) Q Go ahead.

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- (1) A There's one more species of substance to complete these
 (2) animals, and that is the larger snail itself that I seem to
 (3) have overlooked, but I'm coming back to, and it's a drill.
 (4) It's one of several species of drills, known because they are
 (5) drills. They drill through shell. They drill through plates
 (6) to prey upon the barnacles and the mussels in that
 environment.
 (7) so it's a predator on barnacles and mussels:
 (8) This addresses the dominant plant in the intertidal zone.
 (9) There are other plants you can see on the lower parts of the
 (10) shore, other types of algae, green algae and red algae, you can
 (11) see on shore.
 (12) There are many species. The fucus I talked about is the
 (13) dominant one. It addresses the dominant groups of animals
 that
 (14) we find in that environment. It does not say one additional
 (15) thing, and that is that the environment, itself, the intertidal
 (16) environment, even without organisms, serves as an important
 (17) resource for fishes. This is intended to be an anadromous
 (18) stream. Anadromous is an adjective that refers to fishes in
 (19) the sea that return to land to breathe.
 (20) Q Causes me to want to ask you a question. Dr. Peterson.
 (21) We talked - we heard earlier about beaches that have high
 (22) wave energy and have rocks on them that turn over and so
 (23) forth. Do those beaches in the tidal zone have a role to play
 (24) in the ecology?
 (25) A Yes, indeed. Those beaches have organisms and, as well, at

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- (1) the mouths of these anadromous streams, the intertidal cobbles
 (2) and gravels serve as the bed in which pink salmon lay their
 (3) eggs, and up to 75 percent of the spawning of pink salmon in
 (4) the Prince William Sound region is done in the intertidal
 (5) gravel at the mouths of these streams. So like the fucus,
 (6) serving as a bed for eggs for herring, the gravel in the
 (7) intertidal zone serves as a bed for eggs of pink salmon in this
 (8) environment.
 (9) Q Have we finished with the exhibit on the animals of the -
 (10) the barnacles and the drills and all that?
 (11) A Yes, sir, we have.
 (12) Q Now, where are we? We were talking about the - the
 (13) intertidal zone?
 (14) A We were - and I had one more comment to make on that, and
 (15) that is that the intertidal zone also serves as a place where a
 (16) variety of consumers use for reasons other than using the
 (17) organisms, per se. The marine mammals use various, usually
 (18) island rocks, as haulouts where they can haul up onto the rocks
 (19) and get out of the water. Hauling out is done for a variety of
 (20) reasons, including molting, the changing of their fur and
 (21) shedding of their fur, like dogs. For pupping, giving birth to
 (22) the new animals, and simply resting at odd times that will
 (23) happen. So the haulout area is - is one function as well that
 (24) the intertidal zone plays for this ecosystem.
 (25) Q Have we finished with the intertidal area?

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- (1) A Yes.
 (2) Q What's the next area that we need to address?
 (3) A The next in my abstraction and subdivision was the
 (4) subtidal, sea floor. And I have that depicted by virtue of an
 (5) artist's rendition of what one particular subtidal sea floor in
 (6) this environment might look like. So this is not from the
 (7) photo, but rather something that we've drawn.
 (8) First let me say - and this is true for the intertidal as
 (9) well as the subtidal - that there are two very different types
 (10) of bottoms. One is rock and another is a bottom of sediments
 (11) or soils of some sort, including sands and muds and maybe
 even
 (12) up to cobbles. And depending upon which type of shoreline
 (13) you'll have, you'll have different species.
 (14) In the intertidal zone, which we pictured here of rock, we
 (15) had these barnacles and mussels and sessiles and so forth.
 The
 (16) intertidal zone, if it were sands and muds and finer sediments,
 (17) would have species like clams and various worms that move
 (18) through them. So there are different species, depending upon
 (19) the nature, the physical nature of the shoreline that we find
 (20) in that intertidal environment. That is also true of the
 (21) subtidal environment and in places where we have the soils in
 (22) the subtidal sea floor, and the sea floor is shallow enough to
 (23) receive light, and light enough for plants to grow and column.
 (24) We have eelgrass growing, and that's what I illustrate here
 (25) in this particular slide. Eelgrass plays the same sort of

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- (1) function that the fucus does. It is a plant that provides
 (2) another substrate for herring to lay their eggs on, so it a bed
 (3) for herring eggs. It also is a habitat that is used as shelter
 (4) and used for reproduction by a variety of juvenile fishes, and
 (5) is one that has associated with it all of these small animals,
 (6) like amphipods and the other bugs of the sea that are the food
 (7) for many of these organisms.
 (8) The subtidal sea floor, when you go out far enough, reaches
 (9) a point where light doesn't penetrate through the water to a
 (10) sufficient degree to allow plants to grow, so the subtidal sea
 (11) floor really has two zones, one of which where plants grow and
 (12) another where they don't. Even where plants don't grow,
 (13) though, there is input of plants from the shedding of the leaf
 (14) of all of this material in the intertidal and nearshore to fuel
 (15) the production of animals. So there are animals on that
 (16) subtidal sea floor even in the absence of local plants, and
 (17) those animals serve as prey for a variety of bottom fish like
 (18) sole and halibut and rock fish and a variety of other organisms
 (19) that still exist in the subtidal zone.
 (20) Now, if this lighted area of the subtidal is rocky, rather
 (21) than sedimentary, then we get a variety of kelps. Here I have
 (22) to give you picture one. Here is a kelp. I don't have it
 (23) illustrated here, but rather here, a generic kelp. There are a
 (24) number of species. This is actually Alaria, but there are a
 (25) number of species of kelps which serve the same function that

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(1) the eelgrass plays and the fucus plays of giving a bed for
 (2) herrings' eggs to be attached, giving habitat and shelter for
 (3) invertebrates and for juvenile fishes and other organisms that
 (4) are using this nearshore zone as a nursery, which many do. So
 (5) that is really the functioning of the subtidal system.

(6) Q All right. Now, when - is there anything else that's you
 (7) think we need to understand about how the system works
 before

(8) we start talking about what happens when we see the influx of
 (9) Alaska North Slope crude into the system.

(10) A Well, there's one other part of the system that I didn't
 (11) get to, which is somewhat self-evident but very important to
 (12) discuss, and that's the water column and what processes go on
 (13) there.

(14) Q Please.

(15) A I mentioned it briefly. The water column can be divided
 (16) into three zones. There's a very thin surface zone in which
 (17) surface tension is important and in which we find a variety of
 (18) microbes, like bacteria and also occasionally eggs and larvae
 (19) of marine animals. That group of organisms found in that
 (20) surface zone is called the neuston, so it's the biological
 (21) organisms of the surface film.

(22) Then as we go deeper in the water, we get to a layer where
 (23) light won't penetrate, so we also divide the water column into
 (24) the lighted zone and the unlighted zone. And in the lighted
 (25) zone we have phytoplankton, the single-celled plants of the

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(1) sea. And the phytoplankton there are fueled, their
 (2) productivity is fueled in part by the nutrients, the
 (3) fertilizers that flow off the land. The phytoplankton are
 (4) there and the phytoplankton and productivity is fed upon by the
 (5) zooplankton.

(6) Okay. Here's what we have, we've got "phyto" meaning plant
 (7) and "zo" meaning animal, so these are the animal plankton. So
 (8) these are the animals that are so small they can't swim against
 (9) the currents. They, like the small plants, are being carried
 (10) back and forth by the currents of the sea. So these two are
 (11) kind of hugs of the sea. And they, in turn, are the food
 (12) source for so many of the larval fishes that we find in this
 (13) system, so that there's a three-step food chain with the
 (14) phytoplankton, the zooplankton and the larval fishes eating the
 (15) zooplankton in that water column.

(16) Q Okay. And did you mention detritus in this context?

(17) A I did, and I - I probably should say something more, that
 (18) is that this subtidal sea floor is, based upon its economy, is
 (19) based upon the detritus, the plant material that shed from
 (20) these plants in the nearshore zone, and from the phytoplankton
 (21) and actually the feces of the zooplankton as they sink through
 (22) the water column, and occasionally large items like, for
 (23) instance, a dead whale that might fall to the sea floor. So
 (24) all these materials ultimately enter into this detrital food
 (25) chain. And in the course of bacteria decomposing these, they

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(1) release the nutrients that the plants use again, so that there
 (2) is a cycle of life as material moves through and through this
 (3) detrital process, ultimately gets released to allow new plant
 (4) growth in the system and complete the cycle of life in this
 (5) environment.

(6) Q Okay. Anything else in general we need to know about the
 (7) relationship between the land, the sea and the air before we
 (8) start talking about what happens when Alaska North Slope
 crude

(9) gets -

(10) A Well, the major issue that I haven't addressed is - I've
 (11) talked about the plants and animals and, to a limited degree,
 (12) organisms that come and go in this system, but mostly the
 (13) plants and animals that you find upon the land and intimate
 (14) attachment to the land. What I've not talked about adequately
 (15) is the role that this intertidal system place in servicing
 (16) organisms that come from the air, from the land and from the
 (17) sea that are higher consumer organisms that come to this zone
 (18) to feed, to take advantage of all this productivity and wealth
 (19) of food sources, and come to this zone to reproduce, and come
 (20) to this zone for other purposes, as well.

(21) Q What would be some examples of those?

(22) A Well, I think if I can organize these in some fashion, I've
 (23) spoken already of the larval fish and this nearshore zone is
 (24) the zone that supports the development of larval fish,
 (25) explicitly herring in early life stages, pink salmon for the

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(1) two months that they spend after emerging from the streams
 and

(2) entering the marine environment. So larval fish are found in
 (3) this environment.

(4) There are, in addition, marine animals at the interface of
 (5) this environment. We get consumers that come from all of
 them,

(6) and consumers in the marine environment include the fish, they
 (7) include the drill, and this is meant to be a generic drill to
 (8) give you a better idea than perhaps what the Trial-Link photo
 (9) does. It includes sea stars and another marine predator that
 (10) eats barnacles and other organisms in this environment. So it
 (11) services these species.

(12) There are others that I don't have depicted from the marine
 (13) environment that come to feed in this zone. Adult pink salmon
 (14) that come to spawn, feed on invertebrates and small fishes in
 (15) this habitat. Other salmonids, like dolly varden and cutthroat
 (16) trout, come to the intertidal zone and focus their feeding
 (17) there because of the richness of the food we find. Those are
 (18) marine animals. Those are from the sea that come.
 (19) There are those from the air. This is meant to be a
 (20) generic sandpiper, an animal that would come and probe into the

(21) sediments to catch the worms and other invertebrates that are
 (22) found in the intertidal zone on the sedimentary shores. There
 (23) are obviously many other birds that feed in this environment,
 (24) such as gulls, a generic gull illustrated here. Arctic terns
 (25) feed in this environment, and so this is a place where birds

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(1) come to feed. They feed in many different ways. For instance,
 (2) eagles and northwestern crows will scavenge carcasses that
 wash
 (3) ashore in the intertidal zone which will include, of course,
 (4) pink salmon as they return to breed and then ultimately die.
 (5) Birds, as well, use this zone for egg laying and, here
 (6) again, is our Arctic tern. The eggs are laid high on the
 (7) shore, above the areas where the tides will reach but still on
 (8) the beach, so it's in that beach environment where the birds
 (9) will come to roost, and this includes many, many species of
 (10) marine birds. I've just illustrated with the Arctic tern.
 (11) Sea mammals use this zone, intertidal zone, for feeding.
 (12) Here I have a picture of an otter, which is meant to represent
 (13) either a river otter or a sea otter. River otters, although
 (14) they sound like they are terrestrial, fresh water, they
 (15) actually do their feeding in the intertidal and nearshore zone
 (16) of the sea. They prey predominantly on fish, but on a variety
 (17) of invertebrates as well. So they come out of the rivers to
 (18) the sea to feed, just like the dolly varden and cutthroat trout
 (19) do the bulk of their feeding not in the rivers and streams
 (20) where they spend the winter, but in the nearshore where they
 (21) spend the summer.
 (22) The harbor seal is another marine mammal that uses this
 (23) environment. It's a fish eater and eats the nearshore fishes
 (24) in this system. It also uses this system for haulouts, to pup
 (25) and to molt. And then the system serves terrestrial

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(1) consumers. Deer, here is a picture intended to indicate Sitka
 (2) black tail deer. Deer in the winter are precluded from grazing
 (3) on their natural forage, which are the lands upland because of
 (4) the snow cover, and so they are restricted to the beach zone
 (5) where they have access to this kelp and seaweed material,
 (6) including the fucus. So in the winter, the deer are restricted
 (7) to foraging on fucus in this environment.
 (8) As well, bears use prey in this environment and they use
 (9) them just after hibernation, where similarly, the season is not
 (10) right for the berries upland to be ready for the salmon to be
 (11) returning, and so the bears, after hibernation, come to the
 (12) nearshore zone and prey upon notably, razor clams and also
 (13) mussels. They are two types of invertebrates that are
 (14) important, bear forage in this environment.
 (15) So the environment, in summary, serves for marine fishes
 (16) and other marine organisms to use, for animals of the air, the
 (17) birds, and for animals of the land. So like an interface, it
 (18) serves the systems all three of the systems so that it is an
 (19) interface, too.
 (20) MR. PETUMENOS: Your Honor, I wonder if I might have
 (21) what I have in my hand here marked as 251-4A, if we have a
 (22) sticker. It is a print, for those jurors who couldn't see the
 (23) screen real well, of what we just showed on the screen.
 (24) BY MR. PETUMENOS:
 (25) Q And we mustn't forget the eelgrass.

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(1) A Actually, I thought since it was done so well by the artist
 (2) that I wouldn't burden people with the eelgrass again, but
 (3) there it is. That is merely a depiction. It's a bit better
 (4) depiction because it shows you the soils that the eelgrass
 (5) grows in, whereas down here you couldn't really tell that it
 (6) was meant to be a soil.
 (7) MR. PETUMENOS: Your Honor, if this would be a
 (8) convenient time for the recess for the extension of the
 (9) University of North Carolina, we will take it now.
 (10) THE COURT: Sure, sure.
 (11) THE CLERK: Please rise. This court stands in
 (12) recess.
 (13) (Jury out at 9:47 a.m.)
 (14) Recess from 9:47 a.m. to 10:07 a.m.)
 (15) (Jury in at 10:07 a.m.)
 (16) THE CLERK: This court now resumes its session.
 (17) Please be seated.
 (18) MR. PETUMENOS: Are you all hooked up?
 (19) THE WITNESS: I think.
 (20) BY MR. PETUMENOS:
 (21) Q Dr. Peterson, before it gets too close to lunchtime and
 (22) people get hungry, I wanted to see if you could talk to the
 (23) jury about the food web and tell us how the food web works.
 (24) A Yes, I'd be pleased to.
 (25) Q Now, are the creatures that you have put on the board here

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(1) and described to us in this significantly interrelated with
 (2) respects to something called the food web?
 (3) A Yes, the food web is a schematic depiction of who eats whom
 (4) in the system. So it explains how energy flows from the sun
 (5) through the plants to the various animals in the system. My
 (6) intent is not to put every plant and every animal in this
 (7) system. However, my intent would be to show the major groups
 (8) and major types of organisms in the Prince William Sound,
 (9) northern Gulf of Alaska coastal ecosystem, so as to show where
 (10) they - where they sit, who eats whom and what the structure of
 (11) the ecosystem is, and that is indeed a food web.
 (12) MS. SMITH: Your Honor, while I'm very interested in
 (13) listening to this lecture, I'm just wondering what relevancy
 (14) the food web has to this case.
 (15) THE COURT: I can see it, counsel, so you can go
 (16) ahead.
 (17) MR. PETUMENOS: Very well.
 (18) A Let me begin on the floor.
 (19) MR. PETUMENOS: The jury doesn't need to stand on
 (20) ceremony, they can stand up if they can't see.
 (21) THE COURT: Absolutely.
 (22) A With the sun, the source of energy. You won't have to see
 (23) that again because that's pretty straightforward. And from the
 (24) sun, the sun provides the light energy that plants then convert
 (25) into tissue, into biomass, that's then used, provided there are

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- (1) the nutrients, the fertilizers.
 (2) There are four major sorts of plant groups that I've talked
 (3) about, and I've talked about to some degree already but I'll
 (4) show you what role they play in the system by going further.
 (5) First of all, we have the - I'm not sure. Is that green
 (6) visible or is that absolutely -
 (7) MS. SMITH: Not very.
 (8) A Okay, these are plants - and plants are green but they're
 (9) not going to be today.
 (10) BY MR. PETUMENOS:
 (11) Q Is this a better green today or - I don't know.
 (12) A I'm into black. I'll use black.
 (13) First we have what I'll call the macrophytic plants.
 (14) "Macro" means large, and what I'm talking about here are the
 (15) fucus, the kelps, seaweeds, and sea grass, the eelgrass. Okay,
 (16) that's one group of plants. And an arrow here will mean that
 (17) energy flows from the sun to them.
 (18) The next group I will include will be the phytoplankton,
 (19) those single-celled algae, and then I'll have plant detritus as
 (20) a separate category, and plant detritus actually is composed of
 (21) materials that come largely from the breakdown of these large
 (22) macrophytic plants. And then finally there is a group we will
 (23) call the microalgae.
 (24) Q Just so I understand, the plant detritus, which is this
 (25) dotted line through here you just drew.

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- (1) A Yes.
 (2) MS. SMITH: Detritus.
 (3) MR. PETUMENOS: Thank you, counsel. Detritus. You'd
 (4) think being Greek I would be able to spell some of these
 (5) things.
 (6) BY MR. PETUMENOS:
 (7) Q Is that like - would an analogy be leaves that fall in the
 (8) forest to the ground or -
 (9) A Yes, indeed. It's leaves and other plant parts that are
 (10) falling there and then used by animals and decomposed by
 (11) bacteria.
 (12) And fungi that are an important part of the system. These
 (13) are basically the four main types of plants at the bottom of
 (14) the food chain. And then I'll track where these plants go and
 (15) the sorts of things that consume them and put some of those
 (16) animals into the picture that we have seen in the photographs
 (17) on the Trial-Link.
 (18) For example, and this animal, first animal level will be
 (19) the plant eaters in the system, or the herbivores, which since
 (20) I'm conveniently here, I will put on the list: herbivores,
 (21) plant eaters.
 (22) Q Vegetarians of the sea?
 (23) A Indeed they are. I think I'll start with a group of
 (24) limpets, periwinkles, chitons, those grazers. They are getting
 (25) their energy from two sources, grazing the large macrophytic

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- (1) plants and these microalgae. Microalgae, I need to talk about
 (2) just for a moment. I'm going to add an adjective to that,
 (3) which is benthic, and benthic means on the bottom, as I
 (4) mentioned earlier.
 (5) These microalgae are really much the same as the
 (6) phytoplankton in the water column. They are single-celled
 (7) small algae. It's just that they live on the surface, on the
 (8) sea floor instead of floating and being transported in the
 (9) water column, that's the difference so they're in a different
 (10) place.
 (11) Okay. After my limpets, periwinkles, let me add some more
 (12) that you're familiar with. What do the barnacles do? Well,
 (13) they graze on phytoplankton. What do the mussels do?
 (14) Similarly, graze on phytoplankton.
 (15) As well, we have another organism, wasn't depicted in our
 (16) pictures of the shallow subtidal, the sea urchin. And the sea
 (17) urchin grazes on these macrophytic plants, on the kelps
 (18) explicitly. The sea urchin is like a little pin cushion for
 (19) those that haven't seen them. They've got a very fragile shell
 (20) with spines coming out, and they walk around and graze much
 (21) the way the other grazers do, except that they focus the grazing
 (22) attention on the larger plants in the shallow subtidal system.
 (23) Then we've got a group of suspension-feeding clams. Now,
 (24) these are things like butter, littleneck grazer and so forth.
 (25) And those, too, feed on the phytoplankton.

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- (1) We have the zooplankton that we've already met, the bugs of
 (2) the sea. They eat the phytoplankton. We have a group - I've
 (3) talked about these as well and I have to use another term,
 (4) phytal invertebrates. Phytal means - is the adjective that
 (5) means in association with plants, and these phytal - I'll
 (6) write it up here - these phytal invertebrates include a lot of
 (7) crustaceans. Crustaceans are the group that includes crabs
 (8) and
 (9) shrimp, things with a lot of legs and in a form that kind of
 (10) reminds you of bugs. The sorts of crustaceans that are these
 (11) phytal invertebrates here of significance are ones like
 (12) harpacticoid is one group, copepods, there are others such as
 (13) isopods that are involved in this group. These are
 (14) invertebrate animals associated with the plants.
 (15) And finally, notice I used a term "suspension-feeding"
 (16) here, too. That means the animals take the food in suspension
 (17) out of the water, they capture their food, and that's really
 (18) what barnacles and mussels do, and that's what the clams do
 (19) that are the hard clams that we eat.
 (20) There's another group, though, which is the sedimentary
 (21) invertebrates which are things like worms, like an earthworm,
 (22) except they're in this environment. Some soft clams, other
 (23) amphipods, are an important group, also, in this system.
 (24) Amphipods are another type of crustacean, another sort of bug
 (25) of the sea.
 (26) Q And the reason you are placing them in two different

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- (1) circles is?
- (2) A That they are – there are different species of them, some
- (3) that inhabit the soft sediments and live in the muds and the
- (4) soils; others that inhabit the – the algae, the seaweeds and
- (5) the kelps, and live in association with them.
- (6) Now, these soft sediment invertebrates – and these are the
- (7) deposit-feeding ones – eat the organic material in the
- (8) sediments, in the deposits, themselves, so they're eating a lot
- (9) of the plant detritus, and they're eating some of these
- (10) attached small algae that are growing on the surface of the
- (11) sediments. So that's their basic diet. So this one, this is
- (12) the plant eaters, that level.
- (13) Now, I've introduced you to some of the next level. The
- (14) next level are the carnivores, the first level carnivores that
- (15) are eating these things, and I'll give you a couple of these.
- (16) Let's see how I'll do it that's visible. We had the drills on
- (17) the picture. The drills take predominantly barnacles and
- (18) mussels, as well as other organisms.
- (19) We have the sea stars. Those, too, take barnacles and
- (20) mussels, as well as some other species in the system.
- (21) There are organisms, such as Dungeness crabs, that come
- (22) into play. They feed upon mussels and snails of a variety of
- (23) sorts and even those things over here, soft sediments.
- (24) We've got in this group, as well, larval juvenile herring.
- (25) And they are feeding on the zooplankton. We've got what I'll

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- (1) call other forage fish. These are things like capelin,
- (2) sandlance and others. By other forage fish, a forage is
- (3) something you eat, a crop, if you will, and herring and capelin
- (4) and sandlance are the primary forage fish for higher level
- (5) consumers, bigger fishes, birds and mammals in the system.
- So
- (6) that's why I say that these are other forage fish in this
- (7) depiction.
- (8) Q And they are feeding on?
- (9) A And they are feeding on the zooplankton.
- (10) Q So as we read your chart, we look – the arrow points to
- (11) the food – the food is pointed at the other species; right?
- (12) A Yes, that's right. This arrow is the direction whereby
- (13) energy or materials flow, flow from the diet to what eats it,
- (14) if you will.
- (15) Now, there's a group of plant-associated fishes that is fed
- (16) dominantly by the invertebrates that are associated with those
- (17) plants. There are also juvenile pink salmon of major
- (18) importance in the system. They eat the zooplankton. They also
- (19) eat these crustacean members of phytal invertebrates, the
- (20) small invertebrates associated with the plants and with some of
- (21) the – with some of the invertebrates associated with the
- (22) sediments, with the soils.
- (23) Now, we move to higher level consumers in this system.
- (24) Q Consumers means –
- (25) A Consumers means predators, and often we use the
- terminology

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- (1) of primary predators, meaning predators who are indeed eating
- (2) the herbivores or the plant eaters. And then we move up in
- (3) this direction to higher level consumers, consumer species.
- (4) One of these, of significance to this system, is the sea
- (5) otter. The sea otter preys preferentially on sea urchins; also
- (6) eats clams, also eats mussels, especially if urchins are
- (7) unavailable. Also eats Dungeness crabs if those others are
- (8) unavailable.
- (9) We've got adult herring in this system. Now, adult herring
- (10) eat zooplankton, but they eat bigger zooplankton than their
- (11) larval and juvenile herring. In fact, larval herring will
- (12) often eat things like eggs and the very small life stages of
- (13) zooplankton, and then as they get bigger, they eat bigger
- (14) ones.
- (15) Adult herring also eat larval and juvenile herring. There
- (16) is a degree of cannibalism to the herring.
- (17) I'll put adult pink salmon as a separate group. Adult pink
- (18) salmon consume smaller fishes, the forage fishes of herring and
- (19) capelins and sandlance, as well as they consume
- (20) plant-associated fishes. So they sit at that position in the
- (21) food chain. Some of these – well, I'll move here.
- (22) Now, what this – this takes it to – to a stage that does
- (23) not include the sea birds or many of the mammals, except to the
- (24) degree that the sea otter sits there. And so now I'm going to
- (25) add some of the birds and where they fall in the sequence.

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- (1) There are a variety of shore birds that eat invertebrate
- (2) prey on rocky shores. Black oyster-catcher, surf bird,
- (3) turnstones are a couple of species in this system, and those
- (4) are preying on things like the limpets and periwinkles and
- (5) predominantly on the mussels.
- (6) Another bird of significance are the – is the sea duck, of
- (7) which there are a variety of species of significance in our
- (8) northern Gulf of Alaska system, the harlequin, three species of
- (9) scoters, two species of goldeneyes, and they prey very heavily
- (10) on mussels in this system, but also on a variety of other
- (11) invertebrates from the shallow sea floor.
- (12) Now, killer whales are a very obvious feature of this
- (13) system. Killer whales prey upon marine mammals, such as
- (14) occasionally sea otters. Also they prey upon harbor seals and
- (15) steller sea lions, especially the young, and they prey upon
- (16) fishes, especially fishes the size of the salmon. Now the
- (17) harbor seals, steller sea lions, themselves are fed by
- (18) predation on a variety of these forage fishes and plant-
- (19) associated fishes. That's where they dominantly come into the
- (20) ecosystem.
- (21) Q Could I ask a question about the circle where you've placed
- (22) adult pink salmon? Is there a reason to differentiate between
- (23) the various species of salmon, or would that apply to –
- (24) A There is a variety of – there are a variety of differences
- (25) among the species, but I've just incorporated this as one of

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(1) the most abundant species. I should clarify, this is by no
 (2) means meant to be complete and include every species. It
 would
 (3) be hopelessly complex, and I think even as it is the impression
 (4) that this is going to leave is one of how many different
 (5) pathways and how much of a web it really is.
 (6) So because the pinks are so much more abundant in the
 (7) system, I've shown to put those in that way, and it's similar
 (8) for some of the others like the crabs and things, that I've
 (9) chosen a particular one. The pinks – there are other salmon
 (10) and they play this role in the sense of being prey for killer
 (11) whales in the system and being prey for some of the seals,
 (12) which I didn't draw in and other organisms, too.
 (13) Q All right.
 (14) A Yeah, there could be others. I just used the one to
 (15) simplify life in this particular diagram.
 (16) Q We're going to have to keep it a little simple because
 (17) you're running out of space on the board.
 (18) A I am. I was looking, I was looking to exactly where I
 (19) could put in the next set of comments.
 (20) One species that I think I won't draw in, but I simply will
 (21) illustrate, is man. Okay, that there is harvest and so there's
 (22) a lot of arrows that are coming from a variety of things of
 (23) importance in this system, which includes Dungeness crabs,
 (24) herring, otters, seals and sea lions, ducks, eggs of a variety
 (25) of shore birds, mussels, chitons, suspension-feeding clams, all

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(1) of the salmonids that we see here and other salmonids. So
 (2) there's a complexity that goes beyond what we have identified
 (3) at this point.
 (4) Now, let me take another group here, which is the harbor
 (5) porpoises, dalls porpoises. They are a group that prey upon
 (6) herring and other forage fishes.
 (7) We have birds like the gulls, including mewes, glaucous,
 (8) glaucous-winged, kittiwakes.
 (9) Q All different kinds of gulls?
 (10) A A group of gulls in that box. Yes, all different kinds of
 (11) gulls. And they, too, are predominantly predators on a variety
 (12) of these – of these forage fishes.
 (13) And I've indicated earlier the bear plays a role in this
 (14) system. The predation by bear is quite intense at times on the
 (15) pink salmon and their carcasses as they've come to shore.
 (16) There is other bear predation that I noted and I won't draw,
 (17) but that includes eating of mussels and eating of clams, at
 (18) least leads to bear.
 (19) Similarly, we have Sitka black-tailed deer with an arrow
 (20) here. That includes the fucus and seaweeds cast up on the
 (21) shore. And obviously other arrows from the terrestrial plants
 (22) that form the bulk of their diet during the nonwintertime, when
 (23) they're not restricted to eating these seaweeds and seaweed
 (24) materials on shore.
 (25) There was another group of birds which include the murre

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(1) and murrelets. They are predominantly fish eaters, although
 (2) they'll eat some larger zooplankton as well. And the fish that
 (3) they are dominantly eating are the forage fishes – should put
 (4) a larger arrow up from the zooplankton to that system.
 (5) Finally, see where I lost track – trying to see where the
 (6) best place to put this one is. Another, alcids, alcids are the
 (7) group of birds that include the puffins, that we recognize.
 (8) Another alcid, pigeon guillemots, is also an eater of forage
 (9) fishes like herring, sandlance, especially, and some of the
 (10) nearshore plant-associated fishes in the system.
 (11) Q Okay.
 (12) A While I've left out things, it's intentional. It's long
 (13) enough.
 (14) Q Tell me, Dr. Peterson, are there problems with the
 (15) ecosystem when the species get out of balance for any reason?
 (16) A Well, one of the major reasons that we, as ecologists use a
 (17) food web – which is what this is – as a tool to understand
 (18) the system, to know how species are linked together in that
 (19) system. And the point is that a species in an ecosystem is
 (20) dependent upon the prey that it eats, the habitats that it
 (21) uses, and the predators that consume it. So species in a
 (22) system are linked together in a web of interactions.
 (23) One of these suites of interactions that is best
 (24) illustrated in the ecological literature is, in fact, the
 (25) sequence of interactions involving the sea otter in this

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(1) northern Gulf of Alaska system. The sea otter is called in the
 (2) literature a keystone species, and by a "keystone" we mean a
 (3) species that when you change it, it has ramification and
 (4) influence that move very strongly through the system, and this
 (5) is a system that is understood as being tightly connected,
 (6) where these connections that follow from changes in sea otter
 (7) abundance move very strongly through the system.
 (8) In point, it goes like this. Sea otters prefer sea urchins
 (9) in their diet. In the absence of sea otters, sea urchins grow
 (10) in population size without a control and they overgraze the
 (11) kelps and seaweeds in the shallow subtidal that they feed
 (12) upon.
 (13) In the absence of those kelps and seaweeds, we have a great
 (14) diminution of the plants related – plant-related invertebrates
 (15) that live on the kelps and seaweeds, which in turn affects the
 (16) plant-associated fishes.
 (17) Furthermore, I talked about competition in this environment
 (18) and the fact that space is limited and that there's competition
 (19) for space. When these plants are reduced in abundance, then
 (20) barnacles and mussels increase in abundance to take up that
 (21) space that is freed by the overgrazing by the sea urchins.
 (22) So whether you've got sea otters or don't have sea otters
 (23) in this system has a tremendous cascade of effects that moves
 (24) through the system and affects other levels, other consumers,
 (25) other prey, other habitats in the system, and this is why we

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- (1) call the sea otter a keystone species in this environment and
 (2) why it has so much of an influence in this system.
 (3) Q We have heard an Exxon lawyer say in this courtroom that -
 (4) show us barnacles that are on the seashore, show us the
 (5) presence of living things on the seashore. Is it as simple as
 (6) being able to - in studying an ecosystem, is it as simple as
 (7) being able to show that something alive is on the shore to
 (8) determine whether the ecosystem is in balance?
 (9) A Well, certainly a - a mere visit and examination of the
 (10) shore doesn't suffice to replace the in-depth studies and
 (11) science that one might create, as well. There is indigenous
 (12) knowledge of these sorts of interactions that is vital, and
 (13) there's a record of understanding that people have to bring to
 (14) this of the history of the past that is important to put into
 (15) place in understanding how the ecosystem works.
 (16) Q Let's talk about barnacles, as an example. Are there more
 (17) than one kind of barnacle?
 (18) A Yes. I have lumped things in the course of laying this
 (19) out, and there are different sorts of barnacles included in
 (20) here, some barnacles that are long-lived and usually abundant
 (21) in the ecosystem, others that are opportunistic barnacles that
 (22) are usually rare but can take advantage of disturbances to
 (23) move
 (23) in abundance into the system.
 (24) Q So if we see a picture or a photograph on a shoreline of
 (25) some barnacles living, would it be important to know what kind

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- (1) of barnacles they are?
 (2) A Yes, it would be important to know whether that system is
 (3) like it should be or whether one barnacle has replaced another
 (4) that is not normally abundant in the community.
 (5) Q Are there certain species or animals in this food chain
 (6) that would specifically relate to Prince William Sound, lower
 (7) Kenai and Kodiak, which are particularly key to how this whole
 (8) system gets together?
 (9) A Yes, there are, and those tend to be illustrated by the
 (10) numbers of arrows that are emanating from the circle that
 (11) represents that species.
 (12) In particular, in this system, the herring, the other
 (13) forage fishes, which include especially the sandlance and
 (14) capelin and the pink form are very vital and important
 (15) fish-based resources that large numbers of consumer species
 (16) of
 (16) sea birds and marine mammals eat as a major part of their
 (17) diet.
 (18) In fact, herring contribute to the diet in a major way of
 (19) over 40 species, and groups of species of predators, which I
 (20) haven't entirely illustrated here but I've just illustrated to
 (21) a small degree.
 (22) MR. PETUMENOS: Your Honor, I would like to move into
 (23) evidence Exhibit Number 251-6, which was the photograph of
 (24) the
 (24) focus that the doctor spoke about earlier in the examination.
 (25) (Exhibit 251-6 offered)

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- (1) MS. SMITH: No objection.
 (2) THE COURT: 251-6?
 (3) MR. PETUMENOS: Correct.
 (4) THE COURT: It's admitted.
 (5) (Exhibit 251-6 received)
 (6) MR. PETUMENOS: I have a copy here for the jury that
 (7) they can look at, and I would move into evidence Exhibit
 (8) Number
 (8) 250, which is the board with the shoreline segments and the
 (9) creatures that are around the border of it.
 (10) (Exhibit 250 offered)
 (11) MS. SMITH: That's the black?
 (12) MR. PETUMENOS: Correct. Very big one.
 (13) MS. SMITH: No objection.
 (14) THE COURT: 250 is admitted
 (15) (Exhibit 250 received)
 (16) MR. PETUMENOS: I would move into evidence, Exhibit
 (17) Number 1510, the food chain.
 (18) (Exhibit 1510 offered)
 (19) THE COURT: 1510 is admitted.
 (20) (Exhibit 1510 received).
 (21) MR. PETUMENOS: I would need to rearrange the
 (22) courtroom if we could take a short recess.
 (23) THE COURT: Sure.
 (24) THE CLERK: Please rise. This court stands in
 (25) recess.

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- (1) (Jury out at 10:43 a.m.)
 (2) (Recess from 10:43 a.m. to 10:55 a.m.)
 (3) (Jury in at 10:55 a.m.)
 (4) THE CLERK: This court now resumes its session.
 (5) Please be seated.
 (6) BY MR. PETUMENOS:
 (7) Q Dr. Peterson, you've now described for the jury how the
 (8) ecosystem works. Do you have an opinion as to whether this
 (9) system that you've described is susceptible to floating
 (10) pollutants, such as Alaska North Slope crude oil?
 (11) A Yes, it is.
 (12) Q And could you explain to the jury how it is impacted, in
 (13) general terms?
 (14) A Yes. I think it's useful to conceptualize the process in
 (15) two stages: A floating pollutant, such as oil, that floats on
 (16) the sea surface, contacts those organisms that, themselves, are
 (17) using the sea surface, and can induce substantial mortality of
 (18) birds, mammals, stages of invertebrates and fish that use that
 (19) surface zone.
 (20) Then that's the first stage of what might be called acute
 (21) effects from the spill. But then as that oil is transported,
 (22) the same forces of wind, waves, currents and tide that move
 (23) foods into the intertidal zone and help make the foods rich,
 (24) bring floating materials, including oil, into that intertidal
 (25) nearshore environment, deposit the oil on the environment,
 work

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(1) it in and out by the rise and fall of the tides so that a
 (2) floating pollutant is tracking directly into this intertidal
 (3) zone, this key area for the production of ecosystems services,
 (4) such as for larger animals in the system.
 (5) Q Let's talk about some of the specific things that happened
 (6) in the Exxon Valdez oil spill as it might relate to this
 (7) process. You talked about the fucus being sort of the forest
 (8) of the intertidal zone. What happened to the fucus as a result
 (9) of the Exxon Valdez oil spill when it spilled in the water?
 (10) A There was substantial damage done to the fucus by the spill
 (11) and by the treatments that followed the spill on the
 (12) shoreline. The study done by the Trustees was one that
 (13) examined fucus. It examined fucus cover and abundance and
 (14) biomass in all three geographic areas of the spill; in Prince
 (15) William Sound, in the Kenai Peninsula, Lower Cook Inlet, in the
 (16) Kodiak Archipelago and Alaska Peninsula, those three regions.
 (17) It also looked at all four major shoreline types in the
 (18) region, exposed rocky shores, sheltered rocky shores, coarse
 (19) textured shores, meaning cobbles and boulders, and estuarine
 (20) fine sediment shores.
 (21) The study was initiated in earnest in 1990, so we have data
 (22) originating from 1990, and some of the study sites were
 (23) continued through into 1993. The fucus recorded a, between
 (24) 10
 (25) and 90 percent decline on average, as measured in 1990. Its
 (26) recovery on those shores was slow, even through 1991 and
 (27) even

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(1) in 1993. In the last data set, the fucus return is not
 (2) complete, with fucus being missing and varied - and lower in
 (3) abundance by approximately 10 to 20 percent high on the
 (4) shores
 (5) of the spill areas.
 (6) Q You mentioned that we had the four kinds of shorelines, and
 (7) one of the ones you talked about was rocky shores. For
 (8) purposes of the importance to the ecosystem, as opposed to
 (9) berthing a boat on shore or something like that, is a rocky
 (10) shore an important kind of shoreline for the abundance and
 (11) richness of the ecosystem?
 (12) A Oh, yes. The - my discussion and my - my board picture
 (13) was one of a rocky shore to indicate the organisms that live in
 (14) that environment and the way that other organisms from the air,
 (15) from the land and from the sea use that environment as habitat
 (16) and for prey on other organisms.
 (17) Q What about eelgrass, why is it important?
 (18) A Eelgrass serves as habitat. It serves as the bed for -
 (19) for the deposition of eggs of herring, so herring lay their
 (20) eggs on the eelgrass as one of the major types of environments
 (21) that holds the eggs. And it also provides the habitat in which
 (22) early preproductive stages of a variety of fish find shelter
 (23) and find prey, so it's an important habitat in the system. It
 (24) also provides the plant material that is detritus, that then
 (25) goes to the deeper sea floor and helps fuel production of such
 (26) things as shrimp, crabs and bottom-feeding fishes.

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(1) Q How did eelgrass do when the - in the Valdez oil spill?
 (2) A There was a Trustee study of eelgrass. It examined the
 (3) abundance of eelgrass in 1990 and in 1991. In 1990, the
 (4) eelgrass in Prince William Sound, which is where the study was
 (5) conducted, was reduced by an average of 30 percent in its
 (6) abundance of stalks and flowers. In 1991, the recovery of the
 (7) eelgrass was nearly complete in those environments.
 (8) Q What about kelps, large and small?
 (9) A The study of kelps was one that was conducted in 1990, and
 (10) what that demonstrated was that the large kelps on oiled shores
 (11) were greatly reduced in abundance compared to the smaller
 (12) kelps, indicating that the large kelps had suffered from the
 (13) oil and clean-up activities the year before and been reduced in
 (14) this environment.
 (15) Q Now, we talked about the importance of mussels a little bit
 (16) in the earlier part of your examination, and tell us, do we -
 (17) more fully, why are mussels important to the system?
 (18) A Well, mussels are one of the - what could be called
 (19) universal prey organisms in the system that feed a number of
 (20) species that eat invertebrates on the shore. They are quite
 (21) abundant. They are quite productive and they are good to eat.
 (22) So a whole variety of species focuses their predation activity
 (23) on mussels.
 (24) Q Can you give us some examples of what species prey on
 (25) mussels?

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(1) A Yes, among the invertebrates, various species of sea stars,
 (2) of which there are several, various species of crabs, including
 (3) Dungeness crabs will prey upon these. Among the birds, there
 (4) are a group of sea ducks which preys intensely on these
 (5) mussels
 (6) and easily five species, perhaps more. Three scoters, two
 (7) goldeneyes and harlequin ducks. There are black
 (8) oyster-catcher
 (9) and other shore birds that prey upon mussels like turnstones,
 (10) surf birds. Mussels also form part of the diet of river
 (11) otters, for example and a variety of other consumers.
 (12) MR. PETUMENOS: Could we show what has been marked and
 (13) admitted as Exhibit Number 737-18?
 (14) Your Honor, I have a hard copy of that same exhibit for the
 (15) jury.
 (16) BY MR. PETUMENOS:
 (17) Q I will represent to you, Dr. Peterson, that this is a
 (18) photograph that was earlier admitted into evidence here of a
 (19) mussel bed taken in 1993, and that the witness who took the
 (20) photograph identified the material in the hole that you see
 (21) there as oil.
 (22) Can you explain to the jury -
 (23) MS. SMITH: Can we know where this was taken?
 (24) THE COURT: Yes, counsel. Do you remember?
 (25) MR. PETUMENOS: I think it's Riou Cove. I'm not sure
 (26) it's of record, in the Prince William Sound area.
 (27) THE COURT: I don't recall, counsel. I remember the

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- (1) exhibit is admitted, but I don't recall.
- (2) BY MR. PETUMENOS:
- (3) Q Can you describe how that phenomenon works in the system
- (4) with the oil underneath the mussel bed?
- (5) A Yes. The mussel bed serves as a blanket or what we call
- (6) in - in physical terms, an armor over the sediments and the
- (7) mussels sit there, cheek to jowl. They have byssal threads
- (8) that go down in and attach to rocks and attach to each other
- (9) and attach to other byssal threads, so they form an actual
- (10) blanket of mussels where they are dense. In that environment,
- (11) the mussels, themselves, shelter the sediments from the action
- (12) of waves, from oxygen, and materials can get deposited, work
- (13) their way under the mussel beds, where they are not in direct
- (14) contact with oxygen, with tidal energy, and with the water
- (15) movement above, and that is where oil has become sheltered,
- (16) beneath those mussel beds, and continues to be present.
- (17) Q How did mussels do in the Exxon Valdez oil spill?
- (18) A There are reductions in abundance of mussels, as
- (19) demonstrated by the Trustee study that examined them on
- (20) several
- (21) sorts of shorelines. As a rule, mussel beds were not subjected
- (22) to the pressurized hot water treatment that the rest of the
- (23) shore was subjected to, so that mussels were not removed by
- (24) that treatment and killed by that treatment to the same degree
- (25) that other organisms were in that environment.
- (25) Q Let's talk about the direct impacts of the spill on some of

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- (1) the species that we've just described. What happens, for
- (2) example, to a sea otter in 1989 when the oil is first spilled?
- (3) A Well, the sea otter came in contact - many sea otters came
- (4) in contact with the floating oil. They did not do avoidance of
- (5) the oil. The oil encountered them. The fur got oiled of sea
- (6) otters, and sea otters use that fur for warmth, to maintain
- (7) body temperature, which is necessary for survival. So as the
- (8) fur became matted with oil, hypothermia set in and many otters
- (9) died from that. As well, otters died from the habit of
- (10) preening their fur and licking to clean it, which gave direct
- (11) ingestion of the oil as it struck the shore. The otters'
- (12) haulouts on the beach, themselves, were oiled and so
- (13) continued
- (14) to become oiled at those haulouts and, in essence, there were
- (15) over a thousand dead oiled otters that were recovered after the
- (16) spill, which is a lower limit to how many otters actually were
- (17) killed by the spill.
- (17) Q What are the estimates for the otter kill as a result of
- (18) the Exxon Valdez oil spill in Prince William Sound?
- (19) A The various estimates of looking at what happens to an
- (20) oiled otter when it would be found and come ashore, the
- (21) estimates are between 3,500 and 5,500 otters died as a
- (22) consequence of the spill.
- (23) Q What about fishes, what happens to fish in 1989 when the
- (24) Exxon Valdez spill occurred?
- (25) A The greatest effect on fishes was the effect that occurred

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- (1) on pink salmon and herring, because of their use of the
- (2) intertidal environment where the oil came, and which is most
- (3) susceptible to a floating pollutant, and where they lay their
- (4) eggs, and there is a tremendous decline in the returns of
- (5) herring and salmon that can be traced to their exposure, not
- (6) only to the exposure of those eggs, but also the exposure of
- (7) other life stages to the oil.
- (8) Q How about some of these sea mammals such as seals, how
- (9) did
- (9) they fare?
- (10) A Harbor seals, a consumer of nearshore fishes in this
- (11) system, harbor seals suffered a large decline in the spill
- (12) area. In the latest molt count from July of 1993, there were
- (13) 51 percent fewer harbor seals at oiled sites as compared to the
- (14) year 1988, before the spill, when we had previous data.
- (15) Whereas at the unoiled sites, there had been a decline of 11
- (16) percent, so the decline from 88 to '93 is five times greater,
- (17) and that has not - the damage done by the spill has not
- (18) equalized the otter abundances - sorry, the harbor seal
- (19) abundances in oiled and unoiled shores.
- (20) Q Let's talk about some of the birds that you described that
- (21) might be predators on such things as mussels, like the
- (22) harlequin duck. How did the harlequin duck do in the Exxon
- (23) Valdez oil spill?
- (24) A Well, like the collections of oiled dead otters, and other
- (25) mammals that occurred after the spill, there were collections

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- (1) of oiled dead birds that were created after the spill that gave
- (2) an indication, again, of the lower estimates of mortality from
- (3) the direct effects of oiling.
- (4) Harlequin ducks had a high initial mortality, as addressed
- (5) by the counts of dead ducks in that initial collection.
- (6) Subsequently, harlequin ducks have demonstrated negligible
- (7) production of young ducks in the oiled areas of Prince William
- (8) Sound through 1993, so that the effects on their abundance
- (9) continue.
- (10) A study funded by the Trustees to look at how abundance of
- (11) harlequin ducks differs between oiled and unoiled areas in
- (12) Prince William Sound has demonstrated that by comparison to
- (13) 1994, in July 1991 counts there were only 17 percent of the
- (14) number of harlequin ducks that we would have expected. In
- (15) other words, this is a study that compared 1984 surveys to 1991
- (16) surveys. It did it in areas that were oiled and unoiled, and
- (17) it asked, if the pattern occurred - if the pattern in the
- (18) oiled zone matched what we would expect by the pattern in the
- (19) unoiled zone, how many harlequin ducks would we see. The
- (20) answer is that we would have seen many more and there were
- (21) only
- (22) 17 percent of what would be expected.
- (22) Q Dr. Peterson, what about clams?
- (23) A Clams have demonstrated a major decline in abundance.
- (24) The
- (24) two species as a consequence of the oiling, the two species of
- (25) clams which are abundant enough to be analyzed in the
- (25) sampling

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(1) that was done for clams are littleneck and butter clam.
 (2) Littleneck and butter clam showed reductions on shores that
 (3) were oiled and treated by pressurized hot water of
 (4) approximately 90 percent, and that 90 percent reduction is
 (5) evident in all three years that they were studied in '89, '90,
 (6) '91.
 (7) There, in addition, was sampling done to look at
 (8) recruitment of the clams by looking at the small juveniles.
 (9) The juvenile clams did not show any recovery in recruitment
 (10) during that period of sampling, and that added recruitment will
 (11) be required before the adult clam population reaches its
 (12) initial size that it would have been at in the absence of the
 (13) spill.
 (14) Q Dr. Peterson, I will represent to you that later in this
 (15) trial there will be witnesses that will testify – who will
 (16) talk about the importance of whether or not there is
 (17) uncertainty with respect to the environment and how the
 (18) environment will do. Are there other areas about which you are
 (19) familiar where the scientists just simply don't know what the
 (20) ultimate effects will be on certain species?
 (21) A Yes. There are many resources of this system that the
 (22) scientists who have studied this for the Trustee Council are
 (23) uncertain about their recovery prospects, the time frame of
 (24) that recovery in the system. I could list several.
 (25) That list, though, would be a minimal list, because the

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(1) numbers of species studied in this system is a small – are a
 (2) small number of species. It's absolutely impossible to address
 (3) every component of the ecosystem and to be able to have a
 (4) study
 (5) so large as to include all of them. So there are many species
 (6) on which no study was initiated, and even including species for
 (7) which there is local indigenous knowledge of what appear to be
 (8) large changes in populations since the spill, but that are
 (9) difficult to study as biologists and, therefore, we will never
 (10) know exactly what the effects of the spill were and what the
 (11) recovery is.
 (12) Q If a person were interested in reading literature and
 (13) becoming an educated person with respect to how the
 (14) ecosystem
 (15) is doing in Prince William Sound, the lower Kenai and Kodiak,
 (16) after reading all the studies that there are, would you expect
 (17) that a reasonable inquirer would come away with an abiding
 (18) sense of certainty about what the state of affairs is?
 (19) MS. SMITH: I object to that question as calling for
 (20) speculation as being ambiguous.
 (21) THE COURT: Counsel, I lost the question. It's an
 (22) awfully complex question.
 (23) MR. PETUMENOS: Should I try and shorten it, you
 (24) think, just a bit?
 (25) THE COURT: Yes.
 (26) BY MR. PETUMENOS:
 (27) Q Are there differing opinions about some of these things in

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(1) the literature?
 (2) A Yes. I think science can be characterized by differences
 (3) of opinion.
 (4) Q And is there a lot of literature that states that there's
 (5) simply no – that there are no conclusions that can be drawn on
 (6) some of the issues?
 (7) A Yes.
 (8) Q So if you were to read a fair cross-section of all the
 (9) studies that have been done, there are differing points of view
 (10) about what has happened in the area of Prince William Sound;
 (11) yes?
 (12) A Yes, that's true, and that applies to organisms for which
 (13) we have data. There's even more uncertainty about organisms
 (14) for which no data was even taken.
 (15) MR. PETUMENOS: Thank you, Dr. Peterson.
 (16) Your Honor, I have no further questions.
 (17) MS. SMITH: Your Honor, I could take five minutes
 (18) or –
 (19) THE COURT: We've got a jury room out here. I can
 (20) just put the jury right here and come back in in five minutes.
 (21) MS. SMITH: Okay, that would be great.
 (22) THE CLERK: Please rise. This court stands in
 (23) recess.
 (24) (Jury out at 11:16 a.m.)
 (25) (Recess from 11:16 a.m. to 11:23 a.m.)

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(1) (Jury in at 11:23 a.m.)
 (2) THE CLERK: Please rise. This court now resumes its
 (3) session.
 (4) MS. SMITH: Dr. Peterson, my name Linda Smith, and I'm
 (5) going to be cross-examining you. Before I start, I'm going to
 (6) be giving you a stack of paper. One pile is your deposition
 (7) testimony in case you need to refer to it in examination, and
 (8) your other stack is the testimony in federal court, and that
 (9) transcript will be there as well.
 (10) CROSS EXAMINATION OF DR. CHARLES H. PETERSON
 (11) BY MS. SMITH:
 (12) Q Dr. Peterson, I look at the food web that you just put
 (13) together for us and I marvel. Isn't the interaction of all the
 (14) living things in the Sound a wonder to behold?
 (15) A Is that a question?
 (16) Q Yes, it is.
 (17) A Yes, I think it is.
 (18) Q And if you look at all your arrows going back and forth,
 (19) Mother Nature made sure that living things have a lot of
 (20) different ways to get the food they need; didn't she?
 (21) A I would answer that by saying that some things are more
 (22) specialized than others and they differ, but many organisms eat
 (23) many prey, some organisms are specialized on some prey.
 (24) Q Is that a yes or a no?
 (25) A That's a yes to those species that are general in their use

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- (1) of the environment and diet, and a no for those species that
 (2) are specialized.
 (3) Q Okay. In order to live on the Sound, the plants and
 (4) critters have to be pretty resilient; don't they?
 (5) A The organisms, yes, need to be adapted to the environment
 (6) in which they're found.
 (7) Q The conditions in the Sound aren't exactly like Hawaii; are
 (8) they?
 (9) A No, Hawaii surely is an environment that differs.
 (10) Q Here we have harsh winters, strong waves, freezing
 (11) temperatures and storms; correct?
 (12) A Yes.
 (13) Q And the waves and the wind throw rocks and boulders and
 (14) logs and ice against the shore?
 (15) A Yes, that's one process that is important in that
 (16) environment.
 (17) Q And when that happens, plants and animals on the shoreline
 (18) take a beating; don't they?
 (19) A Yes, they indeed can, and do.
 (20) Q And when one of those harsh winter storms come by,
 (21) everything doesn't die; does it?
 (22) A No. There is not complete clearing or denoting of the
 (23) shoreline from a storm.
 (24) Q There's an old saying that nature abhors a vacuum. The
 (25) life forces in the Sound have a remarkable way of coping with

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- (1) tough conditions and adapting to them. Do you agree with
 (2) that?
 (3) A I find that a bit philosophical and vague. Could you try
 (4) me again by reading it once more and let me think about it?
 (5) Q Sure. I'm asking you whether nature abhors a vacuum and
 (6) when - and whether the life forces in the Sound have a
 (7) remarkable way of coping with the tough conditions that they
 (8) face in the Sound.
 (9) A I really don't know what nature abhors a vacuum means. I
 (10) mean, I'm not trying to avoid answering that. I don't know
 (11) what that means, so let me answer that I just need more
 (12) clarification; but try me on the second part, because I was
 (13) trying to focus on that.
 (14) Q Do the life forces in the Sound have a remarkable way of
 (15) coping with the conditions in the Sound?
 (16) A Yes. Yes, I think understanding the adaptations of plants
 (17) and animals is very interesting.
 (18) Q And the intertidal zone that you've described of the Sound
 (19) is constantly changing and renewing itself; isn't it?
 (20) A Yes. I mean, that is life. Life is birth, death and
 (21) renewal.
 (22) Q There is a natural competition among the living things in
 (23) the Sound every day for space to live and food to eat?
 (24) A There can be. When we - sources are in short supply, then
 (25) there can be competition on a daily scale.

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- (1) Q Let's talk about the eaters and those that get eaten in the
 (2) intertidal zones. Each one of the critters you've talked
 (3) about, it doesn't eat just one kind of food; does it?
 (4) A I'm trying to think, since I talked about so much.
 (5) Q Let me ask you this. Let me ask you this. If there's no
 (6) mussels for others, they don't just lie down and die; do they?
 (7) They eat clams, crustaceans, urchins and, in some cases, fish;
 (8) is that right?
 (9) A That is partially true. They will eat what they can find
 (10) to eat, although food limitation, if something is absent, can
 (11) indeed contribute to high mortalities.
 (12) Q Okay, but they don't just eat mussels; right?
 (13) A No, they are not specialists on mussels, to use my
 (14) terminology of a moment ago.
 (15) Q And on the other side of the equation, lots of things get
 (16) eaten by more than one critter; don't they? For example, sea
 (17) urchins don't just have to worry about otters; do they? They
 (18) get eaten by sea stars and crabs and birds and some fish?
 (19) A That's correct.
 (20) Q And did you just testify that juvenile pink salmon eat
 (21) zooplankton, phytal invertebrates and sedimentary
 (22) invertebrates?
 (23) A Yes. My testimony, if I said it as I wanted to, was that
 (24) they eat portions of the zooplankton and they eat certain types
 (25) of the sedimentary invertebrates and certain types of the

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- (1) phytal invertebrates, namely some of those crustaceans
 (2) including amphipods and harpacticoid copepods that are in
 those
 (3) two different environments.
 (4) Q We've heard something about the intertidal zone being a
 (5) table that's open, and I guess what I'm asking you is when
 (6) critters or fish come to eat at the table, there's not just one
 (7) food; if they can't have spinach, they're not having lunch. I
 (8) mean, if they cannot have one food, they're not going the eat?
 (9) A It depends on what alternatives foods are there. In other
 (10) words, the principle that you - that you're making is well
 (11) taken, that many of these organisms have a variety of choices
 (12) of what to eat, but that does not mean that if the reduction in
 (13) prey is substantial over all the possible prey in the
 (14) environment that those organisms might not suffer, suffer lower
 (15) growth or suffer mortality.
 (16) Q Okay, so you're saying if I can eat a whole bunch of things
 (17) but all of them have died except one and that one isn't there
 (18) anymore either, then I have nothing to eat?
 (19) A Well, you're painting sort of a black and white situation,
 (20) a with and without. The point is that resource abundances
 (21) could be lower and organisms suffer from that reduction without
 (22) having them present or absent, necessarily.
 (23) Q You talked about deer. Do deer eat foods that don't come
 (24) from the intertidal zones?
 (25) A Yes, indeed.

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- (1) Q What do they eat?
- (2) A Well, one of the chief diets of deer is Elymus, one of
- (3) the - called the rye grass that is higher on the shore in that
- (4) environment, and they also eat plant forage and terrestrial
- (5) habitats that ranges far away from the shoreline.
- (6) Q How about bear, do they eat foods that don't come from the
- (7) intertidal zone?
- (8) A Yes, indeed. And I pointed out, for example, that once the
- (9) snow melts, once the berries develop, and once the salmon
- (10) return later in the season, the bear have access to foods in
- (11) those environments that are away from the intertidal zone and
- (12) they're not restricted to that nearshore.
- (13) Q You're not a fisheries population dynamicist; are you?
- (14) A No, I'm not a fisheries population dynamicist.
- (15) Q You don't profess an expertise on a specific petroleum
- (16) toxicology of mammals, birds, algae or, as a matter of fact, of
- (17) marine invertebrates?
- (18) A That is true. I'm not a toxicologist. I'm an ecologist.
- (19) Q You haven't personally made a comparison of the recovery in
- (20) Prince William Sound rigorously compared to other oil spills?
- (21) A I have not done a rigorous comparison. I have done like
- (22) many people would. I have filed away my knowledge of what I've
- (23) learned after the Exxon Valdez oil spill and asked myself many
- (24) questions about those components in the system and how their
- (25) response compared to similar components in systems that have

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- (1) elsewhere been perturbed by oil.
- (2) Q You didn't go out and study personally the Amoco Cadiz oil
- (3) spill; did you?
- (4) A No, I did not.
- (5) Q In fact, other than the Santa Barbara spill, where you
- (6) spent approximately three months, you haven't personally
- (7) studied any other oil spills?
- (8) A I have not personally studied any other oil spills, but I
- (9) should clarify that the Santa Barbara spill was one that I was
- (10) involved in for - for as long as two years.
- (11) Q But, Dr. Peterson, I asked you whether, other than the
- (12) Santa Barbara spill, you personally studied any other oil
- (13) spills?
- (14) MR. PETUMENOS: I'll object to the interruption. The
- (15) testimony was appropriate as much as she stated.
- (16) THE COURT: This question - his question's in the
- (17) record - I mean, his answer's in the record, so is the
- (18) question.
- (19) BY MS. SMITH:
- (20) Q Dr. Peterson, you work for the Trustees, as well as the
- (21) plaintiffs; don't you?
- (22) A Yes, that's correct.
- (23) Q And you are what is called a peer reviewer, you discussed
- (24) that?
- (25) A Yes, I tried to explain that, what that means.

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- (1) Q And it means that you read and review other scientific
- (2) papers?
- (3) A That's part of what it means. The peer review process also
- (4) has in it a major task of integrating the work on the several
- (5) studies that have been conducted by the individual species
- (6) experts in the field, and has with it, as well, a major policy
- (7) commitment wherein we are asked to look at - at where these
- (8) studies should go in the future, what are the most important
- (9) unanswered questions that new studies need to address.
- (10) Q You don't personally go out to the field and do the
- (11) hands-on research; do you?
- (12) A No, I do not.
- (13) Q That's done by the scientists called PIS or personal
- (14) investigators?
- (15) A "PI" stands for principal investigators and they are the
- (16) principals, which means they're the people in charge. But then
- (17) there's a whole group of other scientists that are associated
- (18) with them, so the hands-on includes the PI's and the additional
- (19) researchers that work for them and with them.
- (20) Q Okay, but you're neither a PI nor the additional researcher
- (21) that works with them or for them?
- (22) A No, I tried to make that separation that the notion is that
- (23) the peer reviewers would not have any individual bias relative
- (24) to studies. That is to say, they would not be funded by an
- (25) individual study to go out there, so their advice about whether

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- (1) a study should be changed or altered, funded or not funded,
- (2) would not be tainted by a relationship that involved getting
- (3) some sort of benefit from that study individually. Rather we
- (4) reviewed the entire study and gave our best advice and our best
- (5) comments on peer review of those studies without doing that
- (6) work in the field, ourselves.
- (7) Q Right, that's what a peer reviewer does; right?
- (8) A Right.
- (9) Q But you don't go out to the field and do your work
- (10) yourselves, as you just said?
- (11) A That's correct. That's the distinction.
- (12) Q In the past five years, you personally spent approximately
- (13) eight days in the Sound or the Alaska Peninsula; is that
- (14) right?
- (15) A That's right. In the course of perhaps 20 trips and a
- (16) month and a half of work a year, for that five-year period, in
- (17) Alaska, I have had an opportunity to go out in the field with
- (18) certain of the research teams on five occasions - eight
- (19) occasions perhaps, sorry, eight.
- (20) Q Sometimes I'm a little confused about your answer. I
- (21) didn't ask you how long you spent in Alaska. In terms of the
- (22) time you've spent in the sound, it's about eight days?
- (23) A That's - that's correct.
- (24) Q You visited the Sound once in July of 1991 for about three
- (25) days?

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- (1) A That's correct.
 (2) Q And then in September 17th through the 20th, 1993?
 (3) A That's - that's right. Those were the occasions.
 (4) Q Have you personally been to the Sound in 1994?
 (5) A No, I have not had opportunity to get out this season.
 (6) Q So you have not personally viewed the intertidal and
 (7) subtidal zones of the Sound in 1994?
 (8) A No, that's right, I have not.
 (9) Q Have you been to Kenai in 1994?
 (10) A No, I - I have not been to Kenai. I've gone south of
 (11) Anchorage, but not to Kenai.
 (12) Q Have you ever been to the Kenai?
 (13) THE COURT: Counsel, I suppose this is a matter of
 (14) local - are you talking about the Kenai or meaning the Kenai
 (15) Peninsula or talking about Kenai.
 (16) MS. SMITH: Kenai Peninsula.
 (17) MR. PETUMENOS: Talking about the Kenai Fiords as
 (18) well? It makes a difference.
 (19) BY MS. SMITH:
 (20) Q Let me - well, let me start by asking you: Have you been
 (21) to the Kenai Peninsula or the Kenai Fiords?
 (22) A I believe that one of the study sites that I visited may
 (23) well have been in the system of the Kenai. I was thinking
 (24) of - of - of Jackpot Bay and another of the study sites that
 (25) I was able to visit in July of 1993, but my - that would be

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- (1) the only occasion and the only visit to the Kenai, if indeed
 (2) it's the truth. I'd have to look closely at a map of that to
 (3) see whether that fell within what you would call the Kenai.
 (4) Q Maybe I can refresh your recollection. Can you take a look
 (5) at your deposition? It's volume one. It was taken on
 (6) June 29th, 1993, and the page number would be page 47.
 (7) MR. PETUMENOS: Well, if she's going to refresh his
 (8) recollection, she should show it to the witness and not publish
 (9) it to the jury.
 (10) THE COURT: Counsel, that could be a very labored
 (11) process. Let's see how we flow. If there's no problem, we'll
 (12) go with the way counsel wants to go. If there's a problem,
 (13) I'll change it.
 (14) BY MS. SMITH:
 (15) Q It's page 47, and it's lines 14 through 17, and the
 (16) question was: Did you make any trips to the field in other
 (17) areas such as the Kenai Peninsula, Kodiak or the Alaska
 (18) Peninsula?
 (19) Answer: No, I did not.
 (20) Is that your testimony then?
 (21) A Yes. That's certainly what I answered, and right now I'm
 (22) just saying I'm a little uncertain about whether one of the
 (23) sites or another that I visited during that July '93 would
 (24) actually be - would actually be identified as on the Kenai or
 (25) not. That was the confusion.

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- (1) I'm not trying to change that testimony, except to the
 (2) point - to point out that I'm a little confused about whether
 (3) that site would or would not qualify as being in the Kenai.
 (4) Q Okay. But you didn't have a plan to go out and personally
 (5) observe oiled sites in the Kenai at any time in the past five
 (6) years?
 (7) A I'll answer that question, but it's another question you
 (8) need to ask. I did have a plan to go out to the Kenai and
 (9) observe oiled sites. I had hoped to do it in the course of the
 (10) visits that I had in September of '93, but we had to choose
 (11) which sites were possible to do within the time frame of the
 (12) tides and the weather. So that except for the possibility of
 (13) Jackpot Bay and one additional site on the mainland, we didn't
 (14) have opportunity to go there.
 (15) Q Have you personally viewed the intertidal and subtidal
 (16) zones of the Kenai in 1994?
 (17) A No, I have not.
 (18) Q Do you believe that the Kenai coast seems to be different
 (19) from the Sound in some of the damages and some of the
 (20) recovery?
 (21) A Yes, I do. I think there is an area specific difference.
 (22) Q Okay, thank you. That's all I want to know.
 (23) Have you been to Kodiak in 1994?
 (24) A No, I have not.
 (25) Q Have you ever been to Kodiak?
 (26) A No, I've never gotten that opportunity.

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- (1) Q So again, you have not had a personal opportunity to view
 (2) with your own eyes the intertidal and the subtidal zones on
 (3) Kodiak?
 (4) A That's true.
 (5) Q Did you read the Anchorage Daily News on Sunday, June
 (6) 26th,
 (7) 1994? There was an article by Ross Anderson called The
 (8) Sound
 (9) and the Furor?
 (10) A No, I - I don't know if I was in town then or not, but I
 (11) didn't read the paper.
 (12) Q Let me show you this article from the Anchorage Daily
 (13) News. It's DX15258.
 (14) MR. PETUMENOS: I will have an objection to this -
 (15) THE COURT: I'll have to see it. Bring it up here.
 (16) MS. SMITH: I wasn't going to publish it till I asked
 (17) him about it.
 (18) REPORTER: Do you guys need me up there?
 (19) THE COURT: I don't think we need you up here.
 (20) (Sidebar, off the record)
 (21) BY MS. SMITH:
 (22) Q Let me give you a copy of the article, just so you have one
 (23) in front of you.
 (24) A Thank you.
 (25) Q Do you - have you had a chance to read that paragraph or
 (26) you're welcome to read it, whatever you want.
 (27) A No, I've never seen this before. I suppose if you're going

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- (1) to question me about it, I have to read it.
- (2) Q I'm going to ask you whether you agree or disagree with the
- (3) paragraph that starts, "But to the amateur eye."
- (4) THE COURT: It's one paragraph, one small paragraph
- (5) down there.
- (6) A Okay, I've got it. I see it.
- (7) BY MS. SMITH:
- (8) Q Do you agree or disagree with Mr. Anderson's statement?
- (9) What he says is: But to the amateur eye of a journalist who
- (10) never completed a biology course, Prince William Sound looks
- (11) mighty good. It teems with whales and otters, gulls and turns
- (12) and even fish.
- (13) A My answer to your question is: It depends upon whether
- (14) that journalist comes from a tradition of living on the water
- (15) or not, because those who live on the water and who would
- (16) know
- (17) what to expect.
- (18) Q Excuse me -
- (19) A I would not view it as it's stated. But if that journalist
- (20) were an amateur relative to his experience in the system, then
- (21) I would agree.
- (22) Q Well, you're saying those who live on the water, that
- (23) doesn't include yourself; does it?
- (24) A No, I was not including myself in that - in that group.
- (25) Q And it also doesn't include you, because you haven't been
- (26) out to the Sound in 1994; right?

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- (1) MR. PETUMENOS: Objection, asked and answered.
- (2) THE COURT: Yes, that's true. It has been asked and
- (3) answered. You don't have to answer the question.
- (4) BY MS. SMITH:
- (5) Q Let's talk for a moment about the oil spill. Prince
- (6) William Sound has at least 3,000 miles of shoreline; doesn't
- (7) it?
- (8) A Yes, depending on how you count it. It's vast and long,
- (9) and that number conforms with the ballpark that I would say,
- (10) yes.
- (11) Q And of that 3,000 miles of shoreline, plaintiffs' experts,
- (12) ICF, say that only about 500 miles or 16 percent of the Sound
- (13) was ever oiled at all; is that right?
- (14) A To be honest with you, I am not familiar with what other
- (15) plaintiff experts are testifying to on that point.
- (16) Q Well, let me ask you this, Dr. Peterson. You're here
- (17) testifying to the effect of oil on the shoreline of Prince
- (18) William Sound. What percentage of the shoreline of Prince
- (19) William Sound do you understand to have been oiled?
- (20) A My understanding is that the oiling on Prince William Sound
- (21) was considerable, but I do not have a specific number, and
- (22) would have to refer to a variety of documents that have been
- (23) produced by the Trustee Council and by plaintiffs to give you
- (24) that number.
- (25) Q Okay. Does 15 to 16 percent of the Sound sound about

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- (1) right?
- (2) A That does not sound out of the - out of reason.
- (3) Q Let's talk about the Kenai. The Kenai Peninsula has 1500
- (4) miles of shoreline, does that sound right?
- (5) A That's in the ballpark of what I would understand.
- (6) Q All right. And if I told you that plaintiffs' experts,
- (7) ICF, says 149 miles or 9 percent of the Kenai Peninsula was
- (8) oiled at all, would that conform to your approximate view of
- (9) how much of the Kenai was ever oiled?
- (10) MR. PETUMENOS: Excuse me, Judge, I'm sorry to
- (11) interrupt. I'm just confused about the ambiguity about Kenai
- (12) Peninsula and Kenai Fiords. If they're talking about our
- (13) expert you are, but you're not talking about the entire Kenai.
- (14) THE COURT: To use counsel's question, you're
- (15) talking - you said Kenai Peninsula; didn't you?
- (16) MS. SMITH: Yes.
- (17) THE COURT: So it's the Kenai Peninsula.
- (18) MS. SMITH: My co-counsel is telling me it includes
- (19) the fiords; is that right, Mr. Clough?
- (20) THE COURT: Let's clarify that, and it's only to
- (21) clarify what the question is. If you're asking about the Kenai
- (22) Fiords, you should say Kenai Fiords. If you're asking about
- (23) the Kenai Peninsula, which includes the Kenai Fiords, then you
- (24) should say Kenai Peninsula.
- (25) MS. SMITH: I'm saying Kenai Peninsula, and I intend

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- (1) to include the fiords and you're saying -
- (2) THE COURT: That's right.
- (3) MS. SMITH: I've got it right now.
- (4) BY MS. SMITH:
- (5) Q Going back to the question, if I tell you that plaintiffs'
- (6) expert, ICF, say 149 miles or 9 percent of the Kenai Peninsula
- (7) was oiled at all; would that conform to your understanding?
- (8) A It's not out of the ballpark of my understanding, but I
- (9) really am uncomfortable in answering without looking at some
- (10) of
- (11) the documentation that the Trustees have created, but it's
- (12) not - it's not an unreasonably low or high number.
- (13) Q Let me ask you this, Dr. Peterson: In testifying as to the
- (14) effect of oil on the shoreline of the Kenai Peninsula, don't
- (15) you need to know how much of that shoreline was ever oiled?
- (16) A To extrapolate the results from any given study site, you
- (17) need to have a good feel for the impact in the broader system,
- (18) no question about that.
- (19) Q Is that a yes?
- (20) A I think it was a yes, although it depends, really, on the
- (21) nature of the - of the impact that you mean to address. For
- (22) example, a large number of the predators and consumers and
- (23) species in the system encountered oil in places other than the
- (24) shoreline, and so asking questions about the oiling of the
- (25) shoreline and relating that to the consumers will not yield an
- (26) understanding, for example, of what happened to killer whales,

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- (1) what happened to a varieties of fishes that were mobile and
 (2) swam through the system, a variety of birds like common and
 (3) thick-billed murres that were rafting on the water.
 (4) Q I guess I didn't think you answered my question. I'm going
 (5) to try it again.
 (6) MR. PETUMENOS: I will move to strike the editorial
 (7) comments. Could counsel -
 (8) THE COURT: That's all right, counsel, she can preface
 (9) things within reason.
 (10) BY MS. SMITH:
 (11) Q As someone who's giving an opinion on the effects of oiling
 (12) on the intertidal and subtidal zones of the Kenai Peninsula,
 (13) don't you think you need to know or have an understanding of
 (14) how much of the Kenai Peninsula was ever actually oiled?
 (15) A Yes, I - and I have had that understanding by virtue of
 (16) that information that I've relied upon that was created by the
 (17) Trustees.
 (18) Q And what is that understanding?
 (19) A That understanding does not differ greatly from what you
 (20) have mentioned, which is the 15, 16 percent; 9 percent kinds of
 (21) numbers are not unreasonable.
 (22) Q And going to the Kodiak archipelago, that has 3,100 miles
 (23) of shoreline; does that sound right to you?
 (24) A I'll buy that.
 (25) Q And are you familiar with the land claim parcels of the

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- (1) plaintiffs in this case on the Kodiak Archipelago?
 (2) A No, I must admit ignorance to even what that means.
 (3) Q All right. Do you know that the plaintiffs in this case
 (4) are Native corporations and municipalities who are suing for
 (5) damages to land parcels?
 (6) A Yes, I do.
 (7) Q And do you know what percentage of the shoreline of the
 (8) Kodiak archipelago is occupied by their land parcels that are
 (9) at issue in this case?
 (10) A I do not have an understanding of that precise number, no.
 (11) Q And do you have any understanding as to what percentage
 (12) of the plaintiffs' land parcels on the Kodiak archipelago were
 (13) ever oiled?
 (14) A No, I don't.
 (15) Q Let me show you DX13200.
 (16) MS. SMITH: George is going to try to help me stick
 (17) this up so that you all can see it, and you can see it - see
 (18) how it works.
 (19) BY MS. SMITH:
 (20) Q Does this look like the Kodiak archipelago to you?
 (21) A It looks pretty good.
 (22) Q All right, and -
 (23) MR. STOLL: Your Honor, can I go over here?
 (24) MS. SMITH: You can go anywhere you want.
 (25) THE COURT: Yes.

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- (1) MR. PETUMENOS: Out the door even, I imagine.
 (2) MS. SMITH: Keep going, keep going.
 (3) MR. STOLL: I don't have any hostile feelings.
 (4) BY MS. SMITH:
 (5) Q And if you take a look at the areas that are in gray - and
 (6) I don't know if you can see them, I can walk the map over to
 (7) you - these are the plaintiffs' land parcels on the Kodiak
 (8) archipelago. Have you visited any of those places?
 (9) A No, I haven't.
 (10) Q All right. So you haven't looked at the intertidal and
 (11) subtidal shoreline of any of the parcels on the Kodiak
 (12) archipelago?
 (13) A No, I have not.
 (14) Q And let me show you DX15407. What I did is I put together
 (15) a list of the parcels on Kodiak and filled in based on your
 (16) testimony whether or not you had ever visited there. Does that
 (17) appear to accurately summarize your visits to the Kodiak
 (18) parcels?
 (19) A Yes. I haven't visited Kodiak.
 (20) Q All right. And it's a very exciting list, just lists the
 (21) parcels and under the "Peterson visited" it says no in every
 (22) column; is that correct?
 (23) A Yes.
 (24) MS. SMITH: Your Honor, I'd move the admission of
 (25) DX15407.

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- (1) (Exhibit DX15407 offered)
 (2) MR. PETUMENOS: No objection.
 (3) MR. STOLL: No objection.
 (4) THE COURT: 15407 is admitted
 (5) (Exhibit 15407 received)
 (6) BY MS. SMITH:
 (7) Q Let me show you DX13199, with help from George.
 (8) Okay, this is a parcel list, again, of the property owned
 (9) by the plaintiffs in this lawsuit of the Kenai Peninsula. ,
 (10) everything in gray is a property that's claimed as a subject of
 (11) damages in this litigation. Have you been to any of the
 (12) parcels that are listed on the Kenai Peninsula? And please
 (13) feel free if you want to come down and take a look.
 (14) I will tell you if you've been to Nellie Juan, that I think
 (15) it's mostly up there in the Sound, but you can - if you have
 (16) been to it, go ahead and let me know.
 (17) A That is a possibility, but I can't see far enough into this
 (18) to say yes or no.
 (19) Q It's on -
 (20) A But not to any from here to the - to the southwest.
 (21) Q Okay, so other than the possibility of Nellie Juan, which
 (22) you'll see is on the Prince William Sound parcel map, you
 (23) haven't been to any of these parcels?
 (24) A That's correct.
 (25) Q And I'll show you DX15405, which is the same summary of
 the

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- (1) parcels and whether you have visited there and ask you if
 (2) that's accurate. And, again, if you need to step down and take
 (3) a look, please feel free to do that.
 (4) A To the best of my knowledge, this is accurate.
 (5) MS. SMITH: All right. I would move the admission of
 (6) DX15405.
 (7) (Exhibit 15405 offered)
 (8) THE COURT: No objection, it's admitted, 15405.
 (9) (Exhibit 15405 received)
 (10) BY MS. SMITH:
 (11) Q Let me see if I can work this gizmo. This is the Kenai
 (12) parcel list and it just has a list of the parcels and whether
 (13) Dr. Peterson has visited, and because there are so many
 (14) parcels
 (15) in the Kenai, it goes on for two pages.
 (16) Okay, I'm going to show you DX13198, which is Prince
 (17) William Sound. You may feel slightly more comfortable here
 (18) and, again, the gray are the parcels that the plaintiffs in
 (19) this case are claiming were damaged. And let me ask you first
 (20) off, did you go to Nellie Juan?
 (21) A No, I can now answer that with some comfort, if that Nellie
 (22) Juan is well depicted there.
 (23) Q It's totally landlocked; isn't it?
 (24) A It appears to me, and that's what gives me comfort in
 (25) answering that I haven't been there.
 (26) Q And I gather you didn't have to review the subtidal and

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- (1) intertidal zone of Nellie Juan, because there isn't one?
 (2) A Looks like a good conclusion.
 (3) MR. PETUMENOS: So stipulated.
 (4) BY MS. SMITH:
 (5) Q Same for Snow River over here?
 (6) A Okay.
 (7) Q And if I get in your way, tell me, it's hard to do this,
 (8) but how about Silver Lake?
 (9) MR. PETUMENOS: Silver Lake is landlocked as well.
 (10) Dr. Peterson.
 (11) A Then I can answer that without launching.
 (12) BY MS. SMITH:
 (13) Q And Comfort Cove?
 (14) A No, I can -
 (15) Q Raging Creek?
 (16) A No, I have not.
 (17) Q Eyak Glacier River area?
 (18) A Probably not, but I came close.
 (19) Q Came close, okay. Let me - before you sit down, let me
 (20) ask you one more thing. Other than Bligh Island, did you visit
 (21) anything in connection, in the last five years, on the eastern
 (22) side of the Sound?
 (23) A Yes.
 (24) Q All right, where did you go?
 (25) A My eastern side of the Sound visits include a great deal of

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- (1) visiting in the Cordova region.
 (2) Q Did you go to any of the parcels or just to the town?
 (3) A No, I would have been in the Eyak Lake region. That
 (4) appears to be this parcel that runs through here. I've flown
 (5) over -
 (6) Q No, I just want to know if you've been there.
 (7) A Oh, okay.
 (8) Q I've flown over a lot of the world.
 (9) A I've landed on Hinchinbrook, but not at any of those three
 (10) parcels that are identified, so I think if you could repeat
 (11) your question, I think I've - I'm put where I can answer it.
 (12) Q Okay, my question is: Where on the west side - excuse me,
 (13) the east side of the Sound have you personally visited?
 (14) A Okay. Well, in the Cordova region, in the region down out
 (15) into the Copper River Delta and at a site that was probably in
 (16) this or this region on Hinchinbrook Island. And the
 (17) Hinchinbrook Island one, I would have to confirm exactly where
 (18) that might be.
 (19) Q All right. Other than Bligh Island, are you aware of
 (20) whether there was ever any oil on these parcels?
 (21) A My understanding is that there was not, but I couldn't -
 (22) THE COURT: Hold it, counsel, that's a vague question,
 (23) only because you just passed your hand over the -
 (24) BY MS. SMITH:
 (25) Q Okay. On the parcel other than Bligh Island, are you aware

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- (1) that there was ever any oil on the eastern side of the Sound
 (2) starting with Galena Bay and Silver Lake and running down to
 (3) the Eyak Glacier River area?
 (4) A From the Exxon Valdez oil spill?
 (5) Q Yes.
 (6) A My understanding is that if there was oiling, it was not
 (7) heavy. I mean, I do not know of any, but I don't come prepared
 (8) to testify as to whether there was, but my understanding
 (9) confirms what you said.
 (10) Q And are you aware that Eyak has stipulated that its lands
 (11) were not oiled?
 (12) A No, I'm not aware of that.
 (13) Q All right. Now we're going to talk about this side, but
 (14) please, feel free to sit down and I'll go through this with
 (15) you.
 (16) MR. PETUMENOS: Counsel, should we feel free to sit
 (17) down? Are you going to use the map again or -
 (18) MS. SMITH: We'll only use the map if he wants to
 (19) refer to it, so it's up to you. I'm not going to -
 (20) MR. PETUMENOS: I don't mean to be a pest, but could I
 (21) get my view - may I view the witness?
 (22) MS. SMITH: What I'm going to do is take him through
 (23) where he did go on the western side of the Sound.
 (24) MR. PETUMENOS: Okay.
 (25) MS. SMITH: And it's only if the witness - I don't

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- (1) need the exhibit anymore, but if you would like to locate or it
 (2) would help you to have it – maybe what I could do is bring it
 (3) closer to you.
 (4) MR. PETUMENOS: That's okay, I'll stand over there.
 (5) That's no problem.
 (6) MS. SMITH: It'll keep you awake if you stand.
 (7) BY MS. SMITH:
 (8) Q When you went to the western side of the Sound for your
 (9) personal observations, you did not seek out places that were
 (10) only lightly oiled; is that right?
 (11) A That's true. In the study that the – that the Trustee
 (12) Council conducted to look at shoreline oiling and effects, the
 (13) lightly oiled sites were grouped with the unoiled sites as
 (14) controls, so that I was not focusing on looking at those
 (15) lightly oiled sites because they hadn't been distinguished from
 (16) unoiled sites in the design.
 (17) Q You went to a number of places on the west side of Prince
 (18) William Sound that are not on parcels, and here you went to
 (19) Snug Harbor on Knight Island?
 (20) A (Nods head up and down).
 (21) Q You're nodding yes, the Court can't pick that up.
 (22) A That's correct, yes.
 (23) Q Herring Bay?
 (24) A Several places within Herring Bay, yes.
 (25) Q Cochrane Bay?

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- (1) A Cochrane Bay, yes that's right.
 (2) Q And Green Island?
 (3) A Green Island, two different sites over two different
 (4) visits.
 (5) Q And did you know that those were not parcels?
 (6) A I do not have a good understanding of the parcels vis-a-vis
 (7) those places, so that by looking at the map, I can gain that.
 (8) Q Okay. And you went to two places on the Bay of Isles and
 (9) Knight Island; is that correct?
 (10) A That's correct.
 (11) Q The Bay of Isles was heavily oiled during the spill; isn't
 (12) it?
 (13) A It's characterized by the Trustees as a heavily oiled site,
 (14) series of sites.
 (15) Q And you spent 45 minutes on site KN205, which is an oiled
 (16) coarse textured site; do you recall that?
 (17) A Yes, I do. Not like it was yesterday, but I recall a lot
 (18) about it.
 (19) Q All right.
 (20) MS. SMITH: And you know what, every place I'm going
 (21) to talk to him about from now on is on a parcel, and unless you
 (22) need the map for reference, maybe I can let you sit down.
 (23) George, if you could help me just collapse this. All three
 (24) of them are up on it together.
 (25) MR. PETUMENOS: Where are we going?

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- (1) MS. SMITH: I'm not going to use the Barco, so unless
 (2) somebody tells me this isn't good for it – oh, it isn't.
 (3) MR. PETUMENOS: Thank you.
 (4) BY MS. SMITH:
 (5) Q When you were at the Bay of Isles at the coarse textured
 (6) site, do you recall that you dug pits, you found some oil
 (7) residue on your fingers at one of the pits, but that you did
 (8) not find any evidence of biological damage that you would be
 (9) prepared to associate with oil?
 (10) A That's correct, from a visit like that, without the science
 (11) to support it, you could not identify damage that is associated
 (12) with oil. The technique just doesn't lends itself to those
 (13) sorts of inferences.
 (14) Q You went there with a Dr. Doudna?
 (15) A Doudna, yes.
 (16) Q Doudna. Who is he?
 (17) A Dr. Doudna is one of this – I believe he would be a
 (18) principal investigator, but at least he's one of the
 (19) investigators of the Trustee funded coastal habitat program
 (20) which studied the intertidal and its resources and damages and
 (21) recovery.
 (22) Q Were you also accompanied on this trip by one of
 (23) plaintiffs' lawyers, a Mr. Rosshach?
 (24) A Yes, I was.
 (25) Q When you went to the Bay of Isles coarse textured site, did

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- (1) Dr. Doudna tell you at that time the focus had returned quite
 (2) substantially?
 (3) A Yes, he did. He said there was a big difference from what
 (4) he remembered in the past from being there in 1989 and what he
 (5) saw there in September of 1993.
 (6) Q You then went on to the famous Bay of Isles marsh, which is
 (7) KN136, and spent an hour, hour and a half there; does that
 (8) sound right?
 (9) A Yes, that's in that ballpark.
 (10) Q And the size of this marsh is sort of half a football
 (11) field. I think you were into sports analogies that day?
 (12) A I don't do sizes any much better than that, but yes, that's
 (13) what I was estimating.
 (14) Q And that marsh was also a heavily oiled site; wasn't it?
 (15) A Yes.
 (16) Q And, again, here you said you weren't comfortable in
 (17) associating what you saw about the biology at the site from
 (18) injury from the oil; is that right?
 (19) A That's correct. In the absence of previous – previous
 (20) knowledge from having been there before and being able to
 (21) compare it with what I saw now, that visit technique of simply
 (22) visiting the shore is just not adequate to assess what damage
 (23) might be to biology.
 (24) Q And at the Bay of Isles marsh, did Dr. Doudna mention to
 (25) you again that in the way of coverage offer fucus, barnacles,

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- (1) mussels was substantially greater than the last time he visited
 (2) the site?
 (3) A I recollect, my recollection of his comments included that
 (4) remark, that he said that he could see where fucus had come
 (5) back prior - relative to what he had seen before, where also
 (6) he saw barnacles on rocks that he hadn't seen before in 1989,
 (7) and the mussels, I'm a little unclear, but I - I don't
 (8) recall.
 (9) Q Okay. You spent - during this trip, you spent about five
 (10) minutes at Evans Island?
 (11) A Not long. That's within - no more than 20.
 (12) Q Okay. You went to Jackpot Bay, which is a Chenega
 (13) Corporation parcel on the mainland west of Chenega Island?
 (14) A (Nods head up and down).
 (15) Q And you spent 15 or 20 minutes at a mussel bed on
 LaTouche?
 (16) A Yes, and visited other sites on LaTouche, as well.
 (17) Q Do you remember when you went to - Green Island's not a
 (18) parcel; is it? Can you see from there?
 (19) A No, it's not marked as such.
 (20) Q Do you remember when you went there that it was the only
 (21) exposed rocky shoreline that you visited in 1993?
 (22) A I believe that a portion of the northern part of LaTouche
 (23) that we visited was - is characterized as exposed, as well.
 (24) So I don't think that that's correct. In fact, I'm pretty
 (25) certain of that.

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- (1) If my recollection is right, the LaTouche shoreline, after
 (2) we did the mussels, we visited a stretch of the shoreline that
 (3) graded from a coarse textured shoreline into an exposed rocky
 (4) shoreline along that stretch.
 (5) Q Okay, let me - take a look in your deposition of volume 4
 (6) that was taken on January 10, 1994, and it's page 629, lines 4
 (7) through 12.
 (8) MR. STOLL: I'm sorry, which day was it?
 (9) MS. SMITH: January 10th, 1994.
 (10) BY MS. SMITH:
 (11) Q And there's - I gave you lines 4 through 9 so you could
 (12) put it in context, but the question at line 10 says is: This
 (13) the only exposed rocky site you visited during this visit in
 (14) 1993?
 (15) Answer: Yes, sir.
 (16) A I've got two things to say about that. One, my
 (17) interpretation of this question, as I recall, was whether that
 (18) was a study site of the program that had examined things and
 (19) that was the only study site that was an exposed rocky one that
 (20) we visited; that is to say, something on which there was the
 (21) mountain of biological data from the people who had worked in
 (22) the field, but as to whether I visited places along the
 (23) shoreline, that's not correct, and I think you'll find in the
 (24) deposition later that I talk at length about the northern part
 (25) of LaTouche as being a site that graded from the coarse

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- (1) textured to an exposed rocky.
 (2) Q Okay. When you went to Green Island, do you remember
 that
 (3) you saw quite a lot of biota, that there was a very dense fucus
 (4) cover, very dense animal cover in general, quite a lot of
 (5) substrate heterogeneity and complexity. You saw tide rocks
 (6) with small fishes, sea stars, barnacles, mussels, periwinkles
 (7) and limpets?
 (8) A Yes, I do remember that.
 (9) Q And you did not observe any evidence of biological injury
 (10) at Green Island; did you?
 (11) A As with the other questions, a visit like that is
 (12) inadequate to assess biological damage or recovery without
 data
 (13) from before to make those inferences. So no, I could not.
 (14) Q I put together - and I will show you DX15406, which is
 (15) the - a list of the Prince William Sound parcels and whether
 (16) or not you've visited, and I'd ask you to take a look at it and
 (17) see if that's accurate.
 (18) It does appear, based on our discussion earlier, that on
 (19) the page that starts with Knight Island, we had you going to
 (20) north LaTouche, which is at the bottom of that page. We did
 (21) not know that you went to LaTouche, also. If you went to the
 (22) LaTouche property, you can change that to a yes and make any
 (23) other corrections that you think are appropriate.
 (24) A I believe that is a yes on the LaTouche, if we're talking
 (25) about the third page of this, the second - second line, which

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- (1) says CAC LaTouche Island and a question mark. We were in
 the
 (2) company of Gail Evanoff and she was speaking to us about the
 (3) Chenega Bay use of that land in that vicinity that we were in,
 (4) the vicinity of one of the places that we visited.
 (5) Q Okay. Going further down the page, there's a question mark
 (6) next to the mainland. It's the fourth one from the bottom. Do
 (7) you know whether you went to the mainland parcel? And,
 again,
 (8) if you need to refer to this map, it's here.
 (9) A No, I - I can tell you that I did not visit the mainland
 (10) parcel.
 (11) Q You can't tell you (sic) that you did or you can tell me
 (12) that you didn't?
 (13) A I'm sorry, I can tell you that I did not.
 (14) Q Okay, so I'm going to change that to a no. And with those
 (15) two changes, is there anything else about the list that doesn't
 (16) accurately summarize your visits to parcels in Prince William
 (17) Sound?
 (18) This is the obstacle course. You didn't think it was so
 (19) hard to be a witness; did you?
 (20) A Exercise. I visited either Crab Bay or Chenega Bay and it
 (21) looks to be Crab Bay, the way the borders are drawn on this
 (22) map. That correction would need to be made ().
 (23) MS. SMITH: I don't think that helped anything. Next
 (24) break, next break.
 (25) MR. PETUMENOS: Is Mr. Diamond reminded of a joke for

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- (1) this one, as well?
 (2) MS. SMITH: Thank you so much.
 (3) A And then if I could clarify again, by "visit," you mean
 (4) landing on the site as opposed to -
 (5) BY MS. SMITH:
 (6) Q Flying over it.
 (7) A Flying and -
 (8) Q Correct.
 (9) A Okay. And in that case - I think this is correct.
 (10) although I don't have anything on Busby Island on my - I don't
 (11) have an entry one way or another on that one.
 (12) Q Right, it didn't indicate you went there. We weren't sure.
 (13) so we left it blank.
 (14) A Okay.
 (15) Q Do you think you went there?
 (16) A I think I did not, but - I don't really know where that
 (17) one is, but I don't recall.
 (18) MS. SMITH: I would ask that DX15406A, with the
 (19) changes that we've just made on the third page, be admitted.
 (20) (Exhibit DX15406A offered)
 (21) THE COURT: It's admitted.
 (22) (Exhibit DX15406A received)
 (23) BY MS. SMITH:
 (24) Q All right. And let me show the jury what all the
 (25) excitement - I say hesitantly - is about. This is

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- (1) Exhibit DX15406A. It's a list of the Prince William Sound
 (2) parcels and whether Dr. Peterson visited any of them.
 (3) On the first page, he did not go to a single one. On the
 (4) second page of the parcel list, he did go to Jackpot Bay. And
 (5) on the third page, which is the page that we've been talking
 (6) about that has my handwriting now, he went to Knight Island
 and
 (7) LaTouche Island, he went to Crab Bay and he went to north
 (8) LaTouche.
 (9) THE COURT: Ms. Smith, do you want to take a break.
 (10) MS. SMITH: That would be great, sure.
 (11) THE COURT: Okay.
 (12) THE CLERK: Please rise. This court stands in
 (13) recess.
 (14) (Jury out at 12:19 p.m.)
 (15) (Recess from 12:19 p.m. to 12:33 p.m.)
 (16) (Jury in at 12:33 p.m.)
 (17) THE CLERK: This court now resumes its session.
 (18) Please be seated.
 (19) THE COURT: I've said this before, but I'll say it
 (20) again, because I know - I know it's a sign of respect to stand
 (21) up for people, but if I keep you waiting, you're entitled to
 (22) sit down; all right?
 (23) BY MS. SMITH:
 (24) Q Dr. Peterson, you ready?
 (25) A Uh-huh.

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- (1) Q Okay. I gather that your testimony is that oil spills are
 (2) not good for plants and critters that live in intertidal zones
 (3) and subtidal zones.
 (4) A Yes, that's fair.
 (5) Q But the parties here aren't disputing that. What I want to
 (6) talk to you about now is recovery. You're not saying, are you,
 (7) that all the plants and critters in the Sound, Kenai, and
 (8) Kodiak that were in oiled areas are dead; are you?
 (9) A No, I'm not.
 (10) Q Okay. You're not saying that sometime in the future all
 (11) the plants and critters are going to die from the 1989 oil
 (12) spill; are you?
 (13) A No, I'm not.
 (14) Q Okay. And you talk about tremendous cascade of effects, I
 (15) wrote that down today. Are you saying that the tremendous
 (16) cascade of effects from the 1989 oil spill someday are going to
 (17) cause all the plants and critters in the oiled areas to die?
 (18) A No, no, I'm not. That's not the implication of that
 (19) testimony.
 (20) Q Okay. Are you - have you been reading the most current
 (21) scientific reports that say that the plants and critters are
 (22) recovering?
 (23) A I have stayed in touch with all the reports, as I can get
 (24) them, and I think I have an understanding of what is
 (25) recovering, what's not recovering, and what we have sufficient

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- (1) uncertainty about as to not even know.
 (2) Q You previously testified that five living organisms, all
 (3) important components of the ecosystem, were damaged by the
 oil
 (4) spill, and that was fucus, eelgrass, kelps, amphipods and
 (5) intertidal fishes. Do you recall having that opinion?
 (6) A Yes, being previous testimony, you mean, in the federal
 (7) trial -
 (8) Q Yes.
 (9) A - as opposed to previously today?
 (10) Q Correct.
 (11) A Yes.
 (12) Q Let's go through those first, because not only did you
 (13) testify about them there, but we certainly heard testimony
 (14) about them here. Let's talk about the recovery of each of
 (15) these organisms, and let's start with eelgrass.
 (16) You stated previously - and, again, this is from your
 (17) report - you state you've filed reports and you've been
 (18) deposed and you've gone - you've had another trial, okay, you
 (19) stated previously that eelgrass is a key provider of structural
 (20) habitat. Do you agree with that?
 (21) A Yes, that was the essence of what I tried to say.
 (22) Q Okay, and it allows fish eggs and larvae, amphipods,
 (23) plankton and other organisms to grow; right?
 (24) A The plankton are not connected to the eelgrass. That's a
 (25) separate system in the water column, but the other bits on the

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- (1) list are connected by their interactions to the plant.
 (2) Q Okay. And in looking at how eelgrass did in the oiled
 (3) areas, did you rely on a study of eelgrass in subtidal algae by
 (4) Drs. Dean, Stekoll and Jewett?
 (5) A Stekoll, yes. That was the study, one of two studies.
 (6) There was a separate independent study as well done by a
 (7) group
 (8) of scientists funded out of NOAA, the National Oceanographic
 (9) and Atmospheric Administration that also looked at eelgrass.
 (10) Q Okay, and the Dean, Stekoll and Jewett study, those folks
 (11) are Trustee scientists?
 (12) A Yes, they are people – two of the three are faculty
 (13) members with the University of Alaska. The third is a private
 (14) consultant, who are people working for the Trustees with funds
 (15) that have come from the Trustees to do the work.
 (16) Q Okay. And these scientists found that there were
 (17) significantly fewer flowering eelgrass – I feel like this is a
 (18) tongue twister. Let me try that again. Significantly fewer
 (19) flowering eelgrass plants at oiled sites in 1989; right?
 (20) A No, it was 1990 that the study didn't actually get into the
 (21) field in 1989. The presumption is, and I would say the
 (22) probability is high, that the damage was at least that great in
 (23) 1989, but in 1990 was when that significant difference was
 (24) demonstrated.
 (25) Q And they also found that by 1991 the eelgrass had
 (26) recovered?

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- (1) A Substantially recovered of eelgrass, as I testified to
 (2) earlier.
 (3) Q And there were no differences noted among sites with
 (4) respect to either turion density or flower density; right?
 (5) A In 1991, that's correct.
 (6) Q And what is turion density?
 (7) A Turion are things that stick up out of the plant into the
 (8) water column. It's the plant – I'd have to draw you a picture
 (9) and I don't think you really want it, but the plant has
 (10) different morphological parts and the turions are parts that –
 (11) they're not roots and rhizomes, they're parts of the plant that
 (12) rise into the water column and help make up part of the
 (13) structure that the plant gives in that system.
 (14) Q You agree, though, that eelgrass had recovered by 1991,
 (15) within two years of the spill?
 (16) A I would only equivocate and say that there may be changes
 (17) subsequently, but it looked to me as if the eelgrass was
 (18) substantially recovered from the data that they took by 1991.
 (19) Q All right, let's take a look at amphipods. There you
 (20) relied on Dean and Jewett's study, as well; correct?
 (21) A That's correct, that is the study that gave me information
 (22) on amphipods.
 (23) Q And I show you DX9269, page 97 of the Exxon Valdez oil
 (24) spill symposium abstracts, and it's entitled "The Effects of
 (25) the Exxon Valdez Oil Spill on Infaunal Invertebrates in the

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- (1) Eelgrass Habitat of Prince William Sound," and it's by Steven
 (2) Jewett and Thomas Dean?
 (3) A Thank you.
 (4) MR. PETUMENOS: Your Honor, may I approach the bench?
 (5) THE COURT: Excuse me?
 (6) MR. PETUMENOS: May I approach the bench?
 (7) THE COURT: Sure.
 (8) (Sidebar held out of the hearing of the jury.)
 (9) MR. PETUMENOS: We did not get production. We got a
 (10) whole box full of exhibits in this morning. This is one of
 (11) them. This is the exhibit that I got. There's a box full of
 (12) them. We have not been able to review it. We can't review the
 (13) context. We – I'm not sure that I have a problem.
 (14) THE COURT: How many of those exhibits did you get,
 (15) today?
 (16) MR. PETUMENOS: A box.
 (17) MS. SMITH: Your Honor, these exhibits were on our
 (18) previous list and, therefore, we were only required by the
 (19) order to send over the new ones that we created on the list of
 (20) five hundred. They were on the April list. We didn't have to
 (21) send them over because they already had them.
 (22) THE COURT: They –
 (23) MS. SMITH: Let me just say one more thing. This is a
 (24) study that he relied on. He relied on the whole study. He
 (25) relied on the abstract. He was crossed on it in federal court

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- (1) three weeks ago. He's had all the stuff for three weeks, the
 (2) same identical stuff, plus whatever new stuff we sent over
 (3) within the 24-hour order.
 (4) THE COURT: Have you reviewed the testimony in the
 (5) federal court?
 (6) MR. PETUMENOS: We reviewed the testimony in federal
 (7) court, but the problem is this: It's more complicated than
 (8) that. I hate to take the Court's time, but the problem is that
 (9) this entire series of exhibits was withdrawn by Exxon off of
 (10) their April list when they were cutting all the litigation, and
 (11) we handled the exhibit list, this whole series of exhibits was
 (12) withdrawn from the Exxon April 7 list and taken out. We're not
 (13) going to utilize them.
 (14) Then last night, we received these, and when they were
 (15) withdrawn, we put them in storage, took them out and didn't
 (16) have access to them because Exxon withdrew them. Last night
 (17) we
 (18) got a list of exhibits that contained these, some of that list.
 (19) MS. SMITH: Tim, I mean, this is a big, long issue
 (20) that has to do with direct exhibits. On cross, which is what
 (21) this is, this is the report he relied on, he testified to, he
 (22) just said he relied on. I'm going to cross him about a
 (23) paragraph. He was crossed on the same paragraph in federal
 (24) court, the same exact –
 (25) THE COURT: Show counsel the paragraph.
 (26) MS. SMITH: If I can find it.

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- (1) MR. PETUMENOS: This was the matter I was going to
 (2) take up with the Court this morning.
 (3) THE COURT: Oh, okay.
 (4) MS. SMITH: I have to bring you the next page.
 (5) (Sidebar concluded.)
 (6) THE COURT: Why don't I give you break? If you'd just
 (7) go right over here. This won't take more than five minutes
 (8) (Jury out at 12:45 p.m.)
 (9) THE COURT: Counsel?
 (10) MR. PETUMENOS: I think first I need - I think first
 (11) I need to give the Court some sort of an idea of the volume of
 (12) material.
 (13) THE COURT: No, counsel, you don't, because I've
 (14) received a statement from counsel that she's going to
 (15) cross-examine about one paragraph here, so I just want you to
 (16) see what the paragraph is and see if there's an issue. I don't
 (17) want to make - I hate to say the word - a federal case out of
 (18) every time you have a suspicion, because that could make this
 (19) trial last a long time. If this is not an issue you need to
 (20) find that out first, so look at the paragraph.
 (21) MS. SMITH: Do you want to see it at the same time?
 (22) MR. PETUMENOS: I don't think we need to be at the
 (23) bench because we can talk.
 (24) THE COURT: I don't care. In fact, I'd rather not see
 (25) it.

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- (1) MS. SMITH: It's the same one he was crossed on in
 (2) federal.
 (3) THE COURT: This is another example of an intertidal
 (4) zone.
 (5) MR. PETUMENOS: Let me try and shorten this. If
 (6) the - if the -
 (7) THE COURT: Could you do me a favor, everybody?
 (8) Please sit down, I have to concentrate on the lawyers here.
 (9) MR. PETUMENOS: If the cross-examination that we're
 (10) going to hear today is limited to matters that were addressed
 (11) in federal court, as this one is, then I have transcript
 (12) references and I believe it's fair.
 (13) The problem that I have is if there's going to be
 (14) cross-examination made on the very large voluminous exhibits
 -
 (15) I can't find the redirect on exhibits that I ran into, I can't
 (16) find the redirect from the documents to read to him or have him
 (17) read.
 (18) THE COURT: I understand what your problem might be.
 (19) MR. PETUMENOS: So I think it's fair for those
 (20) excerpts to come from the federal transcript that - we have a
 (21) transcript and see where it is, but so that I don't take up
 (22) more time, I'm concerned about a problem with respect to order
 (23) 40 and the way the cross exhibits are coming in. I spoke to
 (24) counsel about it. I understand that these are some logistics
 (25) that may happen at the beginning of the case. My problem is I

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- (1) can't conduct a redirect on - on, you know, four or five boxes
 (2) full of material when I don't have any idea where the material
 (3) for cross is coming from and some of the exhibits arrive very
 (4) late in the day the night before and, in fact, there was a
 (5) delivery, what, time, 1:00 in the morning. My witness was, as
 (6) I was, asleep by then.
 (7) MR. DIAMOND: This is not - I'm a little bit upset at
 (8) Mr. Petumenos for throwing out the throw-away line at the end
 (9) without putting things in context. This is not an issue
 (10) because we're only cross-examining on this one paragraph.
 (11) THE COURT: One paragraph which counsel has now read.
 (12) Right.
 (13) MR. DIAMOND: We were going to talk to you in chambers
 (14) about the other issues, and I think that's probably where it
 (15) should be resolved.
 (16) THE COURT: In chambers, you want to talk to me in
 (17) chambers off the record, counsel, on an issue as significant as
 (18) this?
 (19) MR. DIAMOND: I'm sorry?
 (20) THE COURT: On an issue as significant as this.
 (21) counsel?
 (22) MR. DIAMOND: Yes.
 (23) MR. PETUMENOS: I asked to talk in chambers. I know
 (24) how you feel, you don't want counsel squabbling about it, but
 (25) the reason I'm raising it now is when it prejudices my clients

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- (1) I have to -
 (2) THE COURT: Counsel, suspicious is a legitimate
 (3) conclusion. Sometimes you can be suspicious, but when the
 (4) suspicion is flushed out by the statement that it's only going
 (5) to cross-examination on one specific paragraph that you then
 (6) reviewed, the issue goes away. That's all I'm trying to do is
 (7) make things efficient here.
 (8) MR. PETUMENOS: I'm ready to proceed.
 (9) THE COURT: Please, can we get the jury?
 (10) (Jury in at 12:49 p.m.)
 (11) THE COURT: You may proceed.
 (12) BY MS. SMITH:
 (13) Q Okay, we were talking about amphipods, and I asked you
 (14) whether you rely on a Dean and Jewett study, and you said yes.
 (15) And I am going to show you DX9269, page 97 of the Exxon
 Valdez
 (16) oil symposium abstracts and ask you if you could take a look at
 (17) that paragraph that starts with - I have a little check by
 (18) it. That might be - it says perhaps, there's several of
 (19) these. We just did one, and I'm going to ask you about it.
 (20) Can you guys read that at all? Okay, thank you.
 (21) It says, perhaps the greatest single indication of initial
 (22) oil effects, followed by recovery, was the recolonization of
 (23) oiled sites by sensitive burrowing amphipods. In 1990 - and I
 (24) have to admit I'm skipping the P minus things. I'm just going
 (25) to read the text - in 1990, the abundance of all amphipods was

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(1) significantly greater at oiled sites. However, at this depth
 (2) in 1991, no difference in total amphipods abundance or
 biomass
 (3) was detected between oiled and unoiled sites. The
 reoccurrence
 (4) of amphipods on those previously contaminated settlements
 began
 (5) for some species in one to two years. Within Prince William
 (6) Sound, these crustaceans have reoccupied the oil sites in
 (7) significant densities by 1991, just two years since being
 (8) oiled.
 (9) Do you see that?
 (10) A No, my - my copy does not conform. It's not the same. We
 (11) were okay on two sentences, but from then on, I don't -
 (12) Q All right, then let me read it instead of out of my notes
 (13) out of the deposition. We'll try it one more time.
 (14) Perhaps the greatest single indication of initial oil
 (15) effects, followed by recovery, was the recolonization of oiled
 (16) sites by sensitive burrowing amphipods. In 1990 at six to
 (17) twenty M depths - what's the "M" for?
 (18) A Meters.
 (19) Q Thank you. The abundance of all amphipods was
 (20) significantly - P is less than .01 - greater at oiled
 (21) sites, unoiled meaning 47 individuals 0.M squared, oiled mean
 (22) equal 19/0.1 M squared. However, at this depth in 1991, no
 (23) difference - P is greater than 0.1 - in total amphipod
 (24) abundance or biomass was detected between oiled and
 unoiled
 (25) sites.

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(1) percent.
 (2) Q So they experienced substantial recovery by 1991, and now
 (3) you're saying that they do not seem to be doing well?
 (4) A That's right. The issue in this is whether you can detect
 (5) a change or not in 1991, there was no detectable difference in
 (6) the amphipod abundance. It didn't imply that they were
 (7) identical, and in 1993 we've now learned that they're not
 (8) identical and there's still a big difference in amphipod
 (9) abundance, lower on the oiled shores in eelgrass beds.
 (10) Q Going back to the report, I think it was stronger than
 (11) you're characterizing it. Again, it says the greatest single
 (12) indication of initial oil effects, followed by the recovery,
 (13) was the recolonization, and it said in total, no difference in
 (14) total amphipod abundance or biomass was detected between
 oiled
 (15) and unoiled sites. I think you were undercharacterizing it
 (16) just now based on what is said there; don't you?
 (17) A I think that's exactly what I said. It's certainly what I
 (18) intended to say.
 (19) Q Okay. Let's talk about rockweed, which is also called
 (20) fucus. You told us this morning that it is the dominant
 (21) organism in the intertidal zone; is that right?
 (22) A It is the thing - and the way I expressed it was - it is
 (23) the thing that gives the greatest appearance to the intertidal
 (24) zone; in other words, its abundance is such that as you glance
 (25) at the intertidal zone, it gives you the appearance of what

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(1) Do you agree with that?
 (2) A I agree with that as far as it goes.
 (3) Q All right, I'm asking if you agree with it as far as it
 (4) goes. And do you agree that amphipods experience
 substantial
 (5) recovery by 1991?
 (6) A No, I do not.
 (7) Q All right, let me show you, sir, your February 1993 report
 (8) at page 13, it's DX15280, page 13, and it says sampling of
 (9) benthic invertebrates in this soft bottom habitat was conducted
 (10) in oiled and unoiled embayments in both 1990 and 1991 at 3
 (11) meters within the eelgrass bed and at six and twenty meter
 (12) elevation depths in below lower boundary of the bed. At these
 (13) two deeper elevations infaunal invertebrates were reduced in
 (14) abundance at oiled embayments - excuse me - unoiled
 (15) embayments in 1990 but experienced substantial recovery by
 (16) 1991.
 (17) Do you agree with that statement that you wrote in 1993?
 (18) A No, I do not.
 (19) Q Tell me why not.
 (20) A Because within the last week, I have been given the copy of
 (21) the field report for the 1993 field season when this same team
 (22) was able to go back out into the environment, sample those
 same
 (23) places and readdress what happened to the amphipods, and
 the
 (24) amphipods in 1993 are significantly less than .01 reduced in
 (25) abundance at the oiled sites by a difference of about 20 to 30

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(1) that zone is like.
 (2) Q Right. And in your opinion, the fucus cover has increased
 (3) substantially but has not returned to referenced levels in the
 (4) higher intertidal zone on south-facing shores; is that right?
 (5) A That is one area where the fucus cover has not returned.
 (6) Q Okay, and does your October 1992 report discuss any other
 (7) areas?
 (8) A I don't believe I made a report in October 1992, but I
 (9) could be convinced otherwise.
 (10) Q October 1993.
 (11) A Without looking at it, I can't recall exactly the full
 (12) extent of my remarks on fucus. I do know that I have
 (13) subsequently received additional reports since then that
 (14) describe the results of the field season in 1993 for fucus.
 (15) Q And those would not have been included in your October
 1993
 (16) report?
 (17) A No, they would not have.
 (18) Q All right. At the time that you prepared your October 1993
 (19) report, were you of the opinion that the fucus cover had
 (20) increased substantially but had not returned to reference
 (21) levels in the higher intertidal zone on south facing shores?
 (22) A That is - I was of that opinion that that is correct, that
 (23) that is true and that there are other areas that - on which
 (24) fucus has not recovered substantially. In other words, it is
 (25) not simply limited to the south-facing shores in the high zone.

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- (1) Q Is there any reason why you so limited it in your October
 (2) 1993 report?
 (3) A Yes, I had not received the information from the field
 (4) season from 1993, which was done in all areas, not just in the
 (5) south-facing shores, but had information for the shores more
 (6) generally.
 (7) Q So prior to October of 1993, no scientists had ever looked
 (8) at fucus cover on a shore that wasn't south-facing?
 (9) A No, but the data that I had in hand were not broken down in
 (10) a way that let me say anything more certain, except about the
 (11) south-facing shore, so that I didn't want to say something I
 (12) couldn't support.
 (13) Q But you didn't indicate in your report, did you, that there
 (14) was any likelihood of any other problem with the fucus?
 (15) A No, I didn't want to go beyond what I knew when I wrote
 (16) that report.
 (17) Q Okay. So at the time you wrote your report in October of
 (18) 1993, you believe that on south-facing slopes that were oiled,
 (19) the fucus was about a half meter lower than it was before?
 (20) A That's correct, a half meter vertically. It's measured
 (21) in -- as the tide falls from top to bottom.
 (22) Q Do you expect the fucus to continue to recover?
 (23) A Yes, I do.
 (24) Q And don't you also have the theory that warm weather may
 (25) have caused some desiccation of fucus and other organisms?

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- (1) A Yes, warm weather and desiccation is a -- an event in the
 (2) intertidal zone that can kill organisms or cause problems, and
 (3) that includes problems that fucus can and, I think, does
 (4) suffer.
 (5) Q So oil isn't the only thing that isn't good for fucus?
 (6) A That's correct.
 (7) Q All right, let's talk about kelp. You were of the view
 (8) that in oiled areas, the large kelp were down in 1990 compared
 (9) to the number of small kelp?
 (10) A That's -- that's correct.
 (11) Q All right. By 1990, didn't the small plants rapidly fill
 (12) in the open spaces?
 (13) A Yes, there had been recruitment of small plants to replace
 (14) the loss of the bigger ones from the year before.
 (15) Q And do Dean, Stekoll and Jewett agree and report that in
 (16) all cases there are proportionately more small algae at the
 (17) oiled sites?
 (18) A Yes, that's the source of my information.
 (19) Q Okay. Let's turn to intertidal fish. You previously
 (20) testified that a coastal habitat study demonstrated that the
 (21) abundance of intertidal fish as a group had declined by 75
 (22) percent in the summer of 1990, and that the recovery in the
 (23) biomass was not yet complete in 1990; is that correct?
 (24) A Not -- not fully. They had declined by 1990 and the
 (25) recovery was not fully complete in biomass in 1991. Those

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- (1) were -- I mean, it's conceivable I said what you said, but if I
 (2) did, I misspoke by that last year, because the data years are
 (3) 1990 and 1991 that we've got information for.
 (4) Q Okay. When you were talking about the coastal habitat
 (5) study, were you referring to the November 1991 coastal habitat
 (6) study or the December 1993 final status reports?
 (7) A The information that I -- that I based my comments on was
 (8) the most recent that I had available to me and that was that
 (9) November/December in 1993.
 (10) Q Okay, let's go back and do this one more time. There was a
 (11) November 1991, followed by a December 1993, and I'm asking
 (12) you: Did you base your opinion on the '91 report or the '93
 (13) report?
 (14) A And my answer is: I based it on the most recent
 (15) information, which was the 1993.
 (16) Q All right. And let me show you a copy of the coastal
 (17) habitat study, final status report, Page 326. It's DX15288 and
 (18) it's under all fish, abundance and biomass. Can you read --
 (19) look at the first paragraph.
 (20) MR. PETUMENOS: Can you give me a moment here,
 (21) counsel?
 (22) BY MS. SMITH:
 (23) Q Are you ready?
 (24) A Yes.
 (25) Q All right. And does the coastal habitat study under all

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- (1) fish in December 1993 under abundance and biomass say, for
 (2) all
 (3) habitats combined, abundance and biomass were greater at
 (4) control sites in 1990, figure 5-3. In 1991, neither abundance
 (5) nor biomass showed consistent differences between control
 (6) and
 (7) oiled sites.
 (8) Let's go down, if you want you can read the middle, but if
 (9) you want let's go down to the last two sentences. In 1991,
 (10) biomass was essentially equal on control and oiled sites for
 (11) both visits, although abundance and biomass increased at both
 (12) control and oiled sites in 1991, the magnitude of the increase
 (13) was relatively greater on the oiled sites.
 (14) Do you agree with that?
 (15) A Yes, I do.
 (16) Q Do you believe now that fish have recovered?
 (17) A Could you clarify; all fish?
 (18) Q All fish covered by this report right here on Page 326 of
 (19) the December 1993 coastal habitat study?
 (20) A No, I would say that that falls into a category of organism
 (21) that I think there's a great deal of uncertainty about what has
 (22) subsequently happened.
 (23) Q And you think that the December 1993 coastal habitat study
 (24) in the first paragraph under abundance and biomass, all fish,
 (25) on Page 326 is wrong?
 (26) A No, I think it's perfectly correct.
 (27) Q Let's talk about mussels. There are millions, if not

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- (1) billions, of mussels in Prince William Sound; correct?
- (2) A A large number.
- (3) Q Hazard a guess?
- (4) A No.
- (5) Q Are the vast majority of the mussels on bedrock?
- (6) A Probably, although I can't say with comfort that I've seen
- (7) any analysis to separate the bedrock versus cobbles versus
- (8) softer sediment sorts of habitats for mussels.
- (9) Q Let me ask you this: How much of the Sound is bedrock?
- (10) A The shoreline of Prince William Sound?
- (11) Q Yes, yeah.
- (12) A I don't know exactly, but it's in the ballpark of 35, 40
- (13) percent.
- (14) Q All right. And if you add cobble to that?
- (15) A There would be another 25 percent or so, I would - let me
- (16) change one of my answers. The bedrock answer I was
- (17) answering
- (18) was actually exposed rock. If I add exposed and sheltered
- (19) rocky shores. I think the total of bedrock would be something
- (20) in the 70 percent ballpark.
- (21) Q 70 percent for those two kinds of bedrock and, if you add
- (22) cobble, another 25 percent?
- (23) A Another 20 or thereabouts.
- (24) Q All right. So 90 to 95 percent of the shoreline is the two
- (25) kinds of bedrock or the cobble; is that correct?
- (26) A I - that's close. I'd have to look at the actual surveys

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- (1) to get you a perfectly accurate number, but that's - I'm not
- (2) mischaracterizing it terribly.
- (3) Q And the mussel beds that's you talked about earlier, are
- (4) they on bedrock?
- (5) A Those are on softer sediments.
- (6) Q That's right. So there's no mussel beds on the 70 percent
- (7) of the Sound that has a bedrock shoreline; is that correct?
- (8) A No, that's not.
- (9) Q I thought mussel beds only were on soft sediment?
- (10) A No, mussel beds occur on bedrock, on hard substrate, as
- (11) well as in soft.
- (12) Q They do?
- (13) A Yes, they do.
- (14) Q Do you have any data on the health of the mussels on
- (15) bedrock in areas oiled in 1989?
- (16) A Yes, I've seen substantial information on the mussels on
- (17) bedrock environments.
- (18) Q Okay, and what data would that be, please?
- (19) A The data are probably best displayed in - in the coastal
- (20) habitat December 1993 final report.
- (21) There's also an additional source of that information,
- (22) which is the study by NOAA that examined mussels on
- (23) shorelines.
- (24) Q Mussels on bedrock?
- (25) A Yes, including mussels on bedrock as a geomorphological
- (26) type of habitat in the intertidal environment.

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- (1) Q Did you peer review any studies involving mussels that live
- (2) in mussel beds that were oiled in 1989?
- (3) A Yes, I did.
- (4) Q And that was the study done in Herring Bay?
- (5) A Herring Bay is - is one - I'm a little confused about
- (6) which study you're talking about. Herring Bay is one of
- (7) several places where there were studies of oiled mussel beds.
- (8) Q All right. Where were the others?
- (9) A The others were scattered about in various places through
- (10) Prince William Sound, including places on LaTouche. I believe
- (11) there were Evans Island places. There were a whole bunch of
- (12) different places on Knight Island. I think there was a Green
- (13) Island site.
- (14) Q And who conducted those studies, please?
- (15) A The study, if we're talking about the same one - and there
- (16) are several that looked at mussels, but the study that I think
- (17) we're talking about is one that was conducted by NOAA, the
- (18) National Marine Fisheries Service, and the principal
- (19) investigators were - were Rice, Babcock, Rounds, and Short.
- (20) Q Did you peer review the Malin Babcock study in Herring Bay?
- (21) A You'll have to be more explicit about what aspects of the
- (22) study to let me answer that.
- (23) Q All right, let me show you your notes. It's DX15279. Do
- (24) you see at the top it says review of Kerinan and Babcock?
- (25) A Yes, I do.

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- (1) Q And is that a mussel bed study that you're reviewing?
- (2) A This was a review of a research proposal that Kerinan and
- (3) Babcock entered into the Trustees for review and for possible
- (4) funding.
- (5) Q Okay. And this had to do with oiled muscle beds; correct?
- (6) A This had to do with mussels, but was a proposal before the
- (7) time at which we had identified the problem that oiled mussel
- (8) beds existed.
- (9) Q So it had to do with mussels, but it appears to be in soft
- (10) sediments; do you agree?
- (11) A These mussels that are discussed here, at least some of
- (12) them, appear to be in soft sediments.
- (13) Q And a low energy area means what?
- (14) A That means an area where you could indeed have sediments
- (15) build up, like sands and clays and silts because there is not
- (16) violent wave action to scour them and remove them.
- (17) Q And you say on - oh, that's too much of a zoom - recovery
- (18) of that damage, it seems highly likely that the sediments in
- (19) mussels that are contaminated by Exxon Valdez oil spill
- (20) petroleum will indeed recover on their own. In low energy
- (21) areas, which are the focus of this study, that recovery is
- (22) likely to take longer than in higher energy areas and the PI's
- (23) estimate of three to five years is not unreasonable.
- (24) Consequently, you could argue that no restoration efforts are
- (25) needed for these resources. Furthermore, it is difficult to

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- (1) imagine what intervention could be contemplated to enhance the
 (2) rate of recovery of these resources, even if one did decide
 (3) that natural recovery of three to five years was too slow.
 (4) Did you write that?
 (5) A Yes, I did.
 (6) Q Let me talk to you for a moment about otters and sea
 (7) urchins. You've given an example of what you call a cascading
 (8) effect, and let me see if I've got it right. The oil spill
 (9) affects the otters. That causes there to be less otters. They
 (10) eat less sea urchins. The sea urchins then exploded and
 (11) cleared out other living things in the area, which in turn
 (12) reduces the food for juvenile fish. Do I have that right?
 (13) A Yes, although it's not explicit enough for my tastes. The
 (14) other living things they clear out are the seaweeds they graze
 (15) on. In fact, they're replaced by a lot of animals that come in
 (16) to take their place. So there are things that decline and
 (17) things that go up rather than a clearing of everything.
 (18) Q So an urchin barren doesn't mean there's nothing left but
 (19) sea urchins?
 (20) A That's correct.
 (21) Q Are you saying there are no longer any otters in the area
 (22) that was oiled in 1989?
 (23) A No, I do not make that claim.
 (24) Q Are you saying that even if there was a reduced otter
 (25) population that they wouldn't eat more of these delicious sea

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- (1) urchins if they were available to them?
 (2) A It depends upon the level of reduction of the otter
 (3) population and the localities where that reduction exists how
 (4) widely the otters range and whether they return to shores that
 (5) were heavily oiled.
 (6) Q Are you saying that there are urchin barrens in Prince
 (7) William Sound?
 (8) A No, I am not.
 (9) Q You talked to Dr. Jewett about this in September of 1993?
 (10) A That - that is my recollection.
 (11) Q And he didn't tell you there was an explosion of sea
 (12) urchins; did he?
 (13) A I don't know quite how to answer that. He described to me
 (14) what he had found, which was that sea urchin abundance in
 (15) four
 (16) of the six eelgrass - sorry, four of the six vegetated study
 (17) sites that he examined in Prince William Sound, that densities
 (18) of sea urchins had increased from absolutely zero to a
 (19) substantial level of about ten per square meter.
 (20) Q And these are little sea urchins; right?
 (21) A At the time when he sampled them, these were sea urchins
 (22) that had newly recruited, probably within the last year and
 (23) were in the silver dollar ballpark.
 (24) Q Do sea urchin recruitments traditionally go up and down?
 (25) A They, like many animals, have their good years and their

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- (1) Q Okay, did he tell you that he had no data to support
 (2) whether there was a true increase in urchins, but rather the
 (3) observations of his divers were more anecdotal than anything
 (4) else?
 (5) A No, he didn't at all. He had quantitative data from doing
 (6) quantitative sampling.
 (7) Q Did he tell you that the urchins were in what he calls
 (8) cryptic locations, hiding under rocks or algae?
 (9) A He did indeed say that they tend to be in those cryptic
 (10) locations.
 (11) Q It doesn't sound like they're amassing on the ocean floor
 (12) ready to take over, based on Mr. Jewett's description; does it?
 (13) A I would say that's an area of uncertainty that deserves
 (14) further attention.
 (15) Q You haven't done any experiments to determine whether this
 (16) phenomena will actually occur; have you?
 (17) A I've not personally done experiments to address that, no.
 (18) Q Jewett's going to do a continuing project to see what
 (19) happens here; right?
 (20) A If his application is successful for funding.
 (21) Q Right. You want to see how much of this is going to
 (22) happen?
 (23) A Yes, that's exactly what I was arguing, that the scale, how
 (24) much of this will happen, the time frame is very important to
 (25) learn and that is the area of uncertainty.

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- (1) Q Nobody knows?
 (2) A Nobody knows the scope of how this phenomenon will play
 (3) out
 (4) in the end, given what we know.
 (5) Q Okay. Let's talk about salmon for a minute. The pink
 (6) salmon that you discussed earlier, they're part of the food web
 (7) and you described them as an important part of the web?
 (8) A Yes.
 (9) Q And pink salmon have a two year life cycle; don't they?
 (10) A That's right.
 (11) Q And the salmon that were growing and feeding in the Prince
 (12) William Sound and the other affected areas when the oil was
 (13) there in the spring and the summer and the fall of 1989,
 (14) they're the group that returned to spawn in 1990; didn't they?
 (15) A Take me through the years again.
 (16) Q They were growing and feeding in the Sound in '89 and came
 (17) back to spawn in '90?
 (18) A Correct. The juveniles that were growing and feeding in
 (19) that coastal environment in '89 are the ones that then returned
 (20) in '90 to spawn.
 (21) Q And the juveniles are the ones that ate the food that
 (22) you're talking about in the intertidal zone in 1989?
 (23) A That's right, those juveniles that returned in '90 ate food
 (24) in the intertidal in late 1989.
 (25) Q And they're the ones that ate the oil; right?
 A That is one -

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- (1) Q And they ate when the oil was there?
- (2) A That is one year class that ate when oil was there.
- (3) Q All right. And the fish that had fed and swam out of the
- (4) Sound when the oil was there returned in 1990 as the largest
- (5) record catch in history; right?
- (6) A That's my understanding.
- (7) Q In fact, the commercial pink harvest for 1990 was over 44
- (8) million fish, which was twice as much as the prior year's
- (9) harvest; right?
- (10) A That's my understanding.
- (11) Q And the next class, the pink salmon that were larva and fed
- (12) as larva in 1990, they returned in 1991 to be caught or to
- (13) spawn or die?
- (14) A That's correct.
- (15) Q All right. And isn't it a fact that the run size of the
- (16) pink salmon in Prince William Sound in 1991 was the second
- (17) largest in history?
- (18) A Yes, it was very large.
- (19) Q In fact, the commercial pink harvest was over 37 million;
- (20) right?
- (21) A I don't know the exact numbers, but I'm with you on the
- (22) argument.
- (23) Q All right. And I listened to your discussion of salmon
- (24) eating or living in these oiled nursery environments. Don't 75
- (25) percent of the salmon, the 1989, the 1990 salmon come out of

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- (1) the hatcheries?
- (2) A The majority of - of salmon in the wild system are
- (3) hatchery raised fish, yes.
- (4) Q Okay, so they weren't in the gravel with the potential of
- (5) being oiled, they were safe and sound over at the hatchery;
- (6) right?
- (7) A The eggs were not in the gravel. The juveniles that
- (8) entered into the Sound and fed were at risk.
- (9) Q Okay. Now, how about the herring, didn't the herring come
- (10) back to the Sound in record numbers in 1991?
- (11) A There were - I cannot confirm that it was record numbers,
- (12) but there were large numbers of herring in '91.
- (13) Q Second highest catch ever?
- (14) A I'll believe you. It was a large number.
- (15) Q All right, how about 1992, record numbers?
- (16) A Large.
- (17) Q First highest catch ever?
- (18) A I'll believe you. It was a high return.
- (19) Q Dr. Peterson, is this the first time in history there's
- (20) been a major oil spill?
- (21) A No.
- (22) Q And if scientists studied other major oil spills and the
- (23) recovery from those spills?
- (24) A Indeed.
- (25) Q In reaching your opinions, have you taken into account

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- (1) scientific literature regarding the impact of other major oil
- (2) spills?
- (3) A Yes.
- (4) Q All right. Are you familiar with the 1990 Library of
- (5) Congress Congressional Research Service report by Dr. James
- (6) E.
- (7) Mielke entitled, Oil in the Ocean, the Short and Long-term
- (8) Impacts of a Spill?
- (9) A I believe I'd have to look at that, but if you can confirm
- (10) it's what I think it is, the answer will be yes.
- (11) Q Okay, I show you a copy of what's been marked as
- (12) DX15345?
- (13) A Yes, this is indeed what I thought it was.
- (14) Q All right. Are you familiar with this report?
- (15) A Only - yes.
- (16) Q Did you participate in the preparation of this report or
- (17) contribute any scientific papers used in its preparation?
- (18) A No, I didn't.
- (19) Q All right. I'm going to show you the summary page of
- (20) DX15345. Can you read that, what I'm doing with it? And I'm
- (21) going to read you the highlighted portion.
- (22) The six events shown are the Santa Barbara and Ixtoc I
- (23) blowouts and the Argo Merchant, Burmah Agate, Alvenus and
- (24) Amoco
- (25) Cadiz tanker spills. Each event received extensive media
- (26) coverage at the time and are still thought of by many as major
- (27) environmental catastrophies. In fact, the environmental
- (28) damage
- (29) and socioeconomic consequences were relatively modest and,
- (30) as

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- (1) far as can be determined, of relatively short duration. The
- (2) longest residence time spilled oil appears to have in the
- (3) marine and coastal environment is generally less than a
- (4) decade,
- (5) often much less. The major ecological impact comes at the time
- (6) of the spill or within the first few months. Beyond a few
- (7) months, most oil is reduced to tarry residues or is chemically
- (8) detectable in sediments and resident organisms which may be
- (9) of
- (10) scientific interest, but in terms of further ecological impact,
- (11) likely to be fairly insignificant. Short-term impacts on
- (12) marine animal life are dramatic, but recovery of species
- (13) populations in almost every case studied has been swift.
- (14) Do you recall reading that?
- (15) A I recall that.
- (16) Q All right, and let me show you from DX15345, on page 34,
- (17) from the epilogue?
- (18) MR. PETUMENOS: Excuse me, I have an objection if
- (19) she's going to use this document. The next thing is asking the
- (20) witness if he agrees or disagrees with it. Otherwise there's
- (21) no reason to read it to him.
- (22) MS. SMITH: He's an expert. I asked him if he took
- (23) other literature from other oil spills into account in his
- (24) opinions. He said yes, and I asked him if he was familiar with
- (25) this report, and he said yes, and I'm showing it to him.
- (26) THE COURT: The objection's overruled.
- (27) BY MS. SMITH:

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- (1) Q Let me show you in the epilogue it says, the oceans are
 (2) ancient and throughout the course of time many sea-dwelling
 (3) species have flourished and faded while new species have
 (4) evolved. Now, for the first time, there is a broad human
 (5) concern for the well-being of the seas because, as no other
 (6) creature before, human beings have the ability to alter a wide
 (7) range of marine ecosystems dangerously and quickly. In the
 (8) pursuit of food and living resources, humans have even
 (9) threatened the survival and caused the extinction of many
 (10) species. Fortunately, however, the oceanic environment is not
 (11) fragile. In fact, it is extraordinarily resilient. It has
 (12) evolved through the ice ages, global warming, bombardments
 (13) of cosmic radiation, fluctuations of the sun, massive volcanic
 (14) eruptions, and collisions of comets and meteors. Mass
 (15) extinctions of species were associated with some of these
 (16) events, but life forms continued to adapt, evolve, become more
 (17) complex and flourish.
 (18) Do you see that?
 (19) A Yes, I do.
 (20) Q Dr. Peterson, you testified as a peer reviewer it is
 (21) important for you to remain unbiased, as opposed to the PI's
 (22) who are trying to get the grants, et cetera; isn't that
 (23) correct?
 (24) A No, that's not an accurate reflection of my comments.
 (25) Q All right, what is accurate?

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- (1) A My indication was that I was arguing not that PI's were
 (2) biased, but that I did not want to be involved in the PI's in a
 (3) way that would reward me for having their project funded
 (4) because I was going to work on it. PI's in this project were
 (5) kept very unbiased by the fact that we had peer reviewers who
 (6) were the best people available in the national scientific
 (7) community in these areas to come examine very closely their
 (8) study plans, their results and challenge any and all of the
 (9) conclusions whichever way they went. So that part of it is
 (10) what I'm objected to.
 (11) Q When were you hired by the plaintiffs for either the
 (12) federal or the state case?
 (13) A Could you clarify what you mean - oh, no, you don't have
 (14) to clarify. The plaintiffs in this particular action?
 (15) Q Or the federal action.
 (16) A Or the federal action. My recollection is that it was in
 (17) the ballpark of spring or summer of - of 1992.
 (18) Q And since the spring or summer of 1992 when you were hired
 (19) by the plaintiffs, you've continued to be a peer reviewer for
 (20) the Trustees?
 (21) A Yes, I have.
 (22) MS. SMITH: Okay, thank you. No further questions.
 (23) THE COURT: How much time, counsel?
 (24) MR. PETUMENOS: I'll try to keep it as short as
 (25) possible, maybe five minutes.

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- (1) THE COURT: If it's more than ten minutes, you'll have
 (2) to top now.
 (3) MR. STOLL: Your Honor, I have a couple questions
 (4) also. That's fine.
 (5) MR. PETUMENOS: We better get started.
 (6) Mr. Stoll, why don't you ask your questions.
 (7) MR. STOLL: You go ahead.
 (8) MR. PETUMENOS: One of us better start.
 (9) REDIRECT EXAMINATION OF DR. CHARLES H. PETERSON
 (10) BY MR. PETUMENOS:
 (11) Q All right, Dr. Peterson, I want to ask you about these
 (12) questions that were asked to you on cross-examination
 (13) regarding
 (14) whether or not shorelines were oiled in the Sound as it
 (15) pertains to the ecosystem. Can there be damage to the
 (16) resources surrounding a property, whether or not the shoreline
 (17) itself, is oiled?
 (18) A Absolutely.
 (19) Q Why is that?
 (20) A That's because many, perhaps most, of these organisms,
 (21) especially the ones that we harvest and take value from, are
 (22) mobile and they move around through a larger system, so
 (23) where
 (24) they are damaged doesn't relate to how much damage and
 (25) whether
 (26) other people are not experiencing that. The harbor seal
 (27) information that I gave earlier, the 51 percent decline is a
 (28) Sound-wide decline in Prince William Sound, just as an

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- (1) example.
 (2) Q When you were retained to be a peer reviewer, did your
 (3) employers, the Trustees, want you to be going around the
 (4) Sound
 (5) visiting these specific sites or did you have a different
 (6) mission?
 (7) A No, my mission was different.
 (8) Q And why would it be inappropriate for you to be spending
 (9) lots of time in the Sound collecting samples?
 (10) A Well, I wouldn't say inappropriate. It's just that time
 (11) spent in pursuit of one thing takes away from time spent in
 (12) pursuit of something else, and by virtue of my oversight, add
 (13) in integrating all the work of the well over a hundred
 (14) scientists, experts in their own right on certain components of
 (15) the system, I was able to get a much better understanding of
 (16) how the whole ecosystem works together than I would ever
 (17) have
 (18) if I'd invested that same time in looking at, say, one given
 (19) species like herring.
 (20) Q Do you remember those questions where counsel asked you
 (21) whether in critiquing this proposal for a grant and you began
 (22) to discuss whether or not there should be treatment or
 (23) intervention in a particular area relating to mussels; do you
 (24) remember that testimony?
 (25) A Yes, I do.
 (26) Q And do you remember, could you comment for us on
 (27) whether -
 (28) the issue of whether or not there should be treatment or

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- (1) intervention on a site is the same thing as determining whether
 (2) there has been damage to an area?
 (3) A No, it's entirely a different issue. The issue of
 (4) treatment of the shorelines after the spill has occurred is an
 (5) issue of two losing propositions. Do we not treat it and let
 (6) damages remain and let the oil sit there, or do we treat it and
 (7) add additional damages and risk of damage by that treatment.
 (8) So it's a no win/no win, lose/lose situation.
 (9) Q Do decisions have to be made as to where the greater loss
 (10) will be between treatment and leaving it alone?
 (11) A I think decisions should be made about that. Whether they
 (12) always are is open to question.
 (13) Q What about hot water washes, as an example. What does
 (14) that
 (15) do, as a treatment technique, to the environment?
 (16) A A study by the NOAA group of scientists demonstrated that
 (17) the pressurized hot water wash over a period of five to seven
 (18) days cleared off the organisms from the rocks to a degree of
 (19) from 50 to 90 percent. These were fucus, barnacles, the snails
 (20) that I talked about in just that short a period of time.
 (21) Q You were shown exhibit 15288, which I'd like to show you,
 (22) which was put on the machine here, and it talked about the
 (23) biomass being greater at control sites for fishes and so
 (24) forth. I think why I said that there was a reason why, despite
 (25) that paragraph, relating to greater fishes in the oiled
 (26) shoreline. That nevertheless didn't mean that the fish have

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- (1) recovered. What did you -- what do you mean?
 (2) A The reason that I argue that, one of the reasons, and the
 (3) reason that's based most directly upon the material that's
 (4) provided in this paragraph and in the report that goes with it,
 (5) is that this particular standard, as to whether they could
 (6) detect difference in biomass, was an inappropriate standard.
 (7) The text reads, and I quote, although biomass in 1990 was 1.6
 (8) times greater at control sites during both first and second
 (9) visits, the difference was not significant. Significant there
 (10) is defined as a probability of occurring by accident of less
 (11) than five percent.
 (12) In point of fact, when you look at the analysis, there is a
 (13) 20 percent likelihood that this could have occurred by
 (14) accident, which means that there's 80 percent likelihood that
 (15) oil actually caused that difference, and that's the reason why,
 (16) as written here, it doesn't apply as readily to the issue at
 (17) hand.
 (18) Q Do you remember those questions that counsel asked you
 (19) about these record runs and so forth in 1990 and 1991 for
 (20) herring and salmon?
 (21) A I do.
 (22) Q Tell the jury what happened in the years after that.
 (23) A What happened in the years after that were dramatic crashes
 (24) in both salmon and pink salmon and herring in the Prince
 (25) William Sound and in the spill system.

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- (1) Q By "dramatic," what do you mean?
 (2) A Well, I mean that for herring, there's not been a fishery
 (3) open for herring in the last two years. For pink salmon, the
 (4) numbers are a small percentage, 20 percent and less, so that
 (5) the returns are -- are grossly out of line with historical
 (6) returns.
 (7) Q We saw a study about these other oil spills from this --
 (8) this gentleman, do you remember his name?
 (9) A No, I don't. But I know the study you're referring to.
 (10) Mielke.
 (11) Q Mielke. Do you know Mr. Mielke or whether he works for oil
 (12) companies ever?
 (13) A I know absolutely nothing about him, except that this
 (14) document is not a peer-reviewed science document. So it is not
 (15) the sort that I naturally would see and review.
 (16) Q What do you mean, it's not a peer-reviewed document?
 (17) A This is not a publication in one of the journals that is
 (18) part of the scientific body of evidence that we use as
 (19) scientists to address problems. This is a report written by a
 (20) group called CRS.
 (21) MR. PETUMENOS: Your Honor, that exhibit I'm referring
 (22) to is Exhibit 15345, for the record.
 (23) MR. PETUMENOS: I yield to Mr. Stoll.
 (24) REDIRECT EXAMINATION OF DR. CHARLES H. PETERSON
 (25) BY MR. STOLL:

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- (1) Q Dr. Peterson, I happen to represent some communities in
 (2) Kodiak and there was some questioning in cross-examination
 (3) about Kodiak. Now, in your -- as a scientist for the Trustees,
 (4) have you found any damage to the ecological system as a result
 (5) of the Exxon Valdez oil spill on Kodiak?
 (6) A Yes, indeed we have. I mentioned earlier that the
 (7) intertidal shoreline study that was conducted was conducted
 (8) intensively in all three areas, Prince William Sound, the
 (9) Kenai, and the Kodiak archipelago and in Kodiak, there were
 (10) damages of the sort that I've reported, of fucus being reduced
 (11) tremendously on the shoreline, of not recovering by the time
 (12) frame that we have to examine that recovery, and of other
 (13) changes in those animals that live on the major -- the
 (14) barnacles and the snails and the mussels. So Kodiak is
 (15) included as one of the sites in which we've examined the
 (16) changes brought by the spill.
 (17) Q Now, there's been a lot of testimony about pink salmon in
 (18) Kodiak. In addition to spawning salmon, we have red salmon.
 (19) Could you tell the jury what, if any, you -- damage you have --
 (20) you understand -- what you found, as far as Kodiak is
 (21) concerned, with red salmon?
 (22) A Yes, there have been damages to the sockeyes, the reds in
 (23) Kodiak. They have been a consequence of what we call
 (24) overescapement, that is to say letting too many fish go through
 (25) to the spawning areas the problem with that is.

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- (1) MS. SMITH: Your Honor, I'm not sure he has any
 (2) expertise in this area, there are experts who will talk about
 (3) overescapement, but I don't believe this witness has the
 (4) expertise to discuss it.
 (5) THE COURT: Foundational discussion.
 (6) MS. SMITH: Yes.
 (7) THE COURT: I'll let you lay the foundation
 (8) afterwards. He can continue his answer.
 (9) MR. STOLL: I'm sorry.
 (10) THE COURT: If you're not completely hung up, Doctor.
 (11) THE WITNESS: Oh, I'm sorry.
 (12) THE COURT: You can finish your answer and tell us
 (13) what the basis of your knowledge is.
 (14) A Yes, the overescapement resulted in more larval fish
 (15) entering the nursery system, which is the lake system, and
 (16) those larval fish have depleted their prey to the degree that
 (17) the larvae, themselves, have suffered reduced survivorship.
 (18) There's competition in the lakes for the food for larvae, so we
 (19) regulate how many red salmon are allowed to come into the
 (20) lakes. There was a study done that included lakes on Kodiak
 (21) and demonstrated that this is a serious problem, reducing the
 (22) smolt production, which are the young salmon leaving those
 (23) streams after some years to go to sea and then ultimately
 (24) return to the fishery. That smolt production is greatly
 (25) reduced because of that overescapement and will be a problem
 to

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- (1) the fishery.
 (2) Q Was this a result of the Exxon Valdez oil spill?
 (3) A Yes, it was, because the fishery could not be prosecuted
 (4) normally in the year of 1989. These fish were both
 (5) contaminated and also viewed by the market as undesirable.
 (6) Furthermore, fishermen fishing in the system would have
 (7) problems fouling their gear. So the management was, one,
 when
 (8) we - was of the sort that we could not prosecute the fishery
 (9) because we couldn't market those fish that came from it.
 (10) Q What is the basis?
 (11) MS. SMITH: Your Honor, he's way - I don't understand
 (12) the scope. We're going to hear from a witness on Monday,
 who's
 (13) a commercial fisheries fellow. This person is a marine
 (14) biologist talking about fouled gear and overescapement on
 (15) lakes, and I could cross him now for days on those issues. I
 (16) don't think this is the right person.
 (17) THE COURT: I hope not, counsel. It's your ball game,
 (18) counsel. You ask the questions. It's a fair opportunity to
 (19) cross-examine.
 (20) MR. STOLL: I understand, all right.
 (21) THE COURT: This could keep this witness here for a
 (22) long time.
 (23) MR. STOLL: Your Honor, one or two more questions?
 (24) BY MR. STOLL:
 (25) Q Now, Dr. Peterson, if you haven't actually been to Kodiak,

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- (1) how do you know this - these facts that you're reporting here?
 (2) A Well, in the course of my work for the Trustee Council, I
 (3) have reviewed the reports of all the scientists that address
 (4) the various species in the ecosystem, the various areas, and
 (5) what the response has been. I've also had meetings on over 20
 (6) trips to Alaska where we meet for a great deal of time, the
 (7) PI's, the peer reviewers and agency scientists and I've, in
 (8) fact, read a stack of reports that probably equals the height
 (9) of this room describing all the data and all the results, as
 (10) well as those meetings that I've attended during which all the
 (11) scientists who were specialists on particular aspects of the
 (12) system are involved, and it's on that review effort that I base
 (13) my understanding.
 (14) MR. STOLL: Thank you very much. That's all.
 (15) MS. SMITH: Two questions.
 (16) Three questions.
 (17) THE COURT: Okay.
 (18) RE-CROSS EXAMINATION OF DR. CHARLES H. PETERSON
 (19) BY MS. SMITH:
 (20) Q Have you been made aware of the early pink salmon returns
 (21) for this year?
 (22) A I have asked fishermen, actually, about the early pinks for
 (23) this year.
 (24) Q And have they told you that so far it's off the charts?
 (25) A What I learned was that they didn't know anything, that it

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- (1) was too early to tell. Learned something about chum but not
 (2) about pink.
 (3) Q Have you asked them this week?
 (4) A Yeah, as a matter of fact, I just asked two Cordova
 (5) fishermen that I picked up yesterday.
 (6) Q There's a fish report that came out today, we'll take a
 (7) look at it. On overescapement, are you aware that there was a
 (8) massive overescapement in 1980 in Red Lake and Kodiak and
 that
 (9) five years later in the five-year cycle, those fish came back
 (10) healthy and in overwhelming numbers?
 (11) A I'm not aware of that 1980 escapement data. No, I'm not.
 (12) MS. SMITH: Thank you.
 (13) THE COURT: You can step down, Doctor. And I'll let
 (14) you go.
 (15) I kept you ten minutes overtime, so I'll get you out of
 (16) here quicker. Don't talk about the case with anybody,
 (17) including your fellow jurors. Don't form or express any
 (18) opinion on it until it's submitted to you for deliberation.
 (19) We'll see you on Monday. Don't come in on Saturday.
 (20) (Jury out at 1:40 p.m.)
 (21) THE COURT: Counsel, do we have anything to take up on
 (22) the record this afternoon?
 (23) MR. PETUMENOS: Well -
 (24) MR. DIAMOND: I was going to introduce and apologize
 (25) for not doing this earlier, one of our colleagues, George

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- (1) Brown, who is a member of the bar of the State of California
 (2) and Professor of Law at UCLA.
 (3) THE COURT: Thank you.
 (4) MR. PETUMENOS: I'm going to make an attempt to try
 (5) and work out with counsel, because I know that's what you'd
 (6) like us to do, this issue of the cross exhibits, because I'll
 (7) try not to burden you, discuss it with you in chambers and see
 (8) if there's some way you can - use you as a mediator as
 opposed
 (9) to on the record.
 (10) I understand, Your Honor, your dislike for the bickering
 (11) between counsel and the delays that it causes for the jury.
 (12) I'm only raising this because it really is a very difficult
 (13) burden for us when we receive a report this big of which only
 (14) one paragraph is going to be used and we haven't a clue as to
 (15) where to look, and then when those reports get piled up on
 (16) other reports, we end up with a box. So hopefully counsel and
 (17) I can work it out.
 (18) THE COURT: Counsel, the only thing that I can say is
 (19) that if I intervene at this stage and do something drastic,
 (20) you're going to hate that because you're going to have to live
 (21) with it, when you can do the very same thing.
 (22) MR. PETUMENOS: I mentioned just that fact to
 (23) Mr. Diamond we needed to get it resolved so it didn't inure to
 (24) one side's benefit rather than the other.
 (25) The other thing I need to clarify. I don't want to make

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- (1) objections and be slapped down. I just need to know what the
 (2) rules are. I am concerned about foundation for prior
 (3) inconsistent statements. I am concerned over the rule 801.
 (4) First, you must establish by matter of foundation what the
 (5) current testimony is, then you need to show counsel what you
 (6) tend to impeach with so that counsel can consider whether it is
 (7) in fact -
 (8) THE COURT: You mean prior statement of the witness?
 (9) MR. PETUMENOS: Yes.
 (10) THE COURT: You don't have to show the prior statement
 (11) of the witness.
 (12) MR. PETUMENOS: Not to the witness, but to counsel.
 (13) THE COURT: Oh, I see, sure.
 (14) MR. PETUMENOS: So I can consider whether, in fact,
 (15) it is inconsistent before it's shown to the jury. I don't need
 (16) to see whether it's under 801 because that's read to the
 (17) witness, to the jury and to yourself. My objection is that at
 (18) some time we have had statements which are not, in fact,
 (19) inconsistent with the witness' current statement which leaves
 (20) the impression with the jury that the witness has said
 (21) something incorrect or false on the stand, and I will work very
 (22) diligently to make the process be quick. I wanted the Court to
 (23) understand my objections were to foundation because I can't
 (24) make an inconsistent objection to foundation unless I know
 what
 (25) the proposed impeachment agreement is going to be. That was

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- (1) the nature of my objection.
 (2) THE COURT: How do you suppose I solve it, other than
 (3) by letting it shuttle back and forth between you?
 (4) MR. PETUMENOS: All that needs to happen is give me a
 (5) straight transcript and line reference before and I will
 (6) know -
 (7) THE COURT: That's fair, and of course, that's the
 (8) rule.
 (9) MR. DIAMOND: They are entitled to that.
 (10) THE COURT: Yes.
 (11) MR. STOLL: Your Honor, I have one more thing, and
 (12) that is they filed a motion, defendants filed a motion to
 (13) exclude the testimony of Dr. Park - Drs. Parker and Phillip
 (14) Mundy, not Wilbur Mundy, and we have a brief and I'm going to
 (15) submit that, but there was a little glitch in it and we're
 (16) filing a revised edition of it.
 (17) THE COURT: When do these witnesses - are they
 (18) sighted to go on?
 (19) MR. STOLL: They may come on Monday or Tuesday, and I
 (20) think that -
 (21) THE COURT: Let's just say they come on Tuesday and
 (22) that way I don't have a problem, and neither do you.
 (23) MR. STOLL: I understand, Your Honor. I think that's
 (24) when they'll come on. If you want any argument after we file
 (25) this -

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- (1) THE COURT: I'll deal with it on Monday afternoon.
 (2) MR. STOLL: Afternoon, that's fine.
 (3) MR. PETUMENOS: The only other thing I had is left
 (4) over from yesterday. I was working very hard with this witness
 (5) last night, Judge, and on the issue of the shareholder profit
 (6) business, the instructions on the other case, all of that is
 (7) going to require some very careful thought on our part, and I
 (8) think we'd even like, with the Court's permission, to file a
 (9) memorandum about that.
 (10) THE COURT: Sure, I'll leave that up to you.
 (11) MR. PETUMENOS: We'll file that early next week.
 (12) THE COURT: It's just that nobody, nobody asks a
 (13) question that raises that issue, makes a statement that could
 (14) be considered to be argument about that issue, or tries to
 (15) elicit testimony from the witness till I say that's all right.
 (16) MR. DIAMOND: Understood.
 (17) THE COURT: Okay, anything from you?
 (18) MR. DIAMOND: No, on that point, we have submitted our
 (19) proposed stipulated language.
 (20) THE COURT: I'd like to see the other version.
 (21) MR. DIAMOND: So would I.
 (22) MR. STOLL: We haven't received it yet.
 (23) MR. PETUMENOS: Yes, we have. I have nothing
 (24) further.
 (25) THE COURT: When am I going to see the contrary to -

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- (1) MR. PETUMENOS: We're going to file a memorandum and
- (2) proposed instruction on Monday about this issue because it is
- (3) such a serious issue for us. We think it could be potentially
- (4) outcome determinative for this case.
- (5) THE COURT: Do you have a version?
- (6) MR. PETUMENOS: Not yet.
- (7) THE COURT: You never have given Mr. Diamond a version
- (8) of your - your proposed jury instruction?
- (9) MR. PETUMENOS: No, Judge. This came up yesterday and
- (10) I was working on Dr. Peterson's testimony all day.
- (11) THE COURT: I was under the impression you had two
- (12) competing versions.
- (13) MR. PETUMENOS: No, he just filed that without getting
- (14) one back. We haven't exchanged or negotiated.
- (15) MR. DIAMOND: I think Mr. Petumenos was candid in
- (16) saying it was highly unlikely in coming to agreement on
- (17) stipulated language with us.
- (18) THE COURT: I think it's highly unlikely, too, but in
- (19) each of your versions there's always a germ of what's
- (20) appropriate. Only a germ, but there is something.
- (21) MR. DIAMOND: That's true with respect to the first
- (22) draft, but we've submitted to you a revised version.
- (23) THE COURT: You've worked very hard at it. Well
- (24) counsel, I got my microscope out and you didn't work hard
- (25) enough.

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- (1) THE COURT: Okay, I want to see you about this exhibit
- (2) problem in chambers. Actually I'm going to take your
- (3) invitation this time, I'd like to talk to you about it because
- (4) it's troublesome and it could cause a waste of time and I just
- (5) would not like to have that happen. So let's talk about it now
- (6) and we can do it very briefly.
- (7) THE CLERK: Please rise. This court stands in
- (8) recess. (Recess at 1:47 p.m.)

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- (2) : Reporter's Certificate
- (3) DISTRICT OF ALASKA)
- (6) I, Joy S. Brauer, RPR, a Registered Professional
- (7) Reporter and Notary Public;
- (8) DO HERBY CERTIFY:
- (9) That the foregoing transcript contains a true and
- (10) accurate transcription of my shorthand notes of all requested
- (11) matters held in the foregoing captioned case.
- (12) Further, that the transcript was prepared by me
- (13) or under my direction.
- (14) DATED this day
- (15) of , 1994.
- (21) JOY S. BRAUER RPR
- Notary Public for Alaska
- (22) My Commission Expires: 5-10-97

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