

***Exxon Valdez* Oil Spill**

Federal Trial Transcript

Case Number A89-0095 civil

1994

Volume 1 - Volume 12

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(1) to file an additional motion in limine concerning the testimony
 (2) of former Governor Hammond and a couple of other people. We're
 (3) at the stage of this case where I feel that the normal motion
 (4) practice and the specific motion to lift stay and so forth
 (5) procedure that we've been using simply has to cease. I don't
 (6) think we can deal with that kind of proceeding and have the
 (7) kind of orderly trial that I hope and expect that we will
 (8) have.
 (9) As a consequence, I'm going to deny the motion to lift the
 (10) stay to file a motion in limine as to the Hammond and Owens and
 (11) Mullins testimony. Having said that, obviously there's a
 (12) problem that we have to resolve and it should logically, I
 (13) think, be resolved at some time sufficiently in advance of when
 (14) those people would be called to testify that we won't unduly
 (15) inconvenience people or upset the flow of the trial.
 (16) What I want to do, therefore, is handle this matter much as
 (17) a test or an experiment if you will for how we're going to
 (18) deal with other like problems in the course of trial. In this
 (19) instance, the application to lift stay in substance puts me on
 (20) notice that we've got a problem that needs to be resolved.
 (21) Over the next 24 hours or whatever, I would ask that lead
 (22) counsel consult with one another and that you give some thought
 (23) to exactly how we are going to do this kind of thing in the
 (24) course of trial, make me a suggestion if you will for when to
 (25) set this and we will make arrangements to set it. I don't

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(1) envision that it will be necessary nor do I envision that
 (2) we're going to really be able to continue to manage paper
 (3) coming in half three-quarters of an inch stack at a time on
 (4) problems like this. I suggest we're going to have to handle it
 (5) much more summarily. Give some thought to how you want to
 (6) actually present those matters. We've touched on it in the
 (7) trial plan but I think now is the time where we need to flesh
 (8) it out just a little bit in terms of exactly how you're going
 (9) to do it. Give some thought to it, get back to me in the next
 (10) 24 hours or so and I'm working with you on a program for
 (11) getting this particular matter on so that we can have it
 (12) resolved timely.
 (13) Any questions about that?
 (14) MR O NEILL: None, Judge.
 (15) THE COURT: Mr Lakosh, you had a question?
 (16) MR LAKOSH: Yes. In relation to lifting the stay for
 (17) motion of summary judgment for breach of contract on law,
 (18) Section 28, is that applicable here? I've tried to consult
 (19) with consolidated plaintiffs and have not had an opportunity to
 (20) get that motion through in concert with plaintiffs.
 (21) THE COURT: Mr Lakosh, the motion to lift stay
 (22) process will stay in place for things like motions for summary
 (23) judgment.
 (24) MR LAKOSH: Thank you.
 (25) THE COURT: What I'm addressing now are the routine

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(1) evidentiary questions that are going to come up in the course of
 (2) trial.
 (3) MR LAKOSH: Thank you, Your Honor.
 (4) THE COURT: Surely.
 (5) The second thing that I need to address, I think we can
 (6) deal with very quickly. We have another motion - just a
 (7) second. I've got to find the right paper.
 (8) Here we go, we've got another motion to lift stay by the
 (9) defendants again to file a motion in limine to exclude
 (10) evidence of natural resource damage from the punitive damages
 (11) phase of trial three. Now on that one, because it deals with
 (12) phase three, I'm going to stay with the procedure that we have
 (13) been using. If we haven't told you this already, we grant the
 (14) motion to lift stay as to the filing of the motion in limine to
 (15) exclude evidence on natural resource damages. I think we have
 (16) already done that. What has happened next is that we have
 (17) received a motion to strike that motion. The motion to strike
 (18) the motion in limine is denied. I think the motion presents a
 (19) clear question if one that may be a little difficult to manage
 (20) and deal with.
 (21) The motion to strike, I hope I don't do you a disservice by
 (22) saying this, but it struck me that the motion to strike in
 (23) substance said we can't understand this motion, we don't know
 (24) how to deal with it. I think you're going to have to deal with
 (25) it. I think it's a real problem. And please get your

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(1) opposition in on the - on the using today's date as the
 (2) beginning point on the standard schedule for filing opposition
 (3) to such motions.
 (4) The third thing that I wanted to take up with you this
 (5) morning has to do again with a notice that I have received
 (6) which, in substance, reports on a ruling by the ninth circuit
 (7) court of appeals on the interlocutory appeal of remanded
 (8) decisions that I made.
 (9) As I understand it, the court of appeals has affirmed my
 (10) Order No. 80 and they have said that they'll hold in abeyance a
 (11) decision on about three other like orders. I don't understand
 (12) what's going on there. Can someone help me understand what -
 (13) what's going on?
 (14) MR O NEILL: I can try, Judge. Order 80 was the
 (15) order that dealt with the removal of the class actions. The
 (16) other three orders dealt with removal of the direct actions.
 (17) Order 80 was a removal by Exxon, the other three orders were
 (18) removal by Alyeska. They asked us for an advice on what the
 (19) status of our settlement was with Alyeska and that advice was
 (20) filed on -
 (21) MR OESTSING: Friday.
 (22) MR O NEILL: - on Friday and we expect them to
 (23) rule. We're here to go to trial, whether they rule or not.
 (24) THE COURT: Well, you told me the one thing that I
 (25) needed to know that I couldn't get out of what I had and I

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- (1) don't know why I couldn't get it but I didn't pick up on the
 (2) fact that the Alyeska removals were the direct action
 (3) statements
 (4) MR O NEILL That's a correct statement Judge
 (5) THE COURT I don't see that that presents any kind of
 (6) problem as far as our moving forward
 (7) MR O NEILL It presents none, Judge
 (8) THE COURT Mr Daum anything to add to that?
 (9) MR DAUM No, I find myself in the happy position of
 (10) being able to agree with everything Mr O Neill said
 (11) THE COURT Thank you, very much That's all we had
 (12) to take up at this point this morning Mr O Neill?
 (13) MR O NEILL I was in shock because Mr Daum agreed
 (14) with me Judge That's all I have I think Mr Neal has one
 (15) matter he'd like to take up
 (16) THE COURT Mr Neal?
 (17) MR LYNCH Your Honor there were a few matters -
 (18) THE COURT Oh it's Mr Lynch
 (19) MR LYNCH - we thought it would be useful to talk
 (20) to you about before we started the jury selection process The
 (21) issue we understood from the clerk you might be interested
 (22) about how we would deal with challenges of jurors that had come
 (23) from a long distance I think the question of the process that
 (24) we've agreed to with plaintiffs - we would like to report to
 (25) you on the process that we've agreed to with the plaintiffs

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- (1) about some of the for cause issues that might arise We can do
 (2) that here or in chambers whichever you'd like
 (3) THE COURT Fine, I'll see you in chambers on those
 (4) things and I think there's nothing further that we need to
 (5) take up in open court at this point Thank you, very much
 (6) We'll see you in chambers
 (7) THE CLERK This court is now in recess
 (8) (Recess at 8:55 a.m.)
 (9) (Jury Selection commenced at 9:35 a.m.)
 (10) THE COURT Good morning, ladies and gentlemen The
 (11) court case set for trial is the case of In re the Exxon
 (12) Valdez case number A89-095 civil This case is to be a jury
 (13) trial Counsel, is there any reason why we should not proceed
 (14) with jury selection?
 (15) MR O NEILL There is none, Your Honor
 (16) MR LYNCH No reason not to proceed, Your Honor
 (17) MR CHALOS None, Your Honor
 (18) THE COURT Ladies and gentlemen, you have been
 (19) summoned here this morning by the clerk of court in order that
 (20) we might select a jury to hear the case which I have called for
 (21) trial My name is H Russel Holland I will preside over this
 (22) trial from now until the jury which we will select returns a
 (23) verdict Plaintiffs trial counsel in this case will be Mr
 (24) Brian O Neill Mr O Neill, would you please stand so the jury
 (25) can see you and introduce your client representative if you

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- (1) have one with you and any other folks who will be assisting
 (2) you this morning
 (3) MR O NEILL I have with me David Oestung and my
 (4) partner Lori Wagner
 (5) THE COURT Thank you Trial counsel for Exxon will
 (6) be Mr Pat Lynch Mr Lynch would you rise and if there's
 (7) anyone you wish to introduce you may do so also
 (8) MR LYNCH Your Honor, may I first introduce Mr Mel
 (9) Harrison, he's the senior vice-president of Exxon Corporation
 (10) and will be with us as much as possible at counsel table during
 (11) the trial
 (12) Mr Gus Elmer is the current president of Exxon Shipping
 (13) Company He took that job in 1990 and he will also be present
 (14) at trial as much as his busy schedule permits him to be With
 (15) me Your Honor - excuse me with me in the team that will be
 (16) in court on an everyday basis is Mr Jim Neal Mr Jim Sanders
 (17) and Doug Serdabely
 (18) THE COURT An additional party in the case is Mr
 (19) Hazelwood Mr Chalos
 (20) MR CHALOS Thank you I'm Michael Chalos this is
 (21) Captain Joseph Hazelwood He's an individual defendant in
 (22) these proceedings, and assisting me will be Thomas Russo
 (23) Thank you
 (24) THE COURT Okay, sir Shall we - shall we pass over
 (25) the matter of Mr Cousins at this point?

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- (1) MR O NEILL I believe that would be appropriate
 (2) Your Honor
 (3) THE COURT Ladies and gentlemen the Court and
 (4) counsel who are presenting this case very much appreciate your
 (5) willingness to take time from your other important affairs to
 (6) perform the civic duty of acting as a civil juror I hope very
 (7) much that those of you who are selected to sit on this jury
 (8) will find jury service to be rewarding As I will advise you
 (9) in greater detail as this matter progresses, it is the function
 (10) of the Court, that is myself, to determine matters of law which
 (11) arise during the trial of this case It is the function of the
 (12) jury to ascertain the facts of the case Of those two
 (13) functions judge and fact finder, the jury's function is in a
 (14) very real sense the more important of the two Whereas I have
 (15) the function of instructing the jury on the law, it is the
 (16) jury's function to apply the law, make factual determinations
 (17) and render a verdict
 (18) Again, I will explain this process to you in more detail a
 (19) little later What I would want you to understand at this time
 (20) is that yours is a most important function As a consequence
 (21) it is vital that you be generally qualified to be a juror and
 (22) that you have an unbiased state of mind so that you will be
 (23) able to render a complete and impartial verdict
 (24) There are two kinds of cases in which juries are used,
 (25) civil cases usually involving private parties and criminal

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- (1) cases in which defendants are charged by a grand jury
- (2) indictment or information of a violation of federal law
- (3) This case is a civil case As I will from time to time
- (4) instruct you there are important differences between civil and
- (5) criminal cases At this time, we will begin the jury selection
- (6) process
- (7) If the jurors would please stand the clerk will administer
- (8) the oath to the panel, please
- (9) THE CLERK Please raise your right hand
- (10) (Jury Is Sworn)
- (11) THE CLERK Please be seated
- (12) THE COURT Ladies and gentlemen the process of the
- (13) purpose of the jury selection process which we are beginning is
- (14) to find 12 individuals with no knowledge of or opinions about
- (15) the case who can impartially hear the case deliberate, that
- (16) is discuss the case using the Court s instructions and render
- (17) a fair verdict
- (18) Some of you may be familiar with the procedure normally
- (19) used in this court for the selection of juries Jury selection
- (20) in this case will be considerably different from what you are
- (21) used to With the assistance of proposed questions from
- (22) counsel the Court has prepared a rather extensive written
- (23) questionnaire which will be made available to you shortly
- (24) Your sworn answers to this questionnaire will be employed by
- (25) counsel and myself for the purpose of evaluating your

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- (1) qualifications and your ability to act as impartial jurors in
- (2) the trial of this case
- (3) If you do not understand any question or have uncertainties
- (4) about what your answer to a question should be write a note to
- (5) that effect at the appropriate place on the questionnaire and
- (6) counsel or I will follow up on your question
- (7) As you will see, this questionnaire requires the disclosure
- (8) of a considerable amount of personal information about each of
- (9) you Neither the Court nor counsel have any desire to pry into
- (10) your personal affairs unreasonably However in order to
- (11) maximize the opportunity for providing the parties to this case
- (12) with an unbiased, fair and impartial jury, substantial
- (13) background information about each of you is necessary
- (14) The clerk of court will keep the original of your
- (15) questionnaire and it will, in due course, be sealed such that
- (16) while a part of the record of the case, it will not be open to
- (17) the public Copies of your answers to the questionnaire will
- (18) be made available to trial counsel and to the Court No other
- (19) distribution of that information will be made When counsel
- (20) and I have no further need of the copies of the completed
- (21) questionnaires, they will be gathered up, returned to the jury
- (22) clerk and destroyed
- (23) In answering the questionnaire, please remember that you
- (24) are under oath give truthful and complete answers When you
- (25) have completed the questionnaire, you will return it to the

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- (1) jury clerk She will then excuse you for the balance of
- (2) today The attorneys and I will spend the balance of today
- (3) evaluating your answers When counsel and I have finished
- (4) evaluating your answers to the questionnaire it will probably
- (5) be apparent that some of you should be excused for cause
- (6) Those excused for cause will be advised by telephone probably
- (7) on Tuesday Please do not feel embarrassed nor should you
- (8) take offense if you are excused for cause
- (9) Not only does your oath require you to answer any questions
- (10) truthfully and completely, but additionally, it is fundamental
- (11) to our jury system that the case be decided by impartial
- (12) jurors Just as you would want an impartial jury if you were a
- (13) party to a case in this court so do the parties in this case
- (14) desire and have a right to impartial jurors
- (15) Beginning on Tuesday groups of about 25 prospective jurors
- (16) will be called to the court house for some follow up
- (17) questions The first group will be called on Tuesday morning
- (18) to report at 1 00 p m on Tuesday Again, a group of about 25
- (19) of you will be called to report back at 1 00 p m on Tuesday
- (20) If you receive such a call you should be in the clerk s - the
- (21) jury clerk s office where you first reported this morning at
- (22) approximately ten minutes to the hour of one so that we can
- (23) begin promptly at 1 00
- (24) For purposes of this case, counsel for each side will be
- (25) allowed a maximum of ten minutes for the examination of each

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- (1) prospective juror Because it will not be possible to examine
- (2) more than 20 or 25 jurors in a given day, we will be calling
- (3) you back in groups as I have mentioned so that the rest of
- (4) you will not be needlessly inconvenienced
- (5) While you are awaiting recall for further examination you
- (6) must abide by the cautionary instructions which I will give you
- (7) shortly At the conclusion of the examination of each of you
- (8) counsel will be required to either pass each juror for cause or
- (9) show cause for the Court to excuse the juror This individual
- (10) examination process will be completed once counsel have passed
- (11) 24 jurors for cause
- (12) At that time we will assemble all 24 jurors who have been
- (13) passed for cause, and counsel will then be permitted to
- (14) exercise their pre-emptory challenges I will explain that
- (15) process to you at a later time
- (16) At this point, by agreement with counsel we will provide
- (17) you with some additional information about the Exxon Valdez
- (18) case which hopefully will be of assistance to you in completing
- (19) the jury questionnaire Mr O Neill and Mr Lynch will each
- (20) take ten minutes to address the entire panel for the purpose of
- (21) informing you in a general fashion what this case is about, and
- (22) although I didn t say it here, counsel for Captain Hazelwood
- (23) will also have a few minutes of Exxon s time to speak with
- (24) you Mr O'Neill
- (25) MR O NEILL May it please the Court counsel, ladies

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(1) and gentlemen the law has brought you here today to decide
 (2) what should be done about the wreck of the Exxon Valdez This
 (3) will be the final accounting in our society about this
 (4) disaster It s one of the great disasters of our time Under
 (5) our system this accounting is done by 12 citizens like you and
 (6) me That s the way our system works
 (7) In 1985 Exxon Shipping Company top management knew that
 (8) Captain Hazelwood was drinking on board ship and had returned
 (9) to ship drunk Captain Hazelwood went through treatment for
 (10) alcoholism in 1985 and Exxon knew that Exxon reinstated
 (11) Captain Hazelwood after he had gone through treatment, as a
 (12) supertanker captain and he started drinking again, and
 (13) officials at Exxon knew that after he had gone through
 (14) treatment that he had started drinking again and that he had
 (15) relapsed back into his alcoholism
 (16) A week before the wreck of the Exxon Valdez there was an
 (17) ugly drinking incident in San Francisco and an Exxon employee
 (18) one week before the wreck reported Captain Hazelwood to her
 (19) superiors and his superiors, and despite knowledge of this
 (20) treatment his resumed drinking and this ugly drinking accident
 (21) one week before the wreck of the Exxon Valdez, Exxon management
 (22) did nothing
 (23) A week later, after drinking throughout the afternoon and
 (24) the evening of March 23rd, 1989, Captain Hazelwood took command
 (25) of the Exxon Valdez out of Valdez Alaska Then, without

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(1) explanation, he pointed the Valdez at Bligh Reef dead ahead,
 (2) increased the speed of the vessel and left the bridge of the
 (3) vessel And for six critical minutes after he had left the
 (4) vessel there was no officer on the bridge of the Valdez and
 (5) the Valdez didn t turn and it ran - it ran aground spilling 11
 (6) million gallons of toxic crude oil
 (7) So Captain Hazelwood had gone through treatment had
 (8) relapsed into alcoholism had started drinking again, Exxon
 (9) Corporation knew about it and did nothing about it, and then
 (10) after a boozy afternoon on April [sic] 23rd left the bridge of
 (11) the Valdez and the vessel ran aground spilling 11 million
 (12) gallons of toxic crude
 (13) Now, we all agree the major issues of the day, like the
 (14) Valdez disaster, are life experiences, and in order to pick a
 (15) jury, we need to know about you and your life experiences
 (16) What I m going the talk about now is the preview of the
 (17) questionnaire and the oral voir dire and the trial
 (18) The trial will be conducted in three phases The first
 (19) phase will be, is Exxon Corporation liable for punitive
 (20) damages, yes or no The second phase will address damages to
 (21) natives and fishermen who suffered as a result of the 11
 (22) million gallon spill and in the third phase of the case if
 (23) you answer the question one yes or no in the third phase of
 (24) the case we will get on with the serious business of deciding
 (25) how much money is appropriate to punish Exxon Corporation

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(1) As I said the Exxon supertanker captain went through
 (2) alcohol treatment in 1985 and we re going to be asking you
 (3) about your knowledge, family experiences other experiences
 (4) with regard to the disease of alcoholism
 (5) Exxon gave the car keys, in this case the tanker keys to
 (6) Captain Hazelwood and in this three years between treatment and
 (7) the wreck he resumed treatment and we re going to be asking
 (8) you about your knowledge of relapse, relapse into alcoholism
 (9) Now the highest executives of Exxon Corporation swore that
 (10) they had monitored the captain and had no idea that he had
 (11) returned to drinking And in this trial, you will hear
 (12) evidence from Exxon Corporation never before heard it yet,
 (13) with regard to Captain Hazelwood s renewed drinking and will go
 (14) into detail with regard to some of the drinking episodes
 (15) We're going to ask you about your attitudes with regard to
 (16) a corporation s responsibilities to its employees and its
 (17) responsibilities to employees who are recovering alcoholics or
 (18) alcoholics who have gone through treatment
 (19) Now, after Captain Hazelwood had gone through treatment he
 (20) was reinstated to what we call a safety sensitive job He was
 (21) a tanker captain He was a supertanker captain, one in which
 (22) his mistakes could result in catastrophic injury, and in this
 (23) case they did We're going to ask you about safety sensitive
 (24) positions and your knowledge of safety sensitive positions
 (25) from bus drivers to construction foremen to heart surgeons

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(1) The company that allowed this wreck to happen, Exxon
 (2) Corporation had about 20 employees in the state of Alaska but
 (3) it has a presence in the state as part of the oil industry
 (4) The oil industry is prominent in the state, and we re going to
 (5) ask you about your attitudes concerning the oil industry
 (6) Now, Exxon Corporation is the 26th biggest institution in
 (7) the world Exxon Corporation is bigger than many countries
 (8) And we're going to ask you about your knowledge of Exxon
 (9) Corporation about power and wealth and size and the social
 (10) responsibilities that come from power, wealth and size
 (11) Now, money from oil companies is why you don t pay state
 (12) income tax Will that keep you from fulfilling your duty as a
 (13) judge of the facts in this historic case Because of views you
 (14) have about the industry, and good corporate citizens like Arco
 (15) will you be able to sit in judgment of Exxon Corporation? Do
 (16) you think that Exxon Corporation is responsible for its own
 (17) actions? We ll ask you about that
 (18) Phase one will deal with the voyage and the events leading
 (19) up to the voyage which make this a disaster waiting to happen
 (20) Phase two will deal with damages to fishermen and natives,
 (21) two long time forces in Alaska alike, and we're going to ask
 (22) you if you know fishermen, do you know natives, do you know the
 (23) natives who live in remote villages whose lives were affected
 (24) by the 11 million gallons of toxic crude
 (25) In phase three of the case, the third of the three trials

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(1) we will address the question of what amount of money if any
 (2) it takes to change the behavior of Exxon Corporation And to
 (3) provide an example to others so that this doesn't happen again
 (4) the law provides for punitive damages which is what we're
 (5) going to be talking about for serious social purposes In a
 (6) very real sense the jury's duty is the people's chance to do
 (7) oil spill prevention to ensure that this never happens again
 (8) This will require talking about Exxon and Exxon's year end
 (9) statements which are written in billions of dollars
 (10) We're going to ask you whether you're opposed to our system
 (11) as it is now Our system as it is now provides for punitive
 (12) damages In certain situations some people have beliefs or are
 (13) at odds with the concept of punitive damages, and we're going
 (14) to ask you whether you share those beliefs or those odds so
 (15) that we can talk with you about it to see whether you will be a
 (16) judge of the facts in this important case
 (17) Now Exxon spent a lot of money trying to clean up the oil
 (18) that it spilled and the law required it to do that And you'll
 (19) hear debates about whether the cleanup was effective, whether
 (20) it was more for PR whether it did more harm than good to oiled
 (21) beaches You'll also hear that in order to clean up its mess
 (22) Exxon hired a lot of temporary workers and brought temporary
 (23) money into Alaska We'll ask you whether the fact that Exxon
 (24) had to clean up its mess and brought this money into Alaska was
 (25) a good thing or a bad thing and whether that will keep you from

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(1) being a fair judge of the facts in this case against Exxon
 (2) Corporation and the last thing I'll ask you when we get to
 (3) meet face to face after you've done the questionnaires is I
 (4) will ask you why you live in Alaska I will ask each and every
 (5) one of you why you live in Alaska Thank you
 (6) THE COURT Mr Lynch? Mr Chalos will go first
 (7) MR CHALOS Yes, thank you, Your Honor
 (8) Thank you May it please the Court counsel ladies and
 (9) gentlemen we know that most of you, if not all of you have
 (10) heard at some point in time something about the grounding of
 (11) the Exxon Valdez No doubt you've seen pictures of it on
 (12) television, you've read about it in newspapers and magazines
 (13) You probably have even talked about it with your family and
 (14) friends
 (15) The proof that you're going to hear at this trial will be
 (16) very much different I guarantee it will be very much different
 (17) than anything that you might have seen, read or heard
 (18) The grounding of the Exxon Valdez was an accident Pure
 (19) and simple, it was an accident This accident did not happen
 (20) because Captain Hazelwood was impaired by alcohol He was
 (21) not It also did not happen because someone acted recklessly
 (22) or whatever the standard is Judge Holland will instruct you
 (23) on that Mr O'Neill stood up here today and told you about
 (24) the facts about Captain Hazelwood and he too, like the
 (25) newspapers and the stories that you heard, sensationalized it

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(1) He told you about a man who was treated for alcoholism He was
 (2) not treated for alcoholism He was treated for dysthymia
 (3) which is a mild form of depression and for episodic drinking
 (4) as a result of the dysthymia He was an alcohol abuser in 85
 (5) when he went in for treatment He was not alcohol dependent
 (6) He was never told that he could not drink after his treatment
 (7) nor did he understand that he could not drink after his
 (8) treatment
 (9) Mr O'Neill talks about an ugly incident a week before the
 (10) grounding There is no ugly drinking incident the facts will
 (11) show that He talks about a man who put the vessel on a course
 (12) of 180 degrees headed straight for Bligh Reef with no
 (13) explanation Well, there are plenty of explanations He says
 (14) there was no officer on the bridge for six minutes There was
 (15) a licensed second mate up there who was a competent man He
 (16) says Captain Hazelwood left and didn't care about what was
 (17) going on Well before Captain Hazelwood left he left clear
 (18) instructions as to what he wanted done
 (19) What he wanted done ladies and gentlemen was no harder
 (20) than making a right turn on the corner with your car Nothing
 (21) more complicated than that Captain Hazelwood not only had
 (22) left clear instructions, but had gotten the call from his mate
 (23) who told him captain, your orders are being carried out
 (24) You'll see from the evidence in this case that had those orders
 (25) had been carried out as Captain Hazelwood was assured that they

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(1) had been this grounding wouldn't have happened
 (2) All we ask you, ladies and gentlemen is that you give
 (3) Captain Hazelwood and indeed all the parties involved
 (4) plaintiffs and Exxon defendants a fair and impartial verdict
 (5) That's all we can ask for We ask you to base that verdict
 (6) solely on the facts and the proof that will be put before you
 (7) in this trial Thank you very much
 (8) MR LYNCH Ladies and gentlemen, again my name is Pat
 (9) Lynch I'll be representing Exxon with the three other lawyers
 (10) I introduced to you It seems that after hearing Mr O'Neill
 (11) that we were at the end of the trial here, but what we are
 (12) actually doing is starting the process of selecting a jury and
 (13) let me start by thanking you and apologizing to you for the
 (14) inevitable amount of dead time that goes into the jury
 (15) selection process I've been there myself, and I'm sure that
 (16) there will be times in the next few days when you will be out
 (17) of patience with us because of the delay in this process We
 (18) thank you for that and we hope that you appreciate how
 (19) important it is in this case, in the stakes that Mr O'Neill
 (20) has described to you, to proceed in this trial and to treat you
 (21) in this trial as we would treat Judge Holland, as judges So I
 (22) will not talk to you as if I wanted you to decide today when
 (23) you leave this room that the plaintiffs have no case And I
 (24) will not ask you to listen to all and prejudge all the evidence
 (25) that you are going to hear, and I will not try to bias every

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- (1) question that you will be asked to answer on this questionnaire
- (2) this afternoon as if it were put there by the Court to help you
- (3) preindict Exxon I will only ask you and Exxon will only ask
- (4) you to do what Judge Holland indicated in his instructions as
- (5) your sworn duty as prospective jurors to do, and that is to
- (6) keep an open mind
- (7) My job is not to argue the case to you for a decision this
- (8) afternoon It is to give you a little information about what
- (9) we think will go on in this case and what the issues will be in
- (10) this case to help you fill out the questionnaire
- (11) Nothing need be said to emphasize or overemphasize the
- (12) tragedy of the grounding of the Exxon Valdez and the oil
- (13) spill It had profound harmful effects on many people here in
- (14) Alaska It had profound harmful effects on Exxon and its
- (15) employees It certainly has had profound harmful effects on
- (16) Captain Hazelwood This is not an event that anyone is here to
- (17) trivialize or brush aside On the very first day of the spill
- (18) Exxon said that they accepted full financial responsibility to
- (19) pay the people entitled to damage any actual damage that they
- (20) suffered as a result of the spill
- (21) One of the reasons that we are here is the fact that
- (22) despite voluntary payment of large sums of money to many people
- (23) who were injured by the spill, we have an honest good faith
- (24) dispute with these plaintiffs about what their actual damages
- (25) are That will be a question for you, the jury to decide,

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- (1) what was the injury to the fishermen and the natives who are
- (2) suing here that resulted from - to them from the spill and
- (3) there is no dispute about the fact that Exxon has always
- (4) accepted the responsibility to pay full and fair compensatory
- (5) damages, to make anyone who was injured by what Mr O Neill
- (6) repeatedly called Exxon's mess whole That is what Exxon has
- (7) been trying to do since March the 25th 1989, the day after the
- (8) spill We have been unable to reach agreement with the
- (9) plaintiffs We have to call on you to decide what that sum
- (10) will be
- (11) But unfortunately that won't be the first order of business
- (12) in this case The plaintiffs and their lawyers are interested
- (13) in recovering more than full and fair compensation much more
- (14) They are asking you, in the guise of the interest of protecting
- (15) the public or somehow promoting oil spill prevention or
- (16) something to award them very large sums of money which they
- (17) pocket which are called punitive damages
- (18) This accident was the result of negligence Exxon has
- (19) admitted that it was negligent, and that as a result, it is
- (20) responsible for people's out of pocket, but it takes more than
- (21) negligence more than simple human error to justify an award of
- (22) punitive damages Unfortunately, in all of our activities,
- (23) even judging mistakes are made, errors are made, and not every
- (24) mistake not every error justifies an award of punitive
- (25) damages

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- (1) In this case as Mr Chalos has told you phase one will
- (2) focus primarily on the question of whether alcohol was the
- (3) cause of this grounding whether the fact that Captain
- (4) Hazelwood had drinks on the afternoon before the spill and
- (5) Exxon at least has nothing to - says nothing to justify he
- (6) should have or not been drinking, whether the fact that he had
- (7) those drinks caused the spill, and Mr Chalos is correct If
- (8) you keep an open mind, if you listen to the evidence, I think
- (9) you're likely to be surprised because there is very compelling
- (10) evidence, or will be very compelling evidence in this case that
- (11) alcohol had nothing to do with this spill, that Captain
- (12) Hazelwood made a very simple very direct command to a
- (13) qualified seaman licensed by the Coast Guard and inspected It
- (14) was a command to turn right at the next corner that if that
- (15) command had been observed the Exxon Valdez surely would have
- (16) avoided peril and surely would have sailed safely through
- (17) Prince William Sound and we would never have heard the dispute
- (18) before
- (19) On behalf of Exxon we will point out to you that if that
- (20) evidence is convincing to the jury, then all of Mr O Neill's
- (21) discussion about Exxon's alcohol policy, Exxon's monitoring
- (22) Captain Hazelwood is beside the point, because if alcohol
- (23) didn't have anything to do with this accident occurring, then
- (24) Exxon's alcohol policy and Exxon's monitoring could not have
- (25) been the cause of this action - accident But even if the

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- (1) jury were to conclude that Captain Hazelwood's drinking had in
- (2) some way, affected this accident we believe that if a jury
- (3) will keep an open mind if it will listen to all the evidence
- (4) if it will hear all the testimony and that it will not be
- (5) biased by the incantation of alcohol, that it will be apparent
- (6) that the policy that Exxon had was a policy made carefully and
- (7) in good faith trying to balance what society, itself, has a
- (8) hard time dealing with, and that is the right balance of the
- (9) rights of the individual and the rights of the public where use
- (10) of alcohol is concerned
- (11) We believe the evidence would also show, if the jury will
- (12) listen to it and be patient and listen to this trial and not
- (13) jump to conclusions as Mr O Neill has invited you to do, that
- (14) the people who were watching Captain Hazelwood were trying to
- (15) do the right thing They were not only trying to protect the
- (16) public of course they were trying to do that, they were also
- (17) trying to live up to their obligations under the law and as
- (18) decent human beings treat Exxon's employees fairly, to comply
- (19) with rules relating to the employer's interference with the
- (20) privacy of one of its employees
- (21) So we ask you not to jump to judgment as the introduction
- (22) you heard from the plaintiff's counsel would suggest, but as
- (23) prospective jurors, to keep an open mind, to wait and hear the
- (24) evidence, to give us a fair hearing and if you will give us
- (25) that opportunity, we believe that the 12 persons who are

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(1) selected to sit finally as jurors in this case will conclude
 (2) that this is a case of an accident caused by human error
 (3) Exxon's errors other people's errors. Sometimes when errors
 (4) like that occur in trains or planes or even in lawsuits
 (5) serious consequences happen. Nobody was acting in bad faith
 (6) and no one was acting with reckless total disregard of the
 (7) interest of the public. It's a cost, it's an effect of being
 (8) human.
 (9) Therefore we ask you as you go out to fill out these
 (10) questionnaires to consider those questions which you were given
 (11) carefully to give us the benefit of your honest and candid
 (12) answers. If you have views and considering the amount of
 (13) publicity and what you've already heard this morning, you may
 (14) well have formed views to fairly disclose those to us and
 (15) discuss them with us both in the questionnaire and in the oral
 (16) questioning that will follow help us choose a good and fair
 (17) jury to decide this case and in that respect I agree with Mr
 (18) O'Neill that with a fair jury we can bring this matter to an
 (19) end. Thank you very much for your time.
 (20) THE COURT Thank you counsel. There is a little bit
 (21) of further information which will be important to you in
 (22) answering at least one of the questions on the questionnaire.
 (23) No doubt many of you are wondering at this point how long is
 (24) this trial going to last. Let me give you some information
 (25) about that.

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(1) As you may suspect this case will involve a major time
 (2) commitment on the part of the jury. It is my best current
 (3) estimate that phase one of this case will require about 20
 (4) trial days. After the trial of phase one the jury will
 (5) deliberate, and then shortly after a verdict is returned on
 (6) phase one, we will go directly to phase two, which will be
 (7) tried by the same jury. It is my best estimate that phase two
 (8) will take approximately 25 trial days. Phase two will be
 (9) divided into two segments with separate jury deliberations as
 (10) to each. A three day recess beginning on June 15 is
 (11) anticipated.
 (12) Shortly following the completion of phase two, and a
 (13) verdict as to phase two, there will - we will if necessary
 (14) commence phase three. Again with the same jury. It is my
 (15) best current estimate that phase three will take approximately
 (16) 20 trial days. While I am hopeful the trial and jury
 (17) deliberations as to all three phases can be completed by the
 (18) middle of August you should assume that your commitment might
 (19) run to the middle of September.
 (20) If trial does not conclude by August 11th, 1994 there will
 (21) be a recess in the trial until August 22, 1994. Once we have
 (22) completed the jury selection process, our normal working day
 (23) during the trial of this case will be from 8:00 in the morning
 (24) until 2:00 in the afternoon. We will take two 15 minute breaks
 (25) evenly spaced between 8:00 a.m. and 2:00. This arrangement

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(1) will allow us approximately the same amount of time for trial
 (2) in a given day as would be available using a more conventional
 (3) trial day and will provide all of us and the jury with an
 (4) opportunity to take care of other important affairs which
 (5) simply cannot be put on hold for the duration of this trial.
 (6) Finally I must caution you about the need to avoid
 (7) exposure to outside influences. It is absolutely necessary
 (8) that this case be tried and decided solely on the basis of the
 (9) evidence in this case presented here in the courtroom. It
 (10) would be inappropriate for jurors to consider anything they
 (11) heard or read about the case from a source outside the
 (12) courtroom either before or during the trial. Even during this
 (13) jury selection process you must avoid reading any newspaper
 (14) accounts about the case or listening to any radio or TV
 (15) broadcasts about it.
 (16) Your family friends neighbors and coworkers will
 (17) undoubtedly be interested in what you are doing. They will
 (18) probably ask you about it. You must have no discussions with
 (19) any of them about this case until it is concluded. If anyone
 (20) whether known or unknown to you should approach you either in
 (21) person or by telephone for the purpose of discussing the case
 (22) with you, you must refuse to discuss the case with them. You
 (23) must absent yourself from any discussion about the case in your
 (24) presence. Should anyone endeavor to insist upon discussing the
 (25) case with you after you have told them that you cannot do so

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(1) you should report the incident to the Court and appropriate
 (2) steps will be taken to deal with the situation.
 (3) At this point we are going to excuse the jury panel to
 (4) return to the jury assembly room for purposes of completing the
 (5) jury questionnaire. It will be handed out to you in the jury
 (6) assembly room. When you have completed your answers to all of
 (7) the questions return the questionnaire to the jury clerk and
 (8) you may then be excused to go about your other business
 (9) subject to these cautionary instructions until you are
 (10) recalled by the jury clerk.
 (11) One of our clerks is in the back of the courtroom at this
 (12) time. I want you to leave the courtroom and return with her
 (13) now to the jury assembly room. I will have you leave through
 (14) this gate which is on your right in the rail which divides the
 (15) courtroom and proceed through the back door and to the jury
 (16) room.
 (17) (Jury excused at 10:33 a.m.)
 (18) THE COURT Counsel I realized after we parted a
 (19) little bit ago that there would be a logistics problem with our
 (20) taking up the Cousins matter in the fashion that I suspect you
 (21) assumed we would. I'm used to using a recording situation
 (22) where we can flip from one courtroom to the next without
 (23) missing a beat and I realized after the fact that the reporter
 (24) had moved down here and that would present a problem of
 (25) logistics. Let's take that matter up at this point if we

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(1) might
 (2) MR O NEILL Thank you Your Honor If I may the
 (3) plaintiffs and the Exxon defendants have entered into a
 (4) stipulation with regard to the effect of dismissing defendant
 (5) Cousins which has been executed, and I assume will be filed
 (6) forthwith Subject to that stipulation being acceptable to the
 (7) Court I hereby move for the dismissal of defendant Cousins
 (8) with prejudice and without costs or fees to any parties
 (9) THE COURT Is there any objection to the motion to
 (10) dismiss Mr Cousins?
 (11) MR RICHMOND Your Honor Bob Richmond representing
 (12) Greg Cousins Mr Cousins is out of the country presently I
 (13) would not be able to talk to him until probably Wednesday of
 (14) this week ask him for his views on a motion to dismiss so I m
 (15) not in a position to comment one way or the other Your Honor
 (16) without talking to my client on that motion
 (17) THE COURT Anyone else wish to be heard on the
 (18) cousins matter?
 (19) MR LAKOSH Your Honor My name is Tom Lakosh I
 (20) understand that the stipulation includes that Mr Cousins will
 (21) be a witness and that all claims against Cousins will remain in
 (22) effect against Exxon Shipping? Is that the stipulation that I
 (23) got the other day?
 (24) MR O NEILL Stipulation says what it says but the
 (25) two provisions of the stipulation as I understand them Your

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(1) Honor, are first that by stipulating Mr Cousins out we don't
 (2) harm our rights to pursue Exxon or Exxon Shipping Company, the
 (3) Exxon defendants and the second one deals with proof that is
 (4) proof which would be admissible in the case if Mr Cousins was
 (5) there is still admissible if he isn't there and it is the
 (6) judgment of lead counsel after having circulated this with all
 (7) of the various plaintiffs groups, that it is in everybody's
 (8) interest to go ahead and do it
 (9) MR LAKOSH If that's the same stipulation I received
 (10) the other day, I consented to it
 (11) THE COURT Mr Lynch?
 (12) MR LYNCH Nothing, Your Honor
 (13) THE COURT Okay, I will - I will grant the motion to
 (14) dismiss Mr Cousins with prejudice As counsel are aware we
 (15) really took this matter up and dealt with it rather thoroughly
 (16) earlier in connection with the motion to dismiss individual
 (17) defendants without prejudice I indicated that I would not
 (18) agree to a dismissal without prejudice However, in the belief
 (19) and with the conviction that it is the plaintiff's right to
 (20) control their case, if they wish to terminate the action with
 (21) prejudice, meaning no further proceedings can be had as to Mr
 (22) Cousins directly I will grant that motion and he is herewith
 (23) dismissed from the case with prejudice and without costs or
 (24) fees subject to the stipulation that has been entered into
 (25) which I will approve

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(1) One - one other matter Mr Lakosh you were concerned
 (2) about a question that you wished to have posed to the jury
 (3) panel as a part of the questionnaire that the Court has
 (4) submitted to them I've taken the matter of that question up
 (5) with lead counsel and discussed it thoroughly with them and
 (6) the Court has determined to leave the questionnaire as - as it
 (7) presently is Is there anything else that we need to take up?
 (8) MR LAKOSH Reconsideration Your Honor?
 (9) THE COURT Sir?
 (10) MR LAKOSH Motion for reconsideration Your Honor?
 (11) THE COURT If you want to file something, you
 (12) certainly can go ahead and file it Mr Lakosh
 (13) MR O NEILL Know of nothing else Your Honor
 (14) THE COURT Anything else?
 (15) MR LYNCH Nothing further at this time Your Honor
 (16) MR CHALOS Nothing for Captain Hazelwood Your
 (17) Honor
 (18) THE COURT We'll be in recess subject to call and
 (19) expect to reconvene at 1:00 tomorrow afternoon
 (20) THE CLERK This court is now in recess subject to
 (21) call
 (22) (Proceedings recessed at 10:40 a m)
 (23)
 (24)
 (25)

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- (1) STATE OF ALASKA)
- (2) Reporter s Certificate
- (3) DISTRICT OF ALASKA)
- (4)
- (5)
- (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
- (16)
- (17)
- (18)
- (19)
- (20)
- (21) JOY S BRAUER
- Notary Public for Alaska
- (22) My Commission Expires 5 10 97
- (23)
- (24)
- (25)

Look-See Concordance Report

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:) Case No. A89-0055 CIV (HRD)
) Anchorage, Alaska
The EXXON VALDEZ) Tuesday, May 3, 1994
) 1:00 p.m.

TRIAL BY JURY JURY SELECTION AND 2ND DAY

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE

VOLUME 2, Pages 1 - 145

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- (1) PROCEEDINGS
 (2) (Call to Order of the Court)
 (3) THE COURT Good afternoon, ladies and gentlemen.
 (4) This is a continuation of trial in Case 89-0075 Civil, in re:
 (5) The Boon Veldez. We are ready to begin voir dire of the jury
 (6) panel. There is one administrative matter that I think we
 (7) probably ought to take up as the first order of business.
 (8) I received communications from you all indicating that
 (9) there is agreement that a number of jurors should be excused
 (10) for cause based upon your examination of their answers to the
 (11) jury questionnaire. What I propose to do is read off the
 (12) list of numbers and have you double check them. Will that
 (13) work, counsel?
 (14) MR. NEAL. Yes, sir
 (15) MR. O'NEILL. Yes, sir
 (16) MR. SANDERS. That's fine, Your Honor
 (17) THE COURT. The numbers that I have, and I will
 (18) endeavor to keep them in sequence are 1, 2, 7, 9, 11, 13, 16,
 (19) 18, 20, 26, 27, 37, 50, 67, 68, 79, 85, 91, 93 and 101. Mr.
 (20) O'Neill?
 (21) MR. O'NEILL. I believe that's correct, Your Honor
 (22) MR. SANDERS. That is correct, Your Honor
 (23) THE COURT. Very well, by agreement of counsel, the
 (24) jurors who have been assigned the sequential numbers that I
 (25) have just read are excused from further service in connection

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- (1) with this case, and if the clerk would -- the jury clerk is
 (2) here now. I have just excused the numbers, the jurors by
 (3) number who you have for cause. If you still have any of them
 (4) you may excuse them now or call them if they're on call.
 (5) JURY CLERK. Thank you, Your Honor.
 (6) THE COURT. Thank you. Is there anything else that we
 (7) need to take up before we call the first juror?
 (8) MR. O'NEILL. I know of nothing, Your Honor.
 (9) MR. NEAL. Nothing, Your Honor.
 (10) THE COURT. Very well. We are going to call those who
 (11) we have in the jury room in their sequential order as they
 (12) appear on the jury list. Would the clerk please call the first
 (13) juror?
 (14) Would it be satisfactory if we have the jurors sit in
 (15) the front of the jury box?
 (16) MR. O'NEILL. Yes, sir.
 (17) THE CLERK. Your Honor, this is Jennifer L. Smith,
 (18) it's juror number 10.
 (19) THE COURT. Thank you, sir. Ms. Smith, you have been
 (20) placed under oath in connection with this jury examination.
 (21) You've completed the questionnaire that the attorneys have
 (22) examined. At this point, counsel are going to be asking you
 (23) some more questions. By agreement, each side is going to have
 (24) ten minutes to talk to you about possible service on this
 (25) jury. Mr. O'Neill?

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- (1) MR. O'NEILL. Thank you, Judge.
 (2) JURY VOIR DIRE
 (3) BY MR. O'NEILL
 (4) Q. Now, if I ask you anything that's personal, don't get mad
 (5) at me, okay? Because I'm going to just try to see if we can
 (6) get to know each other for a minute. You work for the State
 (7) court system?
 (8) A. Yes.
 (9) Q. And what do you do with the State court system?
 (10) A. I work in the personnel department.
 (11) Q. And what do you like about your job?
 (12) A. What I like about my job?
 (13) Q. Yes, ma'am.
 (14) A. Just people orientation.
 (15) MR. CHALOS. Excuse me, Your Honor. Mr. O'Neill, we
 (16) can't hear back here.
 (17) MR. O'NEILL. Let me get out of the way.
 (18) MR. CHALOS. No, it's all right. If Ms. Smith would
 (19) keep her voice up.
 (20) MS. SMITH. All right.
 (21) MR. O'NEILL. Give you a little line of sight, too.
 (22) BY MR. O'NEILL
 (23) Q. What do you like about your job, ma'am?
 (24) A. I like the people interaction, just learning. I've just --
 (25) brand new to that position, so I just like just the position

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- (1) itself
 (2) Q. What did you do before this position?
 (3) A. Before this particular position? I worked in the clerk's
 (4) office in trial court accounting.
 (5) Q. As a result of that, do you know a lot about the law?
 (6) A. Know a lot about -- no, not a lot about the law. I just
 (7) know certain things.
 (8) Q. Do you have any strong feelings about the legal system one
 (9) way or the other?
 (10) A. Strong feelings?
 (11) Q. Yeah.
 (12) A. Not one way or another.
 (13) Q. Do you generally think it's a fair system?
 (14) A. Yes.
 (15) Q. The court system?
 (16) A. Yes.
 (17) Q. Do you hold any views one way or the other on the subject
 (18) of punitive damages?
 (19) A. No.
 (20) Q. Have you ever thought long or hard about it at all?
 (21) A. No.
 (22) Q. How about the subject of alcoholism?
 (23) A. Well, do I have an opinion?
 (24) Q. Have you thought about it? I mean, has somebody in your
 (25) family had a problem with alcoholism, or has it been something

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- (1) that you ve -
 (2) A Really not a problem
 (3) Q - that s come into your life one way or another?
 (4) A Not a problem no
 (5) Q Have you had any contact with regard to the oil spill clean
 (6) up or the oil spill?
 (7) A Any contact other than when I worked in the trial court
 (8) accounting, I was the cashier where the cases were opened
 (9) through, through me but other than that -
 (10) Q Were you in Alaska when the spill happened?
 (11) A Yes
 (12) Q What was your reaction to the spill?
 (13) A I guess I thought it was just terrible, something that
 (14) happened Other than that, I didn't have any real reaction to
 (15) it
 (16) Q Between the time of the spill and today, have your views at
 (17) all with regard to the spill changed?
 (18) A No
 (19) Q Have you spent a lot of time thinking about it one way or
 (20) the other?
 (21) A No
 (22) Q Are there any problems with your schedule your job, your
 (23) family, your vacation schedule that would cause you any problem
 (24) in spending some quality time with us?
 (25) A I have plans to go on vacation in July We're having a

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- (1) family reunion there, so I do have those plans
 (2) Q Could you work around that, or that s the family reunion?
 (3) A Well, something that's been scheduled for every other year,
 (4) they only do it every other year, so this is -
 (5) Q Where is the family reunion?
 (6) A In San Antonio, Texas
 (7) Q You filled out the questionnaire, and I assume between
 (8) hearing our comments yesterday and today you've thought a
 (9) little bit about why you're here little bit about the case?
 (10) A Not too much
 (11) Q Not too much? I think about it all time As you sit here
 (12) today is there any reason one way or the other why you
 (13) couldn't come in here and give both sides a fair shake?
 (14) A No
 (15) Q You think you could give both sides a fair shake?
 (16) A Yes
 (17) Q As you sit here today with regard to the jury system do
 (18) you believe the jury system is a good thing a bad thing have
 (19) you thought about it?
 (20) A I believe it's a good thing I think it would be something
 (21) that's fair I think it's a good thing
 (22) Q Did any member of your family anybody you know work on
 (23) this clean up?
 (24) A My husband worked right after it happened He worked for
 (25) one of the contractors, North Employment or something

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- (1) Q What did he do?
 (2) A Part of the - I don't know a lot about what he did, but I
 (3) believe it's part of the safety or - I'm not exactly sure what
 (4) he did
 (5) Q Did you and your husband talk a lot about what he did?
 (6) A No Not a lot, no I don't remember
 (7) Q Do you - because of religious beliefs or personal beliefs
 (8) or something inside you, and I m trying to figure out the right
 (9) way to say this but would you have a problem as a juror, a
 (10) sworn juror sitting in judgment on the actions of other
 (11) people? Some people just can't sit in judgment because of
 (12) their religious beliefs or personal beliefs Is that a problem
 (13) for you at all?
 (14) A No, I can't see why
 (15) Q And then I ll just sort of throw my hands up and say, is
 (16) there any reason at all that you can think of that you don't
 (17) think you could come in here and do a good job for us?
 (18) A I can't think of a reason
 (19) MR O NEILL Thank you
 (20) JURY VOIR DIRE
 (21) BY MR CHALOS
 (22) Q Ms Smith, I hope you don't mind I ll come as close as Mr
 (23) O Neill was I m Michael Chalos and as I told you yesterday I
 (24) represent Captain Hazelwood It read in your questionnaire
 (25) that you worked in the clerk's office for the supreme - is it

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- (1) the Alaska -
 (2) A The Alaska court system, yes
 (3) Q Were you there in 1989 and 1990?
 (4) A Yes
 (5) Q As part of your job, did you hear anything about the
 (6) grounding of the Exxon Valdez?
 (7) A No, I can't say I heard anything about it other than to
 (8) expect - we were to expect the cases that were coming in, but
 (9) I can't say that I heard anything in particular
 (10) Q When the cases came in, did you review any of the
 (11) documents?
 (12) A Only thing I reviewed was to make sure they were signed I
 (13) didn't review any of the documents
 (14) Q You didn't read any of the pleadings or anything?
 (15) A No, I can't say that I did
 (16) Q As part of your job, did you hear anything about Captain
 (17) Hazelwood?
 (18) A Other than when he was out in the lobby, not too much, you
 (19) know I didn't read or hear anything too much about him
 (20) through the court system at all
 (21) MR SANDERS Your Honor I m having a terrible
 (22) difficult time hearing here
 (23) THE COURT I m not doing too well either I had
 (24) intended to use the witness box where we have a microphone that
 (25) amplifies Is there some way to get rid of that monitor that s

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- (1) still sitting there that a going to go somewhere else?
 (2) MR O NEILL You want to do it so that neither one of
 (3) us prejudices the monitor
 (4) MR NEAL Yeah I think I better go up here with you,
 (5) Mr O Neill
 (6) MR O NEILL Come on
 (7) MR NEAL Might as well get used to doing this Now
 (8) you take care of the wires and I ll do the strong work After
 (9) all I m younger than you are
 (10) MR SANDERS Why did it take two Your Honor?
 (11) MR CHALOS Because they re lawyers, that s why
 (12) THE COURT I have a story about that but I think we
 (13) better save it Let s try up - up here The - is it the
 (14) silver microphone
 (15) THE CLERK Yes, sir, Your Honor, the silver
 (16) microphone
 (17) THE COURT The silver microphone if you ll move it
 (18) close to you and speak into it, it will amplify your voice and
 (19) I think it will help all of us a little bit
 (20) MR CHALOS Your Honor, would it be all right if I
 (21) approach Ms Smith
 (22) THE COURT Yeah, go ahead
 (23) BY MR CHALOS
 (24) Q Ms Smith, I know you said that you haven t really read too
 (25) much about the grounding or watched too much television Over

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- (1) the course of the last four or five years have you formed any
 (2) opinions about Exxon with respect to the spill?
 (3) A No
 (4) Q How about with respect to Captain Hazelwood?
 (5) A No
 (6) Q Have you heard anything about Captain Hazelwood at all in
 (7) connection with the spill?
 (8) A Connection with the spill, I mean nothing that I can
 (9) remember, no, other than I know that he was involved
 (10) Q What do you know about that?
 (11) A Basically he was the captain at the time that it happened
 (12) and that he was not on the bridge at the time, the pictures and
 (13) the thing about the drinking, that's about all I heard
 (14) Q Have you formed any opinions about the fact that he might
 (15) not have been on the bridge?
 (16) A No
 (17) Q How about the fact that he may have been drinking the
 (18) afternoon before - before the vessel grounded?
 (19) A Did I have any opinion?
 (20) Q Yeah did you form any opinions?
 (21) A No
 (22) Q In your questionnaire you mentioned that your husband was
 (23) involved in an accident an automobile accident?
 (24) A Yes
 (25) Q And the other driver was under the influence of alcohol?

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- (1) A Yes
 (2) Q And you said that the effect on you was very stressful?
 (3) A Yes
 (4) Q Do you remember that?
 (5) A Right
 (6) Q What did you mean by that?
 (7) A It just at the time when the accident happened it was just
 (8) one car having to deal with the insurance company Just the
 (9) things in general of him, my husband, what he was going
 (10) through, just that
 (11) Q Was your husband injured?
 (12) A He was injured, not seriously, but he was injured, yes
 (13) Q I see Were you in the car at the time?
 (14) A No
 (15) Q How did you feel about the other driver? Were you angry at
 (16) him?
 (17) A It was much later that we found out about the fact that she
 (18) had been drinking
 (19) Q Her, sorry
 (20) A Yes, it was much later It wasn't at the time, so I really
 (21) can't say I had any kind of opinion about her
 (22) Q Okay Let me just check my notes You mentioned that your
 (23) husband worked on the spill after the spill, is that right?
 (24) A Yes
 (25) Q How long was he over there?

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- (1) A He worked there, I believe it was probably from about May
 (2) to September that he worked for that company
 (3) Q I see Did he come back home and tell you any stories
 (4) about it?
 (5) A I can't remember, because he wasn't directly near - it was
 (6) something where the airplanes landed or something like that so
 (7) he didn't really have any stories to tell me at all
 (8) Q I see He didn t actually go out on the water or -
 (9) A No
 (10) Q Or on the shoreline or anything like that?
 (11) A No, he didn't
 (12) Q Okay Ms Smith, do you - I know Mr O Neill asked you
 (13) this, but I need to assure myself is there any doubt in your
 (14) mind that you'll be able to sit listen to the facts that are
 (15) put before you, and based on those facts and those facts only,
 (16) not what you heard about or what you may have read about or
 (17) what somebody told you, just on the facts that you hear in this
 (18) courtroom that you can render a fair and impartial verdict
 (19) just on those facts?
 (20) A Yes
 (21) Q Is there any doubt in your mind that you can do that?
 (22) A No, there is not any doubt, no
 (23) Q None whatsoever?
 (24) A No
 (25) Q And you promise all of us that that s what you ll do?

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- (1) A Of course
 (2) Q Thanks a lot for your time
 (3) A You're welcome
 (4) THE COURT Does the plaintiff pass for cause?
 (5) MR O NEILL Passes for cause yes
 (6) THE COURT Mr Chalos, defendants?
 (7) MR CHALOS Yes we pass for cause Your Honor
 (8) THE COURT Ms Smith this completes your
 (9) examination You can go about your business now but be sure
 (10) the jury clerk knows where she can contact you to call you
 (11) back It s not really possible for me to say how soon that
 (12) will be but it will probably be a couple of days before we
 (13) call you back okay thank you
 (14) MR NEAL Judge, a point of clarification There is
 (15) a juror number three, and I don t know what happened to him
 (16) THE COURT There were several who the jury clerk
 (17) could not locate when we started calling them up Having in
 (18) mind that I guess it s Mr Chauvin
 (19) MR NEAL Chauvin, yes, sir
 (20) THE COURT Lives in Soldotna despite what people
 (21) were told, it could be that he went back to Soldotna but at
 (22) any rate she told me that there were several who she could not
 (23) find on the 30 or so minutes notice that she had to start
 (24) calling them
 (25) THE CLERK Your Honor this is Sandra R Wilburn

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- (1) it s juror number 12
 (2) THE COURT Ms Wilburn, by agreement with counsel
 (3) each side is going to ask you a few more questions about your
 (4) qualifications to serve as a juror in this case In responding
 (5) to the questions, please remember that you re under oath and
 (6) answer truthfully to the questions Mr O Neill
 (7) MR O NEILL Thank you judge
 (8) JURY VOIR DIRE
 (9) BY MR O NEILL
 (10) Q Ma am, I m going to ask you some questions, and don't get
 (11) mad at me if I get too personal Why do you live in Alaska?
 (12) A My husband's in the Coast Guard
 (13) Q And how long has he been in the Coast Guard?
 (14) A 15 years
 (15) Q And is he still in the Coast Guard?
 (16) A Yes
 (17) Q And do you work outside the home?
 (18) A Yes
 (19) Q And what do you do?
 (20) A I'm a vault teller at First National Bank of Anchorage
 (21) Q Do you like your job?
 (22) A Yes
 (23) Q Why?
 (24) A Because I like to be around people, like to serve people
 (25) Q Is there anything you don t like about your job?

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- (1) A No
 (2) Q Your husband went to Valdez to help with the spill?
 (3) A Uh huh
 (4) Q And what did he do there?
 (5) A He worked the computers, he's in computer management and
 he
 (6) worked computers
 (7) Q What - did you go down to Valdez?
 (8) A No
 (9) Q There was a question in the questionnaire that you wrote
 (10) down I don t understand and it was - maybe the question
 (11) wasn t a good question but it was an attempt to get your
 (12) views sort of intuitive gut heart views on a variety of
 (13) different groups of people, do you recall that question?
 (14) A Not really
 (15) Q Then I ll -
 (16) A Maybe if you reworded it
 (17) Q Yeah, let me - do you have either positive or negative
 (18) feelings about fishermen?
 (19) A No
 (20) Q How about Alaskan natives?
 (21) A No
 (22) Q Exxon Corporation?
 (23) A No
 (24) Q Were you in Alaska when the spill happened?
 (25) A No

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- (1) Q Where were you?
 (2) A California, Santa Rosa
 (3) Q Where is Santa Rosa, just out of interest?
 (4) A California
 (5) Q But -
 (6) A Oh, 60 miles north of San Francisco
 (7) Q Is it more near the ocean or more towards the valleys?
 (8) A I guess towards the valleys We have a bay there about 30
 (9) miles away, something like that
 (10) Q And when did you come to Alaska?
 (11) A 1990
 (12) Q Do you like it?
 (13) A Yes
 (14) Q What do you like about it?
 (15) A Fresh air, the trees, no smog Kodiak, I love Kodiak
 (16) Planning on returning there
 (17) Q Oh you re going to retire to Kodiak?
 (18) A No crime in Kodiak
 (19) Q Your ex spouse had a problem with alcohol?
 (20) A Yes
 (21) Q Is that going to, do you think, in any way affect your
 (22) judgment if you re a juror in this case one way or the other?
 (23) A No, because that life's behind me We've been divorced for
 (24) 11 years
 (25) Q Is there anything that you can think of as we re sitting

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- (1) here right now that would lead you to believe that you
 (2) couldn't be fair one way or the other to one side or the other
 (3) side?
 (4) A No
 (5) Q If pursuant to the Judge's instructions and after taking a
 (6) look at all of the evidence the evidence and the law as they
 (7) were both either shown to you or explained to you indicated
 (8) that there ought to be a large punitive damage award in this
 (9) case in the billions of dollars do you feel you'd be able to
 (10) do that if that's what the law and the facts required?
 (11) A If I thought it was fair
 (12) Q If you thought it was fair?
 (13) A If I thought it was fair
 (14) Q Do you have any religious or personal beliefs that would
 (15) lead you to not be able to sit in judgment of somebody in this
 (16) courtroom if it was your sworn duty to sit in the jury box and
 (17) be a judge of the facts?
 (18) A No
 (19) Q What was your reaction when you heard about the Valdez
 (20) spill? Do you recall?
 (21) A No, I don't remember
 (22) Q Because you were in Santa Rosa at the time?
 (23) A I was in Santa Rosa, didn't hear much
 (24) Q How about today, do you have any views on the Valdez spill
 (25) today one way or the other?

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- (1) A Not really
 (2) Q This is going to seem like an odd ball question, but I'm
 (3) going to ask it any way In your personal life when you make
 (4) decisions one way or the other, are you comfortable making them
 (5) on your own or sitting down with a group of people talking to
 (6) the group of people about it and sort of coming to a decision
 (7) after talking to people? Are you a loner on things like that
 (8) or do you like to act in a group?
 (9) A Well, I like to talk it out
 (10) Q You get some help from talking it out?
 (11) A Yeah, you see what -- you could see it better
 (12) Q What do you know about Exxon Corporation?
 (13) A Not much at all
 (14) Q How long has your husband been in the Coast Guard?
 (15) A 15 years
 (16) Q What is his rank?
 (17) A He's an E-6, electronic technician
 (18) Q Does he work with radar and things like that?
 (19) A (Nods head up and down)
 (20) MR O NEILL Thank you
 (21) MS WILBURN You're welcome
 (22) MR NEAL Your Honor could we -- could we approach
 (23) the bench in some way here? I think Your Honor will know why
 (24) concerns a motion in limine
 (25) (Side bar conference off the record)

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- (1) JURY VOIR DIRE
 (2) BY MR CHALOS
 (3) Q Hello Ms Wilburn We heard that your husband is in the
 (4) Coast Guard and that he's -- an electronic technician?
 (5) A Yes
 (6) Q You mentioned that he also works on radars?
 (7) A Yes
 (8) Q When he went over to Valdez after the spill did he do any
 (9) work on the radars over there?
 (10) A No He worked completely on computer
 (11) Q Just computer?
 (12) A Uh huh
 (13) Q I see You live down in Kenai?
 (14) A No, I live now?
 (15) Q Yes
 (16) A I live in Kodiak
 (17) Q Oh, Kodiak, sorry And I take it your husband lives
 (18) down there as well?
 (19) A Right, in the base there
 (20) Q Does he deal with radar down there?
 (21) A No, he does computers He's just straight computer now
 (22) Q You know, there's going to be some facts that come out in
 (23) this case that might cast a negative light on the Coast Guard
 (24) How do you feel about that?
 (25) A I have negative feelings about the Coast Guard myself

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- (1) Q To begin with Okay, fair enough It's not going to
 (2) influence your decision, because you know, we want to try and
 (3) get as fair and impartial person as possible It's not going
 (4) to influence your feelings one way or the other, is that what
 (5) you're saying --
 (6) A No, it's not
 (7) Q -- if something comes out about the Coast Guard?
 (8) A No
 (9) Q I need to ask you some personal questions, and I hope
 (10) you'll forgive me for this, but we need to explore it You
 (11) mentioned in your questionnaire that your ex husband had an
 (12) alcohol problem?
 (13) A Yes
 (14) Q And as a result of that problem you had an incident where
 (15) you were burnt, is that what you said?
 (16) A No, that wasn't my ex husband That was where I worked
 (17) Q Oh, I see, what happened there?
 (18) A Well, the cook we had had a problem
 (19) Q A drinking problem?
 (20) A Yeah, but we didn't know it at the time
 (21) Q I see
 (22) A He was an older man in his sixties and he had made
 (23) something that splashed on me and burned me No problem
 (24) Q I see Were you seriously burned?
 (25) A No, I had to be off work because I was a cook and with a

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- (1) burn you can't cook
- (2) Q Okay Oh you can't cook without a burn --
- (3) A You can't cook with a burn if you're working
- (4) Q You worked in the kitchen?
- (5) A I was working in the galley and I had to take off work
- (6) Q Did you have any negative feelings towards him for causing the accident?
- (7) A No
- (8) Q How about your ex husband how long did you live with him?
- (9) A 16, almost 17 years
- (10) Q Did he have an alcohol problem throughout that period?
- (11) A Yes
- (12) Q Did he seek any help?
- (13) A No
- (14) Q Did not?
- (15) A He didn't He kept saying he didn't have one That was his problem
- (16) Q How did you feel about that? I know you said --
- (17) A Well, I tried to help him, but you know, you have two kids, you want to be --
- (18) Q Did you leave him because of the alcohol?
- (19) A No, he was having an affair
- (20) Q Oh, would you have stayed with him but for the affair?
- (21) A Yes
- (22) Q You would have How did you feel about being in that

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- (1) relationship I mean with someone that had an alcohol problem?
- (2) A Well, I loved him and I tried to do what I could Took care of my kids and tried to take care of him
- (3) Q I see from your questionnaire that you do not drink
- (4) A No
- (5) Q Have you ever drank?
- (6) A When I was 21, but I was allergic to alcohol
- (7) Q I see It isn't you don't drink because of your ex husband?
- (8) A Yeah, it's because I'm allergic to it
- (9) Q How about because of your ex-husband's situation?
- (10) A No
- (11) Q That had nothing to do with it?
- (12) A Uh-huh My husband now drinks a couple beers once in a while
- (13) Q You know, there's going to be issues of alcohol use in this case We mentioned that to you yesterday in the little mini opening statement How do you feel about that? Do you feel that with the background that you have with the experience that you have that you can render an impartial verdict even though there might be alcohol involved in this case?
- (14) A I think I can be impartial
- (15) Q You think so?
- (16) A I mean, nobody was killed
- (17) Q Now you mentioned here that is it your husband, your

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- (1) ex husband that was arrested a number of times for DWI?
- (2) A Uh huh
- (3) Q How many times was he arrested for DWI?
- (4) A Nine
- (5) Q Nine times?
- (6) A That I know of That's when we were married He was arrested a few times afterwards, but I didn't have to pay his bill then
- (7) Q How did you feel about that?
- (8) A I don't know I hurt inside because I was thinking that maybe it was me why he was drinking
- (9) Q I see And you have children you say?
- (10) A Two
- (11) Q Were they born during those periods that he was being arrested?
- (12) A Yeah
- (13) Q Was it a painful experience for you?
- (14) A Yeah
- (15) Q I lost one of my sheets What have you -- what have you heard about the grounding of the Exxon Valdez anything?
- (16) A Not really Never paid attention to it
- (17) Q Did you watch it on television?
- (18) A No, I don't ever watch news too much
- (19) Q I see Did you read anything about it?
- (20) A (Shakes head from side to side)

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- (1) Q Have you heard of Captain Hazelwood?
- (2) A Yeah
- (3) Q What have you -- what do you know about him?
- (4) A Nothing I've just heard his name
- (5) Q Have you just heard his name?
- (6) A Last two days, actually
- (7) Q Prior to that, you had no idea who the captain of the ship was?
- (8) A No
- (9) Q And I take it, do you have any opinion of Captain Hazelwood?
- (10) A No
- (11) Q And I know you said you don't have an opinion of Exxon either favorable or unfavorable?
- (12) A No
- (13) Q Sitting there today or sitting here today is there anything that you think might prevent you from rendering a fair and impartial verdict?
- (14) A No, I don't
- (15) Q Nothing at all?
- (16) A Nothing at all
- (17) Q You can assure us that you'll listen to the evidence?
- (18) A Yes
- (19) Q And you'll make a decision on the basis of what you hear?
- (20) A What I hear and what I see

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- (1) MR CHALOS Thank you very much
 (2) THE COURT Mr O Neill?
 (3) MR CHALOS Go ahead
 (4) MR O NEILL I have nothing else
 (5) MR CHALOS Your Honor I wonder if I can just ask
 (6) one follow up question
 (7) THE COURT Yeah go ahead
 (8) BY MR CHALOS
 (9) Q Ms Wilburn I mentioned to you that there may be some
 (10) evidence about the Coast Guard here As part of that, there
 (11) will be some Coast Guard witnesses who will appear both live or
 (12) through videotape Would the fact that a Coast Guard witness
 (13) testifies in any way affect you? In other words, would you
 (14) tend to believe people that are in the Coast Guard and what
 (15) they have to say?
 (16) A No
 (17) Q Would you tend to disbelieve them?
 (18) A No
 (19) Q Would the fact that a Coast Guardsman or a Coast Guard
 (20) person testifies in any way affect your ability to judge this
 (21) case fairly?
 (22) A No
 (23) Q None at all?
 (24) A Uh-huh
 (25) MR CHALOS Thank you

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- (1) THE COURT Mr O Neill do you pass for cause?
 (2) MR O NEILL Pass for cause, Judge
 (3) THE COURT Mr Chalos?
 (4) MR CHALOS Your Honor, I would like to - I would
 (5) like to move to challenge Ms Wilburn for cause
 (6) THE COURT I m listening
 (7) MR CHALOS Your Honor, Ms Wilburn has had an
 (8) extended experience with alcohol and alcohol - an alcoholic
 (9) who I m sure, and this is no reflection on you, Ms Wilburn,
 (10) has caused her a lot of pain for a long period of time, and
 (11) even though Ms Wilburn says that she thinks she can put that
 (12) all aside and do her best to give us a fair and impartial
 (13) verdict, I think, I'm not a psychologist, but I think when you
 (14) live with someone for 15 years who is an alcoholic who refuses
 (15) to get help who subjects you - subjects you and your children
 (16) to a lot of pain by being arrested, I'm sure she was humiliated
 (17) many times by having to go down and bail him out, I just can t
 (18) see despite how hard Ms Wilburn would try, that she won t be
 (19) influenced subconsciously if not consciously by that
 (20) experience
 (21) THE COURT Mr O Neill?
 (22) MR O NEILL Alcoholism is a part of life it s a
 (23) part of all of our lives We ve seen her she is a fair minded
 (24) person and if we re going to strike everybody in the community
 (25) who has some knowledge or interaction with the disease of

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- (1) alcoholism we re not going to get a jury So we think she s
 (2) suited to sit on the jury
 (3) THE COURT Challenge is rejected I pass the juror
 (4) for cause Mrs Wilburn s situation raises a question that we
 (5) need to confront Being from Kodiak, I suspect she might
 (6) prefer to go home to Kodiak until we re going to need to call
 (7) her back I don t know what arrangements the clerk has made
 (8) for that situation Do any of you have a problem with Mrs
 (9) Wilburn returning to Kodiak for a couple of days if the clerk
 (10) says that that s the way we ought to do it?
 (11) MR NEAL None Your Honor
 (12) MR O NEILL No Judge
 (13) THE COURT Ms Wilburn if you d go back to the jury
 (14) assembly room, I hope you can find that, it s down where you
 (15) came from We ll telephone ahead and give the clerk down there
 (16) some instructions, and she ll have to help us make a decision
 (17) on whether we need to have you stay here or whether you should
 (18) go home until well call you back okay?
 (19) MS WILBURN Okay, thank you
 (20) THE COURT Get our next juror
 (21) MR NEAL Judge, before the next one comes in
 (22) respectfully, we need a better system than challenging for
 (23) cause in front of the juror Could we work out some way to do
 (24) that outside of the presence of the juror? Sometimes we feel
 (25) and Mr Chalos felt, that he had to challenge her for cause

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- (1) We can t be in a position to overrule that, but it puts us in a
 (2) terrible spot, because if you feel you've got to challenge for
 (3) cause you may not necessarily, and we already didn t agree with
 (4) that, we d like to do that out of the presence of that juror
 (5) THE COURT Mr Neal I have no problem with that As
 (6) you know, I don t usually pick juries this way I usually do
 (7) that business myself and I have no problem with accommodating
 (8) that concern
 (9) MR NEAL So how do we, yes, Your Honor -
 (10) THE COURT What I would suggest is that you complete
 (11) your questioning as we have been If both of you pass for
 (12) cause, obviously there's no problem If you do not pass for
 (13) cause, we will return the jury to - juror to the jury room
 (14) behind us I will hear you on the - on the challenge for
 (15) cause, and if for some reason we need to call the person back
 (16) they ll be close at hand
 (17) MR NEAL How do we let you know that she should
 (18) retire? In other words -
 (19) THE COURT You re just going to have to tell me that
 (20) you want to talk to me about passing for cause
 (21) MR O NEILL Or you could say I m finished
 (22) THE COURT Well these jurors aren t - aren t
 (23) completely uninformed as to what s going on here I think you
 (24) need to tell us what the situation is I understand your
 (25) problem with discussing it as candidly as you might wish to in

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- (1) front of the juror and I'll accommodate you there but if you
 (2) want to challenge for cause tell me so
 (3) MR NEAL And as good a lawyer as he is Mr O Neill
 (4) knows how to embrace a juror that we've just challenged for
 (5) cause so we'll make it known somehow Your Honor
 (6) THE COURT I must admit it crossed my mind when I saw
 (7) what was happening Would you call the next juror please?
 (8) THE CLERK Your Honor this is Leon B Currier juror
 (9) number 14
 (10) THE COURT Mr Currier, you are under oath to answer
 (11) questions here You've already answered a questionnaire
 (12) Counsel are now going to have some further follow up questions
 (13) for you, going beyond the questionnaire We've agreed that
 (14) each side would have ten minutes to talk to the jurors Mr
 (15) O Neill?
 (16) MR O NEILL Thank you Judge
 (17) JURY VOIR DIRE
 (18) BY MR O NEILL
 (19) Q Sir, I'm going to ask you some questions and if I offend
 (20) you because of the nature of some of the questions as being
 (21) personal I hope you forgive me but I'm trying to do a job and
 (22) they're trying to do a job
 (23) What branch of the service did you serve in?
 (24) A U S Army
 (25) Q And what branch of the Army?

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- (1) A Infantry
 (2) Q Infantry?
 (3) A Right
 (4) Q And five years?
 (5) A Right
 (6) Q How far did you get up the ranks in five years?
 (7) A To an E-4
 (8) Q Did you go to the infantry school at Ft Benning?
 (9) A No, I went through basic training at Ft Dix, New Jersey
 (10) Q One of the real pit holes of the world And why did you
 (11) leave the Army?
 (12) A My time was up
 (13) Q Did the - you now work for the City of Anchorage?
 (14) A Yes, sir
 (15) Q As a mechanic?
 (16) A Yes, sir
 (17) Q And what do you like about your job?
 (18) A I just like working on heavy equipment
 (19) Q And do you work as a mechanic or as a supervisor?
 (20) A Sometimes when the foreman leaves I fill in for the
 (21) supervisor, you know, for him Most of the time I do all
 (22) mechanical work
 (23) Q Now at one point in time you worked for Alyeska What
 (24) did you do for Alyeska?
 (25) A I was a mechanic, a master mechanic on the pipeline

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- (1) Worked for many different contractors on the pipeline
 (2) Q Did you like working on the pipeline?
 (3) A Yeah
 (4) Q Are you proud of the contribution you made on the pipeline?
 (5) A Sure am
 (6) Q Does the fact that you're obviously proud of one of the
 (7) great technical achievements of the 20th century would that
 (8) give you any problem in sitting as a juror in this case? Would
 (9) you be more partial to Exxon or less partial to Exxon because
 (10) you worked on the pipeline?
 (11) A No
 (12) Q What do you do for fun?
 (13) A I play hockey and I roller blade I'm involved with a
 (14) couple of organizations in Eagle River, the Elks and the Lions
 (15) and I work with the blind people and I do a lot for the
 (16) community
 (17) Q Have you had - has the subject of alcoholism entered your
 (18) life in any way, shape or form, friends, family?
 (19) A Yes
 (20) Q How?
 (21) A With my mother My mother was quite a heavy drinker
 (22) Q Did she ever seek treatment?
 (23) A She did one time here in town, Charter North, yes
 (24) Q And did it help?
 (25) A Sure did

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- (1) Q Does she - is she - your mother alive?
 (2) A Yes
 (3) Q Is she drinking now?
 (4) A No
 (5) Q Is she happier now?
 (6) A Well, she will be tomorrow, she gets out of the hospital
 (7) tomorrow
 (8) Q Oh, she does? You've listened to both, to all three of the
 (9) little pitches yesterday Listening to those - well let me
 (10) ask, before I get to that, let me ask you another question
 (11) where were you when the spill happened, do you recall?
 (12) A I was working here for the city
 (13) Q What was your reaction to the spill?
 (14) A I didn't - at first I didn't think anything about it I
 (15) thought it was just the media blowing it out of proportion
 (16) Q You thought the media blew things out of proportion?
 (17) A At the beginning of it, yes
 (18) Q And then did your feelings change at all?
 (19) A Not really
 (20) Q How about today?
 (21) A I thought it was all over with, you know, I mean I
 (22) thought -
 (23) Q You thought it was all over with?
 (24) A Yeah
 (25) Q Do you have a reaction to the fact that it isn't all over

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- (1) with?
- (2) A No
- (3) Q Why did you think it was all over with?
- (4) A Because I hadn't heard anymore about it
- (5) Q Do you fish or hunt at all yourself?
- (6) A I hunt
- (7) Q Where do you hunt?
- (8) A Over across Knik It's right across by Wasilla, Goose Bay
- (9) and that
- (10) Q Do you like to hunt?
- (11) A Yes
- (12) Q Do you have any views on Exxon Corporation?
- (13) A No
- (14) Q One way or the other?
- (15) A No
- (16) Q How about on do you have any views about commercial fishermen?
- (17) A No
- (18) Q Do you have any views on the seriousness of alcoholism in Alaska?
- (19) A I'm concerned about it, yes
- (20) Q If at the end of the - if you're a juror in this case, you'll sit in this jury box for longer than you probably want to and you'll listen to the testimony, and at the end of the proceeding the Judge will instruct you on the law And if the

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- (1) facts and the law are such that your duty requires you to bring in a punitive damage award can you do that?
- (2) A I'm sure
- (3) Q Do you have feelings one way or the other about the subject of punitive damages?
- (4) A No, I don't
- (5) Q If the facts and the law required you, and your duty required you to bring in a punitive damage award in billions of dollars, could you do that?
- (6) A Sure
- (7) Q Is there, as we sit here right now, is there anything that you can think of, just sort of ask a summary question, as to why one way or the other would you be a good judge of the facts in this case?
- (8) A I would try to be, yes
- (9) Q You think you have it in you to be a good judge of the facts in this case?
- (10) A I think so, I think so
- (11) Q And be fair to everybody who was in the courtroom?
- (12) A I think so
- (13) Q And do you have any reasons why you couldn't sit with us through first of August?
- (14) A No, I sure don't
- (15) Q Have you ever been in a lawsuit yourself?
- (16) A No

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- (1) Q Known anybody in a lawsuit that talked about it all the time?
- (2) A Couple of people I worked with have been in automobile accidents and stuff like that, you know, but other than that, no
- (3) Q Can you think of any questions I should have asked you? I have nothing further, thank you
- (4) JURY VOIR DIRE
- (5) BY MR LYNCH
- (6) Q Excuse me Mr Currier it's a little narrow back there
- (7) You work on heavy equipment?
- (8) A Yes, sir
- (9) Q Does that - you work on the mechanical part of it or the engines or both?
- (10) A Both
- (11) Q Are you familiar with diesels?
- (12) A Yes, sir
- (13) Q You ever worked on diesels used in marine applications like they would use on a ship?
- (14) A I worked on a lot of pumps and stuff like that, yes
- (15) Q But how about the diesel propulsion?
- (16) A No
- (17) Q Do you - I gather from your questionnaire that your job involves you in some way with the Port of Anchorage?
- (18) A Yes, sir

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- (1) Q Is that right? Do you have contact with seamen and ship operators in your job?
- (2) A No, not really We just - we do the maintenance to the actual dock We don't have anything to do with the ship
- (3) Q Now, you were, as I gather you didn't follow the grounding of the Exxon Valdez to any great extent?
- (4) A No
- (5) Q As you sit here today, from all that you've seen and read and heard, whatever it is, do you have any opinion at all about how that accident happened?
- (6) A Not really, no It's been - what I did hear about it was confusing, because one was saying this and the other was saying that
- (7) Q And when you heard us talk yesterday and Mr O'Neill told you one side of the story and we tried to suggest to you there was another side do you have any - any feeling that you would have a hard time listening to either side in this case?
- (8) A No
- (9) Q You start off with the leaning that you have a feeling that you know what happened here?
- (10) A No
- (11) Q How about Captain Hazelwood?
- (12) A I have no feeling whatsoever one way or the other
- (13) Q Did you know before yesterday that Captain Hazelwood one of the allegations that's made about Captain Hazelwood in

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- (1) connection with this accident is that he had been drinking on
 (2) the night of the accident?
 (3) A Could you repeat that?
 (4) Q Did you know before you came here yesterday to serve on the
 (5) jury that one of the allegations was that Captain Hazelwood had
 (6) been drinking on the night of the accident?
 (7) A Well, I read that or heard that on the news, you know,
 (8) months and months ago when it was actually going on
 (9) Q What impression did you get if you can recall what
 (10) impression did you have about Captain Hazelwood from what you
 (11) read and heard on the news?
 (12) A I didn't have any impression at all
 (13) Q Do you drink yourself?
 (14) A I have an occasional drink, yes
 (15) Q Have you ever had a situation where maybe you've been
 (16) someplace and driven home, or something where you've felt
 (17) you're in control and perfectly all right to do?
 (18) A I have
 (19) Q In your own experience have you driven with people who
 (20) might have had a drink who were perfectly fit to drive?
 (21) A Yes, I have
 (22) Q And have you been in a situation where you've made a
 (23) judgment that maybe someone's had a little too much?
 (24) A Yes, I have
 (25) Q Now in connection with your mother's situation, I hope

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- (1) like Mr. O'Neill, I don't want to pry into your personal life
 (2) If it worked both ways you could ask me these questions, but I
 (3) need to because you're going - there's going to be a lot of
 (4) testimony in this case about alcohol. You heard that
 (5) yesterday?
 (6) A Right
 (7) Q And we of course know that people who've had close
 (8) contact with alcohol in their life, that's a very substantial
 (9) effect on them so we have to ask how that might influence -
 (10) how you feel about this. There will be a lot of testimony
 (11) about alcohol. Have you, because of your involvement with your
 (12) mother have you been involved, for example, in support groups
 (13) and parent - I mean family groups that are involved with
 (14) alcohol?
 (15) A I supported her when she was over there at Charter North
 (16) She was over there for 30 days
 (17) Q You mentioned that your mother's coming out of the
 (18) hospital, that isn't in connection with alcohol?
 (19) A No, she just had a total hip replacement
 (20) Q Well that's a good development. But you weren't a member
 (21) of a like the family groups that support -
 (22) A No
 (23) Q - alcohol or something like that?
 (24) A No
 (25) Q Do you have any strong opinions about what alcoholism is?

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- (1) A Any opinions what it is?
 (2) Q You know do you feel that you have a strong personal
 (3) definition of what alcoholism is?
 (4) A No, I really don't
 (5) Q Do you have a view that whether or not there are - there
 (6) might be different kinds of alcohol problems?
 (7) A Yes
 (8) Q I mean if a doctor came in here and said you know that in
 (9) his opinion there are different varieties of alcohol problems
 (10) would that be inconsistent with your beliefs at present?
 (11) A No
 (12) Q Would you have a hard time listening to a doctor who said
 (13) that?
 (14) A No
 (15) Q Do you have the belief that if someone's had a problem with
 (16) alcohol, because of your personal experiences or for any other
 (17) reason, that if they've had a problem with alcohol in their
 (18) life they can never drink again?
 (19) A I - I guess they go to the individual. I don't know if
 (20) they can or not. I guess if they're told that they're not
 (21) supposed to. It's the individual has to decide that.
 (22) Q A lot of people I think who have alcohol problems in their
 (23) family have heard for example - have you ever watched the
 (24) John Larroquette Show?
 (25) A No, I haven't

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- (1) Q That's a show about someone who's in alcoholics anonymous
 (2) and alcoholics anonymous has the view that a person that's got
 (3) a problem with alcohol should never ever drink again no matter
 (4) what. Are you of that view? Do you subscribe to that view?
 (5) A Not necessarily, no
 (6) Q So if the testimony in this case indicated that perhaps
 (7) there were varieties of alcohol problems that don't necessarily
 (8) require a person to never ever drink again, that wouldn't go
 (9) against one of your strong beliefs is that correct?
 (10) A No, no
 (11) Q What about, do you feel that a person who's had, you know
 (12) warning about alcohol has to continue going to support groups
 (13) that that's the only way to deal with alcohol?
 (14) A I don't think so, no
 (15) Q Did you - you know, in your own involvement have you ever
 (16) been involved in alcoholics anonymous?
 (17) A Yes, I have
 (18) Q Personally?
 (19) A Yes
 (20) Q And what role did you have with that organization?
 (21) A Well, I was - my first marriage with my - I been married
 (22) twice. My first marriage, the wife and I used to have quite a
 (23) few battles and I had to go to what they call AWIC, that's a
 (24) support group, because she said that I was drinking, so the
 (25) Judge said, well, you have to go to one of these classes. And

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- (1) I went to one of those classes That was back 15 years ago
- (2) Q Was that a positive experience?
- (3) A Yeah
- (4) Q Do you have any feelings left over from that that would
- (5) possibly affect the way you look at this case?
- (6) A No
- (7) Q Now do you have any present feelings or information about
- (8) the consequences of the spill?
- (9) A What?
- (10) Q About what the effect the spill has had on Alaska or on
- (11) Prince William Sound?
- (12) A Do I have any feelings about that? Do I have any feelings
- (13) about it?
- (14) Q Yes, sir, or opinions
- (15) A No, no
- (16) Q Do you have any information that would cause you to have an
- (17) opinion about the plaintiffs and what the plaintiffs are
- (18) claiming damages for?
- (19) A No
- (20) Q And Mr O'Neill asked you some questions about - about
- (21) punishment Now, have you been on a jury before?
- (22) A No, I never have
- (23) Q Criminal or civil?
- (24) A No
- (25) Q Okay Now in this case the jury needs to be unanimous

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- (1) Do you feel that if you felt in your own conscious that a
- (2) certain decision was right and was what the Judge had
- (3) instructed you the law directed, that you could you could
- (4) stand and hold your own conscious, even if other people on the
- (5) jury were encouraging you to vote for a different verdict?
- (6) A I think I could
- (7) Q Do you think you d have the patience for that?
- (8) A Yes
- (9) Q Do you anticipate that you would have any job problems if
- (10) this trial runs as long as Judge Holland said it might run?
- (11) A None whatsoever
- (12) Q Do you think this would be any strain on your family or -
- (13) A No, not at all
- (14) Q Do you - do you have any particular feelings about the
- (15) effect that oil has had in Alaska? You were on the
- (16) construction of the Trans-Alaska Pipeline, do you have any
- (17) feelings about the Trans-Alaska Pipeline and what it's done for
- (18) Alaska?
- (19) A I think it's done some great things for the State of
- (20) Alaska
- (21) Q Would you like to be a juror on this case?
- (22) A I think I would like to, yeah
- (23) MR LYNCH I have no other questions Your Honor
- (24) MR O NEILL Could I ask one or two follow up
- (25) questions? Say no, if you want to say no Judge

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- (1) THE COURT No Pass for cause?
- (2) MR O NEILL Pass for cause
- (3) MR LYNCH Pass for cause Your Honor
- (4) THE COURT Mr Currier this completes this stage of
- (5) it as far as you re concerned It will probably be several
- (6) days before we get back to you and we will have the jury clerk
- (7) call you as soon as we need you again Thank you sir
- (8) THE CLERK Your Honor this is Linda L Hood juror
- (9) number 15
- (10) THE COURT Ms Hood you have been placed under oath
- (11) to answer some questions in this case You ve already answered
- (12) the questionnaire At this point the attorneys are going to
- (13) have some follow up questions for you We ve agreed they each
- (14) have up to ten minutes to talk to you Mr O'Neill?
- (15) MR O NEILL Thank you, Judge
- (16) JURY VOIR DIRE
- (17) BY MR O NEILL
- (18) Q Ma am don t get mad at me if I ask a question that you
- (19) think is sort of intruding because I m going to try to intrude
- (20) a little bit tiny bit
- (21) Where were you when the Exxon Valdez ran aground?
- (22) A Here in Anchorage
- (23) Q Do you recall your feelings about the Valdez running
- (24) aground when it ran aground?
- (25) A I will tell you that I know it - you know, I knew it

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- (1) happened I don't - I don't really have any feelings I know
- (2) it's a tragic spill
- (3) Q Do you have, in your family, and in our society it s very,
- (4) very common - let me start over again You work in the area
- (5) of sleep disorders?
- (6) A I do
- (7) Q What do you do?
- (8) A I'm a coordinator for the sleep center at Providence
- (9) Hospital I coordinate the patients coming through
- (10) Q And are you a researcher or a -
- (11) A No I schedule the patients I work with the physicians,
- (12) but I'm not a researcher It would be more - more clerical
- (13) type
- (14) Q Why do you live here in Alaska?
- (15) A I was born here It's my home
- (16) Q Where were you born?
- (17) A Here in Anchorage
- (18) Q What do you like about your job?
- (19) A I like most everything about my job I've worked there
- (20) almost 14 years I like the hospital and I like to work with
- (21) people
- (22) Q What - do you have any views on the contribution of the
- (23) oil industry to the State of Alaska?
- (24) A No
- (25) Q Have you ever thought about it much?

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- (1) A No
- (2) Q What do you do for fun?
- (3) A I walk, I ride my bike I walk my dog I travel with my
- (4) husband
- (5) Q Where do you?
- (6) A Go to the movies, do needlework
- (7) Q Where do you travel?
- (8) A Last month we went to Las Vegas Went to Seattle in
- (9) February
- (10) Q What s the best trip you ve ever been on?
- (11) A Probably when I was a flight attendant and went to Europe
- (12) Q Who did you work for as a flight attendant?
- (13) A I worked for PNA, Pacific Northern Airlines, and they
- (14) merged with Western Airlines and I worked for Wien Air Alaska
- (15) Q Do you have any views one way or the other on Exxon
- (16) Corporation?
- (17) A No)
- (18) Q Do you have anything planned upcoming in the months ahead
- (19) that would prevent you from concentrating while you were acting
- (20) as a juror?
- (21) A Well, I'd like to - I was thinking about going to - my
- (22) daughter goes to the Univeraty of Oregon in Eugene I was
- (23) thinking about going to parents weekend However, we had
- (24) discussed it, but I don't believe we're going We would like
- (25) to go on vacation in September, although we haven't set the

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- (1) date I would say mid September
- (2) Q Do you have any views one way or the other about commercial
- (3) fishermen?
- (4) A No
- (5) Q How about Alaskan natives?
- (6) A No
- (7) Q Do you consider yourself to know a lot about sleep
- (8) disorders?
- (9) A No well, I work - I've worked there for three years I'm
- (10) not a expert on sleep disorders
- (11) Q Is it an interest of yours, sleep disorders?
- (12) A I find it interesting We work mostly with obstructive
- (13) sleeping, people who can't get enough air at night to sleep
- (14) Q What do you read?
- (15) A Well, I just started The Client and light reading
- (16) Q Like that's a John Grisham book?
- (17) A Uh huh
- (18) Q Do you like him?
- (19) A Well, I read The Firm, I saw the movie I thought that was
- (20) very good
- (21) Q I liked The Firm a lot, too How would you feel about
- (22) being a jury in this case a juror in this case? You wouldn't
- (23) be a whole jury
- (24) A I feel that it would be my responsibility if chosen
- (25) Q How would you approach that responsibility?

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- (1) A Well, I'd listen and discuss it with the other people and
- (2) come up with whatever
- (3) Q When you make decisions in your own life, do you like to
- (4) make them talking with other people and then making your
- (5) decision or do you like to go off on your own and make the
- (6) decision by your own self?
- (7) A Well, I think I'd probably discuss it
- (8) Q If after sitting here the facts were such that your duty
- (9) required it and the law that His Honor instructs you with
- (10) required it could you make and award a punitive damage award
- (11) in the area of billions of dollars if that s what the evidence
- (12) requires?
- (13) A I don't know I've never given that much thought I would
- (14) have to - I would hope he would instruct us how to do that I
- (15) mean, I really don't know that much about it
- (16) Q Does the concept of punitive damages, have you ever thought
- (17) much about that?
- (18) A No
- (19) Q Do you get scared off in dealing with billions of dollars?
- (20) You showed a little reluctance in answering the question
- (21) A Well, I've never had to
- (22) Q Just something you don't do on a daily basis in figuring
- (23) out your checkbook?
- (24) A No
- (25) Q But again, if the law required it and His Honor s

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- (1) instructions required it, do you think you could work hard and
- (2) come to grips with it?
- (3) A Yes
- (4) Q Is there anything that you know, after listening to us
- (5) yesterday, or the questionnaire, reflection on the
- (6) questionnaire, that would give you pause with regard to being a
- (7) juror, or are you ready to go?
- (8) A No, I would be ready to do it
- (9) MR O NEILL Thank you
- (10) JURY VOIR DIRE
- (11) BY MR SERDAHELY
- (12) Q Ms Hood, what kind of dog do you have?
- (13) A Well, she's just a little five pound mutt
- (14) Q Five pound mutt, have you had other dogs?
- (15) A Yes
- (16) Q Do you breed dogs?
- (17) A No
- (18) Q Your job as a technical coordinator at the Providence
- (19) Hospital, is that a managerial position or is that a staff
- (20) position?
- (21) A It's a staff position
- (22) Q Have you ever had a managerial position?
- (23) A No
- (24) Q The - your husband is a Teamster?
- (25) A Right

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- (1) Q Was a Teamster Did he work on the pipeline?
- (2) A No
- (3) Q And your son by your questionnaire is also a Teamster
- (4) correct?
- (5) A I have a daughter and she's a student at the University of Oregon
- (6) Q And what is she studying to do?
- (7) A Well, she's an English major and a music major, freshman year
- (8) Q You indicate in your questionnaire that you had some experience with navigational matters Could you explain that please?
- (9) A I said in my questionnaire I was a flight attendant and that I flew with pilots that navigated airplanes
- (10) Q And also in your questionnaire, ma'am, you indicated that you had belonged to MADD or the -
- (11) A That's right
- (12) Q And that is Mothers Against Drunk Drivers?
- (13) A That's right
- (14) Q Are you still a member of MADD?
- (15) A No
- (16) Q And is there anything about that relationship, that membership that would effect your ability to be a fair juror here today?
- (17) A No

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- (1) Q You ve participated in the Anchorage youth symphony?
- (2) A I sat on the board when my daughter was a member of it
- (3) Q And are you still on that board, ma'am?
- (4) A No
- (5) Q You indicated you like to ride your bicycle Where do you ride your bicycle?
- (6) A We live on the coastal trail, near it
- (7) Q And you hike, walk?
- (8) A Walk
- (9) Q Do you have any strong feelings one way or the other about the oil industry?
- (10) A No
- (11) Q Any strong feelings about the oil companies in general or Exxon Corporation in particular?
- (12) A No
- (13) Q Do you have any strong feelings about commercial fishermen?
- (14) A No
- (15) Q Alaska natives?
- (16) A No
- (17) Q You ve been here for your entire life?
- (18) A That's right
- (19) Q All 50 years and you ve seen the Alaska Native Claims Settlement Act be passed and all that Do you have any interest in those matters?

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- (1) A No
- (2) MR SERDAHELY That's all I have thank you
- (3) THE COURT Mr O'Neill?
- (4) MR O NEILL Pass for cause
- (5) MR SERDAHELY Pass for cause thank you
- (6) THE COURT Ms Hood thank you It will probably be several days before we call you back but we will be calling you back, so you can go about your business now but expect a call in a few days from us
- (7) MR O NEILL They said I was supposed to stay myself and I commented that nobody really likes me
- (8) MR COHEN We agreed, Your Honor
- (9) THE CLERK Your Honor, this is Gloria P Sampaga, it's juror number 19
- (10) THE COURT Mrs Sampaga, you've been placed under oath to answer this questionnaire that you completed yesterday The attorneys are going to have some follow up questions for you Now we've agreed each side would have ten minutes to talk to you about your answers Mr O'Neill?
- (11) MR O NEILL Thank you, Judge
- (12) JURY VOIR DIRE
- (13) BY MR O NEILL
- (14) Q Hi, you work for the Anchorage School District?
- (15) A Yes
- (16) Q Do you like your job?

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- (1) A Yes
- (2) Q What do you like about your job?
- (3) A Nice pay, good pay
- (4) Q Good pay? Where were you in 1989 when the Exxon Valdez ran aground?
- (5) A Here
- (6) Q Do you remember?
- (7) A Here in Anchorage
- (8) Q Did you have a reaction?
- (9) A I didn't like what it happened - why it happened
- (10) Q And between then and now, has your reaction changed much?
- (11) A No
- (12) Q What do you do for fun?
- (13) A Like to play bingo And I go fishing with my husband
- (14) Q Where do you go fishing?
- (15) A We go to Homer, Seward
- (16) Q Do you like to fish?
- (17) A He likes to fish I just like to go watch
- (18) Q Does - you mentioned a minute ago that you didn't - you weren't particularly impressed or you had some feelings when the - when the Valdez ran aground Do you think those feelings would keep you from being fair while a juror in this case? Could you put your feelings aside and be fair?
- (19) A I don't think so
- (20) Q You don't think you could?

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- (1) A No
- (2) Q A lot of times in our life we re forced to make decisions
- (3) despite what s in our heart and we can move our feelings aside
- (4) and be fair do you think you could be fair?
- (5) A No I don't
- (6) Q You re sure you couldn t be fair?
- (7) A (Shakes head from side to side)
- (8) Q Sure you can t be fair You really would have a problem
- (9) with being fair you think Why?
- (10) A Oh, gosh Well, that's a big disaster, that's what it is
- (11) Q And you re so mad I mean you are mad about it and you just
- (12) can t do any - you just can t move your heart aside enough?
- (13) A (Nods head up and down)
- (14) Q So unfortunately you d feel uncomfortable sitting here with
- (15) us for three months talking about it, wouldn t you
- (16) MR O NEILL Your Honor, that's the best I can do
- (17) Do you want to short cut the process?
- (18) THE COURT I think we need to excuse you I really
- (19) appreciate your being so candid with us
- (20) MR O'NEILL Yes, ma'am, thank you for being honest
- (21) THE COURT Thank you for coming
- (22) MR O NEILL And I'm really sorry that you couldn't
- (23) sit here with us for three months
- (24) THE COURT You should go back and check with the jury
- (25) clerk in the assembly room but tell her that you re excused

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- (1) (Time now 222)
- (2) THE CLERK Your Honor, this is Richard L. Walls,
- (3) juror number 22
- (4) THE COURT Mr. Walls, you've been placed under oath
- (5) and have answered a questionnaire here By agreement with the
- (6) attorneys they're going to take ten minutes on each side and
- (7) have some time to follow up on the answers to your questions
- (8) Your answers to their questions Mr. O'Neill?
- (9) MR O NEILL Thank you, Judge
- (10) JURY VOIR DIRE
- (11) BY MR O NEILL
- (12) Q It s unfair because I have your questionnaire here
- (13) A I filled it out yesterday
- (14) Q Still remember what s on it, huh?
- (15) A I do
- (16) Q You work as an aircraft mechanic for Federal Express?
- (17) A That's right
- (18) Q What do you like about your job?
- (19) A Oh, it's lots of varied activities, different problems
- (20) occur each day that's different from the next, so it's
- (21) interesting that way
- (22) Q How long have you been an aircraft mechanic?
- (23) A 30 years
- (24) Q Did you get your training in the service originally or -
- (25) A That was my first exposure to it, and then subsequent

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- (1) junior college, got my A and P license and followed up with
- (2) the jobs in aircraft, aircraft maintenance
- (3) Q You were in the Army?
- (4) A What's that?
- (5) Q You were in the Army, U S Army?
- (6) A Army National Guard
- (7) Q Oh, where were you when the Valdez spill happened?
- (8) A I was here in Anchorage
- (9) Q Did you have a reaction at the time -
- (10) A No, no particular reaction
- (11) Q - one way or the other?
- (12) A No
- (13) Q How about between then and now?
- (14) A It's not that big of an issue with me
- (15) Q Do you have feelings about it one way or the other?
- (16) A Well, it's a sad thing that occurred, but no real - I have
- (17) no opinions really
- (18) Q You started to say but no real -
- (19) A Opinions or feelings one way or the other
- (20) Q How do you think the press covered the Valdez spill?
- (21) A I suppose that they - they covered it, you know, as far as
- (22) they needed to go for - I really didn't follow it that well to
- (23) know if there was adequate coverage or minimal coverage or if
- (24) there was excessive
- (25) Q Has - I don't mean to intrude and I'm trying to think of

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- (1) a delicate way to do this, but there's going to be a lot of
- (2) testimony in this case about alcoholism, and I notice on the
- (3) form that you skipped have you or any member of your family or
- (4) close friend ever had an alcohol or drug abuse problem
- (5) Has the disease of alcoholism entered your life in any way,
- (6) family, friends?
- (7) A To some degree I don't know if it was abuse of alcohol
- (8) but maybe excessive use
- (9) Q But how was that?
- (10) A Maybe my intolerance of it
- (11) Q The oil industry is a big force in Alaska life Is that a
- (12) subject you ve ever given a lot of thought to?
- (13) A Not really
- (14) Q How about the fact that you don't pay income tax?
- (15) A Well, I like that
- (16) Q You're going to be sitting in judgment on - if you re a
- (17) juror, you re going to sitting in judgment on Exxon Corporation
- (18) and that s what - this is judgment here Would that fact that
- (19) you don t pay income tax keep you from judging them fairly?
- (20) A I don't think so Because I realize that just because we
- (21) don't pay taxes and it's due to oil revenues, that it's my
- (22) choice that I'm here, and if this is part of, you know, my
- (23) residency of being in Alaska, that's great If need be that
- (24) were taken away, I would probably still retain my residency
- (25) Q You like it here any way?

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- (1) A Yes
- (2) Q If you re going to as one of the judges of the facts in
- (3) the jury box you ll sit here for weeks and listen to
- (4) testimony And if the testimony requires it and the law that
- (5) His Honor gives you requires it, would you be able to give a
- (6) punitive damage award against Exxon if the facts and the law
- (7) require it in billions of dollars?
- (8) A I haven't really considered it that scale, but I probably
- (9) could
- (10) Q I m saying if the facts require it and the law requires it
- (11) do you have a personal insurmountable obstacle doing what the
- (12) facts and the law required?
- (13) A No
- (14) Q I asked this question of everybody, and it may seem
- (15) peculiar to you, but I m going to ask it any way Do you hold
- (16) any personal or religious beliefs that would create a problem
- (17) in your sitting as a judge of the facts? Some people do
- (18) A No
- (19) Q What do you do with your spare time?
- (20) A I spend a lot of time on my computer and have my own
- (21) personal finances on there and tracking various things and
- (22) computer games and also work out at a club
- (23) Q That's a revealing question You say, why does this guy
- (24) ask me what the heck I do with my spare time, but very often
- (25) it s a very revealing question about a person You work around

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- (1) heavy equipment?
- (2) A Yes, that is heavy - not construction type equipment,
- (3) but -
- (4) Q Airplane type equipment?
- (5) A Airplane type, yes
- (6) Q Do you like that?
- (7) A Yes
- (8) Q Are you a supervisor or -
- (9) A Well, it's a aircraft mechanic, and I am in a lead
- (10) capacity, so I have anywhere from 15 to 17 mechanics that I
- (11) direct activities during the day
- (12) Q You filled out the questionnaire, and we've had an
- (13) opportunity to talk and there was a time for reflection between
- (14) the questionnaire and today Is there any reason that you can
- (15) think of why you might be uncomfortable being a juror in this
- (16) case?
- (17) A No
- (18) MR O NEILL Thank you
- (19) JURY VOIR DIRE
- (20) BY MR CHALOS
- (21) Q Hello Mr Wall You and I have something in common I
- (22) like working out too except I don t do it too often as you
- (23) can see
- (24) I see that you work for Federal Express and before that
- (25) Flying Tigers?

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- (1) A That's correct
- (2) Q And you re a mechanic supervisor?
- (3) A No
- (4) Q What do you do?
- (5) A It's called a lead position
- (6) Q Lead?
- (7) A Lead
- (8) Q Uh huh
- (9) A And it's a quasi supervisor I have a manager over me who
- (10) is the actual supervisor
- (11) Q I see In your capacity, do you supervise people below
- (12) you?
- (13) A To certain degree, yes
- (14) Q Other mechanics?
- (15) A Yes
- (16) Q I see In your capacity as the quasi supervisor do you
- (17) delegate down to these people different tasks?
- (18) A Yes
- (19) Q And when you do that, you expect that they re going to
- (20) carry out whatever it is that you told them to do?
- (21) A Yes
- (22) Q Even if you're not standing there watching them?
- (23) A That's correct
- (24) Q In your job, I take it over the years when you have men and
- (25) machinery kind of mixed together there s bound to be

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- (1) accidents Do you have that kind of experience?
- (2) A Yes, there - there are accidents
- (3) Q Either sometimes through human failure, sometimes through
- (4) mechanical failure?
- (5) A Yes
- (6) Q Sometimes a combination of both?
- (7) A Yes
- (8) Q So you have that kind of experience in your life?
- (9) A To some degree
- (10) Q Does Federal Express have an alcohol policy?
- (11) A Yes, they do
- (12) Q What type of policy do they have, as far as the people that
- (13) you deal with?
- (14) A It's a drug free work place, covered by the - I believe
- (15) it's the Railway Protection Act or something They've got a
- (16) law that's nationwide we have to do mandatory drug testing
- (17) Q How about alcohol testing do they test for alcohol?
- (18) A Not specifically
- (19) Q In your experience with Flying Tigers and Federal Express
- (20) have you had occasion where somebody came to work when you
- (21) could smell alcohol on their breath?
- (22) A That has occurred
- (23) Q What did you do in those instances?
- (24) A In one instance, it was - it was not on my duty, period,
- (25) and it wasn't related to the maintenance side, and others have

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- (1) been - there's just been a matter of informing our management
 (2) Q Did that person continue to work or those persons?
 (3) A Yes
 (4) Q Have you had occasion where you smelled alcohol on
 (5) somebody's breath but you didn't believe that they were in any
 (6) way impaired they can still do their job?
 (7) A Yes
 (8) Q Have you ever gone to work after you've had a drink?
 (9) A No
 (10) Q In your questionnaire you mentioned that you heard a lot
 (11) about the spill either through television or you read about it
 (12) is that right?
 (13) A It was just a general nature, yes, seeing the headlines
 (14) Q Do you recall what you might have read about Captain
 (15) Hazelwood in connection with the grounding and the spill?
 (16) A Only that he was the captain of the vessel at the time
 (17) Other particulars, no, sir, I don't remember
 (18) MR SANDERS Your Honor, I'm sorry, I didn't hear the
 (19) answer
 (20) BY MR CHALOS
 (21) Q He says he wasn't aware of the particulars is that right?
 (22) A Yes
 (23) Q Have you formed any opinions about Captain Hazelwood with
 (24) respect to the grounding of the Exxon Valdez?
 (25) A No

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- (1) Q How about Exxon?
 (2) A No
 (3) Q Do you have any opinions or strong beliefs one way or the
 (4) other about either one of them?
 (5) A No
 (6) Q I see also from your questionnaire that you sport fish in
 (7) Prince William Sound
 (8) A I have
 (9) Q Did you do that in 1989 pre spill?
 (10) A Yes
 (11) Q And have you done it since the spill?
 (12) A No
 (13) Q Is there any particular reason why you haven't fished over
 (14) there?
 (15) A I've been - other duties, and just not taken the
 (16) opportunity
 (17) Q It isn't that you don't go over there because of the spill
 (18) or -
 (19) A No
 (20) Q Or because of the aftereffects that might be from the
 (21) spill?
 (22) A No
 (23) Q Do you still fish today?
 (24) A On occasion
 (25) Q Do you have any friends that are fishermen?

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- (1) A Yes
 (2) Q Commercial fishermen?
 (3) A No
 (4) Q Have you discussed the spill at all with your fishermen
 (5) friends?
 (6) A Not to - not to any length
 (7) Q Anybody express any opinions of your friends about
 (8) Captain Hazelwood or Exxon?
 (9) A I'll sure they have
 (10) Q Anything that comes to mind anything that in any way might
 (11) affect the way you view this case?
 (12) A They're entitled to their own opinions, but I haven't
 (13) formed - formulated anything of my own
 (14) Q Let me ask you about that You're right everybody's
 (15) entitled to their opinion Mr O'Neill asked you if the facts
 (16) and the evidence were such, and you were instructed by Judge
 (17) Holland that punitive damages might be in order well, let me
 (18) take that back, before I ask you
 (19) The jury here has to be unanimous If you had a belief
 (20) that the facts were such that your belief differed from the
 (21) rest of the jurors, you feel like you have the strength of
 (22) character to hold out and tell people what your beliefs are
 (23) independent of what they may say to you?
 (24) A I believe I can
 (25) Q You can?

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- (1) A Uh-huh
 (2) Q Have you ever done that in your life's experiences where
 (3) your boss may have one view and you have another, and you stuck
 (4) to your guns?
 (5) A We've always been able to make some agreement between us
 (6) Q How about if you feel strongly about something, do you -
 (7) do you hold on and try and get the person to come around to
 (8) your side?
 (9) A I have not made any judgments or decisions, you know, of
 (10) any real hard nature that way, to - you know, another person's
 (11) opinion is still valid, and if I were to stick to my guns on an
 (12) issue, I would still hold to that conviction, but there would
 (13) probably be mitigating circumstances that might alter the
 (14) outcome of my - my thinking But I would - I would look at
 (15) that
 (16) Q I guess what you're saying is you would keep - no matter
 (17) what you believe you would keep an open mind and listen to what
 (18) other people had to say, and if something was brought to your
 (19) attention that you might have overlooked or you might have had
 (20) a different view about, you could change your mind?
 (21) A I could take it into consideration and look at it, yes
 (22) Q I'm sorry for getting personal about this and I hope
 (23) you'll forgive me I thought I heard you, sitting over there
 (24) in the corner, say something that in the past you felt like
 (25) maybe you did abuse alcohol on occasion did I hear you right?

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- (1) A Well not abuse but maybe misuse
 (2) Q Do you understand the difference between abuse of alcohol
 (3) as opposed to dependence on alcohol?
 (4) A Why don't you clarify it for me?
 (5) Q Well I need to know what you understand I mean do you
 (6) know people in your life who are dependent on alcohol, such as
 (7) alcoholics?
 (8) A No
 (9) Q Do you know people that from time to time maybe as you say
 (10) misuse or abuse alcohol? I mean besides yourself?
 (11) A There's - there are some
 (12) Q When you misused alcohol, as you said, does that mean that
 (13) you drank a little bit too much?
 (14) A Yes
 (15) Q Did you consider yourself an alcoholic when you were doing
 (16) that?
 (17) A No
 (18) Q Do you drink today?
 (19) A Yes
 (20) Q I see from your questionnaire you drink once a week or so?
 (21) A That's correct
 (22) Q Let me ask you a couple more questions Have you ever had
 (23) a drink or two and then gotten in your car or driven off to
 (24) your home or someplace else?
 (25) A That has happened

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- (1) Q And in those occasions did you feel like you were okay that
 (2) you could get in and drive?
 (3) A Yes
 (4) Q You didn't feel impaired just because you had a couple
 (5) drinks?
 (6) A At the outset, at the beginning, I felt confident
 (7) Q You did?
 (8) A Yes
 (9) Q Did there come a time when you didn't feel so confident?
 (10) A Yes
 (11) Q When was that?
 (12) A When I was going across the roadway
 (13) Q And on that occasion, you remember a specific occasion?
 (14) A Yes
 (15) Q How many drinks did you have then?
 (16) A I didn't keep count
 (17) Q Was it a lot?
 (18) A It must have been
 (19) Q Have you had occasion where you were over at a friend's
 (20) house or you were out with a couple of fellows where you had a
 (21) couple beers then got in your car and drove home?
 (22) A No
 (23) Q No never? Is that what you're saying?
 (24) A Not in that - not in that -
 (25) Q Well I don't mean to limit it to those situations, but I

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- (1) mean where you were at one place and you had to go someplace
 (2) else have you had that?
 (3) A Yes
 (4) Q And you felt all right in those situations?
 (5) A Yes
 (6) MR CHALOS Okay, Mr Wall thanks a lot I'm sorry
 (7) if I intruded in too personal a thing Thank you
 (8) MR O NEILL Pass for cause
 (9) MR CHALOS Pass for cause Your Honor
 (10) THE COURT Mr Wall thank you It will probably be
 (11) several days before we call people back but we will be calling
 (12) you back when we need you again okay?
 (13) MR LYNCH Your Honor were you thinking about a
 (14) break any time soon?
 (15) THE COURT Actually I was I was thinking we'd take a
 (16) break about 3:00
 (17) MR LYNCH Be great, Your Honor, thank you
 (18) THE CLERK Your Honor this is Sarah M Bratz juror
 (19) number 25
 (20) THE COURT Ms Bratz we'll remind you that you're
 (21) under oath to answer questions in this case You've already
 (22) answered a questionnaire By agreement the attorneys are
 (23) going to spend about ten minutes per side asking some follow up
 (24) questions beyond what's in the questionnaire Mr O'Neill?
 (25) MR O NEILL Thank you Judge

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- (1) JURY VOIR DIRE
 (2) BY MR O NEILL
 (3) Q Did in 1989, did you work as a cannery worker that year?
 (4) A It was in 1988
 (5) Q So the year of the spill you didn't work as a cannery
 (6) worker?
 (7) A Correct
 (8) Q Have you worked as a cannery worker any other years other
 (9) than 88?
 (10) A I worked in 1983 in Kenai in a cannery I think I worked
 (11) that year at Fisherman's Packing
 (12) Q The other comment on here is there's a question there, it's
 (13) estimated that the trial of this case will take four months
 (14) A Uh huh
 (15) Q Do you have any difficulty in being a juror in a case of
 (16) this duration, and I guess my initial reaction is it's - that
 (17) is an imposition on everybody
 (18) A Right
 (19) Q Being jurors?
 (20) A Right
 (21) Q And it's something that we have to live with part of being
 (22) a citizen of the good old U S Of A?
 (23) A Uh huh
 (24) Q Is it possible that you could?
 (25) A Yes I actually spoke to my boss about that last night and

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- (1) he said, well, do what you have to do if you do get called, but
 (2) I was concerned about that
 (3) Q Do you think because you worked in a cannery in Kenai or
 (4) elsewhere in '88 and earlier on in the eighties that - you
 (5) could you put that aside and give everybody a fair shake as you
 (6) sat here?
 (7) A Sure That was a summer job
 (8) Q Because it's important to us that when you do sit here that
 (9) you give us a fair shake and you give Exxon a fair shake and
 (10) you give Captain Hazelwood a fair shake
 (11) A Uh huh
 (12) Q And we're sure that you can put your association with the
 (13) slime line aside?
 (14) A Yes, I'm sure of that
 (15) Q Okay
 (16) A That was a long time ago
 (17) Q Yeah, and I would bet you dollars to donuts that it wasn't
 (18) one of the more glamorous moments in your life?
 (19) A No, no, it wasn't
 (20) Q You've had - you've had, as most of us have had at one
 (21) time or another, experience with people in our families that
 (22) have had problems with alcohol?
 (23) A Uh-huh
 (24) Q Do you think you can put that aside and give everybody a
 (25) fair shake? Alcohol and issues with regard to alcohol are

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- (1) going to be talked about at great length in the courtroom
 (2) A I think I've had experience with them, you know, my own
 (3) personal life with people that I've dealt with, but I think I
 (4) have an understanding about it I don't think I'm prejudiced
 (5) one way or the other against it I have a pretty good
 (6) understanding of it
 (7) Q And you're willing to sit here and be open minded and hear
 (8) what people say They'll be people in the witness stand,
 (9) you'll be sitting here judging people in the witness stand,
 (10) sort of like feel everybody's looking at you right now?
 (11) A Yes
 (12) Q But you'll be able to listen to their testimony?
 (13) A Yes
 (14) Q And process that through whatever abilities that God gave
 (15) you and then try to be fair about the whole thing?
 (16) A I would think so, yes
 (17) Q Between answering the questionnaire yesterday and today,
 (18) have you come up with any reasons as to why you might think
 (19) that you were not ideally suited to be a judge of the facts in
 (20) this case or do you feel ready to go?
 (21) A I feel ready to go, I guess
 (22) MR O NEILL Thank you very much
 (23) JURY VOIR DIRE
 (24) BY MR SANDERS
 (25) Q Good afternoon Ms Bratz My name is Jim Sanders and I

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- (1) represent Exxon I have some questions to ask you and I want
 (2) you to know that there's no right or wrong answer just
 (3) whatever you have to say to us candidly is what we want It's
 (4) not a test
 (5) A Okay
 (6) Q Now, I have some more serious questions to ask you I
 (7) guess but I can't wait to ask you about the stock car racing
 (8) You race stock cars?
 (9) A A boyfriend that I had did and we were pretty interested in
 (10) that
 (11) Q Did you actually race?
 (12) A No, I didn't
 (13) Q Did he?
 (14) A His son did, actually
 (15) Q So his son raced?
 (16) A So we were fans, more or less, or pit crew
 (17) Q I just wondered if you'd driven a stock car?
 (18) A No, they wanted me to, but I wasn't ready for that yet
 (19) Q Was this at Kenai?
 (20) A In Kenai, yes
 (21) Q Was it a dirt track?
 (22) A Uh huh, yeah
 (23) Q Are they late model stocks or?
 (24) A I don't even - at this moment, I think it was a '74 Ford
 (25) I don't know

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- (1) Q What year was the '74 Ford racing?
 (2) A Pardon?
 (3) Q What year was the '74 Ford racing?
 (4) A What was it - it was actually in the bomber division
 (5) There was a bunch of other cars in it and they all went around
 (6) the track and it was a race Last year was the first year I
 (7) did it, but it was a lot of fun, so -
 (8) Q Now, Mr O Neill asked you a couple questions about alcohol
 (9) and you said you could - you could put whatever your feelings
 (10) are aside but I - I need to ask you a couple of questions
 (11) about those feelings You mentioned first that you thought
 (12) that alcohol in Alaska is a serious, extremely serious
 (13) problem Did I read that right?
 (14) A Yes
 (15) Q What is your basis for saying that?
 (16) A There seem to be quite a high number of DWIs in this state
 (17) and a lot of accidents, lot of deaths that occur from it, and I
 (18) think something should be done about that
 (19) Q What do you think ought to be done?
 (20) A Probably starting with education, people need to be more
 (21) educated and aware of what alcohol does to a person and what it
 (22) doesn't do to a person, what it allows them not to do
 (23) Q You had a close friend and an ex fiance that had some
 (24) experience with alcohol?
 (25) A Uh huh

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- (1) Q Problems and treatment?
 (2) A Uh huh
 (3) Q And again I don't intend to intrude but it's my job to
 (4) ask these questions and even though neither one of us is going
 (5) to enjoy it very much I'm going to ask you
 (6) A Okay
 (7) Q Did you conclude that either one of those were alcoholics
 (8) or both?
 (9) A Yes Yes My ex-fiance was an alcoholic, I would say He
 (10) was chemically dependent
 (11) Q And your family member was that person alcoholic or just
 (12) had an alcohol problem?
 (13) A That's how she would have classified it, yeah
 (14) Q And both of them, both your ex-fiance and your family
 (15) member went into treatment, correct?
 (16) A My mother, well, she was part of AA That was what helped
 (17) her and she no longer drinks and neither does my ex-fiance, so
 (18) both of the experiences were successful as far as recovery
 (19) goes So far
 (20) Q Is it - and that's a part of the creed isn't it?
 (21) A Right
 (22) Q It's one day at a time Would your experiences either with
 (23) your mother or your ex-fiance leave you with opinions about how
 (24) other people with alcohol problems in the past or - well, let
 (25) me leave it like that, other people with alcohol problems in

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- (1) the past should have acted or should be treated or how they
 (2) should comport themselves after treatment? Have I muddled that
 (3) question up enough
 (4) A Yes
 (5) Q So it's just completely not understandable
 (6) A Can you help me out
 (7) Q Let me chop it up a bit
 (8) A Should something have been done differently, is that what
 (9) you're asking?
 (10) Q No, I'm asking you if in looking at, for example, just
 (11) some other person and how that other person -
 (12) A Right
 (13) Q - had alcohol problems and then went into treatment, would
 (14) your view of your mother and your ex-fiance and their situation
 (15) affect the way you would judge the way someone else dealt with
 (16) an alcohol problem and treatment?
 (17) A No, I don't think so
 (18) Q For example do you think that everyone who has a type of
 (19) alcohol problem who has treatment is a person who can never
 (20) drink again?
 (21) A No It depends on what - what they - no, it depends on
 (22) if they're an alcoholic or not Maybe it was just a crisis in
 (23) their life I don't know People who go for help aren't
 (24) necessarily there because they're alcoholics or can never drink
 (25) again, but - I think circumstances are different for each

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- (1) person
 (2) Q And diagnoses are different for each person?
 (3) A And diagnoses are different for each person
 (4) Q Well we're just not all curious about how you feel about
 (5) alcoholism and alcohol problems and everything in between
 (6) There is going to be, of course testimony in this case about
 (7) that kind of thing and my question to you is, do you know
 (8) anything about how alcohol relates to this case based on what
 (9) you have read or seen or heard or Mr O'Neill's statement?
 (10) A Well yesterday, yeah, it was brought up that alcohol may
 (11) have been involved
 (12) Q All right Before that, did you -
 (13) A I don't
 (14) Q Did you have any impression or feeling that alcohol was in
 (15) any way involved in the grounding of the Exxon Valdez and the
 (16) resulting spill?
 (17) A Not necessarily in the initial - in the actual event, but
 (18) I knew - I didn't really know that much about the whole trial
 (19) or the whole thing actually, but just that apparently he'd had
 (20) a history of alcohol in his life in the past I don't know
 (21) what that really was, though, what his history was
 (22) Q Do you believe that that history had something to do with
 (23) the grounding?
 (24) A I don't know that
 (25) Q Have you heard anything about that? I mean has anybody

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- (1) told you or you read anything that would suggest to you other
 (2) than what you've heard here in court, that would suggest to you
 (3) that that history or drinking had anything to do with the
 (4) grounding?
 (5) A No
 (6) Q Is that an issue on which you would want to see the facts
 (7) before you came to any landing on it?
 (8) A Yes
 (9) Q What do you think caused the grounding?
 (10) A I have no idea From what was brought up yesterday, I
 (11) don't know Maybe someone didn't make a right turn is what it
 (12) sounded like to me I don't know what that means I don't
 (13) know
 (14) Q Did you - have you ever read any of the books that were
 (15) written about the grounding of the Exxon Valdez?
 (16) A No, no
 (17) Q Have you seen the movie that they made about the grounding
 (18) of the Exxon Valdez?
 (19) A No No
 (20) Q I don't want you to think you're going to hurt my feelings
 (21) when we talk about this, but you marked on your questionnaire
 (22) that your opinion about Exxon was somewhat unfavorable Tell
 (23) me about that
 (24) A I have some environmental concerns as far as maybe tankers
 (25) go in the first place Maybe they should have been made a

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- (1) little more better so that this thing wouldn't have happened in
 (2) the first place I'm not sure if that's even valid in this
 (3) case at all
 (4) Q Well let me talk to you a little bit about that Your
 (5) first - let me ask you about your environmental concerns Is
 (6) it you think that Exxon did something that was not consistent
 (7) with your environmental concerns that had to do with the spill?
 (8) A Not necessarily Exxon, just oil people in general, just the
 (9) whole oil manufacturing business I don't understand why oil is
 (10) transported in such a way where something so easily like this
 (11) can happen in such a way The structure of the boats just
 (12) don't seem designed to safeguard if something like this
 (13) happened I mean this kind of thing I don't think should
 (14) happen
 (15) Q And do you have a generally unfavorable opinion about oil
 (16) companies and oil production in Alaska because of those
 (17) problems?
 (18) A No
 (19) Q Do you think oil production in Alaska has been good or bad
 (20) for Alaska?
 (21) A I think it's been good for Alaska
 (22) Q Well now of course there's a difference between concerns
 (23) and beliefs and opinions and commitments I think you re
 (24) saying that you have a concern Do you have a - is it more
 (25) than that? Is it something that would get in your way in

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- (1) trying to be fair to both sides in this case?
 (2) A I have a concern that I probably don't have a complete
 (3) understanding of the whole issue I mean, I'm just - I don't
 (4) know much about how to make a supertanker or how to
 (5) safeguard
 (6) against these things, so I have a concern about it, though,
 (7) definitely
 (8) Q Would there be a flip side to your having a concern? Would
 (9) you think that Exxon is not concerned based on what you've seen
 (10) and heard?
 (11) A No
 (12) Q Or the fact that they just - they're in the oil business?
 (13) A No, I don't think they would be not concerned
 (14) Q Now it's apparent from your questionnaire and some of the
 (15) answers you gave to Mr O'Neill about your wondrous experience
 (16) in the canneries that you live around and know other people who
 (17) are involved in fishing?
 (18) A (Nods head up and down)
 (19) Q And you yourself I believe - you do some sport fishing?
 (20) A Uh-huh, yes, sure
 (21) Q And do you know fishermen in the area where you live?
 (22) A Yes
 (23) Q And are some of those fishermen commercial fishermen?
 (24) A Yes
 (25) Q And do you know whether those people that are - that we've
 (26) just mentioned are parties to this lawsuit or maybe would

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- (1) benefit from this lawsuit?
 (2) A I'm not sure really if they are, if they're involved in it
 (3) or not
 (4) Q If you were chosen as a juror and it later turned out that
 (5) they were involved in the lawsuit or strongly in favor of the
 (6) lawsuit or beneficiaries of the lawsuit do you think it would
 (7) make it uncomfortable for you to sit on the case and decide the
 (8) case knowing that you had those people back home that had deep
 (9) feelings about it and maybe even a financial stake in it?
 (10) A No
 (11) MR SANDERS Could I have a minute Your Honor?
 (12) I have no further questions
 (13) MR O NEILL Pass for cause
 (14) THE COURT Mr Sanders?
 (15) MR SANDERS Pass for cause, Your Honor
 (16) THE COURT That completes this part of the
 (17) examination We will be calling you back in a couple of days
 (18) and we'll need you to come back again but you go about your
 (19) business for now Do you know what was decided in that? Yeah,
 (20) I - do you know whether the jury clerk decided that it would
 (21) be better to have people go back?
 (22) THE CLERK The lady from Kodiak she said it would be
 (23) better for her to remain here than fly down and back
 (24) THE COURT Okay, well have her make the same call as
 (25) to Ms Bratz also because she probably is going to be a day or

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- (1) two before we call you back
 (2) MS BRATZ So I'll be called back again for more
 (3) questions
 (4) THE COURT Not more questioning, but for the next
 (5) step in the process, which is the jurors will be all assembled
 (6) that have been passed and the attorneys -
 (7) MS BRATZ What does passed mean? Does it mean I
 (8) passed or passed for cause
 (9) THE COURT No, not excused
 (10) MS BRATZ Oh, not excused, okay
 (11) THE COURT The lawyers get another cut at it to
 (12) excuse people just because they don't like the way they part
 (13) their hair or something like that
 (14) MS BRATZ Okay
 (15) THE COURT And that's when we'll call you back
 (16) again
 (17) MS BRATZ Okay
 (18) THE COURT Now as far as whether you stay here or go
 (19) to Kenai, we're going to let the jury clerk make that call
 (20) MS BRATZ Okay, no problem Thank you
 (21) THE COURT We'll be in recess now for 15 minutes
 (22) MR NEAL Before, Your Honor can you give us so we
 (23) can get our papers here could you give us the next couple?
 (24) THE COURT We lost the guy who can do that We'll
 (25) move around quickly

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- (1) THE CLERK This court is now in recess
 (2) (Recess at 3 05 p m)
 (3) THE CLERK All rise Your Honor, this is Earl J
 (4) Chauvin juror number 3
 (5) THE COURT Mr Chauvin, you have been placed under
 (6) oath in connection with this matter and you answered a
 (7) questionnaire By agreement the attorneys are each going to
 (8) have ten minutes to ask you some follow up questions beyond the
 (9) questionnaire Mr O Neill?
 (10) MR O NEILL Thank you Judge
 (11) JURY VOIR DIRE
 (12) BY MR O NEILL
 (13) Q Why did you - why did you move to Alaska?
 (14) A I finished college in 1991 at Nichols (ph) State University
 (15) and I had a background in well, biological sciences and I was
 (16) wanting to get into the fisheries here in Alaska
 (17) Q One of the last places where there are any fish, isn't it?
 (18) A Yeah, well
 (19) Q Lot of places in the world you can fish and you're just
 (20) sort of sitting there in the boat or a pond and it's like
 (21) McGilligan's pool So is that your long term goal, to be a
 (22) fisheries technician?
 (23) A Yes, sir
 (24) Q You worked for Prince William Sound Aquaculture Association
 (25) from 91?

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- (1) A Yes, sir, from - no, sir, May - March of 1992 to May of
 (2) 1993
 (3) Q And you didn't work for them at the time of the spill?
 (4) A No, sir
 (5) Q And you don't work for them now?
 (6) A No, sir
 (7) Q They're a plaintiff in the case, or were a plaintiff in the
 (8) case and I just tell you that so that we all know it Does
 (9) the fact that you worked for them at one point or another do
 (10) you think you could be fair to all of us, us, the plaintiffs,
 (11) Exxon Captain Hazelwood, despite this connection with the
 (12) aquaculture association?
 (13) A Well yes, I believe I could because I've worked in both
 (14) the - in the aquaculture field and the oil field As I said
 (15) later on I was just laid off working for a major oil company
 (16) here in Alaska
 (17) Q And in your heart you think you could be fair to both us
 (18) and them?
 (19) A Oh, yes, sir
 (20) Q And I just am going to get out the stuff here that
 (21) everybody's obviously going to ask you about There was a
 (22) question 66 on the questionnaire do you have an opinion about
 (23) awarding punitive damages and your answer was Damage should
 (24) be harsh enough to deter any other harmful conduct or
 (25) behavior Large sums of money will make corporate employees

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- (1) sit up and take note of the situation
 (2) And that was an answer that you gave?
 (3) A Yes, sir
 (4) Q I would assume that before you'd make a judgment like that
 (5) that you'd sit and listen to the facts?
 (6) A Yes, sir
 (7) Q I mean on a particular instance?
 (8) A Yes, sir
 (9) Q And listen to the law as the Judge gives you?
 (10) A Yes, sir
 (11) Q And I would - would it be fair to say that you could -
 (12) punitive damages are an issue in this case?
 (13) A Yes, sir
 (14) Q You could be fair to them about punitive damages?
 (15) A Yes, sir
 (16) Q And be open minded?
 (17) A Yes, sir, I could
 (18) Q And be fair to the plaintiffs about what their claims are,
 (19) be open-minded with regard to us?
 (20) A Yes, sir
 (21) Q You work for the - for Global Drilling?
 (22) A Yes, sir
 (23) Q And as a rigger for Lees?
 (24) A Leasco (ph)
 (25) Q Leasco?

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- (1) A Yes, sir, that was in Louisiana
 (2) Q Where are you originally from?
 (3) A I'm from Franklin, Louisiana, which is right on the edge of
 (4) the Gulf of Mexico down there
 (5) Q So you grew up fishing and hunting?
 (6) A Yes, sir, my father was a fisherman and - and he also
 (7) worked in the oil field down in Louisiana
 (8) Q So he covered both sides of the spectrum too?
 (9) A Yes, sir, yes, sir
 (10) Q Does the fact that your father was a fisherman, do you
 (11) think despite the fact that your father was a fisherman you
 (12) could be fair to both us and - and Exxon and Hazelwood?
 (13) A Yes
 (14) Q Do you fish and hunt up here?
 (15) A Yes, sir, sure do
 (16) Q Where do you fish and hunt?
 (17) A I - well, it all depends on when I'm hunting I hunt
 (18) sheep in certain mountain ranges, hunt caribou in different
 (19) areas, but I've hunted all over I've hunted in the Sound
 (20) where the - and on the islands where the spill actually had
 (21) occurred I've hunted all over I hunted at the tip of the
 (22) Kenai Peninsula or whatever
 (23) Q You've been down to the Sound after the spill?
 (24) A Yes, sir
 (25) Q And with that in mind do you think when we get to the

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- (1) point in the case to where we talk about where there's oil and
 (2) where there isn't oil and that kind of thing you could keep an
 (3) open mind and take in where the proof - what the proof is?
 (4) A Well, I can say that I haven't been or have no knowledge of
 (5) being on a beach that actually had oil there and that has
 (6) cleaned - that has been cleaned up I can't really tell you
 (7) I can tell you some of the islands I've been on, but I can't
 (8) actually tell you about whether it had contact with oil
 (9) Q You could sit here and listen to the proof as the proof
 (10) comes in and make a decision as the evidence comes in?
 (11) A Yes, sir
 (12) Q The - that's all I have thank you, sir
 (13) JURY VOIR DIRE
 (14) BY MR NEAL
 (15) Q Mr Chauvin I'm Jim Neal and I represent Exxon along with
 (16) the lawyers sitting over there I'm going to ask you to tell
 (17) me a little something about your studies that I really don't
 (18) know
 (19) A Yes, sir
 (20) Q First place, let me say that what we're looking for here is
 (21) your thoughts, your perceptions If I ask you a question
 (22) there's no right or wrong answer, it's just your honest
 (23) forthright response If I ask you a question that you don't
 (24) understand, it's probably my fault, just tell me to be a little
 (25) smarter and ask them a little better okay?

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- (1) A Yes, sir
 (2) Q And if I ask you some questions that maybe you've answered
 (3) in your questionnaire, we've had a difficult process here with
 (4) the reproducing and sometimes the answers haven't come to -
 (5) come through plain enough You went to college and you
 (6) graduated with marine fishery science?
 (7) A Yes, sir That's my background, yes, sir
 (8) Q And that was in Louisiana?
 (9) A Yes, sir
 (10) Q Tell me what - what is that? What do you - if you have a
 (11) degree in marine fishery science, what can you go out and do,
 (12) then, with your education?
 (13) A Well, I can work as a hatchery worker and actually work in
 (14) all phases of salmon culture I can work for a state agency,
 (15) Alaska Fish & Game, U S Fish & Wildlife, go out and monitor
 (16) fisheries in certain parts of the state, and I don't know,
 (17) write reports on biological data that we observe
 (18) Q Okay, and I guess if they're - if they're salmon and
 (19) you're hatching them that way, you'd have to do with the
 (20) hatching process and the - and the various stages they go
 (21) through until they go back out to sea is that right?
 (22) A Yes, sir, correct
 (23) Q And then you worked I believe for National Marine I
 (24) believe or National Marine Fishery Service?
 (25) A Yes

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- (1) Q Where was that?
 (2) A South Louisiana
 (3) Q South Louisiana?
 (4) A Yes, sir
 (5) Q You collected data?
 (6) A Yes, sir
 (7) Q What kind of data did you collect?
 (8) A We were monitoring menhaden fleets down there, which is a
 (9) herring type fish that is - it's a major fishery in the state
 (10) of Louisiana, so I would monitor these fleets when they would
 (11) come into the processing plants and ask the captains questions
 (12) on the areas they fish, I would get samples of fish from the
 (13) holds of their boat. Observe any bycatch or any - any illegal
 (14) species or what have you that were on board or what have you,
 (15) which I've never seen
 (16) Q Okay You then came up to Alaska and you worked at the WHN
 (17) hatchery?
 (18) A Wally Noerenberg Hatchery, located on Esther Island
 (19) Q And that is in Prince William Sound?
 (20) A Yes, sir, it is in the northwestern part of Prince William
 (21) Sound
 (22) Q And you had to do there with salmon culture?
 (23) A Yes, sir
 (24) Q Tell me what that is?
 (25) A Okay, actually it starts in the summertime or in the

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- (1) springtime when our salmon start returning They come in and
 (2) we - we have the fish there, then we start an egg take is what
 (3) it's called and harvest at the same time, which is a nonprofit
 (4) corporation and we would have a seiner working for the hatchery
 (5) that would actually catch fish and sell them to market, and
 (6) then we had another phase where we actually had an egg take
 (7) where we would actually take the eggs from the females and the
 (8) milk from the males and started the process of putting the eggs
 (9) into the incubators and having them hatch and going through
 (10) outmigration and waiting until the plankton bloomed to actually
 (11) let the fish out to sea, so it's a one year process
 (12) Q You were there in Prince William Sound, then, about the -
 (13) about the season in '92 and '93 when the salmon come in?
 (14) A Yes, sir, I was there in '92 and '93 I left when the fish
 (15) were first returning
 (16) Q First returning?
 (17) A Yes, sir
 (18) Q What did you observe about the salmon returning in '92
 (19) '93?
 (20) A '92 was a poor fish run
 (21) Q Poor fish run?
 (22) A Yes, sir
 (23) Q Do you have any opinion about what - what caused that?
 (24) A No, sir, I don't
 (25) Q No opinion at all?

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- (1) A I could speculate on certain factors I think that – that
 (2) may have caused the fish run to be poor
 (3) Q Why don't you speculate for us?
 (4) A You know, there's a lot of factors on why fish don't
 (5) return I am not a specialist on this by any means, I'm just
 (6) giving you my own opinion
 (7) Q But you've got so far much more knowledge than I have, go
 (8) ahead
 (9) A Okay
 (10) Q Go ahead and help me out
 (11) A Well, there were many reasons we figured we weren't having
 (12) the returns I believe I read in the report, the Alaska Fish &
 (13) Game stated that the water temperatures in the Gulf of Alaska
 (14) were low that year we – we actually released the fish and
 (15) maybe they were held up into the Sound a little bit longer than
 (16) they should have There was also speculation to the oil spill,
 (17) saying that it may have endangered – may have endangered the
 (18) plankton, you know, which is the lowest step in the food chain
 (19) and it may be carrying on through the –
 (20) Q Excuse me, I'm sorry?
 (21) A That's fine
 (22) Q Did you reach any – have you reached any conclusion about
 (23) whether or what part the spill might have played in that?
 (24) A No, sir, I haven't
 (25) Q Not at all?

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- (1) A No, I don't – all I know is what I read and you know, I –
 (2) I have these ideas in my mind, but usually I try to find out a
 (3) fact, you know, before I gain an opinion
 (4) Q Sure, and however – however – whatever the opinion is,
 (5) what are ideas in your mind? I mean what do you really
 (6) think – what do you really think?
 (7) A Really I don't know
 (8) Q Oh, you don't know?
 (9) A Yes, sir
 (10) Q Okay, what about the herring, what about the herring run in
 (11) Prince William Sound?
 (12) A I have no knowledge of – I know they had a poor run this
 (13) year, because I do follow the fisheries here in Alaska, but I
 (14) have no ideas on what caused it
 (15) Q Again you don't have any opinion about whether that was
 (16) caused by the spill or some other factor?
 (17) A No, sir, I don't
 (18) Q Do you understand that in part of this case that will be
 (19) issues that we'll be trying here?
 (20) A Yes, sir
 (21) Q Have you talked to other people about that during your
 (22) work?
 (23) A Of course, you know we're – we don't have much – you
 (24) know, we're – well, when I worked at that hatchery, we always
 (25) hoped that the fish would return, you know, so we were pretty

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- (1) optimistic, you know, we tried not to think that there were,
 (2) you know, there were external factors that caused the fish not
 (3) to return, you know, we just always hoped they would
 (4) Q Well as you sit there right now do you have an opinion
 (5) either way, as to whether the spill caused what you've just
 (6) described about the poor return? And if you got an opinion
 (7) just tell us what it is?
 (8) A Okay, I – I'll say that you know, as I said before, it may
 (9) be a factor, but it hasn't been proven yet, you know, and until
 (10) it is, you know, like any scientist, you – or any person who's
 (11) involved in scientific work, you know, you always try to wait
 (12) until the facts are known until you get your opinion
 (13) Q Are you – are you capable, now if you were chosen as a
 (14) juror in this case you have a lot of knowledge in an area that
 (15) we'll be discussing, would you agree with that?
 (16) A Yes, sir
 (17) Q Are you able to sit there as a juror, if you're selected
 (18) and put aside whatever knowledge you – try to put aside
 (19) whatever knowledge you may have acquired as a result of what
 (20) must be very interesting work and as the – as the Court will
 (21) instruct you, decide this case on what the evidence that is
 (22) presented here in the Court and the law as given you by the
 (23) Judge?
 (24) A Well, yes, I guess it's – you know, as I said, I would
 (25) have to hear the facts, you know, to find out if – or at least

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- (1) have it proven to me, yeah
 (2) Q I think we're all human You have a lot of knowledge and
 (3) the question simply is, I think the Court will instruct you
 (4) that you've got to disregard what you may have learned outside
 (5) of this courtroom, except for your – except for your thinking
 (6) ability, and you must listen to the evidence, listen to the
 (7) Court's charge on the law, and then decide the case not on what
 (8) you learned in Prince William Sound or what people told you in
 (9) Prince William Sound?
 (10) A Or what I've seen there, right
 (11) Q And what you've seen there?
 (12) A Yeah, and what I've seen
 (13) Q Now, can you really put aside what you – what you've seen
 (14) and learned down there? Is that – is that possible for you?
 (15) A I haven't been in the situation, I can't really tell you
 (16) I will answer that question, that's what I know
 (17) Q Fair enough Can you perceive that you might have some
 (18) difficulty doing that?
 (19) A I'll tell you, I've spent a lot of time in the Sound, which
 (20) I stayed out there for 16 months, and it is a beautiful place
 (21) you know
 (22) Q And you love it don't you?
 (23) A It is a nice place I don't like working there, but I'd
 (24) sure like to go back to visit
 (25) Q I'm not sure I got a – I think maybe you've given me a

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- (1) fair answer to your question, that you're just - don't let me
 (2) put words in your mouth?
 (3) A I won't.
 (4) Q But you're just not sure whether you can put that aside or
 (5) not?
 (6) A I didn't say that
 (7) Q Okay tell me what you are saying
 (8) A I'm just saying that I haven't been in a situation to put
 (9) it outside of my mind
 (10) Q I see you haven't been asked - you haven't, in your young
 (11) life been asked to do that before?
 (12) A Not recently, any way
 (13) Q You have said that in your questionnaire that you view
 (14) Exxon somewhat unfavorably, I believe that's the question
 (15) that's used in the questionnaire, was that an answer, have I
 (16) got that right?
 (17) A I did not say I viewed Exxon unfavorably My grandfather
 (18) worked with Exxon for many years And he supported my
 (19) mother
 (20) with, you know, money he made from Exxon, so I can't view them
 (21) unfairly, but -
 (22) Q How long did - your father worked for Exxon?
 (23) A No, my grandfather
 (24) Q Your grandfather?
 (25) A Worked
 (26) Q Where did he work for Exxon?

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- (1) A He worked - now he worked for - I can't recall right
 (2) now It wasn't for Exxon, it was just one of its - it was one
 (3) of its smaller companies This is in the '40s, because when we
 (4) retired he had 37 years with the company
 (5) Q But it wasn't Exxon, you say?
 (6) A It was - it was - I can't recall it at this time But he
 (7) worked for one of the smaller companies Exxon owned
 (8) THE COURT What did they call Exxon in the '40s?
 (9) MR ELMER Your Honor, it was probably Humble Oil &
 (10) Refinery or Standard Oil in Louisiana
 (11) THE MR CHAUVIN It was Humble Oil, that was it
 (12) BY MR NEAL
 (13) Q Was that it, Humble Oil Refinery?
 (14) A Yes, sir
 (15) Q Going back to your questionnaire, unless - unless I'm
 (16) reading this the wrong way, you say that based on your
 (17) experience and knowledge, your general - what is your general
 (18) response to each of the following types of organizations or
 (19) businesses and when it comes down to Exxon Corporation, you
 (20) say somewhat unfavorable Can you explain - can you explain
 (21) what you mean by that?
 (22) A It was a long questionnaire I just can't remember what I
 (23) was thinking
 (24) Q Forget the questionnaire how do you view Exxon?
 (25) A Well, you know, somewhat unfavorable, I guess is the basic

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- (1) answer
 (2) Q I should have - I should have forgotten the questionnaire
 (3) and gone right and asked the question shouldn't I? What's the
 (4) basis of that?
 (5) A Well, you know, you have to - you know, I can't say as a
 (6) whole I view the corporation I think the oil spill is
 (7) definitely a - a - you know, was a devastating thing to the
 (8) state of Alaska, you know, and I've seen a lot of good changes
 (9) that have come about, you know, from the spill, like spill
 (10) response is one thing, you know I worked on a drilling
 (11) platform and I've seen these - you know, just having - having
 (12) these, you know, boats nearby, you know, just always waiting
 (13) while we were drilling, you know I've seen a lot of positive
 (14) things come I've had training, also
 (15) Q You think that any of those positive things have come
 (16) because of Exxon's efforts?
 (17) A I think the spill itself is what I give credit to I can't
 (18) say that I would give credit to Exxon, no
 (19) Q Do you have an opinion as to what - based on what you've
 (20) read or seen or discussed down there what caused the
 (21) grounding?
 (22) A I haven't been in the Bligh Reef area, you know I can't
 (23) say that I would not - what would have actually caused the
 (24) grounding, probably the competence of the person operating the
 (25) vessel is what I would think I mean I've been in boats my

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- (1) whole life and I can't say I've busted a hole in any one of
 (2) them
 (3) Q Well there's a big hole busted in this one no doubt about
 (4) that Well, do you know who was in charge of the vessel?
 (5) A No, sir, I don't
 (6) Q Do you remember the name of the master?
 (7) A Of the master?
 (8) Q Of the vessel, Valdez?
 (9) A The master being the captain?
 (10) Q The captain, yes, sir
 (11) A Hazelwood
 (12) Q Captain Hazelwood?
 (13) A Yes, sir
 (14) Q What have you heard about Captain Hazelwood, at least in
 (15) regards to the grounding in this case?
 (16) A Well, yesterday, I was right in here when, you know, I
 (17) heard both of you, really both sides gave their opinions of -
 (18) of what actually happened I'm sure you -
 (19) Q You heard Mr O'Neill's argument?
 (20) A Yes, sir
 (21) Q What - before that, had you heard anything about Captain
 (22) Hazelwood?
 (23) A Yes, sir
 (24) Q Anything stuck out in your mind?
 (25) A Well, he was the captain of the ship He's obviously in

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- (1) charge of the vessel, you know, so he would be the one who
 (2) would be - would have the finger pointed at him, and he - and
 (3) obviously it was his fault, unless he passed command, is what
 (4) it comes down to
 (5) Q Anything else about it?
 (6) A Well, he - I've - have heard from the media that alcohol
 (7) was a factor in the -
 (8) MR O NEILL Your Honor we've been almost 20 minutes
 (9) with this man
 (10) MR NEAL I'm sorry Your Honor It's something we
 (11) had to explore
 (12) THE COURT About time to wrap it up
 (13) MR NEAL Pardon me?
 (14) THE COURT Time to wrap it up
 (15) MR NEAL Thank you, sir
 (16) MR O NEILL Pass for cause
 (17) THE COURT Mr Neal?
 (18) MR NEAL Your Honor, we want a discussion
 (19) THE COURT Okay, this is as far as we take the
 (20) examination with you, Mr Chauvin If you would return to the
 (21) jury room and standby for just a few minutes, we'll get back to
 (22) you And don't bring anyone else in for just a moment,
 (23) please
 (24) (Time now 3:46
 (25) MR NEAL May it please the Court, we challenge this

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- (1) man for cause May I make a brief statement?
 (2) THE COURT Yes
 (3) MR NEAL It seems this court, I believe the law is
 (4) in the ninth circuit, that the Court may consider answers, it
 (5) may consider the demeanor of the person being asked questions,
 (6) it may consider the - maybe specialized knowledge that the
 (7) witness has that would - that will - about issues that will
 (8) be tried in this case This witness never said, although I
 (9) tried to get him to say it, maybe he's being very fair about
 (10) it, that he doesn't know what he - whether he could put aside
 (11) this specialized information he has about really critical gut
 (12) issues, at least on phase two of the case, and my understanding
 (13) is that we're picking a jury for that phase also He's
 (14) clearly - he clearly does not like Exxon I had problems, and
 (15) I don't know whether - I have to say - I have to say frankly,
 (16) I don't know whether it's the young man's mannerism or whether
 (17) it was reluctance to - to come forward, but I think he was
 (18) reluctant to express himself in certain areas, and I think he
 (19) has a bias I think he has specialized knowledge that would be
 (20) impossible really for him to - him to put aside and decide
 (21) this case on the evidence he hears in court and the
 (22) instructions of the Court and of course the massive argument
 (23) of Mr O'Neill
 (24) THE COURT Mr O'Neill?
 (25) MR O NEILL With regard to the last point, I think

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- (1) everybody's going to have a problem with that but with regard
 (2) to this potential juror he was subjected to 20 minutes of
 (3) interrogation by one of the finest lawyers in the United
 (4) States, and whatever doubt Mr Neal was able to elicit is the
 (5) doubt of a decent God-fearing human being who is troubled by
 (6) issues that trouble all of us that's the first question
 (7) That's the answer to the first question
 (8) The answer to the second point that he may have
 (9) specialized knowledge is if we're going to apply that then
 (10) anybody in the health care industry is out because they know
 (11) about alcohol any accountants are out because we're going to
 (12) talk about balance sheets people who fish and hunt are out
 (13) because they fish All I saw there was a guy trying to do his
 (14) best to answer questions honestly He never said he couldn't
 (15) be fair He never said he couldn't be fair He said he could
 (16) be fair, and we don't strike or not strike on the basis of Mr
 (17) Neal's intuitive feelings That is what the pre-emptory
 (18) challenges are for This man is exactly what the pre-emptory
 (19) challenges are for, not a challenge for cause Thank you
 (20) THE COURT I - I'm going to excuse this juror for
 (21) cause I - I'm troubled by his - his initial answer was,
 (22) about his view of Exxon was inconsistent with his - with his
 (23) questionnaire and he seemed I will say, a little reluctant
 (24) to - to own up to what he I think clearly knew he had
 (25) already said and that - that single factor gives me some

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- (1) pause I'm afraid that we have someone here who - who is as
 (2) he finally conceded, not favorably disposed toward one client
 (3) and that gives me some cause about some of the other things he
 (4) has said, but I will excuse him for cause because of his view
 (5) of Exxon Would you tell Mr Chauvin that he is excused and
 (6) bring us another juror, please?
 (7) THE CLERK Your Honor, this is Darryl S Jordan juror
 (8) number 5
 (9) THE COURT Mr Jordan, you have been placed under
 (10) oath and you've answered a questionnaire for us By agreement
 (11) the attorneys are now going to ask you some follow-up
 (12) questions, going a little bit beyond the questionnaire Mr
 (13) O'Neill?
 (14) JURY VOIR DIRE
 (15) BY MR O NEILL
 (16) Q Does your dad work for Arco?
 (17) A No
 (18) Q There's a Darryl Jordan that works for Arco
 (19) What do you like to do with your spare time?
 (20) A Basically I don't really have much spare time I just go
 (21) home and do whatever, whatever's around the house, watch
 (22) television
 (23) Q What kind of job do you have?
 (24) A I'm assistant bakery manager over at Carrs Quality Centers
 (25) Muldoon branch

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- (1) Q Your both wife and brother go to AA?
 (2) A No
 (3) Q Is this the wrong – your spouse?
 (4) A My wife, no, no she doesn't
 (5) Q Did she go to rehab?
 (6) A That I'm aware of This was before I even met her, though
 (7) Q Does she drink now?
 (8) A No
 (9) Q How about your brother is he –
 (10) A He doesn't drink
 (11) Q Your wife's expecting?
 (12) A Yes
 (13) Q In August?
 (14) A Yes
 (15) Q Do you know about when in August?
 (16) A They're guestimating about August 1st.
 (17) Q Maybe if you're a juror she could like have it at night?
 (18) I m kidding That was just a joke
 (19) A Oh, okay
 (20) Q Do you recall where you were when the Valdez ran aground?
 (21) A No
 (22) Q Were you in Alaska then?
 (23) A Oh, yes
 (24) Q Do you recall what your reactions were when the vessel ran
 (25) aground?

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- (1) A No, I really don't recall
 (2) Q Do you have any views now?
 (3) A Sort of It's – it's vaguely rememberable, any way
 (4) Seeing that it's happened so long ago, you know, you really
 (5) don't –
 (6) Q Do you have – I m interested in this comment that I can't
 (7) read
 (8) MR O NEILL Could I approach him and give him the
 (9) questionnaire, Judge?
 (10) BY MR O NEILL
 (11) Q I can t read your answer to 45 Not because your
 (12) handwriting is bad, but because I just have a bad copy Could
 (13) you read that for me out loud so that we could know what we're
 (14) going to talk about? Can you or recall what you said?
 (15) A Oh, I see, yeah I'm going by the – what was discussed
 (16) yesterday, as far as from the Exxon view upon it As far as
 (17) trying, if I can use that word, trying to go about the cleanup
 (18) on the oil spill And in that – in that sense, I am sort of
 (19) biased on or should I say sort of – well, I guess I could use
 (20) the word biased on – on my viewpoint on that
 (21) Q Which is what?
 (22) A If they're going to go ahead and make the efforts, they
 (23) should just go about and you know, go ahead and do that It's
 (24) not like they're saying no we're not going to clean it up, you
 (25) know

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- (1) Q And you used the word biased because of that and how do
 (2) you mean that?
 (3) A Well, with the lack of better words for it, in my opinion,
 (4) you know, there is some sort of positive effect, as far as a
 (5) positive outlook instead of using the word effect in their
 (6) regards that they would clean it up, as far as – go as far as
 (7) they can on it
 (8) Q So as you sit here today, as a result of what you heard
 (9) yesterday, now does that also include what you may have seen on
 (10) the newspaper or the TV?
 (11) A Yes Uh-huh
 (12) Q And you ve seen stuff about the cleanup on the newspaper
 (13) and the TV?
 (14) A Well, only on the television
 (15) Q TV you ve seen stuff about the cleanup?
 (16) A Uh-huh
 (17) Q So would it be fair to say that with regard to the cleanup
 (18) you think favorably of Exxon and indeed you have a bias towards
 (19) Exxon?
 (20) A Well, I would think favorably in their attempts at the
 (21) cleanup, but I think it should go as far as possible, as far as
 (22) like what has been damaged, aftereffects, adverse effects,
 (23) because there's no way that I can see anyone actually being
 (24) able to – how do we say this? Anticipate any possible adverse
 (25) effects if such an occurrence were to occur

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- (1) Q You don't think there's any way to anticipate the effects?
 (2) A As far as damages?
 (3) Q Yeah
 (4) A If somebody were to actually come up with a – an amount
 (5) they could use, you know, just in case something were to
 (6) happen, you know, as – as this situation has occurred, they
 (7) wouldn't be able to go about it.
 (8) Q What do you feel about the judicial system juries, do you
 (9) have any views on juries one way or the other?
 (10) A No, no, this is my first time actually
 (11) Q If the – the facts were such, the facts proved in this
 (12) courtroom and you were sitting in the jury box, and the facts
 (13) were such that His Honor instructed you that the law was such
 (14) that there was a requirement from the facts and the law that
 (15) you award punitive damages against Exxon do you think you
 (16) could do that?
 (17) A Yes
 (18) Q And if the facts and the law were such that a punitive
 (19) damage award was in the billions of dollars do you think you
 (20) could do that?
 (21) A Yes
 (22) Q As we sit here right now even with your thoughts about the
 (23) cleanup and such do you know of any reason one way or the
 (24) other why you wouldn't be well qualified to be a juror?
 (25) A No

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- (1) Q Sort of an open ended question Do you want to be a
 (2) juror?
 (3) A Yes
 (4) Q Why?
 (5) A It would be a great experience, as far as even going
 (6) through the judicial system
 (7) Q You mentioned at the end there that you had some problem
 (8) with regard to your wife and a baby If she s due August 1st
 (9) or August 2nd and we re not done, do you have other people who
 (10) can care for your wife and such?
 (11) A Not that we have right now That I'm aware of
 (12) Q And she is going to have a baby and she is going to have a
 (13) baby about August 1st?
 (14) A That they're guestimating Apparently she seems about a
 (15) month ahead We have a large baby
 (16) Q Good for you If she s a month ahead, could the baby come
 (17) in July?
 (18) A Well, if she's a month ahead
 (19) Q Oh, it's going to be August 1st?
 (20) A Well, they're only estimating it August 1st, judging by the
 (21) size - size of the, the diaphragm and head ratios
 (22) Q What views do you have with regard to alcoholics and
 (23) alcoholism?
 (24) A I'd say pretty bias My family has had a lot of alcoholic
 (25) problems Especially my parents

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- (1) Q Do you think despite those problems - there s going to be
 (2) a lot of talk about drinking in this courtroom Do you think,
 (3) despite those problems, you could move that aside and sit here
 (4) as a fair judge of the facts?
 (5) A It'd be hard to say, actually I could say yes, but then
 (6) it would be hard to say if I'm actually in the situation
 (7) Q Do you think that because of bad experiences that you had
 (8) with alcohol, that may spill over to how you view this?
 (9) A Yeah, yes, uh-huh
 (10) Q Could I have my piece of paperback, please?
 (11) A Sure
 (12) MR O NEILL Judge, can I grab this?
 (13) THE COURT Sure
 (14) MR O NEILL Thank you
 (15) MR O NEILL Nothing further Thank you
 (16) JURY VOIR DIRE
 (17) BY MR CHALOS
 (18) Q Hello Mr Jordan I m Michael Chalos and as I told you
 (19) yesterday I represent Captain Hazelwood
 (20) You used the word bias a couple times once when it came to
 (21) Exxon and once when it came to alcohol I want to ask you a
 (22) few questions about it You answered that questionnaire
 (23) question number 45 about Exxon s efforts to clean up, and
 (24) you ve said that they did what they needed to do and that was
 (25) good And you said that there may be some bias or you called

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- (1) it bias
 (2) A Uh huh
 (3) Q Does that so-called - you used the word bias but does
 (4) that prevent you your feelings about what Exxon did in this
 (5) case as far as cleanup is concerned will that prevent you
 (6) from giving us a fair and impartial verdict?
 (7) A No
 (8) Q You think that you can - despite what you said about that,
 (9) that you can sit there and listen to the evidence and if the
 (10) evidence were such that it favors Exxon that you could give a
 (11) verdict for them?
 (12) A I probably could
 (13) Q And if it favored the plaintiffs you could give a verdict
 (14) for the plaintiffs?
 (15) A Yes
 (16) Q Despite what you wrote in that questionnaire?
 (17) A Uh-huh
 (18) Q I need to get a little personal I hope you won t be
 (19) offended but I have to explore this area Incidentally, your
 (20) wife worked for Alaska Airlines?
 (21) A Yes
 (22) Q Did you ever discuss the spill with her or the grounding?
 (23) A No
 (24) Q Of the Valdez?
 (25) A No

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- (1) Q Did she work for Alaska Airlines in 1989?
 (2) A It was '90 I think she became a flight attendant in 1990
 (3) Q She was a model before that?
 (4) A No
 (5) Q Oh, I thought I read she was a -
 (6) A No, it's in between She was on a - they had a layoff and
 (7) so as an extra job, she went ahead and got a model for -
 (8) Q She was a model before that?
 (9) A Yes, in a sense with Hawaii, but I don't know if she did it
 (10) as a job
 (11) Q Never mind, lucky you That's all I wanted to point out
 (12) That s terrific I take it your wife had some problems with
 (13) alcohol before you met?
 (14) A Yes
 (15) Q Did she go through rehabilitation?
 (16) A No
 (17) Q She did not?
 (18) A No, she just went cold turkey
 (19) Q I see Was she abusing alcohol? Is that what she was
 (20) doing?
 (21) A Yes, she was abusing alcohol
 (22) Q Did she consider herself an alcoholic or just an alcohol
 (23) abuser?
 (24) A She probably considered herself an alcoholic
 (25) Q She did?

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- (1) A Uh huh
- (2) Q She told you that that she considered herself an
- (3) alcoholic?
- (4) A Not in so many terms as straight
- (5) Q Do you know about when she went cold turkey?
- (6) A As soon as she went - as soon as she got pregnant, that
- (7) she knew she was pregnant, because at the time, she never was
- (8) able to get pregnant She was diagnosed as -
- (9) Q This is a child other than the one that she's expecting
- (10) now?
- (11) A No, this is her first child
- (12) Q I see okay So your wife hasn't drank since she became
- (13) pregnant?
- (14) A Uh-huh
- (15) Q She was drinking prior to that?
- (16) A Yes, she was a lot heavier when I first met her, as far as
- (17) drinking, but then she started cutting down
- (18) Q I see, so she recognized that she had a problem and then
- (19) she slowly cut back on it?
- (20) A Well, the thing is she never had a reason to stop and then
- (21) she finally found one
- (22) Q I see Have you encouraged her, did you encourage her to
- (23) seek help?
- (24) A Yes
- (25) Q But she didn't do that?

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- (1) A No
- (2) Q What s your feelings about that? Do you have any
- (3) feelings?
- (4) A It's varied I don't know I really don't have any
- (5) feelings on it at this time Just thinking back, I found it
- (6) very difficult and I knew somewhere, you know, that she really
- (7) didn't need it, just from my own past experiences
- (8) Q Did you have any bad experiences with her when she was
- (9) abusing alcohol?
- (10) A No
- (11) Q Have you driven with her when she had drank?
- (12) A Yes
- (13) Q Were there times where she drank and she did just fine
- (14) driving?
- (15) A Yes
- (16) Q How about you, you drink?
- (17) A Once in a while
- (18) Q Have you ever drank and gotten in the car and -
- (19) A No
- (20) Q - driven off?
- (21) A No
- (22) Q Have not?
- (23) A No
- (24) Q Never?
- (25) A No, I usually take a cab

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- (1) Q Have you had a situation where you ve had one or two drinks
- (2) and then driven?
- (3) A No
- (4) Q And I take it you re pretty religious about that sort of
- (5) thing where you don t drink and drive?
- (6) A Yes
- (7) Q Does that stem from your experience with your parents?
- (8) A I don't believe so I've had a car accident back in '89
- (9) and had lost my license, and so I just put it to myself where I
- (10) wasn't going to lose my license again
- (11) Q I see Did you lose your license because you were drinking
- (12) and driving?
- (13) A No, this was under mental fatigue, and see, what I had
- (14) done, I had worked two jobs and I had to drive across black ice
- (15) and lost control of the vehicle
- (16) Q I see, but this was because you were tired -
- (17) A Yes
- (18) Q - is that what you're saying?
- (19) Prior to that, had you drank and driven?
- (20) A No
- (21) Q Not even prior at the that?
- (22) A No
- (23) Q Let me ask you now, and again I'm sorry, but we have to -
- (24) we have to probe to make sure that you're not biased in any
- (25) way You mentioned that your parents had problems with

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- (1) alcohol?
- (2) A Yes
- (3) Q What sort of problems?
- (4) A They were - it's hard to say It's - I'd say I was about
- (5) six years old, six - from the point that I was - well, let's
- (6) go ahead, and since, I'd say since I been four, all the way to
- (7) about the point of, oh, ten or eleven, they had been pretty
- (8) heavy drinkers, they'd go out and to bars
- (9) Q Are they still together?
- (10) A Yes
- (11) Q Did they go through any rehabilitation?
- (12) A No, they haven't.
- (13) Q I see, do they still drink?
- (14) A No
- (15) Q Did they stop when you became 11 years old?
- (16) A They stopped around that time What had happened, they
- (17) started, well, considering their age, I'm the youngest out of
- (18) six, and there had been apparent problems with my father, he
- (19) had a heart attack and he just stopped doing whatever he could
- (20) just to go about living
- (21) Q Let me ask you this do you - do you believe - do you
- (22) have an opinion as to whether a person who might have an
- (23) alcohol problem, any sort of alcohol problem, do you think that
- (24) person can ever drink again if he s ever gone to seek help or
- (25) been told by his family members that he should -

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- (1) A No
 (2) Q You believe that he cannot?
 (3) A No
 (4) Q You feel very strongly about that?
 (5) A Yes
 (6) Q And you said that you didn't think you could be fair or you
 (7) felt a certain bias because of your experience with your
 (8) parents?
 (9) A I'd say it would - it would be very difficult
 (10) Q Tell me a little bit about that Tell me why you feel it
 (11) would be difficult?
 (12) A Well, the only thing I can figure is if this would be a
 (13) case in where the alcohol was the problem, then I'd have very
 (14) great difficulty trying, you know, to be fair about it But if
 (15) it points to show that the alcohol wasn't a problem, then it
 (16) would be a lot easier for me to be able to come up with some
 (17) conclusive decision
 (18) Q How about if there was testimony in this case that Captain
 (19) Hazelwood had been through a treatment program and then had
 (20) drank again after the program, would you hold that against him?
 (21) A I probably would, yes
 (22) Q On your questionnaire you mention that you have some
 (23) friends in subsistence farming - sorry hunting and fishing?
 (24) A Well, the question I left on the note was if that was the
 (25) correct answer, I'd need to know more of what do you mean by

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- (1) subsistent
 (2) Q Subsistence?
 (3) A Uh-huh
 (4) Q Well, I don't really know the term I mean, I have - I
 (5) have about the same - the same knowledge as you do Maybe I
 (6) can get some help Who's our subsistence man?
 (7) THE COURT I am
 (8) MR CHALOS The number one authority
 (9) THE COURT Mr Jordan and for whoever's interested,
 (10) what is usually being referred to when folks speak to me about
 (11) subsistence hunting and fishing is the customary and
 (12) traditional taking of either fish or game for one's
 (13) sustenance In short, a sort of living off the land, and
 (14) that's what I think of when people ask me that question
 (15) MR CHALOS I did, too But -
 (16) MR JORDAN All right, so going by that definition,
 (17) I'd say yes, it was my father-in-law, my present
 (18) father-in-law He now - it's not now, as far as he doesn't
 (19) presently do it, that I know of, but he was a homesteader and
 (20) that wasn't too far back
 (21) BY MR CHALOS
 (22) Q Where was that?
 (23) A He lives in the valley right now I don't - not sure
 (24) where he had been hunting I know there's moose hunting and
 (25) deer hunting He has quite a bit of stock in freezers that he

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- (1) has at his house
 (2) Q Was he affected by the spill at all?
 (3) A Not that I know of
 (4) Q Do you know anybody that's been affected by the spill any
 (5) close friends or relatives?
 (6) A No
 (7) THE COURT You're about out of time, Mr Chalos
 (8) MR CHALOS Yes, Your Honor Mr Jordan thanks a
 (9) lot I appreciate it
 (10) MR O NEILL Pass for cause
 (11) MR CHALOS May I have a minute Your Honor? Your
 (12) Honor, may we have a minute with you?
 (13) THE COURT Mr Jordan could we get you to go return
 (14) to our jury room for just a moment We'll get back to you in
 (15) just a few minutes
 (16) MR JORDAN All right, thank you
 (17) MR CHALOS Your Honor
 (18) THE COURT Mr Chalos
 (19) MR CHALOS We move to strike Mr Jordan for cause
 (20) I think he was very, very honest and when he told us with
 (21) respect to his feelings about alcohol, people in his family
 (22) that were involved with alcohol, how he felt about people
 (23) drinking after they've been through treatment and he stated
 (24) clearly that he would hold it against Captain Hazelwood if the
 (25) evidence was such that it was presented to him that Captain

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- (1) Hazelwood had been through rehab and then started - or through
 (2) treatment and then started drinking again I think that
 (3) exhibited a clear bias and I don't believe that in spite of how
 (4) hard he would try, I don't think he can be fair, holding those
 (5) views at this point in time
 (6) THE COURT Mr O'Neill?
 (7) MR O NEILL This young man to me, exhibits what we
 (8) all want in jurors, and he sat there and he struggled with
 (9) every question He said the things that they take issue with
 (10) are the things that most of the population would take issue
 (11) with, and that is he has trouble with the fact that somebody
 (12) who has gone through rehabilitation is drinking again 90
 (13) percent of the population holds that view With regard to the
 (14) key question that was put to this young man, he separated out
 (15) He said if alcohol had to do with the accident then he'd have
 (16) a problem with that If alcohol didn't have to do with the
 (17) accident, then he wouldn't have a problem with alcohol That
 (18) is insightful careful and to the point
 (19) THE COURT I'm going to grant the excuse for cause
 (20) The juror's candid statement that someone having relapsed after
 (21) having been treatment - after having had treatment would give
 (22) him trouble gives me some pause I know from what I've heard
 (23) about this case that we are going to be dealing with a relapse
 (24) situation and that's what he specifically said he would have
 (25) trouble dealing with

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- (1) Subsidiary thing, while I am hopeful that you re going to
- (2) finish this thing up by August 1st I d hate to have someone
- (3) sit through this trial and have him lost to us as far as the
- (4) jury is concerned, because his wife's going to have a baby, and
- (5) I m afraid that a what would happen in this case Mr Jordan
- (6) is excused for cause Would you tell Mr Jordan that he s been
- (7) excused and bring us another juror, please sir?
- (8) THE CLERK Your Honor this is Rose A Martin juror
- (9) number six
- (10) THE COURT Ms Martin you have answered under oath a
- (11) questionnaire that was put to you The attorneys are going to
- (12) have some follow up questions for you now We've agreed that
- (13) they would each have ten minutes to talk with you about your
- (14) answers Mr O Neill
- (15) MR O'NEILL Thank you, Judge
- (16) JURY VOIR DIRE
- (17) BY MR O NEILL
- (18) Q Ma am, your husband is leaving first of June?
- (19) A '95
- (20) Q Oh, 95?
- (21) A Yes
- (22) Q Okay
- (23) A Our time's up in Alaska
- (24) Q So if this case is less than 16 months long then you'll be
- (25) able to sit on the jury?

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- (1) MR NEAL If it doesn't, we'll all leave
- (2) BY MR O'NEILL
- (3) Q Do you like Alaska?
- (4) A Uh huh, sure do
- (5) Q How long is has your husband been in the Air Force?
- (6) A Little over 18 years
- (7) Q Have you traveled with him that entire 18 years?
- (8) A Yes
- (9) Q What kinds of places have you been to?
- (10) A We've been North Carolina, Turkey, South Carolina, and
- (11) Alaska
- (12) Q Have you liked it?
- (13) A Oh, yeah
- (14) Q You like to travel?
- (15) A Oh, yeah
- (16) Q Do you talk about retirement?
- (17) A Uh-huh
- (18) Q Where do you think you'll retire?
- (19) A Have no idea
- (20) Q What kind of places do you talk about?
- (21) A Sometimes we talk about Alaska, sometimes we talk about
- (22) getting closer to the parents, just all up in the air Depends
- (23) where we're stationed next, we might want to make that home
- (24) Q Where do you think you might be stationed next? Does he
- (25) have any control over that, or does it just sort of come out of

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- (1) the Pentagon?
- (2) A It's just luck of the draw Wherever they send you that's
- (3) where you go
- (4) Q Are you a homemaker?
- (5) A Yes, and I work part-time at elementary school
- (6) Q What do you do at the elementary school?
- (7) A I'm noon duty I watch the kids during the recess hours
- (8) and lunch hours
- (9) Q And your kids are seven and twelve?
- (10) A Uh-huh
- (11) Q And you spend a lot of time with the kids?
- (12) A Lot of time
- (13) Q The - at issue in this case is going to be punitive
- (14) damages Do you think if the facts in the courtroom are such
- (15) and the law from the Judge is such that a punitive damage
- (16) verdict ought to result because of what you saw, evidence wise
- (17) and from what you heard from the Judge, that you're able to
- (18) bring in a punitive damage verdict, if that's what the evidence
- (19) is?
- (20) A If that's what the evidence is
- (21) Q And if the evidence is such that the punitive damage number
- (22) ought to be in billions of dollars, do you think you would be
- (23) able to do that if that's what the evidence is?
- (24) A If that's what the evidence is
- (25) MR O'NEILL The - I don't have any other

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- (1) questions Thank you very much
- (2) JURY VOIR DIRE
- (3) BY MR SANDERS
- (4) Q Afternoon Ms Martin
- (5) THE COURT Ms Martin, would you turn and aim
- (6) yourself at the microphone just a little better so it ll
- (7) amplify your voice
- (8) BY MR SANDERS
- (9) Q Good afternoon
- (10) A Good afternoon
- (11) Q Ms Martin, I gather from your questionnaire and your
- (12) answers to Mr O'Neil that you ve spent some time in the
- (13) south?
- (14) A Yes, I have
- (15) Q You're probably one of the few people I ve met up here
- (16) recently that won t think I talk funny Where is Goldsboro?
- (17) A It's the - more to the east of North Carolina It's oh,
- (18) about 30 minutes from Raleigh-Durham
- (19) Q Toward the coast?
- (20) A Yeah, closer toward the coast Still good hour ride to the
- (21) coast.
- (22) Q What part of South Carolina did you spend time in?
- (23) A Rock Hill, well we were stationed at Shaw Air Force Base
- (24) That's about 30 minutes from Columbia, but I have relatives in
- (25) Rock Hill, South Carolina

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- (1) Q There are a couple of responses on your questionnaire I
 (2) wanted to ask you about and when I do that I want you to know
 (3) that we're not trying to trick you here. There's no right or
 (4) wrong answer. What we really want to know is your honest
 (5) opinion about things and we're doing that to help us pick a
 (6) fair and impartial jury and for you to help yourself determine
 (7) whether you can be fair to both sides. Do you understand
 (8) that? Is that all right?
 (9) A Uh-huh
 (10) Q In one of your answers the question asked you about what
 (11) you knew about the grounding and the oil spill?
 (12) A Uh-huh
 (13) Q And of course you weren't here when - you weren't in
 (14) Alaska when that happened, right?
 (15) A Yes, I was
 (16) Q You were? I'm sorry, I misread things. And what did
 (17) you - what did you hear about it? What did you hear about the
 (18) cause of the accident?
 (19) A Well, from what I read, that the captain might have been
 (20) intoxicated at the time and that the tanker went aground and we
 (21) had a major spill, basically. That was -
 (22) Q Did you read that or did you see that on television, or
 (23) where did you get that information?
 (24) A Gee, I mean it was all over the news, Night Line and just
 (25) everywhere, so probably a little bit of everything, TV,

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- (1) newspaper
 (2) Q When you - have you been a kind of an avid follower of the
 (3) news over the years do you always read the papers and keep up
 (4) with the local and national news?
 (5) A Yeah
 (6) Q Do you believe everything you read in the paper?
 (7) A No
 (8) Q Do you believe everything you hear on the radio?
 (9) A No
 (10) Q Do you believe everything you see on television?
 (11) A No
 (12) Q Do you believe that Captain Hazelwood was intoxicated on
 (13) the night the Valdez ran aground?
 (14) A I - I don't - I don't have an opinion either way. I
 (15) mean
 (16) Q Let me ask you about your belief before I ask you about
 (17) your opinion. What do you believe? What do you think?
 (18) A I don't - I don't know. I mean, I just - it's just not
 (19) something that I really thought about. I mean, I don't - I
 (20) don't sit there and think, well, golly, that was terrible or,
 (21) you know, that he did or he was or you know, possibly, golly
 (22) maybe it was a misprint or maybe it was a mistake. I just
 (23) don't -
 (24) Q I understand. So as you sit here - well, back then, did
 (25) you think - did you think that was true then?

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- (1) A Back then, it was - it was as I - as I recall, a
 (2) possibility, but I don't - I didn't check into it any further
 (3) as far as, you know, was it true, did it come, you know, were
 (4) the facts true. I didn't check into it any further, as far as
 (5) that
 (6) Q What do you think caused the grounding?
 (7) A Who do I think caused the grounding?
 (8) Q What do you think caused it?
 (9) A Just - I don't know
 (10) Q Maybe your question was maybe better than mine. Who do you
 (11) think caused it?
 (12) A I think it was - it was just a bunch of errors that were
 (13) made
 (14) Q If you were chosen to sit on the jury, in the - on the
 (15) jury in this case, would you be able to put aside those things
 (16) that you remember hearing and seeing back in the past in the
 (17) news coverage and base what your decision as a juror would be
 (18) in this case solely on what you hear in this courtroom?
 (19) A Yes
 (20) Q Let me ask you about another answer that you gave. You
 (21) indicated in a question about companies and the environment,
 (22) that you thought that business should take more precautions or
 (23) take extra precautions in Alaska because the environment is so
 (24) precious here. Of course it's precious everywhere, but what do
 (25) you mean by that?

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- (1) A Well, when you - if you travel and you go to Tennessee or
 (2) you think that's the - the country music capital of the world
 (3) or you go to Florida, it's Disney World you go to see. When
 (4) you come to Alaska, it's to see the mountains and the water and
 (5) the animals, so I mean, that's - that's Alaska, so it needs to
 (6) be preserved
 (7) Q And do you think that companies or business should take
 (8) extra precautions? What kind of extra precautions?
 (9) A To make sure that the environment is not in any way going
 (10) to hurt any - the animals or the air or the water or -
 (11) basically, you know, just anything that has to do with the
 (12) environment
 (13) Q Would those views affect you in the way you look at the
 (14) evidence in this case?
 (15) A Affect me? I'm not sure I understand what's you mean
 (16) Q Well, you say that you think that business ought to take
 (17) extra precautions. The standard of care or what precautions
 (18) should have been taken will be defined for you by the Judge
 (19) If those are different than what you think will you be able to
 (20) set aside yours and follow what the Judge tells you?
 (21) A Yes
 (22) Q Mr. O'Neill asked you about punitive damages. Do you think
 (23) there is a - is a difference between compensatory damages
 (24) which are the actual damages people suffer versus punitive
 (25) damages which are something else over and above actual

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- (1) damages do you see that difference?
- (2) A Yes
- (3) Q And do you think now that Exxon ought to pay punitive damages, as you sit here today?
- (4) A I don't know
- (5) Q You don't know?
- (6) A I don't know
- (7) MR SANDERS Could I have a minute, Your Honor?
- (8) I have no further questions, Your Honor
- (9) MR O NEILL Pass for cause
- (10) MR SANDERS Pass for cause
- (11) THE COURT Ms Martin that's it for today We will be calling you back in a day or so for the next step of this process, but you can go about your business until we call you back
- (12) MR O NEILL Your Honor, are we going to try to get one more done?
- (13) THE COURT Yeah, at least
- (14) MR O NEILL Crack, crack
- (15) THE CLERK Your Honor, this is David O Nelson, juror number 17
- (16) THE COURT Mr Nelson, you've answered a questionnaire under oath The attorneys are going to ask you some follow up questions and we've agreed that each side would have ten minutes to talk to you about your answers Mr

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- (1) O'Neill?
- (2) MR O NEILL Thank you, Judge
- (3) JURY VOIR DIRE
- (4) BY MR O'NEILL
- (5) Q I had the chance to read your questionnaire and I want to ask you some general questions and then some specific questions about the questionnaire, and if I get unduly personal you're just going to have to forgive me because I'm just out here earning a wage doing what I'm supposed to do
- (6) A Okay
- (7) Q In your questionnaire, you're talking about retiring on July 1, 1994?
- (8) A Correct.
- (9) Q And where are you going to go to? Retire to?
- (10) A Washington or Oregon
- (11) Q Sort of a flip of a coin on which one?
- (12) A Well, yeah, I haven't made up my mind yet.
- (13) Q What factors would you look up to to decide whether you'd go to Washington or Oregon?
- (14) A Primarily where a lay of a land for what I want to retire for
- (15) Q What do you want to retire for?
- (16) A Run bird dogs
- (17) Q And do you train dogs?
- (18) A Correct.

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- (1) Q For -
- (2) A All personal use
- (3) Q Is it like waterfowl, upland bird dogs?
- (4) A Pointing dogs
- (5) Q For like pheasant grouse chucker, that kind of stuff?
- (6) A Yes
- (7) Q Is there a lot of good pheasant grouse, chucker hunting up here? I didn't think - there's some spruce grouse?
- (8) A No, that's why I will - that's why I'll leave the state to go - leave the state to go down there and do it.
- (9) Q Willamette Valley is where the pheasant were first introduced in the United States did you know that?
- (10) A Yeah
- (11) Q What am I telling you about that for? How long have you been up here?
- (12) A 14 years
- (13) Q Have you enjoyed it?
- (14) A Yes
- (15) Q What have you enjoyed about it?
- (16) A Well, it's - it was a great opportunity for my wife and my family and my children when I came, but I've enjoyed the work that I've done, it's been a great - been a great opportunity for my whole family
- (17) Q Do you recall where you were when the spill happened?
- (18) A I was in the Anchorage office

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- (1) Q How did you react to the spill?
- (2) A I was probably shocked probably be the best definition I can give you
- (3) Q Did you have feelings after the spill about the spill?
- (4) A Well, only thing I saw was on the television, and it was catastrophic But other than that, I probably didn't have any real reaction to it, it was a distance away from me so
- (5) Q It's over the hill -
- (6) A Right, besides I was - probably had all night to take care of We were in construction season and probably had all I could take care of myself without worrying about that at that time, probably
- (7) Q With regard to the oil industry in Alaska, do you have views on the importance of the oil industry in Alaska?
- (8) A Yes, yeah
- (9) Q Just sort of inform me for a minute
- (10) A Well, probably one of the larger bases of our economy in the State of Alaska
- (11) Q As you sit here today, do you have any feelings one way or another about whether you would be a good juror in this case?
- (12) A Having never served on a jury, I don't know how I could honestly answer that.
- (13) Q Would you work hard at it?
- (14) A Yes
- (15) Q Keep an open mind as you went?

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- (1) A Yes
- (2) Q I guess that s all any of us can do with regard to
- (3) anything except shooting a shotgun If you can t shoot, you
- (4) can t shoot
- (5) A Well – that's true There's a hundred and one reasons you
- (6) miss, so all you do is pck a number from one to a hundred
- (7) Q Are you aware at all of the tort reform movement or
- (8) anything at all that has to do with tort reform Have you ever
- (9) heard of that?
- (10) A Vaguely
- (11) Q If the evidence in this case was such and the instructions
- (12) from the Judge were such that they required a finding of
- (13) punitive damages in the case so that what you saw here was such
- (14) and what the Judge told you the law was and you put the two
- (15) together and the conclusion that you should draw from that was
- (16) an award of punitive damages, do you think you could do that?
- (17) A Yes, I do
- (18) Q If the evidence and the law, the evidence in the courtroom
- (19) and the law coming from the Judge was such that that number was
- (20) in the billions of dollars, do you think you could do that?
- (21) A Depends upon how much damage there was done
- (22) Q You work for a construction company?
- (23) A Correct
- (24) Q And what do you do with regard to – are you a
- (25) superintendent?

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- (1) A Correct
- (2) Q What do you like about being a construction
- (3) superintendent?
- (4) A Well, I like to control the people and to see it through to
- (5) your effort When you complete a project you can see what
- (6) you've completed
- (7) Q Got a start and a finish and it looks good when you finish?
- (8) A And you got a budget and you got a schedule
- (9) Q With regard to the construction industry, do you comply
- (10) with environmental standards in the construction industry? Are
- (11) there some?
- (12) A Oh, certainly In fact, the company I work for has an
- (13) environmental division but I'm not a part of that.
- (14) Q How do you feel about compliance with environmental laws?
- (15) A That's a tough question Some of them are all right
- (16) Others are, you know, I can't agree with all of them, but – I
- (17) mean, some of them are awful hard to – hard to swallow
- (18) Q Yeah, how about legislators are legislators – and they
- (19) could have a good goal and a goal – generally, how about the
- (20) goals in environmental laws, accepting that legislators could
- (21) screw up everything, how about – maybe I shouldn t say that in
- (22) a courtroom?
- (23) A Well, I mean, my feelings are that there has to be some
- (24) kind of a control I mean if you let things go too long, and I
- (25) have to kind of agree with you, I think they can legislate

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- (1) themselves into some holes that are not right
- (2) Q Well they don t work for a living
- (3) A Right I just completed a project, and an area half the
- (4) size of this room sits right alongside the highway it was
- (5) wetlands I mean, be real
- (6) MR O NEILL Thank you
- (7) JURY VOIR DIRE
- (8) BY MR CHALOS
- (9) Q Hello, Mr Nelson My name is Michael Chalos As I told
- (10) you yesterday, I represent Captain Hazelwood I see from your
- (11) questionnaire that you were in the Navy between 1951 and 1953?
- (12) A Correct
- (13) Q What did you do in the Navy?
- (14) A I was a chaplain (ck0 jewel man
- (15) Q You were what?
- (16) A A chaplain jewel man
- (17) Q You followed the priest around is that what you did?
- (18) A Right
- (19) Q Carried the bible?
- (20) A No
- (21) Q No? I also see that you work as a superintendent of a
- (22) construction company?
- (23) A Correct
- (24) Q The name of that company Wilder Construction?
- (25) A Right

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- (1) Q You have three boys that work there now?
- (2) A Correct
- (3) Q Are they – they re operating engineers?
- (4) A Correct
- (5) Q What does that consist of?
- (6) A They operate heavy equipment
- (7) Q When you worked there, what did you do as a superintendent?
- (8) A Well, I estimated for – I estimated for some projects, and
- (9) then the way the company is set up, if you're a job
- (10) superintendent you're in charge of that job and you run the
- (11) complete job from start to finish
- (12) Q As part of your duties did you delegate down to people
- (13) that worked for you?
- (14) A Yeah, everybody on that project was responsible to – I was
- (15) responsible for
- (16) Q Okay If you had a particular task to do and you passed it
- (17) down the line to other people?
- (18) A Correct
- (19) Q When you did that, I mean you didn t stand and supervise
- (20) everything that you told them to do did you?
- (21) A No
- (22) Q There would be times where you would be away, but you would
- (23) expect them to carry it out right?
- (24) A Right
- (25) Q Given the job that you had I take it you worked with a lot

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- (1) of machinery and there were a lot of people working with the
 (2) machinery Have you had experiences where there were accidents
 (3) either because of mechanical failure or human failure?
 (4) A Yes
 (5) Q Do you have an opinion about that? I mean, when you have
 (6) men and machine mixing together, sometimes you have accidents?
 (7) A Yeah, besides that, I'm traveling - I'm dealing with the
 (8) traveling public and that's a whole lot more dangerous than
 (9) dealing with equipment.
 (10) Q Yeah so in your experience, accidents happen, am I
 (11) correct?
 (12) A Sure, that's correct.
 (13) Q Did your company -
 (14) A Some of them beyond your control
 (15) Q I m sorry, did I interrupt you?
 (16) A I said and some of them beyond your control
 (17) Q Have you had a situation in your experience where you ve
 (18) given somebody instructions and left them to do it and they
 (19) didn't do what you asked them and an accident happened?
 (20) A Oh, I'm sure I have, but I can't at this time think of it.
 (21) But I mean I've told people to do things and they haven't done
 (22) it, but if an accident has happened I can't remember
 (23) Q You mentioned in your questionnaire that you've seen a lot
 (24) of coverage about the spill?
 (25) A Right.

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- (1) Q Do you remember what you saw or heard or read about?
 (2) A Well, I saw what was on television here I've read
 (3) articles, you know, there's articles still, you know, they're
 (4) still floating around, you know I don't know how much of it
 (5) I'm really concerned about, but -
 (6) Q You believe everything you read or see on television?
 (7) A No, no
 (8) Q Sitting here today, what do you think caused the grounding
 (9) of the Valdez do you know? Based on what you read or saw or
 (10) heard?
 (11) A Not taking into any consideration of what was said
 (12) yesterday?
 (13) Q No, you don't need to take that into consideration
 (14) Whatever you heard prior to that, because we're going to say
 (15) things and Mr O'Neill will say things, and I'm sure Exxon's
 (16) lawyers will say things, forget that Just based on what you
 (17) read or seen before?
 (18) A I honestly - I honestly couldn't tell you what - what was
 (19) truly - why, what the cause of it was
 (20) Q So I take it you don t have any opinion as to what might
 (21) have caused the grounding of the Valdez, sitting here?
 (22) A No
 (23) Q Will you be able to put aside whatever you ve read heard
 (24) or seen in the media and listen to the evidence that s
 (25) presented and make your determination on that basis?

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- (1) A To the best of my knowledge
 (2) Q And your ability, I take it?
 (3) A Yeah
 (4) Q You feel up to it?
 (5) A I hope so
 (6) Q I just need to ask you some - some personal questions and
 (7) I hope you don t mind, I need to do this In your
 (8) questionnaire you mention that your son was arrested for DWI?
 (9) A Right.
 (10) Q Is that right?
 (11) A Right
 (12) Q That was back in '83?
 (13) A Right.
 (14) Q Did he go into any sort of rehabilitation program after
 (15) that?
 (16) A Yes, he did
 (17) Q What was that?
 (18) A Oh, he had to go - he went into alcoholic rehabilitation
 (19) program
 (20) Q Did he successfully complete the program?
 (21) A I don't - personally, I don't think so, no
 (22) Q Is he drinking again?
 (23) A Yes, he is
 (24) Q Do you have any feeling about that?
 (25) A Yes, I do

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- (1) Q Would you mind sharing it?
 (2) A Well, I talked to him - I've talked to him about it on
 (3) numerous occasions and it's - I have a feeling that it's
 (4) affecting - affecting him - his family life and it's
 (5) affecting his children
 (6) Q Do you make a distinction in your mind between someone who
 (7) abuses alcohol as opposed to someone who is dependent on
 (8) alcohol?
 (9) A Well, certainly
 (10) Q Where do you put your son?
 (11) A Well, my feeling is that my son is - cannot have one, two
 (12) drinks and quit and then enjoy life He's got to get to where
 (13) he - it controls him, which could only last for a day, but in
 (14) my opinion, he's an alcoholic
 (15) Q Do you think you can have a situation where if you could
 (16) control it, where you can have one or two drinks and then say,
 (17) okay, that that would be all right even though you might have
 (18) been through some treatment?
 (19) A Yeah, yeah, sure
 (20) MR CHALOS Mr Nelson, thanks a lot Appreciate
 (21) your time
 (22) THE COURT Mr O'Neill?
 (23) MR O NEILL Pass for cause, Judge
 (24) MR CHALOS Pass for cause, Your Honor
 (25) THE COURT Mr Nelson, that takes care of it for

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- (1) today We will be calling you back in a day or so to -
 (2) take the next step in this process but you re excused until we
 (3) call you back
 (4) One more and then we ll call it a day and when you -
 (5) when you get one tell the rest they can leave for the day but
 (6) be back at 8 00 in the morning
 (7) (Time now 446)
 (8) THE CLERK Your Honor this is Charlene Jones It s
 (9) juror number 28
 (10) THE COURT Ms Jones you ve answered our
 (11) questionnaire under oath The attorneys are going to ask you a
 (12) few questions now following up on the questions - on the
 (13) answers that you gave to those questions We ve agreed that
 (14) each side would have ten minutes to talk to you about your
 (15) answers Mr O Neill?
 (16) JURY VOIR DIRE
 (17) BY MR O NEILL
 (18) Q Let me get to - right to the nut of it You belong to
 (19) Greenpeace and the Wildlife Federation and the World Wildlife
 (20) Fund?
 (21) A I don't belong to them I mean, I contribute moneys
 (22) Q You contribute money to them?
 (23) A Yeah
 (24) Q And would it be - as a juror, can you be fair, despite
 (25) that organizational predisposition? Could you work hard to put

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- (1) your feelings aside?
 (2) A It would be hard, I think
 (3) Q It would be hard?
 (4) A Yeah
 (5) Q Can you do it?
 (6) A I don't think so
 (7) Q You don t?
 (8) A It's - it's just a hard subject for me, personally
 (9) Q Hard subject for everybody personally
 (10) A Well, I mean - well, I don't think I could
 (11) Q Have you thought long and hard the last 24 hours about
 (12) whether you could?
 (13) A Yeah And thinking about it at work and everything is I
 (14) can't believe that I was called back today for that reason
 (15) Q I m not finished yet Judge I m going to probably give
 (16) up, but it does pain me to see people who have good hearts like
 (17) you who come to the conclusion that they can t sit as jurors
 (18) It hurts me but if that s how you feel so be it
 (19) MR NEAL Well we have - we like people with good
 (20) hearts too
 (21) MR O NEILL I don t think that we ought to spend
 (22) much more time on this Judge She obviously has the
 (23) predisposition and -
 (24) THE COURT Ms Jones, I appreciate your being so
 (25) candid with us about your feelings It s really necessary that

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- (1) you be willing to tell us exactly how you feel so that we can
 (2) have a jury who - who won t be deeply affected as I think you
 (3) might be by personal concerns So we need to have the case
 (4) decided simply on the basis of facts of law not how we feel
 (5) We appreciate you coming back and you re excused
 (6) THE COURT Having been careful about having enough
 (7) people all day, I got outsmarted by myself the last minute here
 (8) today
 (9) MR O NEILL You re supposed to be able to fill the
 (10) day, too Judge
 (11) THE COURT Gets unconscious for one minute and you
 (12) get trapped We will recess at this time until 8 00 tomorrow
 (13) morning at which point we will continue
 (14) THE CLERK This court is in recess until 8 00 a m
 (15) tomorrow morning
 (16) (Proceedings recessed at 4 50 p m)
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- (1) STATE OF ALASKA)
- (2) Reporter s Certificate
- (3) DISTRICT OF ALASKA)
- (4)
- (5)
- (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
- (16)
- (17)
- (18)
- (19)
- (20)
- (21) JOY S BRAUER, RPR
- Notary Public for Alaska
- (22) My Commission Expires 5-10-97
- (23)
- (24)
- (25)

- (1) Charlene Jones
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Look-See Concordance Report

UNIQUE WORDS 1,969
TOTAL OCCURRENCES 7,651
NOISE WORDS 385
TOTAL WORDS IN FILE 28,322
SINGLE FILE CONCORDANCE
CASE SENSITIVE
NOISE WORD LIST(S)
NOISE NOI
INCLUDES ALL TEXT OCCURRENCES
IGNORES PURE NUMBERS
WORD RANGES @ BOTTOM OF PAGE
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(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 (3) In re) Case No A89 0095 CIV (HRH)
 (4)) Anchorage Alaska
 (5) The EXXON VALDEZ) Wednesday May 4 1994
 (6)) 8 00 a m
 TRANSCRIPT OF PROCEEDINGS
 TRIAL BY JURY JURY SELECTION AND 3RD DAY
 BEFORE THE HONORABLE H RUSSEL HOLLAND JUDGE
 (11) VOLUME 3 Pages 1 261
 (12) Realtime Transcription
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(1) PROCEEDINGS
 (2) THE CLERK All rise
 (3) (Call to Order of the Court)
 (4) MR NEAL Your Honor as they say we ve got a
 (5) proposition you can t refuse If you d give us a few minutes
 (6) because of work last night going over questionnaires so
 (7) forth we didn t get together We have some - we re probably
 (8) going to be able to get together on some - some of them coming
 (9) up and we could probably agree to strike them
 (10) THE COURT How much time do you need?
 (11) MR NEAL 15 minutes
 (12) THE COURT You got it
 (13) MR NEAL Thank you sir
 (14) THE CLERK Court s in recess for 15 minutes
 (15) (Recess at 8 05)
 (16) THE CLERK All rise
 (17) THE COURT Good morning ladies and gentlemen We
 (18) are reconvened in Case A89 0095 civil In re the Exxon Valdez
 (19) We have previously conferred with counsel and have excused five
 (20) more people from the jury panel by stipulation it s jurors 30
 (21) 31 42 44 and 61 Are we ready for the next juror?
 (22) MR O NEILL Yes we are Your Honor
 (23) MR NEAL Yes Your Honor
 (24) THE COURT Call the next juror please
 (25) THE CLERK Your Honor this is juror number 4 Bruce

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(1) A Dean
 (2) THE COURT Good morning
 (3) MR DEAN Should I wear my glasses or not? I ll just
 (4) wear them so I can see everybody then I ll take them off
 (5) THE COURT Whichever You ve answered a
 (6) questionnaire under oath The attorneys are now going to ask
 (7) you some follow up questions with respect to the answers to the
 (8) questionnaire We ve agreed that each side would have ten
 (9) minutes to talk to you Mr O Neill?
 (10) MR O NEILL Thank you Judge
 (11) JURY VOIR DIRE
 (12) BY MR O NEILL
 (13) Q How are you sir?
 (14) A Good
 (15) Q I m going to ask some questions and too the extent they
 (16) get personal don t get mad at me
 (17) A Okay
 (18) Q It s my job Are you - you re a miner by trade is that
 (19) right?
 (20) A Yes sir
 (21) Q Are you working now?
 (22) A No, sir
 (23) Q What kind of things have you done in the mining business?
 (24) A You name it, about 17, 18 years of mining, so from placer
 (25) mining to hard rock contract mining Everything that entails

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- (1) that I should say
 (2) Q And you've been a superintendent on the mine?
 (3) A Well I kind of - my brother and I owned a little placer
 (4) outfit once and I been on quite a few jobs
 (5) Q You came do Alaska eight years ago to mine?
 (6) A Yes
 (7) Q You can put those on if you want to
 (8) A That's okay, yeah, I can see better with them
 (9) Q Where did that mine before you came here eight years ago?
 (10) A Mostly in Colorado and Utah California, Texas you name
 (11) it
 (12) Q In looking over your questionnaire and it lists - I'm
 (13) going to get a little personal here you're just going to have
 (14) to forgive me
 (15) A Sure
 (16) Q In answer to the question have you or any member of your
 (17) family or close friend ever worked with a person who had an
 (18) alcohol or drug problem or dependency The answer yes Could
 (19) you tell me about that?
 (20) A Well, almost 20 years in the mine, it - I been around a
 (21) lot of people that had drinking problems or I guess - I don't
 (22) know if it's problems, lot of people drank steady
 (23) Q Does that present a problem in the mining business?
 (24) A Sure it does You know, I've had problems with guys who
 (25) have showed up drunk and things like that and even drinking on

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- (1) the job, one or two, but not by any means no large amount or
 (2) anything
 (3) Q Do you have any views on the oil industry in Alaska?
 (4) A To be honest, I don't think so
 (5) Q Something you've ever thought about?
 (6) A I just, you know, I don't know - I guess other than we
 (7) need them or we've got them here and they were here before I
 (8) moved to the state, and I just never really did much - it was
 (9) kind of like it was already here
 (10) Q What do you feel about the environmental laws?
 (11) A Well, of course being a miner, I've gone around and around
 (12) with a few of them, a few of the laws, I should say And some,
 (13) of course, make a lot of common sense and of course need to be
 (14) held up And then there are some, you know, that could be
 (15) changed just because I feel that they're going to extinguish
 (16) the mining business instead of helping mining, or whatever
 (17) business for that matter
 (18) Q Sort of a mixed bad?
 (19) A Yeah, you get the good with the bad There's some rules
 (20) that anybody knows makes common sense
 (21) Q What have you liked about mining?
 (22) A I just always liked to do it I just started it, like
 (23) blowing stuff up Making a big mess, not having to clean it
 (24) up
 (25) Q I spent 13 years in the Army we had a good time there

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- (1) A Yeah I never would have thought I'd like it but I ended
 (2) up liking it
 (3) Q You worked on the cleanup?
 (4) A Yes, sir I did
 (5) Q What reactions did you bring back from working on the
 (6) cleanup?
 (7) A I spent only about 21 days on one boat, and we were sent
 (8) out to look for oil and we didn't find any, to be honest with
 (9) you In the 21 days We found about three or four 55 gallon
 (10) drums full
 (11) Q Where was that?
 (12) A I really - you know, I want to say Naked Island or Nuka
 (13) Island or down in the very, the lower end of the Sound We
 (14) went out of Homer, but I didn't know that area real well, so
 (15) you know the islands and everything, so we just kind of roamed
 (16) around I couldn't tell you exactly what areas we hit
 (17) Q Who was the employer was it Veco?
 (18) A No, I worked for Martech, which is I guess a part of Veco
 (19) And then other people on the boat worked for Exxon or
 (20) somebody
 (21) Q Were you in Alaska when the spill happened?
 (22) A Yes
 (23) Q What was your reaction to the spill when the spill
 (24) happened?
 (25) A It just - I was just like everybody else, you know, it

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- (1) just happened, it was an accident I just remember seeing it
 (2) on the news when it came out
 (3) Q Do you think it was an accident?
 (4) A I don't know I don't know I guess I just assumed it was
 (5) because you know, nobody would do something on purpose, just
 (6) the way - what I picked up on it made me feel that way
 (7) Q How do you feel about it today?
 (8) A I don't know exactly, you know, how I feel about it
 (9) Q Have you thought about it between yesterday and today?
 (10) A Since we came in the other day?
 (11) Q Yeah
 (12) A I've only thought about that I haven't really based an
 (13) opinion on anything I haven't followed it that closely,
 (14) especially the case - this particular case, I haven't followed
 (15) it that closely I haven't followed the cleanup that much
 (16) Q Have you ever worked for the oil industry yourself?
 (17) A Not in Alaska Not anywhere that I can remember When I
 (18) was younger, 18 and stuff you know
 (19) Q How about have you ever commercially fished?
 (20) A No
 (21) MR O NEILL Thank you
 (22) MR DEAN You bet
 (23) JURY VOIR DIRE
 (24) BY MR NEAL
 (25) Q Mr Dean I'm Jim Neal I represent the Exxon defendants

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- (1) I'll just ask you a few questions. One of them starts with -
 (2) you know we got a copy of the questionnaire and there's
 (3) something I really don't understand maybe you can explain it
 (4) to me. On question 25 you won't remember the question but it
 (5) says have you a family member or close friend ever been
 (6) employed by any of the following and then it's got Exxon and a
 (7) number of organizations here ADEC ADF&G food processors so
 (8) forth. You haven't checked anything but you've got something
 (9) up here.
 (10) MR NEAL: May I approach the witness, Your Honor?
 (11) THE COURT: Yes.
 (12) BY MR NEAL:
 (13) Q: Just tell me what this is because it's very difficult for
 (14) me to read that. See your writing up there on top.
 (15) A: Oh, okay.
 (16) Q: It looks like none parentheses BAD or it could be you
 (17) started to right none of them and -
 (18) A: None, and then BAD is my initials.
 (19) MR NEAL: May I approach the witness?
 (20) MR DEAN: That's it.
 (21) MR NEAL: Never in the history of the world has a
 (22) mystery been cleaned up so quickly. Thank you.
 (23) BY MR NEAL:
 (24) Q: Did you follow the publicity about the grounding of the
 (25) spill? I believe you did -

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- (1) A: I did some, but I should say very little, because at the
 (2) time I was working camp jobs and we were gone for a month at a
 (3) time and we were home for a week and so I -
 (4) Q: Did anything about the publicity stick in your mind now as
 (5) you sit there?
 (6) A: None other than it happened.
 (7) Q: It happened?
 (8) A: And the - some of the stuff afterwards, you know, some of
 (9) the trial stuff I remember hearing.
 (10) Q: In regard to the alcohol there'll be some evidence of
 (11) consumption of alcohol in this case a lot of it will be
 (12) disputed a lot won't be disputed. Anything about your
 (13) experience with alcohol that would cause you any problem being
 (14) a fair and impartial juror in this case listening to the proof
 (15) as it comes in the evidence listening to the instructions of
 (16) the Court giving the plaintiffs and the defendants a fair and
 (17) impartial trial?
 (18) A: No there wouldn't be any problem.
 (19) Q: Okay. Have you heard anything about who the master or
 (20) captain of the Valdez was at the time?
 (21) A: I've just - other than the normal news said Mr. Hazelwood.
 (22) Q: Mr. Hazelwood didn't hear anything about Mr. Hazelwood?
 (23) A: I did hear about the trial in Valdez where they - I
 (24) believe it was in Valdez that they tried him there and he was
 (25) found innocent or acquitted or whatever. I just know I heard

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- (1) some of the trial. That's the end result.
 (2) Q: You understand that whatever happened in that trial -
 (3) well is - can't be substituted for the judgment of this - of
 (4) a jury picked here, right?
 (5) A: Yes, sir.
 (6) Q: And you will put that out of your mind and decide this case
 (7) on the evidence that comes into court and under the
 (8) instructions given you by the Judge?
 (9) A: Yes, sir.
 (10) MR NEAL: Thank you, Mr. BAD.
 (11) THE COURT: Mr. O'Neill?
 (12) MR O'NEILL: Pass for cause.
 (13) MR SANDERS: Pass for cause.
 (14) THE COURT: Mr. Dean, that completes this stage of the
 (15) matter. We won't need you for the rest of today. The jury
 (16) clerk will contact you by telephone as soon as we need you
 (17) back, okay? Thank you, sir.
 (18) THE CLERK: Your Honor, this is juror number eight.
 (19) Nancy L. Provost.
 (20) THE COURT: Ms. Provost, you have answered under oath
 (21) the questionnaire we submitted to you. By agreement, counsel
 (22) are now going to each take ten minutes per side to ask you a
 (23) few follow-up questions. Mr. O'Neill?
 (24) MR O'NEILL: Thank you, Judge.
 (25) JURY VOIR DIRE

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- (1) BY MR O'NEILL:
 (2) Q: Hi.
 (3) A: Hi.
 (4) Q: Ma'am, how long have you lived in Alaska?
 (5) A: Two years.
 (6) Q: And where did you live before there?
 (7) A: In - well, I was raised in Indiana, I lived in Kentucky
 (8) for four years before coming here.
 (9) Q: And then where before Kentucky?
 (10) A: Indiana.
 (11) Q: So you're a Hoosier?
 (12) A: Yes, I am.
 (13) Q: And why did you come to Alaska?
 (14) A: My husband died, my oldest daughter died and my daughter
 (15) lives here.
 (16) Q: So you came to be with your daughter?
 (17) A: Yeah, she wouldn't let me stay by myself, so she said come
 (18) up with me. Mom.
 (19) Q: Did you come up willingly or kicking and screaming?
 (20) A: No, willingly.
 (21) Q: Do you like it up here?
 (22) A: Yeah, I'm real pleased with it.
 (23) Q: Why do you like it up here?
 (24) A: I like snow for one thing.
 (25) Q: You do like snow?

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- (1) A Yeah, I like to sit in the house and watch it
 (2) Q You came to the right place didn't you?
 (3) A Right
 (4) Q What do you do with your spare time?
 (5) A Oh I baby sit I live with my daughter and we have four
 (6) girls and a boy that are - so they keep me busy
 (7) Q That means you don't have any spare time?
 (8) A Well yeah, they go to school through the day, so -
 (9) Q Where were you when the Valdez oil spill happened?
 (10) A In Indiana
 (11) Q Do you recall reading about it at the time?
 (12) A My daughter called me She lived up here and she called
 (13) and told me this happened We watched it on the news, but no,
 (14) we didn't really follow it
 (15) Q Did you have any reaction one way or the other when it
 (16) happened?
 (17) A Just that's a shame, you know, that it happened
 (18) Q Do you have any feelings about it after living up here for
 (19) two years? Do you have any additional feelings insights?
 (20) A No, I really don't I really - I've really not followed
 (21) it, you know I just haven't been involved in it
 (22) Q Have you ever had any problems in your life with family
 (23) members or such that have had problems with alcoholism?
 (24) A No Been very fortunate, no
 (25) Q If the evidence in the case and the law that the judge

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- (1) tells you about in the case is such to result in an award of
 (2) punitive damages could you do that? Could you sit in judgment
 (3) of Exxon Corporation and if the evidence the facts and the
 (4) law support such a judgment could you bring in an award of
 (5) punitive damages against Exxon Corporation?
 (6) A I believe I could
 (7) Q If the facts and the law supported an award of punitive
 (8) damages against Exxon Corporation in the billions of dollars
 (9) could you operate in that realm? Could you do that if that's
 (10) what the facts and the law supported?
 (11) A I imagine so if I had to, yeah, you know, yeah I think
 (12) so
 (13) Q Have you given any thought over the last day or two to
 (14) being a juror in this case?
 (15) A Yeah, gave a lot of thought to it
 (16) Q Do you want to share those thoughts with me?
 (17) A Well, it's just, you know, I want - I would like to do it,
 (18) I would like to help, but yet it's an inconvenience, you know
 (19) it's time consuming
 (20) Q It is very time consuming
 (21) A Right
 (22) Q And it's - without trying to be preacher it's also your
 (23) duty as a citizen
 (24) A Right, right, right
 (25) Q Between the time of the voir dire or when we had

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- (1) everybody - between the time when we had everybody over in the
 (2) other courtroom -
 (3) A Right
 (4) Q - and today have you had any misgivings or such about
 (5) your ability to be fair in the case or are you here ready to
 (6) go to work as a juror?
 (7) A Well, I - I have to say I've had doubts, you know, can I
 (8) really do this, am I smart enough to do this Yeah I've
 (9) thought about it
 (10) Q Do you think you're ready to go?
 (11) A I'd sure give it a try
 (12) MR O NEILL Thank you
 (13) JURY VOIR DIRE
 (14) BY MR SERDAHELY
 (15) Q Doug Serdahely for Exxon Is it Miss or Ms or Mrs do
 (16) you prefer Mrs ?
 (17) A I go by Mrs , I'm a widow
 (18) Q Mrs Provost you came here two years ago?
 (19) A Yes, I did
 (20) Q And you're living with your daughter in Wasilla?
 (21) A Yes, I am
 (22) Q What does your daughter do?
 (23) A She is the manager of the entertainment facilities at Fort
 (24) Rich
 (25) Q Is that a eating facility or -

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- (1) A It's a restaurant, have disco, have a ballroom, they have
 (2) parties and catering, you know, weddings, wedding receptions
 (3) Q They serve alcohol?
 (4) A Yes, they do
 (5) Q And does your daughter have any regular contact with the
 (6) problems - well let me ask are there any problems that arise
 (7) out of the club surrounding -
 (8) A If there are problems she calls the MPs and they handle it
 (9) Q And there are no more problems after that?
 (10) A Right
 (11) Q Have you discussed those problems with your daughter from
 (12) time to time?
 (13) A Yeah, she's told me incidents that's happened, you know
 (14) Q Anything about that discussion or those incidents that
 (15) would affect your ability to be a fair juror here today?
 (16) A No
 (17) Q Do you like to read mystery stories?
 (18) A Yes, I do
 (19) Q What kind of books do you like to read?
 (20) A I like Carter Brown, I like Agatha Christie, just you know
 (21) mysteries
 (22) Q And how about films do you like mystery films?
 (23) A Yes, I do, uh-huh
 (24) Q What was the last good mystery film you saw?
 (25) A Well, I don't know if it was a mystery, The Firm, I liked

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- (1) It real well
 (2) Q Did you read the book The Firm too?
 (3) A Yeah
 (4) Q How about The Client?
 (5) A I beg your pardon?
 (6) Q The other book that the author wrote The Client have you
 (7) read that?
 (8) A No, I haven t read it
 (9) Q In Indiana you were a factory worker?
 (10) A Yes sir
 (11) Q If I recall for some period of time right?
 (12) A Yes, uh huh
 (13) Q You were a specialty connector?
 (14) A Yes, that was the name of the company
 (15) Q What exactly did you do for that company?
 (16) A Made electrical connectors for, well, your circuit boards
 (17) We had a lot of different people, Hewlett Packard, we made
 (18) parts for computers, airplanes, just you know, all different
 (19) parts that they bought from us
 (20) Q And these would be parts that would be installed in
 (21) electronics like computers?
 (22) A Yes
 (23) Q Any navigations?
 (24) A Microwave ovens Just, you know
 (25) Q Any navigational instrumentation for aircraft or -

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- (1) A Electrical, little electrical connectors It was
 (2) electrical, is what we did
 (3) Q And then you served for a while or you worked for a while
 (4) as a nurse s aide Is that right?
 (5) A Quite a while, yeah
 (6) Q And in that capacity you had as I understand a
 (7) supervisory role?
 (8) A Occasionally, occasionally I passed medicines, and on the
 (9) nights that the nurse was off, I took charge nurse
 (10) Q How large of a staff did you have working under you when
 (11) you were in charge?
 (12) A Not that big, maybe four or five girls
 (13) Q And in the course of these duties did you have a chance to
 (14) delegate responsibilities to your - the folks working for you?
 (15) A Yes, sir
 (16) Q And did you expect them to carry out those duties?
 (17) A Yes, sir
 (18) Q Did you ever have an occasion where somebody didn t carry
 (19) out the duties?
 (20) A Yes, sir
 (21) Q Did you have a disciplinary problem then?
 (22) A No, I went to my supervisor and they took care of it
 (23) Q Have you had any prior jury service Mrs Provost?
 (24) A Never
 (25) Q How about your daughter?

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- (1) A Yes my daughter served for state trial I think three
 (2) years ago three or four
 (3) Q In your questionnaire you indicated you thought you
 (4) recalled something about the Alaska settlement arising out of
 (5) this oil spill Could you tell me a little bit about that
 (6) ma am?
 (7) A I remember hearing on TV that Exxon paid the State of
 (8) Alaska, I believe
 (9) Q Right
 (10) A Some millions but I couldn t even tell you how many
 (11) Q Anything about that coverage or that piece of information
 (12) that would affect your ability to be fair and impartial here?
 (13) A No
 (14) Q Okay Do you have any strong views one way or the other
 (15) about the oil industrial in Alaska?
 (16) A (Shakes head from side to side)
 (17) Q Oil companies?
 (18) A No
 (19) Q Exxon or Arco or Alyeska?
 (20) A I know - I don t know that much about them I really
 (21) don t
 (22) Q Is the oil industry a major industry in Indiana?
 (23) A No, sir
 (24) Q Or where you lived after that?
 (25) A No, sir

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- (1) Q And let me ask you this question On the questionnaire
 (2) you indicated that you do not use alcohol yourself?
 (3) A No, I don t
 (4) Q Does your daughter or any members of their family?
 (5) A Just occasionally have a drink, you know, if they go to a
 (6) party or something, but no, they don t
 (7) Q Have you had any problems in your family or with your close
 (8) friends with alcohol?
 (9) A We had one close friend, my husband did, that would drink
 (10) Q Could you tell me a little bit about that please?
 (11) A He just had a drinking problem and wouldn't get help, you
 (12) know My husband tried to talk him into it but he just would
 (13) not
 (14) Q And he never never volunteered for rehabilitation?
 (15) A No
 (16) Q Anything about that experience that would affect your
 (17) ability to be a fair juror here?
 (18) A No
 (19) Q I noticed Mrs Provost on your questionnaire the last
 (20) question in the questionnaire asks is there any reason why you
 (21) cannot sit on this jury panel throughout the course of the
 (22) trial and you left it blank if I recall Is there any reason
 (23) why you could not sit on this jury panel at this time?
 (24) A No, I don t work I baby sit for my daughter, but they
 (25) said if I was needed here, they could find another

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- (1) Q They could find somebody else to baby sit?
 (2) A Yes
 (3) Q I think the Court will tell you that we'll run from eight
 (4) to two in the afternoon that will give you some time in the
 (5) afternoon to come back and do baby sitting
 (6) A Well, my son in law is going to work the night shift He
 (7) said he would go in days or nights and he said he would go in
 (8) at 3 30
 (9) Q So he can arrange his affairs that would help?
 (10) A Right
 (11) Q Good
 (12) A Then I have a 16 and 15 year old grandson and granddaughter
 (13) that can do it in the summer you know
 (14) Q Kind of a built in baby sitter?
 (15) A Yeah, yeah
 (16) Q That's terrific Thanks very much
 (17) MR O NEILL Pass for cause
 (18) MR SERDAHELY We pass this juror for cause Your
 (19) Honor
 (20) THE COURT Thank you Ms Provost this completes the
 (21) process for now We will be calling you back The clerk will
 (22) be calling you back but you can go about your business now
 (23) Just be available for her call in the next day or thereabouts
 (24) MR O NEILL Your Honor it appears that juror 34
 (25) Irma R Liston is a class member

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- (1) THE COURT Are we agreed that she should be excused
 (2) MR NEAL Yes Your Honor
 (3) THE COURT I'll take care of it just a second
 (4) THE CLERK Your Honor this is juror number 21
 (5) Severin A Swanson
 (6) THE COURT Thank you Before we - before we begin
 (7) with Mr Swanson by agreement of counsel juror number 34
 (8) Irma Liston has been excused Would you tell the jury clerk
 (9) that she may locate and excuse Ms Liston?
 (10) THE CLERK Yes sir
 (11) THE COURT Mr Swanson you've answered your
 (12) questionnaire under oath By agreement with counsel they're
 (13) going to ask you some follow up questions that go beyond -
 (14) beyond the questionnaire Again counsel Mr - Mr Swanson is
 (15) the gentleman who I told you about earlier whose employed by
 (16) local construction company where there's been a death of the
 (17) owner of the company You might want to inquire a little bit
 (18) about that Mr O'Neill?
 (19) JURY VOIR DIRE
 (20) BY MR O NEILL
 (21) Q Tell me about the owner of the construction company
 (22) A He was my father in law and it happened about six months
 (23) ago and just - just things are real tight around there and
 (24) I'm a party of the company if I was - or unable to be there
 (25) for a long period of time, it would deeply impact the company

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- (1) Q Would that - you'd have a problem sitting here
 (2) concentrating on this?
 (3) A Yes
 (4) Q And worrying about that?
 (5) A That and I'm going through a divorce
 (6) Q And you're going through a divorce at the same time?
 (7) A Yes
 (8) MR O NEILL I think this young man has a enough
 (9) problems without having to put up with us Your Honor
 (10) MR SANDERS I agree
 (11) THE COURT I'm satisfied too Mr Swanson thank
 (12) you for being with us and you're excused sir
 (13) THE CLERK Your Honor this is juror number 23 Cindy
 (14) L Zinck
 (15) THE COURT Thank you Ms Zinck you've answered
 (16) your questionnaire under oath and the attorneys have examined
 (17) it and by agreement they're now going to ask you a few follow
 (18) up questions with respect to the questionnaire Mr O'Neill?
 (19) MR O NEILL Thank you Judge
 (20) JURY VOIR DIRE
 (21) BY MR O NEILL
 (22) Q HI
 (23) A HI
 (24) Q You work in the accounting division of the Mat Su Borough?
 (25) A Uh huh

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- (1) Q What do you like about it?
 (2) A Is this a fair question?
 (3) Q Yeah
 (4) A It's a job
 (5) Q A paycheck?
 (6) A Yes
 (7) Q Sound like that guy Johnny Paycheck had that country song
 (8) a few years ago?
 (9) A It's a good place to work
 (10) Q Are there things you don't like about it?
 (11) A Yeah
 (12) Q Could you tell me if everybody here promises not to tell
 (13) your employer can you tell me about it?
 (14) A It's mainly the politics
 (15) Q Lot of politics?
 (16) A Uh huh
 (17) Q That is sort of an aspect that you don't particularly
 (18) enjoy?
 (19) A It's not that I don't enjoy it, it's just that it gets a
 (20) little rough at times
 (21) Q Let me ask another off the wall question When you make
 (22) decisions in your own personal life do you like to make them
 (23) by yourself or do you like to make them after discussion with a
 (24) group important decisions
 (25) A I would consider my husband to be my group

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- (1) Q Yeah do you and he generally try to talk things over?
 (2) A Definitely
 (3) Q And is it win lose or do you try to come to consensus?
 (4) A We do pretty well
 (5) Q You're a lifetime Alaskan?
 (6) A Yes
 (7) Q Do you like it here?
 (8) A Love it
 (9) Q Why?
 (10) A Summers
 (11) Q You like the - so you like 30 days out of the year huh?
 (12) A 90 90 days
 (13) Q As a lifetime Alaskan do you have any feelings about the
 (14) oil industry in the State?
 (15) A Yeah
 (16) Q Could you tell me what they are?
 (17) A Well, the oil industry's brought in a lot of money to the
 (18) state, which is good, but if we're referring to the spill, I
 (19) don't feel so good about that. It wrecked a lot of places
 (20) Q At the end of your questionnaire you talk about both a
 (21) vacation plan and your workload. In the day or two since you
 (22) filled out the questionnaire have you given any thought to
 (23) accommodating your work load and your vacation plans to sit
 (24) here as a juror? Can that be done do you think?
 (25) A I didn't talk to my employer about it. But I'm sure that

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- (1) can be worked out
 (2) Q How about your -
 (3) A My vacation?
 (4) Q Yeah
 (5) A It's real important. I mean it's summer, but it can be
 (6) worked out too.
 (7) Q That could be worked out too. I was just trying to figure
 (8) out a political way to get into the subject but the subject of
 (9) alcoholism is going to play a major role here in this
 (10) courtroom. Have you had problems in your family with friends?
 (11) A Yes
 (12) Q Could you tell me about it?
 (13) A My father's an alcoholic and almost died last July. My
 (14) uncle died of alcoholism. My little sister is into drugs and
 (15) yeah big time. I was raised with it.
 (16) Q Is it - there are - we all make a lot of decisions in our
 (17) lives and can you put that over to one side do you think and
 (18) try to be fair to everybody as we fight over the wreck of the
 (19) Valdez and with the subject of alcoholism being kicked around
 (20) in the courtroom?
 (21) A To be real honest I'm not sure
 (22) Q The subject that we're going to be discussing in the
 (23) courtroom is different than your family other people at
 (24) another time. Do you think that might help you separate the
 (25) two?

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- (1) A Well I would definitely try
 (2) Q You think - you consider yourself a fair minded
 (3) individual I would assume. That's a safe question to ask?
 (4) A Yes, I would
 (5) Q When you say you would try does that mean you think you
 (6) can?
 (7) A Yeah
 (8) Q It's a little preachy but there are a lot of times in our
 (9) lives when we have to sit and make decision and put things -
 (10) our experiences push them off learn from them a little bit
 (11) but push them off a little bit too. Do you think you can do
 (12) that in this case?
 (13) A I - I guess so
 (14) Q We all have - well?
 (15) MR O NEILL. Thank you
 (16) JURY VOIR DIRE
 (17) BY MR NEAL
 (18) Q Ms Zinck I'm Jim Neal. I represent the Exxon defendants
 (19) good morning
 (20) A Good morning
 (21) Q You in your questionnaire said your family had a fishing
 (22) permit for Deep Creek?
 (23) A Uh huh
 (24) Q You have to help me out a little bit here but is that
 (25) broken down into - is that a permit to catch anything or

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- (1) permit to catch certain types of fish?
 (2) A I'm not real sure. It was my brother in law and he just
 (3) had a - I think it was a subsistence net thrown out and it was
 (4) last summer but I'm not real sure
 (5) Q You don't know whether he has it now or has had it for a
 (6) certain period of time or -
 (7) A He had it for last summer, and that's all I know
 (8) Q You don't know whether he has it now or not?
 (9) A No, I don't
 (10) Q And you don't know whether it's a permit to catch one kind
 (11) of fish or another kind of fish?
 (12) A He was catching salmon, that's all I know
 (13) Q Salmon in Deep Creek?
 (14) A Clam Gulch somewhere right in there yeah. He stayed on
 (15) the beach
 (16) MR NEAL Your Honor could I consult just a moment
 (17) THE COURT Sure
 (18) (Bench conference off the record with Mr Neal)
 (19) BY MR NEAL
 (20) Q Are you close to your brother in law?
 (21) A Not real close. He lives in - he lives out of Fairbanks
 (22) so we don't see him much
 (23) Q Let me ask you a question about this and I do - sure do
 (24) appreciate this. Sometimes - sometimes the system puts a
 (25) person in a near impossible position the legal system and

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- (1) you re the only one who can answer these questions There will
 (2) be a good bit of evidence about consumption of alcohol in this
 (3) case Some of that will be disputed some of it will be
 (4) acknowledged There may be proof in this case about a person
 (5) who sought help got that help and then whether it was right
 (6) or wrong resumed some drinking Assuming those - that to be
 (7) part of the evidence and in recognition of your experience
 (8) with I believe you said your uncle?
 (9) A And my father
 (10) Q Who died of alcoholism and your father who almost died
 (11) Assuming the evidence to be something like I said I think the
 (12) Court will instruct you that you must assure us that you can
 (13) put aside your personal information and personal experiences
 (14) and decide the case simply by what we present here in court
 (15) under the guidance with respect to the law given you by the
 (16) Judge I d like for you to tell me whether you re confident
 (17) you can do that or not and there s no right answer A
 (18) forthright honest answer is the only thing I m looking for
 (19) A I m really not sure that I can
 (20) MR NEAL Could we approach Your Honor?
 (21) (Side bar off the record with Mr Neal and Mr O Neill)
 (22) MR NEAL Your Honor that side bar doesn t count
 (23) against my time does it?
 (24) THE COURT No
 (25) BY MR NEAL

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- (1) Q Ms Zinck you ve been to Valdez and I take that to mean
 (2) Prince William Sound?
 (3) A Yes
 (4) Q Both before and after the spill?
 (5) A Yes
 (6) Q Is that correct?
 (7) A Uh huh
 (8) Q What was your perceptions about the Sound after the spill?
 (9) A Actually It didn t look that much different to me
 (10) Q Didn t look that much different?
 (11) A I didn t go onto the beaches
 (12) Q Sorry pardon?
 (13) A I didn t really go onto the other beaches except for
 (14) Valdez
 (15) Q Did you fish down there after the spill?
 (16) A Uh huh
 (17) Q And I think you said you re a recreational boater?
 (18) A Yes
 (19) Q And did you recreationally boat down there?
 (20) A Yes
 (21) Q After the spill - you enjoy that I m sure You ve
 (22) followed to some extent the grounding of the Valdez?
 (23) A Yes, I did
 (24) Q Anything stick out in your mind as you sit there? Now
 (25) forget what we said or what somebody said the day before

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- (1) yesterday now but in recollecting back to the spill and the
 (2) publicity that you read some of anything stick out in your
 (3) mind about that?
 (4) A The dead wildlife, by all means The lack of fish
 (5) Q And what about other aspects say the grounding itself?
 (6) A Well I remember it I mean it s -
 (7) Q Did you - did you come - as a result of what you ve seen
 (8) read or heard did you come to any opinion at the time about
 (9) what caused the grounding?
 (10) A Yeah
 (11) Q Okay Would you mind sharing that with us?
 (12) A Well, I thought it was because he was drunk at the wheel
 (13) Q And he being the captain?
 (14) A Right
 (15) Q That publicity about that impressed you correct?
 (16) A Yes
 (17) Q Do you still have that opinion?
 (18) A I m not quite sure I think there s a lot more to it than
 (19) what we have seen
 (20) Q And you re willing to listen to whatever - to the evidence
 (21) based on that issue?
 (22) A Yeah
 (23) Q All right Having that reaching that - and I believe you
 (24) said that was your opinion at the time of the spill that he
 (25) was drunk at the wheel Having that opinion at that time and

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- (1) the way you sit there now would Captain Hazelwood or any of
 (2) the defendants have to put on any proof to - as you sit
 (3) there - to change your present opinion?
 (4) A Yes
 (5) MR NEAL Your Honor I think I will stop here and
 (6) ask for indulgence of the Court
 (7) THE COURT Ms Zinck this completes the
 (8) questioning If you d return to the jury room and standby for
 (9) just a few minutes we ll be back to you shortly
 (10) MR NEAL Your Honor we challenge this very nice
 (11) lady for cause for the reasons that I don t think it does -
 (12) the Court appreciates everything here very quickly for all
 (13) the reasons at the side bar does the Court want because we
 (14) didn t have it recorded does the Court want me for the
 (15) record -
 (16) THE COURT Just make a quick record of it yeah
 (17) MR NEAL For the record there is certainly a
 (18) question I m not capable of resolving but there is a question
 (19) whether she her brother in law is a member of the plaintiff
 (20) class that s at least a question
 (21) Second she said that she did not think or was not sure I
 (22) don t remember the verblage that she could put aside her
 (23) personal experiences rather tragic with alcohol and decide
 (24) this case on the proof submitted in court and under the
 (25) instructions of the Judge

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(1) Third she s now stated that she - it would - she has an
 (2) opinion as to Captain Hazelwood and his position and condition
 (3) at the time of the grounding and that it would take proof by
 (4) the defendant to dislodge or change that opinion so we
 (5) challenge for cause
 (6) THE COURT Mr O Neill?
 (7) MR O NEILL From what she described her
 (8) brother in law is not a member of the class From what she
 (9) described he was a - one of the people who got one of these
 (10) one year one shot subsistence permits I don t know him to be
 (11) a member of the class there s no evidence that he was a member
 (12) of the class And she is not close to her brother in law
 (13) With regard to the lady s answer to the questions
 (14) concerning drinking I want to address the last question
 (15) first You have to listen to the questions that lead up to
 (16) that She was asked are you willing to listen to the
 (17) evidence? Yes
 (18) She was asked what her view was at the time of the spill
 (19) about the cause of drinking but Mr Neal followed up and said
 (20) what do you think now and she says I think it s much more
 (21) complicated than that And then based upon are you willing to
 (22) listen to the evidence and I think it s much more complicated
 (23) than that we did get this sort of odd ambiguous question
 (24) would Captain Hazelwood have to put on proof to change your
 (25) present opinion Well the two questions that led to that is

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(1) I m willing to listen to the evidence and I think it s much
 (2) more complicated now I think that this woman evidences the
 (3) care concern sole searching kind of person that we want in a
 (4) juror and she said she could be fair and she never said I
 (5) can t be fair and the question can you be fair I always
 (6) thought was the test Thank you
 (7) THE COURT I am - I am not going to excuse Mrs
 (8) Zinck I don t believe that there is any conflict as far as
 (9) the fishing permit situation is concerned
 (10) With respect to her answers on the other matters I am not
 (11) convinced that this lady has answered questions in such a
 (12) fashion as to evidence a bias or prejudice which - which she
 (13) would be unable and unwilling to set aside Counsel, I - you
 (14) know I m kind of splitting hairs on this one The one I ruled
 (15) on yesterday I thought was just over the line This one I
 (16) think is maybe just short of it but I - that s the way I see
 (17) It so she will stay
 (18) THE CLERK Your Honor would you like me to bring Ms
 (19) Zinck back in?
 (20) MR NEAL Thank you Your Honor
 (21) THE COURT You may tell her - huh?
 (22) MR O NEILL Nothing Judge
 (23) THE COURT You may tell her we will get back to her
 (24) when we need her again in 24 hours or whatever and call
 (25) another juror

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(1) THE CLERK Your Honor this is Cathy Fricke juror
 (2) number 24
 (3) THE COURT Thank you Ms Fricke you have answered
 (4) our questionnaire under oath The attorneys by agreement are
 (5) now going to ask you some follow up questions They ll take
 (6) each take about ten minutes a side to ask you some follow up
 (7) questions Mr O Neill?
 (8) MR O NEILL Thank you Judge
 (9) JURY VOIR DIRE
 (10) BY MR O NEILL
 (11) Q How are you ma am?
 (12) A Fine
 (13) Q I m going to ask some questions about you and your
 (14) background and if I seem to be getting personal I am
 (15) A I ll tell you
 (16) Q I m sure you will When did you come to Alaska?
 (17) A January, 91
 (18) Q And why?
 (19) A Start over Had a divorce come up here, start a new
 (20) life
 (21) Q And where do you work now?
 (22) A Well, I m on the school board in the Mat-Su Valley and I
 (23) write, freelance writer
 (24) Q What kind of things do you write about?
 (25) A Humor

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(1) Q Oh you do?
 (2) A Oh, yeah, this will be fun
 (3) Q You don t have any reason not to come here and sit with
 (4) us? No competing forces in your life you can write in the
 (5) evening?
 (6) A You know I m going to be quite frank with you
 (7) Q Yeah
 (8) A On the way here, I was thinking what can I say that can
 (9) alienate me from both sides and what could I do that would be
 (10) biased because I have my summer planned And in all honesty,
 (11) there isn t anything
 (12) MR NEAL I m sorry we couldn t hear that
 (13) MS FRICKE There isn t anything there s no reason
 (14) BY MR O NEILL
 (15) Q Like sitting on the school board sitting on a jury is a
 (16) public duty so you re here and ready to serve I would guess
 (17) then huh?
 (18) A Yes
 (19) Q Can you think of any reasons why you couldn t be fair to
 (20) everybody move aside predisposition past thoughts and get on
 (21) with the business of being a judge of the facts in the case?
 (22) A No, I think I could be fair
 (23) MR O NEILL Thanks
 (24) MR SANDERS I ll be up there in a minute
 (25) MS FRICKE Okay

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- (1) JURY VOIR DIRE
 (2) BY MR SANDERS
 (3) Q Ms Fricke my name is Jim Sanders I represent the Exxon
 (4) defendants You grew up in Maryland?
 (5) A Yes
 (6) Q You got any relatives in country music?
 (7) A It s my ex s side
 (8) Q Oh okay
 (9) A Yeah Janey Fricke
 (10) Q She lives in Nashville now?
 (11) A Yeah I think she was originally from Michigan or Ohio
 (12) Who knows
 (13) Q I didn t mean to bring up a sore subject
 (14) Tell me a little bit about the freelance writing that you
 (15) do Is that for newspapers or periodicals or books?
 (16) A Periodicals I was going to come up here and write a book
 (17) but I ended up getting on the school board, so I don t have
 (18) much time and I ve had writer s block or avoidance
 (19) Q One or the other?
 (20) A Yeah
 (21) Q What about your wood carving what kind of wood carving do
 (22) you do?
 (23) A Well, I do metal sculpture and wood carving blrds you
 (24) know, like the ducks
 (25) Q All kinds of species of ducks?

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- (1) A I sculpt I - yeah Anything
 (2) Q You undoubtedly have read or heard something about the
 (3) grounding of the Exxon Valdez and the oil spill?
 (4) A Yes
 (5) Q Did you read about it in the paper? You weren t up here at
 (6) the time that it happened correct?
 (7) A No, I wasn t
 (8) Q Did you read about it in the paper at that time?
 (9) A I don t know if I read it in the paper or I had seen it on
 (10) the news
 (11) Q National news?
 (12) A Yeah, I think it was the national news
 (13) Q Did you see any pieces on it other than just news clips and
 (14) regular half hour hour -
 (15) A That was about it, yeah
 (16) Q What sticks in your mind about the grounding publicity?
 (17) A The event, just it happened That s what I remember
 (18) Q Based on anything - well let me ask you another
 (19) question Have you read any books about it?
 (20) A No
 (21) Q Have you read any articles or think pieces on it?
 (22) A I think I - well, I ve read some - our newspaper, you
 (23) know, reporting on it, but it s embarrassing I haven t really
 (24) paid much attention
 (25) Q Don t be embarrassed There are no right or wrong answers

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- (1) here Just what you remember and recall and what you think is
 (2) what s important to us Have you seen any movie about it?
 (3) A No
 (4) Q Based on what you heard about it or read about it or saw
 (5) about it before you came in here to court the day before
 (6) yesterday what do you think caused the grounding?
 (7) A I don t know Oh, I did find out when I was here I think
 (8) they said a reef I had never - I had never really known how
 (9) it had ground I had not paid attention
 (10) Q You marked in your questionnaire quite candidly that you
 (11) have a somewhat unfavorable impression of Exxon Corporation
 (12) and since we re a defendant here we re interested in that
 (13) Tell me about that What is - why do you have that
 (14) impression?
 (15) A Because I - from the media Just the news, from things
 (16) that I ve read
 (17) Q Can you give me any more specifics on that? What s bad or
 (18) unfavorable to you about Exxon?
 (19) A I don t know if I thought they were cold or distant or not
 (20) caring I don t know
 (21) Q Do you get that impression in connection with the grounding
 (22) in the oil spill or is that just a free standing picture of a
 (23) corporation?
 (24) A Well, you have to admit, you haven t got the best
 (25) publicity And I m just a victim of it

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- (1) Q Well I m glad I m asking the questions But it is
 (2) connected to the oil spill and the grounding right?
 (3) A Yeah, I - yeah, the cleanup I think it talked about
 (4) that I just really haven t paid attention
 (5) Q But you have - you have that impression?
 (6) A Sure
 (7) Q And we have to work with that a little bit here
 (8) A Sure you do Lot of people I got up too early, I m
 (9) sorry
 (10) Q Don t apologize I appreciate your honesty here What
 (11) did - what did we do wrong your impression of what we did
 (12) wrong
 (13) A Ground the tanker, I guess It s the accident, itself I
 (14) don t know Just every time you see something like that, you
 (15) think how can it - how could it have been prevented, or why
 (16) did it happen
 (17) Q Do you have anything in mind of what should have been done
 (18) to prevent it? Or is it just this is awful and somebody ought
 (19) to be responsible and that s bad?
 (20) A Yeah Not - you know, I don t have a clue on how to -
 (21) you just see an event, you think this is terrible, how did
 (22) that - you know, how did that happen and what s it going to
 (23) do, things like that
 (24) Q You think you know how it happened?
 (25) A No

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- (1) Q All right and do you think that you would be interested in
 (2) knowing how it happened and what happened?
 (3) A If I say no - actually, I'm always interested in the
 (4) truth, both sides. I like to know
 (5) Q Well are you - are you willing to listen to both sides
 (6) and wait till you hear both sides before you figure out what
 (7) the truth is or is your feeling about Exxon something that's
 (8) going to make that - get in the way of that?
 (9) A No. No. I - on the school board you get both sides of
 (10) the issue a lot of times and each side has a good point and
 (11) then you have to weigh that. What's the law, what's ethical -
 (12) Q Do you -
 (13) A - what's emotional
 (14) Q In this case there's a - particularly in the first phase
 (15) we're going to talk about whether Exxon is guilty of and
 (16) Captain Hazelwood guilty of not meeting a standard of conduct
 (17) which would make it perhaps liable for punitive damages and if
 (18) the answer to that is yes then we would have a phase three
 (19) We're going to have phase two that's on compensatory damages
 (20) Do you see a - do you see a distinction between compensatory
 (21) damages which is actual damages that people were hurt
 (22) sustained and punitive damages which are over and above those
 (23) actual damages? Do you appreciate a distinction between those
 (24) two?
 (25) A Yes

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- (1) Q Do you think there ought to be that distinction?
 (2) A If the law allows it
 (3) Q Do you agree with that? Do you feel like that's fair? Not
 (4) asking you whether you would follow the law I'm just asking
 (5) how you feel about it?
 (6) A Well, yeah I guess things are fair. It all depends on
 (7) how, you know, how you present the sides. It's hard to say
 (8) without everything in front of you
 (9) Q But going into it is it - will you give the Exxon people
 (10) a fair chance and hear them out on these issues just like you
 (11) will the plaintiffs in this case?
 (12) A Yes, I would
 (13) THE COURT Mr O'Neill?
 (14) MR O'NEILL Pass for cause
 (15) MR SANDERS Pass for cause Your Honor
 (16) THE COURT Ms Fricke thank you you're excused for
 (17) the day now and we will call you back when - the clerk will
 (18) call you back when we next need you
 (19) MS FRICKE You don't need me here
 (20) THE COURT We don't need you here today
 (21) MS FRICKE Ever here?
 (22) THE COURT No we don't need you today We'll call
 (23) you back as soon as we need you back Okay?
 (24) THE CLERK Your Honor this is Celestial Barattiero
 (25) juror number 29

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- (1) THE COURT Ms Barattiero you've answered our
 (2) questionnaire under oath. The attorneys are now going to ask
 (3) you some follow up questions that go a little bit beyond your
 (4) questionnaire Mr O'Neill?
 (5) MR O'NEILL Thank you Judge
 (6) JURY VOIR DIRE
 (7) BY MR O'NEILL
 (8) Q How are you ma'am?
 (9) A Fine, thank you I think
 (10) Q I'll stop here I have your questionnaire that I want to
 (11) talk with you about a little bit. It says in the questionnaire
 (12) that you have trouble hearing with your left ear?
 (13) A Yes, I don't hear out of my left ear. If you are not
 (14) facing me, I can't hear what you're saying. If you're talking
 (15) and looking that way, I can't hear you
 (16) Q How about if I was to play a audio tape?
 (17) A I've never tried it so I can't answer that
 (18) Q You know like a tape cassette or a radio?
 (19) A Oh, well yes, I listen to the radio
 (20) Q I mean you can listen to the radio and you get on the right
 (21) side. You see the speakers up here?
 (22) A Uh huh
 (23) Q If I was to put a cassette tape in so that it came out of
 (24) the speakers could you adjust yourself so you could hear the
 (25) cassette?

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- (1) A Yes
 (2) Q On your good ear do you have any tone problems high or
 (3) low?
 (4) A No, I don't think so
 (5) Q In question - well let me ask another question because
 (6) we might as well just get it out. Your daughter works for
 (7) Birch Horton?
 (8) A Yes, sir
 (9) Q Have you ever talked to your daughter about the case?
 (10) A About this case?
 (11) Q Yeah
 (12) A No, sir I mean when this came up, I was still living in
 (13) Florida, it was 1989 I've only been here since 1991, January
 (14) of 1991
 (15) Q Do you live with your daughter's family?
 (16) A Yes, I do. We watch the news, I read the papers
 (17) Q And the daughter works at Birch Horton?
 (18) A Yes, sir
 (19) Q I wish you didn't live with your daughter's family ma'am
 (20) A It was my choice to live with either six grandchildren or
 (21) two, and I opted for the two
 (22) Q We - and I can explain it Birch Horton represents some
 (23) of the folks on my side
 (24) A Oh
 (25) Q And the fact that you're going to be seeing your daughter

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- (1) every night and she works at Birch Horton I m afraid creates
 (2) a real problem with us having you as a juror And -
 (3) A This has not made me unhappy
 (4) Q But you know it makes me very unhappy It makes me very
 (5) unhappy ma am But -
 (6) THE COURT Mr Sanders?
 (7) MR SANDERS I agree Your Honor
 (8) THE COURT Ms Barattiero thank you for coming in
 (9) but we do need to excuse you under the circumstances
 (10) MS BARATTIERO For now? When you say excuse me
 (11) what do you mean?
 (12) THE COURT You re all through
 (13) MS BARATTIERO All through period ?
 (14) THE COURT All through You can go Be careful when
 (15) you step down there there are two steps there and sometimes
 (16) people miss the first one
 (17) THE CLERK Your Honor this is juror number 32 Sonya
 (18) Irish
 (19) THE COURT Ms Irish you ve answered our
 (20) questionnaire under oath and by agreements the attorneys are
 (21) now going to ask some follow up questions for about ten minutes
 (22) per each side okay? Mr O Neill?
 (23) MR O NEILL Thank you Judge
 (24) JURY VOIR DIRE
 (25) BY MR O NEILL

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- (1) Q Hi On your questionnaire on question about extremely
 (2) favorable somewhat favorable somewhat unfavorable extremely
 (3) unfavorable to governments aquaculture organizations
 (4) processors fishermen natives you didn t answer that one
 (5) A No, I didn t
 (6) Q Could you share with me why you had trouble answering it?
 (7) A No
 (8) Q You just - you just didn t want to answer it? Couldn t
 (9) figure out how to answer it didn t answer the question
 (10) A Pretty much just - do you want to just ask me a specific
 (11) question and I ll try and answer it? You know
 (12) Q Okay Do you have - what s your reaction with regard to
 (13) just sort of intuitive gut reaction with regard to fishermen?
 (14) A I like fishermen, I think that they re good for the
 (15) economy I don t have anything against fishermen My
 (16) brother in law, he s a fisherman
 (17) Q How about Exxon Corporation?
 (18) A Exxon? It was a little disturbing, a lot disturbing
 (19) actually to hear about what happened and all the damages to
 (20) the state out of Alaska I ve been here for many years and it
 (21) just wasn t a pleasant thing to hear about
 (22) Q Can you put those feelings aside? If you re a juror in
 (23) this case you get to sit in the jury box here?
 (24) A Yeah
 (25) Q You re essentially a judge if you re a juror like His

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- (1) Honor although he judges the law and you judge the facts Can
 (2) you put those feelings aside and do you think be fair to the
 (3) Exxon Corporation?
 (4) A I - I would try I d like to hear, you know, both sides
 (5) I guess I ve only heard negative
 (6) Q And I - from what you say you would - you d like to hear
 (7) both sides?
 (8) A Well, yeah, you need both sides to make you know make a
 (9) conclusion
 (10) Q And with whatever preconceived notions you have you could
 (11) sit here and put those notions aside and listen to him and
 (12) listen to me and listen to the witnesses and listen to the
 (13) judge and bring your best efforts to it I would guess?
 (14) A I would try
 (15) Q Do you see any serious reason why you wouldn t be
 (16) successful?
 (17) A No, I - I would honestly really try to see both sides
 (18) Q Now on question 82 which is the one about what - what
 (19) else do you have going on in your life do you think you can
 (20) leave your job between now and August and help us here with
 (21) this without a real real undue burden on your life?
 (22) A And these are just like business hours?
 (23) Q Eight to two?
 (24) A Eight to two Yeah, I don t - I don t see a problem with
 (25) that

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- (1) Q Eight to two every day Monday through Friday?
 (2) A Uh huh
 (3) Q Bright eyed and bushy tailed?
 (4) A Right
 (5) Q One of the issues that we re going to decide in this case
 (6) is the question of punitive damages Punitive damages are
 (7) damages that are for the purpose of punishing conduct which the
 (8) judge describes for you is unsuccessful if that s the judgment
 (9) you make and for setting an example to others Do you have
 (10) any problem if the facts in the courtroom are such and the law
 (11) that the Judge instructs you on is such that punitive damages
 (12) should issue can you do that? If that s what the facts
 (13) dictate and the law dictates?
 (14) A Yes
 (15) Q And the next question may seem funny to you but I want you
 (16) to think hard about it when I ask it If the facts and the law
 (17) are such that punitive damages ought to issue in the billions
 (18) of dollars billions of dollars if the facts are such and the
 (19) law is such that that s the case can you do that?
 (20) A Yes
 (21) MR O NEILL Thank you
 (22) JURY VOIR DIRE
 (23) BY MR LYNCH
 (24) Q Ms Irish my name is Pat Lynch I represent the Exxon
 (25) defendants and I ll be asking you some questions on behalf of

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- (1) all the defendants including Captain Hazelwood and as you
 (2) know what we're trying to do in this process is pick a fair
 (3) jury. And I listened carefully to your answers to Mr
 (4) O'Neill's questions and respected the fact that you indicated
 (5) that you would do your very best, you would try to -- to be
 (6) fair to both sides. But I got the impression that that would
 (7) take an effort on your part, is that fair?
 (8) **A Yeah.**
 (9) **Q** You start out with a feeling that that you have a hard time
 (10) with the defendant's side of the case?
 (11) **A (Nods head up and down)**
 (12) **Q** If you were in my position, representing the shareholders
 (13) and employees of Exxon Corporation, would you want a juror like
 (14) yourself to sit in this case?
 (15) **A No.**
 (16) **Q** You grew up in the Kodiak area?
 (17) **A No, I only lived in Kodiak for a year.**
 (18) **Q** Just for one year?
 (19) **A Uh huh.**
 (20) **Q** I see, and you mentioned that you get along with and like
 (21) fishermen. Did you have a lot of exposure to the fishing
 (22) industry?
 (23) **A No. This was when I was younger, my dad, he was stationed**
 (24) **over in Kodiak for a while, so --**
 (25) **Q** I see. One of the -- one of the answers in your

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- (1) questionnaire suggests that -- and excuse me, but our xerox
 (2) machine, I think it must be our xerox machine seems to only
 (3) have about half of each answer so I can read half a line and
 (4) then I got to guess what it is until I can get the next set of
 (5) words, so if this seems like a dumb question, I apologize, but
 (6) I couldn't understand about your answer. You bought a fishing
 (7) boat at one time?
 (8) **A No, my brother in law, he has a fishing site down on the**
 (9) **Kenai area and he -- he bought that last summer. And then my**
 (10) **sister, she just bought a fishing site just recently.**
 (11) **Q** Okay, when you say bought a fishing site, I'm not a
 (12) fisherman, could you fill me?
 (13) **A I'm not either.**
 (14) **Q** Your brother in law and sister commercial fishermen?
 (15) **A Well, they -- they bought a site where they can fish, they**
 (16) **can use their nets, and I don't really know too much about it**
 (17) **myself because I'm not a fisherman.**
 (18) **Q** You understand that they sell the fish they catch or they
 (19) just use it for --
 (20) **A Well, she hasn't done it yet, but I believe he did, he sold**
 (21) **the fish that he caught.**
 (22) **Q** Is this a site where they put the nets in the ground as
 (23) opposed to having a boat, are they setnetters?
 (24) **A Right, doesn't have a -- right, he uses the nets.**
 (25) **Q** And where are those sites?

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- (1) **A All I know is that they're in Kenai. I have not been down**
 (2) **to the sites.**
 (3) **Q** They're in the Kenai area?
 (4) **A Uh-huh.**
 (5) **Q** Now, Mr. O'Neill, at -- well, let me ask you another
 (6) question. I've got this one note that I can get out of the
 (7) way.
 (8) Do you have any feelings about Captain Hazelwood's role in
 (9) this case?
 (10) **A Do I have any feelings?**
 (11) **Q** Yes, you indicated that you -- that you had some feelings
 (12) about the Exxon defendants and I wondered if you had --
 (13) **A Well, I'm upset about the damage. I don't really -- I**
 (14) **don't really know too much on that. I don't know the man.**
 (15) **Q** As you -- before you came here for the first time, based on
 (16) what you've read and seen and heard, what was your
 (17) understanding of what caused the Exxon Valdez oil spill?
 (18) **A Before I -- before I read anything?**
 (19) **Q** No, before you came here, from what you had read and what
 (20) you'd seen on television or what you may have heard?
 (21) **A Well, that alcohol was involved and that was the main**
 (22) **cause. I don't know any differently.**
 (23) **Q** So did you -- did you know Captain Hazelwood's name?
 (24) **A Yes.**
 (25) **Q** Did you know anything else about Captain Hazelwood?

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- (1) **A Oh, no, not really.**
 (2) **Q** Had you heard from the press anything about his background
 (3) or anything like that?
 (4) **A No, I didn't.**
 (5) **Q** You indicated that you were concerned about the damage. Do
 (6) you have, as you sit here, a view about what damage resulted
 (7) from the grounding of the Exxon Valdez?
 (8) **A The wildlife is something that really kind of sticks out in**
 (9) **my mind.**
 (10) **Q** Do you have a view right now that the oil spill has caused
 (11) certain kinds of damage? I know I mean there was wildlife
 (12) killed and there was a lot of pictures of that object in the
 (13) television, but I mean after, in the subsequent years, do you
 (14) have a view about that?
 (15) **A No, not really.**
 (16) **Q** One of the issues in this case, of course, will be how much
 (17) fishermen were affected. Do you feel that you have an open
 (18) mind on that subject, or do you kind of lean to the view that
 (19) the fishermen were affected in subsequent years?
 (20) **A I'm open to anything until you know, like I said, unless I**
 (21) **see the facts or hear the facts, then you know, I can judge on**
 (22) **that, but I'm pretty much open.**
 (23) **Q** But as you sit here right now, you don't have any
 (24) information one way or the other, is that correct?
 (25) **A Right.**

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- (1) Q You don't know anything about whether there - whether all
 (2) the effects of the spill might have stopped in '89 or whether
 (3) some of it continued on - is that correct?
 (4) A Right I don't know
 (5) Q And you'd give both sides a fair hearing on that part of
 (6) the case?
 (7) A Right
 (8) Q Have you read any books about the Exxon Valdez?
 (9) A No
 (10) Q Did you see the movie that they made on it - the television
 (11) movie?
 (12) A No
 (13) Q Would you like to be a juror in this case?
 (14) A Not really
 (15) Q Do you - this will be a fairly long trial and the jury
 (16) will deliberate a number of times - Have you ever been a juror
 (17) before?
 (18) A No This is first
 (19) Q This would be the first time?
 (20) A Uh huh
 (21) Q Let's see I have one other question I think You
 (22) indicated that you - see my colleagues have a question that I
 (23) didn't ask You indicated that you had heard that alcohol was
 (24) involved Do you remember where you heard that?
 (25) A I believe it was from the newspaper

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- (1) Q Can you tell us as best you can what you remember you heard
 (2) about alcohol but what its involvement was?
 (3) A That he was intoxicated I don't really know - I don't
 (4) remember
 (5) Q Okay Do you have any views about alcohol dependency or
 (6) problems that people have with alcohol controlling alcohol?
 (7) A I really don't know anyone who has that problem That's
 (8) not a good problem to have
 (9) Q Do you know anything about Alcoholics Anonymous?
 (10) A No, I don't I never - I don't know really too much
 (11) Q Do you have the view that if a person has a problem with
 (12) alcohol they can never drink again?
 (13) A It probably wouldn't be wise for them to drink again
 (14) Q Why would that be?
 (15) A Well, it's kind of like eating I know that when I go on a
 (16) diet, if you don't keep your mind on it and you go off it and
 (17) you eat that first candy bar, then you just keep going and
 (18) going It's not good
 (19) Q When you go on a diet you don't stop eating entirely?
 (20) A No you don't but I think alcohol's a little different
 (21) than food
 (22) Q You're kind of of the view that - from what you know that
 (23) if a person has had a problem with alcohol they better not
 (24) ever have it again is that -
 (25) A Well, I don't know if they could just have that one drink

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- (1) or if it would lead, you know to two or three or more
 (2) Q Do you know how you -
 (3) A I'm not a alcoholic, I don't know
 (4) Q I understand Hopefully I'm not either
 (5) But do you - is that from something you read or is that -
 (6) A No I haven't read anything on that
 (7) Q Okay Do you know where you got - I'm trying to get a
 (8) feel for whether you'll be able - there'll be a lot of
 (9) evidence in this case about alcohol -
 (10) A Okay
 (11) Q - and what people think alcohol does and doesn't mean
 (12) medically Could you -
 (13) A Well, just in talking -
 (14) Q Would you have an open mind on it?
 (15) A Just talking, it seems to me it's more of an addiction,
 (16) it's like smoking or anything like that
 (17) MR LYNCH I have no other questions Your Honor
 (18) MR O NEILL Pass for cause
 (19) MR LYNCH May we discuss?
 (20) THE COURT Ms Irish would you return to the jury
 (21) room for just a moment and standby We'll get back to you in
 (22) just a few moments
 (23) THE COURT Mr Lynch?
 (24) MR LYNCH Your Honor this is very similar to the
 (25) prior challenge because I do think we have fairly clear

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- (1) indication that this juror is closely related to members of the
 (2) fishing class Her brother and brother in law appear to be
 (3) setnetters and are within the class although she doesn't know
 (4) it this is a very long trial and I think that it is
 (5) unreasonable - I can't resist commenting Your Honor on the
 (6) standard that was applied in the last challenge in this area
 (7) because I think that this is not a case given its importance
 (8) and given the number of claims that are coagulated into this
 (9) trial We need to go right to the edge of the line We ought
 (10) to be able to have the luxury of picking a jury that - that we
 (11) don't even have to have second thoughts about
 (12) This is a juror who said and with commendable honesty I
 (13) think that if she were a defendant in this case she would not
 (14) want herself as a juror She indicated and I think almost all
 (15) people would like to believe that they can be fair and I think
 (16) the appellate decisions in this area comment that that's one of
 (17) the aspects of voir dire that is not totally reliable that
 (18) people's subjective view particularly at the start of a trial
 (19) that they will be able to put aside feelings and be fair in the
 (20) long run isn't totally reliable
 (21) Here we start with a juror who says she has serious doubts
 (22) that she could put aside her feelings as to the defendants and
 (23) we think it - it does establish probable cause to believe that
 (24) she cannot be impartial as the case goes forward Also the -
 (25) as I indicated Your Honor the affinity to a plaintiff

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(1) MR O NEILL The jury the defendants would like would
 (2) be a collection of people who never read the newspapers because
 (3) they re the only ones that will have not read about the spill
 (4) This young lady didn t say she would have serious problems in
 (5) being fair She said she could put aside her feelings and be
 (6) fair The question and I use the question that I do a lot of
 (7) defense work and I use the question if you were me would you
 (8) want me on the jury I use that question all of the time That
 (9) is not a disqualifying question In the past it s mostly been
 (10) a cute way to get into the disqualifying questions but that is
 (11) not a disqualifying question
 (12) Again this is - the ordinary person read about the
 (13) spill The ordinary person formed some view as to the spill
 (14) The good juror is the one who can say despite what I read
 (15) because I do read the newspaper and this was on the front page
 (16) of the newspaper I can still be fair If they sit in that box
 (17) and you believe that then they re the best of all jurors
 (18) With regard to the setnet site it appears that they bought
 (19) in last year and she doesn t know anything about it And the
 (20) mere fact that that s a couple levels of family removed isn t
 (21) disqualifying
 (22) THE COURT Although the answer to the questions
 (23) would somebody like me on the jury question is - is a bit
 (24) troublesome I don t think that answer disqualifies someone I
 (25) have sufficient confidence in the other answers that this lady

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(1) gave that she would listen to both sides and would make an
 (2) effort to be fair that I just - I don t think there s enough
 (3) there to create probable cause to believe that she s going to
 (4) be biased one way or the other
 (5) As far as the - the brother and sister - no
 (6) brother in law and sister having - having setnet sites I have
 (7) a question Mr O Neill Do people who - let s see how to put
 (8) it Are we going to have in the fisherman class Kenai
 (9) setnetters who are making claims for last year and this year?
 (10) MR O NEILL Yes
 (11) THE COURT Okay well I m going to excuse her then
 (12) Because I think it s too much to expect that s pushing things
 (13) way too far to think that she wouldn t start making connections
 (14) and figuring out that this could financially impact her
 (15) relatives Ms Irish is excused for cause Would you tell her
 (16) that she is excused from this case please and bring us
 (17) another juror? Mr Neal?
 (18) MR NEAL Well I was just going to inquire about a
 (19) break Your Honor
 (20) THE COURT Ten o clock
 (21) MR NEAL That means we have to move rapidly on this
 (22) juror
 (23) THE COURT I ll use any way I can find to get you to
 (24) move I don t mean to suggest that you haven t been I
 (25) appreciate the fact that everybody s been picking them up and

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(1) putting them down on this Appreciate it
 (2) THE CLERK Your Honor this is Douglas A Graham
 (3) juror number 33
 (4) THE COURT Mr Graham we had your sworn answers to
 (5) my questionnaire By agreement the attorneys are now going to
 (6) ask you some follow up questions in response to your - in
 (7) connection with your responses Mr O Neill?
 (8) JURY VOIR DIRE
 (9) BY MR O NEILL
 (10) Q How are you sir?
 (11) A Good
 (12) Q You noted in the questionnaire that you came to Alaska with
 (13) your parents on vacation at 16 and you stayed and you didn t
 (14) have any say in the matter?
 (15) A Well I was in high school at the time so I was going into
 (16) my senior year and so I really wanted to go back to Tucson bu
 (17) they decided to stay and then you know so that s how I ended
 (18) up here
 (19) Q So you didn t get to graduate with your pals?
 (20) A That s exactly right yeah I spent my last year of high
 (21) school here
 (22) Q Do you recall when you first heard about the Valdez
 (23) grounding disaster?
 (24) A Well, I suppose same time everybody else did Spring of
 (25) 89

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(1) Q What kind of reaction did you have?
 (2) A Well, I didn t really - I don t - it didn t really make a
 (3) real big impression on me I - you know I didn t have any
 (4) idea of how big it was or whatever and I just - that s
 (5) basically it
 (6) Q How about between then and now?
 (7) A Well, obviously I know that it was big, a big spill and
 (8) probably the - you know I guess maybe one of the biggest
 (9) spills in history or something
 (10) Q Do you have any knowledge about Exxon Corporation?
 (11) A Not personally I mean I know they re a big oil company
 (12) Q How about Veco?
 (13) A Well, I put in my questionnaire that my nephew worked for
 (14) them during the oil spill and my brother in law did too
 (15) through long distance ears
 (16) Q They both worked on the spill?
 (17) A Well they both worked in Valdez My nephew worked in a
 (18) yard down there and my brother in law worked out on some doc
 (19) type thing
 (20) Q The last question in the questionnaire is do you have any
 (21) difficulty being a juror in the case and you explained about
 (22) your mother Could you explain to us all about your mother so
 (23) we can talk about that?
 (24) A Well, she s been asthmatic for years and years and that was
 (25) her - that was their primary reason for deciding to stay in

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(1) Alaska I m from - we re from Tucson originally, and there s
 (2) a lot of copper mines around there and a lot of smelters and
 (3) she was in really bad shape when we came up here It wasn t -
 (4) probably wouldn t have lived more than a few more years and
 (5) the change in climate was real beneficial for her And that s
 (6) why we decided to stay And once you are an asthmatic, you
 (7) really, you know you always are And these last few years we
 (8) think it might have something to do with the oxy fuel that
 (9) we ve been running in the winters or whatever, but she s had a
 (10) couple of bad spells and been into the hospital because of it
 (11) This past winter there was no oxy fuel and she s been
 (12) doing pretty good Lately, she s been having a little bit of
 (13) difficulty but I think it s mainly because of the dust in the
 (14) air And so -
 (15) Q If you had to come here every day from eight to two five
 (16) days a week for three months is your mom going to be able to
 (17) get on without you? Can you -
 (18) A Well I asked her, I told her I might be involved in a long
 (19) trial, and she told me she could, but she s just the type
 (20) person that s going to say that regardless because she doesn t,
 (21) you know, isn t one that, you know, wants you to think that she
 (22) needs somebody to take care of her
 (23) Normally, the two times she s been in the hospital were
 (24) both in the middle of the winter, and normally summer she s
 (25) pretty good in pretty good shape

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(1) Q Let me ask will you be able to sit here and not worry
 (2) about her and pay attention to the business in this room or
 (3) are you going to sit here and worry about her?
 (4) A Well, since I filled that questionnaire out, she s actually
 (5) gotten - gotten to feeling better And assuming that, you
 (6) know - I mean, if she ends up in the hospital or something, of
 (7) course I m going to be thinking about her, but I feel I could
 (8) come here from - I guess you guys said eight in the morning to
 (9) two in the afternoon
 (10) Q Every day
 (11) A And concentrate on what I m doing here
 (12) Q You can t miss a day
 (13) A Right, I understand that
 (14) Q And you got to start at the beginning and move on to the
 (15) end
 (16) A Right, right Well, what would happen if there was some
 (17) type of real emergency?
 (18) Q That -
 (19) A I would just be -
 (20) Q You know I guess that depends I mean I m not the -
 (21) A Right
 (22) Q I just work here -
 (23) A Right, okay
 (24) Q - on the answer to that question I do know that what we
 (25) have -

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(1) A Let me put it this way, unless it was something extremely
 (2) serious, I ve got other family that could be with her during
 (3) the hours that I m here, okay
 (4) Q Good okay good let me - I m sorry that took so long but
 (5) I wanted to be careful about you
 (6) A Right
 (7) Q And your mom
 (8) Do you have any notions about the oil industry in Alaska?
 (9) A Well, none of us have really ever - ever worked for the
 (10) oil industry, so - well, I mean except for what I told you
 (11) about my nephew and my brother in law My sister s a teacher
 (12) My brother works for the Teamsters as a computer operator My
 (13) other brother works as a - he s operating engineer, he runs
 (14) heavy equipment for the municipality
 (15) Q One of the issues that we re going to address in this case
 (16) is the issue of punitive damages and punitive damages are for
 (17) the purpose of punishing and setting an example to others If
 (18) the facts in the courtroom are such that they justify punitive
 (19) damages and the law from Judge Holland is such that they
 (20) result in punitive damages can you with your own self apply
 (21) those facts and those law - and the law from the Judge and if
 (22) they do support punitive damages make a punitive damage award?
 (23) A Well, I suppose I think that s probably the way the
 (24) system works
 (25) Q If the law and the facts were such that they resulted in or

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(1) ought to result in - and that s the law from the judge and the
 (2) facts in the courtroom - a punitive damage award in the areas
 (3) of billions of dollars billions of dollars -
 (4) A Right
 (5) Q - do you think you could do that if that s what the facts
 (6) and the law required?
 (7) A Yeah, if that s what the facts and the law required I
 (8) mean, I m going to follow the law, if that s what you re
 (9) saying
 (10) Q Yeah I just - some people have a - some people don t get
 (11) along with the system
 (12) A Right
 (13) Q And we ask questions and they re going to ask you a lot of
 (14) questions that may seem sort of oblique or odd but the purpose
 (15) is to make sure -
 (16) A See, I don t have a lot of experience in any of this You
 (17) know, I mean you guys said there s like two types, you re
 (18) talking this actual and punitive, you re going to explain what
 (19) that is, I guess
 (20) Q He ll explain it for you
 (21) A He ll explain it for me?
 (22) Q He won t let me explain it He ll explain it and you ll
 (23) get to see all of the facts You re going to be sitting in
 (24) here for three months just working at the facts but just so
 (25) long as you re comfortable with doing what the law requires

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- (1) that s what we all ask
 (2) A Right, right yeah
 (3) Q Okay?
 (4) A But I mean I would do the same thing as the law requires
 (5) for their side as I would for yours
 (6) Q That s what we ask That s what we ask
 (7) A Okay
 (8) Q Good comment thank you
 (9) A Okay
 (10) JURY VOIR DIRE
 (11) BY MR SANDERS
 (12) Q Good morning Mr Graham
 (13) A HI
 (14) Q My name is Jim Sanders and I represent the Exxon
 (15) defendants and I m going to ask you questions both on our
 (16) behalf and on behalf of Captain Hazelwood in other words all
 (17) the defendants
 (18) A Okay
 (19) Q You moved here from Tucson?
 (20) A Yeah
 (21) Q So you came from about 110 to -
 (22) A Quite a climate change, yes
 (23) Q To coolish
 (24) A Yeah
 (25) Q Mr O Neill asked you some questions about the oil

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- (1) industry Let me ask you about Exxon Do you have any
 (2) feelings pro or con about Exxon?
 (3) A Well I know they re a big oil company
 (4) Q Is that bad or good or doesn t make any difference to you?
 (5) A Well I couldn t drive my car without gasoline so I don t
 (6) know
 (7) Q Big enough to put gas in your car right?
 (8) A Yeah
 (9) Q Have you heard before you came to court day before
 (10) yesterday and heard the lawyers talking and His Honor talking
 (11) to you had you heard of Captain Hazelwood before?
 (12) A Yeah
 (13) Q What had you heard?
 (14) A Well that the ship that he was in charge of hit - hit
 (15) this reef in Prince William Sound
 (16) Q Did you hear anything about Captain Hazelwood that you can
 (17) recall?
 (18) A Well the press said at the time that there was alcohol
 (19) involved
 (20) Q All right Did the press say how they knew that alcohol
 (21) was involved?
 (22) A No
 (23) Q Did you think then that that was a true story by the
 (24) press?
 (25) A Well I don t always believe everything I read let s put

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- (1) it that way, but you know again that s what was being said at
 (2) the time
 (3) Q All right and all I m asking you for is you know what
 (4) you think about it and then - and you ve been real honest
 (5) with us Do you think that story is true or you just don t
 (6) know?
 (7) A Is that part of what s going to be decided in this trial?
 (8) Q I think that s going to be an issue in the case what
 (9) caused the accident?
 (10) A Okay Well I don t know if I ve really got enough facts
 (11) to say whether it was or wasn t, you know
 (12) Q That s really the question you hit right at the nub of
 (13) it Any facts that you might have that you gleaned from
 (14) newspapers whatnot those don t count?
 (15) A Right
 (16) Q You d have to base your decision on what you hear in this
 (17) courtroom and make up your mind after the judge instructs you
 (18) to the law as to what the facts really are and I gather that
 (19) you don t really have a basis for knowing the answer to the
 (20) question right now you d have to hear some proof wouldn t
 (21) you?
 (22) A Right
 (23) Q The family members that worked in the cleanup did they
 (24) come back with any stories that gave you a bad feeling about
 (25) the people involved in the cleanup or did you just get normal

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- (1) it was hard work?
 (2) A They really weren t involved in the cleanup I don t know
 (3) exactly what they were doing but my nephew was moving stuff
 (4) around, driving truck back and forth in Valdez or something
 (5) moving stuff from a yard, maybe to the boats or something and
 (6) my brother in law, truthfully I don t - my brother in law s
 (7) actually been in the building industry all his life and I
 (8) don t know, they were doing something down there as far as
 (9) putting these barges together they needed somebody with
 (10) experience at putting things together, I guess and so that s
 (11) what he was doing But neither one of them were really out
 (12) involved in the actual spill
 (13) Q So in other words nobody in your conversations with
 (14) either of them you didn t get any stories about these people
 (15) are bad or those people are bad or good nothing about
 (16) fishermen or Veco or Exxon that would cause you any problem in
 (17) judging this case?
 (18) A Well nothing that I can recall at this point There
 (19) probably was things that were said, but didn t make a big
 (20) impression on me If it did
 (21) Q Didn t stick with you?
 (22) A Right right
 (23) Q Is the brother that worked down there is he an engineer?
 (24) A Well he s actually my sister s husband He s worked all
 (25) over the state for like 20 some years mainly doing like

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- (1) building schools and he is a construction superintendent is
 (2) what he is That is - and I think what happened was my nephew
 (3) went down there and got a job and they decided to go down and
 (4) see him and something one thing led to another and he ended
 up
 (5) working down there for the summer but he is never - that is not
 (6) his field let me put it that way His field is the building
 (7) industry and that is what he is back doing now
 (8) Q Mr Graham I'm almost through Let me ask you you've
 (9) answered the question in the questionnaire basically asks you
 (10) is there any reason you can't be fair anything that you -
 (11) that we - that would come to your mind that would cause you to
 (12) think you couldn't be fair Let me ask you is there anything
 (13) that's been said about this case in the courtroom or that's
 (14) been asked by Mr O'Neill or me to you that would cause you to
 (15) think that well I'll come into this case with a tilt toward
 (16) one side or the other is there any - do you have a tilt?
 (17) A Not really I'll just listen to what's going on and like
 (18) you say, whoever is going to instruct me in the law or
 (19) whatever
 (20) Q You had it right he is the one Thank you Mr Graham
 (21) A Okay
 (22) MR O NEILL Pass for cause
 (23) MR SANDERS Pass for cause
 (24) THE COURT Thank you gentlemen Mr Graham that
 (25) that's it for today The clerk will be calling you back in a

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- (1) day or so for the next step in this process
 (2) MR GRAHAM Do I need to go back there now then?
 (3) THE COURT Does he need -
 (4) THE CLERK We're sending them down
 (5) THE COURT You need to go back and check with the
 (6) jury clerk now but you're through for today We will take a
 (7) 15 minute recess at this point Mr Neal
 (8) (Recess at 10:04 a.m.)
 (9) THE CLERK All rise this court is again in session
 (10) Please be seated
 (11) THE COURT Call another juror
 (12) THE CLERK Your Honor this is Robb A Milne juror
 (13) number 35
 (14) THE COURT Mr Milne we have your sworn answer to
 (15) the interrogatory that you answered on Monday By agreements
 (16) the attorneys are going to ask you a few more follow up
 (17) questions with respect to your answers
 (18) MR MILNE Okay
 (19) THE COURT Mr O'Neill
 (20) JURY VOIR DIRE
 (21) BY MR O NEILL
 (22) Q How are you sir? Is it Milne?
 (23) A It is actually pronounced Milne, it is just spelled
 (24) backwards
 (25) Q Milne?

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- (1) A Right
 (2) Q So it's spelled wrong?
 (3) A No it is spelled correctly, it looks like it is spelled
 (4) wrong
 (5) Q You're a CPA?
 (6) A That's correct
 (7) Q And what kinds of things do you do as a CPA do you
 (8) personally do?
 (9) A I primarily work on audits and financial statements in
 (10) effect testing to various clients fair presentation of their
 (11) financial records
 (12) Q So you work on year end statements annual reports?
 (13) A That's correct
 (14) Q And things like FASB five issues finance and accounting
 (15) standard board standard five?
 (16) A That could be one of the issues, yes
 (17) Q And with regard to things like deciding whether or not
 (18) there is a contingency or deciding on issues of materiality
 (19) that is an area of your expertise?
 (20) A That's correct
 (21) Q What company do you work for?
 (22) A DeLolte Touche
 (23) Q They're the auditors for Veco?
 (24) A Yes, I believe the firm is the auditors for Veco
 (25) Q What kind of ethical obligations does a CPA owe a client?

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- (1) A I'm not sure I understand As far as -
 (2) Q Yeah are there obligations of confidentiality with regard
 (3) to certain information?
 (4) A Certain information would be confidential yes
 (5) Q And that is an obligation between you and the client?
 (6) A That's correct
 (7) Q And so if a client gives you certain information and it
 (8) doesn't require it to be publicly disclosed there are certain
 (9) situations where that is going to remain confidential trade
 (10) secrets and things like that?
 (11) A Yeah, I believe it would remain confidential I don't
 (12) think it is protected in the same way an attorney client
 (13) information is protected, though
 (14) Q But there are obligations?
 (15) A Right
 (16) Q Does the - are you in the Anchorage office?
 (17) A That's correct
 (18) Q And the Anchorage office does do audit work on Veco?
 (19) A Right
 (20) Q And you understand that Veco was a contractor for Exxon on
 (21) the cleanup you know that?
 (22) A Yeah, I - I wasn't with DeLolte Touche during the time
 (23) that the oil spill occurred
 (24) Q Who were you with?
 (25) A I was in college

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- (1) Q And who were you with before - right after the oil spill
 (2) occurred 6/ 89?
 (3) A I went to work for Price Waterhouse
 (4) Q And you were with Price Waterhouse for four years?
 (5) A That is correct
 (6) Q As an audit - auditor?
 (7) A Again right I was in the audit department
 (8) Q And Price Waterhouse does the year end statements for Exxon
 (9) Corporation?
 (10) A I believe they do
 (11) Q And the year end statements for Exxon Corporation are going
 (12) to be exhibits in this trial?
 (13) A Okay
 (14) Q You can - they will be
 (15) A Okay, that audit work is done out of - It wasn't done out
 (16) of this office
 (17) Q But it was done by a company - in fact the year end
 (18) statements that were done for calendar year 89 90 91 and
 (19) 92 were done by Price Waterhouse while you were with Price
 (20) Waterhouse that is a correct statement isn't it?
 (21) A I believe so
 (22) Q And the year end statements that Price Waterhouse did for
 (23) those four years did you - you didn't work on them?
 (24) A No
 (25) Q But with regard to the methodology that Price Waterhouse

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- (1) would apply that would be the same methodology that you would
 (2) apply to your audit statements that you were doing while you
 (3) were at Price Waterhouse isn't that right?
 (4) A It would probably be very similar, yes
 (5) Q And the standards would be the same?
 (6) A That is correct
 (7) Q And the procedures would be the same?
 (8) A (Nods head up and down)
 (9) Q And if you were back in the jury room and there was a
 (10) question in phase three of the trial on the Price Waterhouse
 (11) statement you'd have the ability to explain that to the jury
 (12) wouldn't you?
 (13) A A question -
 (14) Q About what is does footnote 17 mean or what does the
 (15) contingency mean or what standards did Price Waterhouse apply
 (16) in 1989 or 90 or 91 or 1992?
 (17) A Yeah, I certainly would have more insight than probably
 (18) anyone else would
 (19) Q More insight than most people would because of the fact you
 (20) worked at Price Waterhouse you were trained at Price
 (21) Waterhouse and the Price Waterhouse method was used on the
 (22) Exxon year end statement?
 (23) A Right
 (24) Q And indeed would it be fair to say in a discussion back in
 (25) the jury room on a year end statement that is going to be an

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- (1) exhibit in this case your views would probably carry the day
 (2) because you're the only one that knows in any detail what the
 (3) heck you're talking about isn't that right?
 (4) A I don't know it is possible
 (5) Q There aren't going to be many other people back there do
 (6) you think that could discuss FASB five and what a contingency
 (7) is and how we did it at Price Waterhouse at the same time
 (8) isn't that right?
 (9) A Probably not unless there is 12 other CPAs on the -
 (10) Q Boy would that be a long day
 (11) A Probably wouldn't be very exciting, but - I have no idea
 (12) who else is -
 (13) Q Yeah I represent fishermen
 (14) A Okay
 (15) Q And let's assume for a minute that you're a fisherman
 (16) A Okay
 (17) Q And if you were a fisherman just knowing on the surface
 (18) that there is an auditor from Price Waterhouse former auditor
 (19) from Price Waterhouse who was an auditor for Exxon Corporation
 (20) Price Waterhouse was an Exxon from corporation that he now was
 (21) an auditor for DeLoitte Touche who is the auditor for Veco
 (22) would you be comfortable having him on the jury? Just on the
 (23) surface of that?
 (24) A Well yeah I probably would DeLoitte Touche probably
 (25) does work for fishermen also although I don't personally I

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- (1) believe that they do
 (2) Q Do you know?
 (3) A I do not
 (4) Q Is Veco a major account of the - the Anchorage office of
 (5) DeLoitte & Touche?
 (6) A It is probably one of the larger ones
 (7) Q Important to DeLoitte and Touche's business?
 (8) A Probably important in the Anchorage area
 (9) Q Yeah And they're going to be - there are going to be
 (10) exhibits introduced in the case from phase three of the case
 (11) from Veco Veco documents the defendants have marked Veco
 (12) documents and back in the jury room with regard to certain
 (13) Veco records you would have an advantage or bring an insight to
 (14) Veco records because of your experience as auditing?
 (15) A I probably wouldn't have much insight there I've not been
 (16) associated with the Veco engagement
 (17) Q Is there a Chinese wall between you and Veco? Do you know
 (18) what that means?
 (19) A No I do not
 (20) Q There is no understanding between you and the people that
 (21) handle the Veco matters that you don't talk about Veco is
 (22) there your partners?
 (23) A That I don't talk about -
 (24) Q Veco if they have an auditing question on Veco?
 (25) A It is possible that they could - right it is possible

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- (1) **yes**
 (2) **Q** Now I m interested in your questionnaire In your years
 (3) **on the planet** you have had no acquaintanceship at all with
 (4) **anybody who s been involved in a marine or boating accident?**
 (5) **A** I don t recall ever -
 (6) **Q** And you don t know anybody who has made a claim or received
 (7) **any payment for damages because of the spill?**
 (8) **A** Not that I know of no
 (9) **Q** And you didn t go to any presentations on the spill?
 (10) **A** No
 (11) **Q** Do you know about the law?
 (12) **A** As applies to -
 (13) **Q** Accounting?
 (14) **A** I guess I know some of that yeah
 (15) **Q** Would you think that you know about materiality standards?
 (16) **A** I would say
 (17) **Q** That s one of the major things that you deal with isn t
 (18) **it whether something s material or not?**
 (19) **A** That s correct
 (20) **Q** In fact to a great extent that s - the forthrightness of
 (21) **a year end statement and the year end statement are tools of**
 (22) **your trade?**
 (23) **A** When it s correctly stated that s correct
 (24) **Q** How about tax stuff?
 (25) **A** I ve not ever worked in the tax department I really have

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- (1) **no specific knowledge with respect to that**
 (2) **MR O NEILL** Thanks
 (3) **JURY VOIR DIRE**
 (4) **BY MR NEAL**
 (5) **Q** Mr Milne I m Jim Neal and with my colleagues and friends
 (6) **over there at the table represent the Exxon defendants Mr**
 (7) **O Neill asked you some questions about clients Doesn t**
 (8) **DeLoitte and Touche represent or provide services to commercial**
 (9) **fishermen?**
 (10) **A** It s possible That - I imagine that that would be
 (11) **primarily tax type work, so -**
 (12) **Q** Matter of fact don t they provide services to at least
 (13) **out of the Seattle office to some of these plaintiffs?**
 (14) **A** That I don't know
 (15) **Q** You don t know that?
 (16) **A** I ve not seen a list of and I would know little about the
 (17) **Seattle office practice**
 (18) **Q** Okay You sport fish in Prince William Sound and I
 (19) **believe you engage in some recreational boating boating in**
 (20) **Prince William Sound correct?**
 (21) **A** Sure
 (22) **Q** Have you done - did you do that before the spill?
 (23) **A** Yeah that would have primarily been before the spill
 (24) **probably 15 years ago, I guess**
 (25) **Q** Oh have you done any of that after the spill?

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- (1) **A** No
 (2) **Q** Is that because of the spill or is it because the press of
 (3) **business or other things?**
 (4) **A** Right, and we ve got recreational property that would be
 (5) **north so we spend most of our time that way**
 (6) **Q** Okay I believe you also said that you had read or heard
 (7) **or followed to some extent the grounding and the oil spill**
 (8) **is that correct?**
 (9) **A** Sure
 (10) **Q** What strikes out sticks out in your mind about that aside
 (11) **from what you ve heard here in court from what you ve read**
 (12) **seen or heard tell me what sticks out in your mind about the**
 (13) **grounding**
 (14) **A** I m not really sure there s any one thing that sticks out
 (15) **in my mind about it**
 (16) **Q** We don t have a lot of time but tell me two or three
 (17) **things that stick out**
 (18) **A** Well, I - I guess I came by the knowledge of the spill a
 (19) **little later than most people would, and that's where I**
 (20) **generally would get what would stick in my mind is by hearing**
 (21) **about something right away, and since it had already occurred**
 (22) **there isn't a whole lot that really does stick out I thought**
 (23) **it - I guess, though, I m not even sure where in relation to**
 (24) **Valdez the spill occurred**
 (25) **Q** I think it occurred on something called Bligh Reef have

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- (1) **you heard of that?**
 (2) **A** Well, yeah I know it by name I don t know where that is
 (3) **or anything**
 (4) **Q** You don t remember that from literature Captain Bligh it s
 (5) **Bligh Reef I don t know if it has any connection with the**
 (6) **good captain or not Does it?**
 (7) **THE COURT** I think so
 (8) **MR NEAL** Not many Blighs around
 (9) **MR LYNCH** In his pre captain days
 (10) **MR NEAL** Pardon me?
 (11) **MR LYNCH** In his pre captain days
 (12) **MR O NEILL** The reef was charted by Captain
 (13) **Vancouver s vessel in 18 - 1794 and named after Captain**
 (14) **Bligh I looked it up**
 (15) **MR NEAL** Well that s another one upmanship Mr
 (16) **O Neill**
 (17) **MR MILNE** That doesn t stick out in my mind
 (18) **MR NEAL** I ll remember that
 (19) **MR MILNE** That doesn t stick out in my mind
 (20) **BY MR NEAL**
 (21) **Q** Doesn t stick out in mine either it s a little bit of
 (22) **erudition he wants to put in there on his part Do you have**
 (23) **any opinion as you sit there as to what caused the grounding?**
 (24) **A** What caused it?
 (25) **Q** Yes sir

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- (1) A The ship went up on it I -
 (2) Q You sound just like an accountant You get right to the
 (3) bottom line pretty quickly It hit the reef didn t it?
 (4) A That s correct
 (5) Q Do you know why it hit the reef do you have any idea why
 (6) it hit the reef?
 (7) A I have no idea I imagine that was the direction it was
 (8) headed
 (9) Q I tell you what I m tempted to sit down while I m behind
 (10) Judge Have you ever heard of Captain Joseph Hazelwood?
 (11) A Yes I have
 (12) Q In what connection what have you heard?
 (13) A I ve heard that he was the captain of the Exxon Valdez at
 (14) that period of time
 (15) Q Have you heard anything else about him?
 (16) A Not really
 (17) Q Okay
 (18) A I didn t -
 (19) Q Do you know the - what is your perception of the
 (20) difference between actual damages and punitive damages?
 (21) A I guess my perception is that actual damages reflect some
 (22) sort of loss that actually occurred, and punitive damages are
 (23) established to apply some sort of retribution for intangible
 (24) things that occurred
 (25) Q Do you as you sit there - well let me strike that The

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- (1) Court will - the Court will instruct you on that Do you have
 (2) any - have you heard about any settlement that Exxon made with
 (3) the federal or state government?
 (4) A Have I heard about a settlement?
 (5) Q Yes sir
 (6) A I believe there was one settlement that occurred
 (7) Q Anything anything in that information that would cause you
 (8) to be less than - well not partial?
 (9) A I don t think so
 (10) Q Or not impartial all right Have you heard anything about
 (11) any other recent developments in the case?
 (12) A No
 (13) Q Do you have any idea of the - of what effects remain in
 (14) Prince William Sound if any from the spill?
 (15) A I do not
 (16) Q As you sit there now Mr Milne do you believe that you
 (17) can be a fair and impartial juror listening to the evidence as
 (18) presented in this court listening to the instructions on the
 (19) law given to you by the Judge and decide this case in a fair
 (20) and impartial manner both for the plaintiffs and for the Exxon
 (21) defendants and Captain Hazelwood?
 (22) A I believe so
 (23) MR NEAL Thank you sir
 (24) MR O NEILL We d like the young man excused for a
 (25) moment

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- (1) THE COURT Mr Milne would you return to the jury
 (2) room for just a moment I ll have some conversation with
 (3) counsel and we ll be back to you in just a second
 (4) MR O NEILL I ll start with Mr Neal s point to the
 (5) extent that DeLoitte and Touche are auditors to any of the
 (6) fishermen he asserts that they are The fishermen object to
 (7) having a DeLoitte and Touche auditor on the jury With regard
 (8) to his role he is presently in the Anchorage office of
 (9) DeLoitte and Touche Veco is their biggest client Veco was
 (10) the contractor or major contractor for Exxon Corporation with
 (11) regard to the cleanup of the spill There are going to be many
 (12) Veco documents put into evidence He was an auditor at Price
 (13) Waterhouse when our four key - key punitive damage exhibits
 (14) were created in 89 90 91 92 and 93 and while he did
 (15) not work on the audit he has knowledge as to the methods Price
 (16) Waterhouse used with regard to the preparation of those year
 (17) end statements
 (18) Lastly he is an expert by trade more so than many
 (19) accountants on issues of contingency that is finance and
 (20) accounting standard work five issues of materiality the
 (21) opinions on issues of materiality those are going to be major
 (22) issues tried in phase three and if he is in there no fair
 (23) deliberation will occur so we move to strike for cause
 (24) MR NEAL May it please the Court I ve never - I ve
 (25) never experienced a greater demonstration of the old

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- (1) expression it depends on whose objection is being gored
 (2) THE COURT I understand the expression
 (3) MR NEAL You understand because Mr O Neill has
 (4) successfully fought a challenge for cause here saying well my
 (5) gosh everybody in the world brings their experiences to the
 (6) jury box And he won And I think this man has indicated
 (7) absolutely no partiality at all and indeed if I ever saw
 (8) somebody who is capable of being impartial this is this man
 (9) I ll say no more
 (10) THE COURT Mr O Neill I think you are very close to
 (11) being caught in your own trap on this one but - but on the -
 (12) on the matter of the interplay between this potential juror and
 (13) key exhibits on the - on the punitive damage question
 (14) assuming we get to that I think it is inevitable that putting
 (15) someone on the jury who is not just conversant but probably
 (16) expertly qualified to analyze a particular exhibit puts a tilt
 (17) on the process that - that is inappropriate So for that
 (18) reason I m going to - I m going to excuse Mr Milne
 (19) Would you inform Mr Milne that he has been excused from
 (20) this case and bring us another juror
 (21) THE CLERK Your Honor this is David A Poisson
 (22) juror number 36
 (23) THE COURT Mr Poisson you have answered my
 (24) questionnaire under oath Counsel have reviewed it By
 (25) agreement they re each going to take about ten minutes for

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- (1) some follow up questions with respect to your answers Mr
 (2) O Neill?
 (3) JURY VOIR DIRE
 (4) BY MR O NEILL
 (5) Q How are you sir?
 (6) A Fine thank you
 (7) Q You re in the insurance business?
 (8) A Yes
 (9) Q And what do you do?
 (10) A Currently I sell and service personalized accounts home
 (11) owners and automobile insurance
 (12) Q So you sell home owners and automobile?
 (13) A Uh huh
 (14) Q What other kinds of things have you done in the insurance
 (15) business?
 (16) A Commercial lines, mostly commercial property insurance
 (17) some commercial liability work, workers compensation
 (18) Q Do you subscribe to any trade magazines?
 (19) A Insurance trade magazines?
 (20) Q Yes
 (21) A Not any longer
 (22) Q Did you used to?
 (23) A Uh huh
 (24) Q How long have you been in Alaska?
 (25) A About 15 years

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- (1) Q Why did you come up here?
 (2) A I got transferred by my company, more or less at my
 (3) request I worked in home office and I d been to Alaska a
 (4) couple of times to - for review of our operation up here and
 (5) decided I liked it and wanted to move if I had the chance
 (6) Q What do you like about it?
 (7) A I like Anchorage It s a small town but there s things
 (8) that go on here I like the country of Alaska It s more
 (9) Pacific northwest, which is where I was raised in California,
 (10) which is where I was living at the time I came up here
 (11) Q It s like the Pacific northwest used to be?
 (12) A Yeah, I guess that s true, yes
 (13) Q Are you aware at all of tort reform and the tort reform
 (14) movement?
 (15) A Yes
 (16) Q Do you follow that in your trade journals or did you
 (17) follow it?
 (18) A I did, yeah
 (19) Q And what kind of things did you read about it?
 (20) A Probably emphasis on the - the emphasis seemed to be on
 (21) the need to contain costs whether it be the cost of medical
 (22) care, the cost of litigation
 (23) Q Did you follow at all what eventually became House Bill 292
 (24) in the Alaska legislature the tort reform bill?
 (25) A No, not really because that was at the time I retired from

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- (1) Industrial Indemnity and my interest at the time was other
 (2) Q Your interest now is to get out and sell and then service
 (3) your customers?
 (4) A Actually we don t go out and sell It s more or less they
 (5) come to us mostly by phone or mailing
 (6) Q You re lucky Do you have feelings on tort reform?
 (7) A I think with an insurance background, yeah, I m bound to
 (8) and I - and I do feel that it is necessary, but I guess in
 (9) three ways, not just tort reform in terms of litigation costs
 (10) but medical cost containment, and I think frivolous suits
 (11) Q Tell me about frivolous suits
 (12) A Well I guess my perception of frivolous suits is what I
 (13) hear from the newspapers, but mostly nuisance suits, nuisance
 (14) claims, somebody thinks they can always file a claim for - or
 (15) file a lawsuit for any occasion And it bothers me that they
 (16) have to tie up the court system for that
 (17) Q The first one you mentioned was the legal system you said
 (18) tort reform You mentioned three frivolous suits was the
 (19) third second was medical what was the first?
 (20) A Oh, cost of litigation
 (21) Q What do you know about cost - give me your views on cost
 (22) of litigation
 (23) A To a room full of lawyers?
 (24) Q I ll squat down and you can tell it talk to everybody
 (25) about it Go ahead

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- (1) A No, I think that some of the things that the state of
 (2) Alaska did, such as imposing what's called a Pure Rule 82,
 (3) where it s a limitation of legal fees I think that with suits
 (4) being able to be filed for anything, with large judgments, I
 (5) think there s some unwarranted large judgments They re being
 (6) filed and in the case of a jury trial with attorneys getting 33
 (7) to 40 percent of that, of the - the amount of the award I
 (8) think that can be a bit excessive I think some of the awards
 (9) are excessive, and I think some of the fees paid to the
 (10) attorneys are probably excessive
 (11) Q So we have excessive awards fees paid to attorneys
 (12) nuisance suits and you think those are all societal problems?
 (13) A Uh huh
 (14) Q As you sit here would it be fair to say that your views on
 (15) the process the ones that we just talked about you bring
 (16) those in the courtroom with you?
 (17) A Uh huh
 (18) Q They re your life experience and you do bring them into the
 (19) courtroom?
 (20) A (Nods head up and down)
 (21) Q And would it also be fair to say that you at least start
 (22) with the predisposition against plaintiffs?
 (23) A No
 (24) Q You don t?
 (25) A No No, I really don t think so Even when I would be

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- (1) heavily involved in cases with Industrial Indemnity there s
- (2) times the plaintiffs are right and awards are justified,
- (3) obviously
- (4) Q You think that s right?
- (5) A Yeah I don t think it s cut and dried on either side, but
- (6) I think there s too many opportunities to abuse the system
- (7) Q As you sit here today with what you heard about two days
- (8) ago do you think this is a situation in which the system is
- (9) being abused?
- (10) A No Because I really don t know the total situation
- (11) Q What - go ahead
- (12) A I can t - I can t make a decision on just what little bit
- (13) was said the other day saying it s wrong or it s right
- (14) Q I m sorry
- (15) A I can t say it was right or wrong in this case
- (16) Q How about where were you when the grounding happened?
- (17) A In Anchorage
- (18) Q What were your feelings at the time?
- (19) A I guess my - my concern was that we couldn t respond
- (20) quickly and perform clean up appropriately That s what I felt
- (21) the most disappointed in, was that we couldn t take action to
- (22) do something about it
- (23) Q How about the forces behind the grounding did you have any
- (24) views on that?
- (25) A I think there were so many conflicting reports you don t

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- (1) know - you know, who s at fault or whatever the case might be,
- (2) you know
- (3) At the time that it happens, because we all know accidents
- (4) are going to happen set of circumstances can make something
- (5) go
- (6) wrong, it s not necessarily an act by one person to correct it
- (7) or something like that
- (8) Q Do you think this was an accident?
- (9) A Well, it was an accident I don't think it was - yeah, in
- (10) the sense that it wasn t intended What circumstances led to
- (11) the accident, I don't know
- (12) Q Has your view changed altered between 89 and 94?
- (13) A Because of the other decisions that have come down?
- (14) Q Because of what s happened?
- (15) A I guess not really My concern still is we didn't - we
- (16) didn t do a good job to respond to it That's still my main
- (17) concern You know, if the circumstances were that blame could
- (18) be placed on the skipper of the ship, yeah that s not
- (19) something I would be happy with or unhappy with
- (20) Q What if in fact blame could be placed on the skipper s
- (21) employer?
- (22) A Well to me, that s completely understandable, you know
- (23) Q Or not I mean depending upon what the facts are?
- (24) A Yeah, but working in the insurance business we deal with
- (25) agents agents are an extension of the company, so somebody
- has
- to take responsibility for what that employee does

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- (1) Q Yeah that s right the agency relationships in the
- (2) insurance business go back many many years don t they?
- (3) A Yeah
- (4) Q Do you have any views about the importance of the oil
- (5) industry in Alaska?
- (6) A Only that they re extremely important for the economy
- (7) Q Now I m going to put a couple of threads together With
- (8) your views on tort reform and the importance of the oil
- (9) industry in Alaska and your background in insurance if the
- (10) facts in the courtroom and the instructions from the Judge
- (11) combined in a fashion or a form to where punitive damages ought
- (12) to be awarded can you do that?
- (13) A Uh huh Yeah, I believe I can I m not opposed to
- (14) punitive damages
- (15) Q And I m going to ask you a follow up question And I m
- (16) just being direct I mean I could beat around the bush but
- (17) there s no need to do that
- (18) If the facts in the courtroom as proved as you saw and
- (19) the law of the Judge were such that punitive damages ought to
- (20) be awarded in the area of billions of dollars against Exxon
- (21) Corporation the facts were to that effect and the law was to
- (22) that effect could you do that?
- (23) A Uh huh yeah I really believe I could
- (24) Q Depending upon what the facts and the law are?
- (25) A Right

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- (1) MR O NEILL Thank you sir
- (2) JURY VOIR DIRE
- (3) BY MR SANDERS
- (4) Q Good morning Mr Poisson I m Jim Sanders and I represent
- (5) the Exxon defendants I m going to ask you a couple of
- (6) questions and I m going to ask questions also on behalf of
- (7) Captain Hazelwood I m asking on behalf of all the defendants
- (8) here right now
- (9) Mr O Neill was asking you quite a number of questions
- (10) about your views on court reform and nuisance suits and
- (11) unwarranted awards and punitive damages and I take it from
- (12) your answers that you feel you could be fair to both sides and
- (13) you would keep an open mind and listen to what the facts are
- (14) first and make your mind up about that in accordance with the
- (15) Court s instructions and then render a judgment and sets aside
- (16) any of your preconceptions about things is that correct?
- (17) A That s correct
- (18) Q You mentioned in your questionnaire that you have a
- (19) recollection of Captain Hazelwood s trial?
- (20) A Brief or very - yes
- (21) Q A little bit of recollection?
- (22) A Right
- (23) Q And I believe your recollection was that he failed to
- (24) perform properly?
- (25) A Uh huh

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- (1) Q Do you have - can we put a little meat on those bones is
 (2) it - do you know - do you have a recollection of why it was
 (3) said or why you might have concluded that he didn't perform
 (4) properly?
 (5) A Well yeah specifically I think what spurred my
 (6) recollection is - or what I recall is that he had left the
 (7) bridge, that he put what was judged to be an unqualified
 (8) officer in charge of the ship during a critical navigation
 (9) stage, and that perhaps there was some problem with - with an
 (10) automatic pilot whether it was on or off
 (11) Q All right now those are - those are recollections I
 (12) gather
 (13) A Right
 (14) Q Do those amount to an opinion by you that that's what
 (15) happened? Do you have an opinion that that's what happened?
 (16) A I'm sure that's my opinion of what happened, yeah I don't
 (17) know all the circumstances, but
 (18) Q And your opinion is based on what you heard about and read
 (19) about?
 (20) A Uh-huh
 (21) Q You are - you know quite a bit about what goes on in
 (22) court you've attended depositions?
 (23) A Yes
 (24) Q And you know how the court system works You realize that
 (25) job of a juror is to put aside those opinions if they can?

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- (1) A Right
 (2) Q That they have formed before they come into court and
 (3) listen to what the facts are do you think you can do that?
 (4) A Yes
 (5) Q Have you had experiences in your life where news reports or
 (6) reports from others turn out not to be right?
 (7) A Yes
 (8) Q Because they didn't know what the facts were?
 (9) A Right
 (10) Q And that sometimes the facts that come in under oath are a
 (11) little bit different than what come over the radio waves?
 (12) A Right
 (13) Q And the television channels?
 (14) A Uh huh
 (15) Q In your experience with depositions I'm not going to be
 (16) silly enough to ask you if you enjoyed them but is there
 (17) anything so bad about having those experiences that it would
 (18) cause you to react negatively to seeing and hearing some
 (19) deposition testimony in this case?
 (20) A No, uh huh
 (21) Q Doesn't bring up such terrible memories that you would be
 (22) affected?
 (23) A No
 (24) Q You had a coworker that you mentioned that had perhaps an
 (25) alcohol problem and I don't want to get into the details of

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- (1) that and I don't want to invade your private life or his or
 (2) hers but I want to ask you is there anything about that
 (3) experience that causes you to have preconceptions about alcohol
 (4) issues?
 (5) A No, sir No, my involvement wasn't why there was a problem
 (6) with alcohol, but it was what an employer can do to work with
 (7) an employee to correct a problem
 (8) Q Do you think it's responsible for a company or a business
 (9) to have a policy about alcohol?
 (10) A I'm not sure what you mean about a policy I think it's
 (11) responsibility of a company to offer a means of assisting an
 (12) employee that has a problem, whether it's alcohol depression
 (13) or whatever the case might be
 (14) Q Lot better way of saying it than I asked it And do you
 (15) think it's better for a company to have such a position or
 (16) policy than to just ignore the problem?
 (17) A Oh, definitely
 (18) Q Do you see the question of what ought to be done as a - as
 (19) a right or wrong or is it a complicated issue?
 (20) A What ought to be done for the employee or what -
 (21) Q Yeah how the company ought to deal with an employee who
 (22) has had some sort of alcohol problem is that an easy thing to
 (23) come up with or is that -
 (24) A No, I think it's complicated I think it's pretty
 (25) individualistic

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- (1) Q Now you mentioned in response to Mr O'Neill's questions
 (2) that you were concerned about the speed of the response or
 (3) the - you were concerned about the response in the cleanup?
 (4) A Right
 (5) Q That's another one of those things that I need to ask you a
 (6) little bit about Do you assess blame in your concerns about
 (7) that or is it just generally that everybody should have done
 (8) more?
 (9) A My impression was that - that we were not prepared and we
 (10) couldn't respond, and I guess that would - you know, I would
 (11) have to say that was probably Alyeska and ownership
 (12) Q Is there anything about that set of thoughts that you have
 (13) the concerns that you have, that would cause you to be
 (14) prejudiced against any of the defendants or the plaintiffs in
 (15) this case?
 (16) A No No, I don't believe so
 (17) Q Mr Poisson thank you
 (18) MR O NEILL Living by my own standards I pass for
 (19) cause
 (20) MR SANDERS Pass for cause Your Honor
 (21) THE COURT Mr Poisson thank you Now I understand
 (22) that it maybe hasn't been entirely clear to everybody what we
 (23) mean when people are passed for cause That means that - that
 (24) I have not found and the attorneys have not found any reason to
 (25) excuse you from the jury so we will be calling you back

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- (1) MR POISSON Oh I thought it was the other way
 (2) THE COURT Well I didn't realize that this was a
 (3) problem but apparently it has been and passing for cause
 (4) means that as everybody sees it right now you're okay we
 (5) want you to come back We will call you as soon as we need you
 (6) back You need to check with the jury clerk at this point but
 (7) you're excused for the rest of today
 (8) THE CLERK Your Honor this is Sharyn Sexton juror
 (9) number 38
 (10) THE COURT Ms Sexton you've answered our
 (11) questionnaire under oath and at this point the attorneys are
 (12) going to have some follow up questions for you We've agreed
 (13) that each side would have ten minutes to make some further
 (14) inquiries Mr O'Neill?
 (15) MR O NEILL Thank you Judge
 (16) JURY VOIR DIRE
 (17) BY MR O NEILL
 (18) Q Ma'am I'm going to just sort of ask some sort of off the
 (19) wall questions to get started so if you'll just bear with me
 (20) you'll see where I'm going in just a minute I'm going to
 (21) throw out a proposition and then I want you to react to the
 (22) proposition and the proposition that I'm first going to throw
 (23) out is this one
 (24) Anybody who cares about the environment can't be fair to
 (25) Exxon

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- (1) A I don't think that's exactly true
 (2) Q Okay Let me try another one People can put fairness
 (3) they can put preconceived notions aside and sit down and work
 (4) hard and be fair would you agree with that?
 (5) A Yes
 (6) Q And indeed that's a tool that we - we all need to develop
 (7) if we're going to have a happy life?
 (8) A I agree
 (9) Q That makes some sense and there are certain situations in
 (10) which we can't do that and we have what we might refer to as a
 (11) closed mind?
 (12) A Yes
 (13) Q And those are sort of the - you can - you cannot know
 (14) anything about it and be completely open you can lead a full
 (15) and fair life and know something about it and be able to put
 (16) your concerns aside or you can have a closed mind and there
 (17) are gradations in between have I been fair so far?
 (18) A Yes
 (19) Q In that context can you be fair to Exxon Corporation?
 (20) A I'm not really sure
 (21) Q You're not sure?
 (22) A I'm not sure
 (23) Q Why?
 (24) A Well just I have thought about this for a while and you
 (25) know, I found the whole thing very upsetting the spill and

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- (1) all and I guess generally I have kind of a bias against large
 (2) corporations
 (3) Q You have a bias against lax corporations?
 (4) A Large
 (5) Q Large corporations Would it be fairer to say you have a
 (6) concern about large corporations?
 (7) A Yes
 (8) Q Let me tell you what my concern is and my concern is that
 (9) people who read the newspapers and who are concerned about the
 (10) world aren't willing to work hard enough to put their feelings
 (11) aside and come in here and be jurors?
 (12) A They aren't willing, did you say?
 (13) Q And what I'm asking you to do is think long and hard about
 (14) whether you can be fair to Mr Neal and his clients if you
 (15) can't be I want you to tell us that but if you can be it is
 (16) a duty of us all to sit as jurors when we can be fair And now
 (17) I'm going to turn you over to them and let you them question
 (18) you but I offer those thoughts to you
 (19) JURY VOIR DIRE
 (20) BY MR CHALOS
 (21) Q Good morning Ms Sexton I'm Michael Chalos I represent
 (22) Captain Hazelwood but I'm speaking on behalf of Captain
 (23) Hazelwood and Exxon in respect to this questioning
 (24) You've been very forthright in answering your questionnaire
 (25) and we appreciate that because what we're here to do is try

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- (1) and find fair and impartial 12 people Those people cannot
 (2) come in with any preconceived biases that they're unable to put
 (3) aside You answered question 81 if I may read it question
 (4) was do you know of any reason not disclosed in your answers to
 (5) these questions why you could not be a fair and impartial juror
 (6) in this case you checked off yes And then you went on to
 (7) explain I am biased against Exxon I think the spill was
 (8) avoidable and that their corporate arrogance was mainly to
 (9) blame I equate them with tobacco companies who claim smoking
 (10) is addictive - is not addictive and does not cause lung cancer
 (11) and heart disease Do you remember giving that answer?
 (12) A Yes
 (13) Q Was that an honest answer your best answer that you could
 (14) give on that?
 (15) A Yes
 (16) Q I need one more honest answer from you Will it be very
 (17) difficult for you to put that bias aside?
 (18) A I think it would
 (19) MR CHALOS Your Honor may we approach
 (20) THE COURT We don't need to Ms Sexton I
 (21) appreciate you being so candid with us about how you feel and
 (22) I'm going to excuse you from the jury Thank you
 (23) MR CHALOS And Ms Sexton I think we all appreciate
 (24) your honesty thank you
 (25) MR NEAL Your Honor before the jury comes in -

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- (1) THE COURT Just a moment let me do one thing that
 (2) may solve your problem Mr O Neill
 (3) MR O NEILL Yes sir
 (4) THE COURT Please no more admonishments to the
 (5) jurors about their expression of feelings I understand your
 (6) feelings and sometimes I say things like that and I wonder if I
 (7) should so let s - let s don t do that please
 (8) MR O NEILL I just find the process somewhat
 (9) frustrating but I will not do it again
 (10) THE COURT Thank you
 (11) THE CLERK Your Honor this is Robert Soronen juror
 (12) number 39
 (13) THE COURT Mr Soronen you ve answered our
 (14) questionnaire under oath At this point the attorneys are
 (15) going to take about ten minutes for each side to ask you some
 (16) follow up questions
 (17) MR SORONEN Can I ask one question of you? Okay I
 (18) have received a subpoena that I was supposed to testify in
 (19) another case on the 25th of last month and that case was set
 (20) off and it s supposed to start I think next week
 (21) THE COURT You re still under subpoena?
 (22) MR SORONEN Well I don t know
 (23) THE COURT Civil or criminal case or do you know
 (24) MR SORONEN I believe it s a civil case State
 (25) court

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- (1) THE COURT Has anybody taken your deposition in
 (2) that -
 (3) MR SORONEN Yes
 (4) THE COURT In that case?
 (5) MR SORONEN That was a few years ago I gave a
 (6) deposition
 (7) MR O NEILL Never seen this one before
 (8) THE COURT I haven t run into this one either
 (9) MR O NEILL Does it present supremacy and comedy
 (10) problems
 (11) THE COURT Yeah I think it probably does Probably
 (12) does
 (13) MR SORONEN The subpoena was dated 4/25 when I was
 (14) supposed to appear but in state court they said they didn t
 (15) have a judge available and that it would be two weeks which I
 (16) guess would be next Monday
 (17) THE COURT And next Monday they ll tell you when
 (18) during that week they want you in all probability
 (19) MR SORONEN Right so I don t have any idea how that
 (20) would affect -
 (21) THE COURT Counsel have any feelings about the
 (22) situation at this point?
 (23) MR O NEILL I think it s -
 (24) MR LYNCH I think Your Honor from - from the
 (25) comedy standpoint it seems to me that -

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- (1) THE COURT I m inclined to avoid the problem
 (2) MR O NEILL I am too
 (3) THE COURT Does anyone have a problem with that ?
 (4) MR O NEILL No sir
 (5) THE COURT We re going to excuse you so you can
 (6) attend
 (7) MR SORONEN I m sorry but I didn t know what the
 (8) correct time to present this was so -
 (9) THE COURT You did good thank you sir You re
 (10) excused
 (11) THE CLERK Your Honor this is Lila B Tubbs juror
 (12) number 40
 (13) THE COURT Thank you Ms Tubbs we have your sworn
 (14) answers to our interrogatones At this point counsel for the
 (15) parties are going to ask you some follow up questions Mr
 (16) O Neill?
 (17) MR O NEILL Thank you Judge
 (18) JURY VOIR DIRE
 (19) BY MR O NEILL
 (20) Q Ma am in your questionnaire on question 65 there was a
 (21) question asked about punitive damages and you wrote don t
 (22) know Do you have an opinion opposed to the basic concept of
 (23) punitive damages and you answered don t know
 (24) A Well, I didn't understand what punitive damages meant,
 (25) okay?

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- (1) Q So the best answer is I don t know?
 (2) A Yes
 (3) Q Okay What do you do for a living?
 (4) A I m a bookkeeper, accountant
 (5) Q And where do you work?
 (6) A I work at my - our business In Dillingham
 (7) Q What business are you in?
 (8) A We have apartments and a gas station and an oil business
 (9) Q What kind of oil business is it?
 (10) A Oil delivery
 (11) Q And whose -
 (12) A Gas
 (13) Q Oil and gas who do you buy your oil and gas from?
 (14) A Delta Western
 (15) Q Do you have any views one way or another on the industry
 (16) big oil industry in Alaska?
 (17) A Well, by my views, do you mean that I approve of it or -
 (18) Q Or just different feelings?
 (19) A Yes, I do
 (20) Q And what are your different feelings?
 (21) A Well, I m glad it s there for one thing
 (22) Q Don t have to pay tax?
 (23) A Yes
 (24) Q Lot of jobs?
 (25) A Yes

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- (1) Q Would your views of the oil industry in Alaska impede in
 (2) any way in your sitting as a juror in this case do you think?
 (3) A I don't know
 (4) Q Could you talk to me a little bit about that?
 (5) A Probably not but I don't know I can't tell you
 (6) Q Okay you have some hesitancy in you about the subject
 (7) Can you tell me about that the hesitancy?
 (8) A No, because I don't think - I don't know what you want me
 (9) to say I mean not what you want me to say but why would I
 (10) have - I don't pay too much attention to the oil industry,
 (11) okay
 (12) Q Okay let me - let me just sort of work out a scenario and
 (13) then you can react to the scenario one way or the other
 (14) A Okay
 (15) Q You're sitting here in the jury box and you've been working
 (16) hard for a month or two as a juror listening and taking all of
 (17) this stuff up and as a result of what you hear in the
 (18) courtroom here and what the judge tells you what the law is
 (19) you come to the conclusion in your mind that there should be a
 (20) verdict against Exxon for what it did but then at the same
 (21) time you say to yourself but I really can't do that because of
 (22) the contributions the oil industry makes to Alaska you
 (23) understand the kind of thing that I'm getting at?
 (24) A Yes
 (25) Q If the law and the facts required a verdict against Exxon

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- (1) Corporation could you do that even though they're a part
 (2) of -
 (3) A Yes, because I - they're not the whole part
 (4) Q In your answer to question 82 on the questionnaire you
 (5) talk a little bit about your daughter having a baby in July and
 (6) other child care issues Do you think it would be possible for
 (7) you to clear your calendar for us and spend the next three
 (8) months?
 (9) A I really wouldn't want to be here, sir
 (10) Q You don't - okay It's all of our duty to serve as jurors
 (11) every once in a while do you think that would -
 (12) A Yes
 (13) Q - do you think that would get in the way of your
 (14) concentrating?
 (15) A No
 (16) Q Would you be mad at me?
 (17) A No
 (18) Q I'll give you a chance - he's the one that makes the
 (19) decisions if you want to talk a little bit about that why
 (20) don't you go ahead and do that about how it would have - what
 (21) personal problems it'd create for you and we can talk about it
 (22) here and see if -
 (23) A Well, it isn't so much that but if I'm out work I don't get
 (24) paid and I do have bills that I have to pay And \$58 doesn't
 (25) cut it

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- (1) MR O NEILL I think sir now I'm in an area where I
 (2) don't know what your views are and -
 (3) MR LYNCH No objection Your Honor if -
 (4) THE COURT Fine this is a situation where - where I
 (5) think we have to excuse the juror if - if she's not going to
 (6) get paid while she's here that's a problem We will excuse
 (7) you Mrs Tubbs and I appreciate your coming in to be with us
 (8) THE CLERK Your Honor this is Marilyn J Wilson
 (9) juror number 41
 (10) THE COURT Thank you Ms Wilson we have your
 (11) answers to the questionnaire At this point the attorneys are
 (12) going to ask you some follow up questions We've agreed that
 (13) each side would have ten minutes to ask you some follow up
 (14) questions Mr O'Neill
 (15) MR O NEILL Thank you Judge
 (16) JURY VOIR DIRE
 (17) BY MR O NEILL
 (18) Q Ma'am is - you moved here when your husband was assigned
 (19) to Elmendorf?
 (20) A Yes
 (21) Q And been here 12 years since?
 (22) A Right
 (23) Q Do you like it?
 (24) A Oh, yes
 (25) Q Could you tell me a little bit about why?

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- (1) A Well, one thing is I love the mountains My husband likes
 (2) to hunt and fish and I love - I like to fish We're from
 (3) Texas and we've considered moving back and I don't know, I
 (4) think we just love the - I like to be able to look out and see
 (5) natural mountains and the trees and not buildings, concrete
 (6) Q Like in Houston where it just goes on forever?
 (7) A Yeah
 (8) Q What business are you in right now?
 (9) A I'm - own a marketing business with my husband
 (10) Q And what do you market?
 (11) A It's an Amway business
 (12) Q What do you like about it?
 (13) A Independence I've been a business owner, self employed
 (14) for the last ten years, most of the time I've worked - been
 (15) an employee a few times, but I prefer to be self employed
 (16) Q Why?
 (17) A The benefits, for one thing, the tax benefits, and I guess
 (18) I'm an independent kind of person
 (19) Q Let's talk about that for just a minute When you're
 (20) making serious decisions in your life do you - do you like to
 (21) talk them over with your husband or talk them over with others
 (22) and then make the decision or do you like to just sort of go
 (23) off on your own and stew about it and make a decision?
 (24) A No, I believe in gathering my facts to make a decision with
 (25) a cause behind it or the reasoning, not - not to just -

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- (1) because I - I guess because I have a family and you know
 (2) everything affects everybody else
 (3) Q Let me ask you a question that I asked of all of the
 (4) jurors Some people have a problem being jurors in that they
 (5) can't sit in judgment They just either because of their gut
 (6) instincts or their religious beliefs or their life experiences
 (7) they just - it isn't in them or they're opposed to sitting in
 (8) a jury box and essentially sitting in judgment Do you have
 (9) any problems with that?
 (10) A I was on a jury state few years back and I found it
 (11) interesting that we could only use the facts that were
 (12) presented to us and I kept finding myself wanting to ask
 (13) questions myself
 (14) Q Maybe you would have been better at it than the lawyers?
 (15) A I don't know, but there was some things maybe that weren't
 (16) clear to me that I wanted to ask people
 (17) Q Philosophically though do you have any problems in the
 (18) role being in a juror's role?
 (19) A No
 (20) Q A lot of the testimony in this case is going to have to do
 (21) with alcohol and alcoholism and that is a subject which at
 (22) least in today's society touches almost all of our lives one
 (23) way or the other Has that touched your life at all?
 (24) A Yes A friend of mine's son was killed by a 17 year old
 (25) drunk He was on the side of the road and she - he was on his

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- (1) bicycle and 17 year old hit him and never stopped to help
 (2) Q Do you think you can move that tragic experience aside and
 (3) sit here and listen to the facts?
 (4) A Yes, because you know, it was settled and the girl was
 (5) brought to trial and she ended up going to prison for five
 (6) years and paying for her mistake, and you know, personally, I
 (7) have - there's - alcohol has not been a family kind of
 (8) problem I mean, never - not that much of a problem in my
 (9) family or my husband's There's none that I know of
 (10) Q The issue of punitive damages is going to be a part of this
 (11) case and the first - first chapter of the case is going to be
 (12) on that subject and if the evidence in the courtroom here that
 (13) you see is such and the judge's instructions are such to where
 (14) a punitive damage verdict is deserved can you do that? The
 (15) evidence and his instructions are such that a punitive damage
 (16) verdict is deserved can you do that?
 (17) A Yes
 (18) Q Now if the evidence and His Honor's instructions on the
 (19) law is such that a punitive damage decision in billions of
 (20) dollars is deserved can you do that?
 (21) A Yes
 (22) Q Do you recall where you were when the Valdez ran aground?
 (23) You were in Alaska then?
 (24) A Yeah, I was in Alaska
 (25) Q What kind of reaction did you have?

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- (1) A Well one thing I - I had just gotten a job with a cruise
 (2) company that was going to be going out from Whittier and I
 (3) wondered if this was going to effect my job As it turned out
 (4) it didn't Had a very minor effect As far as I recall one
 (5) person called and canceled their cruise a one day cruise
 (6) was a bookkeeper for the company But I don't - I don't
 (7) think - I wondered why, you know, what they were going to do
 (8) to clean it up, like everyone, what was going on
 (9) Q As a result of what you saw or what you heard can you sort
 (10) of push that aside for three months for us and sit here and
 (11) listen to it one time for once and for all?
 (12) A Oh yeah, to get - to get the facts, yes Like I said
 (13) before, when I was on that jury before, it was interesting to
 (14) know that you could only use the facts that were given to you
 (15) and you couldn't, I guess, speculate
 (16) Q Hopefully we'll do a better job for you this time Thank
 (17) you
 (18) JURY VOIR DIRE
 (19) BY MR LYNCH
 (20) Q Ms Wilson my name is Pat Lynch and I'm part of the group
 (21) of lawyers that's working with Exxon but the defendants are
 (22) spreading us around so I'll be asking for Captain Hazelwood as
 (23) well You appreciate don't you that the reason we're here is
 (24) that we couldn't agree with plaintiffs on a number of things
 (25) so we're just as interested in finding a good jury as the

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- (1) plaintiffs are and what we're looking for is a group of people
 (2) who will listen to both sides of the case Do you have any
 (3) problem with that?
 (4) A No, I don't
 (5) Q You indicated that you served on a jury in the State court
 (6) some time ago How long ago was that?
 (7) A Must have been at least six or seven years ago
 (8) Q Here in Anchorage?
 (9) A Yes
 (10) Q What kind of a case was it criminal or -
 (11) A It was a car accident on the Seward highway It was a head
 (12) on collision, icy roads In November
 (13) Q For damages?
 (14) A Yes
 (15) Q Someone was seeking damages? And did you reach a verdict
 (16) in that case?
 (17) A Yes It was because some people were injured It was to -
 (18) another insurance company was there to see what kind of
 (19) compensation for the people that were injured in the other
 (20) car
 (21) Q Did you - was the verdict - did all of the jurors join in
 (22) that verdict or were there a split in the jury?
 (23) A No, it was - we came to a decision really rather quickly
 (24) Q Okay In this case the jury has to be unanimous that
 (25) means that all the jurors have to join in the verdict and each

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- (1) juror as I think the judge will instruct you at the end of the
 (2) case each juror must give his own or her own honest judgment
 (3) that this is their verdict that they agree with this they re
 (4) not just compromising they re not just getting along to go
 (5) along Could you do that if you needed to in this case? In
 (6) other words if you reached a conclusion that in your own mind
 (7) after listening to the other jurors you didn t agree with the
 (8) verdict could you say I m not going to join in a verdict
 (9) that s not my verdict?
 (10) A Yes
 (11) Q Now in that connection I ll get to something that
 (12) concerns me a little bit I indicate - I understand from your
 (13) questionnaire that you may have a health problem?
 (14) A Yes
 (15) Q Do you have any concern about whether the strain of coming
 (16) to court every day for three months and having as many as four
 (17) jury deliberations might be a problem for you?
 (18) A I did consider that, as far as the stress factor goes,
 (19) because it's - I believe it's part - part of what happened to
 (20) me was stress related and health, health and hereditary
 (21) related
 (22) Q I think it s safe to say that no one here on the
 (23) plaintiffs side or the defense side much as we want a fair
 (24) jury wants to put anybody s health at risk Is that a problem
 (25) for you? I mean have you talked to your doctor about that?

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- (1) A I haven t talked to him concerning this I - I did have
 (2) an appointment with my cardiologist last week and he said that
 (3) I - I was fine to come back in six months I do have an
 (4) appointment tomorrow I was waiting to see what was going to
 (5) happen today, to look at some scar tissue that I d like to have
 (6) taken care of
 (7) Q Well I certainly don t I m not trying to be your doctor
 (8) at all but sometimes in jury deliberations because people do
 (9) honestly you know have differences of opinion about the
 (10) evidence and you re a bookkeeper even though we talk in
 (11) billions of bits billions of items billion is still except
 (12) for congressmen a lot of money and so you know I would hope
 (13) that every juror would take this assignment prepare to be very
 (14) careful about the decision they make Would that cause you a
 (15) concern in terms of stress that might occur in jury
 (16) deliberations? I m asking that out of genuine concern not
 (17) that I know how you will end up on the case at all but I
 (18) wouldn t want to put you in jeopardy or put the other members
 (19) of the jurors in a very awkward situation if you weren t
 (20) feeling well?
 (21) A That definitely has - that s the one and only reason I
 (22) feel that would cause me not to serve on the jury is because
 (23) it s - I had quadruple bypass surgery and I m still - still
 (24) healing and healthy otherwise and not on any major medication
 (25) Q I guess I have to ask you the question would you feel more

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- (1) comfortable if you were excused if this got passed as it were
 (2) until you were more fully recovered?
 (3) A Yes because I don t know how - because I am still
 (4) healing
 (5) MR LYNCH Your Honor I could stop here and ask Your
 (6) Honor if you have a view on that subject
 (7) THE COURT Mr O Neill what do you think?
 (8) MR O NEILL I think it s up to her Judge
 (9) THE COURT I think - I think she s made the call
 (10) and I think we should excuse you to make sure that you get
 (11) healed up well without the stress of going through a jury
 (12) trial I have confidence that these lawyers are going to do a
 (13) businesslike job of presenting the case but there s liable to
 (14) be some stress in reaching decisions and I m not comfortable
 (15) exposing you to that after recent surgery We ll excuse you
 (16) Thank you for coming
 (17) MR LYNCH Thank you very much and I hope you feel
 (18) better
 (19) THE CLERK Your Honor this is Katherine J Moor
 (20) juror number 43
 (21) THE COURT Thank you Mrs Moor we have your
 (22) answers under oath to the questionnaire that you gave us on
 (23) Monday By agreement the attorneys are going to ask you some
 (24) questions following up on your other answers Mr O Neill?
 (25) MR O NEILL Thank you Judge

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- (1) JURY VOIR DIRE
 (2) BY MR O NEILL
 (3) Q Ma am?
 (4) A Yes
 (5) Q You work for H&R Block?
 (6) A I have in the past Not recently
 (7) Q Did you like working for H&R Block?
 (8) A Yes It was a part time job during the tax season
 (9) Q What did you like about it?
 (10) A I like figures I like to work with figures, numbers
 (11) Q How about - have you held other jobs outside the home?
 (12) A Oh, yes
 (13) Q Give me some examples?
 (14) A I ve worked for a rural Alaska community school program, I
 (15) ended up as their comptroller I worked for the Mat Su
 (16) Borough, Matanuska Susitna Borough which is located north of
 (17) Anchorage and I was the finance officer there
 (18) Q You were finance officer What does the finance officer
 (19) for the Mat Su Borough do?
 (20) A At that time it s been a number of years ago, but I was in
 (21) charge of both the borough offices and the school district
 (22) financial offices
 (23) Q So you were essentially controller?
 (24) A I guess so yeah They didn t call me that but
 (25) Q Now then you re a financial officer now you re a

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- (1) controller
 (2) A Yeah
 (3) Q Your questionnaire says you have problems with hearing?
 (4) A Yes I do I wear a hearing aid
 (5) Q Is it both ears?
 (6) A No just in one I can't wear them in both ears I have
 (7) an ear infection that's on going in the other ear
 (8) Q The reason I ask this is because it's going to happen but
 (9) if we were to play a audio tape like a cassette tape -
 (10) A Yes
 (11) Q - and it was to come out of these two speakers here would
 (12) you be able to hear the tape well?
 (13) A I have no idea
 (14) Q Can you hear you radio?
 (15) A I can hear you
 (16) Q The reason I mention the speakers is you won't be able to
 (17) also get the visual input
 (18) A I don't know I've never tried
 (19) Q How about when you watch - do you listen to the radio?
 (20) A Sure
 (21) Q Do you have any problem listening to the radio?
 (22) A No
 (23) Q It's going to be the same as the radio?
 (24) A Oh, okay Then I shouldn't have any trouble
 (25) Q It will be a little more boring but -

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- (1) A Okay
 (2) Q How long have you been in Alaska?
 (3) A 40 - over 40 years
 (4) Q And do you like it here?
 (5) A It's my home
 (6) Q And why do you like it?
 (7) A Alaskans are different than other people, more friendly, I
 (8) think, and pretty much do as we want to do
 (9) Q That's why people come to Alaska?
 (10) A Pardon?
 (11) Q That's why people come to Alaska?
 (12) A That's right
 (13) Q Do you recall when you first heard about the Exxon Valdez
 (14) running aground and spilling -
 (15) A Probably on the morning news, but I don't really remember
 (16) Q Did you have an immediate reaction?
 (17) A Of course, terrible thing
 (18) Q Has your reaction evolved changed from then to now?
 (19) A Well, I no longer am shocked by it, or I mean it happened
 (20) and time has passed and we've become used to the idea that it
 (21) did happen
 (22) Q The oil industry is important to the State of Alaska
 (23) A Yes
 (24) Q Would that fact create a problem for you in sitting in
 (25) judgment of Exxon Corporation?

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- (1) A I don't really understand your question
 (2) Q Okay Let me put it - let me make it more specific and
 (3) then we'll come - let me give you two questions and then
 (4) we'll come back to that question Let's assume just for the
 (5) sake of discussing this right now without making any prior
 (6) judgments but let's assume that the law that was proved here
 (7) the facts that were proved here and the law that His Honor
 (8) instructed on were such that punitive damages ought to issue
 (9) against Exxon Corporation let's just assume that My first
 (10) question is could you do that if that's what the facts were
 (11) and the law was?
 (12) A I'm not exactly sure I understand what punitive damages
 (13) are, but if it means awards of money, I think I could be fair
 (14) on it
 (15) Q On awards of money you could be fair?
 (16) A I think so
 (17) Q So that's the answer to the question Now what if the
 (18) award was in the billion - in the area of billions of dollars
 (19) the facts and the law were such that the award ought to issue
 (20) in the area of billions of dollars could you do that?
 (21) A I think so
 (22) Q Now I'm going to come back to the first question that I
 (23) asked?
 (24) A Okay
 (25) Q Could you do that against Exxon Corporation knowing that

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- (1) the oil industry as a whole contributes a lot to the State of
 (2) Alaska or would that sort of put the brakes on what you would
 (3) do otherwise because of the facts and the law? Does that make
 (4) any sense?
 (5) A I - I guess so What you're saying is because Exxon is a
 (6) big source of income to the State of Alaska would I assess a
 (7) penalty against them?
 (8) Q If that's what was required
 (9) A I think so
 (10) Q In your questionnaire there was the question asked have
 (11) you or any member of your family or any close friends ever had
 (12) an alcohol or drug abuse problem and you didn't fill out the
 (13) answer to that
 (14) A I'm not sure if it's a problem Alcohol has been a factor
 (15) in our family, yes I don't know exactly what a problem -
 (16) it's been - I guess it has been a problem, yes
 (17) Q Could you talk a little bit about that? Rather than pry
 (18) why don't you talk up to the point that you're comfortable
 (19) about it and then -
 (20) A My husband has had a DWI There was no accident involved
 (21) He was pulled over on the side of the road He was driving
 (22) My son was given a DWI There was no accident involved He
 (23) actually had had a disagreement with his girlfriend and
 (24) domestic violence had come about as a result of it and the
 (25) police were called and he was given a DWI because he had keys

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- (1) to the car in his pocket
 (2) Q That one s sort of silly
 (3) A I thought so I thought very unfair But I m prejudiced
 (4) Q Let s go back to the first one let s go back to the first
 (5) one for a minute What was your at the time - or what - I ll
 (6) ask you what was your reaction at the time to your husband s
 (7) DWI?
 (8) A Disgust I guess
 (9) Q With who?
 (10) A I thought he should have known better
 (11) Q As we sit here today and you got to hear us two days ago
 (12) and you got to answer the questionnaire and you got to
 (13) cogitate think about the questionnaire for a couple days can
 (14) you think of any reason why you can t be fair to the fishermen
 (15) and the natives and the municipalities and the native
 (16) corporations on the one hand and Exxon Corporation and Captain
 (17) Hazelwood on the other? Is there anything that you think would
 (18) get in the way of you sitting here and being a good judge for
 (19) all of us?
 (20) A I can t think of anything that would cause me to be
 (21) unfair I try to be fair in my daily life
 (22) Q Good thank you Do you know Cindy Zinck?
 (23) A Zinck?
 (24) Q Zinck?
 (25) A No I don t think so

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- (1) Q Well the reason I asked is she also works for the Mat Su
 (2) Borough?
 (3) A Oh, but I worked there in the 60s, so I left there in
 (4) 69 No, I don t know that person
 (5) MR O NEILL Anything you want to ask me? Kidding
 (6) Thank you
 (7) JURY VOIR DIRE
 (8) BY MR SERDAHELY
 (9) Q Good morning Mrs Moor I m Doug Serdahely and I m with
 (10) these gentlemen representing Exxon Do you prefer Mrs To Ms
 (11) or does it matter?
 (12) A Kay is my name
 (13) Q And you ve been here 43 years?
 (14) A I ve been here 43 - well actually lived in Alaska for 40
 (15) years We took a three year leave in 1977 to 1980 and we lived
 (16) in Pakistan for three years
 (17) Q Yes let s talk about that for a minute That was with the
 (18) Rural Cap program was it not or was that something else?
 (19) A That was what?
 (20) Q With what program was the -
 (21) A My husband worked for the United Nations
 (22) Q I see and what did you husband do for the United Nations?
 (23) A He worked in flood and river control They were putting a
 (24) early flood warning system on the five big rivers in the Indez
 (25) Valley (ph)

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- (1) Q So did you live full time then in Pakistan for three years?
 (2) A Yes I did
 (3) Q Did you find that to be an interesting experience?
 (4) A Very
 (5) Q Do you like to travel?
 (6) A Yes
 (7) Q You say you like to read books as well What kind of books
 (8) do you like to read?
 (9) A Adventure I like mysteries Historical type novels
 (10) Q What type of mysteries do you like to read?
 (11) A Oh mostly about say early England and castles and so
 (12) forth I guess I ve always wanted to go and see the castles in
 (13) Europe and so forth
 (14) Q Have you ever been to England in your travels?
 (15) A Not to England, no I ve been to a lot of countries but
 (16) not there
 (17) Q You ve had a considerable background in finance?
 (18) A Yes
 (19) Q And tax right and your husband is retired?
 (20) A Yes
 (21) Q And he was a NOAA inspector if I recall from your
 (22) questionnaire?
 (23) A He worked for the office of the federal inspector on the
 (24) proposed gas line We lived in Fairbanks at that time Of
 (25) course the pipeline was never built

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- (1) Q What were some of your husband s duties?
 (2) A They were looking over the route that they would put the
 (3) gas line and mapping of Fairbanks up to Prudhoe Bay
 (4) Q And how long how long was that that was in what?
 (5) A Two and a half years we lived in Fairbanks and he worked on
 (6) that
 (7) Q And if I understand your questionnaire correctly Ms Moor
 (8) you were a part time business manager and owner of a coal
 (9) company?
 (10) A Back in the 50s
 (11) Q In the 50 in the old days and that was in Sutton as I
 (12) recall?
 (13) A That was at Sutton, Alaska, right
 (14) Q And you also managed a ski lodge at Independence Mine is
 (15) that right?
 (16) A Right
 (17) Q Did you have people working for you under your supervision?
 (18) A Several, yes Well we had many at the coal mine A few at
 (19) the ski lodge
 (20) Q How many folks did you have working for you at the gold
 (21) mine?
 (22) A I think it was 57 was our top employment
 (23) Q And were you and your husband then acting as supervisors or
 (24) managers for that operation?
 (25) A My husband was a part owner of the coal mine and he and the

- (1) owner ran it and his wife and I ran the office
- (2) Q You have five children is that right?
- (3) A No I have six children
- (4) Q And are they all - how many of the six are living here in
- (5) Alaska now?
- (6) A We have four in Alaska and two in the states
- (7) Q And one of your daughters is - is a biologist is she not?
- (8) A Yes, she is
- (9) Q This would be Julia right?
- (10) A She is not working in the biology field
- (11) Q She was trained as a biologist right?
- (12) A She has a degree as a biology
- (13) Q Has she ever worked as a biologist or marine science?
- (14) A Yes she worked at the U S experimentation in Palmer for
- (15) about - I m guessing about eight years ago
- (16) Q In her work at Palmer or otherwise has she had any
- (17) experience with the oil spill that s at issue here?
- (18) A Not that I m aware of
- (19) Q Or marine biology? Is she a marine biologist or some other
- (20) type?
- (21) A No, she s just a biologist
- (22) Q In your questionnaire Mrs Moor you mentioned that
- (23) another daughter was employed by a seafood processor is that
- (24) right?
- (25) A At one time she was office manager or ran the office for

- (1) Icicle Company, whatever it is
- (2) Q Icicle Seafoods? Do you remember what the years she worked
- (3) for Icicle Seafoods?
- (4) A Probably would have been right around 1982, 83 I m not
- (5) really sure
- (6) Q And she - has she worked for Icicle Seafoods since then?
- (7) A No, she s in - she has passed her real estate exam and
- (8) she s in real state now
- (9) Q I see okay Are any of your other children employed by
- (10) seafood processors or have they worked for seafood processors
- (11) or any other aspect of the seafood industry?
- (12) A No
- (13) Q Now you ve had some prior experience with the legal system
- (14) before you and your husband personally have you not?
- (15) A You mean have you we -
- (16) Q Well let me rephrase the question You ve been involved
- (17) in a couple of lawsuits is that right?
- (18) A Yes, we have
- (19) Q There was a lawsuit involving the coal company and if I
- (20) understand the questionnaire injured employee?
- (21) A We had an employee who filled on our tailings pile and we
- (22) objected to it
- (23) Q A tailings pile?
- (24) A That's the reject after you take the coal out
- (25) Q That s where the drilling machine goes through and leaves

- (1) the gravel behind?
- (2) A Yeah that s fair enough You re thinking about gold
- (3) Q You re right I am thinking about gold not coal And
- (4) how - how did that - how did that lawsuit turn out?
- (5) A Pardon?
- (6) Q How did the lawsuit turn out ma am?
- (7) A We won the case
- (8) Q And then there s a second case in which you yourself
- (9) brought an action against -
- (10) A Yes, I brought suit against the Mat Su Borough I was
- (11) terminated at the mat Mat Su Borough for no reason, really
- (12) Anyhow I - well I felt my supervisor had used a gimmick
- (13) naming me as department head when he let me go, so that I had
- (14) no recourse to the assembly, and I did sue him and I
- (15) collected - did not ask for reinstatement, but I did ask for
- (16) back wages as a department head, which he had indicated I was
- (17) from the day I d been hired
- (18) Q And you prevailed?
- (19) A Yeah
- (20) Q Good Anything about those two lawsuits or that experience
- (21) that would affect your ability to be fair and impartial to both
- (22) plaintiffs and the Exxon parties and Captain Hazelwood?
- (23) A I don t think so
- (24) MR SERDAHELY That s all I have thank you
- (25) THE COURT Mr O Neill?

- (1) MR O NEILL Pass for cause
- (2) MR SERDAHELY Pass for cause Judge
- (3) THE COURT Mrs Moor the attorneys have indicated
- (4) that you are acceptable to them as a potential juror That s
- (5) what passing for cause means We re through with you for
- (6) today We will be calling you back sometime in the next day or
- (7) so for the next step of this process okay? You can go about
- (8) your business now but you ll hear from the clerk again and
- (9) we ll call you back
- (10) THE COURT Since we re right up against the noon hour
- (11) we ll adjourn now until 1 00 this afternoon I will see you
- (12) then
- (13) (Recess at 1 1 58 a m to 1 07 p m)
- (14) THE CLERK. All rise His Honor the Court this United
- (15) States District Court is again in session please be seated
- (16) THE COURT Would you call another juror please?
- (17) THE CLERK Your Honor this is Michael E Richardson
- (18) juror number 45
- (19) THE COURT Mr Richardson we have your sworn answers
- (20) to our questionnaire The attorneys are going to have some
- (21) supplemental questions for you We ve agreed each side could
- (22) take about ten minutes for some follow up questions
- (23) MR O NEILL One brief subject While we were in
- (24) talking to Your Honor Oesting and Neal apparently gave away
- (25) the store but they ve decided on - to strike 52

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- (1) THE COURT 52 is David Christy?
 (2) MR O NEILL Yes sir 72 Heather Powell
 (3) MR NEAL 77 - 77 I thought but were you still
 (4) conferring on that
 (5) MR O NEILL Yeah and 77 I just hadn't finished
 (6) THE COURT I guess we have two then that are for
 (7) sure
 (8) MR O NEILL 52 72 and 77
 (9) THE COURT Oh I'm sorry I misunderstood I thought
 (10) you were still talking about 77
 (11) MR O NEILL You want 77 you can have 77
 (12) MR NEAL Spouse works for the law firm again 77
 (13) yes sir
 (14) THE COURT All right 77 Terrence Woods is also
 (15) excused All right again that's 52 Christy 72 Powell and
 (16) 77 Woods are excused by agreement. Would you inform the jury
 (17) clerk please that those people may be excused at this time
 (18) with our thanks
 (19) Now we're ready for Mr Richardson
 (20) MR O NEILL Thank you sir
 (21) JURY VOIR DIRE
 (22) BY MR O NEILL
 (23) Q How are you sir?
 (24) A Good
 (25) Q You have a problem with regard to your job in sitting on

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- (1) the jury?
 (2) A Well, I - jury doesn't pay a whole lot
 (3) Q If you're sitting on jury duty and you're not working are
 (4) you going to have trouble paying your bills?
 (5) A Well, I don't know It would be hard to determine if my
 (6) company would pay me, you know, the difference, but I haven't
 (7) had the answer to that yet I would like to be on it I think
 (8) it would be -
 (9) Q Do you know?
 (10) A No I don't know
 (11) Q Are you going to sit here and worry about meeting your
 (12) bills while you're being a juror is that going to be a
 (13) problem?
 (14) A No
 (15) Q I have a couple of questions on your form You said on
 (16) your form that Rodney King was awarded millions he was not
 (17) entitled to in your opinion Could you talk to me about that
 (18) a little bit?
 (19) A That guy was a criminal, you know, cops were chasing him
 (20) down
 (21) Q And this opinion you have with regard to Rodney King and
 (22) the cops chasing him down is that a -
 (23) A I just don't think he deserves any compensation for being,
 (24) you know, a criminal like that, you know I mean maybe, maybe
 (25) some compensation for police were out of line maybe but not

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- (1) millions of dollars worth
 (2) Q Okay Now you didn't - you didn't get the opportunity to
 (3) sit as a juror in the Rodney King case?
 (4) A No, so I - you're right, anything - I know what you're
 (5) going to say, anything I - my opinion is based on my knowledge
 (6) of what comes through the media
 (7) Q It's a pretty strong opinion though isn't it?
 (8) A Well, yeah
 (9) Q I mean strong enough?
 (10) A And that meant - you know, I pointed that out
 (11) Q I'm not saying -
 (12) A Not just that one case, but it happens all the time
 (13) Q I appreciate your honesty on the questionnaire You did a
 (14) good job with the questionnaire I just want to talk with you
 (15) about the answers to the questions You were very forthright
 (16) and honest in filling out the questionnaire You said it
 (17) happens all of the time Could you tell me about that?
 (18) A Well, you hear about cases where people are awarded large
 (19) sums of money
 (20) Q And how do you feel about that?
 (21) A Well, if a person is - is maimed or disabled, I can see
 (22) where you would get a large, you know, I mean if you can't go
 (23) out and work or you know, they just - the guy got beat up I
 (24) been beat up Nobody paid me millions of dollars for it
 (25) Q Are you at all angry about it?

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- (1) A No - well, yeah, kind of I used to live there It kind
 (2) of hurts me to see what goes on in my hometown
 (3) Q And you say you're angry Would it be fair to say that
 (4) you're angry about the size of the award in the Rodney King
 (5) case?
 (6) A Well, I don't think angry is the right word Disappointed
 (7) Q Does it irritate you?
 (8) A Irritated, maybe
 (9) Q Irritated? Do you think the system the judicial system at
 (10) all contributed to that result in the Rodney King case the way
 (11) the system is set up with juries and such like that?
 (12) A I don't know that much about the ins and outs of the
 (13) judicial system
 (14) Q Have you ever been involved with the judicial system at
 (15) all?
 (16) A No My opinion is based on what I take in from the media
 (17) Across the country, people are awarded large sums of money
 (18) for - for trivial things, in my mind
 (19) Q Okay That was people are awarded large sums of money for
 (20) trivial things Do you think that happens on a regular basis?
 (21) A It happens
 (22) Q Does it bother you?
 (23) A Yeah Yes
 (24) Q That's a disposition that you would bring into this case
 (25) an attitude a view?

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- (1) A Maybe, subconsciously
 (2) Q Another comment on your questionnaire was you made a
 (3) comment on this specific case and that is In my opinion the
 (4) oil companies including Exxon bend over backwards to ensure
 (5) the safe and efficient flow of oil from Prudhoe Bay to west and
 (6) gulf coasts but we all know accidents happen
 (7) What is the basis of this opinion?
 (8) A Well, I work in the oil industry for an oil company I've
 (9) been to Prudhoe Bay and I see what - seen what goes on It's
 (10) a very safe operation But in any - in any operation nothing
 (11) is perfect For the most part the oil companies do probably
 (12) more in this state than they do in a lot of other places
 (13) Q Okay let's sort of parse that down Your view is that the
 (14) oil industry does a safe job is that a correct statement?
 (15) A Yes
 (16) Q And that would carry over to your views as a general
 (17) matter maybe not specifically as a general matter about
 (18) Exxon's oil shipping practices in 1988 and 1989?
 (19) A No, I've never - I've never been to Valdez I know
 (20) nothing of Exxon's shipping record, I wouldn't hold those
 (21) opinions
 (22) Q Why do you use the expression accident on your form?
 (23) A Because for lack of a better word
 (24) Q Do you think Exxon was negligent or reckless with regard to
 (25) this situation?

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- (1) A I don't - I can't answer that I don't know
 (2) Q Do you presume that they weren't because the industry is
 (3) safe?
 (4) A No, not at all
 (5) Q On your questionnaire you exhibited a somewhat unfavorable
 (6) attitude towards commercial fishermen Do you see that?
 (7) A Yeah
 (8) Q Why?
 (9) A Oh, I think they get a lot of - that - my opinion, as you
 (10) wanted in your questionnaire, I - I sport fish only, you know,
 (11) I go to the rivers, I go to streams, sometimes out on charter
 (12) boats I think they get a lot of - a lot of breaks from the
 (13) State
 (14) Q Does that irritate you?
 (15) A It irritates me when - when a setnetter can go out and set
 (16) nets all in the inlet, but then they'll close off sport fishing
 (17) in the rivers
 (18) Q And you're talking about UCI?
 (19) A Setnetters down around the Kenai and the Kaslof, right
 (20) Q So you have a less than favorable view of at least Upper
 (21) Cook Inlet setnetters?
 (22) A Yes
 (23) Q Now on the questionnaire you had an extremely favorable
 (24) view of Exxon Corporation could you talk to me a little bit
 (25) about that?

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- (1) A What do you want to know?
 (2) Q What is your extreme - why do you have an extremely
 (3) favorable view of Exxon Corporation?
 (4) A I guess to explain my answer there is that I work in the
 (5) oil industry and I - it's - it is - it is my well being
 (6) You know I mean if it wasn't for them at this point in my
 (7) life you know they're paying - the oil industry pays my
 (8) bills
 (9) Q Your view is that the oil industry pays your bills?
 (10) A Partly
 (11) Q Is that a correct statement?
 (12) A Right
 (13) Q And you said that and because the oil industry pays your
 (14) bills you have an extremely favorable view of Exxon
 (15) Corporation?
 (16) A I have an extremely favorable view of the oil industry
 (17) Q On the sheet here it says Exxon Corporation?
 (18) A Well, they're part of the oil industry
 (19) Q Now if you were a fisherman if you were an Upper Cook
 (20) Inlet setnetter who was a plaintiff in this case knowing your
 (21) views on Upper Cook Inlet setnetters and your views on the oil
 (22) industry and the views - your view that the oil industry pays
 (23) your wage and your views on Exxon Corporation and your views
 (24) on Rodney King and your views on people getting extremely rich
 (25) off of jury verdicts would you want you to be sitting in

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- (1) judgment of a UCI setnetter? If you were a UCI setnetter
 (2) would you want you as a juror after hearing all those things in
 (3) this case
 (4) A It wouldn't matter to me I mean, a person is going to be
 (5) open minded Everything I wrote on there is, you know, I have
 (6) no specifics of what happened in the case You said a lot of
 (7) things in the other room Monday morning that I'd never heard
 (8) Q What was your reaction to what I said?
 (9) A Curiosity
 (10) Q Curiosity? Were you angry or mad or irritated that I would
 (11) say something bad about Exxon Corporation?
 (12) A No
 (13) Q Did you have any kind of visceral reaction to it?
 (14) A No
 (15) Q So your view is - despite your views of UCI setnetters and
 (16) Exxon Corporation and juries and jury verdicts and Rodney King
 (17) that if you were a fisherman you would want you on the jury
 (18) that's -
 (19) A I didn't - if I was in that situation I would probably
 (20) want nothing but Upper Cook Inlet fishermen on my side
 (21) Q Okay But would you want you? Or would you be a UCI
 (22) setnetter's worst nightmare?
 (23) A I can't - I can't say what other people might think I
 (24) don't know what other people might think I - like I said,
 (25) probably would want everybody who agrees with me if I was in

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- (1) that situation
- (2) Q Would you agree that not only do you - let's use your
- (3) terminology not agree with UCI setnetters but you carry a lot
- (4) of preconceptions into the courtroom as you sit here right
- (5) now that would bear on your duty as a juror and that would
- (6) give you some problems being fair?
- (7) A I don't think so
- (8) Q You don't think so?
- (9) A No because I have an open mind I have no direct
- (10) repercussions, you know, what happens over here How much
- (11) Exxon pays It might set a precedent that would effect the oil
- (12) industry but -
- (13) Q Let's talk about that What if Exxon had to pay billions
- (14) and billions of dollars in punitive damages billions and
- (15) billions of dollars in punitive damages in this case and the
- (16) law required it and the facts required it could you do that?
- (17) Come in with a multi billion dollar award against Exxon
- (18) Corporation?
- (19) A Sure
- (20) Q You could?
- (21) A I mean, my - like I said, I have no direct - there is no
- (22) direct repercussion to me They're still going to ship oil
- (23) from Prudhoe Bay no matter how much Exxon has to pay in fines
- (24) There was an incident it was - I won't say accident again,
- (25) there was an incident and you know, but incidents happen

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- (1) Q And incidents happen?
- (2) A Incidents happen and that's the price of doing business
- (3) Q And you believe -
- (4) A And if this court tells them they'll have to pay they'll
- (5) have to pay it
- (6) Q And you believe in this case that it was an incident that
- (7) just sort of happened?
- (8) A I don't know that I don't know the specifics I told you
- (9) what I hear on the news is all I heard and I heard a lot of
- (10) different stories when it all came out
- (11) MR O NEILL I have nothing further
- (12) MR SERDAHELY Your Honor
- (13) JURY VOIR DIRE
- (14) BY MR SERDAHELY
- (15) Q Good afternoon Mr Richardson
- (16) A How you doing?
- (17) Q I'm Doug Serdahely I'm with the Exxon defendants Let me
- (18) cut to the nub of it here Mr Richardson Can you be a fair
- (19) juror in this trial for both the plaintiffs and the defendants
- (20) including the Exxon defendants and Captain Hazelwood? I mean
- (21) you know as you sit there now what's in your head You know
- (22) your values you know the baggage of life you bring into the
- (23) courtroom with us and both sides are entitled to a fair
- (24) answer Can you be an open minded and fair juror in this trial
- (25) if you're asked to sit?

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- (1) A Sure I - you know I come into this trying to get out of
- (2) jury duty and I find myself defending myself I mean -
- (3) Q I hear you
- (4) A You know what I'm saying but I could sit up there just
- (5) like any other law abiding citizen and do what is right
- (6) Q And we all have our own life experiences we all have our
- (7) own different employment experiences You work with the oil
- (8) industry correct?
- (9) A Yeah
- (10) Q And have you had - by the way sir have you had prior
- (11) jury service by any chance?
- (12) A (Shakes head from side to side)
- (13) Q And if the judge at the end of the case the judge will
- (14) issue legal instructions on the law the law you're supposed to
- (15) apply if you sit as a juror Would you have any trouble
- (16) following those legal instructions and applying them to the
- (17) best of your ability?
- (18) A No
- (19) Q Are you able sir to set aside any information you may
- (20) have learned or acquired from outside sources such as
- (21) newspaper ads or television coverage news coverage of this
- (22) incident and base your verdict strictly upon the evidence that
- (23) you hear in the courtroom?
- (24) A I'm sure that anything I heard in the past would be
- (25) definitely overshadowed by you know what is the true facts of

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- (1) the case I do really -
- (2) Q And can you -
- (3) A Let me add I do realize that most of what we hear in the
- (4) media is slanted for whatever way either for or what the
- (5) reporter wants it to be
- (6) Q And can you keep an open mind if you sit here throughout
- (7) the trial if you're called as a juror to the conclusion of the
- (8) trial until you've heard all the evidence both from the
- (9) plaintiff's side and from the defendants side and until you've
- (10) had the instructions from the Court on the law? Can you keep
- (11) your mind open?
- (12) A Sure
- (13) MR SERDAHELY Thank you Your Honor we have nothing
- (14) further
- (15) MR O NEILL Could we excuse the young man for a
- (16) moment?
- (17) THE COURT Mr Richardson could you go back to the
- (18) jury room for just a few minutes and we'll get back to you in
- (19) just a moment
- (20) MR O NEILL Reading the transcript one could not
- (21) understand how angry disingenuous in the vernacular The
- (22) young man has an attitude and he's biased to Exxon and I would
- (23) contend at this point in time that his answers to my questions
- (24) were less than frank and you had to see his demeanor and the
- (25) tone and the pausing in order to get that and we move to

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- (1) strike him for cause
 (2) MR SERDAHELY Thank you Your Honor We'll resist
 (3) the motion to strike for cause The gentleman's testimony was
 (4) clear It doesn't evince any bias or close mindedness on the
 (5) gentleman's parts His demeanor his testimony his - the way
 (6) he responded to the questions was available for the Court to
 (7) see If there is a credibility issue here the Court can
 (8) resolve that We oppose the motion
 (9) THE COURT I'm going to grant the challenge for
 (10) cause This is - this is one of the few witness - one of the
 (11) few jurors where I have had and am acting on what I will tell
 (12) you frankly is a visceral reaction I have the feeling that
 (13) this young man is angry about something I don't know exactly
 (14) what it is but his - his answers that he will keep an open
 (15) mind and can be fair and impartial are - are a little hard for
 (16) me to accept in the light of all the opinions that he has on
 (17) other things that suggest to me that he would have difficulty
 (18) being impartial in this case I will grant the challenge for
 (19) cause Would you tell Mr Richardson please that he has been
 (20) excused and bring us another juror
 (21) THE CLERK Your Honor this is Juanita A Shumaker
 (22) juror number 46
 (23) THE COURT Thank you Ms Shumaker we have the
 (24) answers to - your answers to our interrogatories under oath
 (25) By agreement the attorneys are going to ask you some follow up

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- (1) questions for about ten minutes on each side Mr O'Neill
 (2) MR O NEILL Thank you Judge
 (3) JURY VOIR DIRE
 (4) BY MR O NEILL
 (5) Q Ma'am let me get to what - let me start at the end of the
 (6) questionnaire You're a self-employed hairdresser?
 (7) A Yes, I am
 (8) Q The jurors in this case are going to have to sit here from
 (9) eight to two for three months
 (10) A And if I did that, since I own my business and am the only
 (11) operator, it would just really, really be awful for me because
 (12) I would lose a lot of customers
 (13) Q You'd both lose the wage and lose the customers?
 (14) A Well, I've had a business here in town for many years and I
 (15) have a small business now and I'm the only operator there If
 (16) I'm out for three months on jury, my customers will have to go
 (17) somewhere else, you know, for their hair, so I would lose some
 (18) of my customers
 (19) MR O NEILL We don't want you to lose any of your
 (20) customers ma'am Thank you for coming
 (21) THE COURT You're excused Mrs Shumaker with our
 (22) thanks
 (23) THE CLERK Your Honor this is Jewel Spann Juror
 (24) number 47
 (25) THE COURT Thank you Mrs Spann we have your sworn

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- (1) answer to the Court's interrogatories By agreement the
 (2) attorneys are going to ask you some follow up questions for
 (3) ten minutes on each side Mr O'Neill?
 (4) JURY VOIR DIRE
 (5) BY MR O NEILL
 (6) Q Ma'am what do you like about living in Alaska?
 (7) A What don't I like about living in Alaska? I don't know,
 (8) it's just - I just like the people and the lifestyle
 (9) Q When did you come up here?
 (10) A When?
 (11) Q Yes ma'am How many years ago?
 (12) A Well, I've lived up here twice One time in - for four
 (13) years in 1969 till 1973, I think it was and then in 1984 we
 (14) come back up
 (15) Q Are you employed outside the home?
 (16) A Yes
 (17) Q And what do you do?
 (18) A Work at McDonald's
 (19) Q You work at McDonald's?
 (20) A Uh huh
 (21) Q My favorite place I want to ask some sort of general
 (22) questions that may seem kind of oblique or odd when I start
 (23) but maybe you'll not think that I'm so strange when we're
 (24) finished Some people because of their attitudes or personal
 (25) beliefs or religious beliefs have trouble sitting in judgment

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- (1) of people in a courtroom setting For whatever personal
 (2) beliefs they have they just don't think that was the reason
 (3) they were put on earth Do you have any problem with the
 (4) concept of being a juror and judging the facts?
 (5) A No
 (6) Q Do you recall where you were when the oil spill happened?
 (7) A I think I was at home I don't think I was even working
 (8) Q Do you recall what your reaction to the spill was?
 (9) A It was shock I mean, it was pretty bad, as I recall
 (10) Q Through the last three or four years five years since the
 (11) spill happened have your views have you thought a lot about
 (12) it one way or the other?
 (13) A It's something that I wish had never happened, but I think
 (14) there was some - were a few good things come out of it
 (15) Q Like what?
 (16) A Like now the response, spill response is a lot better, a
 (17) lot faster, or at least it seems to be on the Kenai, any way
 (18) Q As a juror in this case one of the topics that we're going
 (19) to discuss is the subject of punitive damages and those are
 (20) damages that are assessed by the Court system the jury and the
 (21) Judge to both punish conduct and to set an example to others
 (22) If the facts in this courtroom were such combined with the law
 (23) that Judge Holland gives you is such that punitive damage -
 (24) punitive damages ought to be awarded can you do that?
 (25) A They should be awarded?

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- (1) Q If the facts are that they should and combined with His Honor's law?
- (2) A Yes
- (3) A Yes
- (4) Q Now if the facts as presented in the courtroom as combined
- (5) with His Honor's law both of those together are such that
- (6) punitive damages ought to be awarded in the billions of
- (7) dollars can you do that?
- (8) A If that's what's required yes
- (9) Q The subject of alcoholism and drinking is also going to be
- (10) a discussion in the courtroom and it is in this day and age a
- (11) subject that most of us through either ourselves or our family
- (12) or friends run up against Has it intruded into your life in
- (13) any way?
- (14) A Not really, no
- (15) Q Any family or friends?
- (16) A I've had a few friends that were recovering alcoholics but
- (17) I mean I didn't know them when they were -
- (18) Q When they were drinking?
- (19) A Before
- (20) Q Yeah what do you do in your spare time?
- (21) A Oh, just anything comes along I like reading, I like
- (22) gardening, fishing, just anything
- (23) Q Do you fish on the Kenai?
- (24) A Oh, yes
- (25) Q I like to fish on the Kenai too but there are an awful lot

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- (1) of people there sometimes?
- (2) A Yes
- (3) MR O NEILL Nothing else thank you
- (4) JURY VOIR DIRE
- (5) BY MR SERDAHELY
- (6) Q Good afternoon I'm Doug Serdahely and I represent Exxon
- (7) defendants and for purposes of this deposition examination
- (8) Captain Hazelwood as well Ma'am you've been in Alaska for
- (9) how long now?
- (10) A Eight - I guess probably 12 years altogether, 12 or 14
- (11) years
- (12) Q And how long on the Kenai peninsula have you been?
- (13) A Let's see, eight years
- (14) Q Prior to that where did you live? Before that where did
- (15) you live ma'am?
- (16) A We was running a business down in Arizona
- (17) Q And what type of a business was that?
- (18) A It was in agriculture was hay and - putting up hay and
- (19) stuff
- (20) Q You mentioned you like gardening is that a flower garden
- (21) or vegetable garden or both?
- (22) A Both
- (23) Q What kind of books do you like to read ma'am?
- (24) A Just about any kind that's got a good story to it
- (25) Q Any particular favorite category mystery romance?

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- (1) A I like adventure
- (2) Q Now you've undoubtedly heard about the spill and you've
- (3) mentioned that in your questionnaire Could you tell us a
- (4) little bit about when you first heard about the oil spill
- (5) occurring from what - from what information did you hear
- (6) about it?
- (7) A What did I hear about it?
- (8) Q What source yes what did you hear?
- (9) A Just what was over TV and - and they were showing how it
- (10) had happened
- (11) Q And do you have or did you formulate any opinions about the
- (12) causes of the spill as a result of the TV coverage that you
- (13) watched?
- (14) A Well, I hope the press forgives me, but I have a little
- (15) problem putting all my trust in what the newspapers and what
- (16) the television says
- (17) Q I think you're not alone in that category You don't
- (18) believe everything you read in the newspapers?
- (19) A No, I do not
- (20) Q And you don't believe everything you see on TV I take it?
- (21) A Right
- (22) Q You're an independent minded person that likes to make up
- (23) your own mind on the facts I take it?
- (24) A I think so
- (25) Q Do you have Ms Spann do you have any strong feelings

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- (1) about the oil industry in Alaska in general?
- (2) A I think we need it I think Alaska needs it
- (3) Q And is there anything about your feeling about the industry
- (4) here that would affect your ability to be a fair and impartial
- (5) juror to both sides in this case?
- (6) A No I don't think so I think I can separate the merits on
- (7) both sides
- (8) Q Do you have any opinions or feelings about Exxon
- (9) Corporation or Exxon Shipping Company as you sit here today?
- (10) A No
- (11) Q Captain Hazelwood for example?
- (12) A (Shakes head from side to side)
- (13) Q How about commercial fishermen or Alaskan natives any
- (14) strong feelings one way or the other?
- (15) A No
- (16) Q Are your children living here in Alaska?
- (17) A I have a son that lives here and a grandson
- (18) Q And what do they do?
- (19) A Right now they're both students My son was manager of an
- (20) oil service company but it went - it closed and so he's went
- (21) back to college
- (22) Q Is that the son that worked on the oil spill cleanup for a
- (23) while?
- (24) A The one down in Seward, yeah
- (25) Q Down in Seward? Is there anything about his experience

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- (1) working on the oil spill cleanup that would affect your ability
 (2) to be fair and impartial to both sides here?
 (3) **A No**
 (4) MR SERDAHELY Thank you That s all I have
 (5) MR O NEILL Pass for cause
 (6) MR SERDAHELY We pass for cause Judge
 (7) THE COURT Mrs Spann what passing for cause means
 (8) is that you re going to stay with us for a little while
 (9) longer We won t need you anymore today however You can go
 (10) about your business for today and the clerk will be in touch
 (11) with you by telephone as soon as we need to have you back
 (12) THE CLERK Your Honor this is Bertha Tugatuk juror
 (13) number 48
 (14) THE COURT Mrs Tugatuk we have your answers to our
 (15) questionnaire and at this point by agreement the attorneys
 (16) are going to ask some follow up questions We ve agreed that
 (17) each side would have ten minutes to ask you some more
 (18) questions okay? Mr O Neill
 (19) MR O NEILL Thank you Judge
 (20) JURY VOIR DIRE
 (21) BY MR O NEILL
 (22) Q Ma am the - in the questionnaire it - you mention that
 (23) you re pregnant?
 (24) A Uh huh
 (25) Q When are you expecting?

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- (1) **A September**
 (2) Q Well that ll work out okay
 (3) **A But I have two kids at home**
 (4) Q You have two kids at home?
 (5) **A And my parents are going to be fishing and I ll have no
 (6) baby sitter**
 (7) THE COURT I m not sure I understood that Your
 (8) parents are baby sitting your other children right now
 (9) MS TUGATUK Right my two kids
 (10) THE COURT When do they go fishing
 (11) MS TUGATUK About this month
 (12) THE COURT Later this month?
 (13) MS TUGATUK First and second week
 (14) THE COURT I m sorry?
 (15) MS TUGATUK First and second week
 (16) THE COURT First and second week of May?
 (17) MS TUGATUK Uh huh
 (18) THE COURT Well that s right upon us Is there
 (19) anyone else who can look after your children?
 (20) MS TUGATUK No
 (21) THE COURT I think we need to let you go take care of
 (22) your children Thank you for coming in Mrs Tugatuk
 (23) THE CLERK Your Honor this is Rita Wilson juror
 (24) number 49
 (25) THE COURT Thank you Mrs Wilson we have your

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- (1) sworn answers to the Court s interrogatories and by agreement
 (2) the attorneys are each going to take about ten minutes to ask
 (3) you some follow up questions Mr O Neill
 (4) MR O NEILL Thank you Judge
 (5) JURY VOIR DIRE
 (6) BY MR O NEILL
 (7) Q Ma am I m not going the make a bad joke How do you read
 (8) a cross stitch magazine? You know I mean how can you describe
 (9) in prose - I m sorry
 (10) **A That s all right**
 (11) Q You ve lived in Alaska your whole life?
 (12) **A No since I was 11**
 (13) Q Since you re 11?
 (14) **A Uh huh**
 (15) Q Do you like it here?
 (16) **A It s home**
 (17) Q And why do you like it here?
 (18) **A Well, I grew up here I don t really know any other
 (19) place**
 (20) Q Where do you work now?
 (21) **A I work at Sand Lake Elementary as a secretary**
 (22) Q And what do you like about your job?
 (23) **A The kids**
 (24) Q Is there anything you don t like about your job?
 (25) MR NEAL Your Honor we re having - I think it s my

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- (1) age I m having a little bit of difficulty hearing over here
 (2) I would think it s my age except my young colleagues can t
 (3) hear either
 (4) THE COURT Mrs Wilson if you d move a little closer
 (5) into that silver microphone it will amplify your voice
 (6) MS WILSON Can you hear me now? I m sorry
 (7) MR O NEILL We have to worry about Mr Neal
 (8) MR NEAL Please do
 (9) BY MR O NEILL
 (10) Q Is there anything you don t like about your job?
 (11) **A Sometimes it s hard to do six and seven things at a time
 (12) and do them well**
 (13) Q Do you recall when you first heard about the oil spill?
 (14) **A (Shakes head from side to side) No**
 (15) Q Do you recall about the time of the spill whether you had
 (16) any reaction to it one way or the other?
 (17) **A No**
 (18) Q You don t recall or you didn t have any reaction?
 (19) **A I don t recall I didn t know until Monday it was in 85**
 (20) **I had forgotten that**
 (21) Q The spill was in 89?
 (22) **A It was 89? See? I m a terrible citizen No It didn t
 (23) affect my life directly, so I don t have - you know, any
 (24) pertinent memories or anything in particular that I remember**
 (25) Q Do you recall watching or seeing anything on it in the last

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- (1) four or five years?
 (2) A No I don't watch a lot of TV
 (3) Q How about the newspaper do you read the newspaper on a
 (4) regular basis?
 (5) A I do the crossword puzzle, I read the art section
 (6) Q You're going to have to start getting current events
 (7) reports at dinner time?
 (8) A I know this is embarrassing
 (9) Q There are going to be certain subjects that are relatively
 (10) sensitive that are going to be discussed in the courtroom as we
 (11) proceed and one of those subjects will be the subject of
 (12) punitive damages and that is the imposition by the jury and
 (13) the Judge of punitive damages if the facts require them and
 (14) the facts will be proven in the courtroom and if the law with
 (15) the facts together requires them Now if the law and the
 (16) facts as you hear them from Judge Holland and you see them
 (17) presented in this courtroom are such that there ought to be an
 (18) award of punitive damages can you do that?
 (19) A Yeah I mean if it's proven
 (20) Q If it's proven that's what I'm saying if it's proven can
 (21) you do it?
 (22) A Yeah
 (23) Q And if it's proven that the award ought to be in the range
 (24) of billions of dollars can you do that?
 (25) A Billions is a hard concept for me

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- (1) Q It's a hard concept for me too but I want to ask the
 (2) question because those numbers will be talked about in the
 (3) courtroom?
 (4) A Well I mean is there going to be reasons for such large
 (5) numbers?
 (6) Q Of course there - there will be reasons for and reasons
 (7) against But I'm asking does the fact that we're talking
 (8) about billions of dollars just set you off so that you won't
 (9) listen to the reasons for or the reasons against?
 (10) A Oh, no
 (11) Q I mean do you think you could sit here and listen that's
 (12) all I'm asking fairly listen?
 (13) A Oh, yeah
 (14) Q Now Exxon Corporation is an oil - oil company I mean
 (15) you don't need to be the greatest lawyer in the world to know
 (16) that And the oil company contributes a lot to the State of -
 (17) the oil industry contributes a lot to the State of Alaska and
 (18) one of your duties here is going to be to sit in judgment of
 (19) Exxon Corporation Can you - does the fact that they
 (20) contribute a lot to the State of Alaska will that give you
 (21) problems in sitting in judgment of them?
 (22) A No
 (23) Q Okay Now the subject of alcoholism and drinking is going
 (24) to be a major subject of discussion in this courtroom on these
 (25) TV sets on that masterful TV set over there and it is a

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- (1) subject that in modern America in the modern world touches
 (2) all our lives one way or the other My question for you is
 (3) has it touched your life any way family friends self?
 (4) A No Nothing - anything that comes to mind no I mean I
 (5) know people that drink but not alcoholism
 (6) Q Is there anything that you can think of that I haven't
 (7) asked you about that you think might affect your ability to be
 (8) fair one way or the other or are you here ready to serve?
 (9) A I can't think of anything that would make me not ready to
 (10) serve
 (11) Q Okay thank you
 (12) JURY VOIR DIRE
 (13) BY MR SANDERS
 (14) Q Good afternoon Ms Wilson My name's Jim Sanders I
 (15) represent the Exxon defendants and for purposes of this
 (16) questioning of you by the plaintiffs and the defendants I'm
 (17) also going to ask questions on behalf of Captain Hazelwood and
 (18) his lawyers He's the guy in the back row there
 (19) Ms Wilson you were answering questions for Mr O'Neill
 (20) about punitive damages and I know we make it hard on jurors to
 (21) sit here by themselves in a room full of people and ask them
 (22) questions and it's hard to figure out where we're coming from
 (23) and therefore it's hard for you to figure out where to go but
 (24) don't worry about that There's no right or wrong on this
 (25) Let me ask you a couple of questions about that

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- (1) Do you think that by virtue of Mr O'Neill's questions that
 (2) you're bound to have to worry about whether there's a billion
 (3) dollars or more in punitive damages?
 (4) A No
 (5) Q There are some other things going to happen before you even
 (6) get to that question You understand that don't you?
 (7) A That's what they told us Monday
 (8) Q Right that we're going to first decide whether or not the
 (9) conduct at issue in phase one makes it even necessary to
 (10) consider the question of punitive damages that's in phase
 (11) one And then phase three if we have it if it's necessary
 (12) then that's the time that that will be discussed you
 (13) understand that?
 (14) A Yeah that's what they told us on Monday
 (15) Q Okay Now in looking at that question and based on what
 (16) you've heard from the Court about compensatory damages or
 (17) actual damages and punitive damages you see there's a
 (18) difference between those two?
 (19) A Yeah
 (20) Q Okay And you can keep that difference that distinction
 (21) clear in your mind throughout this?
 (22) A Oh yeah
 (23) Q All right Do you have - I realize you were asked several
 (24) questions about what you know about this and I'm not going to
 (25) plow that ground again but I would ask you do you - do you

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- (1) think you know what caused the grounding?
 (2) A No
 (3) Q Do you think you know what the long term effects if any
 (4) of the spill are or were?
 (5) A I just know that it was -- supposedly it was hard on the --
 (6) our ocean and things like that
 (7) Q All right Do you have any feeling about whether the
 (8) effects continue today or whether they re over or will you
 (9) wait to see what the proof shows you about that?
 (10) A I don t have any facts really to answer that
 (11) Q And there are very few people that have facts about that
 (12) A Okay
 (13) Q But I m asking you do you have a belief or an opinion
 (14) about it coming into this?
 (15) A In all honesty, I never really have thought a lot about
 (16) it It didn t affect my life directly and I never -- never
 (17) really put a lot of thought into it
 (18) Q I understand and you know you re talking to people that s
 (19) spent several years worrying about these things so you have to
 (20) understand this
 (21) A I know, and I feel like a terrible citizen because I don t
 (22) have -- you know, I don t have any opinions about it I don t
 (23) have any facts either
 (24) Q I obviously cut you off I didn t mean to Do you have
 (25) any thoughts about whether the oil industry is good or bad for

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- (1) Alaska?
 (2) A A lot of people have benefitted from the oil companies
 (3) it s -- seems like if anything, there s been good and bad
 (4) things with it
 (5) Q What are some of the bad things?
 (6) A Well it s been --
 (7) Q To you to you?
 (8) A The only thing personally I ve been affected is greedy
 (9) people
 (10) Q I m sorry?
 (11) A Greedy people They got greedy and couldn t have enough
 (12) money, just -- that s just some friends that were involved
 (13) working for the oil companies, that once they started making
 (14) really big money, then they wanted to make even more money
 (15) and
 (16) just sort of changed their personality
 (17) Q You probably blame those people more than you do the oil
 (18) industry for that?
 (19) A Oh of course anybody could deal with that a little
 (20) better
 (21) Q Day before yesterday did you know who the captain of the
 (22) Exxon Valdez at the time of the grounding was?
 (23) A When he walked in the courtroom he looked familiar but I
 (24) couldn t figure out why I knew him till he was introduced, and
 (25) then it was like oh, yeah, that s who he is
 (26) Q And do you -- day before yesterday did you -- did you know

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- (1) anything about Captain Hazelwood or the guy you had seen
 (2) before?
 (3) A No I had just probably seen his picture in the paper or
 (4) something
 (5) Q All right Do you remember anything that was said about
 (6) him that sticks in your mind good or bad?
 (7) A The only thing I can remember is, you know, something at
 (8) a trial or something, but you know I don t really read those
 (9) articles, I just sort of look at the pictures and read the
 (10) articles and things I m interested in
 (11) Q Do you remember -- do you have any recollection of how that
 (12) trial turned out?
 (13) A No
 (14) Q Now part of your life you spent as a librarian right?
 (15) A Library aide
 (16) Q I ve read that wrong
 (17) A Library aide
 (18) Q And as library aide -- and as a library aide you helped
 (19) put up the books?
 (20) A Uh huh
 (21) Q You ever come across a book or books on the oil spill?
 (22) A No, it s children s libraries We don t have --
 (23) Q They don t have those in the children s library?
 (24) A They don t allow lewd books in the libraries I was working
 (25) in

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- (1) MR SANDERS I believe that s all I have thank you
 (2) Ms Wilson
 (3) MR O NEILL Pass for cause
 (4) MR SANDERS Pass for cause Your Honor
 (5) THE COURT Mrs Wilson being passed for cause means
 (6) that we re going to want you to stay with us some longer in
 (7) this matter
 (8) MS WILSON Even though I was nervous
 (9) THE COURT Right We are through with you for today
 (10) so that you can go about your business now but the clerk will
 (11) be calling you back as soon as we get to the next step in the
 (12) process Mr Murtiashaw how many people do we have in the
 (13) wings at this point
 (14) THE CLERK Back here about maybe half dozen They
 (15) brought me another batch
 (16) THE COURT Looks like we re in pretty good shape for
 (17) the rest of the day
 (18) THE CLERK Yes sir
 (19) MR NEAL Your Honor while that witness is coming
 (20) could we have a side bar
 (21) (Side bar off record)
 (22) THE CLERK Your Honor this is juror number 51 Terry
 (23) Dodds
 (24) THE COURT Mrs Dodds we have sworn answers to your
 (25) questionnaire At this point by agreement the attorneys are

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- (1) each going to have ten minutes to ask you some follow up
 (2) questions based on your answers okay? Mr O'Neill?
 (3) JURY VOIR DIRE
 (4) BY MR O NEILL
 (5) Q Hi In our lives we occasionally have to put our feelings
 (6) aside when it comes time to make tough decisions Does that
 (7) make sense?
 (8) A Yes It does
 (9) Q And that's something that if we're successful in life we
 (10) learn how to do And you have some feelings about this Exxon
 (11) Valdez disaster don't you?
 (12) A I suppose I do, yeah
 (13) Q My question for you is can you put those feelings aside if
 (14) you were chosen to be a judge of the facts in this case?
 (15) A I think I could, yes
 (16) Q In the questionnaire you say I am unlikely to forget the
 (17) personal and financial devastation wrecked upon my family and
 (18) friends due to the oil spill and its impact on the fishing
 (19) community and my clients The fishermen and the natives
 (20) appreciate your honesty and I'm sure Exxon appreciates your
 (21) honesty Just again want to ask you do you believe you can
 (22) move that aside and be fair if you're a juror?
 (23) A My statement's true I don't think I'll ever forget it
 (24) But yeah I do believe I can put that aside and do it fairly
 (25) Q Your father is a commercial fisherman?

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- (1) A He's since retired
 (2) Q When did he fish until?
 (3) A Probably 79, 78
 (4) Q So he didn't - he wasn't fishing during the time of the
 (5) spill?
 (6) A No
 (7) Q On question 65 and 66 of the questionnaire they were the
 (8) questions on punitive damages the awarding of punitive
 (9) damages?
 (10) A I didn't understand what punitive meant
 (11) Q Okay Lot of people have - you're not alone That's the
 (12) story of - most misunderstood question on the questionnaire
 (13) if we're looking for blame Compensatory - and this is going
 (14) to be a gross simplification and they'll correct me if I get
 (15) it wrong but compensatory damages are the damages that you get
 (16) in the lawsuit for your immediate loss so that if your car's
 (17) wrecked and you sue somebody and you get the value of your car
 (18) that's compensatory damage And then in certain serious
 (19) situations the law allows for the award of punitive damages to
 (20) set an example and some people have profound beliefs against
 (21) that concept and the reason the questionnaire asks those
 (22) questions was is that something you had given thought to and
 (23) had profound beliefs against Is it?
 (24) A I think there's a place for it
 (25) Q You have a brother that's a tanker pilot?

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- (1) A Not a tanker pilot He works for TOTE It's a cargo
 (2) container
 (3) MR O NEILL I have nothing further
 (4) JURY VOIR DIRE
 (5) BY MR CHALOS
 (6) Q Hello Ms Dodds I'm Michael Chalos I represent Captain
 (7) Hazelwood but for the purposes of this exercise I'm also
 (8) speaking on behalf of the Exxon defendants Ms Dodds the
 (9) whole point of this exercise is to try and find a fair and
 (10) impartial jury You understand that?
 (11) A Yes I do
 (12) Q And what we need to do is explore with you any bias that
 (13) you might have any prejudice that you might have any strong
 (14) feelings that you might have that even though you say you think
 (15) you can be fair still come into the courtroom with you and
 (16) what we need from you is your most honest answer because
 (17) Captain Hazelwood is entitled to a fair and impartial jury
 (18) Exxon is entitled to the same thing and so are the plaintiffs
 (19) You understand that?
 (20) A Yes, I do
 (21) Q And by the way we appreciate your honesty in your answers
 (22) to this questionnaire but I'd like to explore with you your
 (23) answer to question 80 where you say - the question was Is
 (24) there any information not asked in this questionnaire that you
 (25) feel the Court should know about you that might be relevant in

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- (1) any way to this trial or to your possible jury service
 (2) And you say The impact of the oil spill on my community
 (3) my friends and family and their ability to pursue their
 (4) business of commercial fishing has been devastating
 (5) You remember saying that?
 (6) A Uh huh
 (7) Q Those are pretty strong feelings wouldn't you agree?
 (8) A Oh, absolutely
 (9) Q And again I need your honest answer Do you think it's
 (10) going to be difficult for you to put those feelings aside?
 (11) A Well, I guess you never know until you're actually put into
 (12) that place, but no, I think that in the profession that I'm in
 (13) I'm faced with those kind of decisions on a daily basis, and
 (14) from personal experience I know I don't have problems putting
 (15) personal feelings aside So based on personal experience, I
 (16) don't believe I would have any problem putting emotions aside
 (17) and just listening to facts
 (18) Q Well is this an emotional issue for you?
 (19) A Well, it can be certainly
 (20) Q Let me ask you this how long have you had these feelings?
 (21) A I don't understand
 (22) Q I mean have you had them since the day of the spill?
 (23) A Certainly from the day of the spill, but I have to say that
 (24) in recent years, I haven't given it much thought
 (25) Q Were you angry when the spill occurred?

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- (1) A About the spill in and of itself in no about some things
 (2) that happened yeah You know personal things, one friend not
 (3) being able to lease their boat and another friend did and you
 (4) know more personal issues dealing with friends
 (5) Q Tell me how the spill has impacted your friends because
 (6) you say it's been devastating on them?
 (7) A Well at the time there was - I'm trying to remember
 (8) Some of my friends were unable to fish Others leased their
 (9) boats so other people went to work for Exxon in the cleanup
 (10) and you know a lot of my friends are in the tourist industry
 (11) down in Homer and it affected that industry somewhat So
 (12) there's a lot of different emotions Some of my friends you
 (13) know, kind of welcomed the work and others were kind of
 (14) financially hit Personally, myself you know, it didn't
 (15) impact me
 (16) Q Well you say it did impact your family and your community?
 (17) A Right
 (18) Q So being part of the family and being part of the
 (19) community it did impact you to that extent?
 (20) A Yeah
 (21) Q Are you still friends with the people that were affected by
 (22) the spill?
 (23) A I've since moved up to Anchorage here and I've kind of lost
 (24) track of most of those people
 (25) Q Where were your friends at the time?

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- (1) A In Homer
 (2) Q Homer?
 (3) A Yeah
 (4) Q Do you know whether any of those friends are plaintiffs in
 (5) this case or part of a class that have claims against Exxon?
 (6) A I don't think so Not to my knowledge, they're not
 (7) Q Did you when this thing happened did you talk it over
 (8) with your friends and was there anger down in Homer?
 (9) A Yeah, I'm sure yes
 (10) Q Did your friends relate that anger to you?
 (11) A Uh huh
 (12) Q Now on question 81 you say Do you know of any reason
 (13) not disclosed in your answers to these questions why you could
 (14) not be a fair and impartial juror in this case And you say
 (15) again yes And your answer is I am unlikely to forget the
 (16) personal - is that personal -
 (17) MR CHALOS Your Honor may I approach? I'm sorry
 (18) but it's tough to read this
 (19) BY MR CHALOS
 (20) Q Could you read that for us?
 (21) A What you just read?
 (22) Q Yeah
 (23) A I'm unlikely to forget the personal and financial
 (24) devastation wrecked upon my family and friends due to the oil
 (25) spill and its impact on the fishing community It's something

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- (1) you never forget
 (2) Q And it affects you it affected you at the time?
 (3) A Oh, certainly
 (4) Q And it affects you now?
 (5) A Uh huh
 (6) Q Let me ask you this Do you come into the courtroom
 (7) believing that the fishermen have a legitimate claim against
 (8) Exxon?
 (9) A I would - I would be making - I would be making up an
 (10) answer if I gave you an answer I have absolutely no idea
 (11) You know I moved up here in June of 89 I've lost track with
 (12) all those people down there I have - it's not something I
 (13) keep track of I have absolutely no idea My father's now in
 (14) Oregon, I don't have any idea
 (15) Q Well can you tell me then why you answered the question
 (16) that you cannot be a fair and impartial juror as yes?
 (17) A Maybe I misunderstood how I was supposed to answer the
 (18) question What was the question again?
 (19) Q Well the question says Do you know of any reason not
 (20) disclosed in your answer to these questions why you could not
 (21) be a fair and impartial juror in this case
 (22) And you honestly at the time you were writing this wrote
 (23) down yes and then you told us the reason which is I am
 (24) unlikely to forget the personal and financial devastation
 (25) wrecked on my family and friends so on

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- (1) Has your family been impacted by this spill?
 (2) A I would have to say of my family, it had a - if you could
 (3) say there was a positive impact, it was positive Not that
 (4) I - because my brothers owned boats that were leased to Exxon
 (5) and so yeah, in that way it impacted my family
 (6) Q Well certainly leasing the boats to Exxon doesn't cause
 (7) devastation does it?
 (8) A You know, I suppose when I answered that question, I have
 (9) to - I remember my - my feelings at the time and that was
 (10) that I was fairly, I guess you could say I was a little bit
 (11) perturbed at being down here
 (12) Q Well let me ask you this Do you want to serve as a juror
 (13) here?
 (14) A You know, if somebody told me that I had to serve as a
 (15) juror, I suppose I would look at it, look forward to it as, you
 (16) know, a learning experience and something that could be very
 (17) interesting Am I interested in sitting in here for the whole
 (18) summer, not particularly
 (19) Q Let me ask you this Have you - what have you heard about
 (20) the grounding and the spill I mean aside from you know the
 (21) personal impact that you talked about?
 (22) A Can you be more specific?
 (23) Q Well have you seen the movie The Wreck of the Exxon
 (24) Valdez?
 (25) A No

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- (1) Q Have you read any books about it?
 (2) A No
 (3) Q Have you read newspapers?
 (4) A Yes
 (5) Q Do you have an opinion as to what caused the grounding?
 (6) A I have no idea
 (7) Q Do you have an opinion as to Captain Hazelwood? Do you
 (8) have any opinion of him at all?
 (9) A Only what I read in the paper
 (10) Q And what is that?
 (11) A He was down below and somebody else was up above and --
 and
 (12) the boat went off course
 (13) Q I see What's your opinion of Exxon? Do you have a
 (14) negative opinion towards them?
 (15) A I wouldn't say so I would say I don't have any opinion
 (16) Q At all?
 (17) A (Shakes head from side to side)
 (18) Q I see here that you had an ex spouse with an alcohol
 (19) problem?
 (20) A Yeah
 (21) Q Can you tell us a little bit about that?
 (22) A Well, it's been decades 12 years ago I was divorced and
 (23) he has since developed an alcohol problem
 (24) Q This was subsequent to your divorce?
 (25) A Yes

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- (1) Q Did he seek treatment at the time?
 (2) A I don't - I don't think so no
 (3) Q Do you have an opinion as to whether someone who might have
 (4) undergone alcohol treatment can ever drink again under any
 (5) circumstances?
 (6) A Well, it's my understanding that that's not something
 (7) that - it's my understanding that alcoholism is a disease and
 (8) you're treated for the disease and the disease always remains
 (9) even though you happen to be alcohol free
 (10) Q I see Is there a distinction in your mind between alcohol
 (11) abuse and alcohol dependency?
 (12) A Oh, I know the difference
 (13) Q What is the difference that you know?
 (14) A Well, I know a lot of people who go out and abuse alcohol
 (15) on Saturday night but they are not alcohol dependent
 (16) Q Do you abuse alcohol from time to time?
 (17) A No, I don't
 (18) Q Have you ever drank and gotten in your car and driven to
 (19) your home or to some other place?
 (20) A Have I ever had -
 (21) Q Yes
 (22) A Yes, I have
 (23) Q And did you feel that you weren't impaired when you did
 (24) that?
 (25) A Yes

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- (1) Q You felt like you could do - you could drive the car and
 (2) not be a danger to anyone?
 (3) A Yes
 (4) MR CHALOS That's all I have for this juror Your
 (5) Honor
 (6) MR O NEILL Pass for cause
 (7) MR CHALOS Your Honor we need to - to speak with
 (8) you
 (9) THE COURT Mrs Wilson [sic] would you go back to
 (10) the jury room for just a few minutes and we'll be back with you
 (11) in just a few minutes
 (12) THE COURT Mr Chalos
 (13) MR CHALOS Your Honor Ms Dodds to me is very
 (14) much like Mr Richardson and that is you remember Mr
 (15) Richardson?
 (16) THE COURT I do
 (17) MR CHALOS The fellow who had very strong views on
 (18) certain things and I found her answers to us here also
 (19) disingenuous in the sense that when she wrote this particular
 (20) questionnaire out she was very very strong in her feelings
 (21) She said she could not be a fair and impartial juror and she
 (22) said the reasons And she seems to have a lot of friends who
 (23) are in the fishing business Her family she said was adversely
 (24) impacted by the spill and she can't forget the devastation
 (25) that was wrecked upon her family and her community I think

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- (1) that despite what she says I think she has a bias I think she
 (2) has a strong prejudice and I think that she should be
 (3) stricken
 (4) THE COURT Mr O'Neill?
 (5) MR O NEILL Her answer to the question 81
 (6) evidences soul searching on her part and an attempt to come
 (7) clean with regard to anything about her past that may impact
 (8) her jury service which is commendable and which distinguishes
 (9) her from the prior gentleman And she said she could be fair
 (10) She said she could put her feelings aside and indeed she said
 (11) she was in a business to where she has training and experience
 (12) with regard to doing that
 (13) I also think she's reflective of the community
 (14) THE COURT The challenge for cause is as to Mrs
 (15) Dodds is denied
 (16) MR NEAL Your Honor could we add one thing
 (17) THE COURT Yeah you can add
 (18) MR NEAL It's difficult for me to see how this is
 (19) distinguishable from Mr Richardson but beyond that she also
 (20) fits in the category of Mr Milne She said - I believe she
 (21) said she had a good bit of knowledge about sockeye salmon
 (22) fishing and of course that's going to be a big part of this
 (23) sooner or later in this case
 (24) THE COURT I didn't hear her say anything about
 (25) sockeye salmon fishing Tell me some more

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(1) MR O NEILL Well I didn't hear her say a word about
 (2) it either
 (3) MR LYNCH Well she Your Honor - it's the problem
 (4) with whispering Mrs Dodds testified on voir dire that she
 (5) knew the specifics of the financial arrangements and the
 (6) financial impact on the fishing community as a result of the
 (7) spill and specifically with reference to Exxon's practice of
 (8) leasing certain fishermen's boats and not leasing other
 (9) fishermen's boats When we get into the damage phase of this
 (10) case in phase two that subject matter will be far more
 (11) extensively involved in phase two of this case than the Exxon
 (12) financial statements will be involved in phase three
 (13) Mr Milne was disqualified because he works for a remote
 (14) office of Price Waterhouse and knows something about FASB five
 (15) and my comment on what other Price Waterhouse people did 3 500
 (16) miles away in doing the Exxon balance sheets in the years
 (17) subsequent to the spill But Mrs Dodds or Ms Dodd says that
 (18) she's going to be able to go into the jury room and when in
 (19) phase two we're talking about whether fishermen were fairly
 (20) compensated which is going to be a significant part of phase
 (21) two whether mitigation payments that they received were
 (22) properly attributable to mitigation of damage and that will
 (23) turn I think Mr O'Neill will agree to some extent on what
 (24) the fishermen say their understanding was in terms of what the
 (25) payments - whether or not the payments would be treated as

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(1) mitigation
 (2) Here is a witness who has said on voir dire that her
 (3) friends were telling her and she had specific things about
 (4) those - those very transactions This is an almost percipient
 (5) witness Your Honor and in that sense as well as her views
 (6) about alcoholism and her views about the spill itself she
 (7) is - she is at least as knowledgeable as Mr Milne was
 (8) MR O NEILL They want -
 (9) THE COURT I think the - the arguments have gone way
 (10) beyond anything this lady said I - as I told you I had kind
 (11) of a nervous feeling in the pit of my stomach over Mr
 (12) Richardson Were I in any of your shoes I would be nervous
 (13) about having someone on the jury who - from whom I felt the
 (14) kind of hostility or anger or something that I felt from him
 (15) I don't feel anything like that from this lady I don't
 (16) particularly relish making these decisions on the feelings of
 (17) my intestines but sometimes that's the only way to go and I
 (18) don't have the bad feeling about this lady She said she would
 (19) be fair and I - I don't have any reason in this instance not
 (20) to take her at her word The challenge is denied Would you
 (21) tell Mrs Dodds that we will be calling her back
 (22) THE CLERK Yes Your Honor
 (23) THE CLERK Your Honor this is Janette L Garrison
 (24) juror 53
 (25) THE COURT Thank you Mrs Garrison we have your

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(1) sworn answers to the questions and the interrogatories At
 (2) this point the attorneys are each going to have ten minutes to
 (3) ask you some follow up questions Mr O'Neill?
 (4) MR O NEILL Thank you Judge
 (5) JURY VOIR DIRE
 (6) BY MR O NEILL
 (7) Q Ma'am you're a custodian over in the Mat Su School
 (8) District?
 (9) A Yes
 (10) Q What do you like about your job? You didn't think I was
 (11) going to ask that did you? What is he going to ask me about
 (12) the problems of the world and I ask you what do you like about
 (13) your job?
 (14) A I like the people I work with
 (15) Q What do you do for fun?
 (16) A As I stated on my questionnaire, spend time with my
 (17) family
 (18) Q Do you -
 (19) A Travel
 (20) Q - recall when the spill happened?
 (21) A Yes
 (22) Q Do you recall what your reaction was towards it?
 (23) A Probably just disbelief
 (24) Q That it could happen?
 (25) A Just that it happened

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(1) Q Have you between then and now have you spent any
 (2) considerable amount of time thinking about the spill?
 (3) A Just as things develop in the news media
 (4) Q Can you put aside what you read in the news media if
 (5) you're seated in this jury box and take a fresh look at it
 (6) through the eyes of what's presented in this well and -
 (7) A I would think so
 (8) Q One of the issues that we're going to address here is the
 (9) issue of punitive damages which is the imposition of damages
 (10) by a jury and a judge under certain very specific circumstances
 (11) to punish and set an example to others Some people have
 (12) philosophical beliefs that are opposed to punitive damages Do
 (13) you share those beliefs?
 (14) A I would think each case would have to be different You'd
 (15) have to judge it on -
 (16) Q What happens?
 (17) A - what happened
 (18) Q And what he tells you?
 (19) A Right
 (20) Q And you can live with what he tells you and what happens?
 (21) A I wouldn't have a problem with that
 (22) Q If the proof in the case is that punitive damages ought to
 (23) be awarded and because of the evidence here and the evidence
 (24) from - and the instructions from His Honor the proof and the
 (25) law requires that the award be in billions of dollars billions

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- (1) of dollars would that just sort of paralyze you and scare you
 (2) off or do you think you could live with what the proof and the
 (3) law?
 (4) A I just - yeah, you d just have to live with it
 (5) Q The evidence in this case is going to concern among other
 (6) things a subject that unfortunately touches all of our lives
 (7) in modern America and that is the subject of drinking alcohol
 (8) abuse alcoholism and it s an odd person who that subject
 (9) hasn t touched one way or the other It is And it s a
 (10) difficult thing to get into but we re going to talk about it
 (11) And my question for you is has it touched your life?
 (12) A Not directly
 (13) Q Indirectly?
 (14) A Friends of the family, but not directly, no
 (15) Q Did you - can you - well let me ask another odd
 (16) question You re just sort of sitting there thinking what is
 (17) he going to come up with next The oil industry is important
 (18) in the state of Alaska and there are - you get benefits from
 (19) the oil industry being in the state and they re a part of the
 (20) oil industry Exxon Corporation is part of the oil industry
 (21) Knowing that they re important to the State of Alaska are
 (22) you - will that give you any problems in sitting in judgment
 (23) on them?
 (24) A No
 (25) MR O NEILL Thank you Nothing further Judge

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- (1) JURY VOIR DIRE
 (2) BY MR SANDERS
 (3) Q Good afternoon Ms Garrison My name is Jim Sanders I
 (4) represent is Exxon defendants and for purposes of us asking
 (5) you questions before the trial I m also going to speak for
 (6) Captain Hazelwood and his lawyers
 (7) Mr O Neill was asking you questions about punitive
 (8) damages and of course you realize that - that before a juror
 (9) could decide that you would have to know what the facts are
 (10) and get instructions from the Judge but you know something
 (11) about this case from reading in the paper and living here Do
 (12) you think right now that punitive damages would be
 (13) appropriate?
 (14) A I don t think I could make that decision till I knew all
 (15) the facts and I don t really feel I know the facts
 (16) Q What do you think caused the grounding?
 (17) A All I know really is what the media s told me
 (18) Q All right
 (19) A I mean the other day they were saying that there were
 (20) facts we didn t know so I guess if there s facts that the
 (21) media hasn t told us, then I guess I don t know all the facts
 (22) yet
 (23) Q Okay let s separate what was discussed with you day before
 (24) yesterday here in court or over there in court -
 (25) A Uh huh

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- (1) Q - with what you heard before then Based on what you had
 (2) heard from the media or seen or read what do you think caused
 (3) the grounding?
 (4) A Well the ship hit Bligh Reef
 (5) Q Right That s right I think you ve got it Now but do
 (6) you know what caused the ship to hit Bligh Reef?
 (7) A Well somebody didn t turn it in time and I don t really
 (8) know myself whether that was because somebody wasn t in the
 (9) right place or somebody got wrong information
 (10) Q Let me ask you a specific question based on an answer you
 (11) gave in the questionnaire There was a question about
 (12) following up in the legal proceedings after the grounding and
 (13) the oil spill
 (14) A Uh huh
 (15) Q And you made a comment about well you remembered that
 (16) there was a guy named Hazelwood and that s of course Captain
 (17) Hazelwood over here and you asked a question which I m not
 (18) going to answer for you I want to know what you know about
 (19) it The question was wasn t he found guilty? You remembered
 (20) that and -
 (21) A I thought there was a trial, yes
 (22) Q And what did you think he was found guilty of?
 (23) A Of being drunk and negligent on the job
 (24) Q All right and do you because you thought that from the -
 (25) from the media reports did you think that had anything to do

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- (1) with the grounding?
 (2) A I thought that part was already decided and over with yes
 (3) sir
 (4) Q Now given that you thought that and you think that what
 (5) are you going to think about when you start hearing the proof
 (6) in this case? I guess you kind of wonder what we re doing
 (7) here?
 (8) A Well, I thought that part of it had already been settled
 (9) yes
 (10) Q Do you think it s settled that Captain Hazelwood was under
 (11) the influence of alcohol at the time of the grounding?
 (12) A Do I think that? I thought that that part was decided
 (13) Q And decided that yes he was is that what you thought?
 (14) A I thought that s what had already been decided, yes
 (15) Q By a court of law?
 (16) A Right
 (17) Q Does that affect your ability to - to look at that
 (18) question again here?
 (19) A No If that has not been decided then that s what needs to
 (20) be decided
 (21) MR SANDERS Can we approach?
 (22) (Side bar off the record with Mr Sanders and Mr O Neill)
 (23) BY MR SANDERS
 (24) Q Ms Garrison I have found that I have misled you I can
 (25) give you some information If I told you that Captain

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- (1) Hazelwood was found not guilty of being under the influence of
 (2) alcohol but was found guilty of a misdemeanor involving
 (3) negligence at the time of that would that kind of realign your
 (4) thinking about this going in?
 (5) **A If that's what, in fact happened**
 (6) **Q I'll represent to you that that's what happened and I don't**
 (7) **think anybody here is going to disagree with me**
 (8) **A Okay**
 (9) **Q Now take a second Does that change your mind about what**
 (10) **caused the grounding?**
 (11) **A Well, as I said I'd have to have all the facts of what**
 (12) **exactly happened**
 (13) **Q Well do you have any problem in putting aside that**
 (14) **information you had before because obviously that's a little**
 (15) **bit wrong?**
 (16) **A I'd have to deal with the new information**
 (17) **Q Right and disregard the old information?**
 (18) **A (Nods head up and down)**
 (19) **Q Okay Now let me ask you about the alcohol business a**
 (20) **little bit more I'm a little bit more curious about it than**
 (21) **Mr O'Neill was You've told us - you gave a detail about**
 (22) **that that I need to ask you about You said you had**
 (23) **contributed to Mothers Against Drunk Driving one time How**
 (24) **long ago was that?**
 (25) **A This year**

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- (1) **Q This year? And do you think that you - is that a - is**
 (2) **that an issue that is really at the forefront of your mind or**
 (3) **did you do that just to help them out in what they were trying**
 (4) **to do?**
 (5) **A They called on the phone, talked to my husband, he told**
 (6) **them we would send them \$20**
 (7) **Q All right I understand that's happened to me**
 (8) **A I made out the check**
 (9) **Q I take it then that although you might be knowledgeable**
 (10) **about it concerned about alcohol issues in society you**
 (11) **haven't staked out a position on that joined a group?**
 (12) **A No**
 (13) **Q Do you think companies should have a policy about how to**
 (14) **deal with first alcohol in the work place and second those**
 (15) **people who have alcohol related illnesses?**
 (16) **A Yes**
 (17) **Q Do you have - do you have an opinion or concept of what**
 (18) **that ought to be?**
 (19) **A It would - basically when it starts affecting the person's**
 (20) **job then they need help**
 (21) **Q All right Then should that - should that company have a**
 (22) **policy that allows them to get help and come back to work?**
 (23) **A Uh huh**
 (24) **Q Your husband was a setnetter I believe and the way I read**
 (25) **the form and please excuse me if I've gotten it wrong but**

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- (1) **it's hard for us to read because the copies were kind of bad by**
 (2) **the time they got all the way to us he was a setnetter in '85**
 (3) **and '86?**
 (4) **A He was working ten months at the time for the school**
 (5) **district so he had the summer off, and a friend of a friend of**
 (6) **a friend said you could go out and work with us make some**
 (7) **money this summer He lost money, so -**
 (8) **Q Do you have any feelings from that experience with your**
 (9) **husband that carries over into this case?**
 (10) **A No**
 (11) **Q You have a - you have a bad feeling about fishermen**
 (12) **because of that?**
 (13) **A No**
 (14) **Q You have a good feeling about fishermen because of that?**
 (15) **A No**
 (16) **Q Do you know why he lost money?**
 (17) **A Because he had to pay his airfare out there and they didn't**
 (18) **get any fish, or very few fish that summer**
 (19) **Q Vicki Sitro (ph) is - is a friend of yours?**
 (20) **A It's my daughter**
 (21) **Q Daughter I'm sorry Okay I understand She is - she**
 (22) **works with the law firm?**
 (23) **A Right**
 (24) **Q And I don't believe that law firm's involved in any of this**
 (25) **litigation but from your daughter have you heard anything**

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- (1) **about this case?**
 (2) **A No They deal mostly with bankruptcy and foreclosure**
 (3) **MR SANDERS Could we have a - well could we have**
 (4) **first a side bar Your Honor?**
 (5) **(Side bar off the record with Mr Sanders Mr Chalos**
 (6) **Mr Russo and Mr O'Neill)**
 (7) **THE COURT Ms Garrison could we get you to go back**
 (8) **to the jury room for just a few minutes and we'll be back with**
 (9) **you in moments Mr Sanders**
 (10) **MR SANDERS May it please the Court we respectfully**
 (11) **move to excuse this juror for cause I think that - I guess I**
 (12) **have to tell you in all candor that I think that when I told**
 (13) **her that he hadn't been convicted for that she didn't believe**
 (14) **me I think she's still of the same opinion that Captain**
 (15) **Hazelwood was convicted of some offense involving alcohol with**
 (16) **respect to the grounding and pretty obvious to me that she**
 (17) **can't put that aside and I think that having that knowledge**
 (18) **and not being able to dissuade her from that makes her**
 (19) **prejudiced against Captain Hazelwood and Exxon**
 (20) **THE COURT Mr O'Neill?**
 (21) **MR O'NEILL I thought she was forthright**
 (22) **open minded when they corrected her conception or**
 (23) **misconception she said she could have an open mind on it**
 (24) **Find absolutely no problems with this lady**
 (25) **THE COURT The challenge for cause is denied I**

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(1) think this is a fair minded lady that can listen to the facts
 (2) and decide what the outcome should be based on what takes place
 (3) in this courtroom the Court s instructions Again the
 (4) challenge for cause is denied Would you tell Mrs Garrison
 (5) that we will call her back as soon as we need her some more and
 (6) bring us another juror
 (7) THE CLERK Your Honor this is Margaret L Johnson
 (8) juror 54
 (9) THE COURT Mrs Johnson we have your sworn answers
 (10) to our questionnaire At this point each side is going to be
 (11) entitled to ask you some follow up questions for about ten
 (12) minutes on each side Mr O Neill?
 (13) MR O NEILL Thank you Judge
 (14) JURY VOIR DIRE
 (15) BY MR O NEILL
 (16) Q How are you ma am?
 (17) A Fine, thank you
 (18) Q Do you have trouble hearing out of one of your ears?
 (19) A I was born that way I don t have trouble with it it s
 (20) just that I wanted to let you guys know that I don t have any
 (21) hearing at all in my left ear
 (22) Q We re going to have some videotaped proof in the case
 (23) audio tape like radio you know like you stick into the car
 (24) thing and the Sound is going to come out of these two speakers
 (25) here one on each side so it would be like listening to the

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(1) radio can you handle that?
 (2) A Right I don t have stereo just comes in one - you know
 (3) but - but no I can hear fine, thank you
 (4) Q We re not technologically at the stage yet where we have
 (5) stereo in courtrooms?
 (6) A Oh okay Yeah, okay that sounds fine
 (7) Q You work for the Anchorage School District?
 (8) A Yes
 (9) Q What do you like about your job?
 (10) A Working with the children I m the custodian, day
 (11) custodian
 (12) Q How long have you worked for the Anchorage School District?
 (13) A Little over 13 years
 (14) Q When - do you recall when the Valdez ran aground?
 (15) A Yes
 (16) Q About? What kind of reaction did you have when you heard
 (17) about it?
 (18) A Well I just said oh, no you know and then nobody got
 (19) hurt so I didn t really think too much more about it as long
 (20) as everybody was saved
 (21) Q Your primary concern was are people saved?
 (22) A Yeah usually when you hear a boat collapses up here you
 (23) think oh somebody got hurt
 (24) Q From then until now until the other day had you thought
 (25) much about it one way or the other?

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(1) A Well you hear it once in a while on the radio and the
 (2) news but no I don t really think too much about it
 (3) Q Busy with the rest of your life?
 (4) A Yeah
 (5) Q The issue of punitive damages is going to be a part of this
 (6) case and I m going to take a shot at what compensatory damages
 (7) are what punitive damages are and then I ll ask you a couple
 (8) questions
 (9) If you were involved in an automobile accident with
 (10) somebody and you were in a lawsuit and you got paid for your
 (11) car your car was crashed you got paid for your car the
 (12) payment for the car is compensatory damages And there are
 (13) certain other times and situations that are regulated by the
 (14) law closely regulated by the law to where sometimes damages
 (15) are awarded to punish somebody in addition to getting paid for
 (16) the car Now that s going to be a subject in this case If
 (17) the proof in this courtroom the proof in the courtroom is such
 (18) that when combined with His Honor s jury instructions and he s
 (19) going to instruct you on what the law is after you hear the
 (20) proof the lawyers are going to put on the proof then he s
 (21) going to tell you what the law is if the facts and the law
 (22) require this punitive damage concept to punish and set
 (23) examples are you like theoretically opposed to that or could
 (24) you do that?
 (25) A I don t really have any feelings on that I ve never

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(1) really experienced anything like that Never been through it
 (2) so -
 (3) Q So you have an open mind one way or the other?
 (4) A Yeah Since I ve never been through it I don t really
 (5) know how I would react to it actually
 (6) Q That s fair I just wanted to know whether you had your
 (7) mind made up before you came in?
 (8) A No, I don t think so
 (9) Q Now if the facts in the case what is proved in this well
 (10) and His Honor s Instructions require an award of punitive
 (11) damages in the billions of dollars could you handle that or
 (12) would the magnitude of the number just cause you to sort of
 (13) push it away?
 (14) A I don t know I ve never had to deal with that much
 (15) money
 (16) Q Just something you hadn t thought about?
 (17) A No I never really did
 (18) Q Let me move on to another subject
 (19) A Okay
 (20) Q And I don t know whether you thought about this one or not
 (21) either but the oil industry is a major player in the state of
 (22) Alaska Exxon Corporation is an oil company and the industry
 (23) over the past has contributed to the State Knowing that or
 (24) whatever feelings you have about it can you sit in this jury
 (25) box are you able to sit in this jury box and pass judgment on

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- (1) Exxon Corporation without letting that get in the way?
 (2) A I don't know oil companies in my mind are big companies
 (3) but they also have a lot of jobs in our state so yeah I think
 (4) I could
 (5) Q You could be fair?
 (6) A I think I could
 (7) Q Just -
 (8) A I mean because I have pros and cons on both sides so in
 (9) my mind they're a big company but at the same time, there's a
 (10) lot of jobs
 (11) Q Lot of jobs okay The subject of alcoholism is a subject
 (12) that we're going to discuss in this trial and it is a subject
 (13) because of day and age that we live in that touches a lot of
 (14) people's lives Has it touched your life in any way shape or
 (15) form friends family?
 (16) A Well, we used to think my father was an alcoholic and he
 (17) passed away about five years ago, but we found out that he
 (18) wasn't an alcoholic It was, you know, related to some kind of
 (19) other illness, but at the time that we went through it, we
 (20) thought he was an alcoholic, drank a lot, it really bothered
 (21) us, but there wasn't too much you know, you could - you know
 (22) you can try to help that person, but - I don't know if I
 (23) answered your question
 (24) Q No you didn't but I mean your life experience is part of
 (25) what we're interested in Now can you move whatever problems

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- (1) your father had over to the side and sit here and give us a
 (2) good hard three months of being fair even if the subject
 (3) raised is the subject of alcoholism?
 (4) A Yeah, well like I, said he didn't have it so I really
 (5) haven't been exposed to somebody - I mean, he drank quite a
 (6) bit, but - yeah, I don't think - I don't hang around with
 (7) alcoholics, and my lifestyle doesn't - and I don't drink
 (8) Q Is there any reason that you can think of why you might
 (9) have concern one way or the other about coming in here and
 (10) being a jury - a juror in this case or do you think you're
 (11) ready to come in and give it your best shot for us for all of
 (12) us?
 (13) A Yeah, I know what you mean All I can do is - is tell you
 (14) that it's going to be a long trial and I think that's going to
 (15) be a hardship on everybody, you know I don't care who you
 (16) are, but yeah, I - I think I could I don't understand a
 (17) whole lot of what's going on because I don't keep track
 (18) Q We'll give you information here and they'll give you
 (19) information here
 (20) A Yeah, so once - once I'm told, you know, the guidelines
 (21) and all that, I think maybe I could
 (22) MR O NEILL Okay thank you
 (23) MS JOHNSON Sure
 (24) JURY VOIR DIRE
 (25) BY MR CHALOS

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- (1) Q Hello Ms Johnson I'm Michael Chalos how are you? I
 (2) represent Captain Hazelwood as I said the other day but for
 (3) purposes of this exercise I'm also speaking for the Exxon
 (4) defendants
 (5) I have to apologize because a question - your question -
 (6) can you hear me would you like me to come closer?
 (7) A No, I can hear you fine
 (8) Q Well I don't blame you You make me feel right at home
 (9) my wife says the same thing
 (10) The questionnaire your questionnaire was very hard to
 (11) read so I'm just going to stumble around if you don't mind
 (12) I'm not impaired So I see here that you're in a union?
 (13) A Yes
 (14) Q Are you in a union?
 (15) A Local
 (16) Q What union is that?
 (17) A Local 71, laborers local
 (18) Q And is that in conjunction with your job that you have -
 (19) A Yes, it is
 (20) Q Are you a - are you a delegate or anything?
 (21) A No
 (22) Q Just a member?
 (23) A (Nods head up and down)
 (24) Q I also see from what I could read in your questionnaire
 (25) that in 1969 you worked for a fish processor do I have that

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- (1) right?
 (2) A Yeah, I worked for Whitney Fidalgo when I first came up
 (3) here
 (4) Q That was how long ago was that?
 (5) A The cannery - when the cannery was opened down there by
 (6) the railroad tracks When the cannery was opened
 (7) Q Here in Anchorage?
 (8) A Yeah
 (9) Q I see How long did you work there?
 (10) A Just a summer
 (11) Q Just one summer?
 (12) A Yeah, then I got the office job out of the cold storage on
 (13) International and I worked there for a couple of months I
 (14) don't remember the length
 (15) Q Let me ask you this do you have any friends or family that
 (16) have been impacted by the spill?
 (17) A No, I don't think so I do have a friend that works for
 (18) Fish & Game and I don't know if she works anything with that or
 (19) not, you know, with the oil spill or anything, but I - I have
 (20) no idea what she does
 (21) Q She's not an officer in Fish & Game?
 (22) A No, she's not I think she tags fish and stuff like that,
 (23) but I don't know if - you know, she's mentioned it once or
 (24) twice, about the oil spill, but I don't know if she's done
 (25) anything with that

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- (1) Q Do you remember what she told you about it?
- (2) A No I don't even remember what she said I just remember she brought the subject up
- (3) Q I see also from your questionnaire that you have some specialized training in labor or human relations?
- (4) A Well not specialized training I'm taking computer courses right now through the school district and they train us through safety, and they train us on - on choking and health and all that stuff through the school district through my job
- (5) Q So that's the extent all right Where were you when the spill occurred the grounding and the spill?
- (6) A Anchorage
- (7) Q Did you hear about it in the news - from the newspapers radio television?
- (8) A Probably everybody around us, you know is probably what -
- (9) Q Over the years you've read a lot of papers?
- (10) A No, I don't read the newspaper
- (11) Q You don't?
- (12) A (Shakes head from side to side)
- (13) Q Okay can you remember what you might have heard about the spill?
- (14) A I can just remember that apparently he was supposed to have been - Mr Hazelwood was supposed to have been drunk and was sleeping, and the ship hit a rock and spilled the oil
- (15) Q That's what you heard at the time?

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- (1) A That's what I heard at the time
- (2) Q Do you have that opinion today that's what happened that's why the ship ran aground?
- (3) A I don't really know what happened too much other than you know what was said the other day, you know but apparently I don't know anything that happened because I don't even know where the rock is actually in Valdez that he hit
- (4) Q Well if you serve as a juror -
- (5) A You can hear -
- (6) Q - you'll be told exactly you'll be shown pictures Let me ask you this Do you believe everything that you hear or read in newspapers or from the media?
- (7) A No I don't believe everything I hear, no
- (8) Q If the evidence that you heard here in the courtroom was different than what you might have heard outside the courtroom would you be able to put that all aside and give us a verdict on the basis of what you hear in here?
- (9) A I believe so, yes
- (10) Q Well I got to be sure You see because we're entitled to a fair jury Are you absolutely sure you can do that?
- (11) A I'm pretty sure, yeah, most likely I mean I do it all the time with children, you know, he hit me no I didn't you know then I have to see it -
- (12) Q You know what?
- (13) A - every day

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- (1) Q You know what let me tell you something Lawyers do the same thing We have those kinds of battles every day?
- (2) MR NEAL Don't point over here
- (3) BY MR CHALOS
- (4) Q I see also from your questionnaire I did better than I thought from your questionnaire that you sport fish in Prince William Sound?
- (5) A Well, down in Kenal area, is that Prince William Sound area Kenal It's sort of all around that area we go fishing for kings and reds and silvers
- (6) Q Who is that you and your husband?
- (7) A No, my sister and I and her boyfriend
- (8) Q I see Have you seen any - how long have you been fishing down there?
- (9) A Well, we try to go every summer
- (10) Q And you've been fishing since let's say 1989 to the present?
- (11) A Sure Every, you know whenever we can, weekends and stuff like that
- (12) Q Have you noticed any difference in the fish that you're catching down there?
- (13) A No
- (14) Q Still catching as many or as few as you always did?
- (15) A As few as I could, yes I'm not very good actually
- (16) Q Do you know Mr O'Neill mentioned to you that there'll be

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- (1) some discussion of alcohol in this case?
- (2) A Yes, sir
- (3) Q Do you have any strong feelings one way or the other about it?
- (4) A No
- (5) Q You mentioned - was it your dad?
- (6) A Yes, sir
- (7) Q That passed away and you thought maybe -
- (8) A Well, we did at the time, we thought it maybe that he was drunk, but he never was, it was just something else
- (9) Q Was your dad a heavy drinker?
- (10) A Well, we thought he was, but see, we never saw him drinking, we just assumed that he was drinking So we -
- (11) Q Did that cause you any - any pain through your lifetime?
- (12) A Well at the time, you know, we used to talk to him and try to talk him out of drinking at all, but he didn't understand what we were saying You know, it was a totally different story, I'm sure
- (13) Q Do you have an understanding of the difference between being alcohol dependent as opposed to being an alcohol abuser?
- (14) A No sir
- (15) Q You don't? In your mind is there a distinction between someone who is dependent on alcohol as opposed to someone who periodically abuses it?
- (16) A I just never been around it that much to understand it I

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- (1) imagine it is a lot like you know - so if somebody is
 (2) dependent on it then they have to have it and then if they just
 (3) drink occasionally is that what you're saying?
 (4) Q Yeah
 (5) A Yeah I can see the difference
 (6) Q You can see the difference then?
 (7) A Yeah
 (8) Q Do you have any opinion as to whether someone who might
 (9) have gone through some sort of treatment for alcohol - them
 (10) coming out not being able to drink again under any
 (11) circumstances - or do you think that person can if they can
 (12) control their drinking?
 (13) A I know I was always told once an alcoholic you're always an
 (14) alcoholic and that if you take one more drink, or I mean if you
 (15) take another drink - I don't know, that is just what I've heard
 (16) through like AA stuff and all that, but I don't know, I've
 (17) never experienced it - so therefore, I don't -
 (18) Q You don't have any personal knowledge of that?
 (19) A No
 (20) Q And other than what you just said - you don't have any
 (21) thoughts on the subject?
 (22) A No, sir - Just not around it
 (23) Q I just have one - a couple more questions - Mr O'Neill
 (24) asked you about punitive damages - you remember if you could
 (25) give millions or billions or trillions if you were asked - Do

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- (1) you understand the difference between compensatory and punitive
 (2) damages?
 (3) A He was trying to explain the difference between the two
 (4) yeah
 (5) Q You do understand that there is a difference?
 (6) A Yes, sir
 (7) Q Compensatory being actual losses and punitive being to
 (8) punish -
 (9) A Right
 (10) Q - so it doesn't happen again - that sort of thing - Do you
 (11) also understand that before you even reach the question of
 (12) punitive damages that certain steps - you have to go through
 (13) certain steps and you have to be convinced that the actions
 (14) that we're talking about really need to be punished? You
 (15) understand that that's the way it works?
 (16) A (Nods head up and down)
 (17) Q If you felt - listening to the evidence - that punitive
 (18) damages weren't warranted - you feel strong enough to say - well
 (19) this is a case where I don't think punitive damages should be
 (20) given?
 (21) A Yes, sir
 (22) Q You feel you could do that?
 (23) A I think so
 (24) Q You feel like you have the strength of character to sit
 (25) there and disagree with other jury members if they felt

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- (1) punitive damages should be given?
 (2) A Yes, sir
 (3) Q Just one last question - Ms Johnson you mentioned that
 (4) your car was totaled - Now this was one area I couldn't read
 (5) A No - It was my sister's car and that happened when I was
 (6) like, I mean a long time ago, like 16 or 17, and there was a
 (7) bunch of children that got into the vehicle and drove it off or
 (8) a cliff into the water embankment down in San Francisco area
 (9) and it was really just a scary feeling that they were drinking
 (10) and they got out of control like that - They stepped on the gas
 (11) instead of the brake - and they weren't even 16 at the time
 (12) Q I understand - Is that experience going to impact in the
 (13) way you're going to react in this case?
 (14) A No - I just thought I should mention it because you know it
 (15) does go through my mind
 (16) MR CHALOS - Thank you very much Ms Johnson
 (17) Appreciate it
 (18) MR O'NEILL - Pass for cause
 (19) MR CHALOS - We pass for cause - Your Honor
 (20) THE COURT - Thank you Ms Johnson - passing for cause
 (21) means that we're going to want you to come back a little later
 (22) again - Means you're still with us
 (23) MS JOHNSON - Okay
 (24) THE COURT - Hang in there - We're through with you for
 (25) today - however - You can go about your business now and the

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- (1) clerk - the jury clerk will call you back in probably in a day
 (2) or so just as soon as we get to the next stage of the matter
 (3) We'll take our afternoon recess at this point for 15 minutes
 (4) (Recess at 3:10)
 (5) THE CLERK - All rise - This United States District
 (6) Court is again in session - Please be seated
 (7) MR LYNCH - I make this request absolutely throwing
 (8) myself on the mercy of the Court - but we - we are obviously
 (9) very near to the magic number - and before Your Honor releases
 (10) the jurors - on behalf of all the defendants we would ask Your
 (11) Honor to reconsider the question of Juror Wilburn who was the
 (12) only juror as to the challenge of cause was argued in the
 (13) presence of the juror - and we believe that that did serious
 (14) prejudice to us - that was personal to the lawyers in that one
 (15) case - It's the only case of that character - And we're so far
 (16) down the process that it's probably ten to 15 minutes
 (17) additional time if we qualify another juror - That was Your
 (18) Honor - will recall - the first juror who was challenged for
 (19) cause on the basis - as we saw it - of concern that her personal
 (20) prior experience with alcohol would - would make it difficult
 (21) for her - despite her statement that she thought she could to
 (22) hear the evidence and not be influenced by it
 (23) MR O'NEILL - First of all - she was a fair juror
 (24) Second of all - I have conducted voir dire - we've all been
 (25) involved in cases where voir dire has been conducted in a

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(1) fashion in which all of the challenges were done in front of
 (2) the jurors And indeed I've been involved in cases where we
 (3) did challenges in front of everybody in the box and we argued
 (4) them in front of everybody in the box The third thing is
 (5) that to the extent that there is any problem with it they
 (6) invited the problem They could have walked over to the side
 (7) bar She is a fair lady and we spent a lot of time getting her
 (8) and it's done I think it's unfair to let them change the
 (9) numbers because of something that they did
 (10) MR LYNCH Your Honor may I just say one word in
 (11) response the analogy that Mr O'Neill describes are analogies
 (12) to a totally different process of juror selection As Your
 (13) Honor said at the time you too hadn't given thought to the
 (14) differences to this situation We were really caught unaware
 (15) in that situation but the distinction as I see it is Your
 (16) Honor as opposed to whether we were right or wrong in our
 (17) challenge We have now told the juror that we in her
 (18) presence that we the lawyers have presence about her ability
 (19) to - and I think that that can't help but bear on her view of
 (20) our ability to represent our clients during the remainder of
 (21) the case
 (22) THE COURT I understand your concern but I think
 (23) it's naive to think that all of the jurors failed to - I think
 (24) all of the jurors understand what's going on and when we -
 (25) when somebody gives me a hand signal or something and we send

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(1) one of these jurors out they know what's going to happen
 (2) They know we're in here talking about - about whether we think
 (3) they can be fair and impartial or not And I don't - I don't
 (4) believe there's a need to go back and revisit that question
 (5) Mr Lynch
 (6) Would you call another juror please? Oh I'm sorry one
 (7) other thing before we do that I'm still trying to think ahead
 (8) and want to save a nickel for Uncle if I can We've got a
 (9) juror in number 99 who is still sitting with us from King
 (10) Salmon I think it's so unlikely that we're not going to get a
 (11) jury short of him that I really would like to send him on his
 (12) way Does anybody have a problem with that?
 (13) MR NEAL The defendants don't Your Honor
 (14) MR O'NEILL That's fine Judge Save the nickel
 (15) THE COURT Thank you very much Would you - let's
 (16) see 99 is Mr - Mr Tolbert Would you tell Mr Tolbert that
 (17) he's been excused
 (18) THE CLERK Yes sir
 (19) THE COURT So that he can be about his business and
 (20) then bring us another juror
 (21) THE CLERK Your Honor this is Joyce D Baker juror
 (22) number 55
 (23) THE COURT Thank you Ms Baker we have your sworn
 (24) answers to the questions in the sworn interrogatory and at
 (25) this point the attorneys are going to each side have ten

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(1) minutes to ask you some follow up questions Mr O'Neill?
 (2) MR O'NEILL Thank you Judge
 (3) JURY VOIR DIRE
 (4) BY MR O'NEILL
 (5) Q Ma'am you work for the Alaska Housing Finance Corporation
 (6) as an administrative assistant?
 (7) A Yes I do
 (8) Q What do you do?
 (9) A I'm the loan administrative assistant for the support staff
 (10) for the planning department
 (11) Q What do you like about your job?
 (12) A I like being the only person for one thing I like being
 (13) told what to do and to do it and basically, you know, I'm able
 (14) to do it the way I want to do it
 (15) Q Let me ask you sort of a related question little strange
 (16) but when you make your life decisions important life
 (17) decisions do you like to make them after discussion with a
 (18) group or significant other or do you like to just sort of sit
 (19) there and cogitate by yourself to make a decision?
 (20) A Both
 (21) Q Both? Depends on the decision?
 (22) A Depends on the decision
 (23) Q This case is about the grounding of the Exxon Valdez Do
 (24) you recall when you first heard about it?
 (25) A I don't know exactly if I read it in the paper or when

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(1) Yeah I remember when it first happened
 (2) Q What kind of reaction did you have?
 (3) A I was horrified
 (4) Q Have you given it a lot of thought since then?
 (5) A I don't know if I've given it a lot of thought I mean
 (6) there were a lot of people involved in it I was involved in
 (7) civil air patrol and they were flying back and forth, and the
 (8) department I worked for at the time had representatives
 (9) on site, so forth But to tell you the truth, I'm a little bit
 (10) tired of hearing about it
 (11) Q Are you?
 (12) A Yes
 (13) Q Why?
 (14) A Because it's - it was a long time ago It's over and I
 (15) would just hope that we could get on with life I hope it
 (16) never happens again but I - you know, I think this is over
 (17) and it's - I'm tired of it
 (18) Q The fact that it's over and you're tired of it do you
 (19) think that view would have any impact on how you view your duty
 (20) as a juror?
 (21) A I don't know if that would have a lot to do with it It
 (22) might in some ways It might yeah
 (23) Q Could you tell me about that?
 (24) A Yes I think that both sides are milking this for all they
 (25) can get out of it And I - like I said, I thought it was

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- (1) over and I'm no great fan of the oil companies, but I also
 (2) believe that there are people in the Sound that made better
 (3) money from the oil spill than they ever did doing an honest
 (4) day's work and I think that the - any money that this process
 (5) extracted from Exxon would not have that much effect on Exxon
 (6) and the money that was extracted from Exxon would never filter
 (7) down to where it would do any good in the Sound. And I just
 (8) feel like we're wasting our time. I mean I feel like we're
 (9) wasting our time.
- (10) Q Do you -
 (11) A I think that a lot of people are going to - summers up
 (12) here are very short. I just sat on a jury for two weeks just
 (13) this last month, and the thought of spending, being forced to
 (14) give up three months of my life to line the pockets of a bunch
 (15) of lawyers does not appeal to me.
- (16) Q As Clint Eastwood would say, do you think we have a serious
 (17) attitude problem here?
 (18) A Yes, yes.
- (19) MR O NEILL: We agree.
 (20) MR NEAL: I don't know, we've gotten in trouble
 (21) signaling before. I want to signal that we agree with Mr.
 (22) O'Neill, okay, whatever that takes.
- (23) MR O NEILL: We -
 (24) MR NEAL: After all, we're lawyers too, Your Honor.
 (25) MR O NEILL: I can appreciate the fact that you've

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- (1) come and respect your views and we're going to turn you over
 (2) to Judge Holland.
- (3) THE COURT: I think it's my time to step in and say I
 (4) appreciate you being so candid with you about this, but we
 (5) really shouldn't have somebody with your frame of mind deciding
 (6) this case for these people. There are serious issues to be
 (7) resolved here and we've got to have people that are of the
 (8) mind to help us solve them. We appreciate you coming in.
- (9) THE CLERK: Your Honor, this is Judy Drew, juror
 (10) number 56.
- (11) THE COURT: Ms. Drew, we have your sworn answers to
 (12) the interrogatory and at this point by agreement, each side is
 (13) entitled to ten minutes to ask you some follow-up questions
 (14) about your answers. Mr. O'Neill?
- (15) MR O NEILL: Thank you, Judge.
- (16) JURY VOIR DIRE
 (17) BY MR O NEILL
 (18) Q You've lived here, ma'am, for two years?
 (19) A Yes.
 (20) Q Have you liked it?
 (21) A Yes, jury's still out, though, I haven't decided.
 (22) Q That's a good expression, the jury's still out?
 (23) A Well, it is.
 (24) Q Sort of a little lawyer joke?
 (25) A No, I like it here.

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- (1) Q Why did you come up?
 (2) A Just to see what it's like to live in Anchorage, Alaska.
 (3) Q And where do you work now?
 (4) A With adult probation on 4th Avenue, State of Alaska.
 (5) Q And do you like your job?
 (6) A Yes, it's a good job.
 (7) Q What do you like about it?
 (8) A It's moves fast. The days fly by. I'm the receptionist so
 (9) it's very busy there. You go crazy every day but it moves
 (10) fast.
- (11) Q I'm going to ask you sort of an off-the-wall question, but
 (12) if you just stick with me.
 (13) When you make your life decisions, important decisions to
 (14) you, do you like to make them in a group or as a result of a
 (15) group discussion, or do you like to go off on your own and just
 (16) sort of let things percolate and make them that way?
 (17) A Oh, I percolate by myself, yes.
 (18) Q Served in the military?
 (19) A Yes.
 (20) Q How long?
 (21) A Ten months, 11 months.
 (22) Q And what branch of the service were you in?
 (23) A Army.
 (24) Q What branch of the Army?
 (25) A WAC, women's Army.

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- (1) Q Is there women - at that - I didn't think there was a
 (2) woman's Army corps anymore. I thought the women were going -
 (3) field artillery, infantry, armor?
 (4) A I was there a long time ago, years ago, 33, 33 years.
 (5) Q See how young you are?
 (6) A Yeah, it was WAC when I was there.
 (7) Q Did you enjoy your military service?
 (8) A It was interesting, yes, basic was fun.
 (9) Q Where did you go through basic training?
 (10) A Ft. McClellan, Alabama.
 (11) Q You didn't have the pleasure of going to like Ft. Dix or
 (12) one of those places?
 (13) A No, no.
 (14) Q What kind of jobs have you held? Go back three or four
 (15) jobs for me, would you?
 (16) A Well, I work in the State adult probation office.
 (17) Q How about before then?
 (18) A Before that I worked at the Westmark and did maid service
 (19) and janitor work, and before that, I worked at Value Village,
 (20) because you had to take what you could get when you came to
 (21) town. Before that, I worked at First Bank of Helena, Montana.
 (22) Q That's part of the First Bank system?
 (23) A Yes, yes, in Helena, Montana.
 (24) Q And what did you do with First Bank systems?
 (25) A I was a statement clerk there and then before that, I

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- (1) worked at a book store in Burlington Vermont)
- (2) Q What do you do with your spare time?
- (3) A Read walk I like to walk a lot Anything that s free
- (4) I m sorry, I don t have much money What can I say
- (5) Q The - I m going to ask about a couple of subjects that are
- (6) involved in this case And the first subject that I want to
- (7) ask about is the oil industry which is prominent in this
- (8) state Exxon Corporation is an oil company and my question
- (9) for you is does the role that the oil companies play in this
- (10) state would that cause you such a problem that you couldn t
- (11) sit in judgment of Exxon Corporation?
- (12) A Oh no No I mean I m not - I don t depend on my living
- (13) from them
- (14) Q Okay Do you recall when you first heard about the Valdez
- (15) disaster?
- (16) A (Nods head up and down)
- (17) Q What was your reaction?
- (18) A I thought it was awful
- (19) Q Can you - do you think you can if chosen as a judge of
- (20) the facts in this case and that s what jurors are move those
- (21) kinds of preconceptions aside and give us your best open mind
- (22) for two or three months?
- (23) A I think so I mean, because I haven t really heard the
- (24) whole story I don t you know, dwell that much on newspaper
- (25) stories because you never know what you hear is the truth any

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- (1) ways
- (2) Q One or the other Do you read the funnies?
- (3) A Oh yeah, not all of them Garfield s my favorite
- (4) Q One of the issues in this case is going to be punitive
- (5) damages That that s a big subject of what s going to be
- (6) discussed and if the judge s instructions are such and the
- (7) evidence in this courtroom is such that punitive damages are
- (8) warranted do you have any philosophical problems with regard
- (9) to doing that?
- (10) A No
- (11) Q If the evidence that is presented in the courtroom is such
- (12) and the judge s instructions are such that punitive damages are
- (13) warranted in the billions of dollars does the magnitude of the
- (14) number just scare you away so you couldn t deal with it?
- (15) A No
- (16) MR O NEILL Thank you
- (17) JURY VOIR DIRE
- (18) BY MR LYNCH
- (19) Q Ms Drew I m Pat Lynch I represent the Exxon defendants
- (20) and for sake of efficiency I m representing all the defendants
- (21) in this ten minute interrogation
- (22) When Mr O Neill asked you your reaction to the spill you
- (23) sort of looked over in our direction?
- (24) A I know I m sorry, I m sorry
- (25) Q Before you said - was there something - I mean was there

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- (1) something about that?
- (2) A Well because it was an oil spill and you re -
- (3) Q I just wondered?
- (4) A Oh no, I wasn t shooting daggers at anyone
- (5) Q You don t really - although Mr O Neill suggested you
- (6) might you really don t have to put aside the idea that it was
- (7) terrible because I don t think that anybody -
- (8) A Oh yeah yeah
- (9) Q - would suggest that that s an issue in this case?
- (10) A Right
- (11) Q But did you have any reaction when you heard about the
- (12) spill as to fault as to whether somebody had done something
- (13) wrong or somebody ought to be punished or anything of that
- (14) kind?
- (15) A No, you re more just horrified at, my God, you know, look
- (16) at - I mean once it s happened -
- (17) Q Where were you at that time?
- (18) A I think - 1989?
- (19) Q Yes ma am
- (20) A In Vermont
- (21) Q In Vermont Now do you have any opinion or did you have
- (22) any opinion when you came into the Court initially about what
- (23) may have caused this spill? In other words anything any
- (24) information that you d received from what you thought or -
- (25) A Oh, you mean today

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- (1) Q What you d seen or read?
- (2) A Just from the paper
- (3) Q Just Monday?
- (4) A Yeah
- (5) Q And what did you have from the paper?
- (6) A God it s been so long since it happened, just that
- (7) evidently the captain, you know, had had a couple drinks and
- (8) left his post and - but really, I just haven t read that much
- (9) about it
- (10) Q Did you have any feelings about you know about the
- (11) alcohol aspect of that?
- (12) A No, it s just - It s a terrible thing, I mean, you know,
- (13) as far as what it did, you know, to the countryside and the
- (14) water, yeah No, I - it s just the fact that it happened is a
- (15) terrible thing
- (16) Q Now in this case as you undoubtedly heard when we tried
- (17) to summarize a little bit for you what trial will be about
- (18) there will be a lot of attention on alcohol as a social
- (19) problem?
- (20) A Yeah
- (21) Q As a personal problem and whether alcohol was actually
- (22) involved?
- (23) A Right
- (24) Q Now in the questionnaire you were asked a little bit about
- (25) that and you indicated you had had some personal experience in

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- (1) your family with alcohol?
 (2) **A Right**
 (3) **Q** But unfortunately the copy I have and I've been saying
 (4) this all day long I can't read your writing because the xerox
 (5) machine
 (6) **A My writing's awful. It really is.**
 (7) **Q** Didn't pick it up and I hate to ask you this in public and
 (8) I hope it's a discrete
 (9) **A That's all right.**
 (10) **Q** Could you tell me what the nature of that problem was?
 (11) **A My father had a drinking problem except that until I was**
 (12) **17 I just thought he was awful tired when he got home from work**
 (13) **because he always fell asleep. He wasn't bad, it's just that**
 (14) **as I've grown older and realized**
 (15) **Q I see. Do you have strong feelings about the use of**
 (16) **alcohol because of your experience with your father?**
 (17) **A I don't have any patience with people that drink**
 (18) **Q** You don't have any patience?
 (19) **A I don't want to be around them.**
 (20) **Q** Don't want to be around them?
 (21) **A I don't want to have to listen to them.**
 (22) **Q** Would that make for example if Captain Hazelwood testifies
 (23) in this case and there's evidence that he had - had had
 (24) alcohol to excess at times would that make you less willing to
 (25) listen to his testimony?

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- (1) **A Oh no everybody drinks. I mean I - I may go out and**
 (2) **have a couple of drinks. It's just that if somebody's**
 (3) **obnoxious and a belligerent drunk, I don't -**
 (4) **Q** Which means when somebody is drinking you don't -
 (5) **A Oh yeah. If they're friendly it doesn't make any**
 (6) **difference. I just don't want to have to deal with that.**
 (7) **Q** Did you get involved at all when you learned about the
 (8) nature of the problem in any of the support groups or other -
 (9) **A Yes, I've had a few friends that have gone through AA, so I**
 (10) **know what - you know, I know about it and how it works.**
 (11) **Q** Were you actively involved in any AA 12 step program?
 (12) **A No.**
 (13) **Q** That is helping these friends?
 (14) **A I've gone to meetings with my friends just as their guest**
 (15) **and heard people speak and they're very good meetings, yeah.**
 (16) **Q** Do you have a strong view about what alcoholism is?
 (17) **A I know what, you know, what is the belief of what it is.**
 (18) **Q** What is that?
 (19) **A That it is a disease. You know, some people are more**
 (20) **susceptible than others because of, you know, it could be**
 (21) **genetic or I don't think they've really quite made up their**
 (22) **mind, but -**
 (23) **Q** Do you believe that everybody who has problems with
 (24) drinking is alcoholic?
 (25) **A No, I don't.**

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- (1) **Q** By that definition?
 (2) **A I don't necessarily.**
 (3) **Q** Do you believe that in your own experience have you seen
 (4) people who can drink and perhaps even drink a fair amount and
 (5) remain in good control of themselves?
 (6) **A Uh huh.**
 (7) **Q** And be trustworthy and be able to carry out their
 (8) activities?
 (9) **A Yes, yes.**
 (10) **Q** That wouldn't be inconsistent you would be open to the
 (11) evidence if the evidence showed you that that was a true state
 (12) of affairs?
 (13) **A Yes.**
 (14) **Q** Now Mr. O'Neill asked you questions about would you have
 (15) any conscientious reservation about sitting in judgment. When
 (16) you - if you were to serve as a juror in this case and you
 (17) recognize as Judge Holland told you that you along with the
 (18) other members of the jury would be a judge of the facts you
 (19) would be under oath?
 (20) **A Right.**
 (21) **Q** Now does the sum of billion dollars what - what
 (22) influence would that have on you in terms of the seriousness of
 (23) the issue that's being presented?
 (24) **A It is a serious issue.**
 (25) **Q** You recognize that awarding a thousand million dollars

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- (1) **is -**
 (2) **A Right, yes.**
 (3) **Q** Is a significant claim?
 (4) **A Oh, of course, of course.**
 (5) **Q** Do you have any views about punishment as you sit there
 (6) today about whether punishment is needed or appropriate in
 (7) this case?
 (8) **A I don't like to think of it as punishment. Sometimes the**
 (9) **only way you can get people to change their actions is to hit**
 (10) **them in the pocketbook.**
 (11) **Q** So your view would be that you would think that that at
 (12) least sometimes you need to make - assess fines to change
 (13) people's actions is that correct?
 (14) **A In our world today, I think that about says it.**
 (15) **Q** Is it your understanding that that's the purpose of
 (16) punitive damages?
 (17) **A I thought it was. I'm not sure, though. You can explain**
 (18) **because I don't really know.**
 (19) **Q** Where did you get that view?
 (20) **A What?**
 (21) **Q** The view that you said you thought punitive damages was -
 (22) **A It means to punish, doesn't it, punitive.**
 (23) **Q** Yes right but you said you understood it was to cause
 (24) people to change the way they behaved. I just wondered where
 (25) you got that information?

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- (1) A Oh to me that's just common sense. If someone doesn't
 (2) want a certain reaction they will stop doing something that
 (3) causes the reaction. I thought
 (4) Q Do you have the view that because this accident had
 (5) significant consequences that conduct was necessarily serious
 (6) or more aggravated than other kinds of mistakes?
 (7) A No
 (8) Q Do you have any opinion as you - as you sit here this
 (9) afternoon that - that the effects of the oil spill in 1989 are
 (10) continuing?
 (11) A Yes
 (12) Q What's that opinion?
 (13) A Oh I thought you meant do I have the opinion that they are
 (14) still continuing?
 (15) Q Yes that was the question
 (16) A Yes, I do feel they are
 (17) Q What effects do you feel continue?
 (18) A Oh, I don't think probably they have even begun to realize
 (19) what the damage is, as far as fish population, you know, the
 (20) shoreline, the ocean. We don't know. You know, it takes years
 (21) sometimes to see the results of, you know, fish their spawning
 (22) habits. You just don't know, the animals the -
 (23) Q So as you come into court you think it's probable that
 (24) there are consequences but we just don't know what they are is
 (25) that right?

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- (1) A I'm sure I'm sure there are, yes
 (2) Q And have you read or seen anything that led to that
 (3) opinion? Or is that -
 (4) A I must have read bits and pieces but nothing that I can -
 (5) you know, it's not like I thought oh I'm going to remember
 (6) where I read this and what it's about. Just - just from being
 (7) alive and hearing bits and pieces
 (8) Q Now in this case there will be substantial dispute about
 (9) whether the effects of the oil spill do continue there will be
 (10) scientists who come and testify about that subject. Do you
 (11) feel that if you hear evidence that the - that the effects of
 (12) the spill do not continue would you be - would you be open to
 (13) that or are you convinced in your own mind that they re -
 (14) A I'm not -
 (15) Q We can't be sure that they must be continuing?
 (16) A No, I'm not convinced of anything. You know, I don't know
 (17) the answers
 (18) Q But as you start - you kind of start with assumption or
 (19) do you I'm not trying to put words in your mouth?
 (20) A I'm just - yeah, because I don't really know. It's just
 (21) it could be. You don't know. That's the whole point. I don't
 (22) know
 (23) Q And if the court were to tell you as a juror as a judge
 (24) of the facts that it's the burden of the plaintiffs to prove
 (25) something is more probably true than not in other words if

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- (1) your true state of mind is you don't know that the plaintiffs
 (2) haven't proved a connection would you be able as a juror to
 (3) return a verdict for Exxon even though at the back of your
 (4) mind there's a possibility that you still think exists there?
 (5) In other words if you - if you still don't know at the end of
 (6) the trial but you have a doubt you don't think it's been
 (7) proven?
 (8) A Right
 (9) Q Could you - could you make that mental balancing act to
 (10) say although I do have doubts in the back of my mind it
 (11) hasn't been proven and therefore as a judge I can't find
 (12) against Exxon?
 (13) A If that's the way I felt
 (14) Q That's a pretty complicated sentence?
 (15) A No, no I just want to make sure I say you know what I
 (16) really think. If I wasn't sure - you don't know what you're
 (17) going to say until you find out what the questions are. You
 (18) know I don't know what I would decide but I would try to be
 (19) open and not -
 (20) Q Okay and what I'm trying to get at is that you and I think
 (21) quite understandably you say science doesn't know everything?
 (22) A Exactly
 (23) Q And there was a spill and things could be traced back to
 (24) the oil I don't know. What I'm trying to make sure is that
 (25) you won't just assume that the oil caused things?

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- (1) A Right
 (2) Q If there's no proof of it?
 (3) A No, I wouldn't
 (4) Q And you'd be prepared to listen to the proof and if the
 (5) plaintiffs haven't proved a connection even though maybe it's
 (6) possible somebody else could in this court that day as a judge
 (7) you'd be able to make that decision?
 (8) A Right, right
 (9) Q Let me see if I - I have one more question here I could
 (10) not read your answer to question number 82. Not because of
 (11) your writing just the copying machine
 (12) A Right
 (13) Q Just didn't pick up your writing but it was a question
 (14) about would it be difficult for you to spend three to four
 (15) months in a trial of this case?
 (16) A Oh, God yes
 (17) Q And what would that be?
 (18) A I just hate to leave work because somebody has to replace
 (19) me. It's hard on the people that I left you know somebody
 (20) has to replace. It would be hard
 (21) Q Would you be paid would you continue to receive your
 (22) paycheck?
 (23) A Yes I'm very fortunate I would be
 (24) Q You indicated that you worked in a book store in Vermont
 (25) Have you read any of the books about the Exxon Valdez?

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- (1) A Oil spill?
 (2) Q Yes ma am
 (3) A No, because the year it happened I was just getting to --
 (4) I was too busy working and you had to buy the book so lot of
 (5) times -- it was a good book store They were expensive books
 (6) MR LYNCH I have no other questions Your Honor
 (7) MR O NEILL Pass for cause
 (8) MR LYNCH Pass for cause
 (9) THE COURT Okay Mrs Drew passing for cause means
 (10) that we re going to want you to come back a little later The
 (11) jury clerk will call you when we need to have you back again
 (12) You can go about your business for the day today but we will
 (13) be calling you back
 (14) MS DREW Okay so I just wait for the call right?
 (15) THE COURT That s right
 (16) THE CLERK Your Honor this is juror number 57
 (17) Jerrold P Jones
 (18) THE COURT Mr Jones we have your sworn answers to
 (19) the questionnaire that we gave you At this point the
 (20) attorneys are going to have ten minutes on each side to ask you
 (21) some follow up questions Mr O Neill?
 (22) MR O NEILL Thank you Judge
 (23) JURY VOIR DIRE
 (24) BY MR O NEILL
 (25) Q Sir where do you work now?

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- (1) A I work at Igloo City, Mile 188 on the Parks Highway, Igloo
 (2) City
 (3) Q What do you do?
 (4) A I m a gas attendant I pump gas I work for the general up
 (5) there
 (6) Q I m going to ask about some -- just general questions about
 (7) you so that we and the Exxon lawyers can get to know you a
 (8) little bit
 (9) A Okay
 (10) Q So if they seem like I m prying a little bit the answer is
 (11) I m prying and there s nothing you can do about it Okay? You
 (12) got your GED in 1993?
 (13) A Yes, I did, from Cantwell
 (14) Q And what was the impetus that got you to go back and get
 (15) your GED?
 (16) A My mother in law
 (17) Q Your mother in law insisted?
 (18) A No she encouraged me I dropped out a month before
 (19) graduation to come up to work on All Alaska
 (20) Q You worked at -- All Alaskan is a cannery?
 (21) A Yeah, out at Bristol Bay
 (22) Q Out at Bristol Bay? What year was that?
 (23) A I think 89 or 90 It s a four month contract I think
 (24) 89
 (25) Q You think it was 89 or 90?

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- (1) A Yeah, I worked -- I worked two contracts
 (2) Q You re going to have to bear with me for just a second
 (3) because I need to get a piece of information
 (4) Thank you for bearing with me Have you worked -- you
 (5) worked for a cannery in Bristol Bay in 1989 or 1990?
 (6) A Yeah I worked two
 (7) Q Two years?
 (8) A No two contracts which is four months
 (9) Q Okay Have you worked in any other fishery other than
 (10) Bristol Bay?
 (11) A No
 (12) Q Do you like it here in Alaska?
 (13) A I love it
 (14) Q Why?
 (15) A Well, where I live It s nice and quiet, you meet people,
 (16) it s not all rush, rush
 (17) Q In Alaska you don t pay any state income tax which is a
 (18) good thing And a part of the reason for that is the oil
 (19) industry And Exxon Corporation is part of the oil industry
 (20) Would the fact that they re a part of the oil industry in any
 (21) way impede you in being fair to both sides if you were a juror
 (22) in this case?
 (23) A I don t understand the question
 (24) Q Let me -- don t get offended I ll ask you directly and
 (25) just don t get mad at me Because you don t have to pay state

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- (1) income tax because of the oil industry would you give Exxon
 (2) Corporation a break in the courtroom if you were a juror?
 (3) A I m --
 (4) Q You want me to try again?
 (5) A Yeah
 (6) Q That s fine I ll -- what I m concerned about is bias one
 (7) way or the other And because you don t pay state income tax
 (8) would you be biased in favor of Exxon Corporation because
 (9) their oil money is run through the State?
 (10) A No
 (11) Q You could be fair to everybody?
 (12) A Yes
 (13) Q Because -- okay Do you recall your reaction to the Valdez
 (14) spill when you heard about it?
 (15) A I -- I m not really sure
 (16) Q How old were you then?
 (17) A Oh just -- I d say a few months ago
 (18) Q Was the first time you heard about it?
 (19) A Yeah Where I live, I don t get TV or radio so my aunt
 (20) down in Las Vegas recorded it for us and that s the first time
 (21) I seen it
 (22) Q Do you follow the issue very much with regard to the Valdez
 (23) spill?
 (24) A No
 (25) Q As you sit here right now is there any good reason that

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- (1) you can think of do you feel prepared to be a juror?
 (2) A No I don't really know what's going on
 (3) Q Do you feel you could be fair?
 (4) A Yes
 (5) Q Do you feel you could work hard?
 (6) A Yes
 (7) Q Do you feel you could listen to both sides fairly?
 (8) A Yes I do
 (9) Q And give it your best shot?
 (10) A Yes
 (11) Q Thank you
 (12) A You're welcome
 (13) MR O NEILL No he's going to talk to you now
 (14) MR JONES Oh okay
 (15) MR O NEILL If life was so easy -
 (16) JURY VOIR DIRE
 (17) BY MR SANDERS
 (18) Q Hi Mr Jones My name's Jim Sanders I represent the
 (19) Exxon defendants and so we can shorten this down I'm also
 (20) asking questions on behalf just this stage on behalf of
 (21) Captain Hazelwood and his lawyers
 (22) Mr Jones you mentioned in your questionnaire that serving
 (23) on a jury for two or three months or maybe even longer would be
 (24) a hardship for you
 (25) A Yes It would

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- (1) Q And I believe the copy I got of your questionnaire was not
 (2) a good copy so I - I think I got this right but I'm - I'll
 (3) ask you Are you the only one that - that can run the
 (4) station?
 (5) A Well, no
 (6) Q And help your father in law?
 (7) A Well yes, that there, yes He's legally blind and he can't
 (8) see to walk around the generator room So I have to be there
 (9) helping him to do the work because he can't get up in the
 (10) grader or loader He can't see if there's snow and if there's
 (11) little peak part on the generator that's broken, I have to do
 (12) it He tells me I have to do it I'm his hands
 (13) Q If you're up here is there anybody else that can help him?
 (14) A Not with the generators, no
 (15) Q Have you talked to him about this situation?
 (16) A No
 (17) Q Why not?
 (18) A Well, well my wife called him and she told me that I was
 (19) doing this case, and then he says can't do it, because I need
 (20) the help down there
 (21) Q Mr Jones we don't want to put you or your family out
 (22) obviously Neither side wants to do that Is there anyone
 (23) else that can do what you do for your father in law if you were
 (24) gone for a couple three months?
 (25) A That I don't know I'm sure there could be if he needed

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- (1) the help He could find somebody
 (2) Q If somebody else did it would you still get paid?
 (3) A That I don't know
 (4) THE COURT I think we better excuse him folks We
 (5) appreciate your coming down here to talk to us about this but
 (6) I think it's probably more important that you help out with
 (7) your family business Mr Jones So we'll excuse you
 (8) THE CLERK Your Honor this is juror 58 Gordon
 (9) Homme
 (10) THE COURT Mr Homme we have the sworn answers to
 (11) our questionnaire At this point by agreement the attorneys
 (12) are each going to have ten minutes a side to ask you some
 (13) follow up questions Mr O'Neill?
 (14) MR O NEILL Thank you Judge
 (15) JURY VOIR DIRE
 (16) BY MR O NEILL
 (17) Q How are you sir?
 (18) A Pretty good
 (19) Q You went to Valdez to see the cleanup at Veco's expense?
 (20) A No, I'm with the postal service
 (21) Q Yeah did you go see the cleanup?
 (22) A No What do you mean "the cleanup"? Not per se I was
 (23) involved with being down there during the time in Valdez only
 (24) Q Okay
 (25) A Yeah

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- (1) Q Were you down there for two months?
 (2) A No, on and off
 (3) Q On and off for two to three months?
 (4) A Yeah, that's correct
 (5) Q You say in your questionnaire that you believe that the -
 (6) the spill was more positive than negative to this -
 (7) A Well, I'm talking about - I don't know about more positive
 (8) than negative I'm talking about probably the expenditures
 (9) that were derived with the employment part of it
 (10) Q How did you feel about the spill?
 (11) A Well, it's sure a tragedy, I mean in that sense, it's not
 (12) the first one that's happened and probably won't be the last
 (13) Q From the time it happened till today have your views about
 (14) it changed at all?
 (15) A I don't think that in my opinion the damage of it is
 (16) probably that extensive as originally thought to be
 (17) Q What do you base that opinion on?
 (18) A Probably things I've read and probably in conversation with
 (19) people who have been down there
 (20) Q In your questionnaire you say I don't believe that large
 (21) sums of money should be rewarded for merely punishing behavior
 (22) A That's correct
 (23) Q And I want to talk about that sentence and the sentence
 (24) was in response to the question of punitive damages and you
 (25) said I don't believe it is a belief that you have isn't

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- (1) that right?
 (2) A Yeah
 (3) Q It s a belief that you ve given some thought to?
 (4) A I would say so
 (5) Q And it s a belief that you ve given enough thought to where
 (6) you put your belief down in writing on this piece of paper?
 (7) A Yeah
 (8) Q And you ve considered it you thought about it?
 (9) A Yeah yeah
 (10) Q Has it been something you ve been thinking about for a
 (11) number of years?
 (12) A No
 (13) Q Recently?
 (14) A I don t know Number of years, I wouldn t say Gosh,
 (15) that d be hard to answer Maybe more recent than would be over
 (16) the years
 (17) Q How about the last year or two you ve been thinking about
 (18) it?
 (19) A Two three years, maybe
 (20) Q And?
 (21) A Couple years
 (22) Q Couple years With regard to thinking about it over the
 (23) last couple years could you - could you share with me your -
 (24) your support for the position?
 (25) A Well, I don t know as there s any - a certain way that

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- (1) I - outside point of view that you can be totally sure of
 (2) anything That s just a belief that - or a thought process I
 (3) want to say that a person has about it I mean get into a lot
 (4) of intricacies of things and hell, maybe things are different
 (5) but from a outside perspective, that would be what I m sort of
 (6) saying, I mean that there s - by seeing the general things
 (7) that went on in the past and so on
 (8) Q Reading the newspapers?
 (9) A Perhaps
 (10) Q Thinking about it?
 (11) A I suppose yes
 (12) Q When you filled out the questionnaire that was a belief
 (13) that you brought with you to the questionnaire that s a belief
 (14) you bring with you here today too isn t it?
 (15) A Somewhat
 (16) Q And if you were impeaneled as a juror that s a belief that
 (17) you would bring into the jury box?
 (18) A Probably swayed that way
 (19) Q You re swayed that way?
 (20) A Possibly
 (21) Q And if you were a plaintiff in this case and you had you
 (22) sitting in judgment of that subject you wouldn t feel
 (23) particularly comfortable about you as a juror being swayed that
 (24) way would you?
 (25) A Well I don t know It s kind of hard to say You can t

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- (1) always be sure till other things have come about It s a
 (2) reasonableness that I guess a person has to look at You can
 (3) have different ideas
 (4) Q I know but we re talking about you and if you were a
 (5) plaintiff in this case with this belief of yours that you ve
 (6) thought about over some period of time a year or two if you
 (7) were a plaintiff you d feel uncomfortable with you as a juror
 (8) wouldn t you?
 (9) A Probably
 (10) Q And that s a subject punitive damages is a subject we re
 (11) going to discuss in this case Are you aware of that?
 (12) A Uh huh yes
 (13) Q Now I m just trying to think of a polite way to say this
 (14) but just out of a general fairness concern and I m not saying
 (15) your views are right or wrong Let s assume that you re right
 (16) for the sake of the discussion but just out of a fairness
 (17) concern in this courtroom because of this belief of yours
 (18) there s a - there s a fairness problem isn t in?
 (19) A Well, I - I don t like to view it that way, but -
 (20) Q I don t mean to cast aspersions on you but would you agree
 (21) with me that there is a fairness problem?
 (22) A Well, it would depend on I suppose, what evidence of
 (23) course is brought forward
 (24) Q Well I understand that but I mean I m talking about this
 (25) belief or disposition that you bring to the process?

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- (1) A Well It could be
 (2) Q Do you agree that there is a fairness problem?
 (3) A I don t know There s two sides I guess
 (4) Q Give me both sides?
 (5) A Well you have to look at just that, what there would be
 (6) when you re talking about - you d have to know what the
 (7) amounts of settlement, whatever the case may involve you
 know,
 (8) in the final I believe in being fair, I really do, regardless
 (9) of the belief You can still be that I still feel
 (10) Q Okay let me -
 (11) A The credibility
 (12) Q Let me make a specific - let me ask some specific
 (13) questions Let s assume in this case just for the sake of our
 (14) discussion your and my discussion that the law is such and
 (15) His Honor s instructions are such that they dictate that a
 (16) punitive damage award of billions billions of dollars ought to
 (17) be awarded against the Exxon Corporation?
 (18) A I don t -
 (19) Q Billions not millions we re talking billions of dollars
 (20) Are you with me so far?
 (21) A You bet
 (22) Q Does your belief with regard to punitive damages would
 (23) your belief with regard to punitive damages create a problem
 (24) with you going along with what was proved in the courtroom?
 (25) A No Not in that case

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- (1) Q How about the fact that it is billions of dollars?
 (2) A No not if it could be proven, yeah
 (3) MR O NEILL Thanks Oh I - could I have two more
 (4) minutes Judge?
 (5) THE COURT I think you've already had more than
 (6) your -
 (7) MR O NEILL I thought it was eight minutes when I
 (8) sat down sir
 (9) MR LYNCH Well I'm not keeping a stopwatch but I
 (10) thought it was - Your Honor it's your courtroom
 (11) THE COURT Let him ask two questions
 (12) BY MR O NEILL
 (13) Q Do you think that because of your - your and your wife's
 (14) health that sitting here for the next three months from eight
 (15) to two in the afternoon would create any kind of problem for
 (16) you?
 (17) A Well, it could potentially, not knowing what the
 (18) circumstances are going to be You know, I mean, I couldn't
 (19) answer that right now
 (20) Q Can you commit to us that for the next three months you'll
 (21) spend from eight to two with us five days a week?
 (22) A Well, if I knew what the condition was going to be of -
 (23) of - of the case, of her case, that would be the thing that -
 (24) I mean, you know, I can't control that Far as that part
 (25) goes -

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- (1) A I would under if - you know if - it's - it's
 (2) troublesome on the mind but you know if the case may be that
 (3) something would have to happen that - that at this stage
 (4) right now it's not very good but it could improve and
 (5) hopefully that's what will happen yeah Based on that -
 (6) Q Now have you ever served on a jury before?
 (7) A Yes
 (8) Q Do you understand that at the start and the end of the case
 (9) the Court will tell you what the law is?
 (10) A That is correct
 (11) Q And when you served as a juror did you do your best to
 (12) follow the judge's instructions on the law?
 (13) A I sure did
 (14) Q Whether or not you agreed with the law?
 (15) A Yes
 (16) Q And as a juror did you listen to the evidence?
 (17) A Yes
 (18) Q And decide the case on your best belief of the evidence?
 (19) A Yeah
 (20) Q And that's what you would do here?
 (21) A Right
 (22) Q Regardless of your personal feelings about whether or not
 (23) the law should -
 (24) A Right
 (25) MR LYNCH No further questions Your Honor

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- (1) Q Is it a serious problem or not a serious problem?
 (2) A Serious, back - back surgery
 (3) Q And my only question is is that going to get in the way of
 (4) your committing to us that you'll be here for three months?
 (5) A Well, if it required transport outside I suppose, or
 (6) something of that nature, which I don't know yet
 (7) JURY VOIR DIRE
 (8) BY MR LYNCH
 (9) Q Mr Homme you - with reference to the last question as
 (10) best you now know will your wife's surgery require transport
 (11) out of state?
 (12) A Well, she just had it on April 18th, and the disc - part
 (13) of a disc was removed and it's extremely painful and went to
 (14) the doctor today I don't know, can't seem to shake, or said
 (15) something two weeks ago, but this is the third one in the last
 (16) two years, I believe, or maybe it's even less than that, so you
 (17) know, I don't know
 (18) Q You just don't know?
 (19) A Just don't know
 (20) Q But as you - as you look back at the other ones would you
 (21) expect that eventually over time your wife's situation would -
 (22) A Well, it's a serious, some type of a nerve disorder and
 (23) along with the disc problem so I don't know Hopefully I'm
 (24) optimistic about it
 (25) Q Well are you willing to serve as a juror in this case?

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- (1) MR O NEILL My only question is his commitment to
 (2) serve in light of his wife's health
 (3) THE COURT I'm concerned about that I have some
 (4) misgivings about starting a trial that's going to last maybe
 (5) three months knowing that - that someone has a serious medical
 (6) problem today and we don't know whether it's going to get
 (7) better or worse I'm inclined to think we ought to excuse Mr
 (8) Homme and hope that things come out well for him but not
 (9) assume the risk that it might go the other way Mr Homme
 (10) thank you for coming we'll excuse you
 (11) THE CLERK Your Honor this is Patrick D Maloney
 (12) juror number 59
 (13) THE COURT Mr Maloney we have your sworn answers to
 (14) the questionnaire at this point By agreement the attorneys
 (15) have reached they'll have ten minutes per side to ask you some
 (16) follow up questions Mr O'Neill?
 (17) JURY VOIR DIRE
 (18) BY MR O NEILL
 (19) Q How are you sir?
 (20) A Just fine, thanks
 (21) Q You have had commercial fishing permits?
 (22) A No, I haven't had a commercial fishing permit I worked
 (23) for a guy that had a permit to - I guess he was a hand trawl
 (24) permit
 (25) Q Where?

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- (1) A In Ketchikan
 (2) Q Have you fished commercially in Upper Cook Inlet Kodiak
 (3) Chignik Prince William Sound?
 (4) A No
 (5) Q Cordova?
 (6) A No
 (7) Q You're a lawyer?
 (8) A Well not yet
 (9) Q Oh you're still working - you haven't passed the bar
 (10) yet?
 (11) A I'm taking the bar, review course again on an Obermeyer
 (12) scholarship
 (13) Q That's pretty good I hope you don't have to take it 17
 (14) times
 (15) A I hope not
 (16) Q Do you have a view one way or the other on the
 (17) appropriateness of punitive damages?
 (18) A Not strongly so But I mean it seems like there's a place
 (19) for that in the - In determining these matters, at least I've
 (20) always been of the opinion that money is kind of the great
 (21) equalizer, it's a great equalizer, so I would say in certain
 (22) circumstances, yeah, it probably is appropriate At least
 (23) that's how our system seems to work
 (24) Q Have you been in Alaska since '79?
 (25) A On and off I was living in Ketchikan until 1984 and I

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- (1) left the State to go to school in Oregon I went to Oregon
 (2) State for three years, then I went to Lewis & Clark for three
 (3) years, and upon completing that program, graduation in '91, I
 (4) returned here, coming to Anchorage instead of Ketchikan
 (5) Q Why did you come back to Alaska?
 (6) A I had always intended to come back to Alaska That was -
 (7) that was just something I'd wanted to do I left for purposes
 (8) of going to school
 (9) Q The oil industry plays a prominent role in the State of
 (10) Alaska that's a fact Would the contributions that the
 (11) industry makes to the Permanent Fund and other like
 (12) contributions create any problem for you in sitting in judgment
 (13) of Exxon Corporation?
 (14) A No
 (15) Q Do you recall where you were when the spill happened?
 (16) A I was in Oregon, in Portland
 (17) Q You do you recall what your reaction was?
 (18) A Probably like most people, it seemed like a tragedy It
 (19) seemed like a big disaster and you know, I probably listened
 (20) to the news and read the headlines and an article or two, you
 (21) know through the paper and was concerned that we, you know,
 (22) there must be some way to prevent that from happening or at
 (23) least to lessen its effects you know, I had that kind of
 (24) concern as a citizen
 (25) Q Can you put those feelings aside and give the Exxon

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- (1) Corporation a fair break if you sit as a juror in this case?
 (2) A Absolutely
 (3) MR O NEILL Nothing further Judge
 (4) JURY VOIR DIRE
 (5) BY MR NEAL
 (6) Q Mr Maloney I'm Jim Neal and I represent the Exxon
 (7) defendants I'll question you some perhaps on behalf of the
 (8) other defendant Captain Hazelwood Patrick Maloney Irish?
 (9) A Yes
 (10) Q Mr O'Neill Irish Mr Jim Neal Irish So we start off
 (11) even okay You've been an engineer for some period of time I
 (12) believe?
 (13) A 24 years
 (14) Q 24 years? Most of that's time with Brown & Root?
 (15) A No actually I've only worked for Brown & Root for about the
 (16) last two and a half years
 (17) Q Two and a half years And before that?
 (18) A I worked for a number of companies I worked for
 (19) municipalities and local governments, Tri Met, which is the
 (20) transit agency in Portland for five years, and before that,
 (21) Ketchikan Public Utilities in Ketchikan for about five years
 (22) Louisiana Pacific for a year and Combustion Engineering which
 (23) is a manufacturer of power plant equipment, I worked for them
 (24) Q Where is Combustion Engineering located?
 (25) A Connecticut

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- (1) Q Louisiana Power that's in Louisiana?
 (2) A No, Louisiana Pacific corporation is a wood products,
 (3) primarily wood products company and they're actually
 (4) headquartered in Portland, Oregon, I believe
 (5) Q Have you ever served on a jury before?
 (6) A No I haven't I was selected once but then the case
 (7) settled
 (8) Q I guess we - I guess we're all sort of interested and
 (9) apprehensive about this I've never served on a jury in all my
 (10) 63 years or those years I've been grown could and I guess
 (11) some people are apprehensive about putting a lawyer there
 (12) with - with people who are not lawyers What do you think
 (13) about that?
 (14) A Well, I mean I can see, from both points of view and I
 (15) don't feel like it would really matter, as far as I'm
 (16) concerned, because I would - would listen and listen intently
 (17) to both sides of the case and you know, listen to the Judge's
 (18) instructions regarding the law and make what I think would be a
 (19) reasonable, sound balanced kind of decision, if that's what
 (20) you're asking
 (21) Q Well you know I never - I never agree with the Judge's
 (22) instruction on the law I always think he's wrong if it's not
 (23) what I want you understand but the Judge does instruct on the
 (24) law You understand that you've got a lot of - you've got a
 (25) lot of legal training now?

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- (1) A Yeah
- (2) Q Part of that legal training tells you that when you get in
- (3) the jury box at least for the purpose of deliberations you've
- (4) got to set aside your substantial knowledge of the law that
- (5) will be far more than other jurors have right?
- (6) A Yes
- (7) Q And you've got to tell those jurors or suggest to those
- (8) jurors and the judge will suggest to those jurors that
- (9) notwithstanding the fact that you're a lawyer that you and
- (10) they must get their instructions on the law from His Honor
- (11) Judge Holland correct?
- (12) A Oh yes I understand
- (13) Q Okay What - when you - you have read something about
- (14) the spill? I believe you said although if I remember this
- (15) correctly you haven't followed it avidly?
- (16) A No, I haven't
- (17) Q What sticks out in your mind about the publicity that
- (18) you - that you heard or read or have seen back when you were
- (19) doing that?
- (20) A Well, probably two things most One was I didn't feel like
- (21) I would like to be in Captain Hazelwood's shoes He was
- (22) getting a lot of attention from every direction and I - I
- (23) don't know if I thought that was fair or a little bit heavy
- (24) in any respect, I thought it was probably not a very
- (25) comfortable place for him Number two I remember there was

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- (1) some - some controversy about the fact that it took a while
- (2) for people to respond and for - for the cleanup effort to
- (3) actually get underway, and you know that there was some
- (4) controversy about there being more damage that might have
- (5) been
- (6) stopped or eliminated had they responded more quickly
- (7) Q As you - as you sit there now who - who - who do you
- (8) think or - I don't remember the publicity about this so you
- (9) tell me did the publicity suggest that some one person or some
- (10) entity or whatever some government was the one who didn't
- (11) respond quickly enough?
- (12) A You know, I'm not exactly sure whose failure to respond was
- (13) in question, because I don't know the structure of the - of
- (14) the system there, what companies are related to what and how
- (15) the State government applies and so on, I really don't know
- (16) that much about it
- (17) Q It's obvious then that whatever you heard didn't make a
- (18) profound impression on you - or generate any firm opinion in
- (19) your mind that you'd be - it would be difficult to set aside
- (20) in this case then?
- (21) A You mean did I make some conclusion about where the blame
- (22) should be placed?
- (23) Q Right
- (24) A No, I didn't
- (25) Q That's good Now do you have any - do you have any
- (26) feelings or perceptions about the results of the spill or the

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- (1) continuing effects of the spill if any?
- (2) A I frankly don't know enough about that at least from a
- (3) you know facts and figures standpoint to really be able to
- (4) make a good answer other than to say no I don't really have
- (5) an opinion about it
- (6) Q Have you been to Prince William Sound since the spill and
- (7) since you've moved to Alaska?
- (8) A I've never been to Prince William Sound
- (9) Q I believe that Mr O'Neill resolved this but let me - let
- (10) me ask you the question You have - is it friends that you
- (11) have who have a fishing permit? Or you have a fishing permit?
- (12) A No I don't have a fishing permit My friend that I - I
- (13) was an abalone diver when I came up here in 1979 in Ketchikan
- (14) area I did it that one summer and my friend had a hand trawl
- (15) permit, and in fact, I didn't actually fish with him on the
- (16) hand trawl permit I - I was doing abalone diving and that
- (17) lasted a couple of months and I was out of it, and I know he
- (18) sold his permit a year later or something like that
- (19) Q That's what you're talking about in the questionnaire about
- (20) the reference to fishing permit on one of the questions?
- (21) A Yeah
- (22) Q Okay Let me go back to Captain Hazelwood just a moment
- (23) You said that you - one of your reactions was you'd hate to be
- (24) in his spot or be -
- (25) A I'm sure it was not -

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- (1) Q You empathized or sympathized with his - or at least to
- (2) say the least discomfort?
- (3) A Yeah
- (4) Q Do you remember anything else about that I mean anything
- (5) else about Captain Hazelwood come to your mind from the
- (6) publicity?
- (7) A Well, I mean there was - there was implication of alcohol
- (8) involvement, if that's what you're hinting at
- (9) Q Well I guess - I don't want to put words in your mouth I
- (10) don't want to - I want to know at what time you recollect -
- (11) A Yeah, I recall that that was kicked about in the media,
- (12) sure, that was something that was brought out
- (13) Q Did you reach any conclusion about that?
- (14) A To be honest with you, no, I didn't Because my attitude
- (15) about reading stories like that is unless you really get
- (16) involved in digging out the truth and the facts and all the
- (17) underlying circumstances you're just as likely to draw a wrong
- (18) conclusion as a right one, maybe more so So no I did not
- (19) reach a conclusion no
- (20) Q Did you reach any - you've read stories about the
- (21) grounding itself and we've - some of the people we've talked
- (22) to come up recognize that it hit Bligh Reef but did you come
- (23) to any conclusion or opinion from what you read or heard about
- (24) the cause of the grounding?
- (25) A No, I didn't I did not get enough information out of what

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- (1) I read to come to what I would consider a reliable conclusion
 (2) about that
 (3) Q You - you stated in your questionnaire that you had a
 (4) friend that you ve had some association like as my friend Mr
 (5) O Neill s apt to say that it happens to many of us if not most
 (6) of us in society have some brush with alcohol and alcohol
 (7) problem and I believe you indicated that you d had a friend
 (8) that had some problem with alcohol?
 (9) A Yes
 (10) Q And was that a close friend?
 (11) A Yes
 (12) Q What happened? Was he - what was the nature of the
 (13) problem?
 (14) A It was related to driving I mean he - actually he
 (15) wasn t driving at the time He fell asleep, passed out in his
 (16) car, parked and got arrested and had, you know, got charged
 (17) with DWI and had to go through, you know, quite a bit of hassle
 (18) over it
 (19) Q Were you participating with him in that that is helping
 (20) him out in the counseling or AA or whatever supporting him
 (21) then?
 (22) A Well, I mean as a friend I was supportive I was not
 (23) formally involved in any treatment or representation or that
 (24) sort of thing but I was - as a friend I was concerned about
 (25) him

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- (1) Q There will be evidence in this case about consumption of
 (2) alcohol perhaps a diagnosis of alcohol abuse treatment that
 (3) sort of thing Anything in your experience with your friend
 (4) that would cause you any concern about listening to the
 (5) evidence in this case about perhaps alcohol consumption what
 (6) I ve said anything in your experience that would prevent you
 (7) from being a fair and impartial jury where alcohol evidence of
 (8) alcohol is involved and drinking and so forth?
 (9) A I don t think so, no
 (10) Q Do you know of any reason Mr Maloney whether I -
 (11) whether I ask it or not and being a man with some legal
 (12) education you know it s difficult for us to - to probe the
 (13) minds and feelings of somebody sitting where you are So just
 (14) tell me do you know of any reason that would prevent you from
 (15) being a fair and impartial juror in this case deciding -
 (16) deciding the issues whether they be actual damages or punitive
 (17) damages punishment damages fairly for the plaintiff and for
 (18) the defendants all of them?
 (19) A I not only don t think that I would have a problem making a
 (20) fair decision about that but I think I m probably better
 (21) qualified than most people to make such a decision because of
 (22) my analytical technical and legal background sir I ve also
 (23) raised four children and I ve - you know I have other
 (24) credentials you might say for dealing even handling situations
 (25) people get into

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- (1) Q And on that you know I think the Court will charge you
 (2) that corporations are just as entitled - corporate defendants
 (3) are just as entitled as individual defendants to a fair
 (4) impartial jury a fair impartial appraisal of the evidence Do
 (5) you understand that?
 (6) A I do understand that
 (7) Q Will you give the - you understand that corporations are
 (8) nothing more than employees stockholders that sort of thing?
 (9) A Yeah
 (10) Q And the charter from the State right?
 (11) A I understand that
 (12) Q And will you give the Exxon corporate defendants just as
 (13) fair an impartial a trial as you d give an individual
 (14) defendant?
 (15) A Certainly
 (16) MR NEAL Thank you Mr Maloney
 (17) MR O NEILL Pass for cause
 (18) MR NEAL Pass for cause
 (19) THE COURT Mr Maloney thank you sir We will
 (20) excuse you for the day now although there isn t much left of
 (21) it And we will be calling you back for the next stage of this
 (22) process soon I can t tell you exactly when but in the next
 (23) day or thereabouts we will call you back Thank you sir
 (24) THE COURT Mr Murtiashaw - counsel what I want to
 (25) do at this point is get one of these out of town folks who s

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- (1) juror number 70 whose been sitting with us for a long time I
 (2) want to take that person out of order even though I realize
 (3) that we may not get to him in terms of the natural sequence
 (4) here If he s going to be excused I want to send him home and
 (5) if not I want to have him out of the way
 (6) MR O NEILL Okay Could this be the last one
 (7) today? I m having trouble paying attention
 (8) THE COURT I think this will probably be the last one
 (9) today Mr Murray that we ve also got here is a local a
 (10) local guy and so we ll ask him to come back tomorrow morning
 (11) You can tell him that he ll be first up tomorrow morning
 (12) MR NEAL Your Honor I don t - you think - I d be
 (13) happy to excuse the man if he s - if he s -
 (14) THE COURT I kind of teased you
 (15) MR NEAL I don t think we re going to get there any
 (16) way
 (17) THE COURT I kind of teased you with that idea
 (18) earlier and I didn t get taken up on it
 (19) MR O NEILL I see no reason to excuse him
 (20) THE COURT Okay
 (21) MR NEAL Well this doesn t - he ll still keep his
 (22) order will he not?
 (23) THE COURT He s still going to keep his order
 (24) sequence
 (25) MR LYNCH The concept is we re not going to get to

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- (1) him any way
 (2) MR O NEILL I thought we were going to get to 24 and
 (3) then stop
 (4) THE COURT We re going to get 24 and stop That was
 (5) the original understanding but then I started asking you could
 (6) we take a few people out of order but I also told you that if
 (7) we took people out of order we were simply going to do it as a
 (8) convenience to the people that we were not going to change the
 (9) random order and what I m telling you is that this - we may
 (10) be wasting our time talking to this juror because we may never
 (11) get to him as far as 24 is concerned We may wind up with a
 (12) 25th juror
 (13) MR NEAL That was the point I guess that was the
 (14) point I was very inarticulately trying to make We ve got a
 (15) number of jurors we need two now as I understand it
 (16) MR O NEILL If we need two more jurors -
 (17) THE COURT I thought we needed - yeah that s right
 (18) MR O NEILL We need two more jurors let s let this
 (19) man - all we need is two more jurors and we re going to pick
 (20) the next two jurors let s let this man go home
 (21) THE COURT Excuse us for just a second
 (22) MR NEAL That s what I was saying
 (23) THE COURT I think we re now all on the same track
 (24) that I was trying to get on which was I think we can probably
 (25) get the - our 24 out of the jurors between 60 which is up

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- (1) next and - and 70
 (2) MR O NEILL Okay so we have 22 now
 (3) THE COURT Yes
 (4) MR O NEILL We re going to take the next two and
 (5) we re going to let this man go home - or we re going to take
 (6) the next two that we pass for cause on that fills us out and
 (7) we re going to let this man go home
 (8) THE COURT That s fine with me if it s okay with you
 (9) all
 (10) MR O NEILL Is that where we are? I m just a little
 (11) slow right now having battled all day with -
 (12) MR NEAL You know Mr O Neill this will take just
 (13) a second banished one of his lawyers because he - there he
 (14) is because he said he was over 65 or over 55 and people over
 (15) 55 have no stamina Well I m over 55 and here s the man lost
 (16) track of where he is and how many jurors we re on You re
 (17) right
 (18) MR O NEILL Am I right where we are?
 (19) MR NEAL Yes sir
 (20) MR O NEILL He s my lawyer
 (21) THE COURT Mr Murtiashaw we re going to quit for
 (22) the day because I think everybody is getting rummy Tell
 (23) Mr - Is it Maines?
 (24) THE CLERK Mr Maines yeah
 (25) THE COURT Tell Mr Maines that the counsel have

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- (1) agreed to excuse him and tell him thank you so much for
 (2) waiting so long on us
 (3) THE CLERK I ve already let Mr Murray go
 (4) THE COURT He ll be first up in the morning
 (5) THE CLERK You want to recess now?
 (6) THE COURT Just a minute there are a couple of
 (7) things I want to talk to you about before we go home so if I
 (8) have to repeat them tomorrow so that you ll remember them why
 (9) I ll do it
 (10) I have a set of preliminary jury instructions that is my
 (11) sort of second cut at - at what I propose to tell the jury
 (12) before oral arguments and before we take any evidence I d
 (13) like you to look at that I had the feeling some days ago that
 (14) maybe some of you all were still looking at that subject but
 (15) I ve not seen anything further come in on it so I ve just
 (16) moved ahead and basically have put together what I think I
 (17) intend to do If you all want any further input on it speak
 (18) up real quick or this will likely be it Just a moment Mr
 (19) Lakosh I ll get to you in just a second
 (20) Second point my current thinking is that we will probably
 (21) take pre emptory challenges as the first order of business on
 (22) Friday morning Does anybody see any problem with that?
 (23) MR O NEILL Do you want to do it tomorrow? We ll
 (24) knock off the remaining jurors and do it tomorrow morning
 (25) THE COURT Well it s a question of getting everybody

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- (1) collected up again Now I haven t - I haven t done any kind
 (2) of analysis of who we have amongst the - amongst the 22 that
 (3) we have now but likely we have some people who are - who are
 (4) up the road 50 70 80 miles or maybe in Kenai
 (5) MR O NEILL Would we be agreeable to striking going
 (6) through the strike sheet without them here?
 (7) MR SANDERS That would be fine with us
 (8) MR LYNCH Your Honor I see no objection to -
 (9) THE COURT I hadn t thought about that
 (10) MR LYNCH - to not calling the jurors who end up
 (11) being stricken back and just bringing the 12 who are chosen
 (12) THE COURT Is it agreeable to all of you that we do
 (13) the strikes out of the presence of the jurors? I m so used to
 (14) doing it the other way
 (15) MR O NEILL So am I but I don t see any - with
 (16) this massive Army of back seat drivers we re going to remember
 (17) who every one of them is I don t see any reason why we can t
 (18) seat two more and take an hour off and then come back and
 (19) strike
 (20) MR NEAL I don t either Your Honor do you
 (21) MR SANDERS No
 (22) MR LYNCH No
 (23) MR NEAL I think we can try out -
 (24) THE COURT It s a better idea than anything I had
 (25) MR NEAL The old way is put them - customary way is

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- (1) put them in there and then strike but we waive that
 (2) MR O NEILL We waive it
 (3) THE COURT All right fine We will - we will
 (4) finish up then tomorrow morning with picking two more
 (5) prospective jurors we'll then take about an hour break and we
 (6) will then assemble without any jurors to - to do the strikes
 (7) and we I believe agreed that we would use again sorts of a
 (8) special technique here where we will swap the list back and
 (9) forth Plaintiff will exercise a strike first defendants will
 (10) exercise one and so forth until we've completed the process
 (11) So that everybody knows what's happening
 (12) MR LYNCH Yes Your Honor
 (13) THE COURT One question
 (14) MR NEAL One question
 (15) THE COURT Mr Neal
 (16) MR NEAL We can strike anywhere on the list of 24
 (17) without waiving anything?
 (18) THE COURT That was the understanding that we had
 (19) MR O NEILL That's what we decided full
 (20) gamesmanship
 (21) MR NEAL It's fun fun
 (22) THE COURT Okay let's see if there's anything else
 (23) Well just so that other people who may be interested are in
 (24) the loop on this during the noon hour break I guess it was I
 (25) met with lead counsel in chambers and we discussed when we

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- (1) would actually start opening statements and taking evidence and
 (2) we're going to do that at 8:00 Monday morning We all on the
 (3) same track on that?
 (4) MR O NEILL Yes sir
 (5) MR SANDERS Yes sir
 (6) MR LYNCH Yes sir
 (7) THE COURT One last just housekeeping matter that I
 (8) have I saw yesterday I think or maybe it was this morning at
 (9) some point a stipulation of facts that - that came around I
 (10) am not clear on what if anything we have in the way of
 (11) stipulated facts that you all are expecting me to read to the
 (12) jury after opening statements as the first evidence in the
 (13) case Will someone help me out on that so that if - if there
 (14) are matters that - that the jury needs to be told about by me
 (15) as a result of a stipulation you know prompt me on it so that
 (16) I'll - I'll know exactly what I'm supposed to tell them
 (17) MR O NEILL We'll prepare a script for you and -
 (18) THE COURT Fine I like scripts Mr Lakosh you had
 (19) something?
 (20) MR LAKOSH May I approach the bar Your Honor?
 (21) THE COURT Yes
 (22) MR LAKOSH In relation to your question about jury
 (23) instructions I had submitted to the Court a list of contract
 (24) patterns and which relate directly to my claims under Article
 (25) 8 Section 8 which cites a breach of contract in law in the

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- (1) grounding and in the prevention and response capabilities of
 (2) defendant and that directly relates to juror number 4 Mr
 (3) BAD Bruce A Dean who as a miner by necessity must retain
 (4) leases from the State and/or federal government as part of his
 (5) livelihood and as such I believe he would have a - a
 (6) personal proprietary interest in preventing a precedent of law
 (7) which would allow forfeiture of leases due to breach of
 (8) contract conditions which are a requirement a constitutional
 (9) requirement to any state lease contract and I've just
 (10) appropriated today from the Department of Oil and Gas some of
 (11) the - a list of the leases and specific contracts of defendant
 (12) today and I would like you to consider a striking for cause of
 (13) juror number four on that basis Your Honor
 (14) THE COURT All right I'll look at it and tell you
 (15) what I think
 (16) MR LAKOSH Thank you
 (17) THE COURT Anything further gentlemen?
 (18) MR O NEILL Nothing further Your Honor
 (19) MR NEAL Nothing further
 (20) THE COURT Thank you We'll be in recess until 8:00
 (21) tomorrow morning
 (22) THE CLERK This court is in recess until 8:00 a.m.
 (23) tomorrow morning
 (24) (Proceedings recessed at 4:58 p.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 2,964
 TOTAL OCCURRENCES 15,587
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SINGLE FILE CONCORDANCE

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(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re) Case No A89-0095 CIV (HRH)
 (5)) Anchorage Alaska
 The EXXON VALDEZ) Thursday May 5 1994
 (6)) 8:00 a.m

TRANSCRIPT OF PROCEEDINGS
 TRIAL BY JURY JURY SELECTION AND 4TH DAY
 BEFORE THE HONORABLE H RUSSEL HOLLAND JUDGE
 VOLUME 4 Pages 1 41
 Realtime Transcription

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PROCEEDINGS
 (1) THE CLERK All rise
 (2) (Call to Order of the Court)
 (3) THE COURT Good morning ladies and gentlemen
 (4) MR O NEILL Good morning Judge
 (5) MR SERDANELY: Good morning
 (6) THE COURT This is continuation of trial A89 0095
 (7) Civil in re The Exxon Valdez When we left off yesterday I
 (8) had been asked to take a second look at the qualifications
 (9) or — the qualifications of juror number four Bruce Dean I
 (10) have done that and I have seen no basis for disqualifying him
 (11) Are we ready for another juror?
 (12) THE CLERK: Your Honor this is Ken S Murray juror
 (13) number 60
 (14) THE COURT: Good morning Mr Murray Sorry you had
 (15) to wait so long yesterday
 (16) MR MURRAY: That s all right
 (17) THE COURT: We have your sworn answers to the courts
 (18) questionnaire At this time by agreement the attorneys have
 (19) ten minutes per side for some follow up questions Mr
 (20) O Neill?
 (21) O Neill?
 (22) JURY VOIR DIRE
 (23) BY MR O NEILL:
 (24) Q How are you?
 (25) A Good

(1) Q You moved here from Tennessee?
 (2) A Yes
 (3) Q Do you recall when about that was?
 (4) A In 1990
 (5) Q Why did you come up here?
 (6) A Well, my wife is a school teacher, and if you ve ever been
 (7) in Tennessee s education system, It s pretty low pay and It s
 (8) not the type of education we wanted for our children, so we
 (9) made the change
 (10) Q Do you like the Anchorage school system?
 (11) A I love It
 (12) Q Where do you work right now?
 (13) A I m laid off right now
 (14) Q You worked before as a counselor?
 (15) A Yes, at Alaska Junlor College
 (16) Q Did you like that?
 (17) A Yes
 (18) Q What did you like about it?
 (19) A I like counseling and getting young kids motivated to
 (20) improve their lives and move forward
 (21) Q What do you do with your spare time here in Alaska?
 (22) A Well, I run and I do a lot of stuff with the Rotary I m
 (23) pretty active in the community
 (24) Q The oil industry is a dominant force in Alaska life and
 (25) indeed it s one of the reasons that people don t pay income tax

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- (1) here Being from Minnesota I m a little envious of that
 (2) A Right
 (3) Q Would that dominant role with the oil industry in the state
 (4) of Alaska cause you any problems at all in being a juror in
 (5) this case?
 (6) A No, sir
 (7) Q Some people have a philosophical problem in sitting in
 (8) judgment in a juror box as a juror either from religious or
 (9) past life experiences or they are uncomfortable with it? Do
 (10) you think you could come in here and do the job as a juror do
 (11) you have that philosophical problem?
 (12) A I don t have a problem right now My mind is open
 (13) Q That s the best kind of juror Is there anything you can
 (14) think of in your background that would prevent from you sitting
 (15) here as an open minded juror and hearing our side and their
 (16) side?
 (17) A Not that I can recall
 (18) Q Do you feel ready to go for us and do a good job for all
 (19) of us as a juror?
 (20) A I've been waiting for four days, so, we ll see
 (21) Q An issue in this case is going to be the issue of punitive
 (22) damages Some people have problems with that issue too if
 (23) the facts in the case are such the facts proven here in this
 (24) room are such and the law is such from His Honor that there
 (25) ought to be a punitive damage award in this case if the facts

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- (1) and law are such that there ought to be an award could you do
 (2) that?
 (3) A Yes
 (4) Q If the facts and the law are such that there ought to be an
 (5) award in the billions of dollars could you do that?
 (6) A Sure
 (7) MR O NEILL Thanks
 (8) JURY VOIR DIRE
 (9) BY MR SANDERS
 (10) Q Good morning Mr Murray
 (11) A Good morning
 (12) Q My name is Jim Sanders and I represent the Exxon
 (13) defendants and so we can have a shorter voir dire questioning
 (14) of jurors we have taken all of them ten minutes a side to
 (15) ask questions on behalf of Captain Hazelwood and his lawyers
 (16) also
 (17) Let me start with one of the last questions Mr O Neill
 (18) asked you In answering his questions about punitive damages
 (19) you answered rather quickly and you don t think right now as
 (20) you sit here that that s what s going to happen in this case
 (21) do you?
 (22) A I have no contrived notion what s going to happen I m
 (23) just saying I have an open mind If that s one of the options,
 (24) I don t have a problem
 (25) Q I wanted to clear that up We don t want you to expect

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- (1) just because you get asked about it that s what s going to
 (2) happen
 (3) A I understand
 (4) Q Now Mr Murray I have a confession in light of your
 (5) comments on the Tennessee school system My partner and
 (6) products of that Maybe I m proving your point?
 (7) A I understand it's changed
 (8) Q But you wouldn t hold that against us?
 (9) A No, I m from the great state of Arkansas, I just grew up
 (10) there
 (11) Q You grew up in Little Rock and moved over to Memphis?
 (12) A Right
 (13) Q You wouldn t hold that against us?
 (14) A Absolutely not
 (15) Q You had a good year?
 (16) A I had an excellent year
 (17) Q Mr Murray in your answers to the questionnaire you
 (18) mentioned that you heard very little about the case or Captain
 (19) Hazelwood and I would like to ask you is there anything you
 (20) remember about what you heard or read about the grounding or
 (21) about Captain Hazelwood that you do remember that sticks in
 (22) your mind?
 (23) A I just have some very vague recollections of that time
 (24) period, because we were in the process of moving in 1990 here
 (25) to Alaska So I do recall the news reports and some articles

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- (1) but nothing in specific that I can really recall this morning
 (2) Q Anything that sticks in your mind about it? Any impression
 (3) that you have about it?
 (4) A Just basically the grounding of the ship and that it
 (5) happened The facts surrounding it are a little shady right
 (6) now
 (7) Q Out of that shady set of facts do you have any sort of
 (8) belief that you might know what caused the grounding?
 (9) A No
 (10) Q Any belief about - well let me ask you something else
 (11) What do you think about Exxon?
 (12) A What do I think about it? Well, being from the south, I
 (13) know that they are a huge conglomerate of oil companies, and I
 (14) used to have an Exxon card I don't know where it is now, I
 (15) used to, but that s basically all I know I know that - being
 (16) from the south, I know about it
 (17) Q I guess what I m trying to get at do you have any thoughts
 (18) or past associations with Exxon that would make you be more
 (19) favorable to Exxon than to these plaintiffs?
 (20) A No
 (21) Q And vice versa you don t have any bad feelings about Exxon
 (22) or bad thoughts about Exxon people that would cause to you tilt
 (23) against Exxon and favor the plaintiffs?
 (24) A No, sir
 (25) Q You did mention that you had kind of a somewhat

(1) unfavorable if I read the question right - sometimes I get
 (2) those columns wrong - but your impression was generally
 (3) somewhat unfavorable What is the basis of that?
 (4) **A I don't recall putting that down "unfavorable"**
 (5) **Q Now I could be wrong**
 (6) **MR SANDERS Your Honor may I approach?**
 (7) **THE COURT Yeah you may**
 (8) **BY MR SANDERS**
 (9) **Q This time I think I'm right I got the column right**
 (10) **A I don't recall**
 (11) **Q Is that right?**
 (12) **A Uh-huh**
 (13) **Q Does that help refresh you on - is that a mistake that you**
 (14) **put it in that column? I notice it's the only one in that**
 (15) **column?**
 (16) **A It probably could be Going through that so quickly, you**
 (17) **try to get those answered as correctly as you can, and probably**
 (18) **one of those that I just -**
 (19) **Q Let's don't get hung up on it Do you have somewhat an**
 (20) **unfavorable impression about Exxon?**
 (21) **A No, sir, I don't.**
 (22) **Q Now I notice also that in responses to the questions about**
 (23) **alcohol the questionnaire you thought that alcohol is a**
 (24) **somewhat serious problem in the state and that you had had the**
 (25) **experience of having a close friend with an alcohol problem or**

(1) in AA and another friend with some drug treatment I'm not
 (2) trying to pry into your friendships or your life but I need to
 (3) ask you a bit about that in order to help you assess whether
 (4) that makes any difference
 (5) Did you go through the experience with your close friend
 (6) before he went into either treatment or Alcoholics Anonymous?
 (7) **A He was going through the process, if I recall**
 (8) **Q Did you have experiences with him when he had a drinking**
 (9) **problem?**
 (10) **A Yes**
 (11) **Q And after he started going to AA did he continue to have**
 (12) **some problems or did he - was he able to stop?**
 (13) **A He was able to stop and get control of his life at that**
 (14) **point**
 (15) **Q Well let me just ask you about him**
 (16) **Is there anything about that association that experience**
 (17) **with your friend that causes you any bad or negative feelings**
 (18) **about alcohol as an issue?**
 (19) **A No, sir, there is not**
 (20) **Q What about people who drink do you have a negative feeling**
 (21) **about people who drink?**
 (22) **A No, sir, I just - I have a rule that says moderation is**
 (23) **the key to that Other than that, I don't**
 (24) **Q Do you drink?**
 (25) **A No, sir**

(1) **Q But you're not judgmental about people who do?**
 (2) **A No, sir**
 (3) **Q Is there anything you can think of as a result of your**
 (4) **experience with your friend do you think you have a special**
 (5) **knowledge or expertise about alcohol or alcoholism?**
 (6) **A Well, I think my mind is open to the avenues of what can be**
 (7) **done to treat the cause of it, so I guess educationally, I have**
 (8) **a better understanding of what services are out there and what**
 (9) **people can do to get some help if they desire**
 (10) **Q As a matter of fact from your educational background you**
 (11) **probably acknowledge there are different ways that different**
 (12) **experts look at this problem?**
 (13) **A Absolutely**
 (14) **Q It's not really an easy divide sometimes right?**
 (15) **A Correct**
 (16) **Q Do you have any feelings about what businesses from your**
 (17) **perspective in education, do you have any feelings or strong**
 (18) **thoughts about how companies or businesses ought to deal with**
 (19) **alcohol issues both in terms of whether they have prohibition**
 (20) **against it and if they do then how do they deal with**
 (21) **employees who have the illness?**
 (22) **A Well, I think that they should be open to trying to get**
 (23) **some help for the employees if they see a need for it, and**
 (24) **finding the necessary outlets so that they can get them into**
 (25) **that program, if they are in fact a contributing factor to the**

(1) **company I feel like that**
 (2) **Q What do you think about them as part of that policy**
 (3) **allowing them to return to work?**
 (4) **A Sure**
 (5) **Q What about penalizing them for the fact that they did have**
 (6) **a problem and sought treatment?**
 (7) **A Well, I'm open to that I think you'd have to get all the**
 (8) **facts, and in my opinion - that's my opinion at this point**
 (9) **Q Let me go back to the issue of corporations again Do you**
 (10) **have any - do you have any bad thoughts about corporations**
 (11) **generally?**
 (12) **A No, sir**
 (13) **Q What about the oil business generally?**
 (14) **A No sir**
 (15) **Q You don't come in with any preconceptions about big**
 (16) **business or big corporations?**
 (17) **A No sir**
 (18) **Q Not going to be any controversy about that Exxon is big?**
 (19) **A No, sir**
 (20) **Q That wouldn't affect you?**
 (21) **A No, sir**
 (22) **MR O NEILL Pass for cause**
 (23) **MR SANDERS Pass for cause**
 (24) **THE COURT Mr Murray thank you Passing for cause**
 (25) **means that the attorneys at this point are satisfied with your**

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- (1) qualifications There is some more to the selection process
 (2) that we'll go through probably today but we're through with
 (3) you for today You will be called back as soon as we need you
 (4) again okay?
 (5) MR MURRAY Yes sir
 (6) MR O NEILL May I approach?
 (7) THE CLERK Your Honor this is Frank J Rion juror
 (8) number 62
 (9) THE COURT Mr Rion good morning We have your
 (10) sworn answers on the jury questionnaire At this point by
 (11) agreement the attorneys are going to take ten minutes per side
 (12) for some follow up questions Mr O'Neill?
 (13) JURY VOIR DIRE
 (14) BY MR O NEILL
 (15) Q I'm going to ask some questions and if you feel I'm
 (16) getting unduly personal my comment on that is I am and I'm
 (17) sorry but I'm going to do it anyway
 (18) A I understand the reasons
 (19) Q You answered on the questionnaire to question 66 that
 (20) punitive damages is an area where abuse is not unknown Could
 (21) you talk to me a little bit about that?
 (22) A I couldn't give you specifics that I'm aware of I mean, I
 (23) tried to think of some way to justify the question, but none
 (24) immediately came to mind It's just, I guess it's my general
 (25) feeling that over the years in civil cases it's not been

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- (1) unknown for unduly large amounts of money to be given out I
 (2) guess it depends on the feeling of the jury I guess if they
 (3) feel that somebody needed to be punished in the nature of
 (4) punitive damages, depends on how the case is felt, the damages
 (5) on the plaintiff were I mean, how serious a case
 (6) Medical cases in particular I mean, we've all heard about
 (7) supposed abuses and lawsuits with doctors for malpractice and
 (8) stuff I'm certain that's an area where a lot of people feel
 (9) strongly Abuse - we're dealing with life and limb, large car
 (10) accidents where there is a lot of damage and money being
 (11) sought Airline accidents in particular are ones that are
 (12) singled out
 (13) Q How about the concept itself?
 (14) A The concept of punitive damages?
 (15) Q Yeah
 (16) A I guess my understanding of what punitive damages is are
 (17) individual or lump sums assessed against a group or an
 (18) individual for whatever damages is felt has been done
 (19) Q For purposes of punishment?
 (20) A That's part of it I think that's the public's view a lot
 (21) of times with that that that's what it is I mean, that if
 (22) there is criminal punishment that's dealt with and the monetary
 (23) sum's beyond what is necessary for actual loss, loss of
 (24) property or stuff, emotional loss, that's a very big area to
 (25) attach a monetary sum to

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- (1) Q Let me divide up and try to get it right, and if I get it
 (2) wrong I'm sure they will tell me
 (3) Compensatory damages if you're in a car accident and your
 (4) car is wrecked you're physically injured and you have
 (5) emotional damages we have three outlets all three of those
 (6) elements are generally compensatory damages
 (7) Now let's say you're in a car accident and the person who
 (8) runs into you ran into you on purpose just for the sake of
 (9) this discussion The law may in those situations allow
 (10) punitive damages for the sake of punishing them change his
 (11) behavior and to set an example to other people who go running
 (12) into cars Now the example is a little superficial but I
 (13) just want to draw the two extremes out.
 (14) The imposition for punitive damages for civil cases do you
 (15) have a view on that?
 (16) A I guess my major view, my gut feeling is it is that it's -
 (17) that's a real hard one to call I mean, I understand the
 (18) concept of it, but trying to decide what is - I mean, and I've
 (19) given some thought already to if I was on this case how would I
 (20) approach that idea, you know, and it's nice to think that I'm
 (21) going to have other people there with me to work this problem
 (22) out with, because it's definitely not an easy one
 (23) Q Would you have - because of the thoughtful consideration
 (24) that you've given the topic would you have trouble being fair?
 (25) A I think if you have given any thoughtful consideration to

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- (1) It, fairness is going to have to enter into it if you're
 (2) thinking about it at all, there is no snap decision involved
 (3) if I'm making myself clear there, that thinking about it at all
 (4) means you're going to deal with it fairly Otherwise, you're
 (5) just making a decision and you go with it from there,
 (6) but trying to figure a monetary figure - I mean, trying to
 (7) decide punitive damages - it's one thing to decide, are you
 (8) going to assess punitive damages, and it's one thing to try to
 (9) attach an amount to the concept that's behind -
 (10) Q Let's get it out This is a very interesting conversation
 (11) but let's split them out
 (12) Are you opposed conceptually but viscerally opposed to
 (13) deciding yes or no with regard to that issue assuming the
 (14) facts and the law are such that -
 (15) A Are you asking me if I agree with the concept of punitive
 (16) damages? I have some problems with it, yeah, but I mean, it's
 (17) there it's part of the legal system You have to accept it
 (18) whether you like it or not, and you have to deal with it I'm
 (19) certain that the fact that I don't agree with the concept
 (20) entirely would have - I mean, there is no way for me to say
 (21) that way - there is no way that's not going to affect my
 (22) opinion, but I would like to think I would be fair I think
 (23) anybody would like to think they would be fair, particularly
 (24) when they are dealing with an issue that's as important as
 (25) this I don't know if I answered your question

- (1) Q Your answers are clear and thoughtful and in all honesty
- (2) sir I don't know where to go with your answers and it isn't
- (3) because you're not doing a good job
- (4) A Thank you
- (5) Q I just - I'm honestly concerned as the representative of
- (6) fishermen and natives and native corporations in the trial -
- (7) A You're afraid if I have the concept of punitive damages I
- (8) will be unfairly against your side?
- (9) Q You got it
- (10) A No, I understand that
- (11) Q What's your reaction to my concern?
- (12) A I think you would be doing your clients disservice if you
- (13) didn't feel that way That's your side of the case That's
- (14) the way you have to see it. I wish I could answer your
- (15) question more clearly I wish I could put your mind to rest on
- (16) the issue, but until I get into the case, there is no way for
- (17) me to answer that
- (18) Q I'm not looking for how you're going to decide the case
- (19) I'm looking at the baggage that you bring into the case that's
- (20) what I'm concerned about the baggage that you bring into the
- (21) case And I'm nearing the end of my ten minutes and I'm going
- (22) to have to sit down in a minute and I'm just saying how do you
- (23) feel about the baggage that you bring into the case?
- (24) A Dealing with the concept of baggage, that's my
- (25) understanding of the case up to this point, that's what I've

- (1) seen, everybody's opinion that has affected me, and whatever
- (2) opinions I may have drawn myself on the case
- (3) I would like to think that if I were to deal with this,
- (4) whatever has come before is quite possibly going to change,
- (5) depending on what I hear here There is necessarily going to
- (6) be details that anybody who sits on this trial is going to hear
- (7) that they may have never heard or may totally contradict
- (8) anything they have heard in the past, and from that point, they
- (9) have to draw their own conclusions
- (10) Q One last question In answer to question 82 you talk
- (11) about the imposition of sitting as a juror it's imposition on
- (12) your job Could you talk to us a little bit about that and
- (13) then I'll sit down?
- (14) A I guess that was a general statement, too, that I mean it's
- (15) an interesting case, but I think anybody honestly would balk at
- (16) the concept of sitting in court three months and listening to a
- (17) case and it's hard to leave your job, particularly one that
- (18) you like and the sort of job I have, if you're out of touch
- (19) with the job too much - and I can't say that I'll lose a lot
- (20) of time with the job, I already started looking at it, that
- (21) I'll be working part time when I'm doing the case You don't
- (22) know if work is going to have to be replaced at some point if
- (23) you lose enough hours
- (24) Q Are your concerns about your job different than any other
- (25) citizens?

- (1) A I would think not
- (2) JURY VOIR DIRE
- (3) BY MR CHALOS
- (4) Q Good morning Mr Rion is it Rion?
- (5) A Yes
- (6) Q I'm Michael Chalos I represent Captain Hazelwood but for
- (7) the purpose of this exercise I'm also speaking on behalf of the
- (8) Exxon defendants
- (9) Mr Rion I have your questionnaire I have to apologize
- (10) there is one answer that you gave that I can't read May I
- (11) show it to you and have you read it to me?
- (12) A Sure
- (13) MR CHALOS Your Honor may I approach?
- (14) BY MR CHALOS
- (15) Q Specifically I'm referring to question 51 let me see it
- (16) talks about membership in any group can you tell me what you
- (17) wrote?
- (18) A I, for one, have given donations to such organizations as
- (19) Greenpeace and the Cousteau Society As for knowing anyone
- (20) having a pro or anti-environmental, looks like it didn't come
- (21) through very well, basically saying who couldn't - I think
- (22) most people know somebody who has pro or anti environmental
- (23) standards, it's pretty hard not to these days
- (24) Q What's your stance?
- (25) A Whether I'm pro or anti environment?

- (1) Q I can't imagine anybody being anti environmental I take
- (2) it your pro environment?
- (3) A Again, I don't go strictly one direction or the other I
- (4) happen to be a supporter of technology and, I mean, I'm living
- (5) in a technological society, I appreciate the benefits of it and
- (6) I happen to be interested in vast technologies and such, but at
- (7) the same time I, you know, I guess I could say I grew up in the
- (8) '70s when there was a lot of, particularly when you were in
- (9) school, at the time there was a lot of environmental awareness
- (10) that went on because of the levels of pollution that went on,
- (11) and that has had a certain affect on me
- (12) Q When did you contribute to Greenpeace?
- (13) A It was some time back in the 80s I haven't been a
- (14) consistent contributor
- (15) The way I understood it, at any point that you have
- (16) supported any such organization so I've given - I subscribed
- (17) one year to the Cousteau Society and one year I have given a
- (18) donation to Greenpeace
- (19) Q Greenpeace has been very vocal in respect to this spill
- (20) Does the fact that you contributed to them in any way color
- (21) your judgment in this case?
- (22) A No, I've never been a serious or strong supporter of
- (23) Greenpeace I think it's an organization that has - it still
- (24) does good work, but has frequently lost sight of what it
- (25) accomplishes versus its emotion I think their emotions get in

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- (1) the way of their competence sometimes
 (2) Q Tell me where were you when the spill occurred?
 (3) A Here in Anchorage
 (4) Q Do you have a recollection of the publicity that surrounded
 (5) the grounding and the spill?
 (6) A Oh, yeah
 (7) Q Can you tell me what stands out in your mind about that?
 (8) A About the publicity itself?
 (9) Q Well what you might have read or heard or seen?
 (10) A Well, that has - it's changed over the course of - the
 (11) information tended to be, you know, there was a spill and at
 (12) the time of the spill itself there was a lot of reports of how
 (13) the oil was flowing and what effects it was going to have. And
 (14) seems like then there was a lot of environmental impact of
 (15) wildlife, and a lot of pictures with people on the cleanup of
 (16) the beaches with animals and stuff. Seems like in the last
 (17) couple years mostly what you see has been the legal end of it,
 (18) the battles. The case is this, and it's doing this from here.
 (19) Q Did you carry away any strong feelings one way or the other
 (20) when you saw the pictures on television or read about the
 (21) environmental impact of the spill?
 (22) A Yeah, well, the pictures definitely had an impact, but any
 (23) pictures - they were similar to any oil spill pictures from
 (24) anywhere around the world. It's always tragic, and considering
 (25) the pictures that one saw from Kuwait, admittedly those have

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- (1) been the ones that had had the strongest impact on me over the
 (2) same period.
 (3) Q Do you feel seeing any pictures whether it be from this
 (4) spill or from the Kuwait spill do you feel that that creates a
 (5) feeling inside of you so strong that you're not going to be
 (6) able to be fair in this case?
 (7) A No. I mean if anything, the sort of reaction I tend to get
 (8) from things like that, let's see - be nice if we could do
 (9) something to keep it from every happening again, but
 (10) unfortunately it's a realistic world too, and to do things one
 (11) has to take risks.
 (12) Q Do you have any feelings one way or the other about Captain
 (13) Hazelwood?
 (14) A I don't know the gentleman. I mean I've never seen him
 (15) physically except in pictures, until Monday. Yeah, I
 (16) recognized him.
 (17) Q He's right there?
 (18) A There are a lot of people involved in the case, you know,
 (19) his name comes up more than a lot of others because it was the
 (20) focus of it, but no, I can't say that I've got any strong
 (21) reactions towards him or against him one way or the other.
 (22) Q Tell me what you recall about Captain Hazelwood?
 (23) A That was the captain of the ship and a lot of
 (24) responsibility understandably was attached to him. And he
 (25) ended up being the face and the name that became synonymous

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- (1) with the whole incident, you know. It tends to be easier if
 (2) you've got a single face and a single name to attach such
 (3) events to.
 (4) Q How about Exxon how do you feel about Exxon?
 (5) A I don't know that I would - I think in the questionnaire,
 (6) you may have noticed that there tended to be a lot of fairly
 (7) negatively, minor negative opinions on the list that Exxon was
 (8) one of, but then I think a lot of people tend to have a fairly
 (9) negative opinion about corporations for one reason or another.
 (10) Q That's the way you felt?
 (11) A Yeah, well I said minorly negative, I think I would have
 (12) to stick with minorly negative.
 (13) Q Aside from the fact that they are a big corporation is
 (14) there anything else that causes you to feel somewhat
 (15) unfavorable towards them?
 (16) A I guess I would say what motivated my answering that
 (17) question that way, just the general concept, corporations have
 (18) to function in the given way, and that if they didn't have to,
 (19) what's called doing what's necessary - if people did what was
 (20) needed instead of doing what was necessary, things might get
 (21) handled in a better way, I guess that would be what -
 (22) Q Do you have a feeling in this case that Exxon did not do
 (23) what was needed or what was necessary?
 (24) A From what I've seen and what I've heard going back to, you
 (25) know, what you'd seen over the time, yeah, I'd have to say

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- (1) that.
 (2) Q What do you feel they should have done that they didn't do?
 (3) A Whatever was necessary. Anytime you're dealing with a
 (4) situation like that, you know, you need to deal with - I mean
 (5) I think they probably would have come across looking better and
 (6) being responded to better, just whatever needed to be done to
 (7) deal with the situation, and I don't know that that was the
 (8) case. I don't believe that was the case.
 (9) Q Are you talking post spill or pre spill?
 (10) A Well, post spill and pre spill too. But it's easy to deal
 (11) with any accident with hindsight, like they say hindsight is
 (12) 20/20, what's the point in looking at before. If anything, you
 (13) look at before to make sure it doesn't happen again.
 (14) Q Well let me ask you this in respect to the last series of
 (15) answers that you gave if the evidence that came before you was
 (16) such that they did what they needed to do they did what was
 (17) necessary and the accident happened anyway are you able to
 (18) put those negative feelings that you have now aside listen to
 (19) the evidence and judge it on the evidence?
 (20) A Well, if I've made an opinion before and it's based on
 (21) improper facts then I would like to think I'm capable of
 (22) forming another opinion, a better opinion, but it depends on
 (23) what facts come out in the case.
 (24) Q Well what I'm exploring is that opinion so strong your
 (25) feelings about Exxon that it's going to take a lot of work for

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- (1) the - and they are capable lawyers but it's going to take a
 (2) lot of work for them to convince you otherwise?
 (3) A No, I don't know that I have any opinions so strong that it
 (4) can't be altered
 (5) Q But you come in with a negative opinion about Exxon?
 (6) A I said that in the questionnaire, and I don't deny it here
 (7) MR CHALOS Your Honor I just have one more subject
 (8) that's important if I may
 (9) BY MR CHALOS
 (10) Q I note from your questionnaire that you've done some work
 (11) with drug and alcohol?
 (12) A At the news (ph) center, yeah
 (13) Q One of the answers that you gave you work with alcohol and
 (14) drug screening?
 (15) A We had to take drug and alcohol screening courses for
 (16) dealing both when I was with Community Work Service and you
 (17) have to deal with them at McLaughlin, when you accept in
 (18) juveniles who may be under the influence of drugs and alcohol,
 (19) you have to assess, because both their affect as a
 (20) depressant - we deal with suicidal juveniles, you have to
 (21) assess whether the juvenile you're dealing with is suicidal or
 (22) whether they need to be sent to the hospital for testing, and
 (23) also part of it - the legal end of it is more the police
 (24) responsibility, and ours was always in the case of dealing with
 (25) the juveniles involved

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- (1) Q You took courses in drug and alcohol screening?
 (2) A Yes, it's a standard course, it's not like, you know, a
 (3) week's long course, but it's how to identify the symptoms
 (4) Q Let me ask you this As part of the course or as part of
 (5) the work that you did did you observe blood samples being
 (6) taken and handled?
 (7) A Yes, but necessarily they were how to identify a
 (8) negative - they didn't supply us with a positive, although
 (9) I've seen them with juveniles that had come in, but at the time
 (10) of the courses they didn't have a - they showed us the results
 (11) of what a positive would be and explained that, but they don't
 (12) have one that we actually do
 (13) Q Do you have any specialized knowledge about how blood is
 (14) drawn how it's preserved how it's handled how it's tested?
 (15) A I have a general understanding of how it's done I don't
 (16) have any actual accreditation or understanding of how it's
 (17) done
 (18) Q You don't drink yourself do you?
 (19) A No, sir
 (20) Q Do you have any feelings one way or another about people
 (21) who do drink?
 (22) A No, but then there is a difference of course between people
 (23) who drink and people who abuse alcohol
 (24) Q Well let me ask about that In your mind is there a
 (25) difference between abuse and dependence?

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- (1) A Well, yes, generally you can be abusing it and be dependent
 (2) on it as well
 (3) Q How about the reverse of that Can you from time to time
 (4) abuse it but not be dependent on it
 (5) A Well, alcohol, like drugs, causes you to have a physical
 (6) dependence, and people frequently have an emotional
 (7) dependence,
 (8) there is a difference between those two and one can lead to
 (9) another If you use it long enough you can end up with a
 (10) physical dependence when you started with an emotional
 (11) Q Are you of the view once you sought treatment for an
 (12) alcohol problem that you cannot ever drink again under any
 (13) circumstances?
 (14) A You have to be very careful with it I know people who
 (15) have been on the wagon and have fallen off of it and have gone
 (16) right back on And generally from what I have known of them
 (17) and what they have told me, it's harder the second time around
 (18) Q Do you know people who have been through treatment who
 (19) drank again but could do it moderately and in a social way?
 (20) A No, anybody I've ever known who has known themselves to be
 (21) an alcoholic, and they generally assume - they have to stay
 (22) off of it If they start drinking again, most of them have a
 (23) very strong fear if they start drinking again they won't be
 (24) able to stop, at least not without some very serious help
 (25) MR CHALOS Thank you very much for your candid
 answers my time is up

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- (1) THE COURT Mr Rion let me go back to this matter of
 (2) punitive damages If you were selected for this jury and
 (3) after you heard all the facts heard my instructions on the law
 (4) as to how you find the facts and how you deal with punitive
 (5) damages could you put aside your personal views of what the
 (6) law ought to be on punitive damages and make an award of
 (7) punitive damages in this case if the facts and the law
 (8) justified it based on my instructions or could you not do
 (9) that
 (10) MR RION I believe Your Honor yes I could
 (11) THE COURT You believe you could?
 (12) About your work situation I infer from what you said that
 (13) your employer won't be paying you your usual wage while you're
 (14) here on a jury
 (15) MR RION No I'm not paid for the time I'm on a
 (16) jury
 (17) THE COURT Is that going to present a financial
 (18) hardship for you paying rent paying other bills
 (19) MR RION No I'm fortunately where my financial
 (20) commitments other than month to month bills I don't think so
 (21) and I would hopefully still be doing some work while I was
 (22) there
 (23) THE COURT Did that elicit any questions from
 (24) anyone?
 (25) MR O NEILL No Pass for cause

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- (1) MR CHALOS Your Honor may I confer for one second
 (2) Your Honor pass for cause
 (3) THE COURT Mr Rion thank you Passing for cause
 (4) means that you stay with us Apparently there has been some
 (5) confusion about that We will not need you any more today
 (6) however so you can go about your business today you'll
 (7) probably receive a call from the clerk either sometime today or
 (8) tomorrow telling you when you report back thank you very much
 (9) sir Before you go out Mr Murtiashaw by my reckoning that
 (10) gives us 24 jurors am I correct about that?
 (11) MR O NEILL Yes you are
 (12) THE COURT I propose to have Mr Murtiashaw excuse
 (13) the rest of the panel are we on the same track?
 (14) MR O NEILL Yes
 (15) MR NEAL Yes
 (16) THE COURT Mr Lakosh
 (17) MR LAKOSH Last evening I questioned to court on
 (18) juror number 4 Bruce Dean have you made a decision on
 (19) striking Mr Dean for cause due to his particularly similarly
 (20) situated endeavors in leasing state properties for mineral
 (21) extraction Your Honor?
 (22) THE COURT Yes sir we went through that yesterday
 (23) and I ruled on it first thing this morning
 (24) MR LAKOSH I was filing -
 (25) THE COURT I could have sworn I saw you here when I

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- (1) did it
 (2) MR LAKOSH I was filing the instructions What was
 (3) the instruction?
 (4) THE COURT The conclusion was I reexamined the matter
 (5) and I do not find any basis to excuse Mr Dean for cause
 (6) MR LAKOSH Thank you Your Honor
 (7) THE COURT Yesterday we had agreed on how we would
 (8) handle preemptory challenges is there anything that we need to
 (9) do at this point before we take a recess so that you can
 (10) consider your pre emptory challenges
 (11) MR O NEILL No sir there isn't
 (12) MR LYNCH No Your Honor
 (13) THE COURT I think it would be probably useful to you
 (14) if we provided you with the clerk's list that you will be
 (15) seeing and using for the strike process so I'll have Mr
 (16) Murtiashaw provide you each with a copy of that list as soon as
 (17) it's available
 (18) We'll now take an hour recess for purposes of your
 (19) considering your pre emptory challenges We'll reconvene at
 (20) quarter to ten and we'll take up the pre emptory challenges
 (21) MR O NEILL Thank you Judge
 (22) MR LYNCH Thank you Your Honor
 (23) (Recess at 8:45 to 9:47 a.m.)
 (24) THE COURT We are back on the record in Case
 (25) A89 0095 By agreement of counsel we have not called the jury

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- (1) panel in for this proceeding We had in the formative stages
 (2) of this matter have talked of passing the strike list back and
 (3) forth I certainly had in mind when we talked about that that
 (4) we would have the jurors sitting here watching us Since we
 (5) don't have that situation Can we handle the strikes orally by
 (6) simply announcing in turn who is -
 (7) MR O NEILL That would be kind of fun yes sir
 (8) THE COURT Is that satisfactory to you?
 (9) MR NEAL Sure
 (10) THE COURT Are we ready to begin?
 (11) MR O NEILL Yes sir we are
 (12) THE COURT Well as we all know we have six strikes
 (13) per side Mr O'Neill your first one?
 (14) MR O NEILL The plaintiffs first strike is juror
 (15) number - seated as juror number 14 David A Poisson
 (16) THE COURT Juror number 14 on our jury panel record
 (17) David A. Poisson is stricken by the plaintiffs Mr Neal?
 (18) MR NEAL For the defendants first pre-emptory
 (19) challenge number 18 on this list number 51 in the random
 (20) order Terry A. Dodds
 (21) THE COURT Juror number 18 Terry A Dodds is
 (22) stricken Mr O'Neill your second?
 (23) MR O NEILL The plaintiffs second strike is number
 (24) five on this list, Richard L. Wall
 (25) THE COURT Number five Richard L. Wall is stricken

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- (1) by the plaintiff Mr Neal?
 (2) MR NEAL The - for the defendants second
 (3) pre-emptory challenge we strike number 23 on the random list
 (4) and number 11 on the court's panel here
 (5) MR MONTAGUE What's the name?
 (6) THE COURT If you would please I think the
 (7) reference to the random list -
 (8) MR NEAL We'll just go to the list.
 (9) THE COURT - are likely to cause confusion Since
 (10) we have the 24 jurors scheduled on a jury panel record let's
 (11) use those numbers for purposes of this process
 (12) MR NEAL Fine
 (13) THE COURT Having done all that talking now Mr
 (14) Neal you're going to have to tell me again which -
 (15) MR NEAL Number 11
 (16) THE COURT That's Cindy L. Zinck is stricken by the
 (17) defendants The plaintiffs third challenge?
 (18) MR O NEILL Plaintiffs third challenge is number
 (19) eight David O Nelson
 (20) THE COURT Number eight David O Nelson is
 (21) stricken Your third?
 (22) MR NEAL Defendants third is number six Sarah
 (23) Bratz
 (24) THE COURT Number six Sarah Bratz is stricken Mr
 (25) O'Neill your fourth?

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- (1) MR O NEILL. The plaintiffs fourth is number three
 (2) Leon B Currier
 (3) THE COURT Number three Leon B Currier is
 (4) stricken
 (5) MR NEAL. Defendants strike number two Sandra
 (6) Wilburn
 (7) THE COURT Number two Sandra Wilburn Your fifth
 (8) Mr O'Neill?
 (9) MR O NEILL. The plaintiffs fifth challenge is
 (10) number 22 Patrick Maloney
 (11) THE COURT Number 22 Patrick Maloney is stricken
 (12) Mr Neal your fifth?
 (13) MR NEAL. Number 12 Cathy Fricke
 (14) THE COURT Number 12 Cathy Fricke is stricken Mr
 (15) O'Neill your last pre-emptory challenge?
 (16) MR O NEILL. Our last pre-emptory challenge is number
 (17) 24 Frank J Rion
 (18) MR NEAL Just a second Your Honor
 (19) THE COURT Mr Neal your last pre-emptory
 (20) challenge?
 (21) MR NEAL. Number 21 Judy Drew
 (22) THE COURT 21 Judy Drew Number 21 okay Let me
 (23) review with you who we have left As I have marked this we
 (24) have left Smith number one Hood number four Martin number
 (25) seven Dean number nine Provost number ten Graham number

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- (1) 13 Moor number 15 Spann 16 Wilson 17 Garrison 19
 (2) Johnson 20 and Murray 23 Agreed on that?
 (3) MR SANDERS That is correct Your Honor
 (4) THE COURT That will be our jury We will have the
 (5) jury clerk call the - actually we'll have them call all of
 (6) these people We will have the clerk tell the persons that
 (7) have been stricken that they are excused We will have the
 (8) jury clerk inform the 12 members of our jury panel that they
 (9) should report at a quarter to eight on Monday to begin the
 (10) trial proceedings
 (11) By my reckoning we have one other thing that we had
 (12) discussed taking care of today at least I think we were
 (13) talking about taking care of today the motion in limine
 (14) concerning testimony of Governor Hammond and a couple other
 (15) people am I correct?
 (16) MR SERDAHELY That's correct Your Honor
 (17) MR OESTING I have asked Your Honor Dave Oesting
 (18) that we put the judicial admission brief that we filed last
 (19) night on for today but I understand that we have a number of
 (20) proceedings for tomorrow What's the story on that?
 (21) MR SANDERS Actually Your Honor Mr Jamin and I
 (22) had talked and we were going to discuss that this afternoon and
 (23) see if we could work out some accommodation on that issue so I
 (24) think it would be well if it's all right with the Court that
 (25) we hold off the judicial admissions

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- (1) THE COURT Well in light of the way this has
 (2) developed shall we just take up everything tomorrow morning?
 (3) MR LYNCH I think that would make good sense Your
 (4) Honor
 (5) THE COURT I'm not clear I know what you all have
 (6) planned for me tomorrow so let's review what you think is on
 (7) tomorrow I know that we have the motion in limine on Governor
 (8) Hammond and others What else do you envision coming up
 (9) tomorrow?
 (10) MR OESTING The judicial admission issue if we can't
 (11) resolve it and the blood and alcohol test results
 (12) MR LYNCH And the Coast Guard plaintiffs motion
 (13) in limine re Coast Guard I think also Your Honor you had
 (14) indicated yesterday afternoon that you would want to hear
 (15) quickly about any comments on the preliminary instructions
 (16) THE COURT That's correct.
 (17) MR LYNCH We probably should put that on
 (18) tentatively We will be filing something today on what I hope
 (19) is a relatively minor concern about the formal preliminary
 (20) instructions
 (21) THE COURT Do we already have what we are to receive
 (22) from you on these one two three four evidentiary matters?
 (23) MR OESTING Only the - really the Coast Guard is
 (24) still on our plate
 (25) THE COURT If it's going to do us any good we need

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- (1) it by the middle of the afternoon
 (2) MR OESTING All right
 (3) MR LYNCH Yes Your Honor we had been thinking in
 (4) terms of tomorrow afternoon that you would need time to - but
 (5) we can make that deadline
 (6) THE COURT Well I'm not wedded to doing it in the
 (7) morning as opposed to the afternoon The only problem with the
 (8) afternoon is that I've committed myself to do a CLE program for
 (9) the bar that will take me until probably - unlikely I can get
 (10) back here before 3:00
 (11) MR LYNCH Your Honor we knew we were pushing you to
 (12) set it so quickly so whatever you need
 (13) THE COURT I need all the time I can get Is it your
 (14) judgment that we can reasonably take care of these matters
 (15) between 3:00 and about 4:30?
 (16) MR OESTING Yes
 (17) THE COURT Well let's - does anybody have a problem
 (18) with our doing it at 3:00 Friday afternoon?
 (19) MR LYNCH No Your Honor
 (20) MR OESTING Not at all
 (21) THE COURT Instead of tomorrow morning it's 3:00
 (22) Friday afternoon Mr Lakosh
 (23) MR LAKOSH Yes I have a question about
 (24) representation of the claims and my complaints in the mandatory
 (25) punitive damages class I have received a letter from Mr

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- (1) Oesting informing me that there were no named class
 (2) representatives in the mandatory punitive damages class
 (3) asserting claims under the Alaska Article 8 Section 16 unique
 (4) situations and non native subsistence injuries And I m just
 (5) wonderng if I m subject to the mandatory nature of the class
 (6) if there is nobody similarly situated representing those
 (7) claims?
 (8) THE COURT Understood Mr Oesting
 (9) MR OESTING I indicated to Mr Lakosh as he stated
 (10) that we had not - though we tried to get a diverse
 (11) cross section of plaintiffs that would be arguably impossible
 (12) to go beyond the breadth of what we had now and that certainly
 (13) there are a number of people in phase four with somewhat unique
 (14) claims who are not actually named representatives but for
 (15) purposes of the singular nature are for the purpose of punitive
 (16) damages I don t think that each member with a unique claim be
 (17) named in that class
 (18) THE COURT But how do their concerns get addressed in
 (19) the damages end of it if they aren t represented by a class
 (20) member? I m not suggesting that it can t be done I m just
 (21) asking how is it going to be accomplished
 (22) MR O NEILL We have appointed a liaison Suzanne
 (23) Etpison to communicate to us Mr Lakosh s concerns
 (24) THE COURT Well Mr Lakosh you re going to need to
 (25) work through that liaison person to see that your concerns get

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- (1) brought to the Court s attention
 (2) MR LAKOSH Sir if claims of mine or those similarly
 (3) situated are not represented in the punitive damages class the
 (4) class is not mandatory and does not apply to me
 (5) THE COURT The class is mandatory it applies to
 (6) everyone
 (7) MR LAKOSH Well then they deserve some
 (8) representation Your Honor and there is none to date And
 (9) I ve been trying to work with consolidated plaintiffs to get a
 (10) look at all these pretrial procedures and exhibits and jurors
 (11) forms and there has been no cooperation whatsoever As Your
 (12) Honor knows I couldn t even get consolidated plaintiffs to
 (13) forward discovery requests and I ve been shut out of virtually
 (14) of every but two consolidated plaintiffs preparation trial
 (15) meetings and there is no representation Your Honor
 (16) MR O NEILL If I could address the question briefly
 (17) Your Honor Due to the fact that there are 81 law firms
 (18) representing plaintiffs in this action and hundreds of
 (19) lawyers in order to both organize and present the case we have
 (20) set - I don t meet regularly with all 81 of those law firms or
 (21) all those lawyers and indeed I can t and with regard to
 (22) everybody that has an interest in the case we have set up
 (23) structures so they could have input into the presentation of
 (24) the case
 (25) Mr Lakosh s concerns - I ve set up a special liaison for

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- (1) Mr Lakosh s concerns Mrs Etpison which is more than I have
 (2) done for most of these other lawyers and other interests in the
 (3) case I will continue to do that Ms Etpison s major job in
 (4) this case is fielding questions from Mr Lakosh Now the fact
 (5) that I don t agree with all of his comments is no different
 (6) than the fact that I don t agree with all the other comments of
 (7) many of my co plaintiffs lawyers I do the best I can with
 (8) what he says and do my best with the presentation of the case
 (9) THE COURT Mr Lakosh we re through with it, I m
 (10) satisfied that the arrangements that are in place are not only
 (11) adequate but in your case appear to be very special and unique
 (12) to take care of your concerns so I m satisfied that you are
 (13) being adequately taken care of that your concerns are being
 (14) adequately addressed We simply can t have everyone running
 (15) the show
 (16) MR LAKOSH In this case Your Honor -
 (17) THE COURT No the matter is concluded at this point
 (18) Mr Lakosh
 (19) Is there anything further we need to take up Mr Oesting?
 (20) MR OESTING No Your Honor
 (21) MR LYNCH No Your Honor
 (22) THE COURT We ll number recess until 3 00 tomorrow
 (23) afternoon
 (24) (Proceedings recessed at 10 15 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 UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re) Case No. A89 0095 CIV (HRH)
 (3)) Anchorage Alaska
 The EXXON VALDEZ) Thursday May 5 1994
 (4)) 8:00 a.m.

TRANSCRIPT OF PROCEEDINGS
 (9) TRIAL BY JURY JURY SELECTION AND 4TH DAY
 (10) BEFORE THE HONORABLE H. RUSSEL HOLLAND JUDGE
 VOLUME 4 Pages 1 41
 Realtime Transcription

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PROCEEDINGS
 (1) THE CLERK: All rise
 (2) (Call to Order of the Court)
 (3) THE COURT: Good morning ladies and gentlemen
 (4) MR. O'NEILL: Good morning Judge
 (5) MR. SERDAHELY: Good morning
 (6) THE COURT: This is continuation of trial A89 0095
 (7) Civil in re: The Exxon Valdez. When we left off yesterday I
 (8) had been asked to take a second look at the qualifications
 (9) or — the qualifications of juror number four Bruce Dean. I
 (10) have done that and I have seen no basis for disqualifying him.
 (11) Are we ready for another juror?
 (12) THE CLERK: Your Honor this is Ken S. Murray, juror
 (13) number 60.
 (14) THE COURT: Good morning Mr. Murray. Sorry you had
 (15) to wait so long yesterday.
 (16) MR. MURRAY: That's all right.
 (17) THE COURT: We have your sworn answers to the courts
 (18) questionnaire. At this time by agreement the attorneys have
 (19) ten minutes per side for some follow up questions. Mr.
 (20) O'Neill?
 (21) O'Neill?
 (22) JURY VOIR DIRE
 (23) BY MR. O'NEILL
 (24) Q: How are you?
 (25) A: Good.

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(1) Q: You moved here from Tennessee?
 (2) A: Yes.
 (3) Q: Do you recall when about that was?
 (4) A: In 1990.
 (5) Q: Why did you come up here?
 (6) A: Well, my wife is a school teacher, and if you've ever been
 (7) in Tennessee a education system it's pretty low pay and it's
 (8) not the type of education we wanted for our children, so we
 (9) made the change.
 (10) Q: Do you like the Anchorage school system?
 (11) A: I love it.
 (12) Q: Where do you work right now?
 (13) A: I'm laid off right now.
 (14) Q: You worked before as a counselor?
 (15) A: Yes, at Alaska Junior College.
 (16) Q: Did you like that?
 (17) A: Yes.
 (18) Q: What did you like about it?
 (19) A: I like counseling and getting young kids motivated to
 (20) improve their lives and move forward.
 (21) Q: What do you do with your spare time here in Alaska?
 (22) A: Well, I run and I do a lot of stuff with the Rotary. I'm
 (23) pretty active in the community.
 (24) Q: The oil industry is a dominant force in Alaska life and
 (25) indeed it's one of the reasons that people don't pay income tax.

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- (1) unfavorable if I read the question right - sometimes I get
 (2) those columns wrong - but your impression was generally
 (3) somewhat unfavorable What is the basis of that?
 (4) **A I don't recall putting that down unfavorable**
 (5) Q Now I could be wrong
 (6) MR SANDERS Your Honor may I approach?
 (7) THE COURT Yeah you may
 (8) BY MR SANDERS
 (9) Q This time I think I'm right I got the column right
 (10) **A I don't recall**
 (11) Q Is that right?
 (12) **A Uh-huh**
 (13) Q Does that help refresh you on - is that a mistake that you
 (14) put it in that column? I notice it's the only one in that
 (15) column?
 (16) **A It probably could be Going through that so quickly, you**
 (17) **try to get those answered as correctly as you can, and probably**
 (18) **one of those that I just -**
 (19) Q Let's don't get hung up on it Do you have somewhat an
 (20) unfavorable impression about Exxon?
 (21) **A No, sir, I don't**
 (22) Q Now I notice also that in responses to the questions about
 (23) alcohol the questionnaire you thought that alcohol is a
 (24) somewhat serious problem in the state and that you had had the
 (25) experience of having a close friend with an alcohol problem or

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- (1) in AA and another friend with some drug treatment I'm not
 (2) trying to pry into your friendships or your life but I need to
 (3) ask you a bit about that in order to help you assess whether
 (4) that makes any difference
 (5) Did you go through the experience with your close friend
 (6) before he went into either treatment or Alcoholics Anonymous?
 (7) **A He was going through the process, if I recall**
 (8) Q Did you have experiences with him when he had a drinking
 (9) problem?
 (10) **A Yes**
 (11) Q And after he started going to AA did he continue to have
 (12) some problems or did he - was he able to stop?
 (13) **A He was able to stop and get control of his life at that**
 (14) **point**
 (15) Q Well let me just ask you about him
 (16) Is there anything about that association that experience
 (17) with your friend that causes you any bad or negative feelings
 (18) about alcohol as an issue?
 (19) **A No sir there is not**
 (20) Q What about people who drink do you have a negative feeling
 (21) about people who drink?
 (22) **A No, sir, I just - I have a rule that says moderation is**
 (23) **the key to that Other than that I don't**
 (24) Q Do you drink?
 (25) **A No, sir**

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- (1) Q But you're not judgmental about people who do?
 (2) **A No, sir**
 (3) Q Is there anything you can think of as a result of your
 (4) experience with your friend do you think you have a special
 (5) knowledge or expertise about alcohol or alcoholism?
 (6) **A Well I think my mind is open to the avenues of what can**
 (7) **done to treat the cause of it, so I guess educationally, I have**
 (8) **a better understanding of what services are out there and what**
 (9) **people can do to get some help if they desire**
 (10) Q As a matter of fact from your educational background you
 (11) probably acknowledge there are different ways that different
 (12) experts look at this problem?
 (13) **A Absolutely**
 (14) Q It's not really an easy divide sometimes right?
 (15) **A Correct**
 (16) Q Do you have any feelings about what businesses from your
 (17) perspective in education do you have any feelings or strong
 (18) thoughts about how companies or businesses ought to deal with
 (19) alcohol issues both in terms of whether they have prohibition
 (20) against it and if they do then how do they deal with
 (21) employees who have the illness?
 (22) **A Well, I think that they should be open to trying to get**
 (23) **some help for the employees if they see a need for it, and**
 (24) **finding the necessary outlets so that they can get them into**
 (25) **that program if they are in fact a contributing factor to the**

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- (1) **company I feel like that**
 (2) Q What do you think about them as part of that policy
 (3) allowing them to return to work?
 (4) **A Sure**
 (5) Q What about penalizing them for the fact that they did have
 (6) a problem and sought treatment?
 (7) **A Well, I'm open to that I think you'd have to get all the**
 (8) **facts, and in my opinion - that's my opinion at this point**
 (9) Q Let me go back to the issue of corporations again Do you
 (10) have any - do you have any bad thoughts about corporations
 (11) generally?
 (12) **A No, sir**
 (13) Q What about the oil business generally?
 (14) **A No sir**
 (15) Q You don't come in with any preconceptions about big
 (16) business or big corporations?
 (17) **A No sir**
 (18) Q Not going to be any controversy about that Exxon is big?
 (19) **A No sir**
 (20) Q That wouldn't affect you?
 (21) **A No sir**
 (22) MR O NEILL Pass for cause
 (23) MR SANDERS Pass for cause
 (24) THE COURT Mr Murray thank you Passing for cause
 (25) means that the attorneys at this point are satisfied with your

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- (1) Q Your answers are clear and thoughtful and in all honesty
 (2) sir I don't know where to go with your answers and it isn't
 (3) because you're not doing a good job
 (4) A Thank you
 (5) Q I just - I'm honestly concerned as the representative of
 (6) fishermen and natives and native corporations in the trial -
 (7) A You're afraid if I have the concept of punitive damages I
 (8) will be unfairly against your side?
 (9) Q You got it
 (10) A No, I understand that
 (11) Q What's your reaction to my concern?
 (12) A I think you would be doing your clients disservice if you
 (13) didn't feel that way. That's your side of the case. That's
 (14) the way you have to see it. I wish I could answer your
 (15) question more clearly. I wish I could put your mind to rest on
 (16) the issue, but until I get into the case there is no way for
 (17) me to answer that
 (18) Q I'm not looking for how you're going to decide the case
 (19) I'm looking at the baggage that you bring into the case that's
 (20) what I'm concerned about the baggage that you bring into the
 (21) case. And I'm nearing the end of my ten minutes and I'm going
 (22) to have to sit down in a minute and I'm just saying how do you
 (23) feel about the baggage that you bring into the case?
 (24) A Dealing with the concept of baggage, that's my
 (25) understanding of the case up to this point, that's what I've

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- (1) seen, everybody's opinion that has affected me, and whatever
 (2) opinions I may have drawn myself on the case
 (3) I would like to think that if I were to deal with this,
 (4) whatever has come before is quite possibly going to change,
 (5) depending on what I hear here. There is necessarily going to
 (6) be details that anybody who sits on this trial is going to hear
 (7) that they may have never heard or may totally contradict
 (8) anything they have heard in the past, and from that point, they
 (9) have to draw their own conclusions
 (10) Q One last question. In answer to question 82 you talk
 (11) about the imposition of sitting as a juror. It's imposition of touch
 (12) your job. Could you talk to us a little bit about that and
 (13) then I'll sit down?
 (14) A I guess that was a general statement, too, that I mean it's
 (15) an interesting case, but I think anybody honestly would balk at
 (16) the concept of sitting in court three months and listening to a
 (17) case, and it's hard to leave your job, particularly one that
 (18) you like and the sort of job I have, if you're out of touch
 (19) with the job too much - and I can't say that I'll lose a lot
 (20) of time with the job, I already started looking at it that
 (21) I'll be working part time when I'm doing the case. You don't
 (22) know if work is going to have to be replaced at some point if
 (23) you lose enough hours
 (24) Q Are your concerns about your job different than any other
 (25) citizens?

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- (1) A I would think not
 (2) JURY VOIR DIRE
 (3) BY MR CHALOS
 (4) Q Good morning Mr. Rion. Is it Rion?
 (5) A Yes
 (6) Q I'm Michael Chalos. I represent Captain Hazelwood but for
 (7) the purpose of this exercise I'm also speaking on behalf of the
 (8) Exxon defendants
 (9) Mr. Rion. I have your questionnaire. I have to apologize
 (10) there is one answer that you gave that I can't read. May I
 (11) show it to you and have you read it to me?
 (12) A Sure
 (13) MR CHALOS Your Honor may I approach?
 (14) BY MR CHALOS
 (15) Q Specifically I'm referring to question 51. Let me see it.
 (16) Talks about membership in any group. Can you tell me what you
 (17) wrote?
 (18) A I, for one, have given donations to such organizations as
 (19) Greenpeace and the Cousteau Society. As for knowing anyone
 (20) having a pro or anti-environmental, looks like it didn't come
 (21) through very well, basically saying who couldn't - I think
 (22) most people know somebody who has pro or anti-environmental
 (23) standards, it's pretty hard not to these days
 (24) Q What's your stance?
 (25) A Whether I'm pro or anti environment?

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- (1) Q I can't imagine anybody being anti-environmental. I take
 (2) it your pro-environment?
 (3) A Again, I don't go strictly one direction or the other. I
 (4) happen to be a supporter of technology and I mean, I'm living
 (5) in a technological society, I appreciate the benefits of it and
 (6) I happen to be interested in vast technologies and such, but at
 (7) the same time I, you know, I guess I could say I grew up in the
 (8) 70s when there was a lot of, particularly when you were in
 (9) school at the time there was a lot of environmental awareness
 (10) that went on because of the levels of pollution that went on,
 (11) and that has had a certain affect on me
 (12) Q When did you contribute to Greenpeace?
 (13) A It was some time back in the 80s. I haven't been a
 (14) consistent contributor
 (15) The way I understood it, at any point that you have
 (16) supported any such organization so I've given - I subscribed
 (17) one year to the Cousteau Society and one year I have given a
 (18) donation to Greenpeace
 (19) Q Greenpeace has been very vocal in respect to this spill
 (20) Does the fact that you contributed to them in any way color
 (21) your judgment in this case?
 (22) A No, I've never been a serious or strong supporter of
 (23) Greenpeace. I think it's an organization that has - it still
 (24) does good work but has frequently lost sight of what it
 (25) accomplishes versus its emotion. I think their emotions get in

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- (1) the - and they are capable lawyers but it's going to take a
 (2) lot of work for them to convince you otherwise?
 (3) A No I don't know that I have any opinions so strong that it
 (4) can't be altered
 (5) Q But you come in with a negative opinion about Exxon?
 (6) A I said that in the questionnaire and I don't deny it here
 (7) MR CHALOS Your Honor I just have one more subject
 (8) that's important if I may
 (9) BY MR CHALOS
 (10) Q I note from your questionnaire that you've done some work
 (11) with drug and alcohol?
 (12) A At the news (ph) center yeah
 (13) Q One of the answers that you gave you work with alcohol and
 (14) drug screening?
 (15) A We had to take drug and alcohol screening courses for
 (16) dealing both when I was with Community Work Service and you
 (17) have to deal with them at McLaughlin, when you accept in
 (18) juveniles who may be under the influence of drugs and alcohol,
 (19) you have to assess, because both their affect as a
 (20) depressant - we deal with suicidal juveniles, you have to
 (21) assess whether the juvenile you're dealing with is suicidal or
 (22) whether they need to be sent to the hospital for testing and
 (23) also part of it - the legal end of it is more the police's
 (24) responsibility and ours was always in the case of dealing with
 (25) the juveniles involved

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- (1) Q You took courses in drug and alcohol screening?
 (2) A Yes it's a standard course, it's not like you know a
 (3) week-long course, but it's how to identify the symptoms
 (4) Q Let me ask you this As part of the course or as part of
 (5) the work that you did did you observe blood samples being
 (6) taken and handled?
 (7) A Yes but necessarily they were how to identify a
 (8) negative - they didn't supply us with a positive although
 (9) I've seen them with juveniles that had come in but at the time
 (10) of the courses they didn't have a - they showed us the results
 (11) of what a positive would be and explained that but they don't
 (12) have one that we actually do
 (13) Q Do you have any specialized knowledge about how blood is
 (14) drawn how it's preserved how it's handled how it's tested?
 (15) A I have a general understanding of how it's done I don't
 (16) have any actual accreditation or understanding of how it's
 (17) done
 (18) Q You don't drink yourself do you?
 (19) A No sir
 (20) Q Do you have any feelings one way or another about people
 (21) who do drink?
 (22) A No but then there is a difference of course between people
 (23) who drink and people who abuse alcohol
 (24) Q Well let me ask about that In your mind is there a
 (25) difference between abuse and dependence?

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- (1) A Well yes generally you can be abusing it and be dependent
 (2) on it as well
 (3) Q How about the reverse of that Can you from time to time
 (4) abuse it but not be dependent on it
 (5) A Well alcohol like drugs causes you to have a physical
 (6) dependence and people frequently have an emotional
 dependence
 (7) there is a difference between those two and one can lead to
 (8) another If you use it long enough you can end up with a
 (9) physical dependence when you started with an emotional
 (10) Q Are you of the view once you sought treatment for an
 (11) alcohol problem that you cannot ever drink again under any
 (12) circumstances?
 (13) A You have to be very careful with it I know people who
 (14) have been on the wagon and have fallen off of it and have gone
 (15) right back on And generally from what I have known of them
 (16) and what they have told me, it's harder the second time around
 (17) Q Do you know people who have been through treatment who
 (18) drank again but could do it moderately and in a social way?
 (19) A No, anybody I've ever known who has known themselves to be
 (20) an alcoholic and they generally assume - they have to stay
 (21) off of it If they start drinking again most of them have a
 (22) very strong fear if they start drinking again they won't be
 (23) able to stop at least not without some very serious help
 (24) MR CHALOS Thank you very much for your candid
 (25) answers my time is up

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- (1) THE COURT Mr Rion let me go back to this matter of
 (2) punitive damages If you were selected for this jury and
 (3) after you heard all the facts heard my instructions on the law
 (4) as to how you find the facts and how you deal with punitive
 (5) damages could you put aside your personal views of what the
 (6) law ought to be on punitive damages and make an award of
 (7) punitive damages in this case if the facts and the law
 (8) justified it based on my instructions or could you not do
 (9) that
 (10) MR RION I believe Your Honor yes I could
 (11) THE COURT You believe you could?
 (12) About your work situation I infer from what you said that
 (13) your employer won't be paying you your usual wage while you're
 (14) here on a jury
 (15) MR RION No I'm not paid for the time I'm on a
 (16) jury
 (17) THE COURT Is that going to present a financial
 (18) hardship for you paying rent paying other bills
 (19) MR RION No I'm fortunately where my financial
 (20) commitments other than month to month bills I don't think so
 (21) and I would hopefully still be doing some work while I was
 (22) there
 (23) THE COURT Did that elicit any questions from
 (24) anyone?
 (25) MR O NEILL No Pass for cause

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- (1) MR O NEILL The plaintiffs fourth is number three
- (2) Leon B Currier
- (3) THE COURT Number three Leon B Currier is
- (4) stricken
- (5) MR NEAL Defendants strike number two Sandra
- (6) Wilburn
- (7) THE COURT Number two Sandra Wilburn Your fifth
- (8) Mr O Neill?
- (9) MR O NEILL The plaintiffs fifth challenge is
- (10) number 22 Patnck Maloney
- (11) THE COURT Number 22 Patrick Maloney is stricken
- (12) Mr Neal your fifth?
- (13) MR NEAL Number 12 Cathy Fricke
- (14) THE COURT Number 12 Cathy Fricke is stricken Mr
- (15) O Neill your last pre-emptory challenge?
- (16) MR O NEILL Our last pre emptory challenge is number
- (17) 24 Frank J Rion
- (18) MR NEAL Just a second Your Honor
- (19) THE COURT Mr Neal your last pre-emptory
- (20) challenge?
- (21) MR NEAL Number 21 Judy Drew
- (22) THE COURT 21 Judy Drew Number 21 okay Let me
- (23) review with you who we have left As I have marked this we
- (24) have left Smith number one Hood number four Martin number
- (25) seven Dean number nine Provost number ten Graham number

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- (1) 13 Moor number 15 Spann 16 Wilson 17 Garrison 19
- (2) Johnson 20 and Murray 23 Agreed on that?
- (3) MR SANDERS That is correct Your Honor
- (4) THE COURT That will be our jury We will have the
- (5) jury clerk call the - actually we ll have them call all of
- (6) these people We will have the clerk tell the persons that
- (7) have been stricken that they are excused We will have the
- (8) jury clerk inform the 12 members of our jury panel that they
- (9) should report at a quarter to eight on Monday to begin the
- (10) trial proceedings
- (11) By my reckoning we have one other thing that we had
- (12) discussed taking care of today at least I think we were
- (13) talking about taking care of today the motion in limine
- (14) concerning testimony of Governor Hammond and a couple other
- (15) people am I correct?
- (16) MR SERDAHELY That s correct Your Honor
- (17) MR OESTING I have asked Your Honor Dave Oesting
- (18) that we put the judicial admission brief that we filed last
- (19) night on for today but I understand that we have a number of
- (20) proceedings for tomorrow What s the story on that?
- (21) MR SANDERS Actually Your Honor Mr Jamin and I
- (22) had talked and we were going to discuss that this afternoon and
- (23) see if we could work out some accommodation on that issue so I
- (24) think it would be well if it s all right with the Court that
- (25) we hold off the judicial admissions

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- (1) THE COURT Well in light of the way this has
- (2) developed shall we just take up everything tomorrow morning?
- (3) MR LYNCH I think that would make good sense Your
- (4) Honor
- (5) THE COURT I m not clear I know what you all have
- (6) planned for me tomorrow so let s review what you think is on
- (7) tomorrow I know that we have the motion in limine on Governor
- (8) Hammond and others What else do you envision coming up
- (9) tomorrow?
- (10) MR OESTING The judicial admission issue if we can t
- (11) resolve it and the blood and alcohol test results
- (12) MR LYNCH And the Coast Guard plaintiffs s motion
- (13) in limine re Coast Guard I think also Your Honor you had
- (14) indicated yesterday afternoon that you would want to hear
- (15) quickly about any comments on the preliminary instructions
- (16) THE COURT That s correct
- (17) MR LYNCH We probably should put that on
- (18) tentatively We will be filing something today on what I hope
- (19) is a relatively minor concern about the formal preliminary
- (20) instructions
- (21) THE COURT Do we already have what we are to receive
- (22) from you on these one two three four evidentiary matters?
- (23) MR OESTING Only the - really the Coast Guard is
- (24) still on our plate
- (25) THE COURT If it s going to do us any good we need

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- (1) it by the middle of the afternoon
- (2) MR OESTING All right
- (3) MR LYNCH Yes Your Honor we had been thinking in
- (4) terms of tomorrow afternoon that you would need time to - but
- (5) we can make that deadline
- (6) THE COURT Well I m not wedded to doing it in the
- (7) morning as opposed to the afternoon The only problem with the
- (8) afternoon is that I ve committed myself to do a CLE program for
- (9) the bar that will take me until probably - unlikely I can get
- (10) back here before 3 00
- (11) MR LYNCH Your Honor we knew we were pushing you to
- (12) set it so quickly so whatever you need
- (13) THE COURT I need all the time I can get Is it your
- (14) judgment that we can reasonably take care of these matters
- (15) between 3 00 and about 4 30?
- (16) MR OESTING Yes
- (17) THE COURT Well let s - does anybody have a problem
- (18) with our doing it at 3 00 Friday afternoon?
- (19) MR LYNCH No Your Honor
- (20) MR OESTING Not at all
- (21) THE COURT Instead of tomorrow morning it s 3 00
- (22) Friday afternoon Mr Lakosh
- (23) MR LAKOSH Yes I have a question about
- (24) representation of the claims and my complaints in the mandatory
- (25) punitive damages class I have received a letter from Mr

- (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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Report

UNIQUE WORDS 1,029
TOTAL OCCURRENCES 2,514
NOISE WORDS 385
TOTAL WORDS IN FILE 8,476

SINGLE FILE CONCORDANCE

CASE SENSITIVE

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INCLUDES ALL TEXT
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IGNORES PURE NUMBERS---
WORD RANGES @ BOTTOM OF
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re) Case No A89 0095 CIV (HRH)
) Anchorage Alaska
(5) The EXXON VALDEZ) Friday May 6 1994
(6)) 3 10 p m

TRANSCRIPT OF PROCEEDINGS
HEARING ON MOTIONS AT DOCKET NOS 4941 4942 4985
(9) JUDICIAL ADMISSIONS ISSUES
AND COMMENTS ON PRELIMINARY INSTRUCTIONS
BEFORE THE HONORABLE H RUSSEL HOLLAND JUDGE
Pages 1 50

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(1) PROCEEDINGS
() THE CLERK All rise
(3) (Call to Order of the Court)
(4) THE COURT This is the continuation of Case A89 0095
(5) Civil in re The Exxon Valdez We have scheduled for this
(6) afternoon a series of wind up motions on mostly evidentiary
(7) matters Be my preference to take them in the following
(8) order First the motion in limine having to do with Hammond
(9) and others second the Coast Guard role third the blood
(10) testing and fourth this matter of use of admissions in
(11) opening statement and in connection with that I've got a
(12) follow up motion that has to do with something about a
(13) comparison of the size of the Exxon Valdez to the size of the
(14) Captain Cook Hotel
(15) MR O NEILL: On the last two items the first has
(16) been -- the last two has been resolved
(17) THE COURT: How was it resolved
(18) MR O NEILL: Your Honor we'll be getting a script on
(19) Monday morning that will include portions of what was in that
(20) brief as a stipulation of fact There are two stipulations in
(21) the trial plan which we would like you to read and then an
(22) edited version of what was in that brief The three of them
(23) were together We're finalizing the agreement on the text and
(24) we would like to you read it as part of your preliminary
(25) charge

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(1) THE COURT Sounds like -- reasonable to me
(2) MR O NEILL In comparison to the Exxon Valdez and
(3) the Captain Cook we'll put it in Van Hemmen I'm not going to
(4) use it in the opening
(5) THE COURT Good thank you
(6) Back to the first one on the motion in limine please if
(7) you can restrict yourself to about five minutes per side on
(8) these With the possible exception of the blood test one I
(9) think the issues are fairly straightforward and pretty well
(10) briefed Mr Neal?
(11) MR NEAL Yes I had a note that there was going to
(12) be some discussion about the preliminary instructions Mr
(13) Daum is here to address that
(14) THE COURT We certainly suggested to you yesterday
(15) that that would be on the agenda Subsequently I received
(16) written presentations from both sides that I rather thought had
(17) resolved the matters at least to my satisfaction
(18) MR NEAL That is correct?
(19) MR DAUM Submitted that in writing
(20) THE COURT In substance I have incorporated I
(21) believe everybody's suggestions into what I proposed to use as
(22) preliminary instruction The one thing that occurs to me that
(23) we did different from anyone's suggestion was to actually go a
(24) step beyond what was suggested There was a suggestion that
WE
(25) include a definition of the term reckless and having done

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(1) that we thought it might be appropriate to include a simple
 (2) definition of the term negligence since we re using the two as
 (3) sort of a distinction So we ve included a definition of
 (4) simple negligence followed by a definition of reckless conduct
 (5) and basically we took the rest of your suggestions and
 (6) incorporated them
 (7) MR O NEILL Getting back to where I was a minute
 (8) ago we do want you to read these factual stipulations as part
 (9) of this charge Judge and we ll try to get those over first
 (10) thing Monday morning so you can look at them and we will have
 (11) them typed in big letters so it s easy to do
 (12) THE COURT I didn t know my bifocals showed that
 (13) clearly
 (14) MR OESTING I had only one comment to that I would
 (15) have to object to the reinsertion of a word referring to
 (16) malicious or malice or anything connoting ill will or spite
 (17) THE COURT We didn t take that option It seems to
 (18) me we were presented with a possible choice there and we
 (19) didn t take that option we took the other one
 (20) MR OESTING Okay
 (21) THE COURT Okay motion in limine concerning Hammond
 (22) and Owens and Mullins
 (23) MR DAUM Your Honor John Daum for Exxon Let me
 (24) start out by saying the plaintiffs papers on this motion take
 (25) us to task for misrepresenting I think is their word the

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(1) nature of the testimony that s going to be offered by their
 (2) witnesses I think it s right to begin by pointing out what
 (3) the plaintiffs own witness list says about what these
 (4) witnesses will say What it says is they will testify quote
 (5) regarding the debate over the pipeline terminus and the sea
 (6) leg unquote That was exactly the testimony to which our
 (7) motion was addressed and I think the papers show clearly why
 (8) testimony on that subject ought not to be allowed And
 (9) plaintiffs own behavior shows that we were right
 (10) Instead of trying to defend that subject matter as
 (11) appropriate for testimony at the trial the plaintiffs say that
 (12) Governor Hammond and others will testify to something quite
 (13) different They won t testify about the debate over the
 (14) pipeline terminus and the sea leg but they will testify that
 (15) they told Exxon that tanker traffic in the Sound posed a risk
 (16) of harm to the Sound and people dependent thereon So the
 (17) position on this motion is that they want witnesses to testify
 (18) something quite different than what their witnesses list
 (19) disclosed and were misrepresenting the witness testimony and
 (20) sandbagging
 (21) The first reason why this testimony ought to be excluded is
 (22) the simplest Plaintiffs were required by the trial plan to
 (23) disclose quote the principal points of testimony to be
 (24) elicited from the witness unquote and by plaintiffs own
 (25) admission they failed to do so

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(1) Moving beyond that there are very serious problems with
 (2) plaintiffs position that they ought to be allowed to offer
 (3) testimony that 20 years ago some people thought and said and I
 (4) quote from their description of form Governor Hammond s
 (5) proposed testimony that there was quote a substantial risk of
 (6) harm from tanker traffic in the Sound unquote
 (7) Their papers do the best to suggest that all they want to
 (8) prove is the defendants knew that oil spills were bad and that
 (9) they could do substantial harm If that were really what
 (10) plaintiffs wanted testimony should be excluded for the reason
 (11) that it s pointless and undisputed No one certainly not
 (12) Exxon has ever disputed that tanker groundings are a bad
 (13) thing that oil spills are a bad thing and that a major oil
 (14) spills can result in substantial harm We disagree with the
 (15) plaintiffs as to how much damage resulted from this spill but
 (16) no one disputes that large oil spills can be harmful
 (17) At their depositions witness after Exxon witness has
 (18) conceded those facts and if the plaintiffs and the Court have
 (19) any doubt about that we ve offered to stipulate to those facts
 (20) and we renew that offer right now
 (21) Plaintiffs aren t stupid They are not silly They know
 (22) that there is no dispute that large oil spills cause harm or
 (23) that large oil spills are bad What they want from this
 (24) testimony is something more than that They want to put
 (25) someone on the stand to say quote I told you so They want

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(1) to put - to argue that because in the early 70s a tiny
 (2) minority of Alaskans thought that tanker traffic in Prince
 (3) William Sound was a bad idea in any amount and under all
 (4) circumstances Exxon s conduct almost 20 years later was
 (5) reckless After Congress had rejected that position after
 (6) Congress had specifically approved tanker traffic in Prince
 (7) William Sound and after Congress had accepted the risks of an
 (8) accident now for that testimony to be relevant here you d
 (9) have to have two things be true First you d have to show
 (10) that the conduct that was warned against was the same as the
 (11) conduct that is in issue here and of course it is not In the
 (12) early 70s the issue was whether tankers should be allowed at
 (13) all whether the risk of tanker traffic which everyone knew
 (14) existed should be assumed
 (15) Plaintiffs don t suggest that former Governor Hammond or
 (16) Congressman Owens or Mr Mullins had anything to say about
 (17) how
 (17) tankers ought to be operated how captains should be trained
 (18) what the alcohol policy should be or any of the other points
 (19) that are in issue here Their point in the early 70s was that
 (20) tanker traffic in general was too dangerous Now that point
 (21) Congress overruled it
 (22) If you prosecute me Your Honor for reckless driving for
 (23) doing a hundred miles an hour it might be relevant that
 (24) someone told me that driving a hundred miles an hour was
 (25) dangerous if it weren t the case that it is here that that

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(1) was so obvious that you wouldn't need any proof. But there was
 (2) no conceivable theory on which evidence would be relevant
 about
 (3) the risks of driving on the highway in general. The difference
 (4) is between testimony about the dangerousness of the conduct in
 (5) question and testimony about the dangerousness of a perfectly
 (6) lawful and proper activity.
 (7) Plaintiffs' evidence goes at most to the dangers
 (8) represented by the activity, not the dangers represented -
 (9) excuse my Your Honor, by the specific conduct with which Exxon
 (10) is charged.
 (11) Now there is a second problem here. Even if evidence as to
 (12) the dangers of tanker operations in general were relevant,
 (13) there would have to be some showing that what Governor
 Hammond
 (14) and others were concerned about in the early '70s was similar
 (15) to the conditions of tanker operations in 1989 when this spill
 (16) occurred, and in fact they have nothing in common.
 (17) I brought today, and Your Honor can look at it if you have
 (18) any interest, a copy of the original environmental impact
 (19) statement for the Trans-Alaska Pipeline which was issued in
 (20) 1971. That reflected the dangers that people were worried
 (21) about in the early 1970s and the risks that Congress ultimately
 (22) decided to assume by ordering that the pipeline be built. And
 (23) here is what it says, page 1 C, it says that casualties from
 (24) tanker traffic, tanker accidents would result in the loss of
 (25) 140,000 barrels of oil in a quote-unquote average year.

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(1) in Mr. Daum's oral argument, I believe they were four, the
 (2) first of which was that we agree, and his words were, this can
 (3) be harmful. That's what he's saying, that's what he's offering
 (4) to agree to. Well, that's not the recklessness standpoint from
 (5) section 500, the restatement on torts, and it's incorporated
 (6) into 908. That's why we rejected the stipulation that Mr.
 (7) Lynch offered at the outset and that's why we reject what Mr.
 (8) Daum is offering right now.
 (9) We have a right to prove subjective and objective
 (10) recklessness, and as the restatement says, the punitive damages
 (11) case is very close in some ways to the criminal case. It has
 (12) an act and a mens re requirement almost. What Mr. Daum has
 (13) talked with you about, point two here today, is the act. He
 (14) doesn't focus on the mens rea requirement, the recklessness.
 (15) That's what this proof goes to, the conscious disregard.
 (16) Now, conscious disregard is not congruent with, can be
 (17) harmful. Conscious disregard involves knowing the magnitude
 (18) of the risk, that is the percentage that it will happen, and
 (19) the other element is how dangerous is it if it will happen.
 (20) Now what Governor Hammond, Owens and Mullins are going to
 talk
 (21) about the magnitude of the risk if this happened.
 (22) And Mr. Daum's third point is this is 20 years ago, it's no
 (23) big deal, let's forget about it. Well, it's actually closer to
 (24) 25 years ago that this discussion started, and we're not
 (25) arguing that it's 25 years ago and lost in the past. We're

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(1) That's the equivalent of an Exxon Valdez spill every other year
 (2) for the life of the pipeline, and that hasn't happened.
 (3) In the early 1970s, the oil industry said it wouldn't
 (4) happen. The tiny minority of opponents of the pipeline said it
 (5) would. And if anyone is entitled to say, I told you so, it's
 (6) not the opponents of the pipeline, it's those who said that the
 (7) environmental risks that were perceived and trumpeted in the
 (8) early 1970s were grossly exaggerated. That highlights the
 (9) unfairness of allowing plaintiffs to put on the testimony they
 (10) seek, and it highlights the extent to which this testimony will
 (11) serve no purpose except to open up collateral matters.
 (12) If plaintiffs can put on testimony to say, I told you so,
 (13) then defendants have to be able to put on witnesses and
 (14) exhibits and testimony to explain what the controversy in the
 (15) 1970s was really about, what the projections were at that time,
 (16) what representations were made, and who was really right. And
 (17) that's going to involve many witnesses, many exhibits, and a
 (18) colossal waste of time on totally collateral matters. That's
 (19) what Rule 403 is for.
 (20) We think the Court ought to prevent that waste of time by
 (21) excluding the evidence at the beginning. Thank you, Your
 (22) Honor.
 (23) MR. JAMIN: Good afternoon, Your Honor, Matt Jamin for
 (24) the plaintiffs. I will not try to broach every issue that was
 (25) presented in the brief, but primarily those that were presented.

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(1) arguing that 25 years ago this risk, through a bunch of
 (2) services, and former Governor Hammond, Congressman Owens
 and
 (3) Mullins will talk about that, that that risk has been known for
 (4) the last 25 years, and that risk has been continuously
 (5) remembered and restated through the various contingency plans
 (6) that have been filed.
 (7) Now Mr. Daum's fourth point, if plaintiffs put on this
 (8) hour of proof, we're going to have a mini-trial, and my
 (9) response to that, very bluntly, is, if they want to use their
 (10) time in the Exxon Valdez litigation to have a mini-trial, let
 (11) them do it. You've told each side on numerous occasions, I'm
 (12) going to let you put on your own cases, and we have an hour
 (13) that we're going to put on, going to the consciousness of the
 (14) risk, it's less than 5 percent of our case, but it's a
 (15) critical element of the restatement, and with due respect, I
 (16) think we're so entitled.
 (17) MR. DAUM: Two very brief points, Your Honor, I don't
 (18) know if I said can be or is, but that's not a sticking
 (19) point for us. If they have a stipulation from us that they are
 (20) harmful, that's fine. That's not an issue.
 (21) THE COURT: I don't think that was the -
 (22) MR. DAUM: The second point is I think Mr. Jamin's
 (23) last point highlighted what we're worried about, which is the
 (24) unfairness of this proceeding. This is a very complicated
 (25) matter. The plaintiffs ought not, in fairness, to be allowed

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(1) to hit and run If they raise a point which is complicated and
 (2) collateral we have an entitlement and a need to protect
 (3) ourselves by exploring it and the plaintiffs ought not to be
 (4) entitled to introduce an hour s worth of testimony and then put
 (5) us - on a collateral matter and then put us to the choice of
 (6) replying to it in full or letting the jury think it s true
 (7) That s what Rule 403 is about That s why it puts together
 (8) prejudice unfairness collateral matters and waste of time
 (9) They all go to the same point which is trials ought not to be
 (10) hit and run they ought to be addressed to the real issues
 (11) Thank you
 (12) THE COURT Give me just a second please With
 (13) respect -
 (14) MR OESTING Transmutation
 (15) THE COURT I want to take these one at a time and
 (16) we ll hear you on the next one in just a second Mr Oesting
 (17) As to the - I don t seem to have the clerk s docket number
 (18) to me at hand but I think the defendants motion in limine
 (19) concerning the testimony of Hammond Owens and Mullins
 (20) basically I am going to grant that motion in limine If I were
 (21) to focus only on the disclosure that was made in the witness
 (22) list very clearly that disclosure which was supposed to tell
 (23) us what the witnesses were really going to testify about
 (24) suggested quite clearly that we were about to become involved
 (25) in a political decision over the choice of whether there should

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(1) or should not be a tanker leg as a part of the scheme for
 (2) transporting North Slope crude to the west coast and
 (3) elsewhere If that s all we were talking about I would grant
 (4) the motion simply on the basis that the disclosure was
 (5) information that was relevant to a political decision that was
 (6) very old and Rule 403 the motion would be granted
 (7) It appears reasonably clear at this point that the
 (8) disclosure was not entirely accurate that what is really
 (9) desired to be offered through these witnesses testimony about
 (10) what each of the witnesses either told or expressed generally
 (11) I presume in the presence of Exxon people who are supposed to
 (12) have heard and understood what was said about the risks of
 (13) choosing a tanker means of transporting crude oil As to that
 (14) aspect I m granting a Rule 403 motion in limine also I m
 (15) persuaded that that inquiry of what third party non expert and
 (16) I infer from what has been said along the way here that neither
 (17) Governor Hammond nor I think it s Congressman Owens or Mr
 (18) Mullins have any particular expertise in the risks associated
 (19) with tanker transportation I think it does get us into
 (20) collateral dispute about the advisability of using tankers
 (21) which to the extent it may have some relevancy also carries
 (22) with it so much baggage that poses a risk of confusion and a
 (23) risk of diversion from the I suspect much better evidence
 (24) that should be presented on the subject at hand that balancing
 (25) those considerations I would opt for granting the motion in

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(1) limine Any questions about that one?
 (2) MR O NEILL One Your Honor That is Your Honor s
 (3) motion was granted on the basis of an offered stipulation
 (4) THE COURT I m sorry say that again
 (5) MR O NEILL Exxon came into the courtroom and said
 (6) not only are they taking these positions but we ve offered a
 (7) stipulation I d like the stipulation
 (8) MR DAUM We offered it Your Honor We keep our
 (9) word
 (10) THE COURT You ve got your stipulation
 (11) Mr Lakosh?
 (12) MR LAKOSH Yes Mrs Etpison isn t available today
 (13) to represent my claims Your Honor so I d like to speak to the
 (14) issue of continuing contract violation which plaintiffs
 (15) witnesses might be able to address and to the extent that
 (16) parole agreements were made by defendants relative to their
 (17) ability to prevent and mitigate spills and to that extent I
 (18) would not only like those witnesses to appear to address that
 (19) issue which unfortunately I was not able to include earlier
 (20) due to my inability to engage in pretrial matters -
 (21) THE COURT Mr Lakosh this just isn t going to
 (22) work Your argument goes beyond the motion that I m
 (23) considering I m going to have to insist that you work this
 (24) kind of thing through the counselor that has been made
 (25) available to you from the plaintiffs trial committee

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(1) Mr Oesting did you have something before we take up the
 (2) next motion or is the next one -
 (3) MR OESTING Next one is on my deck Your Honor
 (4) THE COURT Go ahead
 (5) MR OESTING Dave Oesting and I m speaking on behalf
 (6) of the plaintiffs in our motion in limine to exclude the
 (7) evidence that the defendants have posed to go over with respect
 (8) to the Coast Guard s activities primarily on the days of March
 (9) 23 and March 24 And to co op or steal the phrase from Mr
 (10) Sanders that you - that I found most effective this one too
 (11) is fraught with the perils of huge collateral trials that are
 (12) on issues that aren t before this jury to be tried and with a
 (13) divergence of attention without adding a great deal of
 (14) substance or as Mr Sanders decided the tossing of a skunk
 (15) into the jury box
 (16) Specifically and to address them in the two parts the
 (17) defendants offer the entire role of the Coast Guard with
 (18) respect to the events of March 23 and March 24 to test or
 (19) ameliorate in their approach the state of mind of Captain
 (20) Hazelwood on the night of the grounding from a reckless to what
 (21) they would obviously contend was at best only negligent and
 (22) they agree when they set the vessel up entirely - on a course
 (23) entirely out of the shipping lanes heading into a dead end cove
 (24) accelerating on autopilot to avoid an ice bogged channel
 (25) Let me break that into the two parts based on that offer

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(1) The first is evidence of events and the Coast Guard's acts
 (2) before - or role before Captain Hazelwood departed from the
 (3) bridge and anything that the Coast Guard did after Captain
 (4) Hazelwood departed from the bridge. Now as to what Captain
 (5) Hazelwood knew or could have known before he departed from
 the
 (6) bridge with respect to the magnitude of the risk he was taking
 (7) with respect to his conduct of managing the vessel that might
 (8) could only be that there was a VTS system in place - nothing
 (9) more than that because nothing more at that point had
 (10) happened. He departed the bridge after he had set the vessel
 (11) on this disastrous course but he had no knowledge of and
 (12) nothing had in fact occurred with respect to the Coast Guard
 (13) watch officers' activities. Thus anything that transpired
 (14) after Captain Hazelwood departed from the bridge could not
 have
 (15) had any bearing whatsoever from the relevant standpoint on his
 (16) state of mind and cognizance of what he had done before he
 (17) walked off and left the vessel to be taken - extricated from
 (18) this course from where he'd put it and maneuvered safely at sea
 (19) by a tired and undermanned and inexperienced bridge crew.
 (20) Thus only the existence of the system would be relevant if at
 (21) all up to that point in time.
 (22) His departure from the bridge and the one thing that the
 (23) evidence that's been offered here and has been established
 (24) throughout is that nobody - neither of the three masters that we
 (25) talked to - nor in fact Mr. Rawls himself in testifying before

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(1) Congress ever relied upon or gave any thought to the existence
 (2) of that system or any dependency or expectation of its
 (3) performance in the management of their vessels - they simply
 (4) didn't and without reliance on the existence of the system
 (5) its existence simply isn't relevant to the state of mind and
 (6) the behavior of Captain Hazelwood up to the moment he
 departed
 (7) from the bridge of the vessel. As Lawrence Rawls said in
 (8) response to Congressman's Studds - clearly we did not expect
 any
 (9) radar help and we did not get any radar help and we cite it in
 (10) our brief. Exxon Shipping Company they did not expect to have
 (11) to rely on the Coast Guard to get them out of that harbor
 (12) referring to the grounding of the Exxon Valdez. We cite the
 (13) related testimony of the three other masters in our opening
 (14) papers.
 (15) Finally Captain Hazelwood himself and they offer his
 (16) affidavit - says nothing in that affidavit about what was in his
 (17) head that evening. He says only that he had served on vessels
 (18) in and out of the Narrows and in and out of the Prince William
 (19) Sound in '77 to '82 and that he was aware that they had a
 (20) system for vessel traffic control in operation - not that he
 (21) thought about it that night. This affidavit is created and
 (22) signed five years after the event of the grounding - 3rd day of
 (23) May '94 in response to our motion.
 (24) On that record Your Honor - our position very simply is the
 (25) existence of that system simply doesn't bear on the issues that

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(1) night with respect to what was in Captain Hazelwood's mind in
 (2) how he was performing because he didn't rely upon it and never
 (3) had and they have offered no evidence that he even thought
 (4) about its existence when he did what he did.
 (5) Now we go to part two - the evidence - which again the Exxon
 (6) defendants offer this only for his state of mind that went
 (7) into place with regard to the performance of watch standers
 (8) after he had departed the bridge. Now those events clearly
 (9) could have nothing to do with his state of mind when he
 (10) departed because they occurred after that fact.
 (11) Secondly he could not have possibly been aware of them.
 (12) Thus the only bearing they would have with regard to the
 (13) issues to be presented would be on causation and fact - The
 (14) actual cause of this accident - and here again the defendants
 (15) in their papers disclaim asserting a contributing cause forced
 (16) to these events - the behavior of the Coast Guard personnel on
 (17) watch duty that night. And with that absent then the only
 (18) possible reason for offering that evidence because it adds
 (19) nothing to the events or the occurrence of this grounding - is
 (20) to point out not just that they didn't call the vessel - only
 (21) connection that the Coast Guard has here - they did not call the
 (22) vessel that night. What those watch people were doing instead
 (23) no one on the vessel had knowledge of - could not have had any
 (24) contributing effect but it invites the people in the box to
 (25) speculate and evaluate all that behavior on the part of these

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(1) Coasties - none of which had any contributive force to the
 (2) grounding or the management of that vessel that evening.
 (3) Now that truly is fraught with a lot of collateral time
 (4) energy and effort on the part of the jury and on our part to
 (5) rebut that evidence when it's not relevant because the
 (6) defendants do not argue causation - that that was a causal
 (7) effect. I go back to Rawls's statement to the Congress and I
 (8) quote - is it possible for you to assure us now that you will
 (9) not - that is Exxon will not at any point seek to prove that all
 (10) or part of the damages resulting from the spill resulted from
 (11) the negligence of the Coast Guard or any agency of the U.S.
 (12) government. And Chairman Rawls responded yes. And the
 (13) defendants themselves in their responsive papers again
 (14) disclaim the causation connection here and for that reason
 (15) trying whatever Blandford and the others on watch that night
 (16) did or might have done - has simply nothing to do with the
 (17) grounding or the critical issues that we'll be presenting to
 (18) this jury in phase one - and that is - did Exxon conduct itself
 (19) in the management of its operations leading to the continuum of
 (20) events from noon on the 23rd to midnight 12:01 - 12:08 a.m. on
 (21) the 24th in a reckless manner.
 (22) And finally as we pointed out in our papers - my
 (23) recklessness is not decreased in the least by the fact that
 (24) when I take off for Seward intoxicated some night - the state
 (25) trooper on patrol that night wasn't diligent enough to get me

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(1) before I had an accident the law doesn't exonerate that
 (2) looking at the equation side or reduce the recklessness of my
 (3) conduct by some other standard or by some other party's
 (4) negligence. The duty that they had to manage this vessel was
 (5) simply non-delegable.
 (6) MR NEAL: May it please the Court, counsel James
 (7) Neal representing the Exxon defendants: We do - we agree
 (8) still with Chairman Rawl's statement: We are not attempting to
 (9) shift responsibility for the actual damages caused by our
 (10) negligence to the Coast Guard. The core evidence sought to be
 (11) excluded here is simply this: the proof that the mariners
 (12) transiting Prince William Sound and particularly including
 (13) Captain Hazelwood as you will see from page 2 of his affidavit
 (14) thought they were being monitored down to Bligh Reef. They
 (15) relied on the fact that the monitors would issue a warning if
 (16) they stood in to danger. That is the core evidence sought to
 (17) be excluded by plaintiffs under Rule 402 and 403.
 (18) The trial plan: Your Honor puts in issue that Captain
 (19) Hazelwood was reckless in his communications to the VTC in
 (20) leaving the bridge at 11:52 p.m. and turning the control over
 (21) to the officer without piloting and they assert in the trial
 (22) plan on pages 18 and 20 that that recklessness is attributable
 (23) to the Exxon defendants. So the issue of recklessness is the
 (24) core issue in phase one.
 (25) What we are saying here, Your Honor, is that when you get

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(1) to the core issue of recklessness, one must consider and I
 (2) believe the plaintiffs agree with this because I've heard this
 (3) in another argument on the issue of recklessness, the Court
 (4) must consider and the jury must consider the magnitude of risk
 (5) under all the circumstances created by the conduct of the
 (6) defendant and number one, whether defendant was conscious
 (7) of
 (8) the risk and number two, disregarded this risk.
 (9) 402 provides that conduct or evidence is relevant if it
 (10) tends to make an issue in dispute more or less likely.
 (11) We submit that Captain Hazelwood's reliance on the Coast
 (12) Guard's monitoring and warning that would be given, which we
 (13) will show to be reasonable by the witnesses, is clearly a
 (14) circumstance and clearly relevant to the key issue of phase
 (15) one.
 (16) In other words, Your Honor, we offer this evidence only as
 (17) one of the circumstances involved in what was the magnitude of
 (18) the risk considered by Captain Hazelwood and whether they
 (19) consciously disregarded that. This evidence therefore is
 (20) simply offered on the issue of whether to be considered
 (21) together with all the other circumstances in determining
 (22) whether Captain Hazelwood was reckless when he left the bridge
 (23) at 11:52 p.m.
 (24) We think and we can show that he reasonably relied on the
 (25) fact that he was being monitored and that his vessel would be
 (26) warned if he - if it was standing into danger. This does not

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(1) excuse what we submit to be and concede to be negligent
 (2) conduct.
 (3) On behalf of Captain Hazelwood, but we do think it is very
 (4) relevant in respect to whether that conduct was reckless or not
 (5) and whether that conduct can be attributed to Exxon
 (6) Corporation.
 (7) As to 403, the other ground for their motion to exclude
 (8) this evidence, it is true that in a case where proof is
 (9) marginally relevant, the Court may exclude that marginally
 (10) relevant evidence because of a waste of time and confusion.
 (11) The proof here and that is for the limited purpose we were
 (12) offering it, that this is a circumstance to be considered by
 (13) the jury, this evidence, whether they believe it or not, we
 (14) will put on proof that that is a fact and that many juries
 (15) believe they were monitored and would be warned. We say that
 (16) this is not marginally relevant as a circumstance to be
 (17) considered on the core issue of recklessness in this case. We
 (18) say it will not be time-consuming. We submit to the Court we
 (19) will do this in less than five hours, wholly on deposition
 (20) testimony and we will submit not the 115 exhibits or whatever
 (21) it was, less than ten exhibits on this issue and we say it
 (22) will not confuse the jury, but it is a part of the res gestae
 (23) that evening, what was going on. We submit that the evidence
 (24) was not marginally relevant but highly relevant and we will do
 (25) it briefly. It will not waste time. It will not confuse the
 (26) issues. Thank you.

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(1) THE COURT: Mr. Oesting.
 (2) MR. OESTING: Well, it's obvious that the Coast Guard
 (3) wasn't going to call him in his cabin and Your Honor, even if
 (4) the existence of the system might be relevant, all of those
 (5) facts and all that testimony they want to offer about
 (6) cutbacks, items three and four in their own papers, on the
 (7) night of the grounding by reason of both undisclosed cutbacks
 (8) and negligence of the watchstanders on duty at the critical
 (9) time, none of that is relevant if their thesis is as Mr. Neal
 (10) just stated it, which was magnitude of the risk. Captain
 (11) Hazelwood chose to take on or was incapable of perceiving
 (12) even though reasonable men might have, when he departed the
 (13) bridge that night with a fatigued, undermanned and underskilled
 (14) bridge watch up there. But what happened after he left and why
 (15) it happened, as far as why that call didn't come, certainly has
 (16) no relevance at all. The fact at most could be that the call
 (17) didn't - that the VTS system didn't perform. Thank you.
 (18) THE COURT: Again, if you'll give me just a moment.
 (19) Again, I don't have it at my fingertips, the clerk's docket
 (20) number for this motion, but we are dealing with the plaintiffs'
 (21) motion in limine to exclude evidence of - it was phrased in
 (22) terms of evidence of Coast Guard negligence. That's really
 (23) not, I think, what we're focusing on here as much as it is some
 (24) particularities, what it is anticipated the defendants would
 (25) offer.

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(1) To the extent that there is any possibility here that the
 (2) offered evidence would go into the state of the art or the
 (3) quality of the equipment that the Coast Guard was using the
 (4) motion in limine will be granted I think it will - would
 (5) present a far greater risk of diverting our attention to
 (6) matters of minimal relevancy maybe even no relevance if we
 (7) were to get into what the equipment might have been That has
 (8) to do with possible Coast Guard negligence and is not an issue
 (9) in this case So to that extent if that were involved in what
 (10) the defendants propose to offer and I m not really entirely
 (11) clear whether it was or wasn t there was some suggestion the
 (12) motion will be granted as to that aspect of it
 (13) As to the more important aspect of this matter what was
 (14) there as far as the - is it called the VTS system?
 (15) MR NEAL VTC I call it
 (16) THE COURT VTC Anyway as to the system of
 (17) surveillance that the Coast Guard didn t have in place and
 (18) this may appear to go at the issue back I don t think it
 (19) presents a Rule 403 problem Or if we evaluate it as if it
 (20) were such a situation in this instance the proposed evidence
 (21) is very time appropriate to the incident that we re dealing
 (22) with unlike the situation we dealt with just a moment ago
 (23) this is information that was right on top the incident I
 (24) believe it has relevancy and I believe the risks that are
 (25) associated with using it do not outweigh the potential

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(1) relevancy In arguing the matter the plaintiffs focus on
 (2) Captain Hazelwood s situation and what he knew I think this
 (3) has some potentially broader application I don t think we
 (4) should focus just on how this evidence might affect Captain
 (5) Hazelwood s situation I think we must look at the overall
 (6) question of risks that were known and the potential offsets to
 (7) those risks of using tankers which were in place
 (8) I think this evidence with some possible limitations would
 (9) be relevant to the issues that we will try in phase one which
 (10) is basically the defendants conduct I will allow testimony
 (11) as to what the system was what it was capable of doing and
 (12) what it was expected to do I will not allow testimony as to
 (13) the quality of the equipment
 (14) I m very dubious about some of the other possible
 (15) extensions the number of people that were on watch in the
 (16) Coast Guard station As to those fine points I will monitor
 (17) that as we get into it but be forewarned that I question the
 (18) relevancy of some of these details but to the extent that the
 (19) system was in place and was known and potentially relied upon
 (20) I see that as being relevant under Rule 402 and I will deny the
 (21) motion as to that aspect of the proposed evidence
 (22) Third matter is testing
 (23) MR RUSSO Good afternoon Your Honor -
 (24) THE COURT Give me just a second I want to get these
 (25) notes straight before I start listening to you All right

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(1) MR RUSSO Good afternoon Your Honor my name is Tom
 (2) Russo I represent Captain Joseph Hazelwood in this
 (3) litigation This is a motion to preclude the introduction into
 (4) evidence in this case of the blood alcohol tests administered
 (5) to Captain Hazelwood The basis of this motion are basically
 (6) four first basis being that the chain of custody and lack of
 (7) integrity of the blood and urine samples gathered on March
 (8) 24th 1989 violate the criteria established in this district
 (9) for the introduction of such evidence
 (10) Secondly that the chain of custody and the gathering of
 (11) these samples also violate federal regulations which
 (12) specifically apply to this particular evidence
 (13) Thirdly that under Rule 403 this evidence may mislead the
 (14) jury relative to Captain Hazelwood s blood alcohol level
 (15) And fourthly that the plaintiffs apparently do not intend
 (16) to lay any foundation for the introduction of this evidence
 (17) and seem to be using this blood test and urine test strictly
 (18) under Rule 703 and our position on that is that because of its
 (19) inherent problems this is not the type of thing an expert
 (20) would reasonably rely on and they should not be permitted to
 (21) introduce this blood test information in that fashion
 (22) Now I d like to start off first with the chain of custody
 (23) and lack of integrity problems not because I think they are
 (24) necessarily the most important but they certainly are very
 (25) compelling and I m not intending to go through a detailed

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(1) litany of facts relative to this chain of custody because I
 (2) think we covered that pretty clearly in our opening brief but
 (3) I do have to just to make sure that Your Honor is focused in
 (4) on some of the real inherent problems that we have here go
 (5) through some of the highlights
 (6) We have testimony here from the medical corpsman that took
 (7) the blood and urine samples that the blood samples that he
 (8) took from Captain Hazelwood were in two gray 15 milliliter test
 (9) tubes and one red 17 milliliter test tube This corpsman
 (10) testified to that fact numerous times He told the NTSB this
 (11) was the case He told the Coast Guard this was the case He
 (12) testified in the criminal trial of Captain Hazelwood that this
 (13) was the case
 (14) As Your Honor probably knows by reading the brief when
 (15) this material eventually arrived at the laboratory it was
 (16) logged in by an experienced supervisor whose job it is to log
 (17) in samples such as this and accurately describe them very
 (18) importantly as to color and size of test tubes It was logged
 (19) in as three ten milliliter red stopper test tubes So right
 (20) off the bat we have a classic situation where what is sent
 (21) does not comport with what is received Significance of that
 (22) is very important not only in terms of the fact that there is
 (23) a misdescription and maybe these are not Captain Hazelwood s
 (24) test tubes but there is a significance between red stoppers
 (25) and gray stoppers for purposes of alcohol testing and the

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(1) significance is very important in this case because of another
 (2) factor in the chain of custody here and that is the fact that
 (3) these samples were not preserved properly they were not
 (4) refrigerated For at least 30 hours during the time that they
 (5) were originally collected on March 24th 1989 until the time
 (6) that they were tested in the lab on March 28th 1989 they were
 (7) unrefrigerated The significance being that gray stopper tubes
 (8) have a preservative red stopper tubes do not The
 (9) significance in this case being that if in fact there was a
 (10) mistake and that these were originally in red stopper tubes
 (11) during that period of time because of lack of refrigeration it
 (12) is likely and entirely conceivable that alcohol would be
 (13) generated in the tube and that s the reason that you use gray
 (14) stopper tube That s the reason that the federal regulations
 (15) and law enforcement and all forensic people that know anything
 (16) about alcohol testing insist that they be refrigerated from the
 (17) time collected until the time of testing So that is a very
 (18) very important problem in this chain of custody but it doesn t
 (19) stop there It doesn t stop there This is not just one
 (20) little problem with the chain of custody that can be explained
 (21) in some way We have numerous other problems with the chain
 (22) of
 (23) custody
 (24) The samples were on numerous occasions left unattended
 (25) which is another fatal flaw in the chain of custody on this
 (26) type of samples There is unrefuted unequivocal testimony

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(1) that the person that collected the samples when he got back to
 (2) Valdez left them unsecured in a galley refrigerator next to
 (3) the lettuce and the carrots for the entire night This was the
 (4) night of March 24th March 25th 1989 in Valdez
 (5) Now you have to imagine what the VTC station in Valdez was
 (6) that night There were people going in and out of there all
 (7) night It was a very busy night The galley was utilized
 (8) Everyone that was in the VTC center had access to the galley
 (9) and Captain Hazelwood s blood samples a very serious breach
 (10) in
 (11) the chain of custody But it doesn t stop there either
 (12) At some point in this scenario he puts the blood samples
 (13) on the window sill of his hotel room in Valdez and leaves them
 (14) there That isn t the end of it there When he gets back to
 (15) Anchorage taking the samples now in an unrefrigerated state
 (16) from Valdez to Anchorage he goes and gives them to Lieutenant
 (17) Stock and what does Lieutenant Stock do? He violates the
 (18) federal regulations relative to chain of custody He breaks
 (19) the seals on all the styrofoam boxes for all of the crew
 (20) members and takes out all the test tubes The whole purpose of
 (21) sealing these things in styrofoam boxes is so that they remain
 (22) in that sealed condition until they get to the laboratory For
 (23) some inexplicable reason this was done in this case
 (24) Furthermore Lieutenant Stock has testified that he did not
 (25) reseal these styrofoam boxes when he brought them and mailed
 (26) them through a private mailing service in Valdez So we have a

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(1) scenario where according to Lieutenant Stock these styrofoam
 (2) boxes were sent or at least delivered to this mailing service
 (3) in an unsealed condition
 (4) Now apparently the boxes are now mailed from this mailing
 (5) service to Sacramento California for testing by Federal
 (6) Express They are very important They are not sent in a
 (7) refrigerated or cooled condition which is a clear violation
 (8) not only of good practice for blood and urine and alcohol
 (9) testing but also a direct violation of the federal regulations
 (10) which mandate that they should be cooled And then of course
 (11) as I said before when in fact these samples are logged in by
 (12) this experienced technician she logs them in as three red
 (13) stoppered 10 milliliter test tubes
 (14) Now I think that the standard is pretty clear in the 9th
 (15) Circuit The plaintiffs have taken issue with our brief as to
 (16) what that standard is but I think if you read the cases that
 (17) it is in fact the same standard in fact the cases that they
 (18) cite do in fact make reference to the same seminal cases that
 (19) our cases refer to which is USC Pennick (ph) and basically
 (20) the standard is that the Court must be satisfied that in
 (21) reasonable probability the article meaning the blood and
 (22) urine samples has not been changed in important respects and
 (23) furthermore as cited in their case Will versus Henry Studios
 (24) the plaintiffs have to make a threshold showing that reasonable
 (25) precautions were taken against risk of alteration

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(1) contamination or adulteration and I submit that the evidence
 (2) in this case shows just the opposite The evidence in this
 (3) case shows an incredibly botched chain of custody and
 (4) preservation of these samples to such an extent that I think
 (5) the Court should preclude them from this case
 (6) Now I ve just discussed thus far the general standards
 (7) relative to the admissibility of blood and urine samples in the
 (8) 9th Circuit according to certain cases but in addition to
 (9) that you also have another factor here and that is federal
 (10) regulations These blood and urine samples were taken by the
 (11) Coast Guard pursuant to their authority under the CFR
 (12) specifically and this is discussed more fully in my brief but
 (13) specifically we re talking about 46 CFR parts 4 5 and 16 and
 (14) 46 CFR part 40
 (15) In conjunction with that the Coast Guard had the
 (16) responsibility to see to it that very specific regulations laid
 (17) out there relative to how these samples should be handled and
 (18) shipped and stored and sealed are followed and the reason that
 (19) Congress passed these regulations is because they know that
 (20) alcohol samples are very very susceptible to alteration and
 (21) contamination Unless they are handled in exactly a careful
 (22) way you may not get the right result It s clear these
 (23) regulations were violated
 (24) The Coast Guard itself acknowledged that in the
 (25) deposition of Admiral Paul Larson who stated that the reason

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(1) that the Coast Guard dismissed the intoxication charge against
 (2) Captain Hazelwood and his licensing revocation proceeding was
 (3) because they had determined that the blood and urine tests were
 (4) invalid because the federal regulations were not followed So
 (5) in other words the Coast Guard decided that according to its
 (6) own rules these samples were not good enough to be
 introduced
 (7) in a licensing revocation proceeding and now the plaintiffs
 (8) seek to introduce them in the United States District Court of
 (9) Alaska
 (10) Now the third part of my argument deals with 403 and that
 (11) also was a compelling argument insofar as what is the
 (12) plaintiffs seeking to introduce here This was not a blood
 (13) sample that was taken at the time of the grounding This is
 (14) not a blood and urine sample that was taken one or two or three
 (15) hours after the grounding which is generally the outer limit
 (16) for blood alcohol samples in most intoxication cases dealing
 (17) with DWIs for example no this was a blood sample that was
 (18) taken over ten hours after the grounding of the Exxon Valdez
 (19) Point I'm making that the only relevance that this has to
 (20) this case insofar as what Captain Hazelwood's condition was at
 (21) the time of the grounding is through a procedure known as
 (22) retrograde extrapolation and that procedure first of all is
 (23) inherently unreliable over that period of time and that's the
 (24) reason that most law enforcement bodies and most courts will
 (25) refuse to allow blood tests taken more than three hours after

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(1) an event because the variabilities in people's elimination
 (2) rates are such that the farther you go back the more
 (3) susceptible to error you are And if you go back ten hours
 (4) the error can be as high as a hundred percent
 (5) I think to allow this in would be a violation of 403 I
 (6) think would mislead the jury I think it's going to take a lot
 (7) of time to refute this evidence if in fact this evidence is
 (8) brought in Not only are we going to have to hear testimony
 (9) from Scott Connor who was the corpsman who took the samples
 (10) and from Gary Stock who was the Coast Guard officer who broke
 (11) the seals and Karen Metcalf who was the lab technician who
 (12) logged in the samples but we're also going to have to hear
 (13) from experts relative to the validity of the samples and the
 (14) validity of retrograde extrapolation So it's going to consume
 (15) a significant amount of court time It's going to be a big
 (16) battle and essentially we're talking about a blood test that
 (17) doesn't measure Captain Hazelwood's blood alcohol at the time
 (18) in question even if it was volunteered
 (19) Now the last point I want to make is that I think the
 (20) plaintiffs have always realized that they had significant
 (21) problems with this blood test and as a result of that they
 (22) have been trying to get it in through the back door so to
 (23) speak never really trying to get it in the traditional way
 (24) which would be to call all the people involved in the chain of
 (25) custody call the lab technician that did the test and get it

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(1) in the way you would expect to get in a blood test No what
 (2) they have done is designated one expert who they say is going
 (3) to testify as to the blood test that's Dr Smith I believe
 (4) and he's going to testify to this blood test just by looking at
 (5) this document and saying yes I'm an expert and under Rule
 (6) 703 I would reasonably rely on something like this so I'm
 (7) going to be able to use it to say that Captain Hazelwood was
 (8) drunk at the time of the grounding of the Exxon Valdez
 (9) The fact of the matter is that this particular laboratory
 (10) report would not be admissible in this case because they have
 (11) not laid any foundation for its admission they have not
 (12) authenticated it they do not plan to call any witness to do
 (13) so and furthermore because of all these problems I have
 (14) outlined this laboratory report would not be the type of thing
 (15) that any expert would reasonably rely upon because of the
 (16) inherent problems with it So bottom line here Judge is that
 (17) there are many many problems with this blood and urine test
 (18) and I think taking them all together there is an overwhelming
 (19) argument admitting it in this case and I really submit that
 (20) this circumstantial evidence so tainted and beyond the pale
 (21) that it should not be allowed in thank you
 (22) THE COURT Thank you Mr Russo
 (23) MR ADAMS Good afternoon Your Honor Kenneth Adams
 (24) of the - I'll be presenting the plaintiffs' opposition to this
 (25) motion

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(1) THE COURT Mr Adams
 (2) MR ADAMS First let me clarify one thing that was
 (3) mentioned both in the defendants' opening brief and again today
 (4) by Mr Russo and clear this up because I'm not sure where
 (5) their information comes from The lab test from ChemWest
 (6) Laboratories has been premarked as an exhibit It will be -
 (7) if there is not a stipulation as to the authenticity of the
 (8) test result we do have on our witness list the relevant three
 (9) witnesses with respect to the chain of custody and the lab
 (10) report that's Scott Connor who is on our witness list
 (11) Lieutenant Gary Stock of the Coast Guard and Karen Metcalf
 (12) they are all on our witness list They were put there by
 (13) agreement from the defendants during a recent round of
 (14) amendments to the witness list and are prepared to offer their
 (15) testimony if necessary by deposition It will not take very
 (16) long to do so I hope and expect if the Court denies the
 (17) motion there will be a stipulation with respect to the
 (18) admission of that document Lots of cross examination I'm sure
 (19) of Dr Smith but I don't think we're going to have much of an
 (20) issue as to what Scott Connor Lieutenant Stock and Karen
 (21) Metcalf would say as to the validity of the sample and the
 (22) test So with that out of the way let me go back to the
 (23) beginning if I may
 (24) I was not intending to spend any amount of time here this
 (25) afternoon addressing either the admissibility under Daubert

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(1) (ph) of retrograde extrapolation testimony in general I think
 (2) we have addressed that adequately It s routinely admitted in
 (3) this jurisdiction and others without regard to ten ours hours
 (4) or other numbers of hours Dr Rogers has been in cases with
 (5) more than that amount of time they have not put that at issue
 (6) in their papers Nor was I intending to spend any appreciable
 (7) amount of time on the admissibility of Dr Smith s testimony in
 (8) particular This is a classic situation where the expert on
 (9) our side after looking at all the testimony about the matter
 (10) in which the sample was taken preserved tested and so forth
 (11) refrigerated not refrigerated expresses an expert opinion
 (12) which he has done in other 300 instances before as part of his
 (13) routine works as far as employment and other surveys He will
 (14) give his opinion that the tests are such that he would rely on
 (15) them in his work
 (16) Presumably the defendants expert Dr Jensen will say the
 (17) contrary and that is the kind of dispute that juries always
 (18) weigh and judges in looking at witnesses and deciding the
 (19) creditability as to how much weight they will give the
 (20) testimony It s a classic jury issue going to weight and
 (21) admissibility I m not going to spend much time I think that s
 (22) clearly framed in briefs
 (23) The fact of the matter is that I don t believe that when
 (24) it s fairly read and parsed there are any facts or law
 (25) presented by the defendants on this motion which create any

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(1) serious issue here as to the admissibility of retrograde
 (2) extrapolation testimony or Dr Smith s expert opinion as to
 (3) Captain Hazelwood s state of sobriety or inebriation on the
 (4) night in question and the law is very clear that Dr Smith is
 (5) permitted to rely on the kind of information that people in his
 (6) field rely upon whether or not it is independently admissible
 (7) So let me use the time this afternoon to address the
 (8) defendants extensive arguments 45 pages of fact argument in
 (9) their brief designed to persuade the court that the lab report
 (10) is so lacking in integrity that the jury we spent all that time
 (11) picking - the jury which is to be the judge of the facts in
 (12) this the case should not be permitted to do what juries always
 (13) do which is to weigh the testimony and decide how much weight
 (14) and credibility to give it
 (15) They contend that the lab report in question is
 (16) inadmissible for one of two reasons Either because it was not
 (17) Captain Hazelwood s blood that was tested or because even if it
 (18) was Captain Hazelwood s blood that was tested the condition of
 (19) his blood may have changed materially from the time it was
 (20) drawn out of his arm on board the ship until the time that it
 (21) was tested due to the lack of continuous refrigeration during
 (22) some portions of that period
 (23) I m not sure where Mr Russo thinks there is a difference
 (24) between us On the legal standard I don t believe there is I
 (25) think our opposition brief clearly states as their reply

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(1) memorandum does the legal standard the legal standard on
 page
 (2) 5 of our brief that the tests like this blood alcohol tests
 (3) are admissible where the proponent in this case the plaintiff
 (4) shows a reasonable probability that the evidence has not been
 (5) materially altered Once we make a threshold showing the case
 (6) is said that reasonable precautions were taken against the
 (7) risk of alteration Beyond that point any challenges regarding
 (8) chain of custody and such go only to the weight of the evidence
 (9) for the jury to consider and not to admissibility Cases are
 (10) clear on that there is no difference between us that that is
 (11) the legal standard Those cases are discussed at 5 and 6 of
 (12) our memorandum The cases go onto say that the mere
 (13) possibility of tampering is not enough to render evidence
 (14) inadmissible on chain of custody grounds and as I ll show in a
 (15) moment I think it s very clear that is all that lies behind the
 (16) blizzard of recitation and all the smoke that is blown by the
 (17) defendants in their pleading and in court is the mere
 (18) possibility of tampering The cases make it clear 9th Circuit
 (19) cases specifically says that when evidence is handled by public
 (20) officials such as the Coast Guard here there is a presumption
 (21) of regularity a mere showing that an opportunity existed for
 (22) unlawful tampering is insufficient to justify exclusion
 (23) Affirmative evidence of bad faith or actual tampering is void
 (24) United States versus Codes (ph) in the 9th Circuit cited on
 (25) page 6 in our memorandum I submit Your Honor there has
 been

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(1) absolutely no evidence affirmative evidence of bad faith or
 (2) actual tampering none whatsoever despite five years of
 (3) intensive investigation and pretrial discovery in three
 (4) separate proceedings where Captain Hazelwood has had
 enormous
 (5) incentives to attack these samples and show they were tampered
 (6) with no evidence nothing more than the mere possibility
 (7) raised by the defendants
 (8) While our primary argument here and the law is that all of
 (9) the issues they have raised once we meet our burden prima
 (10) facia going forward all the issues they raise going to weight
 (11) and not admissibility there is a prima facia burden that the
 (12) proponent must meet and unless there be any question that we
 (13) have more than met it I realize that the papers that have been
 (14) filed here are coming to you amidst a great many papers on a
 (15) great many issues that there has been some 30 fact exhibits
 (16) offered by them perhaps ten by yourself and the time has been
 (17) short so just to be clear that we have a clear record in this
 (18) court today that the plaintiffs have absolutely met their
 (19) burden of going forward here let me just take the time and I
 (20) hope it s not more than five or ten minutes to pull together
 (21) in one place the facts which we have placed on the record which
 (22) more than meet our burden of going forward with respect to
 (23) admissibility and we ll remind the Court the law which we may
 (24) cite to you once we have done that all else is for the jury
 (25) goes to weight not admissibility So with that introduction

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(1) let me move quickly through what the record shows in this
 (2) case
 (3) It begins with Coast Guard officer Scott Connor who went
 (4) aboard the Exxon Valdez shortly after the grounding He
 (5) testifies on more than one occasion that he drew blood from
 (6) Captain Hazelwood and from other crew members they put
 (7) Hazelwood s blood in two gray and one red stoppered tubes that
 (8) those tubes had labels attached to them where he wrote Captain
 (9) Hazelwood s name and Social Security number on each tube that
 (10) had the blood on them He then sealed those tubes with orange
 (11) colored integrity seals which were on board the vessel in some
 (12) blood test kits they were labeled with Captain Hazelwood s
 (13) name and Social Security number They were placed into a
 (14) styrofoam container I m talking about Captain Hazelwood
 (15) because I think that s what the motion addressed There was
 (16) others that went into other styrofoam containers Also he
 (17) testified he placed Captain Hazelwood s urine sample which
 (18) also had his name and Social Security number on the label and
 (19) that had a red evidence seal as he recalls it I believe he
 (20) used the orange ones for the blood and he think he used the
 (21) red ones that he brought from the hospital but there were
 (22) orange and red security labels on the three vials of blood and
 (23) the urine samples Those four things samples were placed in a
 (24) styrofoam container which was then in turned sealed with the
 (25) security seal he believes it was the orange tape And that s

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(1) in his testimony that s part of Exhibit C to the defendants
 (2) opening memorandum It s from the omnibus hearing in
 (3) November
 (4) of 89 as well as Scott Connor s deposition in 1992 at page 137
 (5) as well as pages 131 and 138
 (6) Connor testifies then that he put the styrofoam container
 (7) in an unlocked refrigerator in the galley of the marine safety
 (8) office at the Coast Guard maintenance in Valdez when he got
 (9) back to town There is no evidence that while it was in that
 (10) galley refrigerator at the Coast Guard marine safety office
 (11) from Friday until later in the day until Saturday no evidence
 (12) in the record that anyone other than U S Coast Guard officers
 (13) had access to that refrigerator no evidence that anyone had
 (14) access to that styrofoam container or tampered with it in any
 (15) way shape or form
 (16) To the contrary Scott Connor testified under oath in his
 (17) deposition on page 283 that when he removed the styrofoam
 (18) container in which Captain Hazelwood s blood samples were
 (19) contained the following day on Saturday to take it to
 (20) Anchorage the outside security seals on the styrofoam
 (21) container were intact There was no evidence that anyone had
 (22) tampered with them He then testified that he carried it by
 (23) hand onto an airplane and kept it in his lap from Valdez to
 (24) Anchorage on Saturday where he gave it to Lieutenant Stock at
 (25) Coast Guard headquarters here in Anchorage as he had been
 ordered to do Again he testifies he had absolutely no reason

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(1) whatsoever to believe that at the time he handed over that
 (2) sealed styrofoam container to Lieutenant Stock on Saturday in
 (3) Anchorage that it had been disturbed or tampered with in any
 (4) way or the seals disturbed in any way That s what the record
 (5) reflects with respect to chain of custody up to the point where
 (6) the container with Captain Hazelwood blood and urine samples
 (7) turned over by Scott Connor to Lieutenant Stock So any
 (8) contentions that may be made about well there was the
 (9) possibility of access by someone while that container was in
 (10) Valdez in a refrigerator not in a refrigerator it s nothing
 (11) more than a mere possibility of tampering which the cases said
 (12) is not a enough They may wish to say that to the jury let
 (13) the jury speculate whether somebody did something There is no
 (14) evidence that anyone did and at the most the fact that it was
 (15) in the refrigerator unlocked refrigerator would go to weight
 (16) not admissibility
 (17) Let s go back to the sworn testimony now of Lieutenant
 (18) Stock now that he has the container He testifies that he did
 (19) open the styrofoam container on Saturday when he received
 (20) custody and checked to make sure that the actual sample tubes
 (21) themselves were not broken or leaking in anyway That the
 (22) seals the security seals on the samples were intact and that
 (23) the tubes and urine samples had proper identification on them
 (24) as to whose blood and urine it was Whether he should have
 (25) done that shouldn t have done that whether it was good

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(1) practice or bad practice whether the regulations that were
 (2) then in place said that should not or should be done I submit
 (3) if it s relevant at all in this case it will go to weight not
 (4) admissibility The fact that those regulations were or were
 (5) not followed does not show that anybody tampered with
 (6) anything Lieutenant Stock testified in his deposition at page
 (7) 27 that when he opened that styrofoam container he found in
 (8) a chain of custody form with Captain Hazelwood s initials on
 (9) it that his blood had been taken and placed in there he found
 (10) vials of blood which were properly sealed with security seals
 (11) that the seals had not been tampered with and that Captain
 (12) Hazelwood s name and Social Security number were on it He
 (13) then - by the way he testified he saw different colored
 (14) stoppers on the vials that s on page 31
 (15) He testified that he stored the styrofoam container in a
 (16) locked refrigerator in a government controlled warehouse in
 (17) Anchorage that s on page 63 That he took personal possession
 (18) to the only key to the refrigerator locked the refrigerator
 (19) The warehouse was locked and he left That was Saturday
 (20) afternoon You recall this was Easter weekend they were not
 (21) able to find anybody who was experienced in shipping blood and
 (22) urine samples who would take hold of these and package them
 (23) and
 (24) ship them over the Easter weekend for deliver prior to Monday
 (25) So they kept them in that locked refrigerator in that locked
 warehouse over the weekend and now there is some mixed

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(1) testimony during Easter Sunday someone else may have gone into
 (2) the warehouse from access to a Coast Guard or not I submit
 (3) it makes absolutely no difference the most that it could show
 (4) would be the mere possibility there is no evidence of
 (5) tampering at all as of this point
 (6) So what happens next Lieutenant Stock goes to the
 (7) warehouse on Monday morning early and he picks up - he
 (8) unlocks the refrigerator he takes out the styrofoam containers
 (9) of the various crew members again he testifies that he looked
 (10) inside to make sure that the security seals on the sample tubes
 (11) themselves were intact that there was no breakage or leakage
 (12) leaking that all the tubes had the proper identification
 (13) matching up with the chain of custody form inside the styrofoam
 (14) container and that everything was the way it should be and
 (15) had not been disturbed over the weekend that s on page 70 to
 (16) 72 of his deposition
 (17) He testifies under oath then that he hand carried those
 (18) samples in the styrofoam container to the shipping company a
 (19) company which was experienced in shipping blood and urine
 (20) samples for hospitals He testified under oath that he stood
 (21) there and watched as the gentleman took Hazelwood s and the
 (22) other styrofoam containers and packaged them in the correct
 (23) kind of packaging and sealed those packages with shipping
 (24) tape At that point he signed over the samples the chain of
 (25) custody form to the shipping company and that was the last he

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(1) had to do with it There is no question - no hint in any of
 (2) the pleadings in any of the five years of investigation they
 (3) have done that there was any irregularity in the shipping and
 (4) handling of these things that they got from that point to the
 (5) laboratory in proper form I think they got there Monday
 (6) night So there is no issue there
 (7) So here we our now on Monday morning and there is no
 (8) question that the seals on the sample tubes are right where
 (9) Scott Connor put them on Friday morning the tubes still have
 (10) Joe Hazelwood s name and Social Security number on them
 (11) there
 (12) is no evidence that anyone has tampered with them in any way
 (13) shape or form that s Scott Connor s testimony under oath at
 (14) the time he turned them over to Lieutenant Stock It s
 (15) Lieutenant Stock s testimony under oath at the time he turned
 (16) them over and saw them wrapped for shipping
 (17) The last person in the chain here relevant to this motion
 (18) is Karen Metcalf and these are the three people whose
 (19) depositions need be are prepared to read at trial they are
 (20) on our witness list and have been for the last week or so
 (21) Karen Metcalf has testified in various depositions her
 (22) testimony is that when the samples were received at ChemWest
 (23) they were in tubes which were inside styrofoam boxes That she
 (24) opened the styrofoam box with Captain Hazelwood s blood and
 (25) urine sample that she took them out verified that the seals
 (26) were in fact on the tubes and that the names on the tubes

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(1) matched up with the chain of custody form in the box and she
 (2) then put them in the correct place for the lab technician to do
 (3) the testing Those are the facts on the record that the
 (4) plaintiffs submit more than meet our burden under the case law
 (5) here of showing that reasonable precautions were taken against
 (6) the risk of alteration that there is a reasonable probability
 (7) that the blood in those tubes those sealed tubes was not
 (8) materially altered between the time Scott Connor put them in
 (9) the tubes and sealed them until the time those sealed tubes
 (10) were opened at the laboratory And any suggestions that the
 (11) defendants wish to make as to the mere possibility that someone
 (12) could have done something to alter those tubes and put
 (13) somebody
 (14) else s blood in them would certainly go to weight not to
 (15) admissibility of the jury s right to hear the evidence and
 (16) weigh it for the themselves
 (17) The next part of their argument is that well even if this
 (18) was Joseph Hazelwood s blood that got to the laboratory with
 (19) his name on it it s possible that what was in the tube could
 (20) have been altered in such a fashion that the test results are
 (21) not reliable in telling us what the blood alcohol level was in
 (22) Joseph Hazelwood s body at the time the blood was drawn from
 (23) him the morning of the grounding and they argue that that s
 (24) true because the samples were not properly refrigerated
 (25) Well I submit to the court that you can pretty well ignore
 (26) all of the testimony about during which hours they were in a

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(1) refrigerator and which hours they weren t because ultimately
 (2) the defendants acknowledge that refrigeration according to
 (3) their own expert refrigeration is of no consequence here
 (4) unless you believe that the blood was in red stoppered tubes
 (5) which had no preservative and anticoagulants and in that
 (6) respect I would invite the Court s attention to Este Mezey
 (7) M e z e y and this is attached as Exhibit B to the defendants
 (8) reply memo where he says that it would not be necessary to
 (9) refrigerate blood samples that has preservatives in it that
 (10) refrigeration is only material here in terms of the risk that
 (11) there is additional alcohol formation in the test tube between
 (12) the time it s drawn and the time it s tested but that risk
 (13) only pertains if you have blood in a red stopper tube with no
 (14) preservative and there is not continuous refrigeration
 (15) So in order for the refrigeration issue to be an issue you
 (16) have to believe that Scott - either that Scott Connor is lying
 (17) as is Lieutenant Stock when they tell us under oath that
 (18) Captain Hazelwood s blood was in two gray stopper tubes and
 (19) one
 (20) red stopper tube you have to believe that the people in the
 (21) laboratory are lying about the color of the tubes but most of
 (22) all the jury if it were going to consider all this and decide
 (23) the weight and so forth the jury would have to ignore the
 (24) following facts which are set forth and undisputed in the
 (25) affidavit of Dr Smith our expert and that s attached to our
 (26) memorandum as Exhibit A

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(1) Dr Smith whose expertise I will not belabor the court with
 (2) now it's well set forth in our memo this is a man who works in
 (3) this field on a continuing basis not just in lawsuits but in
 (4) the field and making determinations of whether employees
 should
 (5) or should not be terminated serious things like that Dr
 (6) Smith says in his affidavit at page 4 it's his opinion Having
 (7) reviewed all of these depositions and the facts that the
 (8) defendants have raised in their own experts affidavits and so
 (9) forth that there was no fatal flaw in the handling or testing
 (10) of these specimens which would impeach their reliability of the
 (11) lab results or require that the blood and alcohol findings be
 (12) discarded
 (13) More to the point on this red versus gray stoppered tubes
 (14) and the need for refrigeration Dr Smith explains to us in
 (15) paragraph eight and nine of his affidavit as follows First
 (16) let me tell you what he says in his own words to make sure I
 (17) understand it and then I'll tell you the way it says it since
 (18) it's complicated
 (19) As I understand it from his affidavit the reason that you
 (20) use gray stoppered tubes with the preservative and
 (21) anticoagulants is so that you have whole blood to test The
 (22) red tube has neither preservative or anticoagulant and what the
 (23) laboratory gets from a red tube blood by the time it gets
 (24) there it has clotted and you have clotted material and you
 (25) have clear blood serum And for certain kinds of drug testing

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(1) serum testing is done from whole blood and in cases like this
 (2) that's where it's done that you have both Dr Smith explains
 (3) from whole blood in gray and serum in a red tubes it's
 (4) obvious visible to the naked eye It's not a matter that
 (5) someone is going to make a mistake about We haven't had
 (6) occasion to talk about that but the papers reflect the papers
 (7) on this motion there were two laboratories that tested these
 (8) samples first they were tested at ChemWest and then they were
 (9) tested for corroboration at a second laboratory whose findings
 (10) agreed entirely with those at ChemWest Both laboratories
 (11) report in their reports that what was tested was blood not
 (12) serum So you would have to believe that these laboratories
 (13) didn't notice that the blood was separated out and that they
 (14) were testing serum instead of blood which apparently you use
 (15) different standards for testing You would have to believe all
 (16) those things in order to believe that the defendants have
 (17) rebutted the presumptions they attained in terms of
 (18) admissibility on the showing we've made Dr Smith says and I
 (19) quote in his affidavit the laboratory results of both ChemWest
 (20) and the Center for Hemotoxicology that's the second lab that
 (21) blood not serum was tested Specimens in red stopper tubes
 (22) will rapidly separate out into clear serum and solid blood cell
 (23) matter That is due to the fact that red stopper contains no
 (24) anticoagulant agent Gray stoppers contain a preservative and
 (25) anticoagulant Blood and serum are easily distinguished by

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(1) the naked eye and a lab will know since blood and serum will
 (2) manifest different alcohol concentrations Therefore since it
 (3) is my opinion that the Hazelwood specimens tested must have
 (4) been in gray stoppered tubes which consistent with Connor's
 (5) testimony Stocks testimony and much of the testimony from the
 (6) ChemWest people though as Mr Russo told you there is one
 (7) piece of paper in ChemWest which calls them red stoppered
 (8) maybe somebody was looking at the orange and red tape It
 goes
 (9) to weight not admissibility It certainly does not show any
 (10) evidence as the cases require affirmative evidence of actual
 (11) tampering none whatsoever Finally Dr Smith concluded that
 (12) given his opinion that the tested specimens were in a gray
 (13) stoppered tubes with a preservative There is no issue as to
 (14) any possibility that the blood specimens may have been
 (15) contaminated by significant bacteria that's what they say
 (16) would happen if you didn't refrigerate a red stoppered tube
 (17) and then tried to test it as if it was whole blood
 (18) Let me wind up by saying that in the face of all this it
 (19) seems to me clear that the plaintiffs have met their burden of
 (20) showing that reasonable precautions were taken against the risk
 (21) of alteration tubes were sealed and labeled with Captain
 (22) Hazelwood's name and Social Security number before they went
 (23) into that styrofoam box they were kept by Connor or by Stock
 (24) all the way through from the brief times they were out of
 (25) their direct custody They were in controlled situations

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(1) either Coast Guard facility or a government warehouse in a
 (2) locked refrigerator Each time they were taken out the seals
 (3) on the tubes or outer container were unbroken absolutely no
 (4) evidence of tampering whatsoever This all adds up in our
 (5) view to the inescapable conclusion that the lab report is
 (6) admissible in this case once we lay the proper foundation as
 (7) we indicated we will through those depositions It is
 (8) admissible just as the defendants quite frankly conceded a
 (9) month ago when they filed their revised federal witness list on
 (10) April 12th and that pleading in this case they said that the
 (11) blood test evidence is probably admissible They were
 (12) understating it it is admissible they were acknowledged that
 (13) it's probably admissible At least we've shown that it's
 (14) admissible and they have offered nothing more than the mere
 (15) possibility of alteration or tampering that goes only to the
 (16) weight not the admissibility
 (17) Finally let me just come back to where I started and let
 (18) me remind the Court of that portion of our brief where we show
 (19) that the admissibility the independent admissibility of this
 (20) piece of paper of the lab report is not determinative of the
 (21) admissibility of Dr Smith's testimony with respect to his
 (22) opinion his expert opinion as to the level of Captain
 (23) Hazelwood's sobriety at the time of the grounding
 (24) Of course that will be controverted by other experts but
 (25) that's what juries do they listen to controverted testimony

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(1) they decide the weight to give to it decide the credibility of
 (2) the witness and they render on it Any questions if not I
 (3) have nothing further
 (4) THE COURT Mr Russo?
 (5) MR RUSSO Your Honor I m going to be very brief
 (6) but I do have a few things that I have to say in light of what
 (7) counsel just said
 (8) First of all despite what counsel says they do not intend
 (9) to lay a proper foundation for the independent introduction of
 (10) this blood test material The testimony of Lieutenant Stock
 (11) and Karen Metcalf is not sufficient to lay an introduction for
 (12) this information They do not intend to call in the laboratory
 (13) technician either in deposition or any way shape or form
 (14) authenticated the blood test report There are no exhibits
 (15) dealing with the laboratory notes or any of the other
 (16) traditional things that would have to be done in order to put a
 (17) blood test into evidence
 (18) Secondly everything just about everything that counsel
 (19) has said in no way relates to the urine in terms of
 (20) preservative for example Urine absolutely has to be
 (21) refrigerated under all circumstances before it can be used for
 (22) any type of blood alcohol testing and there were other
 (23) problems you have to void your bladder and take another
 (24) sample
 (25) 20 minutes later in order to have a valid test So even if you
 (26) were to assume what he said true you d still have to throw out

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(1) the urine
 (2) Couple of other points that I think should be mentioned
 (3) The galley that we re talking about where these samples were on
 (4) the night in question for overnight they were next to the
 (5) lettuce and carrots and it was open to the public it isn t a
 (6) closed Coast Guard facility There were people from every
 (7) place going in and outside of Valdez VTC on that night As far
 (8) as his statement that this is the mere possibility of
 (9) tampering with all of these problems where you have the Coast
 (10) Guard saying it sent tubes of a certain size and color to a lab
 (11) and a lab getting test tubes of a different size and color if
 (12) that isn t circumstantial evidence of tampering I don t know
 (13) what is There is also another thing that would indicate
 (14) tampering and that is Lieutenant Stock testified that he did
 (15) not reseal the styrofoam boxes when he gave them to the
 (16) shipping company for mailing to the lab The lab documents and
 (17) Karen Metcalf say that they were sealed when she received
 (18) them That would indicate that someone other than Lieutenant
 (19) Stock entered the chain of custody between the time that they
 (20) were mailed and the time that they were delivered to the lab
 (21) It s also curious to note that Karen Metcalf was not the first
 (22) person to receive those samples from the lab She testified
 (23) that they came in after hours the night before and that there
 (24) were at least two other people that are not on the chain of
 (25) custody that had handled those samples before she got them

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(1) She doesn t know whether they were refrigerated or what
 (2) happened to them before she got them A very unusual
 (3) occurrence
 (4) I think Judge that if there ever was a situation where a
 (5) chain of custody is so botched up that it warrants the
 (6) exclusion of the evidence in the United States District Court
 (7) on a case of this magnitude this has got to be it Thank you
 (8) very much
 (9) THE COURT Just a moment please
 (10) Again we re dealing with a defendants motion in limine to
 (11) exclude evidence of blood and urine tests For purposes of
 (12) planning your opening statements you should assume that I will
 (13) grant the motion in limine as to the urine sample and that I
 (14) will deny it as to the blood samples I think on this motion
 (15) because of its potential importance to this case we will
 (16) probably in due course give you a written ruling on this
 (17) motion You may make the assumptions I ve just given you for
 (18) purposes ever your opening statements I want to say a little
 (19) bit more about this particular motion though
 (20) I m really really concerned about how so important a
 (21) matter came as late as it did in this case To make matters
 (22) worse we got some kind of a corrected brief at about 9 00 this
 (23) morning which I didn t see until 11 00 after we had finished
 (24) our work on this
 (25) That practice has simply got to stop at this phase of

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(1) things Once you file a document in connection with anything
 (2) that we re doing with you re through I will not accept any
 (3) more of these corrected filings which we ve been receiving in
 (4) far too significant numbers Finally we are not going to have
 (5) this kind of time to devote to evidentiary matters from this
 (6) point on Counsel have ignored my suggestion about the
 (7) amount
 (8) of time we devote especially with regard to this last motion
 (9) I concede you that because it was a very important motion but
 (10) know that we are not going to spend this time kind of time on
 (11) evidentiary matters from this time on I simply have to have
 (12) several hours a day to work on other things during the course
 (13) of this trial I will have that You re going to have to
 (14) concede me that and whatever problems flow from it that s
 (15) just the way it s going to have to be We re going to have to
 (16) take care of these matters in a more efficient way than this
 (17) last one was taken care of Is there anything else that we
 (18) need to be thinking about today and before we start Monday
 (19) morning
 (20) MR LYNCH I think not Your Honor
 (21) MR O NEILL Nothing sir
 (22) MR LYNCH We have some things we were discussing
 (23) but anything we could take up with the Court has been resolved
 (24) THE COURT Thank you very much
 (25) MR O NEILL Thank you for your help
 (26) MR NEAL Thank you

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- (1) THE COURT We ll see you 8 00 Monday morning
- (2) (Proceedings recessed at 5 00 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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totally to yourself

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MIDNIGHT SUN COURT REPORTERS

907-258-7100

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY

Vol 5 1

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA
) re) Case No. A89 0095 CIV (HRH)
) Anchorage Alaska
 (15) The EXXON VALDEZ) Monday May 9 1994
 (16)) 8:10 a.m.
 TRANSCRIPT OF PROCEEDINGS
 TRIAL BY JURY 5TH DAY
 (17) BEFORE THE HONORABLE M. RUSSEL HOLLAND JUDGE
 (18) VOLUME 5 Pages 1 195
 Realtime Transcription
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PROCEEDINGS
 (1) (Jury in at 8:05 a.m.)
 (2) THE CLERK: All rise
 (3) (Call to Order of the Court)
 (4) THE COURT: Good morning ladies and gentlemen
 (5) MR O NEILL: Good morning Judge
 (6) THE COURT: This is a continuation of the case
 (7) A89 0095 civil in re the Exxon Valdez
 (8) We have seated a jury in this case good morning ladies and
 (9) gentlemen Is there any reason why I should not go straight to
 (10) my preliminary instructions?
 (11) MR O NEILL: There is none Your Honor
 (12) MR NEAL: No Your Honor
 (13) MR CHALOS: None that we can tell Your Honor
 (14) THE COURT: Ladies and Gentlemen of the Jury these
 (15) preliminary jury instructions are intended to serve as an
 (16) introduction to the trial of this case These instructions are
 (17) not a substitute for the detailed instructions on the law and
 (18) evidence which I will give you at appropriate times during the
 (19) trial of this case and before you retire to consider a
 (20) verdict We are about begin the trial of the case about which
 (21) you've heard some details during the process of jury
 (22) selection
 (23) Before the trial begins however there are certain
 (24) instructions you should have in order to better understand what

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 (14) Dep. by Clerk) TOM MURTIASHAW
) U.S. District Court
 (15)) 222 W 7th Avenue #4
) Anchorage AK 99513
 (16)) Ph: 907/271 4529
 (17) Reported by) Jay S Brauer
) Registered Professional Reporter
 (18)) Midnight Sun Court Reporters
) 2550 Denali Street Suite 1505
 (19)) Anchorage AK 99503
 (20)) Ph: 907/258-7100

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(1) will be presented to you and how you should conduct yourselves
 (2) during the trial
 (3) The parties who bring a lawsuit are called plaintiffs In
 (4) this trial numerous lawsuits filed by a very large number of
 (5) plaintiffs have been consolidated for presentation at this
 (6) trial by order of the Court and agreement of the parties In
 (7) this trial the plaintiffs who will participate are commercial
 (8) fishermen and their crews who hold permits used - who hold
 (9) permits issued by the State of Alaska entitling them to fish
 (10) for salmon and herring in the geographical areas generally
 (11) known as Prince William Sound the Kodiak Island area lower
 (12) Cook Inlet Upper Cook Inlet Chignik Lagoon and all of these
 (13) are in Alaska
 (14) Also participating in this trial will be the native
 (15) Alaskans who have engaged or participated in the harvesting
 (16) consumption and other uses of natural resources in the
 (17) geographical areas just described
 (18) The plaintiffs against whom - I'm sorry the parties
 (19) against whom the suit is brought are called defendants In
 (20) this case they are Exxon Shipping Company and Exxon
 (21) Corporation They will be referred to throughout the trial as
 (22) the quote Exxon defendants end quote and may be
 (23) considered
 (24) one party for all purposes
 (25) Joseph Hazelwood has also been named as a defendant in this
 case The parties seek compensation for their actual losses

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(1) which they claim to have been legally caused by the grounding
 (2) of the oil tank vessel Exxon Valdez on Bligh Reef on March 24
 (3) 1989 and the discharge of a large quantity of North Slope crude
 (4) oil into Prince William Sound and adjacent areas
 (5) This evidence will be referred to throughout the trial as
 (6) the Exxon Valdez oil spill or simply the oil spill
 (7) In addition plaintiffs seek punitive damages from the
 (8) Exxon defendants and Hazelwood
 (9) The Exxon defendants admit that Joseph Hazelwood the
 (10) captain of the Exxon Valdez was negligent in leaving the
 (11) bridge of the vessel on the night of the grounding that such
 (12) negligence was a legal cause of the oil spill and that the
 (13) Exxon defendants are responsible for this act of negligence
 (14) The Exxon defendants contend that there were other legal
 (15) causes
 (16) of the grounding as well Defendant Hazelwood denies that he
 (17) was negligent in any manner The Exxon defendants and
 (18) Hazelwood deny the claim for punitive damages
 (19) Next all parties have agreed that any acts or omissions of
 (20) Exxon Shipping Company or any knowledge or information
 (21) chargeable against Exxon Shipping Company shall be
 (22) chargeable
 (23) against the Exxon defendants and each of them
 (24) Third all parties have agreed that any acts or omissions
 (25) of Exxon Corporation or any knowledge or information
 chargeable
 (1) against Exxon Corporation shall be chargeable against the
 Exxon
 (2) defendants and each of them

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(1) Fourth all parties agree that Exxon Shipping Company was
 (2) the owner and operator of the Exxon Valdez and Exxon
 (3) Corporation owned the cargo of Alaska North Slope crude oil
 (4) that was aboard the Exxon Valdez at the time of the grounding
 (5) Accordingly the Exxon defendants are strictly liable for
 (6) damages proximately caused by the spill pursuant to the terms
 (7) of Alaska Statutes 46 03 822
 (8) Fifth the Exxon defendants have stipulated one that
 (9) Captain Hazelwood was voluntarily hospitalized in April 1985
 (10) for treatment that included alcohol rehabilitation and that
 (11) senior management of Exxon Shipping Company learned of
 (12) such
 (13) treatment contemporaneously
 (14) Two that senior management knew in may 1985 shortly
 (15) after his discharge from the hospital that Captain Hazelwood s
 (16) admitted that in the past he had occasionally consumed
 alcohol
 (17) aboard Exxon vessels and that he had returned to his ship from
 (18) port drunk several times
 (19) And three that such conduct constituted a clear violation
 (20) of Exxon Shipping Company s prohibitions against the use of
 (21) alcohol and/or intoxication aboard Exxon vessels
 (22) Six the Exxon defendants stipulate that at all times
 (23) relevant to this action they have been aware that
 (24) transportation of large quantities of Alaska North Slope crude
 (25) by tanker through Prince William Sound involved the risk that
 if a casualty resulted in a major oil spill the spill could

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(1) result in significant impact on the environment of Prince
 (2) William Sound and its environs
 (3) Due to the number of plaintiffs asserting claims for
 (4) damages the parties have agreed to divide the trial into two
 (5) and possibly three parts or phases These phases may be
 (6) generally described as follows
 (7) In phase one plaintiffs will seek to prove one that the
 (8) Exxon defendants conduct leading up to the grounding of the
 (9) Exxon Valdez on March 24 1989 was reckless and two that the
 (10) reckless conduct was a legal cause of the grounding of the
 (11) Exxon Valdez Also in this phase plaintiffs seek to prove
 (12) that defendant Hazelwood was reckless or at least negligent
 (13) Negligence is the failure to use such care as a reasonable
 (14) prudent and careful person would use under similar
 (15) circumstances Reckless conduct differs from negligence
 (16) Reckless conduct requires a conscious choice of a course of
 (17) action either with knowledge of a serious danger to others or
 (18) with knowledge of facts which would disclose the danger to any
 (19) reasonable person
 (20) In phase one the Exxon defendants will contend that the
 (21) conduct that resulted in the grounding of the Exxon Valdez was
 (22) not reckless as distinguished from being merely negligent
 (23) The negligence of the Exxon defendants will not be an issue in
 (24) this trial Defendant Hazelwood will contend that he was not
 (25) reckless or negligent

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(1) At the end of this first part of the trial you will be
 (2) asked to render a verdict as to the phase one issues on the
 (3) basis of the evidence presented and the instructions on the
 (4) law which I will give you at the close of the evidence and
 (5) after the presentation of the arguments of counsel
 (6) In phase two the parties will present evidence for and
 (7) against claims for some of the actual damages alleged to have
 (8) been caused by the oil spill This phase will be divided into
 (9) two parts which we will call phase two A and phase two B In
 (10) phase two A - strike that
 (11) Phase two A will relate to claims made by commercial
 (12) fishermen and their crews for compensatory damages In
 phase
 (13) two B the parties will present evidence for and against claims
 (14) made by Alaskan natives for actual damages We will have
 (15) opening and closing arguments and instructions of the law as to
 (16) each sub part of phase two You will be asked to return a
 (17) verdict on the fishermen s claims for damages at the end of
 (18) phase two A and a separate verdict on the Alaska natives
 (19) claims for damages at the end of phase two B
 (20) If at the end of phase one you find that the grounding was
 (21) legally caused by reckless acts or omissions attributable to
 (22) the Exxon defendants phase two B will be followed by phase
 (23) three of the trial If at the end of phase one you find that
 (24) the grounding was not legally caused by reckless acts or
 (25) omissions attributable to the Exxon defendants there will be

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- (1) no third phase of this trial
- (2) Phase three of the trial if held will deal with the
- (3) claims of plaintiffs that they should recover punitive damages
- (4) from the Exxon defendants Punitive damages are not favored in
- (5) the law and are never awarded as a right no matter how
- (6) egregious the defendant s conduct but may be imposed for that
- (7) conduct which manifests reckless or callus disregard for the
- (8) rights of others Punitive damages serve the purpose of
- (9) punishing a defendant of teaching a defendant not to do it
- (10) again and of deterring others from following the defendant s
- (11) example
- (12) If you have found the Exxon defendants to have acted
- (13) recklessly the plaintiffs will ask for punitive damages The
- (14) Exxon defendants deny that any punitive damages are warranted
- (15) in this case even if you return a verdict of reckless conduct
- (16) at the end of phase one of this trial
- (17) Again phase three of the trial will begin with opening
- (18) statements by the plaintiffs outlining their claims The Exxon
- (19) defendants may also make opening statements outlining their
- (20) case immediately after plaintiffs statement At the
- (21) conclusion of the evidence introduced by plaintiffs and the
- (22) Exxon defendants during phase three of the trial the parties
- (23) will present closing arguments At the end of these arguments
- (24) I will instruct you on the law which you are to apply in
- (25) reaching your verdict for phase three of the trial

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- (1) In each phase of this trial you will determine the facts
- (2) from all the testimony that you hear and from the exhibits
- (3) which have been admitted into evidence
- (4) Your function as jurors is to find and determine the facts
- (5) of this case Under our system of civil procedure you are the
- (6) sole judges of the facts If at any time I should make any
- (7) comment regarding the facts you are at liberty to disregard
- (8) it It is equal - it is especially important that you perform
- (9) your duty of determining the facts diligently and
- (10) conscientiously for ordinarily there is no means of correcting
- (11) an erroneous determination of facts by a jury
- (12) On the other hand and with equal justice I instruct you
- (13) that the law as given by the Court constitutes the only law for
- (14) your guidance and it is your duty to accept and follow it It
- (15) is your duty to follow the law as I give it to you even though
- (16) you may disagree with my statement of the law
- (17) The burden is on the plaintiff in a civil action such as
- (18) this to prove every essential element of his claim by a
- (19) preponderance of the evidence If the proof should fail to
- (20) establish any essential element of plaintiffs claim by a
- (21) preponderance of the evidence in the case the jury should find
- (22) for the defendant as to that claim
- (23) To quote establish by a preponderance of the evidence
- (24) end quote means to prove that something is more likely so than
- (25) not so In other words a preponderance of the evidence in the

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- (1) case means such evidence as when considered and compared
- (2) with
- (3) that opposed to it has more convincing force and produces in
- (4) your minds belief that what is sought to be proved is more
- (5) likely true than not true This rule does not of course
- (6) require proof to an absolute certainty since proof to an
- (7) absolute certainty is seldom possible in any case
- (8) The evidence from which you are to decide what the facts
- (9) are consist of one the sworn testimony of witnesses both on
- (10) direct and cross examination regardless of who called the
- (11) witness Two the exhibits which have been received in
- (12) evidence and three any facts to which all the lawyers have
- (13) agreed or stipulated
- (14) Many of the exhibits will be presented to you on television
- (15) screens Exhibits thus presented are entitled to the same
- (16) consideration by you as physical exhibits in the form of papers
- (17) or objects received into evidence Depositions may also be
- (18) received in evidence Depositions contain sworn testimony of
- (19) witnesses with counsel for each party being entitled to ask
- (20) questions Testimony produced in a deposition may be read to
- (21) you in open court or may be played for you on a television set
- (22) from a videotape player Deposition testimony is to be
- (23) considered by you subject to the same instructions which apply
- (24) to witnesses testifying in open court
- (25) Statements and arguments of counsel are not evidence in the

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- (1) or a stipulation of fact When the attorneys on both sides
- (2) stipulate or agree to the existence of a fact you must unless
- (3) otherwise instructed accept the stipulation as evidence and
- (4) regard the fact as proved in this trial
- (5) Any evidence as to which an objection has been sustained by
- (6) the Court and any evidence ordered stricken by the Court must
- (7) be entirely disregarded Anything you may have seen or heard
- (8) outside the courtroom is not evidence and must be entirely
- (9) disregarded
- (10) Some evidence is admitted for a limited purpose only When
- (11) I instruct you that an item of evidence has been admitted for a
- (12) limited purpose you may consider it only for that limited
- (13) purpose and for no other
- (14) You are to consider only the evidence in the case but in
- (15) your consideration of the evidence you are not limited to the
- (16) bald statements of the witnesses In other words you are not
- (17) limited solely to what you see and hear as the witnesses
- (18) testify You are permitted to draw from the facts which you
- (19) find have been proved by the evidence introduced at trial such
- (20) reasonable inferences as you feel are justified in the light of
- (21) your experience
- (22) In deciding the facts of this case you will have to decide
- (23) which witnesses to believe and which witnesses not to believe
- (24) You may believe everything a witness says or only part of it
- (25) or none of it In deciding what to believe you may consider a

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(1) number of factors including the following One the witness
 (2) ability to see or hear or know the things the witness testified
 (3) to two quality of the witness memory three the witness
 (4) manner while testifying four whether the witness had any
 (5) interest in the outcome of the case or any motive bias or
 (6) prejudice five whether the witness was contradicted by
 (7) anything the witness said or wrote before trial or by other
 (8) evidence and six how reasonable was the witness testimony
 (9) when considered in the light of other evidence which you
 (10) believe
 (11) A witness may be discredited or impeached by contradictory
 (12) evidence or by evidence that at some other time the witness has
 (13) said or done something or has failed to say or do something
 (14) which is inconsistent with the witness present testimony
 (15) If you believe any witness has been impeached and thus
 (16) discredited It is your exclusive province to give the
 (17) testimony of that witness such credibility if any as you may
 (18) think it deserves
 (19) If a witness is shown knowingly to have testified falsely
 (20) concerning any material matter you have a right to distrust
 (21) such witness testimony in other particulars and you may
 (22) reject all the testimony of that witness or give it such
 (23) credibility as you may think it deserves
 (24) An act or omission is quote knowingly unquote done if
 (25) done voluntarily and intentionally and not because of mistake

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(1) you in any way in your determination of the facts At times I
 (2) may ask questions of witnesses If I do so it is for the
 (3) purpose of bringing out matters which I feel should be brought
 (4) out and not in any way to indicate my opinion about the facts
 (5) or to indicate the weight I feel you should give the testimony
 (6) of the witness
 (7) Attorneys representing the parties in this trial have a
 (8) right and duty to object to questions or argument offered by
 (9) the opposing side if such attorneys believe in good faith that
 (10) such offered evidence questions or argument are
 objectionable
 (11) under our rules of evidence or procedure
 (12) At times the attorneys may request the opportunity to
 (13) discuss matters out of your hearing We will endeavor to keep
 (14) this kind of conference to an absolute minimum We will refer
 (15) matters requiring discussion to the end of the day so that the
 (16) period of your attendance in court can be devoted almost to
 (17) exclusively to the taking of testimony
 (18) You should not be critical of any lawyer or client because
 (19) objections are made regardless of whether I sustain or
 (20) overrule those objections and you should draw no inference for
 (21) or against any party because objections were made because I
 (22) matters were discussed out of your hearing or because I
 (23) sustained or overrule such objections
 (24) It is the duty of the Court to admonish any attorney who
 (25) out of zeal for the cause of his or her client does something

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(1) or accident or other innocent reason
 (2) In determining whether any fact in issue has been proved by
 (3) a preponderance of the evidence in the case the jury may
 (4) unless otherwise instructed consider the testimony of all
 (5) witnesses regardless of who may have called them and all
 (6) evidence and all exhibits received in evidence regardless of
 (7) who may have produced them The rules of evidence ordinarily
 (8) do not permit witnesses to testify as to opinions or
 (9) conclusions An exception to this rule exists as to those whom
 (10) we call expert witnesses Witnesses who by education and
 (11) experience have become expert in some art science
 profession
 (12) or calling may state an opinion as to relevant and material
 (13) matters in which they profess to be expert and they also state
 (14) their reasons for the opinion
 (15) You should consider each expert opinion received in
 (16) evidence in this case and give it such weight as you may think
 (17) it deserves If you should decide the opinion of an expert
 (18) witness is not based upon sufficient education and experience
 (19) or if you should conclude that the reasons given in support of
 (20) the opinion are not sound or if you feel that it has - that
 (21) it was outweighed by other evidence you may disregard the
 (22) opinion entirely
 (23) No statement ruling remark or comment which I may make
 (24) during the course of the trial is intended to indicate my
 (25) opinion as to how you should decide the case or to influence

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(1) which is not in keeping with the rules of evidence or
 (2) procedure You are to - you are to draw no inference against
 (3) the side to whom an admonition of the Court may be addressed
 (4) during the trial of this case
 (5) There has been substantial publicity about this case prior
 (6) to the beginning of this trial Statements contained in the
 (7) media accounts are not evidence You must lay aside and
 (8) completely disregard anything you may have read or heard
 about
 (9) the case outside this courtroom and your verdict must be
 based
 (10) solely and exclusively on the evidence presented in court in
 (11) accordance with the Court's instructions to you at the close of
 (12) each phase of the case about the law you must apply to the
 (13) evidence
 (14) If you or any juror reads or hears anything about this case
 (15) outside the courtroom you should bring such facts to my
 (16) attention at once This court does not permit jurors to ask
 (17) questions of witnesses or attorneys Therefore please do not
 (18) interrupt the lawyers during their examination of witnesses or
 (19) otherwise However if you are unable to hear a witness or a
 (20) lawyer or to see the exhibits or other evidence please raise
 (21) your hand and I will see that the situation is corrected
 (22) At the end of the trial you will have to make your
 (23) decision based upon what you have - upon what you recall of
 (24) the evidence You will not have a written transcript to
 (25) consult and it is difficult and time consuming for the

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(1) reporter to read back lengthy testimony I urge you to pay
 (2) close attention to the testimony as it is given
 (3) If you wish you may take notes to help you remember what
 (4) witnesses say If you do take notes please keep them to
 (5) yourself until you and your fellow jurors go to the jury room
 (6) to decide each phase of the case and do not let note taking
 (7) distract you so that you do not hear other answers by
 (8) witnesses
 (9) When you leave at night leave your notes in the jury
 (10) room If you do not take notes you should rely on your own
 (11) memory of what was said If the notes of other jurors do not
 (12) conform with your memory of what evidence was offered at trial
 (13) you should rely on your memory as to such evidence
 (14) I will now say a few words about your conduct as jurors
 (15) Do not talk to each other about the case or about anyone who
 (16) has anything to do with it until the end of each phase of the
 (17) case when you go to the jury room to decide your verdict Do
 (18) not talk with anyone else about this case or about anyone who
 (19) has anything to do with it until all phases of the trial have
 (20) ended and you have been discharged as jurors
 (21) Quote anyone else end quote includes members of your
 (22) family and your friends You may tell them that you are a
 (23) juror in a case but don't tell them anything else about it
 (24) until you have been discharged by me
 (25) Do not let anyone talk to you about the case or about

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(1) anyone who has anything to do with it If someone should try
 (2) to talk to you you should report it immediately Do not read
 (3) any news stories or articles or listen to any radio or
 (4) television reports about the case or about anyone who has
 (5) anything to do with it Do not do any research or make any
 (6) investigation about the case on your own
 (7) If at any time after the commencement of the jury selection
 (8) process last Monday and until you are discharged by me at the
 (9) end of this trial any information about this case should happen
 (10) to be seen or heard by you inadvertently or otherwise from
 (11) any source other than here in the courtroom you should
 (12) promptly make a note of what happened and what you saw or
 (13) heard You should pass the note to Mr Murtiashaw my in court
 (14) clerk or one of the jury clerks They will pass your note to
 (15) me and I will take any necessary action
 (16) Do not make up your mind about what verdict - about what
 (17) the verdict should be until after I given you my instructions
 (18) on the law and you have gone to the jury room to decide that
 (19) phase of the case Even then do not make up your mind until
 (20) you and your fellow jurors have discussed the evidence
 (21) Finally I have already told you that the trial of this
 (22) case will be conducted from 8 a m Until 2 p m We will take
 (23) two evenly spaced 15 minutes breaks during this time I
 (24) normally eat a light snack during the second of these two
 (25) breaks I find my ability to pay attention and concentrate is

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(1) adversely affected if I try to work six hours without some
 (2) nourishment I suggest that you do the same thing Each
 (3) morning of the trial you should report to the jury assembly
 (4) room The jury clerk will take role and escort you to the jury
 (5) room behind my courtroom As a courtesy to the Court counsel
 (6) and your fellow jurors please arrange to arrive at the
 (7) courthouse and be in the jury assembly room at least 15
 (8) minutes
 (9) before 8 a m It is my desire to start promptly at 8 00 and we
 (10) will adjourn promptly at 2 p m
 (11) Should any juror find it necessary to communicate with the
 (12) Court for any reason during the trial that communication
 (13) should be in writing and should be accomplished by giving
 (14) your
 (15) note to either the jury clerk or my in court clerk who is
 (16) assisting at any time It will usually be Mr Murtiashaw
 (17) That completes the preliminary instructions and we are
 (18) ready for counsel s opening statement
 (19) MR O NEILL Thank you Judge
 (20) THE COURT Mr O'Neill?
 (21) MR O NEILL May it please the Court counsel ladies
 (22) and gentlemen of the jury I introduced myself to you the first
 (23) day that we were together My name is Brian O'Neill and I
 (24) represent the plaintiffs And the lawyers who will be working
 (25) with me over the course of the next weeks here include my
 (26) partner Lon Wagner Dick Gerry Laddie Montague and Jerry
 (27) Cohen I'm going to - as we move along I'm going to let them

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(1) do something too
 (2) I want to introduce you to some of my clients My clients
 (3) include 10 000 fishermen and 4 000 natives the municipalities
 (4) in the spill area native corporations in the spill area and
 (5) natives who live in remote villages who subsist and whose
 (6) subsistence lifestyle was impacted by the wreck of the Exxon
 (7) Valdez Now I can't introduce you to all 14 or 15 000 of
 (8) those folks but I'm going to introduce you to a few
 (9) We have from Prince William Sound the herring fisherman
 (10) Snooks Moore who is right there behind the TV set Kory
 (11) Blake Prince William Sound herring fisherman Jamle
 (12) Henderson a Prince William Sound herring fisherman all the
 (13) way in the back Tom Cochran a Prince William Sound herring
 (14) fisherman Jere Eidem who fishes for black cod and fishes in
 (15) Upper Cook Inlet Bobby Correia and Liz Schmidt who are
 (16) Upper
 (17) Cook Inlet fishermen herring Richard McGahan and his son
 (18) Richard Junior Dave Horn Timmy Keener Dean Osmar who
 (19) is a
 (20) fisherman and who was the 1984 Iditarod champion Lois
 (21) Munson
 (22) Ken Duffus Ron Cusack Kerry Nelson Patty Wright Jim Gray
 (23) Now as I said the classes that are before you also include
 (24) natives who subsist and I have from those classes with us here
 (25) today Eleanor McMullen Back behind the TV set Larry
 (26) Evanoff Gary Kompkoff and Lois Munson
 (27) The municipalities the cities in the case include Kodiak
 (28) Island Borough Ouzinkie Port Lions Old Harbor Larsen Bay

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(1) Seward Cordova The classes before you include all of the
 (2) property owners in Prince William Sound the natives come from
 (3) the villages of Tattlek Kodiak Larsen Bay Karluk Port
 (4) Lions Akhiok Ouzinkie Ivanoff Bay Chignik Bay Chignik
 (5) Lagoon Chignik Lake Perryville
 (6) The plaintiffs in the case represent the full fabric the
 (7) full tapestry of life in and around Prince William Sound and
 (8) indeed Alaska life Now how did we all get here? How did you
 (9) get here how did we get here and how did the Exxon
 defendants
 (10) get here? How do we get to the point to where 12 citizens will
 (11) be judging the actions of one of the biggest corporations in
 (12) the world? A disaster happened and why did the disaster
 (13) happen? The disaster happened because of the recklessness
 of
 (14) Exxon Corporation
 (15) The long term Exxon employee Joseph Hazelwood who
 Exxon
 (16) knew was suffering from relapse into alcoholism left the
 (17) bridge of the Exxon Valdez a 987 foot long supertanker loaded
 (18) with 15 million gallons of toxic North Slope crude when he left
 (19) the bridge It was done in violation of the law He left the
 (20) bridge in charge of an unqualified mate while approaching ice
 (21) at night and after setting the ship dead on a collision course
 (22) with Bligh Reef When Hazelwood left the bridge when he
 (23) walked off the job he left the bridge in the charge of third
 (24) mate Gregory Cousins who was not qualified to be running that
 (25) vessel at that time The vessel ran aground Its cargo holds

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(1) ripped open spilling 11 million gallons of crude 11 million
 (2) gallons of crude contaminating 11 000 miles of shoreline
 (3) killing all kinds of wildlife birds otters and seals And
 (4) with regard to why we re here today destroying the livelihoods
 (5) of fishermen and the subsistence livelihoods of natives who
 (6) live in those remote villages And the accident was inevitable
 (7) and it was inevitable because of the reckless indifference of
 (8) the Exxon defendants
 (9) Exxon was reckless when it ignored the serious problems of
 (10) an important employee Now we all know what a risk a
 drinking
 (11) alcoholic is And Captain Hazelwood was a risk to himself and
 (12) others and Exxon Corporation knew it long before the vessel
 (13) ran aground
 (14) Captain Hazelwood graduated from the New York Maritime
 (15) Academy my in 1968 and hired on with ESSO then Exxon and
 (16) advanced through the ranks to where by 1977 he was the
 captain
 (17) of a supertanker and by 1985 Captain Hazelwood was having
 (18) problems with his life And this is when Exxon began to make
 (19) reckless choices Now let s look at some of those choices
 (20) Exxon Corporation has an officer named Ben Graves and Mr
 (21) Graves learned that Hazelwood drank aboard vessels and that
 (22) Hazelwood had been drunk and returned to the vessels That
 was
 (23) in 1985 and you ll see Mr Graves written report and his memo
 (24) dated May 25 1985 - can we get that memo?
 (25) This is the first page of the memo Exxon Shipping

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(1) Company Mr Davis is an Exxon Shipping Company lawyer Mr
 (2) Iarossi is the president of Exxon Shipping Company the top
 (3) guy Mr Revere is a high official Attached is my interview
 (4) report and it s signed Ben Ben Graves name is up here And
 (5) here is the interview report
 (6) I asked Joe if he ever drank aboard the ship He commented
 (7) that he occasionally drank aboard the ship but not frequently
 (8) He also indicated that he came back to ship from port drunk on
 (9) several occasions Now this report goes to the number one
 guy
 (10) in Exxon Shipping Company in 1985
 (11) Now both of those drinking on ship and returning to ship
 (12) drunk are violations of the law and violations of Exxon
 (13) Shipping Company policy and Exxon senior management
 knew about
 (14) that and Exxon admits that It has to admit it because the
 (15) document says it And in late 1985 late March 1985 a Mark
 (16) Pierce who is an Exxon captain calls Captain Hazelwood and
 (17) says I ve received an anonymous report that your drinking is
 (18) having some impact on your - your job that you have problems
 (19) that are having some impact on your job - very vague
 (20) conversation - maybe you ought to do something about it But
 (21) the essence of the call was something is happening that s
 (22) having an effect on your job do something about it Very
 (23) vague call And Mr Pierce Captain Pierce suggested to
 (24) Captain Hazelwood that he seek help and on April 2nd 1985
 (25) Captain Hazelwood enrolled in a 28 day inpatient alcohol

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(1) treatment program at South Oaks Hospital in New York State
 (2) And he was there for the 28 days and his stay there was
 (3) reported to Exxon Corporation in what everybody calls an IDR
 (4) Can we get the IDR
 (5) What I ve done here is this is the IDR It didn t have
 (6) this yellow stuff on it but in order to show you what s in
 (7) these boxes we ve printed it out here I ll get it up so you
 (8) can all read it Now this form goes to Exxon Company - Exxon
 (9) Company U S A which is higher than Exxon Shipping
 Company
 (10) Goes to their medical department where it s looked at by
 (11) doctors including a Dr Montgomery and the report says with
 (12) regard to treatment individual psychotherapy group therapy
 (13) marital therapy AA which is Alcoholics Anonymous lectures
 (14) seminars workshops pertaining to alcoholism and Mr
 Hazelwood
 (15) will complete our 28 day program It is given - it is
 (16) recommended given the nature of his job that after discharge
 (17) Mr Hazelwood be given a leave of absence to get involved in
 (18) AA Alcoholics Anonymous and aftercare
 (19) So this report goes to the top Thank you Statement
 (20) there s another Exxon document that is created and these are
 (21) the only two Exxon documents that we ll ever see about this
 (22) subject And it is created at Exxon Company U S A and you ll
 (23) see it as Exhibit Number 745 and in the upper left hand corner
 (24) of it It has diagnosis out treatment ALC treatment and it
 (25) has much of the same stuff on it that the prior exhibit had

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(1) and we'll talk about that when we get to this document in the
 (2) trial
 (3) Now Captain Hazelwood denies that he was treated for
 (4) alcoholism. He says he was treated for dysthymia which is a
 (5) form of depression and alcohol - episodic alcohol abuse but
 (6) the forms the paper indicates that he was treated for
 (7) alcoholism the report to Exxon Corporation indicates that he
 (8) was treated for alcoholism and you'll see the testimony of his
 (9) treating physician Dr. Vallury and the testimony of Dr
 (10) Vallury will also point to alcoholism
 (11) In any event Captain Hazelwood's program ended on April
 (12) 30th of 1985 and he got a 90 day leave of absence from Exxon
 (13) Corporation to get into AA. They didn't pay him during those
 (14) 90 days. They did not pay him during those 90 days
 (15) Now as the Judge read at this point in time the Exxon
 (16) defendants have stipulated that Captain Hazelwood was
 (17) hospitalized for treatment. This fact is binding on you. And
 (18) the treatment included alcohol rehabilitation and that the
 (19) senior management of Exxon Shipping Company learned of
 (20) such
 (21) treatment contemporaneously at the same time and that the
 (22) senior management knew that he admitted that in the past he
 (23) had
 (24) consumed alcohol on board ships and that he had returned to
 (25) ship from port drunk several times and that such conduct
 (26) constituted a clear violation of Exxon Shipping Company's rules
 (27) and it also constituted a violation of the law. So that's

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(1) where we are
 (2) And now what happens Captain Hazelwood goes through this
 (3) 90 day period of leave of absence over the summer of '85 and
 (4) goes to AA and gets a sponsor a temporary sponsor and I
 (5) think
 (6) his wife goes to Alanon and now it's time to return to Exxon
 (7) Shipping Company and see what we should do about this
 (8) situation. And the first meeting he has with the
 (9) representative of Exxon Shipping Company is where? It's in a
 (10) bar. The first meeting he has on return from his disability
 (11) leave is in a bar
 (12) Now when Captain Hazelwood returns Exxon Corporation has
 (13) a medical department and there's a Dr. Montgomery in the
 (14) medical department who's going to come here and testify. And
 (15) Dr. Montgomery got the IDR and when Dr. Montgomery got the
 (16) IDR did he call Captain Hazelwood in and say what kind of
 (17) problems are you having and how can we address those and
 (18) can we
 (19) come to grips with a work plan. The evidence will be that he
 (20) didn't talk to him about his problems he didn't call him in
 (21) and interview him about his problems. He didn't call him in
 (22) and ask him about what the scope of the problem was. Dr.
 (23) Montgomery who has a staff of doctors underneath him didn't
 (24) do anything. There is one brief meeting Hazelwood goes to
 (25) meet with Exxon Shipping Company he meets with an Exxon
 (26) employee in a bar and then goes up into a hotel room and he is
 (27) told one thing don't violate company policy. He isn't asked

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(1) how is AA coming along what can the company do to structure
 (2) a
 (3) program so that you can get back on board. Isn't asked any of
 (4) those things. He's told don't violate company policy
 (5) Briefly succinctly that's it. There is no what can we do to
 (6) seriously help let's sit down and figure this out. And what
 (7) could they have done to help?
 (8) The evidence will be that Exxon knew at that point in time
 (9) that he shouldn't drink again the evidence will be that they
 (10) knew he shouldn't drink again. And in 1985 we as a society
 (11) knew that alcoholism was a serious problem that people with
 (12) the disease had high rates of relapse and they had higher rates
 (13) of relapse without aftercare and they had higher rates of
 (14) relapse without AA
 (15) And Exxon Corporation placed the captain in a situation to
 (16) where he did not have - the evidence will be he did not have a
 (17) chance to recover and that's what I want to talk about next
 (18) is the job of the captain of a supertanker a good job for a
 (19) recovering alcoholic. Do we have the picture of the
 (20) supertanker? Is the job of the captain of a supertanker a good
 (21) job for somebody who's just coming out of treatment?
 (22) This is the Exxon Valdez going to the Portland shipyard in
 (23) 1988. You see the little people right there. Three football
 (24) fields long. Costs 125 million dollars to make one of these
 (25) things. Thank you
 (26) What could Exxon have done well let's talk a little bit

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(1) more about the job of the captain. The captain's in charge of
 (2) the crew the cargo the vessel and the safety of those around
 (3) that vessel. It's a lot of responsibility and he is the sole
 (4) one in charge. A captain a ship captain for the people on
 (5) that ship it's a person of great great responsibility and
 (6) ship captains can't be monitored because they're out at sea
 (7) and the crew of a ship isn't going to tattle on the captain so
 (8) there's no realistic monitoring opportunity when a ship is out
 (9) at sea doing duty for 99 days
 (10) And when a ship is out at sea and here you have Captain
 (11) Hazelwood 90 days after treatment and there's no treatment on
 (12) that ship for 99 days and there's no aftercare on that ship
 (13) for 99 days. So it's responsibility you're taking him away
 (14) from his family you're taking him away from AA you're taking
 (15) him away from support base. You're taking him away from
 (16) aftercare. You're giving him a lot of responsibility and
 (17) a tedium at the same time. Is that what they should have done
 (18) or should they have decided that at least for the next year or
 (19) two because he just came out of treatment maybe we ought to
 (20) give him a shore side assignment
 (21) Now Captain Hazelwood had been considered for shore side
 (22) assignments before in 1983 and 1984 and you can give him a
 (23) shore side assignment something they called a port captain
 (24) and it isn't a step down in rank and it isn't a step down in
 (25) pay and it isn't a step down in dignity. We all have problems

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(1) in our lives We all have problems in our lives and an
 (2) employer ought to help somebody when they have a problem
 and
 (3) they should have given him a shore side assignment But what
 (4) did they do? Did they give him a shore side assignment? No
 (5) they assigned him on the Exxon Yorktown on a 99 day tour of
 (6) duty which was equal to the longest tour of duty he ever had
 (7) with Exxon Shipping Company
 (8) Why did they do that? Because at the time Exxon
 (9) Corporation was short of captains They were building two
 (10) vessels and they took some captains over to help them build the
 (11) vessels and in 1985 Exxon Corporation was short of captains
 (12) and Captain Hazelwood was assigned to the Yorktown So they
 (13) gave Captain Hazelwood a job as a supertanker captain on a
 (14) three month run away from home
 (15) Now let s assume that you were considering giving somebody
 (16) in this situation a job like that Wouldn t you call them in
 (17) and talk about it at some length? Talk about AA and the
 (18) availability of AA and the availability of your family and your
 (19) wife who is going to Alanon and those kinds of things and see
 (20) whether - be fully informed before you made the decision
 (21) They didn t do that
 (22) Let s assume that you re going to do that What s the next
 (23) thing you can do You can set up a realistic good monitoring
 (24) system You bring him in and you say don t drink we re going
 (25) to monitor you we want you to work with the monitors we re

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(1) going to facilitate AA we re going to facilitate any help you
 (2) want We re going to set up the program - if you re going to
 (3) make the bad decision to put him on a supertanker you bring
 (4) him in and say this is what we re going to do for you None
 (5) of those things happened None of them happened
 (6) Exxon is going to claim and you ll see the chairman of the
 (7) board of the Exxon Corporation tell the congress of the United
 (8) States that Captain Hazelwood was the most closely monitored
 (9) man in the fleet He should have been Exxon will not produce
 (10) to you one piece of paper out of the millions of pieces of
 (11) paper in its files not one piece of paper that shows that that
 (12) captain was monitored
 (13) So the captain is put in charge of a supertanker and
 (14) expected to beat the long odds against relapse into
 (15) alcoholism
 (16) Now I m going to tell you what happened and many of the
 (17) facts that I m going to tell you that we re going to prove in
 (18) this courtroom this is the first time they will have seen the
 (19) light of day and they were obtained - when these incidents
 (20) happened between 85 and 89 these fishermen weren t
 present
 (21) and these natives weren t present and their lawyers weren t
 (22) present Exxon employees were present and we re going to
 talk
 (23) about what Exxon knew and when they knew it But to get these
 (24) facts we had to pull these facts out in depositions But I m
 (25) going the talk about what we were able to discover the lawyers

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(1) were able to discover taking testimony And for many of these
 (2) facts it s the first time that they ve seen the light of day
 (3) Captain Hazelwood will testify that he was never told not
 (4) to drink and Captain Hazelwood will testify that he never knew
 (5) he was monitored was unaware of being monitored that he
 was
 (6) unaware of being monitored by anyone Hopefully tomorrow
 we ll
 (7) put the captain on the stand and I ll ask him those questions
 (8) He was never told not to drink and he was unaware of ever
 (9) being monitored
 (10) Now let s talk a little bit about what happens after
 (11) Captain Hazelwood goes back to duty on the Yorktown A beer
 or
 (12) two or three is not harmful to most of us but to somebody
 (13) who s alcoholism has evolved to the point where it s enough of
 (14) a problem to go into a 28 day program it is a problem and
 (15) somebody in recovery shouldn t be drinking one beer or two
 (16) beers They should have been drinking no beers and a
 drinking
 (17) alcoholic is a danger to everyone because he has impaired
 (18) judgment by his very nature and when he drinks the judgment
 is
 (19) worse
 (20) By 1986 Captain Hazelwood resumed drinking and he ll
 (21) testify that he didn t hide it from anybody He didn t hide it
 (22) from anybody and his drinking in major part was with Exxon
 (23) employees And he drank on board ship with the following
 Exxon
 (24) employees Joe DeOliveira Nathan Carr Joel Roberson
 (25) Katherine Haven William Masciarelli We ll put testimony in

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(1) on this and you can pick it up as the testimony goes in He
 (2) drank with the following Exxon employees not on ship Michael
 (3) Stalzer Carlos Hogan Patnck Enright Thomas St Pierre The
 (4) list goes on He drank in the presence of Exxon s agents and
 (5) Valdez Alamar
 (6) Now while the captain was on the Yorktown James Shaw who
 (7) was a port steward on three different occasions smelled
 (8) alcohol on the captain s breath and he knew that he had
 (9) recently got out of treatment On the fourth incident Shaw
 (10) ran into a Jesse Watts who said that he was bringing alcohol to
 (11) the Exxon Yorktown to have a drink with the captain on the
 (12) vessel violation of company policy Shaw reports this to
 (13) Exxon management A Captain Sheehy and a fellow named
 Koops
 (14) who is the fleet manager and they re both high officials and
 (15) Shaw reports directly Hazelwood s cure didn t take
 Hazelwood
 (16) fell off the wagon and that Hazelwood was drunk on the vessel
 (17) That s his report to management
 (18) The two officials now testify that they investigated
 (19) briefly They never talked or asked Hazelwood They never
 (20) went and said Joe we have this report what s the problem
 (21) Never said it And they let it drop
 (22) Now the captain will admit that he had resumed drinking by
 (23) 1986 and there is a long list of instances in which he drank
 (24) that we ll go through with him and the pattern of behavior
 (25) here is very very interesting because he will drink

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(1) occasionally with Exxon employees on the road but for the most
 (2) part he doesn't drink at home. And when he goes home he goes
 (3) to AA meetings and his wife goes to Alanon meetings so he
 (4) drinks on the road but at home he goes to Alcoholics Anonymous
 (5) meetings and his wife goes to Alanon meetings. And he has a
 (6) sponsor an AA sponsor
 (7) So his relapse is apparent. He drinks with Exxon people
 (8) and in March of 1987 four top Exxon Shipping Company officials
 (9) get together and they need a pilot for the Exxon Valdez and
 (10) they pick Hazelwood. Now this is the flag ship this is the
 (11) biggest most expensive tanker that they've got and they pick
 (12) him without sitting down ever and saying we know you have a
 (13) problem how's your recovery coming along. Have we been doing
 (14) everything we can to help. Are you up for this. That
 (15) conversation doesn't take place. In fact almost no
 (16) conversations take place. They make the assignment and he goes
 (17) to the Valdez and why does he go to the Valdez? Because the
 (18) Exxon Valdez run has a requirement for a pilot. A pilot is
 (19) somebody who has special knowledge of an area like Prince
 (20) William Sound or San Francisco Bay or a place like that so
 (21) that with this special knowledge should anything happen
 (22) unusual the pilot can instinctively get them out of the mess
 (23) and Prince William Sound has a pilot endorsement and you can
 (24) either have for a portion of Prince William Sound your own
 (25) pilot or you can hire a state pilot. And if you have your own

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(1) pilot you save something from a thousand to \$4,000 because
 you
 (2) don't need to fly a state pilot out put him on the vessel or
 (3) truck one out on a boat and put him on the vessel. So to save
 (4) one thousand to \$4,000 because they had very few people with
 (5) the Prince William Sound pilotage endorsement
 (6) Captain Hazelwood is assigned to the Exxon Valdez but
 (7) again with no discussion no thought or no concern. He's
 (8) still going to AA but again he doesn't go when he's away on
 (9) ship. He doesn't go when he's on the road. He goes primarily
 (10) when he's at home with his wife
 (11) So he's reassigned Exxon Shipping Company Frank Larossi
 (12) when he's told of the reassignment has grave concerns about
 the
 (13) reassignment but doesn't do anything about it. He is not happy
 (14) about it but he doesn't do a thing about it. He just sort
 (15) of - he chooses not to act. Recklessly chooses not to act
 (16) And Hazelwood continues to drink aboard the Valdez. In Long
 (17) Beach there's a place called the Yankee Clipper or the Yankee
 (18) Whaler where after each of the stints the crew would get off
 (19) and while waiting to catch their planes home they would drink
 (20) and Exxon would drink with the crew members openly there
 And
 (21) in early '88 Hazelwood admits to drinking vodka with Kevin
 (22) Dick first mate on the Valdez and Bob Sturgis the second mate
 (23) on the Valdez at the airport. Nathan Carr Exxon employe
 (24) testifies or will testify that he recalls drinking with
 (25) Hazelwood on two occasions and other Exxon people were

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(1) present. Now these are all Exxon people. This is testimony
 (2) from Exxon people about drinking with Exxon people. This has
 (3) to be pulled out of the company
 (4) In May of 1988 the captain was in the Portland shipyard
 (5) for two to three weeks while the Valdez was in dry-dock being
 (6) fixed. The picture we saw of the boat is on the way up to the
 (7) Portland shipyard and in the Portland shipyard. Now he's in
 (8) one place for two or three weeks and he's not at home and we
 (9) do have a snapshot of how he acts. Michael Stalzer will
 (10) testify that Hazelwood consumed two Vodkas in the Portland
 (11) airport. When he picked Hazelwood up at the airport between
 (12) getting off the airplane and picking up the luggage he has two
 (13) Vodkas and then Stalzer has wine with Hazelwood that night
 (14) Cousins testifies. Greg Cousins who was the mate who
 (15) eventually was on in charge of the vessel when it runs aground
 (16) testifies that he drinks with Hazelwood in his apartment
 (17) Hazelwood and an Exxon employee named Carr have a dispute
 over
 (18) the facts here. Carr says he and Hazelwood drank on the
 Valdez
 (19) while it was in dry dock violation of company policy. Carr
 (20) will testify to that. Hazelwood says they drank out in a car
 (21) in the parking lot
 (22) The fourth incident involves a fellow named Steve Day
 (23) who's an Exxon superintendent who saw empty Henry
 Weinhard beer
 (24) bottles on the vessel on two different locations in the
 (25) Portland shipyard while it's sitting there getting fixed. And

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(1) a couple of days later Mr. Day and - Herb Leyendecker who is
 (2) a repair supervisor from Houston headquarters they call
 (3) Houston headquarters mecca. Over here Hazelwood ordering
 (4) Henry Weinhard on the walkie talkie from the vessel. Now both
 (5) Day and Leyendecker knew somewhat about Hazelwood's
 drinking
 (6) history and Day complains to Leyendecker and Leyendecker
 says
 (7) I'll confront him
 (8) And Leyendecker says were you drinking on the vessel and
 (9) let's go check and they check the vessel and there's no beer
 (10) on the vessel anymore but what's significant here is that
 (11) Hazelwood tells Leyendecker he tells him that they didn't
 (12) drink on the vessel they drank back in his apartment. This is
 (13) the guy from Houston management
 (14) Now Hazelwood is of the position that he was never told not
 (15) to drink. He wasn't being monitored and he wasn't hiding
 (16) anything. And from his perspective he's being open with
 (17) Leyendecker
 (18) Now Steve Day then calls another senior official Paul
 (19) Myers and discusses the incident and Myers goes to Harvey
 (20) Borgen the Number 2 guy in Exxon Shipping Company and reports
 (21) the whole incident beer on the vessel Henry Weinhard empties
 (22) on the vessel the walkie talkie incident the conversation
 (23) with Leyendecker and Borgen tells Mr. Myers Mr. Myers comes
 in
 (24) to Mr. Borgen and says I have something to talk to you and
 (25) Borgen tells Mr. Myers that he knew about it already. Now what

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(1) do Myers Borgen and Leyendecker do? Nothing Nothing
 (2) James Kunkel when assigned to the Exxon Valdez remembers
 (3) drinking beer with Hazelwood in Long Beach Hazelwood
 admits
 (4) that he got in the habit of drinking wine out to dinner James
 (5) Shaw will testify that in 1988 in San Francisco there was
 (6) drinking And the fall of 1988 Exxon s Vern Deckert and
 (7) Hazelwood drank in Valdez Katherine Haven Hazelwood s
 (8) shipmate saw alcohol in Hazelwood s quarters aboard the
 Valdez
 (9) and saw Hazelwood drink at sea a violation of company policy
 (10) Michael Emel sees Hazelwood in January of 89 and concludes
 he
 (11) must have been drinking And he sees him aboard the vessel
 (12) February of 1989 William Masciarelli a second mate saw
 (13) Hazelwood come onto the ship It appears that he would have
 (14) been drinking Joel Roberson the radio man is asked by
 (15) Hazelwood to come below and watch the destruction of a
 (16) confiscated bottle of booze They go down Hazelwood pulls
 the
 (17) bottle out from under his jacket and Roberson Cousins and
 (18) Hazelwood kill the bottle
 (19) And up to this time up to early 1989 it s still AA and
 (20) Alanon at home and no drinking at home but drinking on the
 (21) road And there s a last chance we re in early 1989 now and
 (22) there s a last chance and what s the last chance? The last
 (23) chance takes place in San Francisco Bay and again the Valdez
 (24) is undergoing repairs and on March 15th Hazelwood is
 returning
 (25) on the launch to the Valdez and there s a Mary Williamson

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(1) aboard the launch and Hazelwood is complaining about Mary
 (2) Williamson s captain Captain Reeder that he was loud and
 (3) abusive and she thought he had been drinking and he was
 abusive
 (4) to her on the launch and his abusive nature was the result of
 (5) excessive drinking And later that night there was a radio
 (6) transmission from Captain Hazelwood s vessel to Captain
 (7) Reeder s vessel and Captain Hazelwood ranted and raved over
 (8) the radio and called Reeder a douche bag scum bucket and
 scum
 (9) bag and Captain Hazelwood will testify that those were the
 (10) more mild words that he used And Captain Reeder discussed
 (11) this offensive radio transmission with his mate Bob Buttner
 (12) and Buttner knew that Hazelwood has a reputation as a drinker
 (13) and that Hazelwood had probably been drinking prior to the
 (14) transmission and that there were occasions where Captain
 (15) Hazelwood was known to have been off the bridge when he
 should
 (16) have been on the bridge
 (17) Now Mary Williamson is very upset about the way she was
 (18) treated on the launch And she goes to Captain Reeder and
 (19) complains to Captain Reeder So now Captain Reeder has
 heard a
 (20) report from Williamson about the launch and heard this phone
 (21) call Captain Reeder does nothing Now Mary Williamson is
 (22) upset that she s a ship s cook or a steward and Captain
 (23) Hazelwood is a ship s captain a supertanker captain a very
 (24) powerful guy She is so upset that she decides I m going to
 go and take this to my supervisor and she does And the

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(1) supervisor was too busy to see her so she goes back a second
 (2) time and she tells the supervisor that she smelled alcohol and
 (3) that Hazelwood had been drinking and that Hazelwood was
 ranting
 (4) and raving over the telephone the walkie talkie Now this is
 (5) Steve Day her supervisor is Steve Day
 (6) Steve Day was the same guy back at the Portland shipyard
 (7) the Henry Weinhardts and the walkie talkie These events are so
 (8) many of them they re just dizzying just stick with me And
 (9) Steve Day concluded that there was something wrong with
 (10) Hazelwood and he went and told Paul Myers and this is the
 (11) same Paul Myers from the Portland shipyard about the launch
 (12) incident in the hopes that Myers would do something
 (13) This is three days before the Exxon Valdez leaves San
 (14) Francisco for Valdez This is the three days before the
 (15) fateful voyage And we have day and this guy Myers aware of
 (16) what happened in Portland aware of what happened in San
 (17) Francisco aware of the man s reputation and they do nothing
 (18) And indeed Paul Myers is on the vessel for three days with the
 (19) captain working on the turbocharger on the vessel and he
 (20) doesn t mention a word to him Doesn t ask him how are you
 (21) are you having any problems anything I can do to help How
 (22) are things at home? There s nobody at Exxon saying how s
 your
 (23) recovery
 (24) Up to this point in time there hasn t been any follow up
 (25) The captain will testify he didn t know he was being monitored

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(1) nobody ever told him not to drink This is a guy who they knew
 (2) went through a 28 day program
 (3) His alcoholism was as clearly charted as Bligh Reef Exxon
 (4) knew he was drinking again and somebody should have said
 stop
 (5) at this point in time and nobody did and the Exxon Valdez
 (6) readies itself to be loaded to go to Valdez Alaska and be
 (7) loaded with 15 million gallons of toxic crude oil and who else
 (8) was aboard the floating time bomb? A helmsman the guy who
 (9) steers the ship named Robert Kagan who has trouble steering
 (10) hearing and seeing and a complement of officers Hazelwood
 (11) Cousins and Glowacki all of whom at some point in their
 (12) careers have violated the Exxon alcohol policy
 (13) Now we re going to step outside and on - for one very
 (14) interesting fact At the same time on March 16th Captain Andy
 (15) Martino sends a telex from Valdez and says captains may want
 to
 (16) consider daylight transit only because of ice This is an
 (17) Exxon telex of Captain Martino in Valdez down to San Francisco
 (18) saying captains may want to consider daylight transit only and
 (19) that s Mr Myers office and Mr Myers ignored the telex
 (20) So the Exxon Valdez sails and gets to Valdez and what
 (21) happens on the afternoon of March 23rd 1989? Valdez comes
 (22) into Valdez port docks captain is finished whatever he has to
 (23) do and leaves the vessel at about 11 in the morning And can
 (24) you guess what happens? The captain and members of the
 crew
 (25) spend a boozy afternoon in Valdez They go to Alamar the

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(1) shipping agent and get some paperwork done From 12 00 to
 2 00
 (2) they re at a place called the Pizza Palace and they have pizza
 (3) and the captain has an iced tea And that s a fair statement
 (4) of what happens at the Pizza Palace From 2 00 to 4 30 the
 (5) evidence is going to be scrambled about what happens He s
 (6) going to say from two to 4 30 he ran errands he went to a
 (7) flower shop he went to a knickknack shop There are witnesses
 (8) that put him in the Pipeline Club at 3 00 Pipeline Club is a
 (9) bar it s not a firm bar it is a drinking man s bar There
 (10) are witnesses that put him in the Pipeline Club as 3 00 When
 (11) he s later interviewed by the Coast Guard he says he was over
 (12) at the Pipeline Club at 3 00 Now his story is from 2 00 to
 (13) 4 30 he was shopping From 4 30 to 6 30 he admits being in
 (14) the Pipeline Club and having three Vodkas possibly doubles
 (15) He admits that He ll testify to that And about 7 00 they go
 (16) to pick up a pizza next door to another joint called the Harbor
 (17) Club and he admits to having a vodka at the Harbor Club So
 (18) he admits to anywhere between four and seven or eight shots
 (19) If you put together the testimony of the bartenders who
 (20) saw him at various times it s as many as 16 shots
 (21) Now while Hazelwood and some of the crew were drinking in
 (22) Valdez the ship s officers were loading the vessel and ship s
 (23) officers for Exxon work at least 12 hours a day seven days a
 (24) week 84 hours a week So they load the vessel all afternoon
 (25) and the evidence will be that towards the end of that day

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(1) they re exhausted
 (2) And now I want to talk to you about some navigational
 (3) comments Can we get that board? I want to give you the lay
 (4) of the water and I want to talk about some requirements We ll
 (5) wait for - yeah let s put that one on too Get it all done
 (6) at one time It s a beauty isn t it? There s a slot there
 (7) Let me just give you the lay of the land and then I want to
 (8) talk about four legal requirements or four legal slash
 (9) policy requirements This is where the Valdez dock is which
 (10) is the end of the Trans Alaska Pipeline And Valdez the town
 (11) is over on this side This is the so called Valdez Narrows and
 (12) you ll hear a lot about that There s a radar station at the
 (13) point
 (14) MR LYNCH Your Honor would there be any objection
 (15) if I walk over so I can see
 (16) MR O NEILL There s a radar station where there s a
 (17) point over here This is Busby Island and there s a light on
 (18) Busby Island This is Bligh Reef here Now it s in purple
 (19) because it s underwater But if you get right down to about
 (20) where that little point is it can be about this far under
 (21) water Oh I m fine This is Bligh island This is called
 (22) Rocky Point here And this is real important and let me tell
 (23) you why
 (24) When a vessel comes out to Rocky Point it has a State
 (25) pilot on it In this case the State pilot s name is going to

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(1) be Mr Murphy Captain Murphy and then they discharge the
 (2) State pilot about here and there s a - there s a little place
 (3) that the boat comes out of over here Now from here he gets
 (4) all of the way to Hinchinbrook Island which is down where my
 (5) foot is The Coast Guard rules are that the captain or some
 (6) officer on the ship can be the pilot if he has a pilotage
 (7) endorsement To go from Valdez to Hinchinbrook you need a
 (8) pilotage endorsement and the Coast Guard rules require that
 (9) Now there ll be a variety of captains who will come in and
 (10) testify about that and say yes you ll see Exxon say yes
 (11) Captain Hazelwood denies that The rest of the world agrees
 (12) with it Captain Hazelwood denies it So that s the pilotage
 (13) requirement You have to have a pilot To become a pilot you
 (14) do two things you take a test and then to be a pilot for
 (15) Prince William Sound you can draw the Sound and put in
 where
 (16) the aids to navigation are like the Busby Island light or the
 (17) Bligh Reef light so that if something odd happens why do you
 (18) have it These are enclosed areas and if something odd
 happens
 (19) where the vessel is lost or momentarily lost the pilot is
 (20) somebody who can intuitively drunk or sober Intuitively just
 (21) say I ve been here before I know it this is what I m
 (22) supposed to do So that s the pilotage requirement That
 (23) comes from the Coast Guard
 (24) Now the Exxon bridge manual which is Exhibit Number 56
 (25) and this was the copy that was seized from the Valdez The

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(1) Exxon bridge manual has a second requirement It s called
 watch
 (2) condition C Because you re in enclosed waters and because
 (3) it s at night in watch condition C there s a requirement that
 (4) there be two officers on the bridge Okay watch condition sea
 (5) requires that there s two officers on the bridge Now a ship
 (6) has with regard to the bridge officers it has a captain and
 (7) three mates the helmsman is not an officer They have a
 (8) helmsman who is a guy that just steers the boat You say turn
 (9) right turn left ten degrees right rudder ten degrees left
 (10) rudder The helmsman is not an officer but there s a captain
 (11) and the three mates who are the three officers So in watch
 (12) condition C this is a requirement in the Exxon bridge manual
 (13) that requires two officers on deck That s the second
 (14) requirement okay Got watch condition C down?
 (15) The third requirement is it is against the law to drink
 (16) alcohol within four hours of assuming a duty It s against the
 (17) law to do that
 (18) And the fourth requirement is a requirement that when a
 (19) mate takes a - a watch that he has six hours of rest in the
 (20) prior 12 hours And this requirement goes back to 1911 when
 (21) the congress passed a law that essentially provided for that
 (22) so that we wouldn t have fatigued officers doing a deck watch
 (23) So those are the four requirements
 (24) So Hazelwood has the afternoon in Valdez and they come
 (25) back to the vessel and the vessel departs at 9 12 and it is

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(1) watch condition C and he had been drinking that afternoon and
 (2) you can watch the testimony and decide yourself how much he
 had
 (3) been drinking that afternoon but anywhere between four to
 (4) seven vodkas to 16 vodkas that he s willing to admit that he s
 (5) willing to admit
 (6) When the vessel leaves at 9 12 Captain Hazelwood shortly
 (7) thereafter assumes his duties and he will admit and has
 (8) admitted under oath that he violated that four hour drinking
 (9) requirement And the vessel leaves and Pilot Murphy is aboard
 (10) the vessel He s the State pilot and he smells alcohol on the
 (11) captain s breath and when the vessel goes through the Valdez
 (12) Narrows with the pilot on board the captain is below and
 (13) there will be testimony that that is unusual that that is
 (14) unusual And when they get down near Rocky Point they re
 (15) going to discharge the pilot And the pilot is - the captain
 (16) has to be called to the bridge and there ll be testimony that
 (17) that is unusual and the pilot is discharged And then things
 (18) happen very quickly This as you might have guessed is the
 (19) track line of the voyage
 (20) I m going to pick up a couple of pieces of paper because I
 (21) want to do this right The captain advises the VTC which is
 (22) the Coast Guard control center the vessel control center I
 (23) believe it is this is the outbound lane where the ships come
 (24) out this is the inbound lane This is sort of the safety
 (25) median just like a highway He advises that because there s

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(1) ice here where my hand is he s going to leave the outbound
 land
 (2) and move over to the inbound traffic lane if there is no
 (3) conflicting traffic He does that at about 11 25 11 30 the
 (4) Coast Guard tells him there s no inbound traffic and then the
 (5) captain says I m going to alter my course to 200 degrees
 (6) that s this and reduce the speed to 12 knots Now the
 (7) vessel s present speed is already less than 12 knots so the
 (8) statement I m going to reduce the speed to 12 knots is
 (9) nonsensical Then Hazelwood changes the vessel s course
 from
 (10) 200 degrees to 180 degrees putting it on a collision course
 (11) with Bligh Reef and doesn t tell the Coast Guard that he s
 (12) changed the course
 (13) At 11 43 he starts to talk to Cousins about he s going to
 (14) go down below and leave the vessel in charge of Cousins and
 he
 (15) says when you come abeam of Busby Island turn But he -
 (16) that s what he says and two minutes before Busby Island
 (17) Hazelwood leaves the bndge Two minutes He doesn t wait
 the
 (18) two minutes for the turn Two minutes before the turn he
 (19) says - he goes down below Now at the moment he goes down
 (20) below there s no pilot on the bridge violation of the law
 (21) And there are not two officers on the bridge A violation of
 (22) the bridge manual
 (23) Now the requirement in the bridge manual for two officers
 (24) is so we have four eyes Four eyes are better than two eyes
 (25) And the requirement for a pilot is so that if something odd

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(1) happens we have somebody who intuitively knows because of
 his
 (2) training what to do and he leaves two minutes before the
 (3) turn He could have waited two minutes - so he violates the
 (4) law the bridge manual common sense Why? Captain
 Murphy
 (5) smelled alcohol on his breath up here and we know what he
 did
 (6) that afternoon
 (7) Captain Hazelwood at some point in here orders that they
 (8) put the pedal to the metal that they put the vessel in a
 (9) condition where it moves up to sea speed it s accelerating
 (10) here He goes below and Cousin goes into the chart room right
 (11) in here to plot his course Instead of just turning he spends
 (12) this amount of the voyage in the chart room plotting his
 (13) course Now the chart room - this is the bridge except the
 (14) real bridge doesn t come apart like this This is the front
 (15) and the captain is right in here See where it says bndge
 (16) upside down? And this is the chart room There s a curtain
 (17) across here So for this six minutes when Cousins is back in
 (18) the chart room there s no officer right here on this part of
 (19) the bridge and Cousins just sort of - for whatever reason
 (20) he s out back here in the chart room
 (21) Now remember that Cousins was told by the captain to turn
 (22) in two minutes And the turn doesn t happen The turn doesn t
 (23) happen for quite a while The captain should have been able to
 (24) tell that the turn wasn t happening Most captains would have
 (25) been able to tell that the turn wasn t happening and the watch

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(1) stander out on the - out on the bridge comes in and says the
 (2) Bligh Reef light is to our right She says it in nautical
 (3) terms but essentially it s to our right You can see that if
 (4) this red light is to your right you re in big trouble
 (5) There s a red zone here that s a danger zone that s on the
 (6) navigation charts They re in the red zone the danger
 (7) navigation zone and what happens? The vessel runs aground
 (8) spilling 11 million gallons of toxic North Slope crude
 (9) Captain wasn t on the bridge violation of the manual the
 (10) pilotage requirement He violated the drinking requirement
 (11) the four hour rule and Mr Cousins who is the watch officer
 (12) the proof will be was in violation of the fatigue statute that
 (13) I talked about earlier the requirement that you have six hours
 (14) of rest in the 12 hours before taking a watch We re going to
 (15) have a big board that will - that s twice as big as this one
 (16) that will detail the day of Cousins Kagan and LeCain the
 (17) three mates to show that none of the three could have taken
 (18) the watch They were all in violation of the fatigue law
 (19) passed by the congress
 (20) Could you take this down?
 (21) So for six minutes prior to the accident Captain
 (22) Hazelwood disabled because of his alcoholism is below a tired
 (23) Cousins is back in the chart room There isn t an officer in
 (24) control of the vessel and the vessel hits Bligh Reef and that s
 (25) why we re here The wrong person gave the wrong order to the

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(1) wrong person at the wrong place at the wrong time and it was
 (2) all made possible when Exxon gave the keys to the car to their
 (3) captain
 (4) Now what happens after the accident? Coast Guard comes
 (5) aboard and Captain Hazelwood is tested nine hours after the
 (6) accident on the vessel He s tested and the blood test shows
 (7) he s at 06 He had a blood alcohol level of 06 Nine hours
 (8) after the accident he has a blood alcohol level of 06 The
 (9) Coast Guard requirement we all know because of the
 newspapers
 (10) that 10 is for driving so he s below 10 but this is nine
 (11) hours after the accident Coast Guard requirement is 04 If
 (12) you re above 04 that s a violation of the law
 (13) Hazelwood is fired by Exxon for leaving the bridge and
 (14) drinking And then later on the Exxon story changes and
 (15) drinking is no longer an issue It is interesting though
 (16) that a victim is the only person that s disciplined and I
 (17) would - Captain Hazelwood wasn t treated well by Exxon from
 (18) 1985 to 1989 and he is the only guy that they fired
 (19) This wasn t a question of if It was only a question of
 (20) when Now Prince William Sound is a beautiful and special
 (21) place It is one of the last best places on earth and this
 (22) last best place on earth is not only renown for its beauty but
 (23) it provides their livelihood and it provides their dinner
 (24) table For a native who lives in a remote village when the
 (25) tide goes out the table is set The oil on the vessel comes

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(1) from the North Slope It is the people s oil not Exxon s and
 (2) the extraction and transportation of oil is inherently
 (3) dangerous And it is very profitable Wealth was given to
 (4) Exxon in exchange for responsibility The public s trust was
 (5) given to Exxon in exchange for responsibility Now Exxon
 (6) Corporation is big enough and smart enough and has the
 (7) resources to meet that responsibility and to meet the public s
 (8) trust Its sales in a year are a hundred and ten billion
 (9) dollars He has a - while it only has 22 employees in Alaska
 (10) except for the next three months it has a hundred and two
 (11) thousand employees worldwide
 (12) Now these are people that have the power the wealth the
 (13) experience to do things right What will Exxon say? Let s
 (14) talk about what Exxon is going to say and about - I m going to
 (15) put out what Exxon says and then I m going to put the proof
 (16) with regard to that item after it Okay?
 (17) Hazelwood s leaving the bridge had nothing to do with the
 (18) grounding But the proof will be the bridge manual required
 (19) him to be there the pilotage rules required him to be there
 (20) Cousins was the only one there He was inexperienced and
 (21) tired in violation of the law Exxon fired Hazelwood for
 (22) leaving the bridge and as the Judge read to you Exxon
 (23) stipulates that his leaving the bridge was a proximate cause of
 (24) the accident A legal cause I think is the word that the
 (25) Judge used

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(1) If Hazelwood had been on the bridge there would have been
 (2) four eyes and there would have been a pilot and the accident
 (3) wouldn t have happened
 (4) Exxon s number two defense will be drinking had nothing to
 (5) do with it And they re going the say here are seven Exxon
 (6) employees who will say that Hazelwood was not impaired that
 (7) night They ll show you the pictures of the seven This guys
 (8) says he wasn t impaired this guy says he wasn t I don t know
 (9) how many there are Let me offer two thoughts on that There
 (10) will be three people in that lot and we ll see whether they
 (11) mention that but there ll be three people in that lot who are
 (12) not Exxon employees Pilot Murphy says he smelled alcohol c
 (13) his breath going through Valdez Narrows Lieutenant
 Commander
 (14) Falkenstein from the Coast Guard and another Coast Guard
 (15) official a fellow named Delozier will testify that they also
 (16) smelled alcohol on his breath He d gone through treatment
 (17) He was a relapsed alcoholic He drank that afternoon and I
 (18) think we can put 16 drinks together that afternoon He
 (19) violated the four hour drinking statute He tested 08 nine
 (20) hours after the accident Got to go down And he was fired
 (21) for not drinking
 (22) And as you ll see when the proof comes in he shows one
 (23) instance of impaired judgment after the other From the time
 (24) he leaves the Valdez port he ll show one instance of impaired
 (25) judgment after the other and we ll play the tape of his voice

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(1) for you when he talks to the vessel control station the VTC
 (2) we ll play the tape for you
 (3) In this light they ll say here s a picture of the
 (4) gangplank and he couldn t have got back on the vessel on this
 (5) gangplank if he would have been loaded Sailors have been
 (6) coming back to ships drunk for centuries and they ve always
 (7) gotten by on the gangplank The last thing is drinking
 (8) alcoholics don t always appear drunk They have a lot of
 (9) practice
 (10) The next excuse that you hear from Exxon was it was the
 (11) Coast Guard s fault They should have followed the ship s
 (12) progress on the radar and told us we were in danger They ll
 (13) blame it on the Coast Guard They ll say we relied on the
 (14) Coast Guard so it s the Coast Guard s fault The evidence on
 (15) this will be the Coast Guard and its manual
 (16) In its manual says don t rely on us And the Coast Guard
 (17) didn t hire Captain Hazelwood and the Coast Guard didn t set
 (18) him up to fail and the Coast Guard didn t fail in the
 (19) monitoring of Captain Hazelwood and the Coast Guard didn t
 (20) know that Hazelwood was relapsed and the Coast Guard didn t
 (21) know that he was in violation of the rest law the vessel was
 (22) in violation of the rest laws and he was in violation of the
 (23) drinking laws and the Coast Guard didn t know that the vessel
 (24) was in violation of watch condition C requirements in the
 (25) vessel s own manual and the Coast Guard didn t know that

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(1) Hazelwood left the bridge and the Coast Guard didn't run the
 (2) vessel aground
 (3) And the next defense that we'll hear and we'll hear a lot
 (4) about their alcohol and safety policies and programs but the
 (5) evidence will be that those policies and programs weren't worth
 (6) the paper that they were written on. They may say that we had
 (7) to give him his job back. The chairman of the board of Exxon
 (8) Corporation will tell you that they didn't. They could have
 (9) given him a port captain's job and give him a year or two shot
 (10) at rehabilitation and then struggled with what the heck to do
 (11) with him. And they didn't monitor him properly. He didn't
 (12) know that he was ever monitored and was never told not to
 (13) drink - to drink.
 (14) And the job that they did give him ensured his failure. It
 (15) ensured his failure because they took him away from family
 (16) AA and gave him the combination of responsibility and tedium
 (17) that is a recipe for disaster with a relapsed alcoholic. Exxon
 (18) never did Captain Hazelwood any favors.
 (19) They're going to have testimony they're going to come in
 (20) and they're going to say well we had this monitoring program
 (21) and here are the pictures of the two guys that we're
 (22) monitoring. Everybody in the company knew he was drinking
 (23) His superiors knew he was drinking he didn't know he was
 (24) being
 (25) monitored and there will not be one piece of paper that Exxon
 Corporation can provide for you that says I talked with Joe

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(1) and we went over these problems. Not one
 (2) The testimony on monitoring is going to be two Exxon
 (3) loyalists who are going to come in after the fact and talk
 (4) about something that the captain wasn't even aware of how do
 (5) you treat somebody decently in that situation? We know how to
 (6) treat somebody decently in that situation. Fatigue wasn't a
 (7) problem but the evidence will be that Cousins didn't get the
 (8) six hours of rest in the prior 12 hours and Exxon Corporation
 (9) and the captain violated what the experts call 8104
 (10) And then there's going to be the blame it on Cousins
 (11) defense that we're going to see and the evidence will be that
 (12) Greg Cousins was not the trained pilot required by the law for
 (13) those waters and that the manual required there be four eyes
 (14) instead of two. And Greg Cousins was deprived of the other
 (15) two
 (16) eyes and then Greg Cousins was fatigued and sailed in
 (17) violation of the law
 (18) And then the last one will be the wreck had nothing to do
 (19) with Exxon shore side management. Sort of a - it was all the
 (20) vessel's fault and the guys on the shore had no responsibility
 (21) but the evidence will be that shore side management hired him
 (22) assigned him back on the vessel created the conditions for
 (23) relapse failed to support him after his treatment failed to
 (24) monitor him ignored evidence of the relapse and evidence of
 (25) the relapse goes in the high ranks of the company that they
 regularly used overworked and fatigued mates on their vessels

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(1) that they failed to intervene in the disaster waiting to
 (2) happen that shore side management was recklessly indifferent
 (3) to how they treated this man. They were recklessly indifferent
 (4) to how they treated the public that they were recklessly
 (5) indifferent to a tragedy in the making.
 (6) And as to these people and these people (indicating) they
 (7) didn't want Exxon - they didn't hire Hazelwood they didn't
 (8) supervise him they didn't monitor him they didn't make tens
 (9) of billions of dollars off of the public's oil. They didn't
 (10) spill the oil and they've had their livelihoods destroyed and
 (11) their way of life altered and Exxon will say they're sorry
 (12) but the evidence will be that they're only sorry enough to get
 (13) by this trial and to get by this proceeding. And Exxon will
 (14) say that we were negligent but it was only negligence that
 (15) caused the harm. But I submit to you if we prove what I've
 (16) said we're going to prove if we prove what I've said we're
 (17) going to prove it wasn't just negligence it was recklessness
 (18) it was recklessness to the captain it was recklessness to
 (19) them it was recklessness to them it was recklessness to the
 (20) people of Alaska the biggest mess by the people that had the
 (21) wealth and power and size to do better. Thanks.
 (22) THE COURT Let's take our first planned recess at
 (23) this point Ladies and gentlemen you'll probably hear me say
 (24) this enumerable times and at subsequent occasions I'll simply
 (25) remind you. During our recesses you shouldn't have any

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(1) conversations amongst yourselves about the case. You
 shouldn't
 (2) have any conversation with anyone else about the case nor
 (3) listen to any discussion about the case. If you hear anyone
 (4) discussing the case you must get away from that person. We'll
 (5) be in recess now for 15 minutes.
 (6) THE CLERK This court is in recess for 15 minutes
 (7) (Recess at 9:51 a.m.)
 (8) (Jury in at 10:12)
 (9) THE CLERK All rise
 (10) THE COURT Mr. Lynch before we start there are a
 (11) couple of things that I need to take care
 (12) Ladies and gentlemen I had intended at the end of my
 (13) instructions to have the clerk administer the trial oath to you
 (14) so that I wouldn't forget to do it before we start taking
 (15) evidence and I didn't do it so let's do it right now so that
 (16) we won't be delayed any longer. Mr. Murtuashaw if you would
 (17) please
 (18) THE CLERK Please stand and raise your right hand
 (19) You and each of you do solemnly swear to well and truly try the
 (20) matters at issue in the cause now on trial before this court
 (21) and a true verdict render in accordance with the evidence and
 (22) the instructions given to you by the Court so help you God
 (23) (Jury is sworn)
 (24) THE CLERK Be seated
 (25) THE COURT Now the next thing I have to say is for

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(1) the folks in the gallery I received a report this morning
 (2) that over the weekend there had been attempts by somebody to
 (3) contact members of the jury That absolutely must stop I
 (4) will not have members of the public attempting to disrupt the
 (5) jury processes of this court If it does not stop immediately
 (6) I will take whatever action it takes to get it stopped I hope
 (7) that is very clear I don't want to have to say this again
 (8) Sorry about that Mr Lynch?
 (9) MR LYNCH Your Honor does this bother you?
 (10) THE COURT Go ahead
 (11) MR LYNCH Ladies and gentlemen of the jury I guess
 (12) I can refer to you now as Your Honors since you are now
 (13) officially federal judges of the facts for at least the time
 (14) being My name again is Pat Lynch The lady behind the
 (15) sandwich board here is Irene Stewart from our office and I've
 (16) introduced you to the other members of our team My job here
 (17) at this stage of the trial which is well in advance of our
 (18) chance to present evidence is to try to give you a preview of
 (19) how we think the evidence will look to you after you've heard
 (20) the four or five weeks of evidence including the chance that
 (21) we will eventually get to tell you our side of the story
 (22) I want to say to you now that what I tell you and what Mr
 (23) O'Neill told you this morning as His Honor told you is not
 (24) evidence It's our effort to predict for you what the evidence
 (25) will be And I in particular need to stress to you how

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(1) important it is to ask you to wait and hear the evidence
 (2) itself because time is limited and you know that we have a
 (3) trial here anticipated to be four weeks long and neither of us
 (4) can in an hour or so do justice to all of the facts that you'll
 (5) be hearing in this case You heard the Court say to you this
 (6) morning that it is the law that there is almost no way to
 (7) correct a mistake made by the judges of the facts an error
 (8) made by the judges of the facts You have that power entrusted
 (9) to you under the oath that you've just taken That's why it's
 (10) so important that each juror give to the trial his or her
 (11) honest wholehearted attention and his or her honest opinion
 (12) and that's why the law requires ultimately that all 12 agree to
 (13) try to avoid the risk of a - of an unfair outcome or an
 (14) erroneous outcome
 (15) And I stand here in a posture which in my years of
 (16) practicing law I've never been in before and that is that you
 (17) have a situation here in which the client that I represent
 (18) begins by saying that it is responsible for this accident
 (19) begins by saying that this terrible oil spill which undoubtedly
 (20) had harmful effects on the fishermen plaintiffs and the native
 (21) plaintiffs and the other people that Mr O'Neill mentioned
 (22) they are entitled to compensation and Exxon Corporation
 (23) should
 (24) pay them compensation and Exxon Corporation fully expects
 (25) that
 (24) you will decide what they should be paid But it is - it is a
 (25) step from that as His Honor instructed you this morning from

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(1) responsibility to pay actual damages which Exxon has
 admitted
 (2) that it has to the obligation to pay large sums of money
 (3) you'll remember that Mr O'Neill was talking about billions of
 (4) dollars over and above any loss that these fishermen suffered
 (5) and over and above any loss that these natives suffered by way
 (6) of punitive damages And in order to arrive at that
 (7) conclusion in order to put money in the pocket of these
 (8) plaintiffs and these lawyers that has nothing to do with any
 (9) damage that they've suffered they have the burden of proving
 (10) to you that Exxon Corporation or people who work for Exxon
 (11) Corporation were reckless and the Court tried to define to you
 (12) in the legal terminology how we distinguish between the
 conduct
 (13) that gives rise to liability to pay actual damages which we
 (14) call negligence simple human error simple human mistakes
 and
 (15) the type of conduct that requires a jury to punish doesn't
 (16) require entitles a jury to punish a party what we call
 (17) punitive damages Difference between simple negligence
 simple
 (18) human mistakes and recklessness If you try to think in
 common
 (19) ordinary terms about the difference you might think about
 (20) things that I think all of us have experienced
 (21) You know you can imagine driving along in your car and
 (22) trying to adjust the radio or your rear view mirror or
 (23) something or looking up at the rear view mirror to see if your
 (24) eyebrows are right and somebody unexpectedly stops in front
 of
 (25) you or something happens and you get into a traffic accident

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(1) that's simple negligence Person that has that happen to them
 (2) is responsible to pay the costs associated with the accident
 (3) Probably most of us one way or another has been involved in
 (4) something like that
 (5) Recklessness involves something much more than that It
 (6) involves something like looking at a train as you're
 (7) approaching the intersection and deciding to race the train as
 (8) you're approaching the intersection knowing full well that
 (9) you're putting people on the train at risk and people in your
 (10) car at risk but deciding to take that chance It's consciously
 (11) taking the chance to cause an accident It's thinking about it
 (12) and deciding I'm going to take a shot at that That's the
 (13) kind of conduct plaintiffs need to prove to prove
 (14) recklessness
 (15) Now Mr O'Neill has made to you a very clear statement of
 (16) a case involving negligence He has focused on the negligence
 (17) of the people at Exxon but he needs to reach beyond
 negligence
 (18) in order to seek that larger sum of money those billions of
 (19) dollars that he was talking about that they - he and his
 (20) clients would like to collect over and above their actual
 (21) damages That's another thing entirely so what we're going to
 (22) be involved with in this first phase of the trial is looking at
 (23) this accident to determine if somebody in Exxon Corporation
 was
 (24) trying to race a train to the intersection or was trying to do
 (25) something which like what Mr O'Neill talked about last

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(1) Monday
 (2) Last Monday he told you that plaintiffs were going to show
 (3) that Captain Hazelwood after drinking aimed Exxon Valdez at
 (4) Bligh Reef pushed down on the throttle to speed the ship up
 (5) put it in autopilot and left the ship alone for six minutes as
 (6) it headed to Bligh Reef I agree that would be a reckless
 (7) act But already today one week later before a single item of
 (8) evidence has been presented he s backed away from that
 because
 (9) he can t possibly prove that
 (10) The fact is that Exxon Corporation is an imaginary person
 (11) and you can attribute to that person any kind of
 (12) characteristics that you want It s very easy to talk about
 (13) big faces Exxon Corporation as an evil empire or like it was
 (14) the Terminator or some robot but the fact is that what we re
 (15) talking about here are the actions of people who worked for
 (16) Exxon and I think those people will either be here in person
 (17) or by deposition
 (18) And the first fact I would call to your attention to
 (19) anticipate in the evidence is to make a judgment about these
 (20) people Were these people who were recklessly putting
 (21) fishermen natives and Alaska at risk or were these people who
 (22) were trying to do a good job best job they could given the
 (23) situation
 (24) Mr O Neill said Exxon could have done better We
 (25) certainly admit Exxon could have done better but were these

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(1) people acting recklessly I think you will see that these are
 (2) people who had no motive to be reckless and who had every
 (3) motive and who did In fact try every day they got up to do a
 (4) good job They made some mistakes they may have been
 guilty
 (5) of simple negligence but they were not guilty of
 (6) recklessness
 (7) How can the plaintiffs get to reckless Well the way they
 (8) have apparently chosen to try to do that is to hang a label on
 (9) this case You know one of the unfortunate things about -
 (10) about lawsuits is that sometimes if you can hang the right
 (11) label on something people will jump to a conclusion about the
 (12) rest of it You know if you can label somebody a gypsy maybe
 (13) people will think they re a thief or if you can label someone
 (14) like me an Irishman maybe you re inclined to think they drink
 (15) too much and the label that the plaintiffs have chosen in this
 (16) case is alcoholic And that s why 45 minutes of his hour of
 (17) time was spent to label Joseph Hazelwood as a hopeless
 (18) alcoholic But in fact if you listen to the evidence you
 (19) will see and you will hear Captain Hazelwood has not been
 (20) diagnosed as an alcoholic
 (21) Mr O Neill showed you this chart with pasted to it a copy
 (22) of what s plaintiffs Exhibit 10 called and individual
 (23) disability report or IDR and I m not going to get into that
 (24) in great detail now but he did not reference these numbers
 (25) here He did not call those to your attention He read you

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(1) all this highlighted stuff but he did not call to your
 (2) attention the only information on that chart that indicates
 (3) what Exxon was told about the nature of Captain Hazelwood s
 (4) problem when he went in to be treated in 1985 and those
 (5) numbers are from a book that doctors use called the Diagnostic
 (6) Statistical Manual or DSM and that manual tells doctors how
 (7) properly to identify diagnoses and it has insurance and it has
 (8) other ramifications
 (9) These numbers say that Mr Hazelwood was diagnosed by the
 (10) doctors not by Mr O Neill as suffering from dysthymia which
 (11) is another word for a mild form of depression The Wall Street
 (12) Journal said it means you had the blues And as a result of
 (13) that dysthymia because the second number is what they call a
 (14) secondary diagnosis he was drinking to excess He was
 (15) medicating himself with alcohol and he went in because he was
 (16) having a problem He of course wasn t a medical doctor The
 (17) doctors talked to him looked at him That was their
 (18) diagnosis That s what they pass today the medical department
 (19) at Exxon
 (20) So the label of alcoholic is presented to you as a way to
 (21) short cut and to pre - to tilt the facts that you re going to
 (22) hear so the first thing you hear about is all this business
 (23) about alcohol back in 1985 all these episodes about drinking
 (24) that didn t have anything to do to the grounding of the Exxon
 (25) Valdez or the oil spill Why? To build up in your mind the

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(1) concept that this is a case you ought to pre judge as involving
 (2) a drunk They can label Joe Hazelwood as a drunk then
 they ve
 (3) got you that seems to be the theory That gets you to
 (4) reckless
 (5) I d like to ask you at the start of the case to start by
 (6) focusing on the grounding the event that gave rise to the
 (7) injury the event that gave rise to our responsibility to pay
 (8) actual damages Mr O Neill has taken you through that and
 (9) I m only going to go back through it in areas which he has not
 (10) covered or areas which in covering perhaps only gave you part
 (11) of the story
 (12) This is plaintiffs very fine chart giving you a general
 (13) view of that part of Alaska that we re talking about the area
 (14) of Valdez with the Alyeska terminal on this side and the town
 (15) of Valdez over here There s a place here called Potato Point
 (16) right at the end of the Narrows It s really not too clearly
 (17) conveyed in this cut out drawing but it s a little bump that
 (18) sticks off from the shoreline and on that bump there is a
 (19) radar tower which is the tower that was installed when tanker
 (20) traffic started in Prince William Sound so that there would be
 (21) radar surveillance of tankers coming and going and that radar
 (22) can look into Port Valdez and it also can look down And the
 (23) evidence that you ll hear is that it can see down on almost
 (24) all - at almost all times and when the evidence is in I
 (25) believe you ll agree that on the night of March 23 it could see

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(1) down to Bligh Reef and below
 (2) And the rules of the road that were established you heard
 (3) a lot from Mr O Neill about the Coast Guard regulations that
 (4) apply to work hours the Coast Guard regulations that apply to
 (5) pilotage Well the same set of Coast Guard regulations that
 (6) apply to the whole operation in Prince William Sound have set
 (7) up this highway system or what is - what is called a vessel
 (8) traffic system will be referred to as VTS or VTC The
 (9) government can't have any name that doesn't get reduced to
 (10) initials So the Coast Guard has set up this system designed
 (11) to prevent tankers from running into each other coming in and
 (12) going out The empty tankers come in and up in the
 (13) southbound
 (14) lane The loaded tankers go out - I'm sorry in the
 (15) northbound lane the loaded tankers go out the southbound
 (16) lane There's a big separation strip between them
 (17) This area down here below Rocky Point Mr O Neill
 (18) emphasized to you that there is a federal regulation that
 (19) requires that in this area tankers have a federal pilot
 (20) aboard Above this point they have to have a State pilot as
 (21) well as a federal pilot below a federal pilot is enough
 (22) The evidence will be that for more than a year prior to the
 (23) accident the United States Coast Guard was trying to eliminate
 (24) that requirement because in the Coast Guard's opinion these
 (25) are not dangerous waters These waters do not require
 someone
 with special skill and special training

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(1) If I could use an every day analogy it would be like a
 (2) highway which was posted for 55 the highway department is
 (3) trying to get it posted for 65 but the 55 mile an hour signs
 (4) are still up I'm not saying it wasn't required I agree with
 (5) Mr O Neill it was required but this was not dangerous
 (6) water The Coast Guard after 13 years of experience was
 (7) trying to eliminate that requirement because these waters were
 (8) quite - quite simple in relation to - to navigation
 (9) problems In fact the commandant of the Coast Guard said
 (10) about this very accident that in that area of Prince William
 (11) Sound a ten year old ought to be able to pilot a tanker
 (12) safely He was joking but it indicates the degree of
 (13) sensitivity
 (14) Now let's - let's talk about the specifics of this
 (15) incident and see if alcohol is being used as a haze here What
 (16) Commander McCall of the Coast Guard called smoke He said
 (17) that
 (18) all this press coverage about alcohol was just so much smoke
 (19) to
 (20) try to confuse what had happened in this accident
 (21) The ship I'm going to pick up at about 11 25 which is
 (22) about the time that Mr O Neill started talking about At that
 (23) point the Exxon Valdez is in the southbound lane coming out
 (24) and third mate Greg Cousins is out on the deck helping the
 (25) pilot get off At that point Captain Hazelwood is on the
 bridge This is the Captain Hazelwood who is supposedly
 impaired is on the bridge and it's a very dark night You

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(1) can't see anything with the naked eye but the Exxon Valdez has
 (2) two kinds of radar and looking in the radar screens he sees
 (3) ahead of him that there is ice in these traffic lanes that
 (4) chunks of ice which had come off the Columbia Glacier up here
 (5) have floated out and are floating across the traffic lanes
 (6) That is something that happened with a fairly high degree of
 (7) frequency
 (8) Mr O Neill made reference to the fact that one Exxon
 (9) captain Captain Martino had seen about a half a month earlier
 (10) had seen so much ice that he suggested that captains might not
 (11) want to sail at night through there But on this particular
 (12) night two prior ships had gone through here two prior ships
 (13) had seen ice two prior ships had done what ships have been
 (14) doing for years and years what the Coast Guard and the
 (15) people
 (16) in the industry had carefully evaluated That is they decided
 (17) to go around the ice because generally speaking the ice would
 (18) end up you know kind of fading out when you got to the edges
 (19) of the northbound shipping lane and then there'd be a clear
 (20) path around the ice
 (21) The evidence will be that most captains decided that the
 (22) prudent and better course for seamanship rather than to slow
 (23) down and sail through the ice with a chance of danger to the
 (24) ship or its propeller or its rudder was to sail around the
 (25) ice The evidence will be that the Coast Guard customarily
 gave permission to do that just as it gave Captain Hazelwood

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(1) permission on this night
 (2) Now at this point I'd like to switch - could I get your
 (3) help Dave?
 (4) At this point Captain Hazelwood has - has been coming
 (5) down He asked for permission to go out of the traffic lane so
 (6) he can go around the ice and as you heard he indicated he was
 (7) going to take a course of 200 degrees and that's this course
 (8) here which I'm drawing not very artfully to about the middle
 (9) of the separation zone Now during this time he is looking
 (10) at the ice on the radar and evaluating what is the best
 (11) strategy to get around the ice This is not a terribly
 (12) difficult maneuver Captain Hazelwood is carefully watching
 (13) that and he concludes that if he continues straight ahead on
 (14) 200 the course he talked to the Coast Guard about he's going
 (15) to hit the ice so he picks a course of 180 degrees which he
 (16) in his judgment and you will hear whatever anyone may say
 (17) about Captain Joseph Hazelwood he had an almost legendary
 (18) reputation as a good seaman People over and over again
 (19) would
 (20) say if I ever had to be on a ship in trouble Captain
 (21) Hazelwood would be the captain I'd want in charge of that
 (22) ship Captain Hazelwood anticipated that on a course of 180 he
 (23) would have two advantages One he would be on a cardinal
 (24) compass heading he would be heading due north and south
 (25) which
 makes calculating your navigation easier but secondly and
 equally important he would be able to go around the ice

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- (1) without any further maneuver
- (2) At that point Mr Cousins who had been doing some duties
- (3) off the bridge as I told you earlier came - came back into
- (4) the bridge area - and Irene if you could give me the bridge
- (5) first
- (6) I'd just like to give you an orientation You've seen the
- (7) plaintiffs model of the bridge This is a photo of what the
- (8) bridge of the Exxon Valdez looked like taken in daytime not
- (9) nighttime as you can see from the windows This is the port
- (10) radar stand starboard radar stand This is a door that goes
- (11) out on this balcony like thing that they call the wing and
- (12) that door goes out to the right wing or the starboard wing
- (13) This is the steering stand this little wheel is how you turn
- (14) the rudder This window here is the window that Mr O'Neill
- (15) referred to into the chart room There's a table back there
- (16) with charts just exactly like this chart you're seeing except
- (17) a little smaller in size and as a part of sailing they are
- (18) supposed to write down on this chart as they go various times
- (19) where the ship is
- (20) This telephone here which figures in the story is a phone
- (21) on the bridge which enables anyone on the bridge to reach
- (22) anyone else on the ship by punching two buttons Two buttons
- (23) you can get the captain's office two buttons you can get the
- (24) engine room And the captain's cabin is down one - it's
- (25) actually down through the chart room it's down one flight of

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- (1) stairs It's takes 11 seconds let's round it 15 seconds to
- (2) get from the captain's cabin to the bridge
- (3) Now as I indicated sometime around say twenty of twelve
- (4) on the night of March 23 Captain Hazelwood had put the ship
- (5) on a course of 180 He put it on autopilot which involved
- (6) pushing a button on a course of 180 Now you may hear some
- (7) testimony in this case that some people some sailors question
- (8) putting a ship on autopilot in that situation the way some
- (9) drivers might question putting a car in cruise control Some
- (10) people trust computers Some people don't trust computers
- (11) I'm using a computer for my opening statement Mr O'Neill
- (12) did not use a computer for his opening statement But Captain
- (13) Hazelwood felt that it was appropriate to put the ship on
- (14) autopilot at that point in time because he wanted to have a
- (15) discussion with Mr Cousins Specifically he wanted to
- (16) explain to Mr Cousins what he planned to do because he
- (17) wanted
- (18) to go down to his cabin to do some paperwork
- (19) Now you'll hear from Captain Hazelwood as to why he reached
- (20) that decision what his purposes were You can decide for
- (21) yourself what that involved whether it was reckless or whether
- (22) it was negligent
- (23) Now could I have Mr Cousins? Show you a picture of Greg
- (24) Cousins who will testify in this case by deposition
- (25) Does somebody know how long I've gone?

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- (1) MR LYNCH How long have I been going?
- (2) THE COURT If you started at approximately 10 15
- (3) MR LYNCH Okay
- (4) Mr Cousins is one of the I think most attractive and
- (5) interesting people you'll hear about in this case At least to
- (6) me he is because most of the officers in the Exxon Shipping
- (7) Company had come out of the merchant marine academy
- (8) They had
- (9) gone to college to learn to be sea going officers Greg
- (10) Cousins had worked up from the deck He had gotten a job as
- (11) an
- (12) able bodied seaman that they call an A B He studied on his
- (13) own He sent away to correspondence courses in navigation
- (14) and
- (15) maritime science and he got a license from the Coast Guard to
- (16) be a third mate And because he'd been a very highly regarded
- (17) A B very highly regarded seaman he was promoted by Exxon
- (18) to
- (19) third mate Once he was a third mate he earned his second
- (20) mate's license in just about the minimum time that a person can
- (21) earn their second mate's license from the Coast Guard
- (22) So on the night we're talking about Greg Cousins was a
- (23) second mate He was licensed by the Coast Guard to sail one
- (24) rank higher than he was Now the plaintiffs have tried to
- (25) tell you that Greg Cousins was blurred eyed and bloodshot
- (26) when
- (27) he came on the bridge at twenty minutes to twelve but that -
- (28) the evidence just won't support that They've made that claim
- (29) to you in this opening statement I ask you just to listen to
- (30) the evidence They told you about a law that doesn't say what

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- (1) they say it says It does not say you must have six hours of
- (2) rest It says you must have six hours off duty and Greg
- (3) Cousins did have six hours off duty He had a very light day
- (4) the day preceding the departure of the Exxon Valdez he'll
- (5) testify You'll see him on the screen as he testified in New
- (6) Orleans and he says I wasn't tired I wasn't a problem
- (7) He thought very highly of Captain Hazelwood as do most
- (8) seamen who worked with Captain Hazelwood you'll see in his
- (9) testimony when you watch that he had great respect for Captain
- (10) Hazelwood Captain Hazelwood called him over and explained
- (11) his
- (12) plan which is just about the plan Mr O'Neill told you about
- (13) that was travel down on 180 until you're straight even until
- (14) Busby Island light is right off your shoulder and then turn
- (15) right and didn't tell him how big a turn but turn right to
- (16) avoid the ice So Captain Hazelwood's plan was to go down to
- (17) Busby Island and then turn right and I'm dotting this line in
- (18) get over - I can't - I can't give you this line with
- (19) precision because no one can at this time
- (20) The idea was now you've passed the ice you've gone past
- (21) the most easterly point of the ice get back into the traffic
- (22) lanes sail through these very wide very deep very
- (23) untreacherous waters down to Cape Hinchinbrook and he also
- (24) said call me when you start that process
- (25) He explains this to Mr Cousins and Mr Cousins who's a
- (26) subordinate officer and you know you heard Mr O'Neill
- (27) suggest

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(1) that everybody on the ship was afraid of the captain he didn't
 (2) say yes sir aye aye sir he went back and looked at the
 (3) charts picked up the binoculars and looked outside He went
 (4) and looked at the radar he checked out the situation he
 (5) decided that he agreed with what Captain Hazelwood proposed
 (6) do he decided that that was something that was well within his
 (7) skills and only after he'd done that only after he'd checked
 (8) it out he went back to Captain Hazelwood and told Captain
 (9) Hazelwood that he was comfortable that this was something he
 (10) was up to doing and that he understood was what Captain
 (11) Hazelwood wanted him to do He understood that Captain
 (12) Hazelwood was asking him do you have any problem with this
 (13) don't hesitate to tell me If you have any problem I'll be
 (14) glad to stay but if you don't if this is something you can
 (15) do I plan to go below
 (16) Now Exxon the Exxon defendants disagree with Captain
 (17) Hazelwood about the wisdom of that decision We agree that
 (18) Captain Hazelwood should have followed our bridge manual
 (19) and
 (20) should have stayed where he was but the question here is
 (21) reckless Was Captain Hazelwood acting like a man racing a
 (22) train through an intersection Was he aiming a ship at Bligh
 (23) Reef and going below to sleep or something or is this both
 (24) Captain Hazelwood and Mr Cousins trying carefully to - to
 (25) assess the situation and concluding that this was not a
 (26) dangerous situation or more than they could handle

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(1) Captain Hazelwood with the light in plain sight concludes
 (2) he can trust Greg Cousins to turn right As I said I think a
 (3) week ago to you it's like if you can imagine driving with
 (4) someone your son or some other driver and saying when you
 (5) get
 (6) to the light up ahead turn right That was the difficulty of
 (7) the order that Captain Hazelwood gave Mr Cousins and no
 (8) one
 (9) will tell you that if that order had been followed there would
 (10) have been a grounding No one will tell you that if that order
 (11) had been followed it would have been highly treacherous or
 (12) risky In fact two - earlier that day that same day two
 (13) ships had come through here one was the Brooklyn I'm not
 (14) sure I'm going to have these lines right again but the
 (15) Brooklyn was a tanker that came through in the afternoon of
 (16) March 23rd It had seen ice and it has followed a course
 (17) something like this red line that I've plotted here and at
 (18) just about exactly the time that the Exxon Valdez was leaving
 (19) the port is just the time it cast off from the Alyeska
 (20) terminal another tanker the Arco Juneau came through here
 (21) and
 (22) it followed a course comparable to the course that Captain
 (23) Hazelwood planned for the Exxon Valdez
 (24) These ships monitored on radar by the Coast Guard which
 (25) was constantly watching all a part of an overall system
 (26) designed to promote safe tanker transit tanker traffic through
 (27) Prince William Sound Now Captain Hazelwood was so
 (28) confident
 (29) that everything was under control that at that point he pushed

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(1) a program computer turned on a computer called Load
 Program
 (2) Up This is the reference that Mr O'Neill made a week ago to
 (3) speeding the ship up Now you heard Mr O'Neill say that at
 (4) the time that Captain Hazelwood spoke to the Coast Guard the
 (5) Exxon Valdez was traveling at about something under 13 miles
 an
 (6) hour little over 12 miles an hour Less than 12 knots It's
 (7) confusing I'm going to use miles per hour because I don't
 (8) know knots but around little under 12 miles an hour
 (9) He told the Coast Guard that he was going to slow down to a
 (10) little under 13 miles an hour At either of those speeds you
 (11) could almost keep up with it running if you're a better runner
 (12) than I am A marathoner could keep up with the ship as it
 (13) moved
 (14) When you push Load Program Up the speed of the vessel will
 (15) increase by about six - six or seven miles an hour but it
 (16) takes 45 minutes for that to happen During the time that
 (17) we're talking about the speed of the vessel did not increase
 (18) by even one mile an hour The vessel never got as high as 12
 (19) knots never got as high as 13 miles an hour and speed had
 (20) nothing to do with this
 (21) Now we've got Captain Hazelwood he's just left the bridge
 (22) he's gone below to his cabin he's 11 seconds away if Mr
 (23) Cousins needs him Who else was up there at the time? Can
 we
 (24) have the - you've heard Mr O'Neill refer to Mr Kagan as
 (25) someone who couldn't steer couldn't hear and couldn't see

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(1) I'm not going to spend a lot of time on Mr Kagan He was
 (2) licensed by the Coast Guard to serve as an able bodied
 seaman
 (3) His job as Mr O'Neill told you was to follow orders His
 (4) job for purposes of what we're talking about was to turn that
 (5) wheel which we saw in the picture and there's an arrow on the
 (6) bottom and you start at zero and you turn to ten That was
 (7) his job Turn that wheel until the arrow points to ten Look
 (8) up and see the rudder angle indicator If it goes to ten
 (9) you've done it right And nobody will tell you in this case
 (10) that Mr Kagan did anything other than exactly what he was
 (11) ordered to do So Mr Kagan is a non issue
 (12) The other person on the bridge at that time was a woman
 (13) named Maureen Jones Ms Jones was a - an able bodied
 (14) seaman She was stationed on the bridge wing just outside the
 (15) door She was licensed as a third mate She was licensed to
 (16) do the job that Greg Cousins had
 (17) Now two minutes - when Captain Hazelwood left the bridge
 (18) it was about 11 52 about eight minutes before midnight The
 (19) Busby Island light was in plain sight He had given a very
 (20) simple order very easy order to Mr Cousins well within his
 (21) conference and Mr Cousins said he was comfortable with it
 (22) Then what happened I think one thing that happened was Mr
 (23) Cousins wanted to show Captain Hazelwood what a good mate
 he
 (24) was He decided to do some things over and above Captain
 (25) Hazelwood's order one of the things he decided he would do is

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(1) take and write down a fix right at Busby light He would -
 (2) beyond looking and watching for the light he would wait until
 (3) he was right even with the light and write it down in the
 (4) charts as Mr O Neill told you about Told you that Mr
 (5) Cousins was back there for six minutes I don t think you ll
 (6) find any evidence to that effect when you hear the evidence
 (7) If you listen to the evidence you ll hear Mr Cousins say
 (8) he doesn t know how long it took him maybe a couple minutes
 (9) maybe a little longer but certainly not six minutes No one
 (10) even after all the money and effort that s been spent in this
 (11) case even though the Court gives us the power to go put
 people
 (12) under oath find them in New Orleans or New York or wherever
 (13) they happen to be now and take their deposition no one can
 (14) reconstruct exactly what happened
 (15) What we do know is that instead of starting to turn right
 (16) as the ship was abeam of Busby island it continued for seven
 (17) minutes on the course of 180 degrees We know that during
 that
 (18) time a number of things happened We don t know in what
 order
 (19) they happened for sure we don t know how long they took for
 (20) sure we certainly don t say that there weren t mistakes made
 (21) there and we Exxon say those are our mistakes and we
 accept
 (22) responsibility for them but look at the whole picture
 (23) Mr O Neill said we try to blame it on the Coast Guard
 (24) well that isn t true but it is a part of the picture I
 (25) indicated to you that from the start of tanker traffic in

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(1) Prince William Sound the Coast Guard had set up the system
 (2) that required that tankers they could leave these lanes tell
 (3) the Coast Guard in Valdez so the Coast Guard in Valdez would
 (4) know where they were so the Coast Guard in Valdez could keep
 an
 (5) eye on them But this was - this trip of the Exxon Valdez was
 (6) about the eight thousandths plus tanker trip through Prince
 (7) William Sound Over those times 8 000 times people had
 (8) developed no problems they had confidence that they knew
 what
 (9) they were doing
 (10) At that night when Captain Hazelwood called the Coast Guard
 (11) in Valdez and told them that he was leaving the tanker lanes to
 (12) go around ice although the Coast Guard procedures called for
 (13) the Coast Guard to follow the ship on radar the watch stander
 (14) didn t do so You will hear evidence that he tried to and
 (15) couldn t see it on the radar but I think when you ve heard all
 (16) the evidence I think that you ll conclude that what happened
 (17) was he had the radar in short range mode that he didn t bother
 (18) to flip the switch that would have showed him where the Exxon
 (19) Valdez was Then right in the midst of this he was replaced by
 (20) his replacement He worked till 12 00 and he was replaced just
 (21) before midnight The Coast Guard rules required him to tell
 (22) his replacement the guy who came in for him how many ships
 (23) were in the system what they were doing and to point them out
 (24) on the radar screen
 (25) When the Coast Guard man Mr Taylor s replacement came in

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(1) Mr Blandford was the replacement he told Mr Blandford that
 (2) the Exxon Valdez was the only tanker in the system one ship to
 (3) worry about Told him that it was going around ice and he
 (4) didn t point it out on the radar screen More over Mr
 (5) Blandford didn t look for it He went to have coffee And
 (6) then he came back and he again didn t look at the radar screen
 (7) he started changing out some tape recordings some tape reels
 (8) on a machine they have there had his back turned to the
 (9) radar So the Coast Guard didn t see as the Exxon Valdez went
 (10) past Busby Island went past the usual kind of customary place
 (11) to turn there was Ms Jones as Mr O Neill has said she
 (12) noticed that they were getting further and further down and
 (13) that that red light on the Bligh Island buoy the Bligh Reef
 (14) buoy rather was getting on the right side of the ship and she
 (15) went in twice and told Mr Cousins I see that red light on the
 (16) right side kind of urging him that maybe the time had come to
 (17) turn We just don t know Mr Cousins can t say what
 (18) happened To this day he says I just don t know what
 happened
 (19) there
 (20) The Coast Guard we don t know why the Coast Guard but
 (21) it s all of those things coming together It wasn t just
 (22) Captain Hazelwood leaving the bridge In fact if you look at
 (23) the chain of circumstances that it took to have this very
 (24) remarkable accident I mean very remarkable because the -
 (25) everybody who looked at it and knows about seamanship

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(1) afterwards just couldn t believe that it s possible for a ship
 (2) to - to sail into a reef in this way and it took a series of
 (3) oversights Captain Hazelwood s oversight in our opinion in
 (4) leaving the bridge Mr Cousins oversight in probably trying
 (5) to do too much Trying to write too many things down juggle
 (6) too many balls That s why we have that rule The Coast
 (7) Guard s just taking for granted that this was going to be just
 (8) another routine passage all of those hallmarks of people
 (9) making simple mistakes in negligence but I submit to you that
 (10) they are not the hallmarks of recklessness
 (11) Let me finish this story quickly At about two minutes
 (12) afterwards we can tell this from instruments kept on the ship
 (13) Exxon Valdez even then if it had turned sharply 15 degrees or
 (14) 20 degrees but it turned at 10 degrees until it sailed down
 (15) and ran into the reef That s - that s the tragedy of this
 (16) case that there were so many chances for this accident not to
 (17) happen and it took all of those chances to go wrong for this
 (18) accident to occur
 (19) I suggest to you as I did last week that if you look at
 (20) what happened here you try to put behind you this label of
 (21) alcoholism or drunk that the plaintiffs try to package this
 (22) case with you see that this is a very tragic accident But it
 (23) really involved the kind of simple mistakes that you see in car
 (24) accidents every day It involves one person making a mistake
 (25) and another person making a mistake and all those come

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(1) together unfortunately for this accident to happen
 (2) Now let me turn very briefly to the subject of - of
 (3) impairment Mr Chalos will cover that for the most part
 (4) because he knows the facts about Captain Hazelwood to a
 greater
 (5) degree than I do Could I have that chart? I think all I will
 (6) say on that subject given the limited time I have is this
 (7) Wrong chart
 (8) The evidence will be that from the time Captain Hazelwood
 (9) left the Pipeline Club in Valdez that more than a dozen people
 (10) saw him and interacted with him in a professional manner
 They
 (11) are shown on this chart here Seven of them had nothing to do
 (12) with Exxon Seven of them were not employed by Exxon and
 (13) several of them were police officers or public officers
 (14) investigating the grounding Every one of them will testify
 (15) that Captain Hazelwood was not in their judgment impaired
 (16) Some of them smelled alcohol on his breath or thought they
 (17) did But all of them will testify that he was not impaired
 (18) and again even a person who shouldn't be drinking if that's
 (19) the case isn't necessarily hopelessly drunk as soon as they
 (20) have a drink and the fact is that this is the judgment of
 (21) everybody who was there to watch and these people these two
 (22) people Commander Falkenstein and Warrant Officer Delozier
 (23) Coast Guard officers sent out to this ship at a time when no
 (24) one knew if it was going to make it through the night People
 (25) on that ship were afraid they were going to die on it These

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(1) two officers were risking their lives to go out there and get
 (2) on that vessel It was creaking and groaning and no one knew
 (3) the full extent of the damage Who did they decide to leave in
 (4) command of that ship as the best person qualified to deal with
 (5) that situation? Captain Joseph Hazelwood They concluded
 from
 (6) what they saw getting there in the emergency Captain
 (7) Hazelwood was the best qualified person to leave in command
 of
 (8) that ship That's pretty strong evidence from professional
 (9) people with no bias for Exxon that impairment was not a factor
 (10) in Captain Hazelwood's actions that night Overconfidence
 (11) possibly Difference of opinion about what constitutes good
 (12) seamanship possibly but not impairment by alcohol
 (13) Lastly I'd like to turn to the subject of Exxon's drug and
 (14) alcohol policy and how it treated Captain Hazelwood I
 (15) mentioned to you that the plaintiffs have tried to hang a label
 (16) of alcoholism or drunk on this case so they can get punitive
 (17) damages And in attacking and trying to parlay that into a
 (18) showing that Exxon was reckless in dealing with Captain
 (19) Hazelwood they're trying to do more harm to people who have a
 a
 (20) problem with alcohol trying to undo a lot of what has been
 (21) done twenty years to try to bring this problem out of the
 (22) closet to end the day when people who had a drinking problem
 (23) were called drunks and were fired and were left to wait on the
 (24) trash heap for whatever could come their way
 (25) The evidence is as Mr O'Neill told you that in 1985

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(1) Exxon learned that Captain Hazelwood had voluntarily gone
 into
 (2) a hospital on his vacation time to receive treatment for
 (3) alcohol treatment in a very fine hospital in his area called
 (4) South Oaks Exxon had nothing to do with him going there and
 (5) nothing to do with prescribing care for him and Exxon had not
 (6) done anything that classified him or compelled him to go to the
 (7) hospital He was treated by qualified professional Exxon
 (8) learned of it in two ways
 (9) First of all they asked for insurance benefits that's the
 (10) information on the IDR that went to Exxon's medical
 department
 (11) and the evidence will be that as a matter of law and as a
 (12) matter of medical ethics the doctor at Exxon was as to keep
 (13) that confidentiality as if Captain Hazelwood were his client
 (14) or rather his patient patient doctor client lawyer Other
 (15) way Exxon learned about the hospitalization was Captain
 Graves
 (16) having a conversation with Captain Hazelwood as usually is a
 (17) sign with dealing with an alcohol problem
 (18) Captain Hazelwood admitted that at prior times he had in
 (19) fact come back to his ship under the influence or he had in
 (20) fact had alcohol aboard the ship And Mr O'Neill told you
 (21) that was illegal Not so At no time up to the date of this
 (22) accident did the Coast Guard have any rule that prohibited
 (23) drinking aboard a U S flagship and in fact many companies
 (24) recognizing that the ship is both the home and the work place
 (25) of seamen openly allow drinking on their ships

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(1) Exxon ran at all times what it called a dry fleet It
 (2) prohibited possession and use of alcohol on its ships but
 (3) there was no law that required that and any suggestion that
 (4) that's so or that Captain Hazelwood was committing a law
 (5) violation just can't be supported Likewise we don't think
 (6) anybody should be coming back to our ships drunk it is not the
 (7) law that you - that a seaman who returns to a ship is
 (8) violating some law to return to the ship drunk but it was
 (9) certainly a cause of real concern
 (10) And you will hear from Mr Larossi Mr Larossi was the
 (11) president of Exxon Shipping Company the highest individual in
 (12) the company that's how high this issue went You'll hear from
 (13) Mr Larossi who had the very tough decision He didn't have
 (14) the benefit of the hindsight Mr O'Neill has five years after
 (15) the fact to say well this will certainly happen this will
 (16) certainly happen so I guess the conclusion anybody who ever
 (17) goes and admits they have a problem and seeks help for
 dealing
 (18) with alcohol better not get their job back if it involves any
 (19) risk of safety and believe me there are a lot of jobs that
 (20) involve the risk of safety beyond tanker captain
 (21) Mr Larossi will tell you there are three factors that
 (22) influenced his decision First of all was the Exxon alcohol
 (23) policy which assured Captain Hazelwood - could I have that up
 (24) please - assured Captain Hazelwood that if he voluntarily
 (25) sought help in dealing with alcohol company sponsored
 medical

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(1) program - support rather available on confidentiality basis
 (2) for individuals who request help in combatting drug or alcohol
 (3) dependency That policy that part of the policy was
 (4) consistent with the recommendation of professionals in the
 (5) field that this was the very best way for companies like Exxon
 (6) to try to - to try to get a handle on the problem of
 (7) alcoholism in the work place which has been customarily
 (8) something that people keep in the closet They're ten percent
 (9) of the population Any population has a drinking problem
 (10) Usually those problems can't be identified until they show up
 (11) as - as some breakdown on the job
 (12) Experts in the field had concluded that the best way to try
 (13) a get handle on that to get out in front of it was to
 (14) encourage people to seek help and the only practical way to
 (15) get people to voluntarily seek help was to tell them that if
 (16) they did so they wouldn't be penalized in their job and to
 (17) tell a man like Captain Hazelwood whose whole life was based
 (18) on being a sea going officer the consequence of his
 (19) voluntarily seeking help was that he was going to be beached
 (20) that Exxon was going to decide that for a year or two or three
 (21) he had to go ashore he couldn't be a captain anymore Even
 (22) though he got the same pay that would be a message to
 (23) Captain
 (24) Hazelwood and any other officer in the fleet that this doesn't
 (25) mean a thing If you admit you have a problem and seek help
 you will indeed have problems on your job when you come
 back

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(1) The experts advised Exxon against that Now that's a tough
 (2) call
 (3) As you know you've got this known problem guy's admitted
 (4) he's got some problem and then you've got these other people
 (5) out there who may have a problem who you'd like to have come
 (6) forward and Mr. Larossi will tell you he referred to the
 (7) opinion of the experts thought it was a good policy and
 (8) thought it deserved to be kept in good faith
 (9) Second thing he considered was whether this would be
 (10) contrary to law because we all know that employers
 (11) particularly employers like Exxon don't have a free hand in
 (12) dealing with employees There are jurors in this country who
 (13) think about awarding punitive damages against companies like
 (14) Exxon for treating their employees unfairly for violating the
 (15) employee's rights and I guess all of us have seen when you
 (16) travel around there are ramps and various other things that
 (17) recognize the rights of the handicap to participate in society
 (18) fully
 (19) In 1978 the attorney general of the United States ruled
 (20) that a person who has been treated for alcohol problems is a
 (21) handicapped person and is entitled to the benefit of laws
 (22) protecting the handicapped from discrimination So Mr.
 (23) Larossi that was another factor that Mr. Larossi considered
 (24) and the third factor he considered you'll hear his testimony
 (25) was that he was concerned that if he did this he would drive

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(1) the problem of drinking underground and any - any hope of
 (2) getting - of making progress you heard a long list of names
 (3) from Mr. O'Neill about people who might be drinking on ships
 (4) and you heard him say and unfortunately there's some truth to
 (5) this that for centuries sailors have been coming back to
 (6) ships after drinking drunk It is a problem And Mr. Larossi
 (7) was really concerned about that problem and working hard in
 (8) various ways that the law permitted to try to get a handle on
 (9) it and get it under control but he didn't have the right to
 (10) put on jack boots like Henry Ford used to do and send
 (11) policemen around to all of his employees' house and check
 their
 (12) garbage and he didn't have the right to become Joe
 Hazelwood's
 (13) doctor and declare to Joe Hazelwood this is what your medical
 (14) treatment will be for the future That's what the plaintiffs
 (15) case of recklessness for an alcohol problem is concerned
 (16) Now we get to the subject of monitoring Because Mr.
 (17) Larossi decided that Captain Hazelwood should be put back in
 (18) his job not that he had to be put back in his job but that he
 (19) should be because it was the right decision Maybe that was a
 (20) mistake maybe you'll disagree with him but I don't think if
 (21) you'll listen to the evidence that you can doubt Mr. Larossi
 (22) was trying very hard to make the right decision And after
 (23) all if you're president of the Exxon Shipping Company you've
 (24) just built a hundred and thirty million dollar tanker although
 (25) he wasn't thinking about the Exxon Valdez at the time but any

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(1) tanker why would you want to put someone who you think has
 (2) an
 (3) alcohol problem back on the ship Why would you want to take
 (4) that risk? From Mr. Larossi's point of view easiest thing for
 (5) him to do would be to say Captain Hazelwood you've got a
 desk
 (6) job for the rest of your life but he was trying to balance
 (7) what society and the law and the courts were telling him was
 (8) the right thing to do and the experts were telling him was the
 (9) right thing to do Said I want this man monitored
 (10) Mr. O'Neill thinks that apparently when you say that what
 (11) you're saying is I want a lot of paper generated please create
 (12) a lot of bureaucracies for me and write me a lot of paper
 (13) That'll make me feel good as a bureaucrat What he told the
 (14) people to do was monitor Captain Hazelwood and again it's a
 two-sided story
 (15) The law and the policy says that he - that Captain
 (16) Hazelwood is entitled to a right of confidentiality and there
 (17) were federal laws protecting his confidentiality about his
 (18) medical treatment for alcoholism so the idea you're going to
 (19) put up on the company bulletin board big picture here's
 (20) Captain Hazelwood he's never supposed to drink again If
 (21) anybody sees him call 1 800 Exxon That idea is contrary to
 (22) the way Exxon employers are allowed to deal with their
 (23) employees So he went to the person responsible for
 (24) supervising Captain Hazelwood At that time it was a man
 named
 (25) John Tompkins Could I have that full screen Irene The whole

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(1) screen okay that s will be fine John Tompkins was in charge
 (2) at that time for the gulf coast fleet Gulf coast were the
 (3) ships sailed from Houston area to New York and sometimes
 down
 (4) to Panama Shorter runs that were involved on the west coast
 (5) shorter runs more often in port better chance to see Captain
 (6) Hazelwood more frequently He told them on a confidential
 (7) basis not he Frank larossi he instructed these people be
 (8) told to monitor Captain Hazelwood on a confidential basis
 (9) You ll hear expert testimony about monitoring
 (10) Again the concept that companies like Exxon were given
 (11) from the experts in field was not the concept you heard from
 (12) Mr O Neill it s not the idea of big Exxon coming in putting a
 (13) big doctor s hat on and sitting down with Captain Hazelwood
 and
 (14) saying I m going if take over your aftercare for you Mr
 (15) Hazelwood here s what you re going to do I want you to go to
 (16) AA I want you to go to aftercare Come in and conference with
 (17) Mr Tompkins or Mr Sheehy every other week it was watch his
 (18) job performance was he doing the job the way he was
 supposed
 (19) to be doing because if he s not you the employer your role
 (20) is to see if the tell tail signs of poor job performance are
 (21) starting to show up That s the employer s role in the
 (22) process
 (23) Remember Captain Hazelwood s has his own doctor and he s
 (24) getting his own medical advice his treatment is his just like
 (25) if you had medical problems like heart problems or diabetes

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(1) you wouldn t expect your employer to call you in and say what
 (2) your treatment should be don t eat any salt and be sure you
 (3) get eight hours of sleep a night or something like that
 (4) That s exactly what these people did and they did it carefully
 (5) and you ll hear their testimony They didn t - they didn t go
 (6) around coming in every week saying Captain Hazelwood take
 the
 (7) pledge have you - have you had anything to drink but they
 (8) watched his job performance carefully and in fact they watched
 (9) beyond that because they watched for any signs that they could
 (10) see of Captain Hazelwood drinking
 (11) Now other people who were not responsible for supervising
 (12) Captain Hazelwood were not told that there was any reason that
 (13) Captain Hazelwood couldn t drink in entirely appropriate
 (14) situations and a big part of that list that you heard from Mr
 (15) O Neill are people who had a beer with Captain Hazelwood at
 (16) dinner or wine or something Totally appropriate lawful
 (17) circumstance It s only because the plaintiffs have declared
 (18) themselves entitled to impose on Captain Hazelwood a lifetime
 (19) regime of abstinence that they even get listed There was
 (20) nothing about what they observed That should have set off a
 (21) red flag for them that said this is improper drinking Now
 (22) it s certainly true that Alcoholics Anonymous recommends total
 (23) abstinence for life but as you ll hear when you hear the
 (24) testimony in this case that s not the only way to treat
 (25) alcoholics And then there was a third category which did come

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(1) to light at least so far as Exxon is concerned came to light
 (2) for the first time as a result of the power that courts give us
 (3) to go and put people under oath put them under penalty of
 (4) perjury and they have to tell the truth Those were people who
 (5) broke Exxon s rules themselves violated Exxon s alcohol
 (6) policy and didn t get caught They said some of them that -
 (7) that they and Captain Hazelwood broke Exxon s rules We
 didn t
 (8) know about that Exxon didn t know about that until this case
 (9) either In fact as you can well imagine these people did
 (10) everything in their power to keep Exxon from knowing about it
 (11) because they knew that if Exxon did know about it they would
 (12) be history because they knew that captain - that Frank
 (13) larossi at Exxon was serious about its alcohol policy They
 (14) knew that if they admitted to this or got caught at it that
 (15) they would not have their jobs any longer So that s basically
 (16) what you ll hear in this case I have not had time enough to
 (17) go into it in the detail I would like I have deferred some
 (18) parts of - of the information to Mr - Captain Hazelwood s
 (19) counsel but fundamentally I finish where I start
 (20) This is a case about a company and people who were trying
 (21) hard to operate in a responsible way The people you will see
 (22) testifying the people who are accused of being reckless were
 (23) faced with a tough problem Being fair to Captain Hazelwood
 (24) to recognize what congress and other government agencies
 were
 (25) telling them they should do as an employer and at the same

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(1) time to monitor and run a safe operation They were acting in
 (2) good faith They were not reckless This is an accident which
 (3) resulted from a lot of improbable commonplace errors
 Captain
 (4) Hazelwood should not have left the bridge but when he left the
 (5) bridge the ship looked like it was in - in very safe
 (6) condition It was in clear water heading to a marked turning
 (7) point The mate knew where he was going he confirmed he
 could
 (8) do it The Coast Guard was supposed to be watching and
 (9) Captain Hazelwood had no reason to think there would be any
 (10) problem The mate felt he was in control he was amply
 (11) trained He was rested There were other people there on the
 (12) bridge to help
 (13) I don t - I m not saying there was no negligence I m not
 (14) saying Captain Hazelwood should have left the bridge I m
 (15) saying he made a mistake he committed an error and other
 (16) errors were committed and the totality of those error any one
 (17) of them - take any one of them away and the ship veers off
 (18) this way and safely heads for San Francisco or Long Beach It
 (19) was only the combination of all those errors that kept it
 (20) headed this way toward Bligh Reef and that was not the result
 (21) of a drunken captain That was not the result of an accident
 (22) that had to happen This was an accident that didn t have to
 (23) happen and wouldn t have happened except for a chain of
 (24) mistakes from Exxon people Mr Cousins Captain Hazelwood
 (25) others and from other people Mr Blandford Mr Taylor the

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(1) Coast Guard and others it s a tragedy
 (2) The plaintiffs natives and the fishermen are entitled to
 (3) full compensation for their loss This is not a case in which
 (4) punishment is warranted Thank you Your Honor
 (5) MR CHALOS Good morning ladies and gentlemen I m
 (6) Michael Chalos and I represent Captain Hazelwood There are
 (7) two myths that surround the grounding of the Exxon Valdez
 The
 (8) first myths is that Captain Hazelwood was a relapsed
 (9) alcoholic That is wrong The second myth is that the
 (10) accident came about because Captain Hazelwood was
 impaired by
 (11) alcohol That is also wrong Please allow me to expose both
 (12) myths for you
 (13) Mr O Neill has told you that the crew of the Exxon Valdez
 (14) and particularly Captain Hazelwood acted with reckless
 (15) indifference on March 23rd and March 24th towards their
 duties
 (16) thereby causing the grounding of the Exxon Valdez Mr O Neill
 (17) told you that he bases his thinking on that - on the alleged
 (18) boozy afternoon that Captain Hazelwood reportedly had in
 Valdez
 (19) on March 23rd He s told you that Captain Hazelwood had
 (20) anywhere between six and 16 drinks
 (21) Ladies and gentlemen the evidence that you re going to
 (22) hear the facts that you re going to hear in this trial will be
 (23) clearly contrary to what Mr O Neill told you In this regard
 (24) alcohol played no roll in the grounding of the Exxon Valdez no
 (25) role Captain Hazelwood was not impaired when he returned to

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(1) the vessel or at any time thereafter
 (2) Now Mr O Neill bases his counts of six to 16 drinks on
 (3) the testimony of two barmaids and one bar patron They said
 (4) they saw Captain Hazelwood in the Pipeline Club on three
 (5) separate occasions on the morning and afternoon of March
 23rd
 (6) The first barmaid Miss Lisa Harrison you re going to hear
 (7) this witnesses this afternoon and I ask you to please listen
 (8) to what they have to say
 (9) Miss Harrison says the man she identifies as Captain
 (10) Hazelwood came into the Pipeline Club between 11 30 and
 12 00
 (11) noon on March 23rd When he came in he was wearing a white
 or
 (12) a gray sailors hat He went to the bar and he ordered a double
 (13) vodka He stayed there continuously for about 20 to 30
 (14) minutes And then he left He came in alone she says She
 (15) then says the same man came back at 2 00 again alone and
 (16) again ordered a double vodka Drank it stayed 15 minutes and
 (17) left
 (18) The bar patron Mrs Janice Delozier you re going to hear
 (19) her again this afternoon says - and by the way she was the
 (20) wife of the Coast Guard officer who was investigating the
 (21) grounding she says the guy that she identifies as Captain
 (22) Hazelwood came into the Pipeline Club at 1 45 wearing a golf
 (23) hat with a snap in front and that he came in with two other
 (24) gentlemen and that he was there continuously from 1 45 till at
 (25) least 2 45 because that s when she left and they were still

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(1) there She says that he drank not double vodkas but two
 (2) single vodkas
 (3) The only thing that Ms Harrison and Mrs Delozier agree on
 (4) is that the lighting in the Pipeline Club was very dark
 (5) The third the other barmaid miss - what is her name?
 (6) Irma Lee Miss Irma Lee says that she thinks someone who
 (7) looked like Captain Hazelwood came into the Pipeline Club at
 (8) 7 00 that evening alone ordered single vodka stayed 15
 (9) minutes and then left
 (10) Ladies and gentlemen for whatever reason I don t know the
 (11) reason but the best I can say about these witnesses is that
 (12) they re mistaken Because the facts that you will hear are
 (13) these Captain Hazelwood with two other crew members chief
 (14) engineer Jerzy Glowacki and radio officer Roberson left the
 (15) Alyeska terminal at 11 a m in the company of a pilot who drove
 (16) them directly from Alyeska to the agent s office Alamar s
 (17) office in Valdez directly They got there about 11 30 and
 (18) they stayed there continuously The three of them stayed there
 (19) continuously from 11 30 till 12 30 About 12 30 when they were
 (20) picked up by Captain Ed Murphy who was the pilot of the
 Valdez
 (21) the night of the grounding and driven over to the Pizza Palace
 (22) for lunch They remained in the Pizza Palace from about 12 30
 (23) to sometime between 1 30 and 2 00
 (24) At this lunch Captain Hazelwood as you were told by Mr
 (25) O Neill did not drink and neither did Pilot Murphy

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(1) After the lunch was over Pilot Murphy drove the three men
 (2) Captain Hazelwood Mr Glowacki and Mr Roberson and
 dropped
 (3) them off in front of a place called the Hobby Hut which is in
 (4) the center of town Mr Glowacki and Mr Roberson went off to
 (5) do some personal business and Captain Hazelwood couple
 minutes
 (6) before 2 00 went into the Hobby Hut and remained in the
 Hobby
 (7) Hut continuously from that time until at least 2 45 possibly
 (8) 3 00 The owner of the Hobby Hut will tell you that Mrs
 (9) Emily Kaiser will tell you that he was there for at least 45
 (10) minutes possibly up to an hour continuously She spoke to
 (11) him she looked at him she stood right next to him and she
 (12) said I didn t smell any alcohol in that man s breath that man
 (13) was sober as a judge sorry Judge But there you are And you
 (14) know what? She s got a timed receipt to prove it She s got a
 (15) timed receipt to prove that he was in there
 (16) Now Captain Hazelwood left the Hobby Hut between 2 45 and
 (17) 3 00 and he walked around town He went to a couple tourist
 (18) shops He did not go into the Pipeline Club at that time and
 (19) contrary to what Mr O Neill tells you there is no witness
 (20) that says he was in the Pipeline Club at 3 00 He wasn t
 (21) there He walked around till about 3 30 or so and then went
 (22) back to the Alamar office stayed there a few minutes talked
 (23) to some of the people and then left Walked about a little bit
 (24) more and got to the Pipeline Club just before 4 30 That was
 (25) the first time that he was at the Pipeline Club that day about

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(1) 4 30 At the Pipeline Club he met Mr Glowacki and shortly
 (2) thereafter he was joined by Mr Roberson The three of them
 (3) stayed there until about 6 30 little bit after 6 30 During
 (4) that time Captain Hazelwood will tell you that he had three
 (5) single vodkas three single vodkas The three of them left the
 (6) Pipeline Club together between 6 30 and 7 00 and walked for
 (7) about 15 or 20 minutes over to the pizza place
 (8) The purpose in going over to the Pizza Palace was to get
 (9) some pizzas to bring back to the ship for the rest of the crew
 (10) members The Pizza Palace at that time its dinner hour was
 (11) crowded so they ordered the pizza and stepped outside While
 (12) they were waiting outside it started to snow so they decided
 (13) to step inside to another place next door called the Club Bar
 (14) to get out of the snow and to wait for the pizza While they
 (15) were there they called for a taxi While they were also
 (16) there they ordered a drink But Captain Hazelwood will tell
 (17) you that before they could start that drink before he could
 (18) start that drink the pizza and the taxi arrived and they
 (19) left They got into a taxi the taxi drove too the Pipeline
 (20) Club none of the three got out of that taxi Another
 (21) gentleman a fourth gentleman joined them and they went
 (22) directly to the Alyeska gate
 (23) Now we have a picture of the Alyeska gate?
 (24) This is the Alyeska gate ladies and gentlemen and here is
 (25) the shack that you have to check through when the taxi pulls up

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(1) here Everybody has to get out of the taxi and go into this
 (2) shack over here for screening What happens in there? Do we
 (3) have a picture of that? There are two security guards that
 (4) stand watch in that gate Their job is to make sure people
 (5) aren't bringing on - in contraband and their job is also to
 (6) make sure nobody's bringing alcohol onto the ships And their
 (7) job their main job is to make sure that nobody comes through
 (8) impaired They look for all the classic signs of impairment
 (9) They look for slurred speech they look for watery eyes they
 (10) look for a loss of - of dexterity They look for unsteady
 (11) movements They did not in this case and you'll hear
 (12) testimony that they saw none of that as far as Captain
 (13) Hazelwood was concerned
 (14) After they go through these check points they go out into
 (15) the taxi again and they were driven to the end of pier five
 (16) it's down at this end here There's a long walk about a
 (17) quarter of a mile walk that they had to negotiate to get to
 (18) again tree that they had to climb to get onto the ship At
 (19) this time as I told you before it was snowing This is the
 (20) gantry they come down - whops here I am
 (21) They come down the jetty and they come to here What they
 (22) need to do then is climb 40 steep steps up and 40 steep steps
 (23) down Captain Hazelwood did it he did it with no problem and
 (24) he did it with one hand because in his other hand he had his
 (25) attache case

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(1) When he got on board that ship he ran into two shipmates
 (2) Spoke to both of them Both of them will testify that they saw
 (3) no signs of impairment on Captain Hazelwood He talked
 (4) normally he acted normally he walked normally After he left
 (5) those two crew members he went up to the bridge That's
 (6) where
 (7) he met Pilot Murphy And Patricia Caples Patricia Caples was
 (8) the agent from Alamar Captain Murphy will testify that he did
 (9) smell alcohol on Captain Hazelwood's breath but that's it He
 (10) didn't see any signs at all of impairment no slurred speech
 (11) no watery eyes no - no unsteady movements no anything
 (12) Ms Caples will say she thought she noticed that he had
 (13) watery eyes but he attributed that to the fact that he walked
 (14) a quarter of a mile down the jetty and it was cold and windy
 (15) that day She'll also tell you that she thought he was a
 (16) little jovial but hey he's a little jovial She followed him
 (17) down 13 steps behind him to his office where he could get the
 (18) mail She saw no signs of impairment When he got to his
 (19) office he took the mail sorted it put it into an envelope
 (20) and handed it to her She saw no sign of impairment
 (21) After Ms Caples left Captain Hazelwood went up to the
 (22) bridge he talked to his officers several officers He talked
 (23) to Pilot Murphy All three of them will testify that he did
 (24) not appear to be impaired in any way His orders were clear
 (25) he was handling his job in a very competent and professional
 way and he looked absolutely normal

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(1) Now Mr O Neill says that on the trip down on the trip
 (2) down Captain Hazelwood absented himself from the bridge in an
 (3) area called the Narrows and that this was unusual using
 (4) Captain Murphy's words Well ladies and gentlemen that's
 (5) what we call in the law business a red herring That means
 (6) it's intended to distract attention and has no substance The
 (7) transit through the Narrows was uneventful Completely
 (8) uneventful They went through there no problem Going
 (9) through
 (10) the Narrows it's a one way zone there's only one ship in
 (11) there at the time you're traveling at six knots less than
 (12) seven miles an hour You have an escort tug with you Captain
 (13) Murphy is an experienced pilot in those waters that's his
 (14) job Captain Hazelwood wasn't on the bridge the whole time
 (15) He came up once He talked to the mate another time He
 (16) knew
 (17) exactly what was going on but it's a non event
 (18) Ladies and gentlemen Mr O Neill says that it was reckless
 (19) for Captain Hazelwood to leave the bridge of the ship Exxon
 (20) says takes the position that their bridge organization manual
 (21) required Captain Hazelwood to be on the bridge and as a
 (22) result they feel that it was negligent but not reckless
 (23) Captain Hazelwood disputes both positions The bridge
 (24) organization manual that Exxon is referring to is - is a book
 (25) that's given to the captains as a guide It is subject to
 interpretation and that interpretation is the captain's
 interpretation not the company's interpretation because what

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(1) the guide tells them is you should do the following however
 (2) use your judgment taking into account the circumstances that
 (3) you see at the particular time that you re interpreting these
 (4) regulations and that s what Captain Hazelwood did That s
 (5) what the manual told him to do So when he looks at the
 manual
 (6) and looks at the watch conditions he doesn t say - doesn t
 (7) believe the applicable watch condition was watch condition C
 (8) He believes that the applicable watch condition was A Now
 (9) you re going to get a definition of C and you re going to get a
 (10) definition of A You look at it and you see if Captain
 (11) Hazelwood was unreasonable to believe that A applied as
 opposed
 (12) to C Take a look at it when it s presented to you
 (13) Exxon says that it was - it was C Captain Hazelwood says
 (14) that it was A Mr O Neill will probably say yeah we agree
 (15) with Exxon it was C but the fact that there may be reasonable
 (16) disagreement as to what condition applied doesn t make
 Captain
 (17) Hazelwood negligent
 (18) Now in disputing negligence Captain Hazelwood is not
 (19) looking to avoid responsibility No he s accepted that
 (20) responsibility He s here He s accepted that responsibility
 (21) from day one as the captain of that vessel he is responsible
 (22) for that vessel running aground He takes that responsibility
 (23) but - and I ll tell you he ll come up here he ll testify and
 (24) he ll tell you that if he knew then what he knows now he would
 (25) have never left that bridge that night But that s with the

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(1) benefit of 20/20 hindsight and the fact that he might have
 (2) done things differently if he had a second chance doesn t mean
 (3) that he was negligent in the first place That s our point on
 (4) that
 (5) I want to talk about this blood alcohol test This is an
 (6) interesting topic Mr O Neill tells you that nine hours after
 (7) the grounding a test was taken from captain - blood was taken
 (8) from Captain Hazelwood that was analyzed and they got a
 reading
 (9) of point - oh sorry 06 which is below the 1 level It
 (10) didn t happen nine hours happened ten hours after and the
 (11) blood was drawn by a Coast Guard corpsman called Scott
 Conner
 (12) You re going to hear testimony from Mr Conner Mr Conner
 (13) says I removed three vials of blood from Captain Hazelwood
 (14) Two of the vials were 15 millimeters in length and I capped
 (15) them with a gray stopper and the significance of the gray
 (16) stopper is that those vials have a preservative in it and the
 (17) preservative is supposed to keep the blood from fermenting
 and
 (18) giving you a false positive reading He says I took a third
 (19) vial third tube of blood which was seven millimeters in length
 (20) and I capped that with a red stopper That was for drug
 (21) testing
 (22) So I got two gray stoppers one red stopper 15
 (23) milliliters on the gray seven millimeters on the red I took
 (24) it - then I took each vial I put this orange sealing tape
 (25) over the top like this then I twisted the sealing tape so it

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(1) made a seal Then I took the three samples - by the way he
 (2) took samples of other crew members as well I took the three
 (3) samples I put them into a styrofoam box and I sealed the
 (4) styrofoam box Why? Because that s what the regulations say
 (5) That s how you maintain a chain of custody you seal the
 (6) samples you seal the box you ve got your chain of custody
 (7) So he says my intention was to take these samples go back to
 (8) the Coast Guard station at Valdez and put them in a locked
 (9) refrigerator But when he gets to Valdez he doesn t put them
 (10) in a locked refrigerator He takes them to his motel room and
 (11) he puts them on a window sill of a first floor room and leaves
 (12) them unattended walks away comes back a couple hours
 later
 (13) picks them up goes back to the station Doesn t put them in a
 (14) refrigerated locker no What he does is he puts them in the
 (15) general galley refrigerator the one that everybody has access
 (16) to In his words now I put them right next to the tomato
 (17) the lettuce the carrots the onions whatever else was in
 (18) there that s what I did I put them in there Then he leaves
 (19) them there over night
 (20) Now this was the weekend of the spill There are hundreds
 (21) of people in that Coast Guard station going in and out all
 (22) night long Everybody had access to those samples Left them
 (23) there complete unattended over night Next day he comes in
 and
 (24) picks them up flies back with them to Valdez He has them on
 (25) his lap on the airplane flies back to Valdez - to Anchorage

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(1) rather and his job was to take the samples and give them over
 (2) to his superior officer but instead of doing that he takes
 (3) them home Unbelievable He takes them home Keeps them
 (4) there for a couple hours then he decides he s going to go over
 (5) and see his superior officer He brings them to his superior
 (6) officer who s supposed to be the genius and this guy
 (7) immediately breaks the seals takes the seals off What d you
 (8) do that for Oh I just wanted to see the color of the
 (9) blood
 (10) Complete violation of all the regulations He holds onto
 (11) them for a little bit and then sends them to a remote
 (12) warehouse to a remote warehouse and they re kept there for a
 (13) couple days unattended unsupervised He then gets them
 back
 (14) doesn t seal the boxes does whatever he does with them He
 (15) puts some other tape on them and sends them off Sends them
 by
 (16) a courier company unrefrigerated Now here s the kicker
 when
 (17) they finally get to the lab they re unaccounted for a couple
 (18) hours then they finally come into the possession - they
 (19) finally come into possession of the lady whose job it is her
 (20) name the Karen Metcalf her job is to log in what she
 (21) receives Her job her only job is to make sure the size of
 (22) the tubes and the color of the stoppers That s her job Low
 (23) and behold she logs in that she receives samples purported to
 (24) be those of Captain Hazelwood of ten millimeters in length with
 (25) three red stoppers Three red stoppers What happened to the

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(1) gray stoppers? On top of that she says there was no orange
 (2) tape over them There was white tape over them and some red
 (3) red tape over the - you know completely different than what
 (4) Mr Conner said that he packaged Completely different
 (5) There s no explanation No explanation Three ten millimeter
 (6) tubes with red stoppers I told you red stoppers do not have
 (7) any preservative and without preservative that blood ferments
 (8) and you re going to get a false positive reading if in fact it
 (9) was Captain Hazelwood s blood
 (10) So okay so the story would be bad enough if that was it
 (11) but that s not it Listen to this About a month after the
 (12) lab has the samples and after they ve been tested already a
 (13) Mrs Judy Pete who happens to be the wife of the man that runs
 (14) the laboratory without explanation and very mysteriously I
 (15) might add goes to Karen Metcalf and she says you made a
 (16) mistake when those samples were received That wasn t the
 (17) correct designation Karen Metcalf says no I didn t make a
 (18) mistake there were three ten milliliter tubes with red
 (19) stoppers on it Says no I want you to change the records the
 (20) official records I want you to change them cross out the -
 (21) what you wrote before and write in two gray stopper tubes and
 (22) one red stopper tube Karen Metcalf says well I didn t think
 (23) I made a mistake you know I don t know why she was asking
 (24) me
 (24) this I tell you why she was asking her that Conners had
 (25) given a statement to authorities that had probably gotten to

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(1) them and they were trying to conform the records to what
 (2) Conner was saying
 (3) Ladies and gentlemen there s serious doubt serious doubt
 (4) that the blood that was tested was Captain Hazelwood s blood
 (5) and even if it was Captain Hazelwood s blood which we dispute
 (6) of course for the reasons that I just told you there s serious
 (7) doubt as to whether it was preserved properly The regulations
 (8) dealing with chain of custody are intended for several things
 (9) One is they re intended to preserve the integrity of the
 (10) sample They re intended to - to let the people who are
 (11) testing it believe that the sample they got is exactly the
 (12) blood that was drawn from that person Here we have these
 (13) outrageous and unexplained breaches of this chain of custody
 (14) Outrageous
 (15) The best I can say on that blood test is and I m going to
 (16) use an understatement It was botched but I think it was a lot
 (17) more than botched
 (18) I want to touch briefly on the issue of pilotage Mr
 (19) O Neill said that Captain Hazelwood violated the pilotage
 (20) regulations when he left the bridge because he was the only
 (21) one
 (21) that had the pilot endorsement Well the fact of the matter
 (22) is that at that time 1989 Captain Hazelwood and not just
 (23) Captain Hazelwood as Mr O Neill told you but many other
 (24) captains believed based on advises they had gotten from the
 (25) Coast Guard based on correspondence they got from the
 Coast

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(1) Guard based on correspondence they got from the agent that
 (2) the pilotage regulations in Prince William Sound were no longer
 (3) being enforced in contemplation of the rule being done away
 (4) with completely and in that regard in 1985 and again in 1988
 (5) the Coast Guard had proposed rule making the Puritan Federal
 (6) Register which said that pilotage would no longer be required
 (7) pilotage endorsement would no longer be required in Prince
 (8) William Sound and that would have been the law but for some
 (9) objection by an industry group on some other reason at the time
 (10) of the grounding
 (11) The reason of the Coast Guard in this regard is important
 (12) The Coast Guard did not believe that the area south of Rocky
 (13) Point and you ve been shown Rocky Point - can I just show
 (14) this quickly? Sorry They believed the area south of here
 (15) about here can everybody see it? I m sorry Can everybody
 (16) see it here? The area south of here this is Bligh Reef here
 (17) this area all the way down to Cape Hinchinbrook was a wide
 (18) roadstead - roadstead is what I meant easy to navigate
 (19) plenty of navigational aids around and anybody could navigate
 (20) that had any training at all without any problem in that area
 (21) That s why they proposed that rule making Admiral Yost who
 (22) was the commandant of the Coast Guard has testified and you ll
 (23) hear him that a man holding a second mate s license like
 (24) Cousin with his background and training should have had
 (25) absolutely no problems in navigating anywhere below Rocky

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(1) Point none You ll hear that testimony Now let me deal
 (2) with the last myth
 (3) This myth about Captain Hazelwood s being a relapsed
 (4) alcoholic Plaintiffs as Mr Lynch has suggested are
 (5) attempting to use that term relapsed alcoholic to steer you
 (6) prejudice you against Captain Hazelwood They want you to
 (7) believe that Captain Hazelwood was alcohol dependent an
 (8) alcoholic a guy that if he drank again one drink he would
 (9) drink until he passed out because he couldn t stop In short
 (10) they want you to believe that my client was a skid row bum
 (11) well he was none of that He was none of that He voluntarily
 (12) went in 1985 to seek treatment for a condition which he was
 (13) diagnosed as dysthymic disorder That s a form of depression
 (14) That was the primary diagnosis that was placed on him The
 (15) secondary diagnosis was alcohol abuse episodic now What
 (16) that
 (16) means is that when he got depressed he drank to excess so
 (17) they
 (17) had to deal with the depression so he wouldn t drink to
 (18) excess That s what they did That s what he went in for
 (19) Unlike what plaintiffs would like you to believe he was never
 (20) diagnosed as alcohol dependent
 (21) He did not in 1985 or any time thereafter have any of the
 (22) symptoms to be classified as an alcoholic or alcohol
 (23) dependent He didn t Now after he completed his treatment
 (24) and his aftercare he started drinking socially No one said
 (25) he couldn t drink socially and that s what he did He drank

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- (1) socially All these incidents that the plaintiff tell you he
 (2) drank with this guy he drank with that guy Those are all
 (3) social drinks A beer here a glass of wine there those are
 (4) social drinks And that's what he did ladies and gentlemen
 (5) Now I told you in my mini opening that you're going to
 (6) hear facts in this trial that are going to be much different
 (7) than anything that you saw on television read or heard about
 (8) I promise you listen to the testimony and you will You will
 (9) hear things differently and I promise you that once you hear
 (10) the evidence that you'll also conclude that this was an
 (11) accident a maritime accident pure and simple Thank you
 (12) THE COURT Let's take our second recess at this point
 (13) if we may Unless somebody has a real need for it I'd like to
 (14) have the big screen put back where it was
 (15) MR O NEILL Our first exhibit is Exhibit 2 and
 (16) where the big screen is would be helpful in playing Exhibit 2
 (17) We could play it now if -
 (18) THE COURT No that's fine Let's take our recess so
 (19) that you can get yourself organized and if you're going to use
 (20) it leave it there One thing that I would ask is that you not
 (21) use the space back here to store your big exhibits it blocks
 (22) people's view and the screen We'll be in recess for 15
 (23) minutes
 (24) THE CLERK This court is in recess for 15 minutes
 (25) (Recess at 11 45)

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- (1) (Jury in at 12 30)
 (2) THE CLERK All rise
 (3) THE COURT Mr O Neill would you call your first
 (4) witness
 (5) MR O NEILL Your Honor we'd like to pre admit some
 (6) documents We offer the following exhibits Offer 799 I'm
 (7) going to read them off and then Exxon can take exception at
 (8) the end 799 the next one is 222
 (9) MR SANDERS I'm sorry 222?
 (10) MR O NEILL The next one is 223 87 89 eight
 (11) niner 88 140 138 136 137 131 86 132 133 128 56 226
 (12) 49 53 55 60 61 172 82 83 90 A
 (13) THE COURT Ninety what?
 (14) MR O NEILL Alpha 90 Alpha 10 292 A 122 123
 (15) 124 268 3722 6 8 48 59 62 63 64 66 67 845 847
 (16) 101 102 111 117 118 120 121 158 162 173 174 176
 (17) 183 193 201 202 227 800 865 889 3642 - 3642 745 160
 (18) 9 57 58 74 116 and 119 We offer those exhibits
 (19) I'm going to withdraw 122 until tomorrow morning With the
 (20) exception of 122 we offer those exhibits
 (21) (Exhibit 799 222 223 87 89 88 140 138 136 137
 (22) 131 86 132 133 128 56 226 49 53 55 60 61 172 82
 (23) 83 90 A 10 292 A 123 124 268 3722 6 8 48 59 62 63
 (24) 64 66 67 845 847 101 102 111 117 118 120 121 158
 (25) 162 173 174 176 183 193 201 202 227 800 865 889

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- (1) 3642 745 160 9 57 58 74 116 & 119 offered)
 (2) MR SANDERS No objection Your Honor
 (3) THE COURT The exhibits listed by Mr O Neill are
 (4) admitted by consent with the exception of 122 which we'll take
 (5) up separately
 (6) (Exhibit 799 222 223 87 89 88 140 138 136 137
 (7) 131 86 132 133 128 56 226 49 53 55 60 61 172 82
 (8) 83 90 A 10 292 A 123 124 268 3722 6 8 48 59 62 63
 (9) 64 66 67 845 847 101 102 111 117 118 120 121 158
 (10) 162 173 174 176 183 193 201 202 227 800 865 889
 (11) 3642 745 160 9 57 58 74 116 & 119 received)
 (12) MR O NEILL Thank you Your Honor Plaintiffs offer
 (13) Exhibit 2
 (14) (Exhibit 2 offered)
 (15) MR SANDERS My understanding that has been agreed
 (16) to
 (17) MR O NEILL Okay
 (18) THE COURT Exhibit 2 is also admitted
 (19) (Exhibit 2 received)
 (20) MR O NEILL May I public issue Exhibit 2 to the
 (21) jury Your Honor?
 (22) THE COURT You may
 (23) MR O NEILL Exhibit 2 is a collection of statements
 (24) by Exxon officials
 (25) THE COURT Excuse me before this starts up question

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- (1) has arisen as to whether this should be put into the record
 (2) stenotyped into the record to the extent that it's verbal We
 (3) didn't think about that
 (4) MR O NEILL We can provide Exhibit 2 with an agreed
 (5) upon transcript of the exhibit with the tape and then there'd
 (6) be no need to transcribe it
 (7) THE COURT Is that agreeable?
 (8) MR SANDERS That will be sufficient Your Honor
 (9) THE COURT Mr Sanders agreed he will provide us
 (10) with the agreed typed script for Exhibit 2 that will become a
 (11) part of Exhibit 2 and the court reporter need not put the
 (12) verbal portion of Exhibit 2 into the transcript
 (13) MR O NEILL We can save her fingers for a minute
 (14) THE COURT Thank you
 (15) (Videotape Played at 12 11 to 12 36)
 (16) MR CHALOS Your Honor may we approach the bench for
 (17) a second?
 (18) (At side bar off the record)
 (19) THE COURT Ladies and gentlemen with respect to
 (20) Exhibit 2 which is the videotape that you have just seen you
 (21) should understand that the statements that were being made in
 (22) that videotape were statements of Exxon and the Exxon
 (23) defendants in this case not statements of the other defendant
 (24) Captain Hazelwood You may continue
 (25) MS WAGNER Thank you Your Honor The plaintiffs

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- (1) call as their first witness Hugh Ackroyd Mr Ackroyd would
 (2) you take the stand please
 (3) THE CLERK Would you raise your right hand please
 (4) (The Witness Is Sworn)
 (5) MR NEAL Your Honor I wonder if we could ask if
 (6) they re going to be any - this thing going to be used
 (7) MS WAGNER We re going to pull up several
 (8) photographs on it and he ll do some description of them
 (9) MR NEAL Could the one of us handling the witness
 (10) move around
 (11) THE COURT I d rather that you move that back at this
 (12) point I m afraid that that thing s going to cause trouble
 (13) and I would rather have you in place for the general
 (14) examination Move the big box back so counsel can see the
 (15) witness
 (16) THE CLERK Sir for the record would you please state
 (17) your full name and address and spell your last name please
 (18) THE WITNESS Hugh Scott Ackroyd A c k r o y-d Post
 (19) Office Box 10101 Portland Oregon 97210
 (20) THE CLERK Thank you
 (21) DIRECT EXAMINATION OF HUGH ACKROYD
 (22) BY MS WAGNER
 (23) Q Good afternoon Mr Ackroyd how are you?
 (24) A Very well, thank you
 (25) Q Thank you for coming Could you tell the jury a little bit

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- (1) about yourself?
 (2) A Yes basically lived on the waterfront all my life Worked
 (3) an a fish packer at school and then worked aboard a tug and
 (4) then war time I was the civilian photographer for the U S
 (5) Navy
 (6) Q And how old are you sir?
 (7) A 80
 (8) Q And what s your profession?
 (9) A Industrial photographer
 (10) Q Do you have a specialty?
 (11) A Mostly marine work
 (12) Q And about how long have you been doing marine
 photography?
 (13) A Interminably
 (14) Q Can you give us that in years?
 (15) A About 60
 (16) Q Thank you Where is your office?
 (17) A In Portland Oregon
 (18) Q Do you do most of your work in Portland?
 (19) A No Most of it in Portland but -
 (20) Q Do you do work elsewhere?
 (21) A Yes I was in Valdez last month so on
 (22) Q I m going to show you first what s been pre marked and pre
 (23) admitted as plaintiffs Exhibit 9 Do you recognize that do
 (24) you?
 (25) A Yes

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- (1) Q Did you take this photograph?
 (2) A Yes I took that on 19th of May in 1988 as the Valdez was
 (3) departing Portland shipyards after an overhaul
 (4) Q And where is that photograph taken?
 (5) A It s down the Columbia River a few miles from the mouth
 of
 (6) the island
 (7) Q What was the reason that the ship was in the Columbia River
 (8) at the time?
 (9) A Because repairs had been completed and it was
 outbound in
 (10) ballast
 (11) Q What does it mean to say that the ship was in ballast?
 (12) A That it s high in the water, it s not carrying any cargo
 (13) Q Can you tell the jury generally what is this area here the
 (14) white area that s just in front of the Exxon sign on the - on
 (15) the ship?
 (16) A Oh that s the bridge and the starboard flying bridge the
 (17) wing
 (18) Q Since you took this photo I take it you know it but can
 (19) you tell me what it is that s in this area right here on the -
 (20) on the bridge wing Need me to bring it to you
 (21) A Well you have the - I believe it would be the pilot and
 (22) the captain and one other person right against the aerial
 you
 (23) can see on that starboard side
 (24) Q What does starboard mean?
 (25) A Right side of the ship

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- (1) Q What is - port is the other side that s left?
 (2) A Yeah It s left
 (3) Q How did you get involved in the Exxon Valdez case?
 (4) A I got called by captain retired Curt Griner with the U S
 (5) Coast Guard who runs an environmental service, and we
 have
 (6) worked on other jobs in the past
 (7) Q Was Captain Griner with the Coast Guard at the time?
 (8) A No no He was retired
 (9) Q And what was - what did you understand his capacity to be
 (10) with regard to the spill?
 (11) A Oh just as an expert pointing out - he kept the - kept
 (12) the notes on the photographs we were taking
 (13) Q And who were you taking those photographs for?
 (14) A For the State of Alaska
 (15) Q What was the - the first thing that happened after captain
 (16) Griner called you with regard to photographing the ship?
 (17) A We tried to set up a time to do it that would be convenient
 (18) to Exxon and the shipyard
 (19) Q And did you find a time?
 (20) A Yes
 (21) Q And what was that?
 (22) A It would be the 7th of September 1989
 (23) Q And where was the Exxon Valdez at the time?
 (24) A It was at national shipbuilding in San Diego
 (25) Q And was the ship in the water at the time or where was it?

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- (1) A No it was in the - in the graving dock there which is
 (2) equivalent to dry dock
 (3) Q I'd like to take a look at some of your photographs if we
 (4) could and I'm going to see if this thing works and we can
 (5) actually pull them up Has it worked Can you describe what
 (6) that is?
 (7) A Yes that's the starboard flying bridge where you saw it in
 (8) the other photograph with the three men standing by the
 (9) aerial
 (10) Q Your Honor this is plaintiffs Exhibit 57 and it has been
 (11) pre admitted I'm going to now try and call up plaintiffs
 (12) Exhibit Number 116 which has also been pre admitted Can
 (13) you
 (14) tell me what this is?
 (15) A Yes that's the wheelhouse from port side and looking
 (16) through the curtains to the chart room
 (17) Q What's the reason for the curtains on the chart room if
 (18) you know?
 (19) A So that the charts can be seen in decent light so the
 (20) bridge people on the bridge are not with blindness from the
 (21) lights They have bright light
 (22) Q Would that be during night transit?
 (23) A Yes
 (24) Q This should be plaintiffs Exhibit Number 74 which has
 (25) also been pre admitted Is that just another photo of the
 wheelhouse?

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- (1) A Yes that's from the starboard side with the curtains
 (2) closed to the chart room
 (3) Q Did you take all - you took these photographs when you
 (4) were in the graving dock in San Diego?
 (5) A Yes at National Shipbuilding
 (6) Q This will be plaintiffs Exhibit Number 58 which has been
 (7) pre admitted Can you tell the jury what that is?
 (8) A Yes that's the chart room back of the curtains You can
 (9) just see daylight on the left there
 (10) Q So where we can see that man's ear is that where the
 (11) curtains were open?
 (12) A Yes, that's where the curtains go
 (13) Q Now I'm going to pull up a series of photographs that you
 (14) took which are plaintiffs Exhibits 119 and it's a series of
 (15) several photographs which have also been pre admitted Now
 (16) sir if it would help at all you're welcome to get down and go
 (17) to the monitor but if you can describe it from where you're
 (18) at that's fine too It's up to you Could you just tell the
 (19) jury what it is they're looking at there?
 (20) A Yes that's the initial impact up near the bow of the ship
 (21) where they started to - see where it scraped the paint off
 (22) the hull and then started to break up the hull
 (23) Q And sir what is it - what is this down here that's -
 (24) goes up into the - that hole area? Did you want to get down
 (25) and take a look at it?

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- (1) A Can't see very well here that the - there's a ladder
 (2) going up in there yes into that hole
 (3) Q Can you just tell the jury what it is they're looking at
 (4) now?
 (5) A That's another shot showing the impact That's over off
 (6) the center on the port side looking aft You can see how the
 (7) plate is broken up there Along the center line plus all the
 (8) scraping from the reef
 (9) Q Could you describe this photograph to the jury?
 (10) A Yeah that's - that's over on the starboard side again
 (11) little further aft an again, you can see the scraping and the
 (12) fracturing of the steel and the little white specs are a
 (13) couple of men give you a notion of the size
 (14) Q Are the lights that are down there at the bottom something
 (15) that you placed there?
 (16) A No, they were there
 (17) Q Can you tell the jury what's the - the sort of
 (18) superstructure that appears along the left side I think you
 (19) can see a five there if you look at the one on your monitor?
 (20) A That's the side of the graving dock
 (21) Q What are we looking at here?
 (22) A That again is looking aft, you can see the ladder going
 (23) into the - one of the holes in the ship Those keel blocks
 (24) are approximately four feet high that are supporting the
 ship
 (25) Q You said a couple of things there I'm not sure we all

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- (1) understand You said we're looking aft What does that mean?
 (2) A The small vertical rectangles or squares you see are the
 (3) keel blocks that support the ship
 (4) Q And what does looking aft mean?
 (5) A Looking back looking astern looking to the back of the
 (6) ship
 (7) Q What's the purpose of the keel blocks?
 (8) A To supply supports for the ship when it goes on dry dock
 or
 (9) graving dock They're pre-positioned before the ship goes
 on
 (10) You can see them there quite clearly
 (11) Q If you would could you describe -
 (12) A Oh and just very dimly in the center there you can see a
 (13) large boulder that's the size of a Volkswagen, and back of it
 a
 (14) few feet out of sight was another boulder, smaller one
 (15) Q The area I'm trying to point to with the pencil that
 (16) doesn't seem to want to work You can see it if you'll look
 (17) just above that big keel block What is this we're looking at
 (18) sir if you could orient us?
 (19) A That's looking along and upwards again looking aft, on
 the
 (20) starboard side and it's - you can see the thickness of the
 (21) steel
 (22) Q Where were you when you took this photograph then?
 (23) A Pretty much on hands and knees underneath the ship
 (24) Q How much room did you have to work in?
 (25) A Four feet

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- (1) Q Sort of tough on the knees?
 (2) A Very
 (3) Q What s this?
 (4) A That s a similar view Again you see the - you can see
 (5) the thickness of the plate on the left there and the damage
 (6) Q I don t know if this is going to work Who s that?
 (7) A Yeah, that s Captain Griner down hands and knees
 That s
 (8) how much working space we had
 (9) Q This one s a little hard to see on the -
 (10) A That s very, very hard to see If you look below that
 (11) bright spot, you can see some curves or bends and that is
 (12) where the hull was pushed out in addition to an upwards
 (13) fracture It was pushed outwards, as well
 (14) Q Let s take a look at this final photograph and if you d
 (15) just tell the jury what that is?
 (16) A Yes, that s the - again, looking - looking aft to show
 (17) the damage
 (18) Q Thank you sir Thank you for coming The Exxon attorneys
 (19) might have a few questions for you
 (20) MR SERDAHELY Your Honor we have no questions of
 (21) this witness
 (22) MR CHALOS We have to questions Your Honor
 (23) THE COURT Thank you sir you re excused
 (24) MS WAGNER Thank you Your Honor the plaintiffs
 (25) would call as their next witness Joel Roberson by deposition

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- (1) and which I hope that perhaps you can describe to the jury a
 (2) deposition
 (3) THE COURT You re hoping what? -
 (4) MS WAGNER That you would give the jury the
 (5) definition of what a deposition is
 (6) THE COURT I think I did that in preliminary
 (7) instructions A deposition is a sworn statement by potential
 (8) witness in a case taken under controlled circumstances and
 (9) involving the availability of the witness to questions from
 (10) counsel for both sides You should treat the testimony of a
 (11) deposition witness in this court just as you would treat any
 (12) other witness who is sitting here in the witness box evaluate
 (13) it just the same way
 (14) MS WAGNER Thank you Your Honor
 (15) THE CLERK Is this going to be the deposition of Joel
 (16) Roberson
 (17) MS WAGNER Roberson
 (18) THE COURT Is this also a videotaped deposition?
 (19) MS WAGNER This is not a videotaped deposition
 (20) THE CLERK Would you raise your right hand sir You
 (21) do solemnly swear you will well and accurately read the
 (22) deposition of Joel Roberson for the cause now on trial before
 (23) this court so help you God
 (24) THE WITNESS I do
 (25) (The Witness Is Sworn)

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- (1) THE CLERK Please take the witness stand and for the
 (2) record state your full name and address and spell your last
 (3) name please
 (4) THE WITNESS My name is Barry Klinckhardt My address
 (5) is 100 North Broadway St Louis Missouri The spelling of my
 (6) last name is K l i n c k h a r d t
 (7) DIRECT EXAMINATION OF JOEL ROBERSON (by deposition)
 (8) BY MS WAGNER
 (9) Q State your full name and address?
 (10) A Joel Roberson, 1009 Stanley Court Forney Texas
 75126
 (11) Q What age are you?
 (12) A 43
 (13) Q Let s touch on your termination What were the
 (14) circumstances of your termination at Exxon?
 (15) A The company came out with a reduction in force program
 that
 (16) offered some severance pay I took advantage or applied to
 be
 (17) included in the program and was accepted
 (18) Q Was there anything that motivated you to do that in the way
 (19) of your relationship with Exxon at the time?
 (20) A Well, yes primarily the fact that my job was eliminated
 (21) essentially
 (22) Q What do you mean your job was eliminated they eliminated
 a
 (23) radio officer job?
 (24) A They were in the process of obtaining waivers to sail their
 (25) vessels without radio officers yes

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- (1) Q Can you start with your education and bring us through your
 (2) employment where were you educated?
 (3) A Following high school at Cooper Texas I enlisted in the
 (4) Navy I was a radio man I had some schooling there radio
 (5) school in the Navy Following the Navy, I enrolled in a
 (6) technical school in Allen Town Pennsylvania
 (7) Q What year was that that you got out of school?
 (8) A I believe it was late 1971
 (9) Q And what did you do?
 (10) A Moved to Dallas, was employed at Texas Instrument as an
 (11) electronics technician, remained there for about three
 years,
 (12) moved to Alvin Texas I was employed by ITT World
 (13) Communications Coastal Station Prayer at Galveston
 Radio,
 (14) KLC In 1978 I left there and went to sea with the Bomo (ph)
 (15) district two, and was aboard several vessels up until the
 time
 (16) I was employed by Exxon
 (17) Q And that was in 1978 then from 1978 to 1984 Will you
 (18) tell us what you did when you went with Exxon?
 (19) A Between the time -
 (20) Q Between the time you got the license and the time you went
 (21) with Exxon what did you do?
 (22) A I served as a radio electronics officer aboard several
 (23) vessels Initially I worked for InterOcean Transport in the
 (24) Philadelphia on the Valdez run I was aboard the Brooks
 Range
 (25) running between Valdez and Panama

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- (1) Q Was that the first time you'd been to Valdez?
 (2) A Yes
 (3) Q And then you went there on the Exxon Valdez how many
 (4) times? You went aboard her twice You went on that February
 (5) run from February 22 to March 8 and then you went on the
 (6) voyage that ultimately ended in the grounding is that correct?
 (7) A That is correct I was also on the - on the Exxon New
 (8) Orleans, which made several trips to Valdez
 (9) Q On the occasion on Valdez when you reported aboard on
 (10) February 22 1989 what did - what radio officer did you
 (11) relieve?
 (12) A There was no radio officer aboard at that time
 (13) Q There wasn't any requirement for any?
 (14) A There was a requirement, yes As I understand Vern
 (15) Deckert had been aboard the ship in San Francisco He was
 (16) transferred to another vessel
 (17) Q He had been aboard up until about February of 1989 is that
 (18) correct?
 (19) A That is correct
 (20) Q Was Deckert the regular radio officer on the Exxon Valdez?
 (21) A That's what I understand yes
 (22) Q Now when you came aboard he had already left is that what
 (23) you're saying?
 (24) A Yes
 (25) Q Who were you relieved by after the grounding by any radio

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- (1) officer?
 (2) A No, I was not
 (3) Q When you reported aboard the Exxon Valdez on February
 (4) 22 did you receive a report from anyone concerning the condition
 (5) of the electronic equipment on board the vessel since Deckert
 (6) was not there?
 (7) A I can't recall whether they left any notes
 (8) Q During your period aboard her from February 22 up through
 (9) the grounding on March 24 did you determine the condition of
 (10) all the electronic equipment that you've indicated you were
 (11) responsible for?
 (12) A No, my -
 (13) Q Well I will put it another way Was it operating properly
 (14) to the best of your knowledge this equipment that you were
 (15) responsible for?
 (16) A Yes, with the exception of the three centimeter radar
 (17) which
 (18) had developed some problems
 (19) Q Did anyone ever mention to you from the time you went
 (20) aboard on February 22 up through the grounding did anyone
 (21) ever
 (22) mention to you the words fairways option?
 (23) A Not that I recall No
 (24) Q Did you know that there was a fairways option aboard the
 (25) Exxon Valdez a device connected with the radar? Were you
 (26) aware of that between these dates?
 (27) A I don't believe that I was aware of that option No

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- (1) Q So then I take it from your testimony you didn't know one
 (2) way or the other what the condition of the unit was during that
 (3) period is that correct?
 (4) A That is correct
 (5) Q Did you ever learn subsequent to the grounding what the
 (6) condition of that unit was?
 (7) A No, I haven't I haven't been made aware of the
 (8) condition
 (9) no of that specifically
 (10) Q Prior to reporting aboard the Exxon Valdez did you ever
 (11) hear the words fairways option before?
 (12) A Yes
 (13) Q Were you familiar with the unit prior to reporting aboard
 (14) the Exxon Valdez?
 (15) A Not this particular unit as it's manufactured I am aware
 (16) of the fairways option I've seen it on other collision
 (17) avoidance systems, yes
 (18) Q Do you recall what Exxon vessels prior to the Exxon
 (19) Valdez were equipped with the fairways option that you
 (20) became
 (21) familiar with it or you knew it was aboard that vessel?
 (22) A No, I can't say which vessels were equipped with it I can
 (23) say that from what experience I've had, that it was an option
 (24) that saw little use
 (25) Q You saw little use of it?
 (26) A No, it was my impression that this option was not used or
 (27) was used very seldom

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- (1) Q Do you recall whether you ever saw it in use?
 (2) A I have seen it in use, yes But I don't recall whether it
 (3) was a situation where the vessel was actually navigating
 (4) Q On March 23rd 1989 you went ashore is that correct?
 (5) A That is correct
 (6) Q While we are on this let's take this period of going
 (7) ashore and cover that Can you trace your movements from the
 (8) time you were leaving the vessel which you started to do and
 (9) tell us where you went with Captain Hazelwood and the chief
 (10) engineer?
 (11) A We left the vessel There was a gentleman - I was under
 (12) the impression at the time that he was the pilot that brought
 (13) the ship in That may or may not be correct He gave us a
 (14) ride into town and dropped us off at the agent's office We
 (15) remained in that office for some time Probably longer than an
 (16) hour Following that we were picked up by Mr Murphy, we
 (17) went
 (18) to the Pizza Palace for lunch
 (19) Q While you were at lunch there was just the four of you is
 (20) that correct?
 (21) A Yes The four of us were seated at a table At one point
 (22) during the meal the agent stopped by
 (23) Q And what did you have to drink at lunch?
 (24) A As I recall I had two beers
 (25) Q And what did the chief engineer have?
 (26) A I believe he also had two beers

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- (1) Q And what did Captain Hazelwood have?
 (2) A Iced tea
 (3) Q And the pilot?
 (4) A I believe he had the same iced tea
 (5) Q And about how long were you there?
 (6) A It is difficult to say. Certainly longer than an hour
 (7) possibly two
 (8) Q And then what did you do?
 (9) A We got back into Mr. Murphy's car and he dropped us off
 (10) toward the center of town. We agreed to meet back at the
 (11) Pipeline Club. I went inside a gift shop, looked around for a
 (12) while. Mr. Glowacki left. I don't know where he went. The
 (13) captain came inside the gift shop with me. A few minutes
 (14) later I went next door to the supermarket, purchased some
 (15) magazines and then walked over to the post office.
 (16) Q So the last time you saw the captain at that point was in
 (17) the gift shop?
 (18) A Yes.
 (19) Q Did the captain indicate to you that he was going to meet
 (20) you later at the -
 (21) A I don't recall.
 (22) Q Then what did you do?
 (23) A I came back to the Pipeline Club.
 (24) Q About what time?
 (25) A I have no idea.

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- (1) Q And who was at the Pipeline Club when you arrived?
 (2) A I joined Captain Hazelwood and chief Glowacki.
 (3) Q And when you joined them, were they drinking?
 (4) A They had glasses in front of them at the table, yes.
 (5) Q And what were they drinking?
 (6) A I don't know.
 (7) Q Was it some type of alcohol?
 (8) A I assumed that it was.
 (9) Q But they gave you no indication of how long they'd been at
 (10) the club prior to your arriving and seeing them there, is that
 (11) correct?
 (12) A Not that I recall, no.
 (13) Q While you were at the Pipeline Club, what did you have to
 (14) drink?
 (15) A I had beer.
 (16) Q How many?
 (17) A I wasn't counting. At least two.
 (18) Q And while you were there, how many drinks did Captain
 (19) Hazelwood have?
 (20) A Again, I don't know. There were drinks on the table when
 (21) I arrived. I purchased a round.
 (22) Q Anyone else purchase a round after you?
 (23) A I believe so. Again, I don't know how many.
 (24) Q After the Pipeline Club, where did you go?
 (25) A We walked over to the Pizza Palace. I believe it's called

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- (1) Q And what did you do at the Pizza Palace?
 (2) A I stood around and waited while the chief engineer
 Glowacki
 (3) ordered pizzas to take back to the ship.
 (4) Q And then what?
 (5) A Then we moved over into the Harbor Club. I believe it's
 (6) called located adjacent.
 (7) Q Did all three of you move as a unit? In other words you
 (8) went in and ordered the pizza and the three of you remained
 (9) there, or did Captain Hazelwood leave that group?
 (10) A No, we went over as a unit, as I recall.
 (11) Q And you went over to the harbor -
 (12) A I believe that's
 (13) Q Harbor Club?
 (14) A Yes, I believe that's correct.
 (15) Q What did you have to drink in the Harbor Club?
 (16) A A bourbon and water.
 (17) Q Just for placement of time, about what time is this?
 (18) A I don't know. It was still daylight.
 (19) Q It was still daylight?
 (20) A Yes.
 (21) Q Late afternoon, is that generally correct?
 (22) A Late afternoon, I think that would be the general time
 (23) frame.
 (24) Q Did you sit down at the Harbor Club?
 (25) A Yes.

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- (1) Q And what did Captain Hazelwood have to drink?
 (2) A I don't know.
 (3) Q What did he order?
 (4) A He ordered a brand that I don't recall. Although I took it
 (5) to be Russian vodka.
 (6) Q Did they have it? Or I mean, did they say we don't have
 (7) that?
 (8) A The bartender indicated that he didn't have that brand.
 (9) Q And do you know what he ultimately gave Captain
 Hazelwood
 (10) to drink?
 (11) A No, I don't know what he ultimately gave him to drink. He
 (12) did set up several bottles on the bar to show him what stock
 (13) that he had.
 (14) Q Of vodka, was it the bottles or couldn't you tell?
 (15) A I assume it was all vodka, yes.
 (16) Q And Captain Hazelwood picked the one that he wanted?
 (17) A That's a little vague in my memory.
 (18) Q Well, did you reach a conclusion that Captain Hazelwood
 (19) ultimately - he didn't get the brand he wanted but he got some
 (20) other brand?
 (21) A My impression was that he settled for a different brand.
 (22) Q When he was served it was he served it in a short glass or
 (23) a tall glass, do you recall?
 (24) A No, I don't have a recollection of the glass.
 (25) Q How many drinks did you have there, to the best of your

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- (1) recollection?
- (2) **A Just one as far as I know**
- (3) **Q Could Captain Hazelwood possibly have had more than one?**
- (4) **A Your question was is it possible that he more than one? I would certainly think that, yes, that was possible, certainly**
- (5) **Q And how long were you at this club approximately?**
- (6) **A Only a few minutes as I recall Half an hour Not long at all**
- (7) **Q Now after the Harbor Club what did you do?**
- (8) **A Captain Hazelwood asked the bartender to call the agent to**
- (9) **arrange transportation back to the ship Apparently he couldn't get through, and a cab was called We boarded the**
- (10) **cab The cab made one stop, picked up another passenger at the**
- (11) **Pipeline Club We then drove back to the terminal through the**
- (12) **check point, back into the cab and on down to the head of the**
- (13) **jetty or pier, or whatever you like to call it now, to the**
- (14) **ship**
- (15) **Q Other than the pizzas that you were bringing back did you have any other packages with you any of the three of you?**
- (16) **A Yes, I had a bag with some magazines that I'd purchased**
- (17) **Q Did Captain Hazelwood was he carrying anything?**
- (18) **A He was carrying a valise or a briefcase**
- (19) **Q Anything else or just that?**
- (20) **A That was the only thing that he was carrying as I recall**
- (21) **Q And the chief was carrying the pizza?**

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- (1) **A Well, I don't have a clear recollection of that, that he took the pizza through the metal detector But I believe yes,**
- (2) **that he did carry the pizza once we got down, disembarked from**
- (3) **the taxi**
- (4) **Q Now when you went into the terminal you went through the**
- (5) **metal detector Was there any kind of search in addition to the**
- (6) **metal detector of the three of you?**
- (7) **A The guard looked inside our bags**
- (8) **Q Did he look inside Captain Hazelwood's briefcase?**
- (9) **A I can't be sure about that, no**
- (10) **Q After you - now after arrived at the ship and about what**
- (11) **time is this was it still daylight?**
- (12) **A No it was dark I don't know what time it would have**
- (13) **been**
- (14) **Q When you left the Harbor Club was it daylight or dark?**
- (15) **A Dusky**
- (16) **Q How did you become aware of the grounding?**
- (17) **A I was only aware of the grounding when I overheard**
- (18) **Captain Hazelwood talking on the MARSAT radio telephone,**
- (19) **satellite**
- (20) **telephone**
- (21) **Q You overheard him talking and from what location was he**
- (22) **talking at the time?**
- (23) **A In the radio room**
- (24) **Q And that's where with respect to your stateroom?**
- (25) **A It's directly adjacent**

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- (1) **Q And when you overheard him you were in your stateroom?**
- (2) **A No, I was in the radio room with him**
- (3) **Q Well let's back up a minute You were sleeping at the**
- (4) **time of the grounding is that correct?**
- (5) **A Yes**
- (6) **Q Did the grounding awaken you the physical -**
- (7) **A Yes, it did**
- (8) **Q And then what did you do from that point up to the time**
- (9) **when you overheard the captain? You just described you got**
- (10) **up**
- (11) **I take it?**
- (12) **A Yes I got up I instantly had the impression that something was seriously wrong so I got dressed I went**
- (13) **into**
- (14) **the radio room Then over into the captain's office and then**
- (15) **back over into the chief engineer's office, and then back**
- (16) **into**
- (17) **the radio room I was just standing around waiting for**
- (18) **something to happen**
- (19) **Q When you went over to the radio room was the captain**
- (20) **already in the room or was he not in there yet?**
- (21) **A He was not there yet, no**
- (22) **Q Well with relation to the grounding when you said you**
- (23) **overheard him talking on the MARSAT radio telephone how**
- (24) **long**
- (25) **after the grounding was that?**
- (26) **A Well, I would have to estimate half an hour or so**
- (27) **Q And up until that time you really didn't know what**
- (28) **happened is that what you're saying?**

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- (1) **A That's correct**
- (2) **Q Did you go up to the bridge at all between the time you**
- (3) **felt the grounding and it awakened you and your hearing the**
- (4) **captain on the MARSAT radio telephone?**
- (5) **A Yes, I did**
- (6) **Q And how soon after the grounding did you go to the bridge?**
- (7) **A Well, again I would estimate it was about half an hour**
- (8) **but to explain it or to backtrack from the time you refer to**
- (9) **here me overhearing the captain on the radio I went to the**
- (10) **bridge to tell him to come down to the radio room, that he**
- (11) **had**
- (12) **a MARSAT telephone call**
- (13) **Q I see Who was that's from?**
- (14) **A That was from Mr Myers**
- (15) **Q Was there a point in time when the house began filling with**
- (16) **vapors and you also mentioned there was a stream of oil**
- (17) **shooting in the area from the deck 40 to 50 feet high do you**
- (18) **recall that?**
- (19) **A Yes**
- (20) **Q How - what I want to do is just point out about that point**
- (21) **in time was that the house was filled with vapors is that how**
- (22) **you were describing?**
- (23) **A The very early stages following the grounding**
- (24) **Q In the early stages but it wasn't at this point when you**
- (25) **went up to the bridge is that what you're saying or am I**
- (26) **mistaken?**

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- (1) A No I think my answer was that I don't recall there being
 (2) vapors on the bridge at that time However there were
 (3) noticeable vapors in the radio room
 (4) Q At that time?
 (5) A Prior to that time
 (6) Q Prior to that time okay When you're saying the house
 (7) you mean the radio room area and the enclosed area where you
 (8) were? Is that what you mean by the radio room your
 (9) stateroom? What did you mean - let me go back What do you
 (10) mean when you say the house? Maybe you can describe that?
 (11) A Well, the house would be the entire aft structure of the
 (12) living quarters of the ship Obviously I was pretty much
 (13) confined to the radio room and my bedroom
 (14) Q Well would it be correct that at this period you're
 (15) describing of the house beginning to fill with vapors that this
 (16) was between the time of when you felt the grounding and when
 (17) you went up to get Captain Hazelwood for his call?
 (18) A Yes, that's correct If I could explain it, my impression
 (19) was that there were vapors coming through the ventilation
 (20) system, the air conditioning ducts
 (21) Q And this stream of oil with relation to the grounding did
 (22) you observe this stream of oil shooting from the deck 40 to 50
 (23) feet high?
 (24) A When I went over into the chief engineers office and
 (25) looked forward on deck This was immediately within a few

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- (1) Q Can you give me a rough idea?
 (2) A How long?
 (3) Q Yes Was it over ten 20 minutes?
 (4) A Oh, yes
 (5) Q Over a half hour?
 (6) A Possibly If not longer
 (7) Q And you stayed with the captain?
 (8) A Now I'm referring to the duration of the connection let
 (9) me put it that way
 (10) Q But Captain Hazelwood remained in your radio room during
 (11) that period is that correct?
 (12) A A portion of that period
 (13) Q A portion?
 (14) A Yes
 (15) Q Well he was talking to Captain Myers you of course could
 (16) hear Captain Hazelwood but you can't hear Mr Myers is that
 (17) correct?
 (18) A Mr Myers, that's correct, I could not
 (19) Q Can you tell me in general what was Captain Hazelwood
 (20) telling him to the best of your recollection?
 (21) A In general, he was advising him of the situation of the
 (22) vessel
 (23) Q Can you remember any specifics of what he was advising
 (24) him? Was he talking to him about the stability of the vessel
 (25) in general?

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- (1) minutes after the grounding and prior to the time that I went
 (2) to the bridge to retrieve Captain Hazelwood
 (3) Q Was this call from Mr Myers you said?
 (4) A Yes, Paul Myers
 (5) Q Where was the origin of the call from Houston?
 (6) A I assumed that the call was coming from the San
 Francisco
 (7) area
 (8) Q And was this the first call that was incoming after the
 (9) grounding that you're aware of?
 (10) A Yes
 (11) Q And you took it and what did he say to you Paul Myers?
 (12) A I don't recall his exact phrase, but he indicated that he
 (13) wanted to speak to the captain I told him to standby and
 went
 (14) to the bridge to get the captain
 (15) Q Now you go up and get the captain and the captain then
 (16) comes down to the radio room to take the call?
 (17) A Yes
 (18) Q And did you go with him?
 (19) A Yes
 (20) Q And did you remain with the captain during the entire time
 (21) of this call?
 (22) A Yes
 (23) Q About how long was the call to the best of your
 (24) recollection?
 (25) A It was quite lengthy

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- (1) A I can't recall
 (2) Q Do you recall anything?
 (3) A About the stability?
 (4) Q Do you recall anything in the way of the subject matters
 (5) like stability or anything else that sticks out in your mind
 (6) that he was talking to him about?
 (7) A The only thing I can recall is that he was saying that they
 (8) had fetched up hard aground on Bligh Reef, that there was
 oil
 (9) in the water and again, I was only hearing half the
 (10) conversation I don't recall anything in addition to that
 (11) Q Do you recall whether Captain Hazelwood ever mentioned
 (12) anything to him about ice?
 (13) A I don't recall
 (14) Q Did he ever mention anything to him about Cousins?
 (15) A He did make a reference to the third mate
 (16) Q And do you recall in what respect he made a reference to
 (17) him?
 (18) A It was just a reference The third mate was - I remember
 (19) him saying the third mate
 (20) Q But you don't remember anything else about - you don't
 (21) remember whether he was praising him or castigating him or
 (22) anything of that nature?
 (23) A No I do recall him saying it was my fault
 (24) Q My meaning Captain Hazelwood?
 (25) A Yes

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- (1) Q Do you remember him telling Paul Myers anything about the
 (2) fact that Captain Hazelwood was not on the bridge at the time
 (3) of the grounding?
 (4) A I vaguely recall some reference to the fact that he had
 (5) just laid below to his cabin to do some paperwork
 (6) Q Now after this telephone call what did you do? You were
 (7) down in the radio room for this period of time Let me just
 (8) back a up minute You said that Captain Hazelwood was there
 (9) and you can correct me if I m wrong he was only there for part
 (10) of this time then who else talked with Mr Myers in addition
 (11) to Captain Hazelwood?
 (12) A I did He instructed me to stay on the line with Mr
 (13) Myers and he returned the captain returned in the
 (14) direction
 (15) of the bridge
 (16) Q Now you ve stayed on the line with Mr Myers What did
 (17) you discuss with him to the best of your recollection?
 (18) A For quite a while, we stood there listening to each other
 (19) breathe, then he asked about the circumstances, what it felt
 (20) like There was a lot of shock or disbelief, I think on both
 (21) of our parts He was asking me how bad the list was
 (22) Q And was there a list?
 (23) A Yes
 (24) Q And in which direction?
 (25) A To starboard
 (26) Q A starboard list and can you give me the approximate

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- (1) number of degrees of list or describe it in any way?
 (2) A As I recall, I described it as a ten degree list
 (3) Q And this ten degree list that existed from the time of the
 (4) grounding was this something that gradually took place or was
 (5) there a ten degree list shortly after the grounding occurred?
 (6) A The list was relatively rapid It was - there was a
 (7) sudden jarring motion, and it seemed to me that the list
 (8) started to become noticeable about the same time as
 (9) vapors were
 (10) starting to fill the radio room
 (11) Q You were in close proximity to Captain Hazelwood then as
 (12) you ve testified After the grounding did you ever smell
 (13) alcohol on his breath?
 (14) A I think I did later This was after the Coast Guard was
 (15) already aboard I didn t notice any of them prior to that
 (16) Q About what time did the Coast Guard come aboard do you
 (17) know?
 (18) A No, I don t recall the time
 (19) Q Now when the Coast Guard came aboard again it s in your
 (20) prior testimony but do you recall a conversation that took
 (21) place when the Coast Guard was talking with Captain
 (22) Hazelwood
 (23) that you overheard in connection with the nature of the
 (24) problem?
 (25) A Yes
 (26) Q Can you describe first of all where did this conversation
 (27) take place?

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- (1) A Directly outside the radio room in the passageway
 (2) Q And you were at that time where?
 (3) A In the radio room
 (4) Q And Captain Hazelwood was just outside the radio room?
 (5) A Yes In the - in the passageway
 (6) Q And there were Coast Guard personnel there How many do
 (7) you recall?
 (8) A I believe there were three The two I m sure of Coast
 (9) Guard people Possibly three or more as I recall one other
 (10) individual
 (11) Q And can you tell us what you overheard?
 (12) A One of the Coast Guard s men asked the captain what
 (13) seemed
 (14) to be - he said, what seems to be the problem And Captain
 (15) Hazelwood says, you're looking at it As I recall the Coast
 (16) Guard officer asked about the anchors, whether one or both
 (17) of
 (18) the anchors were down Captain Hazelwood indicated that
 (19) they
 (20) were both out and the Coast Guard officer said good At
 (21) that
 (22) point they turned and went in the direction of the bridge
 (23) Q Did you ever learn subsequent to this time you ve just
 (24) described that the Coast Guard personnel aboard smelled
 (25) alcohol
 (26) on Captain Hazelwood s breath?
 (27) A I had heard the two Coast Guard officers talking between
 (28) themselves in the radio room One indicated to the other
 (29) that
 (30) he smelled alcohol on the captain s breath
 (31) Q In your interview with the NTSB I want to focus on one

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- (1) incident and you can refer to the bottom of the first page if
 (2) you need to refresh your recollection of the NTSB interview
 (3) but it s in connection with when if you were ever asked if you
 (4) had seen Captain Hazelwood drinking on the vessel prior to the
 (5) grounding and you start relating an incident Can you tell us
 (6) the circumstances of the incident that you told the NTSB about?
 (7) A Yes I don t recall the exact day I believe it was on
 (8) the weekend The captain had come to the radio room
 (9) before
 (10) lunch time and asked me to come down to the lounge after
 (11) lunch
 (12) that he had something to show me
 (13) Well, subsequent to that he called me into his office I
 (14) don t recall if this was before or after lunch, but he
 (15) indicated that he had a confiscated bottle that he wanted me
 (16) to
 (17) witness the destruction of down in the lounge I went into
 (18) the
 (19) lounge, Greg Cousins was there The captain came in and
 (20) reached under a jacket that was on one of the recliners and
 (21) pulled out a bottle I think in the NTSB account it indicates
 (22) that I said that the bottle was handed to me I don t recall
 (23) that I do recall that the bottle sat on the deck for some
 (24) period of time
 (25) Q What was in the bottle? What kind of liquor? Well what
 (26) was in the bottle?
 (27) A Clear liquid
 (28) Q Was it alcohol?
 (29) A At this point, I wasn t sure I think I assumed that yes

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- (1) It was alcohol Captain indicated that Greg and I should have
- (2) some I was very uncomfortable in the situation I had been
- (3) called on in the past to witness destruction of confiscated or
- (4) out of date controlled substances aboard the ship in the
- (5) medicine chest and it was a pretty unusual situation
- (6) Q So did you all have some drinks from this bottle then?
- (7) A I had a cup with orange juice I had tipped the bottle
- (8) into the cup I tasted it I was puzzled at the time There
- (9) was no taste of alcohol pretty much just sat there and
- (10) observed the video that the captain started
- (11) Q Did you observe Captain Hazelwood drink from the bottle?
- (12) A I do recall that he had a glass I don't have a specific
- (13) recollection of him pouring from the bottle, no
- (14) Q What about Cousins?
- (15) A Again I would have to say the same thing I do recall that
- (16) he had a glass I do recall him handling the bottle but as
- (17) far as a recollection of him actually drinking from the bottle
- (18) or pouring from the bottle, I don't have that
- (19) Q Did this bottle have a label on it?
- (20) A Yes it did I don't recall what the label - the printing
- (21) on the label it seems to me that it was somewhat silver in
- (22) color with a reddish stripe
- (23) Q Well based on your experience did you have an opinion
- when
- (24) you saw the bottle with the label that there was some kind of
- (25) alcohol in it?

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- (1) A My impression was that yes It was an alcohol bottle
- (2) Q Did you have an opinion whether it was vodka or anything
- (3) else before you were going to taste it because of its color?
- (4) Was it a clear liquid?
- (5) A It was a clear liquid I don't know if I formed an opinion
- (6) as to what type of alcohol it was either vodka or some other
- (7) colorless alcohol
- (8) Q Did anyone else other than Cousins yourself and Captain
- (9) Hazelwood was anyone else in that room with you?
- (10) A Yes the chief mate
- (11) Q Kunkel?
- (12) A No
- (13) Q Another chief mate?
- (14) A It was his predecessor I want to say Klees but I'm not
- (15) sure of his last name Now in addition to that I don't recall
- (16) any other - anyone else coming into the room But there
- were
- (17) windows on the door and I do recall one or two people
- looking
- (18) in the window without coming up
- (19) Q Did you ever hear anything or did you ever observe anything
- (20) in connection with their performance? Did you ever hearing
- (21) anything in connection with Kagan's performance - let's stay
- (22) with Kagan concerning his performance as a helmsman?
- (23) A Just that I'd been on the bridge on a few occasions when
- (24) Kagan was at the helm
- (25) Q Did you observe anything in connection with his performance

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- (1) on the helm?
- (2) A I didn't observe anything out of the ordinary no
- (3) Q Did you ever hear any criticism of Kagan's ability as a
- (4) helmsman?
- (5) A Yes I had although I'm not sure what sequence in time
- (6) that would be but I had heard those remarks
- (7) Q Do you remember in general what the remarks were?
- (8) A Generally that he had difficulty steering the vessel that
- (9) he had a very short attention span
- (10) Q Were there any announcements made over the P A System
- on
- (11) the ship after the grounding concerning smoking not smoking
- in
- (12) any areas or anything of that nature?
- (13) A No there weren't
- (14) Q Were there any announcements at all made over the P A
- (15) System after the grounding during those early morning hours?
- (16) A No
- (17) Q What were the first announcements that were made over the
- (18) P A System after the grounding that you can recall?
- (19) A I don't recall the P A System ever being in use
- (20) Q Did you ever have any discussions with Chief Officer Kunkel
- (21) about the stability of the vessel?
- (22) A Yes I did
- (23) Q What were the first discussions that you had with him
- (24) concerning the vessel's stability?
- (25) A The morning after the grounding

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- (1) Q And the morning about - was it daylight?
- (2) A Yes
- (3) Q And what did he tell you?
- (4) A He seemed to be concerned if not upset The captain
- was
- (5) no longer aboard I believe although I'm not totally sure
- that
- (6) Captain Deppe and Captain Wallace were aboard Mr
- Kunkel
- (7) indicated that he was unsure of the stability of the vessel
- (8) He thought it was a very dangerous situation that he
- thought
- (9) that the crew should be removed from the vessel and he
- seemed
- (10) to be concerned that whoever he had expressed those
- feelings to
- (11) didn't seem to be that concerned He said it was a situation
- (12) on his stability computer that was essentially useless It
- was
- (13) a condition that there were no calculations for
- (14) Q You testified with regard to an incident involving what you
- (15) believe to be alcohol on the Valdez and involving Captain
- (16) Hazelwood Do you ever recall in addition to that do you
- (17) ever recall anybody bringing alcohol onto the Exxon Valdez?
- (18) A I can't say that I have
- (19) Q When you came back to the ship on one occasion in San
- (20) Francisco did you see anything that led you to believe
- (21) somebody was bringing alcohol back on board?
- (22) A I can just say that I observed a bottle what I took to be
- (23) alcohol aboard the launch as the launch was travelling from
- San
- (24) Francisco back to the Valdez and also to another vessel that
- (25) was anchored

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- (1) Q In whose possession was that?
- (2) A Greg Cousins
- (3) Q And in the same record it's possible that there was only
- (4) one drink is that correct?
- (5) A That is correct
- (6) Q Why don't you tell us what you observed?
- (7) A The launch was leaving from San Francisco bound for the
- (8) vessel Exxon Valdez which was anchored I think there was
- (9) another Exxon vessel also anchored nearby We were on
- the dock
- (10) waiting for the launch Mr Cousins had an athletic type bag
- (11) with him and I saw him on at least two occasions open the
- bag
- (12) and remove a glass bottle Aboard the launch I again saw
- him
- (13) with the bottle As I recall, he offered me a drink and a
- (14) couple of the other crew members that were aboard the
- launch
- (15) Q Who else was aboard the launch?
- (16) A There was an A-B that - I don't suppose anybody has a
- crew
- (17) list I could recognize his name, but I don't recall it at the
- (18) present time
- (19) Q Wayne the A B from the Exxon Valdez?
- (20) A Yes
- (21) Q Anybody else you can recall?
- (22) A That was aboard the launch?
- (23) Q Yes
- (24) A Yes, the second mate Lloyd LeCain was aboard and also
- a
- (25) gentleman that I took to be the master of the other vessel

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- (1) Q And do you recall what -
- (2) A Also the ship's cook was aboard our second cook
- Melanie
- (3) Wright I believe she was there yes I think that's the
- (4) case I believe there was a pump man aboard I don't recall
- (5) his name
- (6) Q Do you recall what the other vessel was?
- (7) A No, I don't
- (8) Q Was it an Exxon vessel?
- (9) A Yes
- (10) Q Was it the Galveston?
- (11) A It's possible but I don't recall
- (12) Q Now about when did this incident occur?
- (13) A In the relative early stages of joining the vessel It
- (14) seemed to me about the time that Lloyd LeCain joined the
- vessel
- (15) because I recall that he was on the launch and there was
- (16) another second mate prior to - to him joining So that's the
- (17) time frame as best I can recall
- (18) Q What did the bottle look like?
- (19) A Pure glass
- (20) Q What size and shape?
- (21) A As I recall, it wasn't so cylindrical or too narrow and
- (22) cylindrical such as a fifth bottle but it was more -
- (23) somewhat shorter and larger in diameter
- (24) Q When you say shorter and larger -
- (25) A As compared to a fifth bottle

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- (1) Q Was it round?
- (2) A Yes, as I recall It was round
- (3) Q Did it have a label on it?
- (4) A I don't know that I saw a label
- (5) Q Do you know what color - what the color of the liquid
- (6) inside was?
- (7) A As I recall, it was clear
- (8) Q Clear as - clear as in colorless?
- (9) A Yes
- (10) Q From looking at the bottle itself there's nothing you saw
- (11) in the bottle that identified to you that it was alcohol that
- (12) was there?
- (13) A Not that I recall
- (14) Q Did Greg say anything to anybody that said this is vodka
- (15) this is Everclear anything that would lead you to believe
- (16) there was alcohol in the bottle?
- (17) A Not that I recall
- (18) Q Did you smell any odor of alcohol at that time?
- (19) A Not that I recall
- (20) Q Associated with the bottle?
- (21) A No, I don't recall any odor
- (22) Q Now Mr Russo asked you some questions about an incident
- (23) involving the destruction of the bottle on the Valdez Did
- (24) Captain Hazelwood ever suggest to you that he was playing a
- (25) practical joke when he did that?

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- (1) A No, he didn't
- (2) Q As a matter of fact after that you had a discussion with
- (3) Mr Cousins did you not?
- (4) A Yes
- (5) Q About the incident?
- (6) A More or less yes
- (7) Q Did you tell Mr Cousins that you were uncomfortable about
- (8) it?
- (9) A I think I indicated to him that I was surprised
- (10) Q Did you during that conversation get the impression that
- (11) Mr Cousins was uncomfortable about what had happened?
- (12) A During that conversation I don't recall I did have
- (13) the - during the incident, I had the impression that he was
- (14) uncomfortable
- (15) Q When you talked with Mr Cousins after the incident did
- (16) you tell him that you were surprised that there would be
- (17) alcohol on the ship?
- (18) A In a roundabout way yes
- (19) Q Did he in any way suggest to you that what was in that
- (20) bottle was not alcohol?
- (21) A No he didn't
- (22) Q Did he in any way suggest to you that it had been a joke?
- (23) A No
- (24) Q As you sit here today you don't think it was a joke do
- (25) you?

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- (1) A No
 (2) Q Mr Sherman provided me the names of the A Bs aboard the
 (3) Valdez at least those A Bs who were present at the voyage that
 (4) ended in the grounding and your responses were possibly yes
 (5) and no Were you saying that you recognized their names or -
 (6) and in particular Mr Claar as to whom your answer was yes
 (7) did Mr Claar take a drink?
 (8) A My response indicated as to whether or not these
 (9) individuals were aboard the launch I indicated that - I
 (10) indicated yes to Mr Claar My recollection is that he was
 (11) aboard and that he did take a drink from this bottle
 (12) Q I believe - and he was the only one you have a distinct
 (13) recollection of taking a drink yes or no?
 (14) A Other than Mr Cousins
 (15) Q Yes sir?
 (16) A Yes, as I recall that is correct
 (17) Q And those A Bs as to whom in response to Mr Sherman you
 (18) said possibly well they probably were aboard the launch and
 (19) possibly may have taken a drink from Mr Cousins?
 (20) A That is correct
 (21) Q And finally as I understand the chronology this incident
 (22) with Mr Cousins aboard the launch was before what we had
 been
 (23) referring to as the bottle destruction episode aboard the
 (24) Valdez?
 (25) A Yes

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- (1) Q Mr Roberson under all the circumstances to include Mr
 (2) Cousins demeanor and the actions that took place in the
 (3) launch did you conclude that he had been - had something to
 (4) drink?
 (5) A Yes
 (6) CROSS EXAMINATION OF JOEL ROBERSON
 (7) BY MR SANDERS
 (8) Q When you would go ashore in the port of Valdez you would
 (9) know the vessel was sailing at a certain time is that correct
 (10) when you left the vessel?
 (11) A Yes There is a sailing board that is posted that did have a
 (12) tendency to change from time to time
 (13) Q Where would they post that sailing board?
 (14) A Generally, right by the gangway
 (15) Q When you were ashore would you check to see if the time
 (16) had been changed as a matter of normal routine?
 (17) A Not as a matter of routine no
 (18) Q There were times when the sailing time was changed from
 (19) time to time you said?
 (20) A Yes
 (21) Q Due to the loading schedule I guess and at times how
 (22) would you protect yourself to make sure you got back to the
 (23) vessel in case the sailing time had been moved up if you hadn't
 (24) checked to see while you were ashore whether it was the same
 as
 (25) when you left?

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- (1) A Well I don't recall that there is - I don't recall that
 (2) that is ever happened that the time was moved up sailing
 sooner
 (3) than the posted time
 (4) Q From your experience relative to changes in sailing time
 (5) is it more likely than not that a change in sailing time would
 (6) be to a later sailing time rather than an earlier sailing time?
 (7) A Yes
 (8) Q It is unusual for a sailing time in your opinion to be
 (9) moved up?
 (10) A I've only seen it occur probably twice in the 12 or 13
 (11) years
 (12) Q So as a result of that you would find it surprising if
 (13) say you left the ship and you saw on the sailing board a
 (14) specific sailing time posted and then returned to the ship and
 (15) found the sailing time moved up?
 (16) A It would be unusual I don't know if I would show a great
 (17) deal of surprise
 (18) Q It would be something that you would not expect though is
 (19) that correct?
 (20) A In this particular operation, running the Valdez no, I
 (21) really wouldn't expect that to happen
 (22) Q You talked about the incident wherein you saw a bottle
 (23) being brought on or being on the launch as the launch returned
 (24) to the Valdez in San Francisco Would you recognize do you
 (25) think the name of the A B or A Bs that were in the launch if

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- (1) you heard them?
 (2) A Yes
 (3) Q Let me see if I can remember all the A Bs on board Paul
 (4) Radtke?
 (5) A Possibly
 (6) Q John Peacock?
 (7) A No
 (8) Q Maureen Jones?
 (9) A Possibly
 (10) Q Harry Claar?
 (11) A Yes
 (12) Q Bob Kagan?
 (13) A No
 (14) Q And Carl Jones?
 (15) A I think not, no
 (16) Q On the occasion in question did you hear anything leading
 (17) you to believe that Mr Cousins had been in town with one or
 (18) more of the A Bs?
 (19) A I don't recall any conversations at that point that
 (20) indicated who he was with no
 (21) Q Do you recall any person in the launch falling asleep
 (22) during the return voyage or return trip?
 (23) A On the launch?
 (24) Q Yes?
 (25) A No

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- (1) Q Do you recall concluding or thinking that one or more of
 (2) the A Bs was affected by alcohol at the time? I don t mean
 (3) necessarily intoxicated or drunk but just affected?
 (4) A I didn t see any signs of that no
 (5) Q What led you to believe that the person that was going to
 (6) the other Exxon vessel was its master?
 (7) A He was talking to Lloyd LeCain and as I recall Mr LeCain
 (8) addressed him as Captain
 (9) Q On the same incident Mr Roberson was the second mate
 (10) LeCain offered a drink by Mr Cousins? I don t think I asked
 (11) that?
 (12) A I think not
 (13) Q And did the offering of the drinks appear in the second
 (14) mate LeCain s presence?
 (15) A Just that it happened Just that it occurred aboard the
 (16) launch that we were all aboard As I recall Mr Cousins was
 (17) standing behind or to the aft of Mr LeCain and the captain
 (18) Q If Mr Cousins was standing to the aft of LeCain and the
 (19) captain - then the captain and LeCain would not necessarily
 (20) have observed what transpired and then one attorney
 (21) interrupts
 (22) and says I want the record to be clear that when you say
 (23) quote the captain end quote you re not talking about any
 (24) specific captain we re not talking about Captain Hazelwood
 (25) and another lawyer says we re talking about the unnamed
 captain
 (26) to whom the witness has referred

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- (1) A That is possible yes that they didn t observe what was
 (2) going on
 (3) Q And I take it that the A Bs to whom Mr Cousins offered a
 (4) drink were also standing aft of Mr LeCain and the unknown
 (5) captain?
 (6) A Mystery captain that s correct
 (7) Q I just want to briefly go over one thing with you and that
 (8) concerns this incident that you ve described about destruction
 (9) of a bottle I believe you said in your testimony that there
 (10) came a point in time when you poured some of this clear liquid
 (11) into an orange juice that you had is that correct?
 (12) A Yes
 (13) Q And then drank from that glass?
 (14) A Yes
 (15) Q And at that time you did not taste any alcohol in that
 (16) glass?
 (17) A No I didn t
 (18) Q Did you think perhaps at that particular point in time when
 (19) you tasted this and didn t taste any alcohol that someone was
 (20) playing a joke on you?
 (21) A The thought went through my mind yes
 (22) Q When you said that you thought someone was playing a
 (23) joke
 (24) on you that was because when you drank this drink after
 (25) pouring this liquid into your orange juice you didn t taste any
 alcohol correct?

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- (1) A That s correct I will say that the thought occurred to me
 (2) that either nothing went into my glass or what went in was
 not
 (3) alcohol yes
 (4) Q Well didn t you pour the liquid into the glass yourself?
 (5) A Yes
 (6) Q And you were new on the ship at that point weren t you?
 (7) A Yes
 (8) Q So you didn t know Captain Hazelwood very well at that
 (9) point?
 (10) A No
 (11) Q And also you didn t know some of the other crew members
 at
 (12) that point very well did you?
 (13) A The only other two crew members I d sailed with before
 was
 (14) Mr Kunkel and Mr Kagan
 (15) Q Now I d like to just go back for a little bit about your
 (16) time in Valdez on March the 23rd 1989 You mentioned that
 (17) after lunch you went to a gift shop in Valdez do you recall
 (18) that?
 (19) A Yes
 (20) Q And if my recollection is correct you said that you were
 (21) in the gift shop with Captain Hazelwood?
 (22) A That is correct
 (23) Q Do you recall the name of the shop that you went to?
 (24) A No I don t
 (25) Q Was this shop also a shop that sold flowers?

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- (1) A That s my understanding, yes
 (2) Q Do you have a recollection of whether you observed Captain
 (3) Hazelwood buying flowers in that shop?
 (4) A I recall that he inquired about it yes
 (5) Q When you say he inquired about it what do you recall about
 (6) his inquiry?
 (7) A He asked the clerk if he would be able to send flowers
 (8) Q And the clerk that he spoke to was this a woman?
 (9) A Yes
 (10) Q And did you leave the shop before he bought the flowers or
 (11) while he was still in there?
 (12) A He was still in the shop when I left, yes
 (13) Q And was he still talking to the lady the clerk when you
 (14) left?
 (15) A I believe so
 (16) Q Now after you left the flower shop where did you go?
 (17) A To the supermarket next door
 (18) Q And do you recall approximately how long you remained in
 (19) the supermarket?
 (20) A No not exactly I don t know that it would have been as
 (21) long as half an hour Several minutes, at any rate
 (22) Q If I recall you said before the purpose was that you were
 (23) looking for magazines in the supermarket?
 (24) A That s correct
 (25) Q And you did buy some magazines the supermarket?

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- (1) **A Yes**
 (2) **Q After you left the supermarket where did you go?**
 (3) **A I walked to the post office**
 (4) **Q And where was the post office in relation to the**
 (5) **supermarket?**
 (6) **A Several blocks away I don't know which direction**
 (7) **Q You didn't make any stops along the way to the post office**
 (8) **did you?**
 (9) **A No, not that I recall**
 (10) **Q What did you do when you got to the post office?**
 (11) **A I mailed some postcards**
 (12) **Q Did you in order to do this did you have to consult with**
 (13) **anybody in the post office or did you just have to drop them in**
 (14) **the mailbox?**
 (15) **A I don't recall whether I purchased stamps or not**
 (16) **Q Approximately how long if you recall did you remain in**
 (17) **the post office?**
 (18) **A Just a few minutes**
 (19) **Q And then you left the post office?**
 (20) **A Yes**
 (21) **Q Where did you go then?**
 (22) **A I walked around I don't believe I made another stop I**
 (23) **didn't go directly back, as I recall, to the Pipeline Club**
 (24) **which was directly across from this gift shop when we split**
 (25) **in other words, I took a roundabout route back to the**
Pipeline

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- (1) **Club**
 (2) **Q When you say you took a roundabout route can you**
 describe
 (3) **in general terms what you mean by that?**
 (4) **A Well, there was another shop near the post office that I**
 (5) **was going to stop at I believe it was closed so when I**
 (6) **discovered it was closed, I proceeded on in the direction of**
 (7) **the Pipeline Club**
 (8) **Q And what type of shop was that that you were looking for?**
 (9) **A A T-shirt shop**
 (10) **Q And had that shop been there before on previous visits to**
 (11) **Valdez?**
 (12) **A This particular shop, no This is the first time I'd been**
 (13) **ashore there in several years I don't recall seeing it there**
 (14) **before and I'm not sure how I noticed it was there unless I**
 (15) **spotted it on the way to the post office**
 (16) **Q Perhaps I misunderstood your last answer When you say**
 the
 (17) **shop was closed you meant just that it was closed for business**
 (18) **but there was still a T shirt shop there is that correct?**
 (19) **A That is correct**
 (20) **Q So after you discovered that that shop was closed where**
 (21) **did you go?**
 (22) **A Back to the Pipeline Club**
 (23) **Q And did you go to the Pipeline Club from that shop?**
 (24) **A Yes**
 (25) **Q Do you recall approximately how far it was from that shop**

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- (1) **to the Pipeline Club?**
 (2) **A A few blocks**
 (3) **Q And you didn't make any stops along the way?**
 (4) **A Not that I recall no**
 (5) **Q And when you got to the Pipeline Club you entered the**
 (6) **Pipeline Club and that's when you saw Chief Glowacki and**
 (7) **Captain Hazelwood?**
 (8) **A Yes**
 (9) **Q After you left the Pipeline Club you went to order a**
 (10) **pizza is that correct?**
 (11) **A Yes**
 (12) **Q And when this pizza was ordered you Captain Hazelwood**
 and
 (13) **Chief Glowacki were together in the Pizza Palace together**
 (14) **ordering the pizza?**
 (15) **A Yes**
 (16) **Q And when this pizza was ordered you captain - excuse me**
 (17) **and subsequent to that you went where?**
 (18) **A We stood outside for a minute and then stepped back in**
 it
 (19) **was snowing The weather was kind of nasty It was wet**
 snow,
 (20) **so we stepped inside the Harbor Club which was directly**
 next
 (21) **door to the pizza shop**
 (22) **Q Was the Harbor Club crowded at that time?**
 (23) **A No I wouldn't call it crowded no**
 (24) **Q Were you seated at the bar or at a table or what when you**
 (25) **went to the Harbor Club?**

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- (1) **A At the bar**
 (2) **Q And Captain Hazelwood and Chief Glowacki were with you at**
 (3) **that time?**
 (4) **A Yes**
 (5) **Q And were they seated at the bar as well?**
 (6) **A Yes**
 (7) **Q When you were seated at the bar did the bartender come**
 (8) **over right away or did you have to wait to be served?**
 (9) **A I don't really recall the time span there**
 (10) **Q Were you engaged in conversation at that time with Captain**
 (11) **Hazelwood and Chief Glowacki?**
 (12) **A Well there was more or less a running conversation, yes**
 (13) **Q And during this time you were waiting for the pizza to be**
 (14) **ready is that correct?**
 (15) **A Yes**
 (16) **Q Now did there come a time when you were made aware of**
 the
 (17) **fact that the pizza was ready?**
 (18) **A Yeah although I don't recall what form that was**
 (19) **Q Did someone from the Pizza Palace come in and tell you that**
 (20) **the pizza was ready?**
 (21) **A I don't recall**
 (22) **Q Do you recall whether Chief Glowacki left the bar to**
 (23) **inquire whether the pizza was ready?**
 (24) **A No I don't recall**
 (25) **Q Do you recall how long you were in the Harbor Club before**

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- (1) you became aware that the pizza was ready?
 (2) **A No I would have to estimate As I said before a matter**
 (3) **of minutes possibly a half hour I wouldn't think it would**
 (4) **have been much longer than that**
 (5) **Q Were you in the process of having a drink when you left the**
 (6) **Harbor Club because the pizza was ready?**
 (7) **A There was a drink that I hadn't finished, yes**
 (8) **Q You didn't finish your drink the drink that you had?**
 (9) **A That is correct**
 (10) **Q Did Chief Glowacki finish his drink?**
 (11) **A I don't know**
 (12) **Q Did Captain Hazelwood finish his drink?**
 (13) **A I don't know**
 (14) **Q Let's go now to going back on board the ship**
 (15) **Approximately how far did you have to walk once you got out of**
 (16) **the taxicab to get to the gangplank?**
 (17) **A It was a very long jetty I would estimate a quarter of a**
 (18) **mile or so Maybe not quite that far**
 (19) **Q And there were the - and there was the three of you**
 (20) **right Captain Hazelwood Chief Glowacki and yourself walking**
 (21) **towards the ship at that point?**
 (22) **A Yes**
 (23) **Q Were you walking in a line or were you walking abreast of**
 (24) **each other? What relationship were you walking?**
 (25) **A We were walking abreast I believe the captain was in the**

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- (1) **middle**
 (2) **Q And do you recall whether it was very windy at that time**
 (3) **whether there was a breeze wind?**
 (4) **A No I don't recall any unusual winds**
 (5) **Q When you say unusual I understand - what about the**
 (6) **weather conditions in general as you're walking along the**
 (7) **quarter of a mile journey? What were the weather conditions**
 (8) **like if you can recall?**
 (9) **A As I recall, it was snowing very large wet flakes There**
 (10) **was a lot of snow on the jetty, itself**
 (11) **Q What about the temperature?**
 (12) **A It was quite cold**
 (13) **Q During this walk you were engaged in conversation with**
 (14) **Captain Hazelwood as well as Chief Glowacki?**
 (15) **A As I recall, it was primarily the captain and I that were**
 (16) **conversing at that time**
 (17) **Q And wouldn't it be fair to say that you did not notice**
 (18) **anything unusual about the captain's ability to walk this**
 (19) **quarter of a mile journey?**
 (20) **A I noticed nothing unusual no**
 (21) **Q He didn't stumble?**
 (22) **A Not that I recall**
 (23) **Q He didn't stagger?**
 (24) **A No**
 (25) **Q Was there anything about his demeanor which would have**
 led

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- (1) you to believe that he was intoxicated or under the influence
 (2) of alcohol during this walk?
 (3) **A No**
 (4) **Q Now after you got to the gangway you have to go up the**
 (5) **gangway Can you describe what the gangway was like?**
 (6) **A The gangway is a ladder type device that is fitted on the**
 (7) **dock It is articulated in two sections I believe The steps**
 (8) **tend to swivel as the angle changes It appeared to be made**
 (9) **out of aluminum The treads were somewhat solid There**
 were
 (10) **hand rails As I recall we had to climb up, it was a very**
 (11) **steep climb You had to go higher than the level of the main**
 (12) **deck and then descend to the main deck as I recall**
 (13) **Q Approximately how far did you have to climb on the initial**
 (14) **ascent of this gangway?**
 (15) **A Quite steep I would guess 30 feet or so**
 (16) **Q And you say this was quite steep?**
 (17) **A As I recall, it was relatively steep, yes**
 (18) **Q What about the width of the stairs that you were climbing**
 (19) **was it wide staircase or was it narrow? How would you describe**
 (20) **it?**
 (21) **A In between, neither wide nor narrow I would estimate the**
 (22) **width to be three feet or less**
 (23) **Q So would it be fair to say this was the type of thing that**
 (24) **only one person climbed up at a time you wouldn't be able to**
 (25) **go up abreast with two people climbing this?**

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- (1) **A That is correct**
 (2) **Q And was it the type of - this was not a gangway as you**
 (3) **would see on a cruise ship for example?**
 (4) **A No**
 (5) **Q And would it be fair to say that you had to be very careful**
 (6) **in climbing this gangway as to not to fall or to trip?**
 (7) **A It required some attention yes There were also - there**
 (8) **was also snow on the treads, as I recall**
 (9) **Q Now when you reached this 30 foot point on this gangway**
 (10) **what happened then? What did you have to do then to continue**
 (11) **getting onto the ship?**
 (12) **A As I recall there was possibly a slight change in**
 (13) **direction and this is like an elbow in the ladder and**
 (14) **descended**
 (15) **down onto the main deck of the ship**
 (16) **Q So after going up the gangway now you have to climb**
 (17) **down?**
 (18) **A As I recall it yes**
 (19) **Q And were these the same sort of stairs that you had to**
 (20) **climb down as you had to climb up?**
 (21) **A Yes**
 (22) **Q And in doing that did you change your directional - in**
 (23) **other words did you have to turn around in order to climb down**
 (24) **or did you just continue climbing down in the same manner that**
 (25) **you had climbed up?**
 (26) **A I seem to recall a slight direction change but my**
 (27) **recollection is a little vague on that**

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- (1) Q And how far did you have to climb down?
 (2) A I would guess ten feet
 (3) Q And after you climbed down ten feet where were you at that
 (4) point?
 (5) A On the main deck of the vessel just aft of the manifold
 (6) Q Now during this ascent and descent on the gangway where
 (7) was Captain Hazelwood in relation to you if you recall do you
 (8) know?
 (9) A I don't recall I have a vague recollection that he was
 (10) behind me but I'm not sure of that
 (11) Q When you arrived on the deck after going up and down the
 (12) gangplank did Mr Glowacki and Mr Hazelwood also arrive on
 (13) deck with you at that time?
 (14) A As I recall, shortly thereafter, yes
 (15) Q When you say shortly thereafter what do you mean?
 (16) A Well, I'm not sure As I recall, we were - the three of
 (17) us all on the main deck proceeding aft towards the house at
 (18) the same time I don't recall spending any - any great deal of
 (19) time waiting, as I say, and any recollection of that is a
 (20) little vague
 (21) Q Was it your perception that you were all going up the
 (22) gangway together one after the other?
 (23) A Yes
 (24) Q Were you aware of anyone tripping or stumbling going up
 (25) the gangplank either yourself Captain Hazelwood or Mr
 Glowacki?

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- (1) A No
 (2) Q I want to go back if I may to the grounding incident when
 (3) you brought Captain Hazelwood down to the radio room
 because of
 (4) the telephone call of Mr Myers At that time you were in the
 (5) radio room with Captain Hazelwood is that correct?
 (6) A As he spoke to Mr Myers
 (7) Q Yes?
 (8) A Yes
 (9) Q And you were approximately how close to him at that
 (10) particular point in time?
 (11) A Very close
 (12) Q And you overheard portions of the telephone conversation
 (13) you also had an opportunity to observe Captain Hazelwood at
 (14) that time is that correct?
 (15) A The portion of the conversation I heard was limited to
 what
 (16) Captain Hazelwood had to say and yes I did observe him
 (17) Q And were the lights on in the room?
 (18) A Yes
 (19) Q Was there anything about Captain Hazelwood's demeanor
 which
 (20) would have led you to believe that he was intoxicated at that
 (21) time?
 (22) A No
 (23) Q In your opinion was he sober at that time?
 (24) A I can only say that I didn't see any signs that he was
 (25) intoxicated

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- (1) Q And approximately how long did Captain Hazelwood remain
 in
 (2) the radio room with you at that time?
 (3) A At that time, just a few minutes
 (4) Q And then he left and went back to the bridge as far as you
 (5) know?
 (6) A Yes
 (7) THE COURT Is that it?
 (8) MS WAGNER That's it for this witness Your Honor
 (9) As your next witness the plaintiffs would like to call Lisa
 (10) Harrison and this will be a videotaped deposition
 (11) THE COURT Will we be handling this deposition the
 (12) same way we did the other video that had an audio with it? In
 (13) other words do you want it typed into the transcript or what
 (14) will become the transcript?
 (15) MR LYNCH Your Honor it's our belief that in
 (16) deposition testimony that it ought to go into the transcript
 (17) and be treated as if it were being delivered by a live
 (18) witness
 (19) THE COURT Very well we will do that
 (20) MR LYNCH Don't want the reporters not to get their
 (21) work day in Your Honor
 (22) DIRECT EXAMINATION OF LISA HARRISON
 (23) BY VIDEO EXAMINER
 (24) Q Please state your full name and spell your last?
 (25) A Lisa Marie Harrison H a r r i s o n

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- (1) Q And your address?
 (2) A 3311 Eagle Avenue
 (3) Q And -
 (4) A Valdez Alaska
 (5) Q You were employed by the Pipeline Club?
 (6) A Yes I was
 (7) Q In Valdez and what period of time were you employed there?
 (8) A I believe I started in 1984 September of 84
 (9) Q And in what capacity were you first employed there?
 (10) A As cocktail waitress for about four months and then I
 (11) became a bartender And usually I always worked daytime
 (12) bartending, few night shifts
 (13) Q And how long did you work at the Pipeline Club?
 (14) A Until April of 89
 (15) Q And during this time period approximately five years that
 (16) you worked there?
 (17) A Yes
 (18) Q And you were employed on a full time basis?
 (19) A Yes
 (20) Q You were mainly working the day shift?
 (21) A Yeah, when I first started I worked like three day shifts
 (22) and two night shifts and then I worked just - just varied you
 (23) know Summertime I worked some swing shifts but mainly
 (24) five
 (25) days a week
 Q When you were working at the Pipeline Club as a bartender

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- (1) what were the hours of your - of the day shift?
 (2) A 10 30 6 30
 (3) Q When your relief person came on the person that would take
 (4) over from you when your shift ended?
 (5) A Um hum
 (6) Q What time would that person then come on?
 (7) A They came on at 6 30 They were usually there about six
 (8) you know to start checking on their banks and things but
 they
 (9) come behind the bar at 6 30
 (10) Q Going back to March 23rd 1989 first of all do you know
 (11) who Joe Hazelwood is?
 (12) A Now I do, yes
 (13) Q Before March now we'll say before March 24th 1989 did
 (14) you know who he was?
 (15) A No, I didn't know him like I knew a lot of the tanker
 (16) people by name or by ship I saw him on March 24th but
 until
 (17) I seen his picture the following day, I didn't know who he
 (18) was
 (19) Q Okay On March 23rd 1989 okay did you have occasion to
 (20) see an individual you later learned was Joe Hazelwood?
 (21) A Yes
 (22) Q And where did you have that opportunity to observe him?
 (23) A In the bar
 (24) Q And that would be the Pipeline?
 (25) A Yeah

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- (1) Q Okay Now do you recall when the first time you saw him
 (2) was?
 (3) A I would say just because it's been so long approximately
 (4) 11 30 or noonish
 (5) Q And could you describe to us the circumstances in which you
 (6) saw him?
 (7) A He came in and ordered a drink and just - he was very
 (8) quiet sat up and had a drink and left a short time later and
 (9) then he returned with another gentleman that used the
 phone, I
 (10) would say around two, and came up and ordered a drink for
 (11) himself and the gentleman and took it to him And he sat off
 (12) in the corner and he left after that drink and I never seen
 him
 (13) again until I saw him on TV But he wasn't - I mean, he
 (14) didn't come up and socialize with the people He was - he
 (15) looked like he just wanted a quiet drink, be by himself
 (16) Q You say he ordered a drink Do you recall what kind?
 (17) A Yeah
 (18) Q What kind was that?
 (19) A He had a double Smirnoff on the rocks
 (20) Q Okay
 (21) A Each time
 (22) Q Was there - this first drink that he ordered from you was
 (23) that a double shot as well?
 (24) A Yes
 (25) Q How much would be poured in a double (inaudible)?

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- (1) A A double on the rocks would go in like a roly poly a
 (2) tumbler glass You know, you repour it We don't use
 (3) (Inaudible) or -
 (4) Q Okay In terms of the amount of alcohol that would go into
 (5) a double would it be -
 (6) A I'd say like three and a half ounces
 (7) Q Three and a half ounces?
 (8) A Three three ounces probably a good - yeah I'd say three
 (9) ounces
 (10) Q Okay And do you have any knowledge as to the proof of
 (11) Smirnoff?
 (12) A It was the blue label It wasn't the hundred proof It
 (13) was the silver, which you know I believe was like 80 or 1 m
 (14) not real sure It was - If you want to look, it was the blue
 (15) label
 (16) Q Okay And was anybody with him at this time?
 (17) A The second time he came back in, there was a - another
 (18) gentleman that, like I said, used the phone but - and then
 (19) after that drink, he left, so - and the gentleman never came
 (20) back in He just used the phone and left, so -
 (21) Q Okay let's back up to the first time
 (22) A No, he was by himself the first time
 (23) Q First time by himself and could you describe he came
 (24) up - well how did he get his drink? Did he come up and order
 (25) it?

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- (1) A He came up to the bar and ordered it
 (2) Q Okay and what did he do after he ordered the drink?
 (3) A He just went back to one of the high tops over by the juke
 (4) box and you know, there might have been a football game or
 you
 (5) know, something on the TV, but usually it was real quiet I
 (6) probably had four or five customers maybe even drinking
 coffee
 (7) at that time of the day, or you know, having a drink at the bar
 (8) but no one else was sitting - the first time he was in there
 (9) no one else was sitting in the outside of the room, you know
 (10) at the tables
 (11) Q As far as - you mentioned he came back again?
 (12) A Yeah
 (13) Q And what did he have to drink at that time?
 (14) A The same thing I know because I started to grab - what
 (15) was it It's like Wild Turkey, just because I had a gentleman
 (16) in prior to that and he said no he corrected me and, I said
 (17) oh I'm sorry I wouldn't have made you pay for it but it
 (18) was it was vodka
 (19) Q Wild Turkey is a bourbon?
 (20) A Right but it's right next to it up on the top shelf so -
 (21) Q And he - did that double that had as much alcohol in it
 (22) as the first one?
 (23) A Oh, yeah
 (24) Q Like three three and a half ounces?
 (25) A Probably about three ounces

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- (1) Q Okay The second time then is it possible that he ordered
 (2) another drink in addition to the double Smirnoff?
 (3) A He ordered two drinks one for himself and one for the
 (4) other gentleman on the phone
 (5) Q Now as far as your interaction with Mr Hazelwood let s
 (6) say the second time there did you have any conversation with
 (7) him?
 (8) A Just the part about trying to pour the wrong drink you
 (9) know and he kind of snapped about it but it wasn t - I
 mean
 (10) it s not like - most people do If you make a mistake they re
 (11) not very happy about it but that was it and he walked away
 (12) It wasn t - I mean there might have been some brief
 (13) conversation but nothing that stuck in my mind
 (14) Q All right Do you recall how he paid for the drink?
 (15) A Probably cash I m not real sure
 (16) Q How close were you - how close were you to Mr
 Hazelwood?
 (17) A About two feet
 (18) Q And how long did you have the opportunity to observe him
 (19) the second time he was in?
 (20) A I said maybe - maybe 15 or 20 minutes He was there and
 (21) he was gone
 (22) Q The person that took over the duties as bartender at 6 30
 (23) was that girl Irma Lee?
 (24) A Yeah
 (25) Q I want to take you back now to March 23rd 1989 And

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- (1) you ve just testified that sometime - you ll have to fill in
 (2) the time because I m not sure what the time is but sometime in
 (3) the morning or in early afternoon a gentleman came in?
 (4) A Yes
 (5) Q And whom you ve testified was - was Joseph Hazelwood?
 (6) A Yes
 (7) Q Do you recall that?
 (8) A Yes
 (9) Q To the best of your recollection what time was that that
 (10) this gentleman came in?
 (11) A I would say between 11 30 and noon
 (12) Q And noon and how is it that you come up with that
 (13) particular time?
 (14) A Just because I open at 10 30 and it was at least probably
 a
 (15) good hour before he did come in you know but like I m
 saying,
 (16) you know that s several years ago so I m approximating
 and
 (17) he was gone for two hours you know out shopping and I
 (18) would - you know Valdez isn t that big There isn t very
 (19) many places you can go so -
 (20) Q Let me just focus in now on this first time during that
 (21) day How long was he - was he in the Pipeline - Pipeline
 (22) Club at that time?
 (23) A Not very long He had the one drink
 (24) Q Approximately how long?
 (25) A Maybe 20 minutes 30 minutes And he sat off by himself

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- (1) and drank a drink you know and he just left
 (2) Q Now you say there came a time later that day that this same
 (3) individual came back?
 (4) A Yes
 (5) Q Now to the best of your recollection what time was that?
 (6) A I d say around two
 (7) Q Around two p m ?
 (8) A Yeah
 (9) Q Could have been before two around 1 30?
 (10) A Probably was closer to two because like I said this group
 (11) of girls had been having lunch somewhere and they were
 already
 (12) In the room by the time he d gotten there
 (13) Q And this group of girls that you re referring to that s
 (14) including Janey Delozier?
 (15) A No she was at the bar She was sitting at the bar This
 (16) other group of girls is like a softball team, a few girls from
 (17) a softball team that were just having a luncheon together
 (18) Q All right so just so I get this straight in my mind -
 (19) A Janey Delozier was sitting at the bar like right next to
 (20) where I d be standing
 (21) Q Approximately how long was this individual in the Pipeline
 (22) Club the second time he came in?
 (23) A 15 to 20 minutes
 (24) Q 15 to 20 minutes and I believe you stated that he ordered
 (25) a drink and then went to a table?

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- (1) A Right
 (2) Q Okay so that s what I want to get to When was it the
 (3) first time that you saw after March 23rd 1989 that you saw
 (4) an individual you saw an individual that you thought was the
 (5) individual you saw in the Pipeline Club?
 (6) A Probably the following day
 (7) Q Following day all right and where was that?
 (8) A While I was working at the Pipeline Club
 (9) Q And how did you come to see that person?
 (10) A First time was on the TV
 (11) Q All right What did you see on the TV?
 (12) A Basically when they were taking Joseph Hazelwood I
 mean
 (13) when he was not in custody, but I mean when they were
 taking
 (14) him off for questioning or whatever So I knew who he was
 when
 (15) they - when I saw him
 (16) Q Now we re saying this is the next day What day are you
 (17) talking about?
 (18) A March 24th
 (19) MR SERDAHELY Your Honor we have about five or six
 (20) minutes of cross on the videotape Do you wish to proceed with
 (21) that?
 (22) THE COURT Yeah do it
 (23) CROSS EXAMINATION OF LISA HARRISON
 (24) NARRATOR Referring to the second time that Captain
 (25) Hazelwood was in the Pipeline Club on March 23rd 1989

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- (1) BY VIDEO EXAMINER
(2) Q Now Mr Hazelwood did you observe him come into the bar?
(3) A Yeah
(4) Q Okay and which way did he come in?
(5) A He came through -
(6) SECOND VIDEO EXAMINER Excuse me which point in time
(7) are you -
(8) VIDEO EXAMINER The second time
(9) THE WITNESS The same way that - okay there s an
(10) outer entryway which you can t see on the street or anything
(11) and he came through that door and sat down his bags the
(12) second
(13) time and like I said the gentleman put down his bags and went
(14) out and used the phone and he stayed over there for a while
(15) and
(16) he went up to the bar I had some girls in at the time that
(17) were having a birthday and he came up and ordered a drink for
(18) each of them and he returned and I think it was a little too
(19) noisy at that time so he didn t stay or you know I don t know
(20) why he didn t stay but he didn t stay very long and he was
(21) gone
(22) BY VIDEO EXAMINER
(23) Q Do you recall at all how he was dressed?
(24) A Just - I don t know if he wore a pea jacket you know,
(25) Navy like jacket but he had that cap, a sailor s cap or
(26) whatever it was, you know and -
(27) Q The cap was it - what color was it if you recall?

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- (1) A I believe white or - I m not sure Could have been
(2) gray I m not real sure but it was - other people recognized
(3) him by that, you know Like, my husband drives a cab and
(4) he
(5) knows who he is because he signs receipts and things like
(6) that
(7) but because I m a day shift bartender I did not know who he
(8) was I mean, I may have had him in the past but it wasn t
(9) anything that stuck in my memory like most all the sailors
(10) that
(11) would come to town repeatedly
(12) Q Okay After he got his drink where did he go?
(13) A Back over to the corner table like it would be closest to
(14) the phone booth where the gentleman was and he stayed
(15) probably
(16) 15 minutes and left
(17) Q Okay and who else was in the bar at that time if you
(18) recall?
(19) A There were a group of about six women in the outer bar
(20) you
(21) know, out at the tables having a little birthday party and
(22) then
(23) there was Janey Delozier and I believe Swisher and
(24) probably
(25) about five people at the bar in the corner Just it was you
(26) know just afternoon people
(27) Q Okay the woman having the birthday party do you recall
(28) who that was?
(29) A It was one of the Dawsons I don t know if it was Angela
(30) Dawson but there s like an Alley Cat softball team and
(31) there
(32) were five or six of them that hang together that were - went
(33) out to lunch and they came in and had a few drinks before
(34) their

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- (1) kids got home on the school bus but they were all gone by
 (2) three and they were there the second time he came in
 already
 (3) but like I say, he stayed about 10 or 20 minutes at the most
 (4) and he left
 (5) Q All right Did you ever see him at all in the Pipeline
 Club again?
 (6) A No not the rest of my shift
 (7) Q You mentioned that Mr Hazelwood bought them some
 drinks?
 (8) A No, he bought a drink for himself and returned - but you
 (9) could - he wasn't very happy about it, and they're wild I
 (10) mean, they're not wild but they're loud and can be
 obnoxious
 (11) so he - he kind of was looking for a quiet place to go So
 (12) I'm not even sure if he finished his drink You know, he may
 (13) not have even have drunk it He may have just left And the
 (14) girls were all gone by three and so I know he wasn't in there
 (15) probably after 2 30, 2 45
 (16) Q Now after the birthday party left what was business like
 (17) in that -
 (18) A I had nobody
 (19) Q Nobody?
 (20) A I mean, for you know like half an hour or 45 minutes it
 (21) was - it was kind of rare but I just was cleaning and doing
 (22) different things like that So that's why I know for a fact
 (23) that he wasn't in there, and you know and the rest of the
 (24) day
 (25) was pretty slow That was my last slow day as a bartender

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- (1) Q Do you recall if you saw Mr Hazelwood in the Pipeline on
 (2) that day let's say between 4 30 and 5 00?
 (3) A No, he wasn't there anymore until - I left at 6 30 and I
 (4) never seen him again and the restaurant is closed until 5 30
 (5) from like two until 5 30 So you know he wasn't in there,
 (6) either, and I serve all the drinks for the restaurant
 (7) NARRATOR Referring to Janey Delozier being in the
 (8) Pipeline Club on March 23rd 1989
 (9) Q Now you said Janey Delozier was in there drinking Was
 (10) she -
 (11) A She just had gotten off work At that time she was a -
 (12) like a dental technician or something and they were only
 going
 (13) to work a half a day or she was - she came in and was
 having
 (14) Bailey's and coffee But she'd do that a lot of times She'd
 (15) just come in like on her lunch hour if they were going to be
 (16) closed for a couple hours and have coffee or something but I
 (17) believe that day they were just finished for the day
 (18) Q Bailey's of course is a liqueur right?
 (19) A Right
 (20) Q Now do you recall what time Janey Delozier got to the
 (21) Pipeline Club on March 23rd 1989?
 (22) A Maybe one
 (23) Q 1 00?
 (24) A Maybe yeah I'd say around one because I know she
 just
 (25) worked a part of a day that day and they had the afternoon
 off

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- (1) Q And approximately - well let me strike that Was this -
 (2) was this person that you've identified as Joseph Hazelwood in
 (3) the Pipeline Club when Janey Delozier arrived or did he show
 (4) up -
 (5) A No
 (6) Q - subsequent to the arrival?
 (7) A He came in after
 (8) Q All right But she was still there when he left is that
 (9) correct?
 (10) A Yes
 (11) Q Was Janey Delozier still there when your shift ended?
 (12) A I don't believe so
 (13) Q Do you recall when she left?
 (14) A Probably like around three because I - I do believe the
 (15) bar was empty, like I said You know I - usually if Janey
 (16) comes in to drink she drinks beer and plays darts and like I
 (17) said she was having Bailey's and coffee and I think she was
 on
 (18) her way home So I'm sure she was gone by three you
 know
 (19) Q Well do you have a recollection of her actually leaving on
 (20) that date?
 (21) A Yeah I remember her leaving, but I'm trying to think what
 (22) time - can you tell me what the day of the week is? Was that
 (23) a Thursday?
 (24) Q Thursday
 (25) A Okay She left but she probably was back early because

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- (1) It's ladies dart night and they'll come in and she plays for
 (2) the Pipe - at that time she played for the Pipeline so she
 (3) may have been back at 4 30 5 00 practicing darts you know
 (4) Q But you would still be on duty then is that correct?
 (5) A Right
 (6) Q Do you recall her coming back before you went off duty?
 (7) A I couldn't say I believe she was back but you know I'm
 (8) not real sure A lot of times that would be about the time
 (9) that they would be coming in at 6 30 They start darts at
 7 30
 (10) so you know, she might have been there and she might not
 have
 (11) NARRATOR Referring to your conversation with Janey
 (12) Delozier on March 24th 1989
 (13) BY VIDEO EXAMINER
 (14) Q Would it be fair to say that right after the spill you had
 (15) a conversation with Janey Delozier about - about the spill?
 (16) A She came in the next day and I was talking about what her
 (17) husband knew - you know what she knew about what was
 going on
 (18) out there At this time we still didn't even realize to what
 (19) extreme the spill was or anything else
 (20) Q When you had your conversation you recall now having a
 (21) conversation with Janey Delozier the day after the spill?
 (22) A Definitely
 (23) Q As to whether or not you had seen Joseph Hazelwood in the
 (24) bar the previous day?
 (25) A Yes

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- (1) Q You do have a recollection of that?
 (2) A Yes
 (3) Q Okay and who was it that brought that up? Did she bring
 (4) it up or did you bring it up?
 (5) A I couldn't tell you one - either way
 (6) Q What did you tell - what did you tell her about it?
 (7) A I don't remember telling her anything I remember talking
 (8) in general but she was - she always thought that he was a
 very
 (9) rude person from the day before but you know like I said
 her
 (10) opinions are definitely different than mine
 (11) Q So just want to get this straight in my mind now We're
 (12) talking now about the day after?
 (13) A Right
 (14) Q Right?
 (15) A Right
 (16) Q Right this is the day that you saw her on television
 (17) correct?
 (18) A Um-hum
 (19) Q You had a conversation with Janey Delozier about the fact
 (20) that you saw this individual that was on television in the bar
 (21) the previous day?
 (22) A Yes
 (23) Q Okay and what did she say in reaction to that?
 (24) A I can't tell you that it's been that long ago if -
 (25) Q Did she say she saw him too?

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- (1) A Oh, yeah she said she--
 (2) Q She did?
 (3) A - was there at the same time
 (4) Q Uh huh and did she also see this television broadcast?
 (5) A I couldn't tell you
 (6) Q Well when did she say that she realized that he was in the
 (7) bar?
 (8) A She may have known him prior to that who she (sic) was
 I
 (9) mean I don't know, you know She may have known him
 from
 (10) being in the bar or anything, you know
 (11) Q Well did she tell you how it was that she came to realize
 (12) that he was in the bar on March 23rd 1989?
 (13) A No, I couldn't I don't have any idea
 (14) Q Okay Now at the time that you first spoke to her about
 (15) this person that came into the bar on March 23rd 1989 did you
 (16) and her both agree that the person that you had seen in the bar
 (17) on March 23rd 1989 was in fact Joseph Hazelwood that you
 saw
 (18) on television?
 (19) A Yes
 (20) Q You did and did she tell you that her husband was out on
 (21) the boat?
 (22) A Yes
 (23) Q In fact investigating this case?
 (24) A Yeah he had gotten called out three in the morning or
 (25) early in the morning, anyways

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- (1) NARRATOR Referring further to your recognition of
 (2) the person who had been in the bar as Captain Hazelwood
 (3) BY VIDEO EXAMINER
 (4) Q Okay Now as far as you said the first time that you were
 (5) able to connect the face of Joe Hazelwood with a name was
 when
 (6) you saw him on TV?
 (7) A Yeah
 (8) Q After making that connection is there any doubt in your
 (9) mind that the man you saw in the Pipeline Club on March 23rd
 (10) 1989 was the same man that you saw on TV?
 (11) A No no doubt in my mind
 (12) Q Is there any doubt in your mind that the man you saw who
 (13) came into the Pipeline you describe the first time was the
 (14) same man that you saw come in the second time?
 (15) A Yeah, he was definitely the same man
 (16) Q Okay and that was the same man that you saw on TV?
 (17) A Correct
 (18) Q Did you ever see his photograph in the newspaper?
 (19) A Yes
 (20) Q Would it be fair to say that his photograph was - was in
 (21) the newspaper quite often?
 (22) A Oh, yes
 (23) Q During that period of time?
 (24) A Yes
 (25) Q Now when you were interviewed by these investigators the

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- (1) state trooper first did he show you a photograph of Joseph
 (2) Hazelwood?
 (3) A Either the state police or the Coast Guard, one or the
 (4) other had showed me, and a few other pictures, too of
 (5) gentlemen that were possibly with him, but I didn't - I don't
 (6) think that I recognized anybody else besides him being in
 there
 (7) that day
 (8) Q What size photograph was this that he was showing you?
 (9) A It was probably five by seven
 (10) Q Five by seven?
 (11) A Approximately
 (12) Q Were you shown one photograph of Captain Hazelwood?
 (13) A I was shown, I believe, just one of him but there were like
 (14) three or four pictures that they'd shown me, maybe more
 (15) Q And when they were showing these other pictures were they
 (16) asking you to see if you could identify the people that were
 (17) with him in the Pipeline Club that day?
 (18) A Or if I - yeah, or if I knew any of the other people I
 (19) don't recall that I recognized anybody else But that's been
 (20) three years ago I don't think that I did
 (21) NARRATOR Referring to whether you had seen Captain
 (22) Hazelwood in the Pipeline Club prior to or after March 23rd
 (23) 1989)
 (24) BY VIDEO EXAMINER
 (25) Q Prior to March 23rd 1989 did you have occasion to serve

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- (1) Mr Hazelwood at the bar?
- (2) A Not to my recollection Not that I remember
- (3) Q Would it be fair to say that the only time that you ever
- (4) saw this man that you have identified as Joseph Hazelwood in
- (5) person was during these encounters that you described on
- March
- (6) 23rd 1989?
- (7) A Yes as much as I can remember
- (8) MR SERDAHELY We re finished Your Honor
- (9) THE COURT Ladies and gentlemen we ll adjourn for
- (10) the day now at this point Please remember my instructions to
- (11) you that you re not to read anything about this case in the
- (12) newspaper during our recess Please don t listen to or watch
- (13) any radio or TV broadcast about the case And with respect to
- (14) the matter of your telephones at least for the near term here
- (15) I would suggest that if possible you have someone else answer
- (16) your telephone In other words screen your telephone calls to
- (17) make sure that the persons who are calling you are people who
- (18) you know who may appropriately contact you and if your
- friends
- (19) who do contact you start to discuss the - anything about this
- (20) case you must please tell them to cease and desist so that
- (21) you re not exposed to any information about the case from a
- (22) source other than here in the courtroom
- (23) We will ask you to be back at quarter to eight in the
- (24) morning again and we will reconvene at 8 00 in the morning
- (25) There are a couple of things having to do with what will come

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- (1) up tomorrow that I will need to see counsel about for just a
- (2) few minutes in chambers Those of you who are involved in
- (3) that I d appreciate it if you would get back there as quickly
- (4) as possible because I have a 3 00 matter that s unconnected
- (5) with this case
- (6) THE CLERK This court is in recess until eight a m
- (7) tomorrow morning
- (8) (Proceedings recessed at 2 12 p m)

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- (1) STATE OF ALASKA)
 - (2) Reporter s Certificate
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 - (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 3,330
TOTAL OCCURRENCES 14,971
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SINGLE FILE CONCORDANCE

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(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re:) Case No. A89-0095 CIV (HRH)
 (3)) Anchorage Alaska
 The Exxon VALDEZ) Tuesday, May 10 1994
 (4)) 7:53 a.m.
 TRANSCRIPT OF PROCEEDINGS
 TRIAL BY JURY 6TH DAY
 (5) BEFORE THE HONORABLE H. RUSSEL HOLLAND JUDGE
 (6) VOLUME 6, Pages 195 405
 Realtime Transcription

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(1) PROCEEDINGS
 (2) (Jury Out)
 (3) THE CLERK All rise
 (4) (Call to Order of the Court)
 (5) THE COURT Good morning ladies and gentlemen This
 (6) is the continuation of trial in Case A89 0095 civil In Re The
 (7) Exxon Valdez There are a couple of matters that we need to
 (8) take care of this morning out of the presence of the jury
 (9) Point number one the court reporter advises me that she
 (10) had considerable difficulty yesterday hearing understanding
 (11) interpreting some of the questioning by the attorneys in the
 (12) videotape depositions I don't know whether there is anything
 (13) that can be done to sharpen or focus the sound on those things
 (14) or not but it was peculiar I noticed the problem myself and
 (15) it varied between examiners on the same deposition So
 (16) probably had to do with the placement of microphones or
 (17) something If there is anything that can be done please If
 (18) not why we'll -
 (19) MR O NEILL We'll look into it I noticed it too
 (20) THE COURT Thank you sir
 (21) Point number two we had told the jurors that we would
 (22) destroy all of those jury questionnaires I don't have any
 (23) particular desire to have people truck those things back here
 (24) to me If that's the way you wish to unburden yourselves of
 (25) them fine we'll take them and destroy them In any event I

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 Registered Professional Reporter
 (16) Midnight Sun Court Reporters
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(1) want them destroyed If you take care of it let us know who
 (2) is getting them back If you destroyed them file a
 (3) certificate or something Mr Oesting and Mr Serdahely
 (4) MR SERDAHELY Yes yes sir That's what we'll do
 (5) THE COURT We'll verify they have been destroyed
 (6) Should there ever be a need to see them we of course have the
 (7) originals sealed so that they could be available
 (8) Point number three we talked yesterday afternoon about one
 (9) of the exhibits We were dealing with Exhibit No 3 which is
 (10) the 1987 Oil Spill Contingency Plan for Prince William Sound
 (11) Question we've had was whether or not two discrete sections of
 (12) that plan should be admitted It is my conclusion that those
 (13) sections of the plan which we discussed are relevant to the
 (14) defendants awareness of the risks associated with tanker
 (15) traffic in Prince William Sound The information is from a
 (16) relevant time It is not unduly cumulative of other
 (17) testimony I will admit those two sections of Exhibit 3
 (18) Finally we had a question which we discussed and was
 (19) briefed a little bit on impeachment of witnesses with specific
 (20) extrinsic conduct The question raises really an interesting
 (21) point under Evidence Rule 608(b) I'm not going to rule on
 (22) that issue until I hear how the testimony develops I'm ready
 (23) to deal with it but I'll deal with it after I see how the
 (24) testimony develops because I may do something different
 (25) depending on how it develops

WORKING COPY

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- (1) That's all I have this morning. Would you call the jury
 (2) in please
 (3) (Jury in at 8:00)
 (4) THE COURT Good morning ladies and gentlemen
 (5) Please be seated. We're ready to continue with trial in the
 (6) Exxon Valdez matter. You may call your next witness
 (7) MS WAGNER Thank you Your Honor. The plaintiffs
 (8) call Erma Lee by deposition and this will be a videotape
 (9) deposition
 (10) DIRECT EXAMINATION OF ERMA LEE
 (11) BY VIDEO EXAMINER
 (12) Q Please state your full name and spell your last
 (13) A Erma Lee, L-e-e
 (14) Q What is your address?
 (15) A 313 E-I g-u-e-a, Harley, New Mexico 88043
 (16) Q Could you give me the dates of your residence in Valdez?
 (17) A I lived in Valdez from August of '78 and I left there in
 (18) October of '90 - of '90 yes
 (19) Q How long were employed by the Pipeline Club?
 (20) A Ever since I've been up here. I think the first year I
 (21) worked there was probably late '78
 (22) Q That would have been through October of 1990 then?
 (23) A Uh huh
 (24) Q Was that full time employment?
 (25) A No. When I started out, I was just doing part time,

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- (1) probably the last ten years on and on. Mostly full time
 (2) shifts, five days a week
 (3) Q And what type of job did you hold there?
 (4) A Bartender
 (5) Q Had you always been a bartender there?
 (6) A Yeah. Well, I helped in the kitchen, around the motel,
 (7) little odds and ends at the beginning, but for at least the
 (8) last ten years, I was bartending
 (9) Q Did you have any particular shift that you worked?
 (10) A Mostly always worked nights, especially the last at least
 (11) five years
 (12) Q When would that shift begin?
 (13) A Well, for a while it was like 6:00 to closing, whatever
 (14) time that was. And then it changed to 6:30
 (15) Q When did it change to 6:30?
 (16) A It was after - it was after the oil spill that it changed
 (17) to 6:30, or during the oil spill, sometime in there
 (18) Q Do you recall if you were working on March 23rd, 1989?
 (19) A Yes, I was
 (20) Q And -
 (21) A And I went to work at 6:00 that night
 (22) Q Do you know Captain Joe Hazelwood?
 (23) A Yes, I do. I don't know him really well but I know him
 (24) when I see him
 (25) Q How do you know him?

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- (1) A Just from coming in there off and on you know from the
 (2) time I guess - seemed like a long time. Quite a few of the
 (3) tanker - at that time quite a few of the tanker guys in so
 (4) you know who is who
 (5) Q Did you know him by name?
 (6) A Uh huh
 (7) Q This was before the spill did you know him by name?
 (8) A Yeah I knew who he was yes by name
 (9) Q Okay Did he come into the bar often?
 (10) A Usually when they were in, you know, in port. If he was in
 (11) town he did usually come into the Pipeline Club maybe
 (12) have
 (13) one drink and leave. I've never, ever saw him sit there for a
 (14) long time, you know. He was just kind of in and out. And
 (15) how
 (16) you get to know who they are you know, is you get a lot of
 (17) the
 (18) younger guys that come in and stay for a while, so they will
 (19) say, he's the Captain, and go over and say hi. So I got to
 (20) know who he was. Because I never really ever talked to him
 (21) that much. He's kind of a quiet guy, so, you know, just to
 (22) speak to him when he come in, I don't know who he was
 (23) Q On March 23rd 1989 did he come into the Pipeline?
 (24) A Yes he did
 (25) Q You were working at that time?
 (26) A Uh huh
 (27) Q Do you recall about what time he came into the Pipeline
 (28) Club?

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- (1) A Well I went to work at 6:00, and I cannot put an exact
 (2) time on it because it was kind of busy. It was ladies dart
 (3) night and I had four teams of gals there. So I would say he
 (4) came in somewhere between probably 6:30 and 8:00. That's
 (5) a
 (6) broad time, but I can't say exactly what time
 (7) Q And that was into the bar as opposed to the restaurant?
 (8) A Yes, uh huh
 (9) Q Do you recall if he ordered any alcohol?
 (10) A He had one drink on my shift
 (11) Q And do you recall what that drink was?
 (12) A I can't. I tried to remember that I'm not positive. I
 (13) can take a guess, but I'm not real positive on what it was.
 (14) He
 (15) sat at the table
 (16) Q Whereabouts was that table if you can recall?
 (17) A It was right by the - when you came in the front door, it
 (18) was like the second table right when you come in
 (19) Q When you say -
 (20) A Before you get to the bar, from the door to the bar there
 (21) is like two big high-top tables and he sat at the second
 (22) table
 (23) Q Was he with anyone when he came in?
 (24) A No, he was by his self
 (25) Q And did he join anybody while he was there?
 (26) A No. Now, there was a couple of the guys that were in
 (27) there
 (28) of his crew that went by and said hi to him you know, seen
 (29) him
 (30) over there and talked to him and then they left and he got
 (31) up

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- (1) and left He wasn't there very long
 (2) Q Was there anybody else at the table?
 (3) A No no
 (4) Q And do you recall at all how he was dressed?
 (5) A No I couldn't tell you
 (6) Q If he had any head gear on or anything?
 (7) A No I couldn't tell you Maybe a hat I think he wore -
 (8) I'm trying to think a beanie type hat or something Seems
 (9) like he did have something on his head
 (10) Q Do you recall the color?
 (11) A I couldn't tell you
 (12) Q Dark or light?
 (13) A I'd say dark
 (14) Q You mentioned that there were some other crew members
 (15) from the Exxon Valdez there?
 (16) A I can't tell you what all their names are I just know
 (17) that they are on that - you know after you work there for a
 (18) while you know which tanker is in but there was several of
 (19) the young guys in there
 (20) Q What bartender did you relieve that day?
 (21) A Lisa, Lisa Hoots
 (22) Q About how long was Captain Hazelwood in the Pipeline?
 (23) A I wouldn't say more than 10 or 15 minutes
 (24) Q I m talking about when he placed his order for his drink
 (25) how close was he his face to your face?

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- (1) A Maybe from me to you
 (2) Q Which is about - (inaudible)?
 (3) A Four feet
 (4) Q Did you get any closer to him that night than the four
 (5) feet?
 (6) A No
 (7) Q On how many occasions did he come up to the bar to order a
 (8) drink?
 (9) A Just once He just had one drink I'll just leave it at
 (10) that
 (11) Q Did you pay much attention to him while he was in the bar?
 (12) A Well I just - I guess I didn't sit and watch him Like I
 (13) said I had a few people in there So he came out ordered
 (14) the drink served him, took the writing And he went back and
 (15) sat
 (16) down, and then the two guys a little bit later went by and
 (17) said
 (18) hi like they were on their way out the door And he sit there
 (19) and finished his drink and got up and left
 (20) Q What was he doing while he was drinking?
 (21) A What was he doing?
 (22) Q Yes Was he doing anything at all as he was sitting there
 (23) staring or reading something?
 (24) A Not staring, no He wasn't reading just sat there and
 (25) kind of looking around
 (1) Q Did he leave with anyone at all?
 (2) A No

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- (1) Q In close proximity in time did anyone else leave that you
 (2) associated his departure with anybody else depart?
 (3) A It wasn't very long until the guys came back and said hi
 (4) Like I said he didn't stay in there all that long that night
 (5) Q Could you actually hear what they said to him?
 (6) A No
 (7) Q What made you assume that they just said hi?
 (8) A Because they were there just a few minutes It wasn't a
 (9) very long time that they were there
 (10) Q But you don't know what was actually said between them?
 (11) A I have no idea
 (12) MR SERDAHELY Your Honor we have cross examination
 (13) by videotape as well
 (14) CROSS EXAMINATION OF ERMA LEE
 (15) BY VIDEO EXAMINER
 (16) Q Now as far as the state of his sobriety do you recall
 (17) anything regarding his state of sobriety on March 23 1989?
 (18) A Well he certainly didn't appear to be drunk or in any
 (19) state of you know being under the influence
 (20) Q When Captain Hazelwood would come in on the days that
 (21) you
 (22) saw him there other than on March 23rd have you ever had
 (23) occasion to see him intoxicated in the Pipeline?
 (24) A No, I haven't, and I've seen him a few times He usually
 (25) would just come in like he'd have his little shopping bags
 (26) where he had been doing his shopping or whatever, and
 (27) come in

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- (1) and maybe have one or two drinks and leave and usually I'd
 (2) call him a cab because usually he was ready to go back to
 (3) the
 (4) ship by that time So no I can't say I ever saw him
 (5) intoxicated
 (6) Q I think your testimony was that you came on duty on March
 (7) 23rd on before - what time?
 (8) A 6 00
 (9) Q 6 00 okay Do you have any recollection as to
 (10) approximately how soon after you came on duty that Captain
 (11) Hazelwood came into the Pipeline Club?
 (12) A Like I say, I really am not real positive on that but I'd
 (13) say within the hour
 (14) Q So that would be sometime between 6 and 7?
 (15) A Uh huh I'm just guessing now Like I said, I don't
 (16) know I said the first time probably between 6 and 8 or
 (17) whatever, you know, but if I really pinpointed it, I'd say
 (18) probably within the hour after I got there So it would have
 (19) been around 7 00
 (20) Q And you also have a specific recollection of him leaving
 (21) the Pipeline Club correct?
 (22) A Yes uh huh
 (23) Q Do you recall how late it was that you worked in the
 (24) Pipeline Club that night?
 (25) A I probably worked until - well I never close before 2 00
 (26) Q 2 a m ?

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- (1) A Uh huh so maybe probably somewhere around 2 00 If it's
- (2) busier I would stay open later you know but I think probably
- (3) about 2 2.30 that night, somewhere along there
- (4) Q You mentioned that there was - that was a busy night that
- (5) night?
- (6) A Yeah, it was heavy
- (7) Q And that there was some - approximately how many years
- (8) would you say you had as bartender?
- (9) A At least probably 25 years 20 25 years somewhere along
- (10) in there in tending bar
- (11) Q Would you say during that long experience that you ve had a
- (12) lot of experience in determining when people are intoxicated or
- (13) under the influence?
- (14) A Yes
- (15) Q Would you say that that was really part of your job to
- (16) watch out -
- (17) A Yes, it is
- (18) Q - when people are intoxicated?
- (19) A Yes
- (20) Q Would you say that on the night of March 23rd 1989 when
- (21) Joseph Hazelwood left the Pipeline Club that he was not
- (22) intoxicated?
- (23) A No he wasn't
- (24) Q He was not intoxicated?
- (25) A In my opinion he was not intoxicated

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- (1) Q While you were working at the Pipeline Club did the owners
- (2) ever have you take any formal classes on recognizing signs of
- (3) intoxication?
- (4) A No I went to one class one time, but I could have taught
- (5) him
- (6) Q Based on your 25 years of experience?
- (7) A Yes
- (8) Q Did you observe Captain Hazelwood come the moment he
- (9) entered into the room where you were working on the night of
- (10) March 23rd?
- (11) A I don't know if I was down there watching him come
- (12) through
- (13) the door, if that's what you mean
- (14) Q I was just wondering when he first got your attention where
- (15) he was when you first -
- (16) A First he came in and put his bags on the table where he
- (17) was
- (18) sitting, and then he walks to the bar and orders the drink
- (19) Q So you saw him put the bags on the table?
- (20) A Yes
- (21) Q And the question is how much before his arriving at that
- (22) table did you see him? Did you see him walk through a door or
- (23) a doorway into the room?
- (24) A No, I just noticed him when he was like in the table
- (25) putting his bags down walked up to the bar
- (26) Q So your first observation was generally when he was around
- (27) the table putting bags down?

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- (1) A Uh huh
- (2) Q And about how many bags was he carrying do you
- (3) remember?
- (4) A Maybe two I don't know
- (5) MR SERDAHELY That concludes our cross examination
- (6) Your Honor
- (7) MR JAMIN Good morning Your Honor At this time
- (8) plaintiffs would offer the following pre admitted exhibits
- (9) 91 A which is a transcript of vessel radio communications
- (10) between the Exxon Valdez and other vessels and the vessel
- (11) traffic control facility in Valdez on March 22 1989 122
- (12) which is a computer simulation model created by Scott Gaff a
- (13) professional computer simulator prepared from records found
- (14) on
- (15) the Exxon Valdez which shows its engine speed and heading
- (16) from
- (17) approximately 12 35 a m to approximately 1 42 a m on the
- (18) morning of March 24th 1989 127 which are papers removed
- (19) by
- (20) the United States Coast Guard from Captain Hazelwood a office
- (21) on board the Exxon Valdez 11, 92 A which is an audio tape -
- (22) THE COURT I m sorry I ve lost you there
- (23) MR JAMIN I m sorry, 11 and then 92 A 92 A is an
- (24) audio tape of the transmissions on March 23rd and March 24th
- (25) which are transcribed in 90-A
- (26) THE COURT Is 90 A coming in also?
- (27) MR JAMIN That was pre admitted yesterday and we
- (28) will be using both of those 208 and finally 3722 A
- (29) (Exhibits 91 A 122 127 11 92 A 208 & 3722 A offered)

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- (1) MR SANDERS Your Honor I know you can't see me but
- (2) I have no objection
- (3) THE COURT I recognize your voice Mr Sanders
- (4) MR JAMIN Thank you Mr Sanders
- (5) MR CHALOS No objection
- (6) THE COURT Exhibits 91 A 122 127 11 92-A 208 and
- (7) 3722 A are admitted
- (8) (Exhibits 91 A 122 127 11 92 A 208 & 3722 A received)
- (9) MR JAMIN Thank you Your Honor
- (10) MR GERRY If the Court please the plaintiffs will
- (11) call Janice Lynn Delozier by deposition
- (12) THE CLERK Would you raise your right hand please?
- (13) (The Witness is Sworn)
- (14) THE CLERK Please take the witness stand For the
- (15) record state your full name address and spell your last name
- (16) please
- (17) MS JOHNSON Trudy Johnson My current address is
- (18) 1200 I Street Apartment 701 Anchorage, Alaska, 99501
- (19) Johnson is J o h n s-o-n
- (20) DIRECT EXAMINATION OF JANICE DELOZIER
- (21) BY MR GERRY
- (22) Q Would you state your full name?
- (23) A Janice Lynn Delozier, D-e-l-o-z i-e-r
- (24) Q Mrs Delozier how long have you lived in Valdez?
- (25) A Five years this past June

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- (1) Q Where is your physical address in Valdez?
 (2) A 155 Gulkana Street
 (3) Q How long have you lived there?
 (4) A Three years this past February
 (5) Q So coming to Valdez five years ago where have you been employed? Let's start with the first job
 (6) A I really didn't intend to work but I got a good offer from a dentist that came to town so I went to work for him in February of '88
 (7) Q And the dentist's name?
 (8) A Doctor Allen Stewart
 (9) Q Are you still employed there?
 (10) A No, I am not
 (11) Q How long did you work there?
 (12) A About 18 months
 (13) Q And what was your job there?
 (14) A Dental assistant
 (15) Q Now in March of 1989 you were employed by Dr. Stewart?
 (16) A That's right
 (17) Q Do you recall the events of March 23rd 1989?
 (18) A Uh huh, I sure do
 (19) Q What were you doing then?
 (20) A He had - Dr. Stewart had been planning some function which would take two two and a half hours so he is one of those that goes through the book and marks off events which tells the

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- (1) office that we will be closed we will be open we will work overtime et cetera and we had known three or four days in advance that on that particular day we would have an extended lunch. Him and his wife had some personal business to attend
 (2) Q The book that you're talking about is that -
 (3) A The appointment book I'm sorry
 (4) Q Appointment book. And the extended lunch hour that you were talking about do you recall what time that began and ended?
 (5) A Yeah our last appointment was at 12:30 and we - we locked the doors at 1:00 turned the recorder on get a few trays ready for the 3:00 re-opening of the office
 (6) Q So what time would you have left to go to lunch?
 (7) A Taking care of the things I just mentioned getting the tape ready for incoming messages, about a quarter of one
 (8) Q What did you do during this time period that the office was closed from 1 to 3?
 (9) A I had the dental receptionist Mrs. Vculek, give me a ride over to the Pipeline to meet some friends for coffee
 (10) Q When you say the Pipeline what are you referring to?
 (11) A A restaurant club and motel all under one roof
 (12) Q When you left how long did it take you to get to the Pipeline Club from -
 (13) A She had -
 (14) Q - leaving the dental office?

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- (1) A Right she had snow boots and gloves and a front seat full of everything so by the time she scooted off a place for me and we sat in her car for a few minutes we probably got to the Pipeline at 25 after 1:30 ish
 (2) Q Now you went inside the Pipeline?
 (3) A Uh huh
 (4) Q What was the purpose of going you going to the Pipeline?
 (5) A I had intended to have coffee with the owner's wife which is one of my best friends, Connie Lee
 (6) Q Was Mrs. Lee there?
 (7) A No she was not Her son in law was and the general crowd that usually has coffee there
 (8) Q Her son-in-law who would that be?
 (9) A Mark Lee He's part owner
 (10) Q You said there was a general crowd that was usually there?
 (11) A Yes There is the general people that have coffee there about seven days out of seven and that usual set of people is always there reading the paper playing cribbage, usually an older set of people
 (12) Q Who are those people if you can recall?
 (13) A Paul Dusenberry, Dennis Baim B a i m, Wanda Crowder came and sat for a few minutes I believe that's all that was there when I got there
 (14) Q And there was also Mark Lee?
 (15) A Uh huh

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- (1) Q Were any of these people employees of the Pipeline Club?
 (2) A Mark does the books He only came in to get a coffee refill He did not take his seat and Lisa Hoots was the bartender She's a friend of mine She was behind the bar
 (3) She was employed there The other ones were not employed
 (4) Q Now when you came in you said your purpose was to have coffee?
 (5) A Kill two hours
 (6) Q While you were there what were you doing?
 (7) A Usually when you got in you get - you get a lot of questions about dental work and this and that, and money and credit So basically me and Lisa Hoots talked about some extensive work that she had been putting off Talked about a small dart tournament that we were going to play in for Safe Ride or something for a benefit, just general talk Cribbage games
 (8) Q Do you recall any customers coming into the bar while you were there?
 (9) A Yes, I do
 (10) Q You're aware of who Captain Joe Hazelwood is?
 (11) A Yes, I am
 (12) Q When did you first learn his identity?
 (13) A When did I learn his identity?
 (14) Q Yes
 (15) A Probably the TV set but I did not put a name to the face

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- (1) until I was in Emily Kaiser's plant shop paying for a flower
 (2) arrangement that I had ordered and yet to pay for and I had
 (3) saw the picture on the front of the Anchorage paper and I
 knew
 (4) that I had seen the person
 (5) Q As far as - let's try to hook up that to some kind of time
 (6) reference Did you see Captain Hazelwood's image on the TV
 at
 (7) all?
 (8) A Not enough to have paid any - that much attention to it
 (9) While Emily was getting my receipt I looked dead down at
 the
 (10) newspaper and you know I just - I looked down and there
 was
 (11) some kind of caption there I didn't really read the caption
 (12) Emily just said to me this is the Captain of the tanker, you
 (13) know It was just like, I guess I'm not even sure I said
 (14) anything out loud I just thought to myself I have seen that
 (15) person before But as far as seeing him on the screen on a
 TV
 (16) set, I can't say that I made the connection at that point I
 (17) can't I'm not really a TV watcher
 (18) Q When you said to yourself that you saw that person before
 (19) was it a foggy recollection a vivid recollection?
 (20) A No, it was not It was - I knew where I had seen him at
 (21) I knew under what circumstances
 (22) Q Do you recall when you saw this picture of Captain
 (23) Hazelwood in the paper? As far as the time frame was it
 (24) within a week of Easter a month of Easter if you can narrow
 (25) it down?

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- (1) A It was within two or three days after Easter
 (2) Q Now from that you were able to connect the face to his
 (3) name?
 (4) A Uh huh
 (5) Q Okay
 (6) A The face with the person that I - the face that face was
 (7) the same face I had seen at the Pipeline
 (8) Q Okay
 (9) A It just became the person with the name right
 (10) Q You said you saw Captain Hazelwood a person you later
 (11) identified as Captain Hazelwood in the Pipeline?
 (12) A Uh huh
 (13) Q What day would that have been?
 (14) A Thursday, the day of the - the day of the two-hour lunch
 (15) Q That was March 23rd?
 (16) A The 23rd
 (17) Q The 23rd of March?
 (18) A Uh huh
 (19) Q Could you tell us how it was that you came to see Captain
 (20) Hazelwood in the Pipeline?
 (21) A Yes As I say, when you walk in the Pipeline, the kitchen
 (22) is to your - the restaurant is to your immediate right, a
 (23) separate room, and as you walk up to the bar, the right side
 is
 (24) curved and there is a coffee machine up against the wall I
 (25) was probably the second to the third bar stool coming out
 from

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- (1) the wall To my left is an opening area where waitresses
 stand
 (2) in and place their order for their drinks A couple of little
 (3) split rails are there where you can put your body between
 He
 (4) walked in off the street into the building came up to that
 (5) little open waitress station made eye contact nodded you
 (6) know, as in a gesture ordered a drink ordered a specific
 (7) drink and watched Ms Hoots pour it and he watched her
 pour
 (8) from a well pour bottle which I guess he saw that it wasn't
 (9) what he ordered so he kidded her about it And she
 apologized
 (10) and said she would pour it out or fix him what he wanted
 and
 (11) just cast it aside
 (12) Q Ms Delozier how far were you from Captain Hazelwood
 when
 (13) he ordered this drink?
 (14) A The same way at the bar One bar stool between me and
 the
 (15) waitress station
 (16) Q Would four or five feet sound correct?
 (17) A Yeah three and a half four not that much of a
 (18) distance Like a chair and then the space the bar stool and
 (19) then the space
 (20) Q Did you have any problems at all in distinguishing the
 (21) man's features due to the lighting conditions?
 (22) A No, I did not
 (23) Q Anything odd at all that would have hindered your vision of
 (24) Captain Hazelwood?
 (25) A No sir

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- (1) Q How long did this - how long was Captain Hazelwood at the
 (2) bar?
 (3) A Probably just a couple minutes
 (4) Q And you said he ordered some kind of drink?
 (5) A Yes, sir
 (6) Q Was that an alcoholic drink?
 (7) A Yes, sir, it was
 (8) Q Do you recall what he ordered?
 (9) A Yes, I do
 (10) Q What was that?
 (11) A Smirnoff on the rocks
 (12) Q Was that the drink that he obtained if you know?
 (13) A There was a mistake made He did take vodka on the
 rocks
 (14) It was not the brand that he had asked for
 (15) Q And you said he had some kind of conversation with Lisa
 (16) Hoots about this?
 (17) A He told her that it was not what he had asked for and she
 (18) apologized to him He was not upset about it, he just kind of
 (19) jokingly said it would be all right
 (20) Q Did you watch Lisa Hoots pour the drink?
 (21) A Yes, I did
 (22) Q Do you recall what kind of glass it was put in?
 (23) A When you pour a drink on the rocks, you fill the rocks
 (24) glass with ice and pour directly onto it You do not use a
 (25) shot glass or a little metal beaker like a lot of bartenders

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- (1) mix with She poured it directly on to the rocks glass which
 (2) was somewhat filled with ice
 (3) Q Now after Captain Hazelwood got the vodka on the rocks
 (4) what did he do if you know?
 (5) A He took the drink and just walked back a few feet to what
 (6) they call a high top table which is just called that because it
 (7) rises up higher than a small cocktail table
 (8) Q How far was that from where you were seated located?
 (9) A About six six to seven feet
 (10) Q And the shape of the table?
 (11) A It's round and they generally have three to four tall bar
 (12) stools pushed underneath them
 (13) Q How did Captain Hazelwood sit as far as his position at
 (14) the table vis a vis where you were sitting? What I m trying
 (15) to say was he facing you was his back to you?
 (16) A He took the chair to the back of the high top in front of
 (17) the juke box and he would have been facing towards the
 (18) coffee
 (19) people, yes, sir, facing ahead towards us
 (20) Q From your vantage point did you have the opportunity to
 (21) see his fashion?
 (22) A Yes, sir, I did
 (23) Q Do you recall how long you had been at the Pipeline before
 (24) Captain Hazelwood came in and ordered his first drink?
 (25) A 15 to 20 minutes
 (26) Q So that would have put it about what time approximately?

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- (1) A He probably got there about a quarter till two
 (2) Q Once he went over to this table did you see him drink the
 (3) drink that he had ordered?
 (4) A I did not stare at him I did look that way a couple
 (5) times I didn't see him drinking the drink I only saw the
 (6) drink in his hand at one point like mid - either he was I
 (7) assume, putting it down or picking it up I did not watch him
 (8) drink the drink no sir
 (9) Q Was there anything that happened while you were there that
 (10) would give you an indication that he had consumed his drink?
 (11) A He got another one He ordered another one
 (12) Q And would you relate how that happened?
 (13) A Well, he had some friends join him
 (14) Q Did you see these friends come in?
 (15) A Yes, I did
 (16) Q Did the friends come in together or separately or how?
 (17) A That one gentleman that I remember coming in came up
 (18) to the
 (19) bar and placed a drink [sic] for two drinks One of them was
 (20) intended for Mr Hazelwood and Mr Hazelwood said that he
 (21) had a
 (22) drink already, thank you
 (23) Q That was going to be my next question How did you know
 (24) that the drink that this man ordered was for Captain
 (25) Hazelwood?
 (26) A He turned around and gestured and Mr Hazelwood said
 (27) he had
 (28) a fresh drink but that this gentleman could pay for it So
 (29) they were kind of joking back and forth So the gentleman
 (30) did

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- (1) not take Mr Hazelwood a drink
 (2) Q When you said that the man gestured could you describe
 (3) what kind of gesture that was?
 (4) A I believe the gentleman got a scotch and water and he
 (5) said
 (6) and another drink for my friend as in like -
 (7) Q What you re doing is pointing in a direction and the
 (8) gentleman would have been pointing in the direction of Captain
 (9) Hazelwood?
 (10) A At the high top table yes sir
 (11) Q And you mentioned something about Captain Hazelwood
 (12) stating
 (13) that -
 (14) A He had a drink
 (15) Q But this other gentleman could pay for -
 (16) A He said, I have a drink but you want to charge him for my
 (17) drink, you can charge again was what I think he meant
 (18) Q Okay Now did this gentleman go and visit with Captain
 (19) Hazelwood?
 (20) A He went and sat with him, yes, he did
 (21) Q Was there anybody else that came in?
 (22) A There was a third person there, I did not see the third
 (23) person enter the building, nor did I see him go to the table,
 (24) he was just there
 (25) Q Now do you have any idea who the second man was the
 (26) man
 (27) who wanted to buy the drink for Captain Hazelwood?
 (28) A No, I don't

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- (1) Q At the time that person came in you had no knowledge of
 (2) who it was?
 (3) A No I did not
 (4) Q And up until that time you had no knowledge of who this
 (5) other individual was?
 (6) A I did not know who he was I, in my own mind assumed
 (7) he
 (8) was aboard the vessel I did not know his name or what his
 (9) job
 (10) might have been
 (11) Q Now this person while you were at the Pipeline did not buy
 (12) Captain Hazelwood a drink?
 (13) A No, sir, he did not
 (14) Q But you mentioned Captain Hazelwood ordered another
 (15) drink?
 (16) A He came back up to the bar, yes, sir
 (17) Q So I get it clear in my mind when you left there were
 (18) three people at this table?
 (19) A Yes, sir
 (20) Q Do you have any idea who the third person was?
 (21) A No, I don't I want to say he was younger than Mr
 (22) Hazelwood and the other gentleman, a bigger build
 (23) Q Since seeing this third person at the table have you
 (24) learned in any manner whatsoever of the third person's
 (25) identity?
 (26) A Not his name
 (27) Q How long did you stay at work after you returned?
 (28) A We worked until about 6 00 that night, from our first

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- (1) patient being slotted at 3 00 we worked until 6 00
 (2) Q After work what did you do?
 (3) A Went home and fixed dinner and on Thursday night there
 is
 (4) the women's dart league every Thursday from October until
 (5) April So I had to prepare for that since I was team captain
 (6) Q Where was your dart game that evening?
 (7) A At the Pipeline Club
 (8) Q Did you go to the Pipeline Club that evening?
 (9) A Uh huh
 (10) Q About what time?
 (11) A Quarter after 7 ten minutes to a quarter after 7
 (12) Q Did you have occasion to see Captain Hazelwood there that
 (13) evening?
 (14) A No, I did not see him that evening
 (15) Q Do you remember what bartender that Erma Lee replaced at
 (16) 6 30?
 (17) A Lisa Hoots
 (18) Q All right Now when is it to the best of your
 (19) recollection that you were in Emily Kaiser a flower shop and
 (20) saw this photo in the newspaper?
 (21) A Once again, she was talking about bad Easter sales It
 (22) could have been Saturday, with no volume of plants being
 sold
 (23) or it could have been the Monday, Tuesday, as the wilted
 plants
 (24) were sitting there I'm not sure, she was just not happy with
 (25) the plants

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- (1) Q Now when you're saying Saturday now which Saturday are
 (2) you talking relative to Easter?
 (3) A The Saturday before Easter
 (4) Q The Saturday before Easter so this would be the morning
 (5) after your husband left to go out to the oil spill?
 (6) A Right
 (7) Q Or it would be the Monday or Tuesday after Easter correct?
 (8) A Yes, sir
 (9) Q Did this look like a new newspaper to you?
 (10) A It didn't look like it had been messed with or opened or
 (11) went through
 (12) Q Did you believe it was that current day's newspaper?
 (13) A I - I think I thought it was, yes
 (14) Q What did you do how did you come to see the picture?
 (15) A I asked her about a bill that I owed and she was going
 (16) through a little file box talking about wilted plants and I'm
 (17) looking down killing time and it was in like the top part of
 (18) the paper, probably, where they tell you what's going to be
 in
 (19) the paper
 (20) Q Right
 (21) A It was something - Captain Hazelwood something And I
 (22) looked down at it while she was talking in the background
 (23) Q What was it Captain Hazelwood something? It was a story
 (24) about Captain Hazelwood correct?
 (25) A I think it was telling you that there would be an article

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- (1) in the paper about that incident
 (2) Q Did it say anything about Captain Hazelwood being drunk?
 (3) A No it did not
 (4) Q When was the first time that you told anybody about this
 (5) incident in Emily Kaiser's shop with the picture?
 (6) A Mark was the first person
 (7) Q When did you tell him that?
 (8) A Either the Sunday night he came home if it happened on
 a
 (9) Saturday, or Tuesday if it happened on a Monday or
 Tuesday
 (10) Q Well if it happened on a Sunday then this is the time he
 (11) first came home and told you about the spill correct?
 (12) A Uh huh
 (13) Q And he had told you that there was some problem with
 (14) alcohol someone was suspected of drinking alcohol correct?
 (15) A He said there was alcohol related He thought -
 (16) Q That someone was -
 (17) A He thought there was yes sir
 (18) Q Meaning one person?
 (19) A That's the way I took it
 (20) Q And when did you tell him about this picture incident
 (21) before or after he told you that?
 (22) A That - that is why I think the incident was a Monday or a
 (23) Tuesday because I do not think I told him that Sunday night
 I
 (24) was too busy listening to him unwind
 (25) Q Okay

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- (1) A I want to say that the flower - me paying for the flowers
 (2) was Monday or Tuesday after he had been out there and
 was back
 (3) on a regular somewhat routine at the office, getting home at
 (4) six-ish instead of being out there overnight
 (5) Q It's your recollection then that you told him that when
 (6) he came home after being at the office?
 (7) A It seems like it is
 (8) Q What did you tell him?
 (9) A That I had something I needed to tell him, and that it
 (10) was - how did I word it? I didn't know what value it was if
 (11) it was any I reminded him of my two-hour lunch break
 which he
 (12) had known about in advance I told him - he knew I was
 (13) already having coffee at the Pipeline I relayed to him
 (14) remember the day I had the two-hour lunch break, he said
 yes
 (15) I said I was at the Pipeline with the gang, and he said yes I
 (16) said, well, this guy came in, et cetera, et cetera, I said, and
 (17) Mark, as God as my witness, it was Joe Hazelwood That's
 what
 (18) I said And he kind of sat back in the La-Z-Boy, you know
 He
 (19) didn't do any handsprings, he just said are you sure and I
 (20) said yes And he said, very slowly, very carefully, tell me a
 (21) little slower this time what you just told me, tell me again
 (22) And I did And I said, I do not want to get involved in this,
 (23) I just want to tell you, I don't want to be involved in it and
 (24) he more or less gave me his word, which was neither here
 nor
 (25) there

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- (1) Q Now when Captain Hazelwood ordered his first drink when he
- (2) came in what did he order?
- (3) A Smirnoff on the rocks
- (4) Q When he came up and ordered the second drink what did he
- (5) order?
- (6) A He didn't get a chance to say much because Lisa turned the
- (7) bottle cocked it kind of like that and said something to the
- (8) terms of, we're going to do it right this time And he smiled
- (9) at her and she did do it right
- (10) Q Did he say anything such as thank you or yes or -
- (11) A Just smiled at her
- (12) Q When he got back to the table did you see him consume any
- (13) of that alcohol in the second drink?
- (14) A No I did not
- (15) Q Do you know whether he gave that drink to anybody? Did you
- (16) see him give it to anybody or -
- (17) A I did not see him give it to anyone
- (18) Q Was that second drink sitting in front of him did you
- (19) know?
- (20) A He just placed it, I didn't see if it was - it was just
- (21) down
- (22) Q It was in front of him as being opposed to being in front
- (23) of one of the other two gentlemen at the table?
- (24) A Yes
- (25) MR GERRY That's the end of the direct examination

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- (1) MR RUSSO Your Honor the defendants have cross
- (2) examination
- (3) THE COURT Go ahead Mr Russo
- (4) MR RUSSO Your Honor there has been an exhibit
- (5) which I believe has been pre admitted for purposes of this
- (6) cross examination DX3458 A
- (7) THE COURT The Exhibit Number DX3458 A
- (8) MR O NEILL May not have been pre admitted but if
- (9) it's offered we have no objection
- (10) MR RUSSO Thank you That's fine
- (11) CROSS EXAMINATION OF JANICE DELOZIER
- (12) BY MR RUSSO
- (13) Q Mrs Delozier how long have you lived in Valdez?
- (14) A Five years this past June
- (15) Q And prior to living in Valdez where did you reside?
- (16) A We transferred here from original Texas My husband
- (17) was stationed there in the Coast Guard
- (18) Q When you say "we" you mentioned your husband?
- (19) A Uh huh
- (20) Q And his name?
- (21) A Mark J Delozier
- (22) Q Have you ever been in the military?
- (23) A No, I have not
- (24) Q And your husband?
- (25) A Military?

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- (1) Q Yes
- (2) A Yes 22 years Coast Guard
- (3) Q So coming to Valdez five years ago where have you been
- (4) employed? Let's start with the first job
- (5) A I really didn't intend to work but I got a good offer from
- (6) a dentist that came to town so I went to work for him in
- (7) February of '88
- (8) Q And the dentist's name?
- (9) A Doctor Allen Stewart
- (10) Q Are you still employed there?
- (11) A No, I am not
- (12) Q How long did you work there?
- (13) A About 18 months
- (14) Q What was your job there?
- (15) A Dental assistant
- (16) Q After leaving his employ where did you go?
- (17) A I didn't do anything for the summer In August of that
- (18) following year, I opened a day-care again at my home
- (19) Q Now on March of 1989 were you employed by Dr Stewart?
- (20) A That's right
- (21) Q Do you recall the events of March 23rd 1989?
- (22) A Uh huh, I sure do
- (23) Q What were you doing then?
- (24) A He had - Dr Stewart had been planning some function
- (25) which would take two two and a half hours so he is one of those

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- (1) that goes through the book and marks off events which tells
- (2) the
- (3) office staff that we'll be closed we will be opened we will
- (4) work overtime, et cetera, and we had known three or four
- (5) days
- (6) in advance that on that particular day we would have an
- (7) extended lunch Him and his wife had some personal
- (8) business to
- (9) attend
- (10) Q The books that you're talking about is that -
- (11) A The appointment book I'm sorry
- (12) Q Appointment book And the extended lunch hour that you're
- (13) talking about do you recall what time that began and ended?
- (14) A Yeah, our last appointment was at 12.30 and we locked
- (15) the
- (16) doors at 1 00, turned the recorder on, got a few trays ready
- (17) for the 3 00 reopening of the office
- (18) Q So what time would you have left to go to lunch?
- (19) A Taking care of the things I just mentioned, getting the
- (20) tape started for incoming messages, about a quarter after
- (21) one
- (22) Q And you mentioned that you were to return at what time?
- (23) A Our first patient for the afternoon was at 3 00, so we
- (24) needed to get back at 15 till three to unlock the two doors
- (25) open things back up
- (26) Q And is that the time period that you recall being gone?
- (27) A Uh huh
- (28) Q Now earlier you had spoken with the Alaska State Troopers
- (29) regarding this lunch hour at some time?
- (30) A Uh huh

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- (1) Q And I believe you told them that you had gone to lunch
 (2) around 12 00 or -
 (3) A I told them we had marked off the books probably 12 00 to
 (4) 2 00 instead of 1 00 to 3 00
 (5) Q And at that time you spoke with the troopers had you
 (6) reviewed the book?
 (7) A No I had not
 (8) Q Since you have talked to them have you reviewed the book
 (9) the appointment book?
 (10) A Yes I wanted to redo - I wanted to be sure in my - on my
 (11) part It's not uncommon for us to take an earlier - our lunch
 (12) without fail is 12 00 to 1 00 unless he tells us any
 (13) different Our lunch without fail is 12 00 to 1 00 I think
 (14) probably I was assuming it was another 12 00 to 1 00 day
 (15) but
 (16) due to his meeting that he had planned with his wife, we
 (17) booked
 (18) the - instead of going at 1 00 he put it down at 1 00, close
 (19) till a quarter to three, but just out of closing at 12 00 every
 (20) day is probably why I said the 12 00 hour I went back and
 (21) looked at the book and made a copy of where it was X'd off
 (22) and
 (23) the time slots that he had X'd off
 (24) Q Do you have a clock - do you have to clock in and out when
 (25) you have to go out to lunch?
 (26) A He does not have a time clock
 (27) Q Do you submit any time sheets at the end of the week or at
 (28) the end of the month relative to -

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- (1) A No, sir
 (2) Q - your time?
 (3) A No
 (4) Q You mentioned previously that in January of 1990 you were
 (5) interviewed by Detective Stogdill of the state police do you
 (6) recall that?
 (7) A Yes, sir
 (8) Q And do you recall that during that interview with Detective
 (9) Stogdill you indicated to him that you had left for lunch at
 (10) 12 30 to 1 30?
 (11) A Uh huh
 (12) Q And this interview I believe was around January 30th 1990
 (13) is that correct?
 (14) A Right
 (15) Q If I recall correctly there also was some testimony at the
 (16) trial of Captain Hazelwood in which you stated you had listened
 (17) to some tapes, do you remember that?
 (18) A A tape
 (19) Q What tape was that you listened to?
 (20) A The tape Mark made as he sat in with the state trooper
 (21) that
 (22) we just talked about, that particular interview on the 4th of
 (23) April
 (24) Q So this tape you re referring to is your interview with the
 (25) state troopers?
 (26) A Yes, sir

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- (1) Q Dental work - well while you were at the bar during this
 (2) period had you consumed any alcohol?
 (3) A No
 (4) Q Prior to going there did you consume any alcohol?
 (5) A No I did not
 (6) Q I want you if you can just to take this piece of paper
 (7) and draw for us a little diagram of the Pipeline Club I want
 (8) you to indicate the bar and the stools and the coffee pot and
 (9) everything that you -
 (10) Mr Bixby Do you want a sticker on that?
 (11) Mr Russo Yes
 (12) BY MR RUSSO
 (13) Q Just so you re clear I m asking you now to give me a
 (14) diagram of the Pipeline Club as it appeared - as it was on
 (15) March 23rd 1989?
 (16) A Right Those are high tops the juke box and a lit up
 (17) video game This is the parking lot, sir You come in the
 (18) door here a small hallway Dining room to your immediate
 (19) right The bar starts about five feet from the dining room
 (20) entrance This little nook is coffee The four bar stools, a
 (21) little curve then the waitress area which is open You can
 (22) walk up there and talk or get a drink The bar runs down this
 (23) way to the wall, the biggest portion of the bar, and these are
 (24) all bar stools That's the wall with the phone mounted The
 (25) dart board being - these are high tops, sir These are high

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- (1) tops over here The dart board being out this way in an
 (2) open
 (3) non-cluttered area
 (4) Q Could you just write dart board where you have the dart
 (5) board?
 (6) A Yes sir And they have two big flood lights over the dart
 (7) board
 (8) Q So you can see the dart board?
 (9) A And this is like coming in the door to your right and
 (10) proceeding to your left is the big juke box and the video
 (11) game
 (12) and four high tops, and then my coffee area and then three
 (13) or
 (14) four more high tops the dart board, then a couple of high
 (15) tops
 (16) against the wall, very close to the wall
 (17) Q Can you draw in all the high tops on the bar and where they
 (18) are located The high tops are these tables you re talking
 (19) about right?
 (20) A Yes, sir They are raised up about four and-a-half feet
 (21) These two are small patio type tables
 (22) Q They are small tables?
 (23) A Yes, sir He has little low ones Men don't generally
 (24) like to sit there
 (25) Q So these are not high tops?
 (26) A These three aren't high tops
 (27) Q So why don't you just write high there okay?
 (28) A Okay
 (29) Q Where else are there high tops?

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- (1) A Over against the - this area here this area here where
 (2) mostly one of the dart teams would sit There is only about
 (3) three little cocktail tables
 (4) Q Those tables and chairs that you re drawing now are they
 (5) moveable or are they fixed to the floor?
 (6) A They are moveable
 (7) Q They are moveable?
 (8) A Yes sir three high tops there
 (9) Q Are there any other tables or benches that you recollect?
 (10) A This is the phone This is where my team usually sits
 (11) There is a high top right against the phone because we are
 (12) consistently having to answer it That's a high top also
 (13) There is like six high tops that he's built in and three, what
 (14) they call patio tables, little short ones
 (15) Q Now when you came into the bar I want you to describe
 (16) what the lighting conditions were when you came into the bar
 (17) This hallway here that you indicated was that lighted?
 (18) A It has two wall lights sir one on - two just wall
 (19) lights The juke box is bright The video game is even
 (20) brighter
 (21) Q How would you describe in your experience when you
 (22) usually
 (23) go into the Pipeline Club how the lighting is?
 (24) A I have been in when they were low, and Mr Lee asked
 (25) them
 (26) to be turned up He does not like it that way, and I have
 (27) been
 (28) in when they were medium

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- (1) Q But you ve never been in there then when they were bright?
 (2) A Not bright bright no, sir
 (3) Q Now are there any windows in this bar?
 (4) A No, sir
 (5) Q So there is no outside light that comes into the bar?
 (6) A No, sir
 (7) Q Now how would you describe the lighting conditions on
 (8) March 23rd 1989 when you went into the bar?
 (9) A The dark corners where no one would be sitting were
 (10) darker
 (11) Q All right When you say the dark corners what corners are
 (12) you referring to?
 (13) A The dart board and to the immediate left of the dart board
 (14) where the high tops are unoccupied
 (15) Q When you say that they would be darker do you mean that
 (16) the lights directly over those particular sections were turned
 (17) down?
 (18) A Lower than the bar area
 (19) Q So does that mean that the lights in the bar are not all on
 (20) the same switch so to speak?
 (21) A There is four switches mounted
 (22) Q So there are four different sets of lights that can be
 (23) adjusted correct?
 (24) A Yes sir
 (25) Q Now when you came in you were saying that the area by the
 (26) dart board and the high tops in that area were dark?

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- (1) A From the dart boards over was darker than this side over
 (2) Q When you say dark were the lights turned off in those
 (3) areas?
 (4) A Low not off
 (5) Q In addition to the TV screen lights are there any other
 (6) lights on that video game?
 (7) A No sir
 (8) Q You mentioned the juke box You say that was lit up?
 (9) A Uh-huh
 (10) Q When you say that do you mean that a light above it was
 (11) lit up or the juke box itself was lit up?
 (12) A The whole front face of it was lit up
 (13) Q And just describe that for us How was that lit up?
 (14) A The juke box?
 (15) Q Yes
 (16) A I guess it has a - the ones I've seen have fluorescent
 (17) lights built in around the case
 (18) Q If you unplug it when business is over it's dark if you
 (19) plug it back in it's fluorescent tubing?
 (20) A That was the answer You just says yes
 (21) Q Yes
 (22) A When you unplug it when business is over it's dark and
 (23) when you plug it back in it's fluorescent tubing
 (24) Q But this particular juke box the one that was in the
 (25) Pipeline Club on March 23rd 1989 I want you to tell me how

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- (1) that was lit up
 (2) A Just tubing lights around the case of the juke box itself
 (3) around the frame
 (4) Q Your recollection is that it was fluorescent lights around
 (5) the frame and they were lit up?
 (6) A Uh huh
 (7) Q Now I want you to on that diagram that we have I want
 (8) you to indicate where everyone was when you came into the
 (9) Pipeline Club?
 (10) A Mr Dusenberry was on the stool where the wall ends the
 (11) last stool
 (12) Q Right
 (13) A I was - Mrs Crowder was here I was tucked in in the
 (14) middle and this third stool crowded as it is is Mr Baum
 (15) So it was Dusenberry, myself Mr Baum and Mr Crowder
 (16) Q Was there anybody else in the place?
 (17) A Mr Mark Lee came in and stood in the bar station and got
 (18) two coffee refills
 (19) Q Indicate where he stood (witness marking on the diagram)
 (20) Who else was in there when you came in?
 (21) A Lisa Hoots was behind I believe that was all that was in
 (22) there when I arrived I want to say Mr Malcolm Swisher was
 (23) there but I can't swear to that
 (24) Q There was no one else in the other end of the bar correct?
 (25) A No sir

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- (1) Q No one seated on these bar stools?
 (2) A Not anyone
 (3) Q No one seated in the back at any of these tables or any of
 (4) the tables -
 (5) A No sir
 (6) Q - in the bar at all in your recollection?
 (7) A No sir
 (8) Q I think you've already testified to this but I just want
 (9) to make sure considering the questioning that I - that has
 (10) just occurred
 (11) You have never had any conversation with any of the people
 (12) that were present in the Pipeline Club on the afternoon of
 (13) March 23rd 1989 in which any of them have told you that they
 (14) saw Captain Joseph Hazelwood in the Pipeline Club?
 (15) A That they have -
 (16) Q At the time that you say that you saw him there?
 (17) A No
 (18) Q None of these people have ever told you that?
 (19) A I've never asked them they have never volunteered
 (20) Q But just so the record is clear none of these people have
 (21) ever told you that?
 (22) A No
 (23) Q Now you were seated here at the end of the bar where it's
 (24) sort of the corner of the bar I suppose right?
 (25) A Uh huh

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- (1) Q And then the bar makes a right angle and goes down
 (2) correct?
 (3) A Yes sir
 (4) Q I see okay So in other words where you were seated on
 (5) the stools is directly opposite the doorway?
 (6) A Yes, sir
 (7) Q And the high top tables were to the left of the doorway as
 (8) you come in correct?
 (9) A As you walk in yes sir
 (10) Q Near where the -
 (11) A Juke box
 (12) Q - juke box was Where are the high top tables in relation
 (13) to the juke box?
 (14) A Directly by, a foot, two feet very close
 (15) Q All right So the high top tables would be directly in
 (16) front of the juke box?
 (17) A Yes, sir
 (18) Q Where would the high top tables be in relation to the video
 (19) game?
 (20) A These two are side by side, so that would be the same
 (21) Q Now you drew three tables here, correct?
 (22) A Uh-huh
 (23) Q These three tables then would be directly in front of the
 (24) juke box and the video game correct?
 (25) A Right

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- (1) Q Now the man you identified as Captain Hazelwood could you
 (2) tell us what he looked like when you noticed him at the bar?
 (3) A He had a coat on an open coat it came down to probably
 (4) the pockets of his pants It was hanging open He had a hat
 (5) on a small hat kind of like a golfer's hat I wouldn't call
 (6) it a beret just a small hat with a little deal on the front
 (7) kind of - he wore it kind of I want to say cocked to one side
 (8) a little bit He had a beard I wouldn't call it a full
 (9) beard It was kind of sparse I guess is the word Kind of
 (10) dark under the eyes maybe like dark circles or kind of
 shadowy
 (11) like crows' feet or little lines Basically I noticed his eyes
 (12) were kind of dark under them
 (13) Q And approximately the age of this man?
 (14) A 50 - up to 55
 (15) Q How tall was the man that you saw in the Pipeline Club?
 (16) A I thought he was about 5'9"
 (17) Q And your recollection is his age was somewhere in the 50s?
 (18) A Early 50s yes
 (19) Q All right What else do you recall about the way he was
 (20) dressed?
 (21) A He had a hat on a small hat He had a beard
 (22) Q Did this hat have a clip on it?
 (23) A A what?
 (24) Q A clip a snap on?
 (25) A It had a small bill on it

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- (1) Q Do you recall ever saying that the cap appeared to have a
 (2) snap on it?
 (3) A Uh huh I did say that
 (4) Q You said that to the state police is that correct?
 (5) A Yes sir
 (6) Q You said that to a state trooper by the name of Burke when
 (7) you were interviewed by him on April 4th 1989 is that
 (8) correct?
 (9) A Correct
 (10) Q Does that refresh your recollection that you remember at
 (11) the time that the cap had a snap on it?
 (12) A It seems like it had a snap that would make the bill closed
 (13) or the bill open
 (14) Q And you also described this as a golf cap correct?
 (15) A Yes, sir
 (16) Q I'd like you to describe for us what you mean by a golf
 (17) cap?
 (18) A Do you ever watch golf?
 (19) Q Sometimes I try to avoid it
 (20) A Small type hat Some have a snap in front It has a
 (21) little opening in the back I presume where you can adjust
 (22) They are usually tweed like heavy tweed, corduroy I have
 one
 (23) like it, not a cowboy hat, just a little cocky like - I
 (24) wouldn't call it a beret A beret to me has no bill
 (25) Q But this golf cap that you've just described, it's your

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- (1) recollection that was the type of hat that this individual was
(2) wearing?
(3) A Yes sir
(4) Q What portions of his face were covered with hair do you
(5) recall?
(6) A His entire chin
(7) Q His chin?
(8) A Not up in here Right in here was kind of clean shaven
(9) Q Let the record reflect that the witness has indicated a
(10) portion below her lip and above her chin was clean shaven
(11) That's what you indicated correct?
(12) A Yes sir
(13) Q What else?
(14) A Just the beard
(15) Q When you say the beard were the sides of his face covered
(16) with hair?
(17) A No He did not have mutton chops either
(18) Q So I want you to describe then for me as best you can how
(19) were the sides of his face? Were they clean shaven too?
(20) A I guess his beard to me started from - started down from
(21) his cheekbones Some of them start higher real bushy His
(22) was a nice kept spar - scarce beard
(23) Q So in other words was his beard like a strip from his
(24) cheekbones down to his chin?
(25) A No it was a molded shape Probably he kept it up very

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- (1) well Probably he had a beard for a while That's how it
(2) looked
(3) Q What about was there a space between his sideburns and
(4) where the beard began?
(5) A No
(6) Q Were his cheeks clear of a beard or were they also covered
(7) with hair?
(8) A Clear
(9) Q They were clear all right This is hard to describe in
(10) words I understand that I'm just trying to visualize what
(11) you recall seeing If you would just you know indicate to
(12) us your face you know where you saw the hair and then I'll
(13) describe it for the record?
(14) A The cheekbones was exposed The beard started like I
(15) say,
(16) this right here -
(17) Q Was clean?
(18) A Uh huh And his beard was very well groomed It wasn't
(19) full out It was a nice groomed beard
(20) Q And I don't recall what you said about whether there was a
(21) space between his sideburns and where the beard started?
(22) A His hair was cut down to here and a beard started, and I
(23) don't think there was a space between where the hair
(24) started
(25) and a space of skin and then beard
(26) Q Do you recall how his hair was cut?
(27) A He's balding

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- (1) Q Was his hair over his ears or was it above his ears or
(2) what?
(3) A It was thinning right in here and what there is he combs
(4) back
(5) Q So his hair the witness indicated the top of her head and
(6) saying it's thinning up there?
(7) A Yes sir
(8) Q And it was combed back where?
(9) A Where his hair does start?
(10) Q Yes
(11) A Right about where the - what hair he does have he
(12) combs
(13) back He doesn't part it or anything
(14) Q He doesn't part it?
(15) A No
(16) Q He just combs it back?
(17) A Right
(18) Q So in other words he doesn't like some people do comb
(19) their hair to cover up their bald spot?
(20) A No, he does not
(21) Q So you can see his you know the bare portion of his head
(22) on the top?
(23) A Especially on the sides
(24) Q On the sides all right and the rest of it was combed
(25) back correct?
(26) A Thin yes

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- (1) Q Can you describe the color of his hair?
(2) A Gray, grayish Probably at one time it was brown, ash
(3) brown, but it's graying His beard had some gray in it
(4) Q What portion of his beard was gray if you recall?
(5) A Mingled It wasn't like one pronounced -
(6) Q Uh huh You -
(7) A - that you see on some gentleman It was just mingled
(8) Q What about his hair was there any portion of his hair that
(9) was gray do you recall?
(10) A Maybe a little on the temples
(11) Q All right
(12) A A little bit of gray He wasn't totally gray
(13) Q But you recall that his temples were gray enough that they
(14) were noticeable to you as being gray?
(15) A Slightly
(16) Q How would you describe his complexion?
(17) A Kind of olive
(18) Q Now after this man ordered his drink at the bar as you
(19) testified previously -
(20) A Yes, sir
(21) Q - where did he go?
(22) A He walked back towards the entrance and took a high-top
(23) by
(24) the juke box
(25) Q Okay
(26) A The closest one

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- (1) Q The closest one to what?
 (2) A To the juke box
 (3) Q To the juke box?
 (4) A And the video
 (5) Q I want you to mark an X where the man was seated when he
 (6) took his seat (witness marking diagram)
 (7) Now he was seated on a stool?
 (8) A Yes sir
 (9) Q By the high top?
 (10) A At the high top
 (11) Q And I believe you previously testified that he was facing
 (12) the bar?
 (13) A Kind of shoulder wise If I looked around I would not see
 (14) him facing me I would see -
 (15) Q His profile?
 (16) A Uh huh And when he was talking to the people, he
 swung
 (17) around
 (18) Q I want you to draw an arrow the way he was facing if you
 (19) remember?
 (20) A Kind of kitty-corner
 (21) Q (Witness marking the diagram) facing that way all right
 (22) And the juke box and the video were right behind him correct?
 (23) A Yes, sir
 (24) Q Now during this period of time you were still in
 (25) conversation with these people right?

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- (1) A Yes sir
 (2) Q So it would be fair to say that you were not watching this
 (3) man continuously during the period of time that you first
 (4) noticed him and he walked to the table?
 (5) A Right I was not watching him continuously
 (6) Q You had no reason to watch him correct?
 (7) A No
 (8) Q There was nothing particularly noteworthy about him that
 (9) made you feel that you had to watch him was there?
 (10) A Whatsoever, none
 (11) Q So the next person that came into the bar then would be
 (12) this second man that you described correct?
 (13) A Yes, sir
 (14) Q How did you come to notice him?
 (15) A He came up and stood in the bar station and ordered two
 (16) drinks
 (17) Q Did he stand in the same place that the first man stood?
 (18) A Yes, he did
 (19) Q And did you look at him from the same vantage point as you
 (20) looked at the first man?
 (21) A Yes
 (22) Q What did you notice about the second man?
 (23) A That he was older He wore glasses
 (24) Q About how old would you say he was?
 (25) A 50s

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- (1) Q What else did you notice about him?
 (2) A Beard but not - I guess I could say not a groomed beard
 (3) It was kind of just a beard but it wasn't like a shaped one or
 (4) a groomed one It was like haphazard
 (5) Q How would you describe his beard in relation to the beard
 (6) of the first man?
 (7) A The first man's was like taken care of shaped groomed
 (8) This guy's didn't seemed to be a certain particular molded
 (9) rounded shape just a beard
 (10) Q Well would you say that the second man's beard was a
 (11) fuller more molded beard than the first man's?
 (12) A No
 (13) Q Do you recall testifying at another trial quote the
 (14) second man that joined him to me had a fuller more molded
 (15) beard? Just so you can see it
 (16) A I believe you
 (17) Q You can refresh your recollection but I think it's
 (18) important that you see it to keep the record straight I'm
 (19) referring to the trial transcript page 3 074 line 15 and 16?
 (20) A Yeah, I said that (Witness reading the document) Yeah
 (21) I said that
 (22) Q Do you recall now that you said that quote the second man
 (23) that joined him to me had a fuller more molded beard unquote?
 (24) A Yes
 (25) Q And you would also describe it as being kind of patchy the

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- (1) first man's beard?
 (2) A If I said it then I must have said it
 (3) Q Is it your recollection that his beard was kind of patchy
 (4) the first man's beard?
 (5) A Yes
 (6) Q Let's go back now to the second man who has come in and is
 (7) standing at the bar ordering a drink how tall is he?
 (8) A I really don't know how tall he was Probably not - not
 (9) probably - under 6 feet
 (10) Q Was he taller or shorter than the first man?
 (11) A I don't remember
 (12) Q All right
 (13) A I don't remember
 (14) Q Do you recall testifying and telling the state police that
 (15) he was taller than the first man?
 (16) A No, sir, but if it's there I must have said it
 (17) Q I believe you may have already testified to this, but do
 (18) you recall whether the second man that came in was younger or
 (19) older than the first man?
 (20) A I believe he was older, sir
 (21) Q A side view Do you recall when he was - just
 (22) backtracking once again, do you recall when he was at the bar
 (23) ordering his drink, the second man what the color of his eyes
 (24) were?
 (25) A No, sir

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- (1) Q Do you recall whether he had any gray hair?
 (2) A Dark hair I don't know if he had any gray
 (3) Q Did you notice any gray?
 (4) A No sir
 (5) Q Did you notice whether he was balding or not?
 (6) A I don't believe he was
 (7) Q He had a full head of hair?
 (8) A Uh huh
 (9) Q Can you describe the second man's voice when he was talking
 (10) to the bar maid?
 (11) A Seemed like it was a higher pitch
 (12) Q Higher pitch than the first man?
 (13) A Seemed like it was
 (14) Q Was there anything else about his voice that you noticed?
 (15) A No sir
 (16) Q Did he have any speech mannerism or anything about his
 (17) speech which you noticed?
 (18) A No sir
 (19) Q Did he sound to you to be an American or foreigner?
 (20) A American
 (21) Q American, did you notice if he had a southern accent?
 (22) A No, sir
 (23) Q Did you notice if he had a northern accent?
 (24) A I just heard him place the order
 (25) Q Excuse me?

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- (1) A I just heard him place the order
 (2) Q Did you notice anything particular about his speech?
 (3) A No
 (4) Q During the time that you were in the Pipeline Club on the
 (5) afternoon of March 24th 1989 and you saw these gentlemen
 (6) come
 (7) in that you described and sit down did you ever hear any of
 (8) them refer to each other by name?
 (9) A No sir
 (10) Q Did you hear anybody say captain or master or anything of
 (11) that nature?
 (12) A No, sir
 (13) Q Did you have an opportunity to observe whether Captain
 (14) Hazelwood actually consumed the second drink?
 (15) A No, sir, I did not
 (16) Q Were there any indications that would have led you to
 (17) believe that he did consume it? Did he come up and order a
 (18) third one?
 (19) A No I left at a quarter to three and his party was still
 (20) there
 (21) Q Did you have occasion to look look to see if these three
 (22) individuals were still seated at the table when you left the
 (23) bar?
 (24) A They were still seated there, yes sir
 (25) Q How did you come to observe that?
 (26) A I walked directly past their table with my right side

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- (1) Q And you exited the bar?
 (2) A Yes sir
 (3) Q Did you have anything of an alcoholic nature to drink while
 (4) you were in the bar that afternoon?
 (5) A No Oh at darts I probably had a beer after 7 30
 (6) Q I said that afternoon that afternoon?
 (7) A No no sir none
 (8) Q Besides Mr Dusenberry did anybody of your group have
 (9) anything of an alcoholic nature to drink?
 (10) A No sir
 (11) Q What about your husband where was he?
 (12) A I - I left the club about 10 30 quarter to 11 Mark
 (13) left - we got home within 10 or 15 minutes of each other
 (14) Q Did -
 (15) A I did not see him leave
 (16) Q Did he get home after you?
 (17) A No, before me
 (18) Q So you left the bar then without looking for him and just
 (19) went home?
 (20) A Right
 (21) Q Did you go home alone?
 (22) A Yes
 (23) Q Approximately what time was it that you got home?
 (24) A 10 30, a little bit till 11
 (25) Q And -

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- (1) A I think the game probably wound down about a quarter
 (2) after
 (3) 10
 (4) Q So what time would you estimate that your husband Mark
 (5) Delozier came home?
 (6) A He probably left the - once again he left before I did
 (7) He probably left 10 ish a little after 10
 (8) Q Game was over - excuse me uh huh?
 (9) A When my game was over I did not notice him still sitting
 (10) there
 (11) Q And he was home when you got home?
 (12) A Yes
 (13) Q Did he go out again after you got home?
 (14) A No The last thing I remember is the phone call
 (15) Q Did he say anything about his conversation with Scott
 (16) Conners at the Pipeline Club?
 (17) A No, sir When I got home, Mark was already in bed I had
 (18) done a couple things, you know locked a couple locks, went
 (19) to
 (20) bed, went to sleep And the last thing I remember was him
 (21) answering the phone
 (22) Q Did you notice whether Mark your husband looked like he
 (23) was under the influence of alcohol when you saw him at home?
 (24) A I saw him in the bed
 (25) Q Now since the - so the last time you saw Captain
 (26) Hazelwood that day was when you left at about a quarter to
 (27) three?

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- (1) A Yes sir
 (2) Q Did you have occasion to see him any place else that day?
 (3) A No sir I did not
 (4) Q Did you see him at any other time other than when you claim
 (5) you saw him at the trial Did you ever see him again in
 (6) person?
 (7) A No sir
 (8) Q Now did anybody ever show you an array of photos like four
 (9) or five photos of different people and ask you to pick somebody
 (10) out?
 (11) A No sir
 (12) Q The trial of Captain Hazelwood when you testified on
 (13) February 7th 1990 do you recall being on the witness stand
 (14) and being shown a photograph of Captain Hazelwood by ADA
 Brent
 (15) Cole?
 (16) A Yes, I did
 (17) Q Do you recall that being an 8 by 10 glossy picture of
 (18) Captain Hazelwood?
 (19) A Yes sir
 (20) Q Was this the same type of picture that you had seen in the
 (21) newspapers in Emily Kaiser's shop?
 (22) A I can't say about Ms Kaiser, but I'm almost identical it
 (23) was the same shot that the L A Reporter had
 (24) Q Right it was a picture of him in a cap and a beard a full
 (25) face picture?

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- (1) A Yes
 (2) Q Isn't it also a fact that after you were shown this picture
 (3) in court on the witness stand that you were asked by the ADA to
 (4) look around the courtroom and point out the individual you saw
 (5) in the Pipeline Club on March 23rd 1989?
 (6) A Yes, sir
 (7) Q Throughout your life Mrs Delozier have you ever had
 (8) occasion to mistake someone for someone else?
 (9) A Just the opposite I have not
 (10) Q Just the opposite you have never made a mistake -
 (11) A No, I have -
 (12) Q - identifying anybody You say just the opposite What
 (13) do you mean by that?
 (14) A I have a very good memory, and have been told so a lot
 (15) That's what I meant by just the opposite
 (16) Q You've testified and stated before that you have a weird
 (17) memory, do you recall saying that?
 (18) A Uh huh
 (19) Q What do you mean by a weird memory?
 (20) A I don't write things down, phone numbers If I - you -
 (21) meet you once I know - I knew you when I walked in here I
 (22) don't - when I was in college, I didn't really cram for tests,
 (23) I just have a good memory and I get a lot of - it's really
 (24) helped me at a few of my jobs, especially dental, because
 you
 (25) know what the person had done last time, you know what
 they are

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- (1) back for you know which tooth they told you about two
 weeks
 (2) ago and my - a lot of my bosses have said and in the hotel
 (3) and motel industry in college that you have a very good
 memory,
 (4) and it's good for this type of or that type of business
 (5) Faces names things of this nature especially faces
 (6) MR RUSSO Judge that's the end of defendants cross
 (7) examination Thank you
 (8) MS WAGNER Can we just keep that case I up
 (9) THE COURT Exhibit 3458 A is admitted
 (10) MS WAGNER The plaintiffs call William Edward Murphy
 (11) by deposition designation, and this will be a deposition
 (12) reading I think the people in the back of the courtroom are
 (13) going to bring up an exhibit which is just the track line of
 (14) the voyage that was used yesterday
 (15) THE COURT It's already been admitted
 (16) MS WAGNER Yes
 (17) (The Witness is Sworn)
 (18) THE CLERK Please be seated For the record would
 (19) you state your name your address and spell your last name
 (20) please
 (21) MR WOERNER Michael Woerner 1629 204 Avenue
 (22) Northeast Redmond Washington W-o-o-e r-n e-r
 (23) THE CLERK Excuse me?
 (24) MR WOERNER W o e r n e r
 (25) THE CLERK Thank you sir

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- (1) DIRECT EXAMINATION OF WILLIAM E MURPHY
 (2) BY MS WAGNER
 (3) Q Would you please state your full name and spell your last?
 (4) A William Edward Murphy, M-u-r-p-h-y
 (5) Q What age are you about?
 (6) A I'm 46
 (7) Q Is this a notebook that you use for your transits with
 (8) vessels?
 (9) A Well yes It's a - the notebook changes every month but
 (10) that's correct I have a monthly notebook and I record all
 (11) ship movements and other data in that notebook all ship
 (12) movements that I take part in
 (13) Q In connection with your service aboard the Exxon Valdez on
 (14) the 22nd and 23rd did you check your wristwatch with the
 (15) Valdez clock?
 (16) A Yes - let me go back Some of these entries for example
 (17) the time of standby engine and last line for example or of
 (18) first line to the dock in case of docking and finish of
 (19) engines, I asked the mate on watch who was recording
 those
 (20) things what times he logged, entered in those Although the
 (21) times - the time I disembarked, for example, I don't know
 what
 (22) they have logged that, so I refer to my personal wristwatch
 but
 (23) normally it's the times that the ships' personnel have logged
 (24) in their deck log
 (25) Q While we are on this document - at this time would you

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- (1) describe your license that you -- is the license you have today
 (2) the same license you had on March 23rd 1989?
 (3) A Yes it is
 (4) Q Would you describe for the record what that license is?
 (5) A Well I have two licenses the federal license is a U S
 (6) Coast Guard license Second Mate of Oceans
 (7) Q Second Mate of all oceans is that right?
 (8) A That's right Master of vessels not more than 1 000 gross
 (9) tons on oceans And my state -- and with endorsement as
 first
 (10) class pilot on vessels of any gross tons upon the waters of
 (11) southwest Alaska And my state license is as a first class
 (12) pilot on vessels of any gross tons upon the waters of
 southwest
 (13) Alaska with a VLCC, very large crude carrier endorsement
 I
 (14) don't believe the VLCC endorsement on the state license --
 at
 (15) the time of the accident that was in the regulatory process
 so
 (16) I think that would be the only change in my license now as
 (17) opposed to then
 (18) Q The first license you mentioned your second mate of all
 (19) oceans you have an endorsement on that for pilotage?
 (20) A Yes which I described
 (21) Q Which you described?
 (22) A Uh huh
 (23) Q So your endorsement on the licenses on this federal and
 (24) state licenses are the same for pilotage?
 (25) A Essentially the same yes that's right

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- (1) Q Can you start with your formal education and bring us
 (2) through your education stage and maybe stop there and we'll
 go
 (3) on?
 (4) A I graduated from high school I attended college at the
 (5) California Maritime Academy where I graduated with a
 bachelor
 (6) of science degree and a third mate's license I sailed on my
 (7) license for about a year
 (8) Q Just backing up what year did you graduate?
 (9) A 1966
 (10) Q And you got a degree and a third mates license?
 (11) A Yes
 (12) Q You sailed for about a year you said?
 (13) A Uh huh
 (14) Q In what capacity as a third mate?
 (15) A Yes I went on active duty with United States Navy for I
 (16) guess, about four and a half years
 (17) Q You were an officer in the Navy?
 (18) A That's correct
 (19) Q What rank were you? You went in as an ensign?
 (20) A Yes
 (21) Q And you came out as what?
 (22) A Lieutenant
 (23) Q Let's pick up you're out of the Navy what did you do? Do
 (24) you return to the maritime field?
 (25) A I came to Alaska When I got out of the Navy I tried to go

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- (1) back to sea I was a member of the Masters Mates & Pilots
 (2) Shipping at that time It was pretty difficult I was not
 (3) able to gain employment going to sea and I got a job here in
 (4) Anchorage with a firm that had just obtained an air taxi
 (5) certificate So under their employ I was I guess the chief
 (6) pilot of an air taxi outfit for a little more than a year out
 (7) in St Mary's Alaska out in the bush
 (8) Q Then what did you do?
 (9) A Well let's see, I believe after that I obtained employment
 (10) as a mate on tugs here in Alaska with Crowley Maritime
 Did
 (11) that for a while, a number of months and I went -- well
 (12) shipping opened up at that time and I went back to sea off
 (13) shore
 (14) Q What type of vessels?
 (15) A Container ships
 (16) Q Where were you sailing from and to?
 (17) A Out of San Francisco, Oakland area, to the orient
 (18) Q And you were sailing as a second mate?
 (19) A Third mate
 (20) Q Third mate?
 (21) A Uh huh
 (22) Q Did you ever sail as a second mate?
 (23) A No
 (24) Q What period of time did you remain with this company
 (25) sailing to the orient?

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- (1) A Six or seven months something like that
 (2) Q What company was that?
 (3) A Sea-Land
 (4) Q Then what happened?
 (5) A Well, when I finished the voyage, came home here to
 Alaska,
 (6) I'd been talking with the local pilots based in Homer where
 my
 (7) home was and is and obtained the permission of the pilot
 group
 (8) to ride with them on my time off
 (9) Q What year are we talking about now approximately?
 (10) A I want to say about '73 somewhere in there
 (11) Q Just approximate?
 (12) A Yeah
 (13) Q When you say to ride with them is that to get --
 (14) A To obtain the -- to obtain the pilot observer trips with
 (15) practicing pilots
 (16) Q Do you need those piloting observer trips to obtain
 (17) ultimately your federal pilotage endorsement?
 (18) A That is correct
 (19) Q So where did you ride with them on those trips?
 (20) A Up and down Cook Inlet primarily
 (21) Q Then what did you do? Do you obtain your endorsement for
 (22) those waters?
 (23) A I obtained my endorsement for Cook Inlet and at that
 time,
 (24) the local pilot group was locally owned I was hired by
 them
 (25) Q Was that called the Southwest --

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- (1) A No it wasn't
 (2) Q - Alaska Pilots then?
 (3) A No it was called Alaska Marine Pilotage
 (4) Q And you were hired by them as what?
 (5) A Well, as a pilot I suppose as an apprentice pilot I was
 (6) hired to pilot ships They thought I was ready to pilot at
 (7) that time and to continue training
 (8) Q When did you initially get your pilotage endorsement on
 (9) your federal license for Prince William Sound approximately?
 (10) A I think about sometime in 1974
 (11) Q In order to get that endorsement can you tell us what
 (12) training you underwent? You told us about Cook Inlet Did you
 (13) have a required number of trips that you had to make for your
 (14) federal endorsement for Prince William Sound?
 (15) A To obtain the federal?
 (16) Q Yes
 (17) A And Coast Guard endorsement yes I can't recall how
 (18) many
 (19) there were but as is typical with Coast Guard pilotage
 (20) requirements, the applicant is required to document a
 (21) certain
 (22) numbers of trips over the pilotage ground When he's
 (23) satisfied
 (24) that requirement, he takes a written examination
 (25) Q Now after you've made the number of trips that are
 (26) required you have to take a written exam?
 (27) A Yes
 (28) Q Can you tell us what that exam consists of generally?

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- (1) A For original pilotage, that is for an applicant who has no
 (2) Coast Guard pilotage on his license -
 (3) Q Well all right go ahead?
 (4) A After producing evidence that one has made the required
 (5) observer trips, there is an examination I believe on - a
 (6) written examination on ship handling perhaps on
 (7) seamanship, I
 (8) don't recall Then there is a chart sketch of the area in
 (9) question
 (10) Q So for Prince William Sound you were saying they make you
 (11) prepare a chart Can you tell us what they make you put on the
 (12) chart?
 (13) A They call it a chart sketch and I haven't written - I
 (14) finished writing my pilotage a number of years ago so it may
 (15) have been changed, but at the time the Coast Guard gives
 (16) the
 (17) applicant a piece of paper with the land contours with the
 (18) area
 (19) in question They direct you to take that piece of paper and
 (20) draw in all the principal, mark the principal points of land
 (21) capes and label them Draw in all the dangers, usually the
 (22) ten
 (23) fathom curve, any drying sands, draw in the main ship
 (24) routes
 (25) with distances off courses, soundings along those routes,
 (26) the
 (27) magnetic variation for the area and so forth Then you turn
 (28) that sheet of paper over On the back of it you - excuse me,
 (29) as part of the chart sketch you also draw in all the aids to
 (30) navigation
 (31) Q Like for this area Busby Island light you'd have to put

- (1) in -
 (2) A Sure
 (3) Q And it's characteristics?
 (4) A That's right
 (5) Q And you'd have to put in Bligh Reef buoy?
 (6) A Yes
 (7) Q With its characteristics?
 (8) A That's correct
 (9) Q And when you put it in they have you put it in it's exact
 (10) location?
 (11) A Yes they do
 (12) Q Go on what else would you put on?
 (13) A So when you're finished with that chart sketch you turn
 (14) the sketch over and on the back of it you write from memory
 (15) the complete light list for the area The light list is all
 (16) navigation aids, in addition to lights, buoys, day markers
 (17) and
 (18) so forth The location of those devices, the characteristics
 (19) of any lights, fog horns and so forth That pretty much
 (20) completes the chart sketch and lists of aids of navigation
 (21) In the case of Prince William Sound, it isn't just a one
 (22) chart sketch The Sound I believe at that time was broken
 (23) up
 (24) into, I want to say into seven different chart sketches
 (25) Various parts of the Sound five or seven I'm not sure
 (26) which
 (27) Depending upon the applicant's desires and the Coast
 (28) Guard
 (29) schedule you can come in and write one chart a day or
 (30) several

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- (1) if you're able to do that
 (2) Q And you passed this examination?
 (3) A Yes
 (4) Q Did this examination also encompass your knowledge of tide
 (5) and current tables?
 (6) A Yes, I believe so There is a - excuse me I forgot to
 (7) mention in addition to the chart sketch there is an
 (8) examination on local knowledge, which in many cases
 (9) would
 (10) include tide and current information
 (11) Q When did you then get your endorsement your
 (12) corresponding
 (13) endorsement for Prince William Sound on your state license?
 (14) A I sure can't remember It would have been shortly after I
 (15) obtained the federal endorsement The federal
 (16) endorsement
 (17) being a prerequisite for the state one
 (18) Q To get a state license itself it's a prerequisite to have
 (19) the federal license is that correct?
 (20) A That's correct
 (21) Q Now for the state, to get your state endorsement what did
 (22) you have to do for that?
 (23) A Well, you had to comply with the state regulations You
 (24) had to satisfy the prerequisites I believe at that time you
 (25) only had to have a 500 ton license You had to possess the
 (26) federal pilotage for the area in question, and for an original
 (27) license you had to do a particular number of dockings and
 (28) undockings under the tutelage of licensed state pilots
 (29) Once

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- (1) you satisfied those requirements you wrote the state
 (2) examination You took a state physical wrote the state
 (3) examination had an oral interview before the Board of
 Marine
 (4) Pilots and if you were successful in those things you were
 (5) given the state license To add - that's the process to get
 (6) the original or that was To add additional endorsements, it
 (7) then became pretty routine Once you had a state license if
 (8) you obtained more federal pilotage it was a matter of
 (9) documenting to the state that you did in fact, have the
 (10) federal pilotage and they would add it to your license fairly
 (11) routinely after you wrote an examination
 (12) Q Now with your federal endorsement you re allowed to pilot
 (13) enrolled vessels?
 (14) A Correct
 (15) Q And for the record an enrolled vessel is what?
 (16) A It's a U S flag vessel engaged in coast wide trade
 between
 (17) ports in the United States
 (18) Q And with your state licence you re allowed to pilot what
 (19) vessels?
 (20) A Foreign vessels and U S registered vessels
 (21) Q That would be a U S vessel sailing from a foreign port to
 (22) a U S port?
 (23) A Yes or vice versa
 (24) Q Or vice versa?
 (25) A Yes

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- (1) Q Could you tell us what the pilotage regulations were as far
 (2) as you understood them on March 22nd 23rd for a vessel such
 as
 (3) the Exxon Valdez coming in? This was where you were to board
 (4) her in the area you just described why were you to board her
 (5) in this area and not say down at Hinchinbrook or down at Bligh
 (6) Reef? What are the requirements as of the date of the
 (7) pilotage?
 (8) A If the master or deck officer had the federal pilotage for
 (9) Prince William Sound - excuse me for the portion of Prince
 (10) William Sound between Cape Hinchinbrook and Rocky Point
 where
 (11) the pilot station is, the master or deck officer, who ever
 (12) could conduct the vessel to the pilot station where the pilot
 (13) boarded
 (14) Q Under his endorsement?
 (15) A Yes sir
 (16) Q And as far as the Exxon Valdez went then on March 22 you
 (17) were aware that there was an officer that had such an
 (18) endorsement?
 (19) A Yes
 (20) Q And who was that?
 (21) A Well I presume it was Captain Hazelwood I don't know
 (22) precisely who it was I knew that one of the officers
 (23) presumably the captain, had the endorsement because we
 (24) weren't - when the pilot order came in, it wasn't to board the
 (25) vessel at Bligh Reef where we would have boarded it had
 none of

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- (1) the deck officers had the endorsement I described to you
 (2) Q Now let's just turn to the outbound voyage When you came
 (3) out on March 23rd what location did you get off the vessel?
 (4) You showed us where you got on Is it in the same general area
 (5) or is it -
 (6) A In the same general area Abeam Rocky Point or slightly
 (7) south of that area or southwest rather
 (8) Q To the best of your recollection when you got off the
 (9) vessel on March 23rd where were you? Where was the vessel
 in
 (10) the traffic with relation to the traffic separation scheme?
 (11) A The vessel was in the middle of the outbound lane of the
 (12) traffic separation scheme
 (13) Q In the general area you indicated before where you boarded
 (14) the vessel is that correct?
 (15) A Yeab, in the general area abeam of Rocky Point or slightly
 (16) southwest of that
 (17) Q But in the outbound lane?
 (18) A In the middle of the outbound lane
 (19) Q What is the pilot's function aboard the vessel?
 (20) A I know of nowhere where a pilot's function is written down
 (21) in a law book or a guide to pilot It's pretty much dictated
 (22) by custom administration over the centuries, really, but
 (23) essentially a pilot comes aboard to provide local
 knowledge
 (24) and in the case of most pilotage district certainly ours ship
 (25) handling expertise The relationship between the master
 and

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- (1) the pilot is that of one professional with another In almost
 (2) all cases the master turns over the conn over to the pilot,
 (3) that is the direction of the ship navigational control over to
 (4) the pilot who directs the navigation of the vessel to its
 (5) destination and then docks it And generally the master
 who
 (6) always retains command keeps an eye on the pilot If the
 pilot
 (7) does something the master thinks is inappropriate, either in
 (8) terms of endangering the vessel or I suppose in abusing
 the
 (9) equipment the master is there to advise the pilot of that and
 (10) ultimately take the conn away from him if he thinks the pilot
 (11) is doing something -
 (12) Q Which will endanger the vessel?
 (13) A - which would endanger the vessel perhaps The master
 is
 (14) always retains command The master is always in
 command of the
 (15) vessel
 (16) Q Of course that means that the master in taking this area
 (17) of Prince William Sound on a vessel such as the Exxon Valdez
 (18) from Rocky Point in and out from the Port of Valdez to Rocky
 (19) Point to take the conn away from you has to be on the bridge
 (20) isn't that correct?
 (21) A Well obviously to conn the vessel I was going to say
 sure,
 (22) an officer has to be on the bridge, but I know of at least one
 (23) case I've heard about that a master tried to do it from his
 (24) stateroom by looking out the porthole
 (25) Q Up here in Valdez was that?

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- (1) A No, no, it wasn't That's just some story that floats
 (2) around pilots But yes the conning officer has to be in
 (3) position where he can reasonably conn the vessel and that
 (4) almost all cases is on the navigation deck
 (5) Q What generally as of March 23rd 1989 22 23 was your
 (6) experience piloting vessels in and out of Valdez? Now I know
 (7) you piloted a lot of vessels but if you could give us some
 (8) perimeters of so many vessels in a month of such and such a
 (9) year or however you want to do that?
 (10) A Well, I really can't do that because I can't recall the
 (11) numbers I can tell you that I had pilotage endorsement for
 (12) Prince William Sound since well before the pipeline started
 (13) I
 (14) piloted a number of tankers and other vessels in and out of
 (15) the
 (16) Port of Valdez before the pipeline
 (17) Q What year did the pipeline -
 (18) A 1977 August 1977
 (19) Q So would it be also be correct then if one were going to
 (20) try to put an approximate number on this that as of the time
 (21) of the grounding of the Exxon Valdez going back just to say
 (22) the year 1977 although you piloted before that that you may
 (23) well have piloted 1500 jobs in and out would that -
 (24) A I've never counted them but I would say it's - my
 (25) approximation is it's in the range of a thousand or more
 (26) Q When the Exxon Valdez was loaded such as she was when
 (27) you
 (28) took her out on the 23rd and in the conditions you took her out

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- (1) on the 23rd which we'll get into the weather conditions and
 (2) so forth and the current the weather was calm on the 23rd?
 (3) A That's my recollection
 (4) Q And the current was what?
 (5) A I don't recall what the stage of the tide was I don't
 (6) remember having observed any current
 (7) Q There wasn't any factor that when you're a navigator -
 (8) there wasn't any strong currents in the area that you're
 (9) piloting, or is it?
 (10) A I don't recall any
 (11) Q Well in those conditions that existed and in the laden
 (12) condition that she was in do you recall her draft?
 (13) A I believe she was at 57 feet I'm not sure
 (14) Q I understand but for the education of the court would you
 (15) agree that if you're on a heading of either of those vessels in
 (16) a laden condition and you're on say, half a head and you give
 (17) a ten degree rudder order either ten degrees right or ten
 (18) degrees left that the interval of time from the time you
 (19) give - the wheel is put on by the helmsman in compliance with
 (20) your order either ten degrees right or left that the interval
 (21) of time from that action by the wheelman to the time where the
 (22) heading moves off whatever course you're on would only be a
 (23) matter of seconds Would you agree with that? If you don't
 (24) then you can explain it it's seconds Well, let's just take
 (25) it I say a matter of less than ten seconds that she will move

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- (1) off her heading?
 (2) A I don't know I don't think in those terms I don't know
 (3) how many seconds it would take
 (4) Q It's certainly less than 20 seconds isn't it?
 (5) A I would think so
 (6) Q And with the more rudder you put on the quicker it will
 (7) move off the heading would you agree with that statement?
 (8) A That's generally true, yes
 (9) Q When you give an order what is your practice? Do you go
 (10) over and watch the helmsman to see what he's doing?
 (11) A Yes When I give a rudder order I look at the rudder angle
 (12) indicator and on various ships it's located in various places
 (13) to make sure my order is being complied with
 (14) Q One of the main reasons you look at the indicator and first
 (15) you want to make sure he's put the rudder on in the right
 (16) direction you've given the order isn't that correct?
 (17) A That's correct
 (18) Q Where you say whether it's right five right ten that he's
 (19) put it on right and not left isn't that correct?
 (20) A That's correct
 (21) Q And then the second thing you want to look at is the number
 (22) of degrees that he's put on?
 (23) A That's true
 (24) Q And you're looking at the rudder angle indicator which
 (25) shows you the movement of the rudder and not the wheel is
 that

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- (1) correct?
 (2) A That's correct
 (3) Q When I say the wheel I mean the helm?
 (4) A Yeah
 (5) Q So regardless of the simplicity of the order in other
 (6) words it's a 10 degrees right rudder order as opposed to a 15
 (7) or 25 or 30 whatever you have to follow this practice that we
 (8) just went over?
 (9) A I don't have to I do
 (10) Q No I mean you do I'll rephrase that You do follow the
 (11) practice you just described, regardless of the order?
 (12) A That is my practice
 (13) Q How long have you known Captain Hazelwood prior to
 (14) March
 (15) 23rd 1989?
 (16) A A number of years, and I am unsure of how many
 (17) Q At the NTSB you testified seven to eight years just to
 (18) refresh your recollection on page 186 Is that about right
 (19) as of that time?
 (20) A I think so, yeah it would be somewhere in that ballpark
 (21) yeah
 (22) Q Now just concentrating on that period of time, which would
 (23) bring it back to 1982, 1981, roughly in that area, how did you
 (24) get to know him? Was it on the trips up here or can you
 (25) explain?
 (26) A Yes, I piloted vessels which he was commanding a
 number of

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- (1) times and we became acquainted that way
 (2) Q Any other ways or was it just through your work piloting?
 (3) A Just through piloting work We seemed to hit it off
 (4) became friendly exchanged Christmas cards that's about it
 (5) Q Did you ever go out with him socially during that period of
 (6) time?
 (7) A No sir not that I can recall
 (8) Q So it was solely when you were aboard the vessel to pilot
 (9) it in or out when he was in command would that be a correct
 (10) statement over the seven or eight year period?
 (11) A Yes yes We didn't socialize He lives on the east
 (12) coast I live on the west
 (13) Q Was the first time you had ever gone to lunch with him on
 (14) March 23rd 1989?
 (15) A I think it was but I can't definitely state that's the
 (16) case I really don't remember We may have gone out to
 lunch
 (17) prior to that Captain Hazelwood had been in a different
 trade
 (18) for a number of years prior to the event of March, so I really
 (19) can't remember I may have gone out to lunch with him
 before
 (20) or dinner, or I may not have
 (21) Q Let's talk about the inbound transit You've told us where
 (22) you boarded the vessel You went up to the bridge and Captain
 (23) Hazelwood was on the bridge is that correct?
 (24) A That's correct
 (25) Q Before you left the vessel did you make any date with

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- (1) Hazelwood for the next day?
 (2) A Yes
 (3) Q Go on and tell us about that?
 (4) A Well we hadn't seen each other for a number of years
 and
 (5) I believe it was he suggested we have lunch together He
 said
 (6) he was going to be in town the next day probably at his
 (7) agent He had some business to do there And we agreed
 that
 (8) he would telephone me I thought that I was going to be
 free
 (9) and we'd have lunch together
 (10) Q Okay and then the next day can you tell us how you were
 (11) contacted by Hazelwood?
 (12) A I was telephoned by him He said he was at his agent's
 (13) office and would I come back and pick him up for lunch
 (14) Q So that was sometime prior to noon?
 (15) A I think it was during the noon hour it was somewhere
 (16) around the noon hour
 (17) Q And you went and picked him up?
 (18) A Yes
 (19) Q Where did you pick him up at the terminal?
 (20) A No no front of his agent's office in Valdez the town of
 (21) Valdez
 (22) Q Was he with anyone?
 (23) A Yes he was with two other gentlemen
 (24) Q Do you know who they are?
 (25) A I know who they are now At the time I recognized the

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- (1) chief engineer whom I had met previously and the other
 fellow
 (2) I didn't recognize He was introduced to me as the radio
 (3) officer radio electronics officer
 (4) Q Then what did you do?
 (5) A They got in my car and we drove down to the Pizza Palace
 (6) restaurant
 (7) Q And you had lunch?
 (8) A Correct
 (9) Q Captain on the evening of the 23rd of March your
 (10) notebook and we previously reviewed indicates you boarded
 at
 (11) 2020 is that correct?
 (12) A Yes
 (13) Q When you boarded the vessel where did you go?
 (14) A After I boarded the vessel?
 (15) Q Yes where?
 (16) A I proceeded to the bridge and en route to the bridge I
 (17) stopped by the master's stateroom
 (18) Q What did you do? Did you knock on the door?
 (19) A Yes, I knocked on the door and - I knocked on the door
 (20) Q Between your boarding the vessel and the master's
 (21) stateroom did you inquire with anyone where the master was or
 (22) did anyone tell you he was in his stateroom?
 (23) A No
 (24) Q You just did that as a matter of routine?
 (25) A Yes

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- (1) Q When there was no answer to the knock I take it you went
 (2) up to the bridge?
 (3) A That's correct
 (4) Q And who was on the bridge?
 (5) A The third mate was on the bridge
 (6) Q What do you recall about that report that the Arco Juneau
 (7) made or is it just there was ice? Did she give a locality or
 (8) an amount?
 (9) A I'm sure she reported her position I don't recall
 (10) precisely where that was and she said that she was
 departing
 (11) the outbound lane to navigate around the ice
 (12) Q When she reported she was departing the outbound lane did
 (13) she report that she was leaving the TSS completely?
 (14) A I don't recall that she did, no
 (15) Q Did you ever pass that information on to Captain Hazelwood
 (16) when he came to the bridge?
 (17) A Yes Prior to getting underway, or during the letting go
 (18) process Captain Hazelwood, I believe he asked me about
 the
 (19) ice and asked me to check with the vessel traffic system
 and I
 (20) reported to him what I had heard on the radio and told him
 that
 (21) that was the most recent ice report He and I talked about
 the
 (22) ice
 (23) Q You boarded the vessel at 2020 and you proceeded as you
 (24) indicated to the bridge via the captain's cabin About what
 (25) time did Captain Hazelwood appear on the bridge?

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- (1) A I don't remember what time it was It seems to me that I
 (2) had been aboard oh 10 or 15 minutes and I did not know
 that
 (3) the captain was not aboard I believe I heard the third mate
 (4) say here comes the captain or the captain is coming
 aboard
 (5) or words to that effect That was the first I had learned that
 (6) he was not in fact aboard Shortly after that the captain
 (7) appeared on the bridge
 (8) Q When the captain came to the bridge did he say anything to
 (9) you where he was or why he was late getting back to the ship?
 (10) A No, we greeted one another and I was - at that time I
 (11) think I was - the ship's agent was on the bridge we were
 (12) chatting and Captain Hazelwood came to the bridge He
 and I
 (13) greeted each other He and the agent greeted one another
 and
 (14) then Captain Hazelwood and the agent went below I
 presume, to
 (15) the captain's stateroom
 (16) Q When you were having this conversation with the captain
 (17) did you smell any alcohol on his breath?
 (18) A Yes
 (19) Q When did you first smell the alcohol on Captain Hazelwood's
 (20) breath? That is he comes up - comes on the bridge and was
 (21) it when he came up to you and was standing a certain distance
 (22) from you or can you describe these circumstances?
 (23) A Yes I think it was - I don't know if I was standing or I
 (24) was sitting on a stool near the chart table having a cup of
 (25) coffee and talking with the agent and Captain Hazelwood
 came

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- (1) through the chart room door and he and I greeted each
 other and
 (2) I smelled something on his breath then
 (3) Q Right away?
 (4) A I believe so yes
 (5) Q How many feet was he standing from you?
 (6) A Oh, probably close enough I don't know How close do
 men
 (7) stand when they shake hands a couple three feet
 something
 (8) like that
 (9) Q A few feet?
 (10) A Yeah
 (11) Q You shook hands?
 (12) A Pardon me?
 (13) Q You shook hands with him, you shook hands with Captain
 (14) Hazelwood I take it?
 (15) A I don't really remember Probably
 (16) Q Did you continue to smell alcohol on his breath as you
 (17) continued with this conversation?
 (18) A Well, we talked for just a short time then he and the
 (19) agent went below
 (20) Q All right but then subsequently Captain Hazelwood came up
 (21) to the bridge again right when you got underway?
 (22) A Yes
 (23) Q And did you have any further conversations with him on the
 (24) bridge?
 (25) A Yes

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- (1) Q When you were getting underway did you continue to smell
 (2) alcohol at that time?
 (3) A Yes
 (4) Q Now you had left him at lunchtime at about what time?
 (5) A Let me go back I don't remember every instant when I
 was
 (6) with Captain Hazelwood that I smelled alcohol on his
 breath I
 (7) smelled alcohol on his breath that's what I smelled
 (8) Q When you described it though when you -
 (9) A The smell that I associate with the smell of alcohol
 (10) that's what I smelled on his breath
 (11) Q But you're not - you're still standing by your testimony
 (12) it was in the chart room when you met him as you describe?
 (13) A Yes I am
 (14) Q A few feet away?
 (15) A That's correct
 (16) Q Are you standing by your testimony you continued to smell
 (17) alcohol on his breath when you had subsequent conversations
 (18) with him when you were getting underway?
 (19) A Yes
 (20) Q And he was on the bridge?
 (21) A Yes
 (22) Q Now what time had he left you at lunchtime when he
 dropped
 (23) you off?
 (24) A Again we went -
 (25) Q Approximately?

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- (1) A Approximately, I picked him up sometime during the noon
 (2) hour as I recall We had lunch for perhaps as long as an
 (3) hour and-a-half and then I dropped he and his party at the
 (4) place I described so it would be -
 (5) Q At 2:00?
 (6) A Somewhere between 1:30 and 2:00 somewhere in that
 range
 (7) That's really a guess
 (8) Q And at lunchtime did you smell any alcohol on his breath?
 (9) A No I didn't
 (10) Q So when you saw on the evening of the 23rd and you smelled
 (11) alcohol on his breath you know he had - sometime between
 the
 (12) time he left you and his coming to the bridge had had
 something
 (13) to drink is that correct?
 (14) A I didn't know anything I know what I smelled on his
 (15) breath That's all I know
 (16) Q You were aware, and are aware I take it you were aware on
 (17) March 23rd of the regulation prohibiting drinking which applies
 (18) to you as well as Captain Hazelwood within four hours of
 (19) assuming duties?
 (20) A Yes
 (21) Q Are you aware of that regulation?
 (22) A I am aware of that and I was aware of that
 (23) Q And you didn't know on March 23rd whether Captain
 Hazelwood
 (24) had violated that regulation or not?
 (25) A I did not know it, right

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- (1) Q Because you didn't know the time period prior to your
(2) talking to him whether he had been drinking within that four
(3) hour period is that correct?
(4) A That's correct that's true I did not know
(5) Q By the way are you -
(6) A I do not know
(7) Q Are you a drinker? Do you drink socially?
(8) A Yes
(9) Q Do you drink beer or alcohol - I'm sorry liquor I should
(10) say?
(11) A I guess you're asking me -
(12) Q I mean do you -
(13) A Am I a teetotaler? I am not a teetotaler I drink
(14) alcoholic spirits
(15) Q You comply with the regulation that you not drink four
(16) hours before you assume duties?
(17) A I comply with all state and Coast Guard regulation As a
(18) matter of fact, I do not consume alcohol in any form while
(19) I'm
(20) on duty in Valdez
(21) Q When Captain Hazelwood returned to the bridge after being
(22) down with the agent you ultimately get underway?
(23) A Yes
(24) Q And according to logbook which I have here a xerox of it
(25) from the NTSB exhibits of March 23rd they start letting go
(26) lines at 2100 and 2112 is the last line which agrees with your

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- (1) notebook?
(2) A Yes
(3) Q The vessel is technically underway when the last line is
(4) cast off is that correct?
(5) A That's true
(6) Q Okay you get underway from the dock and does Captain
(7) Hazelwood remain on the bridge?
(8) A Yes
(9) Q Didn't there come a period of time when he left the bridge
(10) after you were underway?
(11) A Yes
(12) Q And about how many minutes was it after you got underway
(13) that he left the bridge?
(14) A I can't be precise It seems to me it was perhaps 30
(15) minutes or so something in that range
(16) Q So if we took approximately 20 minutes once you've given
(17) your answer at the NTSB that would make it about 2132 is that
(18) correct approximately with that guideline?
(19) A I agree with your addition
(20) Q Now Captain Hazelwood left the bridge What did he say to
(21) you before he left the bridge?
(22) A I don't recall that he said anything
(23) Q He just walked off the bridge?
(24) A I'm sure he didn't, but I don't have a recollection of what
(25) it is he said I don't remember

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- (1) Q He didn't give you a reason why he was leaving the bridge
(2) did he?
(3) A Not that I can recall
(4) Q And you don't recall what he told you when he was coming
(5) back?
(6) A I don't remember that
(7) Q You continued piloting the vessel and do you recall when
(8) Captain Hazelwood left the bridge what watch officer was on the
(9) bridge that is which mate do you remember that?
(10) A I believe it was the third mate
(11) Q When you got underway from the dock it was the chief mate?
(12) A That's - you know I never have been able to remember
(13) who
(14) was up there I don't - Exxon's custom sometimes is for the
(15) chief mate to be on the bridge during the tying up and
(16) letting
(17) go process and then for the officer on watch to come and
(18) relieve him and the chief mate goes below So I don't
(19) remember
(20) if it was the chief mate or the third mate during the letting
(21) go process At any rate, after letting go, the third mate was
(22) on the bridge
(23) Q To your knowledge did Captain Hazelwood return to the
(24) bridge?
(25) A About 15 minutes before I was going to get off I asked
(26) the
(27) third mate to call him and tell him when I would be getting
(28) off And shortly after the telephone call Captain
(29) Hazelwood
(30) came on the bridge

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- (1) Q Would soon thereafter - do you recall at the NTSB
(2) interview you had you told them it was about a five minute
(3) interval from the time you told the third mate to have the
(4) captain come to the bridge?
(5) A Yeah it was something in the range of a few minutes five
(6) possibly About five minutes and maybe less
(7) Q On page 2 of the NTSB summary interview which you told me
(8) you reviewed before you testified if you could just read the
(9) bottom of this paragraph where I have that little line Do you
(10) want to read out loud what you told the NTSB?
(11) A The master arrived on the bridge about five minutes later
(12) Q That was your recollection at the time you were interviewed
(13) by the NTSB is that correct?
(14) A Yes
(15) Q Where is the captain's cabin located with respect to the
(16) bridge?
(17) A It's on the deck immediately below the bridge deck
(18) Q Did Captain Hazelwood when he came to the bridge did
(19) you
(20) have any conversation as to where you've been trying to find
(21) out where he's been this period of time?
(22) A No
(23) Q Did you smell alcohol on his breath?
(24) A Yes
(25) Q Did you smell it - at what point did you smell it? He
(26) walks into the wheelhouse and comes to where you are is that

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- (1) correct?
 (2) A Yes
 (3) Q And he is standing a few feet from you?
 (4) A Yes
 (5) Q And you start to have a conversation do you?
 (6) A Uh huh
 (7) Q Is that - right at that point did you smell the alcohol?
 (8) A Yes
 (9) Q Did you smell the alcohol even before he opened his mouth
 (10) to say anything do you remember?
 (11) A I don't remember
 (12) Q You continued to have a conversation with him then for a
 (13) period of minutes before you left the vessel is that correct?
 (14) A That's correct
 (15) Q And about how many minutes was that?
 (16) A Oh it must have been about 10 minutes somewhere in
 (17) the range of 10 minutes
 (18) Q Did you continue to smell the alcohol during that 10 minute
 (19) period while you were having the conversation with him?
 (20) A I believe I did
 (21) Q You were about to leave the vessel and with respect to the
 (22) vessel ice so on that official type conversation?
 (23) A Okay When I turned over the conn to the captain, I
 (24) advised him of the vessel's course the engine speed
 (25) Q Do you remember what they were?

- (1) that correct?
 (2) A Yes Is that what it says there? I don't know
 (3) Q Yes I'm just reading your entry 23 20?
 (4) A Then yes that's when I left the vessel
 (5) Q All I'm trying to do is would you agree that the period of
 (6) time Captain Hazelwood was off of the bridge from the time he
 (7) left the bridge which you've testified to is about 20 minutes
 (8) after getting underway and the period of time he returned to
 (9) the bridge was approximately an hour and a half would you
 (10) agree with that?
 (11) A The time he was off the bridge?
 (12) Q Yes
 (13) A While I was on the vessel?
 (14) Q Yes?
 (15) A The time he wasn't present on the bridge?
 (16) Q Yes
 (17) A Something in that range
 (18) Q Okay, that's all I want
 (19) For a captain on a vessel like this that had a licensed
 (20) officer with a pilotage endorsement to be off the bridge for
 (21) approximately an hour and a half from the Port of Valdez
 (22) and where you get off the vessel at Rocky Point that is not
 (23) the norm is it?
 (24) A That's not the norm no
 (25) Q Just before you left the vessel did you have any

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- (1) A Yes
 (2) Q What was the course?
 (3) A 219 gyro, and engines on slow ahead
 (4) Q What else did you advise?
 (5) A I advised him of traffic I don't recall if there was
 (6) any I don't remember what the inbound traffic situation
 (7) that
 (8) might was going to be for the ship If there were inbound
 (9) ships scheduled I would have passed that onto him We
 (10) had a
 (11) short conversation about the ice reports I communicated
 (12) words
 (13) to the effect, remember the ice reports, or, you know, ice
 (14) has
 (15) been reported ahead, something like that
 (16) Q Anything else you can think of?
 (17) A No, that's about it
 (18) Q Then you shook hands with him and left the bridge?
 (19) A Correct
 (20) Q After this 10 minute period?
 (21) A Yes
 (22) Q During this 10 minute period did you hear Captain
 (23) Hazelwood issue any orders whatsoever on the helm or engine?
 (24) A No, no He - I still had the conn
 (25) Q So when you left the bridge, he then had the conn but you
 (26) hadn't heard him issue any orders, is that correct?
 (27) A I turned over the conn to him and I don't recall having
 (28) heard him issue any orders to the rudder or the engine
 (29) Q And you left the vessel, according to notebook at 23 20 is

- (1) navigation lights in view aids to navigation?
 (2) A Yes
 (3) Q Can you tell us what they were?
 (4) A Well Rocky Point light Busby Island light, Buoy 9 I
 (5) don't recall whether or not I could see Glacier Island light
 (6) And astern of course Potato Point light and I believe
 (7) Entrance Point light, and perhaps Middle Rock I don't
 (8) recall
 (9) looking astern
 (10) Q Can you see Bligh Reef - could you see Bligh Reef buoy?
 (11) A I don't believe so
 (12) Q On the weather conditions that existed from that evening
 (13) when you left what were the weather conditions when you left
 (14) the Port of Valdez when you cast off?
 (15) A Well, as I recall the visibility was somewhat restricted
 (16) While in Port Valdez, something three miles or less
 (17) something
 (18) less than that probably Sometimes transiting the Narrows
 (19) the
 (20) visibility lifted and became pretty good
 (21) Q Was it snowing when you left the Port of Valdez?
 (22) A You know, I think it was I can't remember if it was snow
 (23) or precip or fog I just remember that the visibility was
 (24) limited and I can't remember why.
 (25) Q When you went down the pilot ladder, who assisted you in
 (26) getting off the vessel do you recall?
 (27) A My recollection is the mate on watch, who I think was the
 (28) third mate, escorted me down to the pilot ladder and there
 (29) were

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- (1) one or more seamen at the pilot ladder waiting there or
 (2) arriving at the same time I did
 (3) Q Did you have any conversation with the mate that you can recall?
 (4)
 (5) A I don't recall that I probably said bye have a good
 (6) trip, words to that effect
 (7) THE COURT Let's take our first recess at this point
 (8) if we may Members of the jury please remember my
 (9) instructions that you not have any discussions with anyone or
 (10) amongst yourself Mr O Neill I'd like to see Mr O Neill
 (11) Mr Chalos and Mr Lynch if he's here or Mr Serdahely for a
 (12) moment in my chambers
 (13) THE CLERK This court is in recess for 15 minutes
 (14) (Recess at 10 03 a m)
 (15) (Jury in at 10 25)
 (16) THE CLERK All rise
 (17) THE COURT I apologize for the delay I have a
 (18) visiting judge in from Oregon today and I had to see him for
 (19) just a moment You may continue
 (20) MS WAGNER Thank you Your Honor
 (21) BY MS WAGNER
 (22) Q Captain just before the break we were talking about this
 (23) approximately hour and a half period that you didn't see
 (24) Captain Hazelwood on the bridge
 (25) In your experience on the Port of Valdez piloting vessels

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- (1) in and out your extensive experience this has not happened
 (2) before a captain staying off the bridge for an
 (3) hour and a half?
 (4) A I've never recorded the time The masters are off the
 (5) bridge occasionally
 (6) Q They are off occasionally but they stay off for relatively
 (7) brief periods don't they?
 (8) A Normally that's the case
 (9) Q Can you think of any instance where a captain left the
 (10) bridge and stayed off an hour and a half before -
 (11) A I can't give you the name of the ship or the master, but on
 (12) a number of occasions the master hasn't been present
 (13) through
 (14) the Narrows How long he's been off the bridge, I really
 (15) don't
 (16) recall
 (17) Q I don't know exactly where we were but I'll pick up where
 (18) I think we were Captain you had indicated I think that you
 (19) at one point consulted or retained to consult by - what was
 (20) the name of the organization again?
 (21) A MSI, Marine Safety International, I believe it is
 (22) Q That consultation took place in Newport Rhode Island?
 (23) A Yes
 (24) Q And your contact back there was with Captain Sykes?
 (25) A Yes
 (26) Q Do you remember his first name?
 (27) A Frank

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- (1) Q Did you have contact with other individuals back there
 (2) other than Captain Sykes?
 (3) A Yes
 (4) Q What was your understanding of what they wanted you to do
 (5) in the course of that consultation?
 (6) A Captain Sykes and I are friends He was, for a number of
 (7) years, the master on vessels in the Trans-Alaska Pipeline
 (8) trade Apparently, he does quite a lot of consulting work for
 (9) MSI He telephoned me, he told me that he had been
 (10) engaged by
 (11) MSI to head up a project which was a training program for
 (12) Exxon, would I come back Part of the project that he was
 (13) designing was a ship simulation in Port Valdez Narrows and
 (14) Arm,
 (15) would I come back and verify the simulation see how
 (16) accurate
 (17) it was and also give him my views on the other aspects of
 (18) the
 (19) program
 (20) Q Did you understand your involvement in this project to be
 (21) related in any way to the Exxon Valdez grounding?
 (22) A I think it was a training project by Exxon Shipping How
 (23) they came to the decision to have such a training program, I
 (24) don't know
 (25) Q Let me be more specific Did the project involve an
 (26) analysis of the Exxon Valdez grounding?
 (27) A Yes I believe so
 (28) Q Did you participate in that analysis?
 (29) A I participated in the analysis to the extent that the - on

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- (1) the bridge simulator based on, I think, the simulation - my
 (2) understanding is the simulation was based upon the
 (3) available
 (4) information that Captain Sykes and the simulator folks had
 (5) They tried to recreate what happened on the Exxon Valdez
 (6) and
 (7) that's what they tried to simulate Where they got their
 (8) information I'm not sure
 (9) Q Well in that type of simulation would it not normally be
 (10) customary to utilize the course recorder printout of the
 (11) grounding itself?
 (12) A I would think so
 (13) Q That's how you helped recreate and explain in retrospect
 (14) what happened or tried to do so isn't it? Isn't that correct?
 (15) A Yes
 (16) Q And I think earlier in your testimony you indicated that
 (17) during the course of this consultation you saw something that
 (18) either was a copy of the course recorder printout or was a copy
 (19) of the recreated path of the vessel is that correct?
 (20) A Correct
 (21) Q And just for the purposes of this discussion let's call it
 (22) the vessel path
 (23) A Okay
 (24) Q Do you recall what the vessel path showed when it was all
 (25) done?
 (26) A Yes It showed that the Exxon Valdez changed course,
 (27) proceeded on that course and hit Bligh Reef

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- (1) Q When you say it changed course are you speaking of the
 (2) course change from one particular heading to a heading of 180
 (3) degrees?
 (4) A Or thereabouts yes
 (5) Q And let's start with the point of the vessel path that
 (6) vessel was heading - was on a heading of 180 degrees or
 (7) thereabouts So we're starting to the north on the chart that
 (8) we see here on the wall and we're starting at the point at
 (9) which the vessel came to a heading of 180 degrees or
 (10) approximately 180 degrees And you said that it proceeded
 from
 (11) that point on down the sound and eventually went aground on
 (12) Bligh Reef?
 (13) A Yes
 (14) Q At any point in the path did the vessel path indicate that
 (15) the vessel turned?
 (16) A Not that I recall That it turned from the 180 degree or
 (17) thereabouts course?
 (18) Q Yes
 (19) A Yes, it seems to me that just prior to grounding, the
 (20) course altered toward the west
 (21) Q Was there any indication on the vessel path that a course
 (22) change was made by the vessel at or around the point that the
 (23) vessel would have been abeam of Busby Island?
 (24) A According to my recollection, the simulated vessel path
 did
 (25) not show a course change off Busby Island

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- (1) Q As a result of your involvement in this consultation work
 (2) were you asked to form any conclusions with regard to the
 cause
 (3) of the grounding?
 (4) A No
 (5) Q In fact did you form any conclusions as to the cause of
 (6) the grounding?
 (7) A Sure
 (8) Q What were those conclusions?
 (9) A Somebody drove the tanker onto the rocks
 (10) Q Were your conclusions any more specific than that? Did you
 (11) in fact conclude that the accident took place in whole or in
 (12) part as a result of acts or omissions of any particular
 (13) individual?
 (14) A Because the Exxon Valdez hit Bligh Reef it's pretty
 (15) apparent, at least to me, that somebody screwed up, or
 plural,
 (16) persons screwed up, a lot Who they were or specifically
 what
 (17) they did I don't know but it's real apparent to me that there
 (18) were serious mistakes made
 (19) Q Did you form any opinion with regard to whether one or more
 (20) specific individuals made serious mistakes?
 (21) A Sure, I have those opinions
 (22) Q Would you please tell me - would you tell me please, the
 (23) identities of individuals that you believe to have made
 (24) specific errors that led to or contributed to the grounding?
 (25) A You're asking for my opinion?

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- (1) Q Yes The question was did you formulate conclusions or
 (2) opinions with regard to how or why the grounding of the Exxon
 (3) Valdez took place?
 (4) A Yes
 (5) Q The next question is this Did the consulting work that
 (6) you did in Newport in whole or in any part play a role in
 (7) those conclusions or opinions?
 (8) A Yes
 (9) Q Would you describe for me briefly what role that consulting
 (10) work played in the conclusions or opinions that you formed?
 (11) A It was a rather disquieting experience for me to
 (12) participate in this recreation simulated recreation of the
 (13) course that took this ship onto the reef
 (14) Q I appreciate that
 (15) A As it would be for any mariner and I, like probably
 (16) others wondering what happened between the six off Busby
 (17) Island - the six off of Busby Island and the grounding
 (18) Q Is that the end of your answer?
 (19) A I think it is
 (20) Q The question is what role did the consulting work that you
 (21) participated in in Newport play in the conclusions or opinions
 (22) that you formed about the grounding?
 (23) A I suppose it impressed upon me if the simulation was
 (24) accurate that there is quite a lapse of time where apparently
 (25) no action was taken when the ship was clearly standing into

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- (1) danger
 (2) Q What specific errors did you conclude took place during the
 (3) course of the outbound voyage?
 (4) A I concluded that the ship was steered toward a known
 danger
 (5) until it struck the known danger
 (6) Q I assume that on the number of occasions that you transited
 (7) the Sound when there has been ice present there has been
 some
 (8) occasions when there has been heavy ice present?
 (9) A Yes
 (10) Q When and if there is heavy ice present, do you normally
 (11) slow down?
 (12) A Well, it is - because where is the heavy ice, you know,
 (13) it's just - I'm not trying to dodge your question You just
 (14) can't answer in that way Every circumstance is different
 (15) The ice is everchanging, the ships are different, and so
 forth,
 (16) visibility conditions, sea state
 (17) Q Prior to the night of the grounding had you ever been made
 (18) aware that ships had on occasion exited the entire traffic
 (19) separation scheme to avoid ice?
 (20) A I do not recall that
 (21) Q Did you have any personal policy, or procedure about never
 (22) going all the way outside the lanes?
 (23) A Yeah, I think so
 (24) Q And by that do you mean that you can't envision conditions
 (25) that would require you to go all the way outside the lanes?

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- (1) A I would feel very uncomfortable being outside the
 (2) boundaries of the lanes and I would try to avoid doing that
 (3) Q Even if there was ice present?
 (4) A Yes
 (5) Q Well don't you as a prudent navigator watch for all the
 (6) lighting and aids to navigation both behind you as well as in
 (7) front of you?
 (8) A Yes I do
 (9) Q And if you're on an outbound voyage do you attempt to
 (10) pass - outbound voyage in a southerly direction do you
 (11) attempt to pass all red lights so they're on your port or east
 (12) of you?
 (13) A Do I?
 (14) Q Yes
 (15) A Yes
 (16) Q And if you have a red light that commences about a point
 (17) on your starboard bow and the bearing broadens until it's
 (18) broad
 (19) on the starboard bow would that give you cause for concern?
 (20) A Yes
 (21) Q Why?
 (22) A It would scare the hell out of me
 (23) Q And would you as soon as you got scared try to turn to
 (24) get it on your port bow again?
 (25) A Well I don't know You're describing something general
 (26) Maybe the best turn would be the other way I don't know

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- (1) MR NEAL This is the defendant's cross examination
 (2) of Pilot William Murphy and going back first to the luncheon
 (3) in the town of Valdez on the day of March 23rd 1989
 (4) CROSS EXAMINATION OF WILLIAM MURPHY
 (5) BY MR NEAL
 (6) Q After lunch did you drop them someplace?
 (7) A I did yes
 (8) Q Where did you drop Captain Hazelwood?
 (9) A In the - it's been renamed At that time there was an
 (10) establishment called, I think the Valdez Market and there
 (11) are
 (12) other businesses connected to it In that complex in the
 (13) parking lot in front of the Valdez Market complex
 (14) Q And the two other officers got off there too?
 (15) A Yes, I believe they did
 (16) Q In your vast experience which you've testified to of your
 (17) numerous trips in and out of Valdez have there ever been an
 (18) occasion where - before where a master had not been on the
 (19) bridge going through the Narrows?
 (20) A Yes
 (21) Q How many times did that occur?
 (22) A I sure don't remember I never counted them I don't
 (23) know
 (24) Q Are you talking about a few times?
 (25) A Relatively few
 (26) Q Do you ever use the fathometer alarm on this transit from

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- (1) Rocky Point to Valdez?
 (2) A Do I?
 (3) Q Yes
 (4) A On that particular transit no
 (5) Q Is that because the depth is straight enough so that you
 (6) don't -
 (7) A Yes typically the topography is very deep there in most
 (8) places 100 fathoms or greater and the shoreline is real
 (9) steep,
 (10) too
 (11) Q By the time you had an alarm you'd be aground anyway?
 (12) A Yeah pretty much
 (13) Q Now when you first encountered Captain Hazelwood on the
 (14) bridge with the I think it was the agent a lady by the name
 (15) of Pat Caples?
 (16) A Yes sir
 (17) Q That's when you first smelled what you perceived to be the
 (18) smell of alcohol?
 (19) A Correct
 (20) Q Are you familiar with a beverage called Moussy?
 (21) A Yes
 (22) Q What is the nature of your familiarity?
 (23) A I believe it's near beer It's a non alcoholic beer
 (24) Q Have you ever had the opportunity to smell that particular
 (25) beverage?
 (26) A Yes

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- (1) Q Could you describe the smell?
 (2) A It smells like beer
 (3) Q Now when you saw Captain Hazelwood for the first time up
 (4) on the bridge did he appear - did he in any way appear to you
 (5) to be intoxicated?
 (6) A No
 (7) Q Did he in any way appear to you to be impaired?
 (8) A No
 (9) Q Did he in any way appear to you to be slurring his speech?
 (10) A No
 (11) Q Did you observe him swaying or misstepping?
 (12) A No
 (13) Q Was he slurring his words?
 (14) A No
 (15) Q Did he appear to you to be at that point in time in any way
 (16) intoxicated or impaired?
 (17) A He gave no such appearance
 (18) Q Now after the last line was let go did you continue
 (19) speaking with him as you were coming off the dock and into the
 (20) harbor?
 (21) A I really can't recall He may have had other duties in the
 (22) wheelhouse and I had to speak with the Coast Guard on the
 (23) radio I'm sure we conversed during that time but I think
 (24) each of us had other duties So we weren't together all the
 (25) time

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- (1) Q Do you remember being asked this question?
 (2) A This was at Captain Hazelwood's trial?
 (3) Q Yes
 (4) A Okay
 (5) Q Quote how long was he gone And your answer quote I
 (6) think he was gone probably between an hour or an
 (7) hour and a half end of quote Do you recall that?
 (8) A Yes
 (9) Q Do you stand by that answer today?
 (10) A That's my recollection To the best of my recollection
 (11) Captain Hazelwood was absent from the bridge between an
 hour
 (12) and an hour and a half and it seems to me more on the -
 (13) toward the hour-and a half end of things Somewhere in
 that
 (14) range
 (15) Q Now when you say he was gone for an hour or an
 (16) hour and a half you're talking about a situation where you
 (17) didn't see him for an hour or an hour and a half?
 (18) A That's right
 (19) Q Now if he had come up to the bridge and stood in the chart
 (20) room if you didn't look in the chart room you wouldn't have
 (21) seen him?
 (22) A That's true
 (23) Q Captain Murphy once you leave the vessel at Rocky Point
 (24) you don't know what a captain might do in so far as staying on
 (25) the bridge or leaving the bridge do you?

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- (1) A I do not know
 (2) Q Now let's talk about just before you left the Exxon Valdez
 (3) when you called for Captain Hazelwood and he came back up
 on
 (4) the bridge You testified you smelled again what you perceived
 (5) to be the smell of alcohol?
 (6) A Yes, I did
 (7) Q Was the smell the same as before?
 (8) A Yes
 (9) Q You had an opportunity to speak with Captain Hazelwood at
 (10) that point?
 (11) A Yes
 (12) Q And to observe him?
 (13) A Yes
 (14) Q Did he appear to you to be in any way intoxicated?
 (15) A No, he did not
 (16) Q Was he slurring his words?
 (17) A He was not
 (18) Q Was he swaying in walking about the bridge?
 (19) A No
 (20) Q Did he appear to you to be the same as he's appeared a
 (21) quarter of nine 9 00 that evening?
 (22) A Yes
 (23) Q Did he appear to you to be the same as he appeared at
 (24) lunch?
 (25) A Yes

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- (1) Q Was he basically acting the same?
 (2) A Yes he was
 (3) Q And the same as he had been acting the night before?
 (4) A Yes
 (5) Q I'd like to follow up on some of plaintiff counsel's
 (6) questions Do you recall the questions about the red light
 (7) being one point on the bow and then broadening to or opening
 up
 (8) to broad on the bow?
 (9) A Yes I remember that
 (10) Q And you gave plaintiff's counsel some answers on the basis
 (11) of a hypothetical that he was giving to you In order to make
 (12) the determination that plaintiff's counsel was asking for
 (13) wouldn't you need to know how far away you were from the red
 (14) light?
 (15) A Yes
 (16) Q And wouldn't you also need to know what maneuver you
 were
 (17) in the process of making when you spotted the light?
 (18) A Yes, it would depend on the circumstances at the time
 (19) Q Wouldn't you need to know your speed?
 (20) A Yes
 (21) Q And wouldn't you need to know where you were going?
 (22) A Yes
 (23) MR NEAL Thank you Pilot Murphy
 (24) MR JAMIN Your Honor plaintiff's seek permission to
 (25) publish a very small portion of 90 A about three and a half

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- (1) minutes, at this time
 (2) THE COURT 90 A is what?
 (3) MR JAMIN March 23 March 24 VTC tape and it will
 (4) be the period shortly after the grounding
 (5) THE COURT All right
 (6) MR JAMIN Members of the jury we will now play for
 (7) you a portion of the radio transmissions reported by the Vessel
 (8) Traffic Center in Valdez Alaska on March 23rd and 24th which
 (9) relates to the grounding of the Exxon Valdez The tape has
 (10) been marked as Plaintiff's Exhibit 92-A A transcript of the
 (11) tape recording has been marked as Exhibit 90 A We've made a
 (12) copy of the transcript that I'd pass out to you now so if you
 (13) would like to, you could read along with it The amount of
 (14) tape we're going to play is just about three-and-a-half
 (15) minutes The portion that we'll have you look at begins about
 (16) on page 5 On page 5 the top number is 2345 02 in the upper
 (17) left hand corner And if you go down the page about halfway,
 (18) you'll see the time 2641, which reflects 26 minutes after the
 (19) hour on the 24th If you're all ready, I'll have the tape
 (20) played Are you all okay?
 (21) (Tape Recording Played)
 (22) MR JAMIN Your Honor ladies and gentlemen with
 (23) your permission I'll pick up the transcripts Thank you Your
 (24) Honor
 (25) MR O NEILL Plaintiff's call Captain Hazelwood as an

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- (1) adverse witness under the Rules of Examination
 (2) (The Witness is Sworn)
 (3) THE CLERK Please be seated in the witness stand
 (4) For the record would you please state your full name and
 (5) address and spell your last name please
 (6) THE WITNESS Joseph J Hazelwood Address is 48
 (7) Crescent Beach Drive Huntington New York
 (8) THE CLERK Spell your last name
 (9) THE WITNESS H a z e l w o o d
 (10) THE CLERK Thank you
 (11) DIRECT EXAMINATION OF JOSEPH HAZELWOOD
 (12) BY MR O NEILL
 (13) Q Captain I realize this is difficult for you and if you ll
 (14) stick with me it will be over I have placed in front of you
 (15) a copy of your deposition transcript in case we need to work
 (16) with that?
 (17) A Very well
 (18) Q And I ve also got some exhibits that are stacked there in
 (19) order, and if you want to talk about an exhibit you re going
 (20) to have to search through there and find it but that ought to
 (21) give us something to work with?
 (22) A Very well
 (23) Q If you don t understand a question or think the question
 (24) isn t fair you tell me okay?
 (25) A Okay

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- (1) Q How did you first find out - how did you first find out
 (2) about your termination from Exxon Corporation?
 (3) A It was in the ether - I think I heard it on the radio
 (4) and shortly thereafter, I saw it on television
 (5) Q Did anybody from Exxon Corporation or Exxon Shipping
 (6) Company come and tell you you were terminated?
 (7) A No
 (8) Q So the first time you heard about it was through the media?
 (9) A Yes
 (10) Q I assume at that point in time they cut off your pay?
 (11) A Yes
 (12) Q What was your reaction?
 (13) A Well I thought - I was angry
 (14) Q Angry at the way they had treated you?
 (15) A Well, angry at the reasons indicated on this press
 (16) conference for firing me without ever bothering to ask me
 (17) anything
 (18) Q Or talk to you?
 (19) A Essentially, yeah
 (20) Q Now let s go back to the other end of the history of this
 (21) and let s talk a little bit if you can give us a little bit of
 (22) your background generally up to - to shortcut up up to about
 (23) the time of 1977 when you became a tanker captain -
 (24) A '79
 (25) Q 79?

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- (1) A Yeah Grew up in Georgia and New York New York
 started
 (2) going to sea 13 or 14 years old Went through high school
 (3) graduated high school attended New York Maritime
 College
 (4) graduating there in 1968 Joined Humble Oil and Refining
 (5) Marine Department at that time a precursor of Exxon
 Shipping
 (6) Sailed as third mate second mate chief mate Did some
 other
 (7) work on my time off marine-related ship-related Was
 loaned
 (8) out a couple times to Esso's international fleet to handle
 (9) ultra large crude carriers 500 000 tonners in the Gulf of
 (10) Mexico And received my first masters assignment was
 1979 on
 (11) the Exxon Philadelphia
 (12) Q You went to New York Maritime Academy?
 (13) A Maritime College, yes
 (14) Q Now I m going to move to the months right now before you
 (15) go into South Oaks?
 (16) A Very well
 (17) Q The couple months right before South Oaks why don t you
 (18) tell us if you would what events leading up to your going
 (19) into the South Oaks had some impact on your decision to go
 into
 (20) South Oaks? Why did you go into South Oaks?
 (21) A Which question do you want me to answer?
 (22) Q Hey I m supposed to be doing the questioning here
 (23) THE COURT Just ask him one by one
 (24) BY MR O NEILL
 (25) Q Were there any events leading up to your going into South

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- (1) Oaks that led to the decision to go into South Oaks any
 (2) significant events?
 (3) A Well there was culmination of a couple of events I had
 (4) reached a point in my life where I hate to use the
 mumbo jumbo
 (5) of the '80s the mid life crisis but due to expanded
 (6) vacations I was spending more and more time at home and
 less
 (7) and less time at sea and I had a young daughter who was
 (8) growing up and I came to realize at that juncture in my life
 (9) that I had missed a significant portion of her growing up and
 a
 (10) significant portion of life not to be critical of life ashore
 (11) as it were rather than life at sea Been married for
 (12) approximately 20 years, 16 of which I had been on a ship
 (13) somewhere 16 out of the 20 years And I was reevaluating
 my
 (14) life I wanted to continue that continue going to sea And
 (15) some occasions I would get down in the dumps and
 depressed and
 (16) I would abuse alcohol at home on my vacations I had been
 (17) doing this for a while on vacations I wasn't particularly
 (18) pleased about it, and whether I was - I didn't really know
 (19) what I was suffering from if I was truly suffering from
 (20) something
 (21) I did a sea tour over the holidays into '84 and '85 on the
 (22) Exxon Yorktown in the east coast products trade and went
 on
 (23) vacation I think in late January mid to late January of
 (24) 1985 And some time during that vacation period, I was
 (25) contacted by a port captain Captain Mark Pierce And he

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- (1) just - he had interacted with me a couple times in December of
 (2) that sea tour the previous sea tour December and January and
 (3) Captain Pierce and I have been friends for a long time and we
 (4) communicate with each other rather well with as few words as
 (5) possible And he says I think you might have a problem with
 (6) your life, see what you can do to fix it up
 (7) Q Now I'm going to ask you a couple questions about -
 (8) specific questions about what you just said
 (9) You mentioned that you abused alcohol?
 (10) A Uh-huh
 (11) Q In your own mind's eye what is abusing alcohol how many
 (12) drinks?
 (13) A Specific number, I couldn't really attach to it
 (14) Q Could I give you a description and see whether you agree
 (15) with it?
 (16) A Sure
 (17) Q How about in the evening, four or five doubles followed by
 (18) wine and then a couple more doubles after the meal?
 (19) A I think that's the description I gave in my deposition
 (20) Q And this was a pattern that had at least set up right
 (21) before your going in the South Oaks?
 (22) A Well, not a pattern, per se It wasn't a clockwork
 (23) pattern It happened sporadically, yeah
 (24) Q Now when you had four or five doubles followed by wine and
 (25) then a couple more doubles after the meal what effect did that

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- (1) have on you? I mean did you - I guess the vernacular is did
 (2) you hold your liquor?
 (3) A Well, I didn't trip over any furniture I could detect a
 (4) little clumsiness on my part I just wasn't - I wasn't
 (5) blotto, I guess is the expression
 (6) Q We've described anywhere from 14 to 20 shots if you take
 (7) the four or five doubles plus a couple more doubles after the
 (8) meal plus the wine and my question is other than feeling some
 (9) clumsiness you didn't feel blotted could you function?
 (10) A Well, I hadn't planned nor did I function outside of
 (11) sitting on the couch and maybe looking at a magazine
 (12) Q You could sit there and read a magazine?
 (13) A Well, I could look at the pictures
 (14) Q Did you pass out?
 (15) A No
 (16) Q Would you admit with me that this amount of drinking took
 (17) place weekly?
 (18) A Sometimes it would be weekly, sometimes it would be
 (19) biweekly There was no lock and step pattern that it
 (20) followed
 (21) that I recall
 (22) Q Now, when Captain Pierce talked to you - let me ask a
 (23) couple more questions
 (24) At any point up going into South Oaks did you lie about
 (25) your drinking?
 (26) A I'm not sure Before, during or after?

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- (1) Q Have you ever lied about drinking to your wife?
 (2) A In a social sense probably yeah
 (3) Q Indeed you were asked that questions in your deposition on
 (4) page 2181 Can you dig that out? You're going to have to
 (5) squint to get those page numbers And I'm on page 2181 line
 (6) 25 which is at the bottom and I'm going to go to page 2182
 (7) line 7 And I'll read - you were under oath when you gave the
 (8) deposition do you recall that?
 (9) A Uh-huh
 (10) Q And the deposition was in this case that's a correct
 (11) statement isn't it?
 (12) A Yes
 (13) Q And the question asked was okay Captain have you told
 (14) lies about your drinking and there is an interjection from the
 (15) lawyers when and at what point in time At any time
 (16) Answer to my wife Question to anyone I am sure I have
 (17) like anybody else
 (18) Did I get that right?
 (19) A Yes
 (20) Q Let me ask another question if I could about this period
 (21) just prior to South Oaks and about the time Mr Pierce called
 (22) you up Had you been having any trouble in your marriage at or
 (23) about that time?
 (24) A Not at that time specifically There had been problems
 (25) like any other relationship

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- (1) Q Had you and your wife discussed marriage counseling?
 (2) A We had discussed it, yeah
 (3) Q Have you ever had a faulty memory as a result of drinking?
 (4) A I don't know about a faulty memory I couldn't remember
 (5) a
 (6) phone number you know specific instances But I suppose
 (7) empirical data there is probably some faulty memory
 (8) Q Have you ever had a faulty memory as a result of abusing
 (9) alcohol?
 (10) A In the sense of maybe I forgot what I said to somebody or
 (11) forgot what I - possibly, yeah what I read
 (12) Q Now at the time that Captain Pierce talked to you about
 (13) going into South Oaks was your wife supportive of the idea?
 (14) A She had detected that I was moodier than I had been
 (15) before She was supportive, yeah
 (16) Q Up to the time you went into South Oaks had there been
 (17) occasions where you knew you already had too much to drink
 (18) and
 (19) you continued drinking?
 (20) A I probably had those occasions I don't know if I gave it
 (21) that much thought, I had too much to drink
 (22) Q There had been occasions where you felt that you had too
 (23) much and you had another?
 (24) A I don't know if I gave it that much thought, really
 (25) Q Could you go to page 1,239 of your deposition transcript
 (26) and I'm going to begin at line 23 and then pick up the
 (27) question the answer to the question at page 1240, line 5

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- (1) A Okay yeah
 (2) Q And the question is were there occasions where you knew
 (3) you already had too much to drink and you continued drinking
 (4) And the answer your answer at page 1240 line 5 is I felt I
 (5) had too much and had another yes
 (6) Do you see that?
 (7) A Yeah, okay It's in conjunction with the previous question
 (8) and answer
 (9) Q Well I'll tell you what just to be fair why don't you
 (10) read to the jury from the previous question and answer all the
 (11) way to page 1240 line 5 and put it in the context that you
 (12) wanted it?
 (13) A Well, the question was is, when you started drinking one
 (14) of
 (15) these moods, as you described could you have stopped at
 (16) any
 (17) time you wanted to Answer I don't know how to answer
 (18) that
 (19) Could I or did I There were a couple of occasions I have a
 (20) general recollection if something came up that I had to go
 (21) do
 (22) and I just went and did it and drank nothing else So if you
 (23) say out of control, or once the ball started rolling down the
 (24) hill I couldn't stop, I would have to disagree with that
 (25) characterization That's the only way I can answer
 (26) Q And then does it continue on?
 (27) A Yeah, were there occasions when you knew you had
 (28) already
 (29) had too much to drink and continued drinking There was
 (30) an
 (31) objection talking about the periods of time when he was

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- (1) abusing alcohol according to his definition The
 (2) questioning
 (3) attorney, correct My answer I felt I had too much and had
 (4) another yes
 (5) Q On any of these questions when I asked you about your
 (6) deposition transcript if you want to go high or low in the
 (7) transcript, just let me know and we'll do that?
 (8) A Very well
 (9) Q Now this Mark Pierce that called you who was he?
 (10) A He was assigned on a temporary assignment in Baytown
 (11) Texas in the Gulf Coast Fleet to which I was attached as
 (12) the
 (13) port captain He was not a supervisory role he was kind of
 (14) liaison between the masters and deck officers of the Gulf
 (15) Coast
 (16) Fleet, kind of a liaison or conduit to management in the
 (17) operational sense of things
 (18) Q Was he a personal friend?
 (19) A I considered him a personal friend
 (20) Q Did you pal around with him at work or was it a personal
 (21) friend in a work trip?
 (22) A Personal friend in a work relationship and we
 (23) corresponded
 (24) over the years and bumped into each other occasionally
 (25) Q In the three or four months prior to the phone call from
 (26) Captain Pierce had you been out with him socially?
 (27) A I think I - socially I had gone out to dinner with himself
 (28) and his wife in Galveston Texas sometime in early
 (29) December I
 (30) believe

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- (1) Q One time?
 (2) A Yes
 (3) Q Did Captain Pierce in his telephone call to you say
 (4) anything about the fact that your problem whatever it was had
 (5) some effect on your job?
 (6) A I don't think he couched it in those terms He said if
 (7) you've got a problem take care of it
 (8) Q And the conversation with Captain Pierce was about a
 (9) minute and a half?
 (10) A Minute-and-a-half, yeah
 (11) Q And as a result of this minute and a half conversation you
 (12) went through the yellow pages and picked South Oaks out of
 (13) the
 (14) yellow pages?
 (15) A That's correct
 (16) Q And you talked to your wife?
 (17) A Yes
 (18) Q And you went to South Oaks?
 (19) A Yes
 (20) Q And you had your bag packed when you went to South Oaks
 (21) you brought a suitcase with you or a bag or a gym bag that had
 (22) clothes in it?
 (23) A Yeah
 (24) Q When you went to South Oaks you had no understanding
 (25) would it be fair to say as to what the diagnosis was going to
 (26) be or the treatment?

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- (1) A No I left that for them to make that determination
 (2) Q And you went to South Oaks with your bag packed and then
 (3) you were admitted to South Oaks and you spent 28 days there?
 (4) A Yes
 (5) Q And then you got out of South Oaks?
 (6) A That's correct
 (7) Q Now did you get a second call from Mr Pierce or did you
 (8) call him?
 (9) A I believe I called him back
 (10) Q I'm sorry and about when was that?
 (11) A I think that was later that same day in the afternoon I
 (12) believe
 (13) Q Of the day that he called you?
 (14) A Yes
 (15) Q And what did you tell him?
 (16) A I said I would be availing myself of this treatment
 (17) facility I don't know if I mentioned it by name or not I
 (18) called and made an admission appointment that I would be
 (19) checking in there, I think this was on a Thursday or Friday I
 (20) spoke to him, I would be going in there on Monday
 (21) Q Did he give you an administrative contact?
 (22) A Yes, he - as I recall, he said when you check in or
 (23) you're going through the admissions procedure your
 (24) contact, or
 (25) their contact would be a Mr Ben Graves and he gave me a
 (26) phone
 (27) number for him

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- (1) Q Did you meet Mr Graves?
 (2) A No
 (3) Q Have you ever met Mr Graves?
 (4) A No
 (5) Q So would it be fair from the time you were born until the
 (6) time we sit here today you have never met Mr Ben Graves?
 (7) A Not to the best of my knowledge
 (8) Q I don't know You know in all of the research I've done
 (9) I can't come up with it
 (10) Now when you talked to Captain Pierce over the phone you
 (11) called him back did you give him any details about what the
 (12) program was?
 (13) A No
 (14) Q Was it just generally vague?
 (15) A I just told him I was going to be getting some help the
 (16) following Monday
 (17) Q Now there is a fellow at Exxon named Mr Tompkins who
 (18) claims he was on this call with you or on a call with you and
 (19) Mr Pierce in which this subject was discussed?
 (20) A You mean like a conference --
 (21) Q A conference call?
 (22) A Uh-huh
 (23) Q Have you ever been on a conference call with Mr Tompkins
 (24) on this subject?
 (25) A Not on this subject an not to my knowledge I wasn't

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- (1) aware of it
 (2) Q Now, while you were at South Oaks your treating physician
 (3) was a Dr Vallury?
 (4) A That's correct
 (5) Q And we're going to play his videotape after we finish with
 (6) you
 (7) A Uh-huh
 (8) Q When you got out of South Oaks was there a
 (9) recommendation
 (10) with regard to drinking?
 (11) A Yes not to -- general recommendation was not to drink
 (12) Q When you left South Oaks did they have an aftercare
 (13) program?
 (14) A Yes
 (15) Q Did you go to the aftercare program?
 (16) A For a period of time, yes
 (17) Q At some point in time did you quit going to the aftercare
 (18) program?
 (19) A Yes
 (20) Q You dropped out of it?
 (21) A Yes
 (22) Q Would you tell us why you dropped out of the aftercare
 (23) program?
 (24) A Well, my primary reason for dropping out was the people
 (25) that were in this aftercare group I was assigned to
 randomly, I
 guess, had an overwhelming obsession with -- all they
 talked

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- (1) about was drinking
 (2) Q Now this aftercare program was run by South Oaks?
 (3) A The outpatient unit of South Oaks yeah
 (4) Q And you didn't finish the program you dropped out of the
 (5) program?
 (6) A As I understood it there was no start or finish People
 (7) were -- it was a dynamic process that people were cycling
 (8) through all the time
 (9) Q Well if you go to 1290 of your deposition transcript on
 (10) the top of the page of 1290 I think you describe your leaving
 (11) the aftercare program as dropping out Could you just check
 (12) that and see if I'm right?
 (13) A Yeah I kind of dropped out I quit going yeah As far
 (14) as a start and finish a lot of time -- I don't know if there
 (15) was a --
 (16) Q Now at the time you got out of South Oaks did you still
 (17) have alcohol in your house?
 (18) A As I recall yeah
 (19) Q At the time you got out of South Oaks one of the things
 (20) you did in conjunction with the 28 day program is you started
 (21) participating in Alcoholics Anonymous?
 (22) A I attended the meetings, yeah
 (23) Q And indeed for the first 90 days after you got out did
 (24) you go to meetings?
 (25) A That's correct

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- (1) Q Did your wife go to any program like Alcoholics Anonymous?
 (2) A She went in to -- I guess it's called Alanon
 (3) Q Alanon And in Alcoholics Anonymous what is Alcoholics
 (4) Anonymous?
 (5) A It's a self-help program for people that have a desire to
 (6) stop drinking
 (7) Q And indeed under the third tradition of Alcoholics
 (8) Anonymous the desire to stop drinking is the one requisite of
 (9) the help isn't it?
 (10) A As I recall, yes
 (11) Q And in Alcoholics Anonymous you get something called a
 (12) sponsor?
 (13) A You're advised to pick a sponsor, yeah
 (14) Q Did you pick either a permanent sponsor or a temporary
 (15) sponsor?
 (16) A I had a couple temporaries
 (17) Q And you had temporary sponsors from mid '85 through
 (18) when?
 (19) A Until fall of '88 I think so possibly -- yeah, fall of
 (20) '88
 (21) Q Now you were on -- while you went to South Oaks you were
 (22) on a paid disability?
 (23) A During the inpatient portion of that yes
 (24) Q And then when you took the 90 days off from South -- the 90
 (25) days off from Exxon to go to the 90 days of AA and to go to
 some aftercare --

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- (1) A Yes
 (2) Q - Exxon didn't pay you then did they?
 (3) A No
 (4) Q Now when you came out of South Oaks did you have any kind
 (5) of plan to abstain from drinking?
 (6) A I had a generalized plan to not drink see how it went
 (7) Q With regard to the decision to attend Alanon was that your
 (8) wife's decision?
 (9) A As far as I know yeah
 (10) Q Did you enjoy going to the AA meetings?
 (11) A For the most part, yeah it was pretty enlightening, and I
 (12) met some nice people
 (13) Q At some point in time you had a conversation with Ben
 (14) Graves - this Mr Graves who you never met you had a
 (15) conversation with him on the telephone?
 (16) A That's correct
 (17) Q Who said what to who?
 (18) A He called me up and asked me some questions I believe
 (19) it
 (20) was - I'm not sure of the date I think it was in May
 (21) sometime
 (22) Q This is right about the time you got out of South Oaks?
 (23) A Shortly thereafter It's kind of a goofy hook up He was
 (24) in Newark and he left a message or something like that and
 (25) I
 (26) contacted him at a hotel or motel
 (27) Q And you talked to him on the phone?

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- (1) A Uh huh
 (2) Q What did he ask you?
 (3) A He asked me some questions including whether I had
 (4) ever
 (5) drunk on Exxon vessels
 (6) Q What did you tell him?
 (7) A I told him yes I had
 (8) Q Did you tell him that you had ever returned to Exxon
 (9) vessels drunk?
 (10) A No
 (11) Q Did you ever tell him you had returned to Exxon vessels
 (12) after drinking?
 (13) A Yes
 (14) Q I'm going to show you what is in evidence as number -
 (15) plaintiffs Exhibit No 160 You've seen this before this is
 (16) the so called Graves report?
 (17) A Yes
 (18) Q Probably more than you've ever wanted to?
 (19) A Yes
 (20) Q And I want to know on the Graves report do you know who
 (21) Mr W J Davis is?
 (22) A No, I sure don't
 (23) Q How about Mr F J Larossi?
 (24) A Yes
 (25) Q Who is he?
 (26) A At the time he was the President of the Exxon Shipping

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- (1) Company
 (2) Q And on the second page of the Graves report there is the
 (3) statement I asked Joe if he ever drank aboard ship He
 (4) commented that he occasionally drank aboard ship but not
 (5) frequently He also indicated that he came back to the ship
 (6) from port drunk on several occasions
 (7) Did I read that right?
 (8) A Yes
 (9) Q Now with regard to drinking aboard ship that's a
 (10) violation - that was at the time a violation of Exxon policy
 (11) wasn't it?
 (12) A That's correct
 (13) Q And why would Mr Graves say - well I'm speculating why
 (14) Mr Graves would say anything
 (15) With regard to this conversation that you had with Mr
 (16) Graves and what you told him about violating corporate policy
 (17) and about returning to ship after drinking did anybody ever
 (18) follow up on that and say, reprimand you or -
 (19) A No, not a specific reprimand, no
 (20) Q Now other than this conversation that you had with Mr
 (21) Graves on the telephone this one time were there any other
 (22) conversations with Exxon people about this drinking on ship
 (23) and
 (24) returning to ship after drinking?
 (25) A Directed at me specifically
 (26) Q Yeah Did anybody call you in and say we have these

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- (1) reports I want we want to clear them up we have them what
 (2) are we going to do about them or words to that affect?
 (3) A For those incidents that I spoke to Mr Graves about?
 (4) Q Yes
 (5) A Not that I'm aware of no
 (6) Q Do you recall how long this telephone call with Mr Graves
 (7) was?
 (8) A I'd say five or seven minutes, maybe ten minutes at the
 (9) most
 (10) Q In the years that you went to AA did your wife ever attend
 (11) any AA meetings with you?
 (12) A I think one or two, yeah They are general public
 (13) meetings
 (14) Q Would you tell us - they have two kinds of meetings in AA?
 (15) A Well, yes, two that I'm aware of
 (16) Q There is a general public meeting?
 (17) A Open meeting
 (18) Q And then closed meetings?
 (19) A And then closed meetings
 (20) Q What's the difference between the two?
 (21) A The open meeting is open to the public Anybody can
 (22) come
 (23) in, they have speakers, and that's about all there is to it
 (24) Q Now you attended both opened and closed meetings?
 (25) A Both, yes
 (26) Q Now we've gotten you through South Oaks we've talked
 (27) about

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- (1) Mr Graves We've talked about the 90 days after South Oaks
 (2) Is there anything significant in that period - and this is an
 (3) open ended question which lawyers are never supposed to ask
 -
 (4) is there anything significant in that period that I've missed?
 (5) MR CHALOS Your Honor I object to that question
 (6) MR O NEILL I'll withdraw the question
 (7) BY MR O NEILL
 (8) Q Have we fairly discussed the subjects we've discussed up to
 (9) this point in time?
 (10) A Yes
 (11) Q Now at some point in time there has to be some kind of a
 (12) discussion about going back to work?
 (13) A That's correct
 (14) Q What was that discussion?
 (15) A There was a couple of discussions
 (16) Q What was the first one?
 (17) A I was contacted by my physician, Dr Vallury, who
 (18) informed
 (19) me that he had been contacted by Exxon physician named
 (20) Dr
 (21) Montgomery and he indicated to me that he had relayed to
 (22) Dr
 (23) Montgomery that I was fit to return to sea duty
 (24) Q At some point in time a Ms Helen Shorret (ph) called you?
 (25) A Shortly thereafter
 (26) Q And she said that Mr John Tompkins who was the fleet
 (27) manager and Captain Sheehy who had replaced Captain Pierce
 (28) as
 (29) the port captain wanted to meet with you in a hotel outside of

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- (1) Houston?
 (2) A Prior to rejoining the Exxon Yorktown yes
 (3) Q Mr Tompkins the gulf coast fleet manager is that a high
 (4) position at Exxon Shipping Company chain of command wise?
 (5) A Chain of command, yeah That's set up, I guess it's
 (6) number
 (7) three, yeah
 (8) Q And how about Captain Sheehy?
 (9) A No that was a rotating assignment of different masters of
 (10) the fleet So it was no more than a master
 (11) Q Let's talk about that kind of position Do you call that a
 (12) port captain?
 (13) A Yes
 (14) Q And that is a job that's given to somebody who is a captain
 (15) like yourself?
 (16) A That's correct
 (17) Q And for how long?
 (18) A Well, when I first went to work at Exxon, or Humble Oil, at
 (19) the time, the port captain was a supervisor He ran - all the
 (20) captains were under his supervision, or thumb, if you will,
 (21) and
 (22) he was in charge of the operation from the deck department
 (23) end
 (24) of things, masters and mates, essentially belonged to him
 (25) and
 (26) he supervised every one of them in the fleet, and there was
 (27) a
 (28) port engineer, does the same thing for the engineers Over
 (29) the
 (30) years, the port captain's job was displaced as a supervisory
 (31) billet, if you will, and it became more of a liaison type of

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- (1) deal where they were rotating masters from the fleet or
 (2) engineers of the fleet for port position
 (3) Q You're colleagues?
 (4) A Colleagues yeah
 (5) Q People that are equal level and equal status with you?
 (6) A Yeah some junior and seniority
 (7) Q Some are senior?
 (8) A And experienced and some are senior
 (9) Q For how long would you get this assignment a year or two?
 (10) A I think the nominal assignment was two years
 (11) Q So you could go to sea for six or eight or ten years and
 (12) then be a port captain for two years and then go back to sea?
 (13) A Or if you smelled the corporate aroma you would follow
 (14) that scent
 (15) Q A management meal so to speak?
 (16) A So to speak, yeah
 (17) Q We were talking about captains and I wanted to stop here
 (18) for a second because we were talking about captains but I want
 (19) talk about what a ship captain is and that is a subject to
 (20) which you have dedicated a major portion of your adult life is
 (21) that a correct statement?
 (22) A Yes
 (23) Q Would you tell us what a ship captain is?
 (24) A His primary goal is the safety of his crew secondary goal
 (25) is safety of the ship, and the third or tertiary is the safe

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- (1) and expeditious delivery of the cargo to the owner, whoever
 (2) that may be
 (3) Q It takes some years and training to become a captain a
 (4) supertanker captain?
 (5) A Yeah a number of years and formal - more on-the-job
 (6) training than formalized classroom, is what you're saying
 (7) Q Are most of your colleagues ship captains that are
 (8) graduates of a maritime academy or the Merchant Marine
 (9) Academy
 (10) or the Coast Guard Academy?
 (11) A Yes in this day and age yes
 (12) Q And that's because of both the complexities of the job and
 (13) the responsibilities of the job?
 (14) A No - yes and no It's a little more complex and a little
 (15) more higher tech than it used to be, but the job is
 (16) essentially
 (17) the same
 (18) Q The job is one of great responsibility?
 (19) A Yes
 (20) Q And this is a model of the Exxon Valdez that I have here
 (21) and does it - aside from its size does it look pretty much to
 (22) you like the Valdez?
 (23) A Yeah, pretty much so
 (24) Q And I'm going to put it right in front of you right here
 (25) if I could I have a couple little cars are on it They are
 (26) on the Valdez for scale
 (27) A You left out the swimming pool

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- (1) Q Why don't you tell them if you would use this model of
 (2) the Valdez what basically the ship is and -
 (3) A Well it's simple this is the pointy end or the bow You
 (4) have the hull Most of this area from here forward is for
 (5) carrying cargo with the exception of an area in here and an
 (6) area in here - (indicating) - which would be seawater
 (7) ballast That's all it would carry When the oil is in there
 (8) they are empty When the oil has been discharged they are
 (9) filled up with seawater
 (10) This is generally where the hose and everything is
 (11) connected, this manifold here, just like a fancy version of
 (12) filling up your gas in your car And it's rerouted through
 (13) these pipes into the various tanks Here is where
 (14) everybody
 (15) lives, and here essentially under the stack is where the
 (16) machinery space is or engine room is They have some
 (17) lifeboats
 (18) here and up here is the bridge, or the navigation bridge
 (19) where
 (20) the ship is steered from and navigated from and down here
 (21) in
 (22) the hull is the machine room where the engine is kept, the
 (23) propulsion
 (24) Q And it's a pretty big thing, isn't it?
 (25) A In this day and age, it's kind of a mid size
 (26) Q It's a mid size?
 (27) A Yeah
 (28) Q With regard to Exxon's relationship with its masters
 (29) that's what I'm going to talk about so you know where I'm

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- (1) going, at one point in time when you were there masters were
 (2) union members?
 (3) A That's correct, yeah
 (4) Q And in about 1973 masters were no longer union members?
 (5) A In that time frame, '73 to '74, the masters were removed
 (6) from contract
 (7) Q And in 1976 masters were put on merit salary about then?
 (8) A It was a couple years after they were taken out of
 (9) contractual agreements, yes
 (10) Q Would you explain that?
 (11) A Well there was - the late '70s - the early '70s the
 (12) masters were no longer represented by a union, which we
 (13) were
 (14) under employment contract with Exxon A couple years
 (15) later
 (16) with the masters, it was implemented that we were going to
 (17) go
 (18) on what - on merit salary program which essentially
 (19) assigned
 (20) a base wage for plain vanilla captain and on a yearly or 18
 (21) month basis they would re-rate you by a number of criteria
 (22) and
 (23) then all the masters would be - their numbers would be
 (24) crunched, where everybody fell out they fell out And
 (25) whether
 (26) you were below or above that base wage would determine
 (27) how much
 (28) you make
 (29) Q And in 19 -
 (30) A Essentially that's it
 (31) Q Sorry In 1981, what is ITOA?
 (32) A Well, prior to that there was the JSTOA, which was the

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- (1) Jersey Standard Tankers Officers Association which is the
 (2) union that represented the deck and engine officers
 (3) masters
 (4) and chief engineers included affiliated with the national
 (5) union Short period of time thereafter Exxon management
 (6) after they arm-twisted enough votes out of people,
 (7) recognized
 (8) the ITOA, which was just a bunch of people that put in
 (9) pledge
 (10) cards the companies BS'd and that union was recognized
 (11) as the
 (12) representative, except for masters
 (13) Q And that union contract expired in 1981?
 (14) A '81, it did, but then in '81 I think this merit salary
 (15) stuff was - went over to the chief engineers, the chief mates
 (16) and first assistants I think, if I'm not mistaken, the second
 (17) mates, third mates had a contract of sorts They didn't go
 (18) on
 (19) merit salary
 (20) Q They were put on merit salary in 1982?
 (21) A Okay
 (22) Q And the chief mates and first assistants in 1982 and the
 (23) second and third mates in '83 do you recall that?
 (24) A Yeah I know it was a gradual
 (25) Q Sometime in the early '80s as a result of taking the
 (26) officers out of the unions and putting them on merit salary
 (27) they turned the officers into management?
 (28) A At that juncture, we were told that we were management,
 (29) yes, which changed subsequent
 (30) Q They never formally told you you weren't management?

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- (1) A Yes, they did In '85, we were told we weren't
 (2) management
 (3) Q There was a pay raise in '85?
 (4) A For management, yes
 (5) Q And you didn't get a pay raise?
 (6) A No, we got pay cuts because we were told we were not
 (7) management
 (8) Q But there was no formal document that said you were not
 (9) management was there?
 (10) A Not that I'm aware of
 (11) Q Now the captain of the vessel commands the vessel?
 (12) A That's correct
 (13) Q And he has the power to discipline the crew?
 (14) A Yes
 (15) Q And if you log someone for a violation of whatever rules
 (16) that you're going by you can take a day's pay, can't you?
 (17) A On foreign articles, yes
 (18) Q And the captain has the power to decide whether to leave
 (19) the port or not?
 (20) A I don't follow you
 (21) Q If a vessel is in Valdez port and is loaded and you as the
 (22) captain don't want the vessel to go for a safety reason or
 (23) another reason you can prevent the vessel from going, can't
 (24) you?
 (25) A I see, yeah, sure
 (26) Q That is a power that you have?

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- (1) A You can make that determination yeah
- (2) Q And you evaluate the crews?
- (3) A Generally that's left up to the watch officer the
- (4) individual crew member is assigned to You talk to the
- (5) watch
- (6) officer who did the evaluation
- (7) Q So you sign off on the watch officer's evaluation?
- (8) A Generally speaking yeah
- (9) Q So you're a step above the watch officer who evaluates the
- (10) crews?
- (11) A Yes because he or she has interaction with them on a
- (12) daily
- (13) basis
- (14) Q Do you have the power to contract when you're in port when
- (15) you need to provision the vessel and there isn't something that
- (16) the agent is providing do you have the power to contract?
- (17) A Well, when I left Exxon that was kind of fuzzy We had the
- (18) power of requisition, but not the power of authorization, as I
- (19) recall
- (20) Q What's the power of requisition?
- (21) A There was never, I asked and asked and asked and
- (22) nobody
- (23) ever told me, because - basically \$10,000 line of credit but
- (24) you couldn't spend it
- (25) Q One of these Valdez, the Valdez what does it cost?
- (26) A On a U S yard, I think her construction price is 125
- (27) million
- (28) Q And when the Valdez is fully laden - is that the right way

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- (1) to say that?
- (2) A Uh huh
- (3) Q How much oil is on it?
- (4) A Depends on what kind of oil Alaskan crude, to summer
- (5) marks, would be a million five
- (6) Q A million five?
- (7) A 1,500,000
- (8) Q And there are 42 gallons to a barrel?
- (9) A That's correct
- (10) Q So that would be -
- (11) A A lot of oil
- (12) Q We found that out didn't we?
- (13) A We certainly did
- (14) Q Now let's go back we discussed captains and unions let's
- (15) go back to Ms Shorret a phone call and this is after the 90
- (16) days of unpaid leave?
- (17) A That's correct
- (18) Q And she said the Gulf Coast port captains Tompkins and
- (19) Sheehy want to talk to you?
- (20) A That's correct She was the manning assignment clerk
- (21) who
- (22) handled the masters and I think chief mates So she would
- (23) call
- (24) me up on occasion and say tell me where the ship was going
- (25) to
- (26) be, where it was, and when I was supposed to meet it So it
- (27) wasn't a lightning bolt that she called me with this
- (28) information

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- (1) Q Was there an appointed date to meet?
- (2) A Yes as I recall, yes
- (3) Q Where were you going to meet?
- (4) A As I recall it was a Greens Point or something I forget
- (5) the name of the hotel out at international airport at Houston
- (6) Q Who was the first one that you met with?
- (7) A I met Captain Sheehy first
- (8) Q Where did you meet with him in the hotel?
- (9) A I first approached the registration desk to see if he was
- (10) registered there, because I had only met him once before
- (11) and I
- (12) was walking there in the lobby and I saw him, and we went
- (13) to,
- (14) it's a sidewalk cafe it's in the lobby some palm trees in
- (15) part of the lobby, and sat down
- (16) Q I want to focus on what you just said You just called it
- (17) a sidewalk cafe?
- (18) A I think that's what it was labeled as something cafe It
- (19) had umbrellas and stuff like that
- (20) Q And you were here for my opening?
- (21) A Yes
- (22) Q And what did I call it in my opening?
- (23) A I believe you called it a bar
- (24) Q And where did I get that?
- (25) A I guess from me It was a lobby, bar, cafe, whatever
- (26) Q Let's go to page 1436 of your deposition transcript?
- (27) A Okay

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- (1) Q Let's go to line 6 and will you read - let's go to line
- (2) 5 and will you read to the jury the question at line 5 and
- (3) your answer?
- (4) A Then what happened We went over to a lounge lobby,
- (5) lounge, some little bar, restaurant there in the open air and
- (6) sat down
- (7) Q And at that point in time in your answer, and you're
- (8) focusing on this event did you call it a cafe?
- (9) A No, I guess I didn't Lobby, lounge, bar, it was an open
- (10) air bar, restaurant
- (11) Q What did Mr Sheehy do Captain Sheehy?
- (12) A You mean as per my deposition?
- (13) Q If you can remember tell me or if you want to look at
- (14) your deposition look at your deposition
- (15) A I think he ordered a beer I ordered a diet soda or club
- (16) soda, whatever I had
- (17) Q This meeting at this lobby, lounge, bar restaurant this
- (18) meeting when Mr Sheehy ordered a beer, was that the first
- (19) contact in person that you had with anybody from Exxon
- (20) Shipping
- (21) Company, or Exxon Corporation following leaving the South
- (22) Oaks
- (23) medical facility?
- (24) A Yeah, I think that was the first face to face
- (25) Q Now have you reviewed in the time that you've spent with
- (26) this case, which is more than should be visited on anyone have
- (27) you had the chance to review Mr Sheehy or Captain Sheehy's

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- (1) version of that testimony?
 (2) A Uh huh
 (3) Q And he says that he discussed with you whether you were
 (4) drinking anymore or not?
 (5) A Yes sum and substance of that
 (6) MR NEAL Your Honor could I have an objection?
 (7) We'll approach the bench if you don't want to talk about it in
 (8) the presence of jury
 (9) MR O NEILL I don't see anything unfair about it
 (10) THE COURT What's the objection to?
 (11) MR NEAL I think it's appropriate to ask the witness
 (12) what happened He's asking him is something else now - he's
 (13) comparing his testimony with somebody else's He can ask the
 (14) witness what happened there but comparing him with what
 (15) somebody else said I think is argumentative
 (16) THE COURT I'll watch it Let's proceed a little bit
 (17) and see how it goes
 (18) MR O NEILL Could you read his answer back please?
 (19) (Record read)
 (20) BY MR O NEILL
 (21) Q Did that discussion take place?
 (22) A No
 (23) Q Thank you What did you and Mr Sheehy discuss?
 (24) A When we first met at the lobby there by the registration
 (25) desk he indicated to me that Mr Tompkins his superior or my

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- (1) superior as well had assigned him the role of explaining to
 (2) me
 (3) some wrinkles or changes or alterations if you will that had
 (4) occurred in the union contract for the crew in my absence,
 (5) and
 (6) that's what he was there to do
 (7) Q So he updated you on some union matters?
 (8) A Union interpretation of the new contract for the crew
 (9) members, yeah
 (10) Q Would it be fair to say that there was no discussion of
 (11) either your stay in South Oaks or aftercare or AA or drinking
 (12) in your conversation with Mr Sheehy?
 (13) A No, strictly business
 (14) Q My statement was a correct statement?
 (15) MR NEAL Objection
 (16) BY MR O NEILL
 (17) Q I'll reask the question sometimes when I say would it be
 (18) fair to say and you say no the transcript gets goofed up
 (19) Is this a fair statement There was no discussion between
 (20) you and Mr Sheehy of South Oaks aftercare, AA or drinking, is
 (21) that a correct statement?
 (22) A None that I was, you know - no
 (23) Q My statement is a correct statement?
 (24) A Your statement is a correct statement I'm a little slow
 (25) Q If we're going too fast or you want to take a break you
 (26) tell us
 (27) Now you had a meeting then with Mr Tompkins?

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- (1) A That's correct yes
 (2) Q And where did that meeting take place?
 (3) A It was in the same hotel a couple decks up in a meeting
 (4) room, or a conference room where he was - appeared to me
 (5) he
 (6) had been doing something during the earlier part of the day,
 (7) I
 (8) don't know what, conferring with somebody He and I sat
 (9) down
 (10) in this conference room
 (11) Q Who said what to whom?
 (12) A He indicated to me - he welcomed me back He said it's
 (13) good to see you, welcome back to the fleet shook my hand
 (14) and
 (15) after the pleasantries were over, he indicated to me, he said
 (16) what you've just been through is confidential in nature and
 (17) only a few people will know, he says, but we all know what
 (18) the
 (19) rumor mill is like in this fleet, so be prepared for rumors to
 (20) start leaking out And I indicated to him at the same time
 (21) that any sources of any rumors wouldn't be from me And then
 (22) he indicated to me he had in a pile of papers like this,
 (23) maybe
 (24) a little skinnier, he had what was labeled on a cover sheet
 (25) the
 (26) current, I guess it was, I forgot the date, Exxon Alcohol and
 (27) Drug Policy And at that juncture, he looked me square in
 (28) the
 (29) eyes and told me in no uncertain terms that there would be
 (30) no
 (31) violations permitted of the Exxon alcohol policy
 (32) Q Now let me ask you a question about the policy Was that
 (33) the policy manual itself or was it a xeroxed copy of the
 (34) front page?

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- (1) A That I couldn't tell you He just kind of patted his hand
 (2) on it As I indicated it was a pile of papers a little
 (3) thicker than that It was a cover sheet
 (4) Q We can dig it out but you've testified you thought it was
 (5) the xerox copy of the cover page?
 (6) A It was a xerox cover page, I don't know what was
 (7) underneath
 (8) it
 (9) Q And he said you had to comply with the policy, or words to
 (10) that effect?
 (11) A It was more like, there will be no violations tolerated
 (12) Q Of the policy?
 (13) A Yes
 (14) Q Now I want to ask you a series of questions about whether
 (15) these topics were discussed in this meeting with Mr Tompkins?
 (16) A Very well
 (17) Q Was AA discussed?
 (18) A No
 (19) Q Was aftercare discussed?
 (20) A No
 (21) Q Was the subject of your personal drinking discussed?
 (22) A No
 (23) Q Was the subject of drinking on board vessels or returning
 (24) to vessels after having drunk discussed?
 (25) A No
 (26) Q Was - were you told not to drink?

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- (1) A With the exception of the parameters of the alcohol policy,
- (2) no
- (3) Q Were you told that you were going to be monitored?
- (4) A Well, in his imitable fashion Mr Tompkins kind of indicated to me I was going to be watched
- (5) Q Did he tell you you were going to be watched?
- (6) A He didn't verbalize that no
- (7) Q So he did not tell you you were going to be watched?
- (8) A No
- (9) Q Did he tell you you were going to be monitored?
- (10) A No, it was just, look forward to working with you
- (11) Q Did he tell you or discuss with you anything that Exxon could do to facilitate attendance at Alcoholics Anonymous?
- (12) A No, that subject wasn't broached
- (13) Q Now, there were these two meetings?
- (14) A Yes
- (15) Q And then you were -- then you rejoined the fleet?
- (16) A Yes
- (17) Q Now, have we covered the subject matter of these two meetings fairly?
- (18) A Yes
- (19) Q How did you rejoin the fleet?
- (20) A Following morning I flew from Houston to Jacksonville Florida, and waited until the ship docked and joined it later that evening

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- (1) Q Let's talk for a minute, are you aware at all that you had been recommended on prior occasions for shore side duty assignments like port captain?
- (2) A I wasn't aware of that I remember Mark Pierce when he first got the job, kind of approached me I don't know, by phone or somewhere along the line, asking me if I would be interested in being his relief when his time was up
- (3) Q His time would have been up in the summer of '85?
- (4) A No, I think he stayed on for an extra year He was due off in the summer of '84
- (5) Q So point in fact, in the summer of '85, Mr Pierce, his stint as port captain ended in the summer of '85 and somebody else picked up?
- (6) A Captain Sheehy replaced him
- (7) Q So at the same time you were going through the 90 days of unpaid leave, the port captain's job switched?
- (8) A Somewhere in there yeah
- (9) Q Did they offer you a port captain's job?
- (10) A No, they probably knew better
- (11) Q A port captain's job is it fair to say, is one of comparable status, have the same people that do it, isn't that right?
- (12) A Uh-huh
- (13) Q With no cut in pay?
- (14) A As far as I am aware of, yeah

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- (1) MR O NEILL I'm about to move onto a new subject
- (2) THE COURT Ladies and Gentlemen we'll take our second recess at this point Please don't have any discussions about the case We'll resume in 15 minutes please
- (3) THE CLERK This court is in recess for 15 minutes
- (4) (Recess at 12 00 noon)
- (5) (Jury in at 12 18)
- (6) THE CLERK All rise
- (7) BY MR O NEILL
- (8) Q Let's go back about where we left off
- (9) A You bet
- (10) Q And I asked you a question did they discuss the shore side assignment with you or port captain's assignment and you said
- (11) something along the line of not if they knew what was good for them, or words to that effect?
- (12) A No, Captain Pierce proffered that early on and he knew my position on it and he probably relayed that to the powers to be that were in charge of nominating the next candidate for that position
- (13) Q At one point in time you told Captain Pierce you were interested in a shore side assignment didn't you?
- (14) A I said I might be interested in relieving him
- (15) Q That was as port captain as a shore side assignment?
- (16) A If he was really desperate, yeah
- (17) Q And have you ever had an opportunity to take a look at your

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- (1) Exxon personnel records in this litigation?
- (2) A Just vis a-vis this litigation
- (3) Q They are Exhibit 11, or pages from them are on Exhibit 11?
- (4) A Yes
- (5) Q I'm going to pull up a page and we can look at it on the monitor if I can run the monitor Do you got it on the monitor in front of you?
- (6) A Yeah, I sure do
- (7) Q And if I can do this correctly, we're off and running
- (8) This is from one of your evaluations prior to 1985 and this subsistence here indicates some discussion of a shore side assignment doesn't it?
- (9) A That's correct
- (10) Q I'm trying to get another page up This the original up there?
- (11) A I believe --
- (12) Q Does it have a good sticker on it? Let me borrow that for a minute
- (13) A It's in here somewhere That's too early, that's '81
- (14) Q I pulled another entry from the record up on the monitor and it's a pre '85 entry?
- (15) A Uh huh
- (16) Q And that again raises the possibility of a shore side assignment?
- (17) A Yeah

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- (1) Q So would it be fair to say that in the summer of 1985 the
 (2) subject had been raised at least a couple times in your
 (3) performance reports and you and Captain Pierce had talked
 (4) about it and you said you would be interested in it?
 (5) A Yes
 (6) Q Now when we left off you had finished your meeting with
 (7) Sheehy and Tompkins and you d met one day and then the
 next
 (8) day you were flown to New Orleans?
 (9) A No, Jacksonville, Florida
 (10) Q And you assumed the command of the Yorktown?
 (11) A That's correct
 (12) Q And the Yorktown was what kind of vessel?
 (13) A She was 41 000 ton handy sized tanker that had been in
 the
 (14) products of trade She was at that time in the dirty oil
 (15) trade, heavy fuels and crude oil
 (16) Q And the Yorktown tour of duty was 99 days?
 (17) A Something like that, I recall seeing
 (18) Q Would it be fair to say that 99 days was as long a tour
 (19) that you had had working for Exxon or about as long a tour you
 (20) had had working for Exxon?
 (21) A About as long, maybe longer
 (22) Q Up to the time of assuming the command of the Yorktown
 you
 (23) had been going to AA?
 (24) A Yeah
 (25) Q And on the 99 day tour aboard the Yorktown would it be

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- (1) fair to say that AA was unavailable?
 (2) A Pretty much yeah
 (3) Q You can't go in you're on a ship?
 (4) A No, and the ports we were calling in were remote
 (5) Q Would it be fair to say that up to the time of assuming
 (6) command of the Yorktown there had been no discussion with
 (7) anybody at all from Exxon Corporation or Exxon Shipping
 (8) Company with regard -- with regard to the availability of AA
 (9) while you were out on a vessel or what were we going to do
 (10) about that subject? That was not discussed?
 (11) A There was no discussion which was no surprise no
 (12) Q Now at the time you were assigned to the Yorktown would
 (13) it be fair to say that there was a shortage of masters in the
 (14) fleet?
 (15) A I -- there was a shortage possibly of promoted masters
 (16) There was plenty of relief masters around In fact a guy on
 (17) the Yorktown was a -- chief mate with a master's license,
 (18) stepped him up, plugged him in
 (19) Q Why don't we go to 1757 of your deposition transcript?
 (20) A Yeah
 (21) Q Down on line 24 and to put it in context the question on
 (22) line 24 deals with 1989 but you got to follow it through The
 (23) question is question was there a shortage of masters in the
 (24) Exxon fleet at that time Your answer was not that I recall
 (25) no And the question was was there -- there was a shortage in

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- (1) 1989 was there And your answer was there was a short time
 (2) bubble shortage in the 84 85 sloughing off into 86 time
 (3) frame Question around the time that you were reassigned to
 (4) the Yorktown after South Oaks Answer yes Question what
 do
 (5) you mean by bubble shortage Answer they had acquired
 these
 (6) two the Yorktown and her sister ship the charter they had
 (7) the two new builds the Long Beach and the Valdez going on in
 (8) San Diego which consumed some masters and engineers
 There was
 (9) an overall officer shortages especially in the senior
 (10) rankings and they were still holding onto some ships They
 (11) were in engaged in the hondo trade They were due to be sold
 (12) or laid up but they were still operating so there was kind of
 (13) a shortage short term shortage In other words a bubble in
 (14) the shortage at the time a lot of people stepping up to fill
 (15) in gaps
 (16) Did I read the questions and the answers correctly?
 (17) A Yes, yes, a lot of people stepping up
 (18) MR CHALOS Your Honor, I'm sorry to interrupt may
 (19) we approach the bench?
 (20) (Bench Conference off the Record)
 (21) BY MR O NEILL
 (22) Q So would it be fair to say that there was a shortage at the
 (23) time?
 (24) A I can't agree with you on that one There was a shortage
 (25) but it was replaceable There was plenty of people in the

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- (1) lower rankings with the license to fill in to cover those spots
 (2) to a temporary basis, and I think my deposition indicates
 (3) that A lot of people stepping up to fill the gaps
 (4) Q Who used the term bubble shortage in the deposition the
 (5) questioner or you?
 (6) A I did
 (7) Q Now there was no AA available on the Yorktown --
 (8) A That's correct
 (9) Q -- for this first tour
 (10) Did you call your sponsor your AA sponsor while you were
 (11) on the Yorktown?
 (12) A There was very limited phone contact No
 (13) Q How about the entire period from your return from South
 (14) Oaks to your last tour on the Yorktown on any of your sea
 (15) tours did you call your AA sponsor?
 (16) A A couple times I did, one of my sponsors, yeah
 (17) Q Do you know Captain Andre Martineau?
 (18) A Yes
 (19) Q At about the time that you were given the Yorktown was he
 (20) given a shore side assignment?
 (21) A He and I were co-masters on the Yorktown originally and
 (22) then when I came back after South Oaks, I think he went to
 the
 (23) west coast as port captain, yeah
 (24) Q Now with regard to your tour of duty from the Yorktown
 (25) that was about from 85 to 87?

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- (1) A Yeah the tail end of '84
 (2) Q And you didn't go to AA meetings on the vessels but when
 (3) you were home you did go to AA meetings?
 (4) A That's correct
 (5) Q And your wife went to Alanon meetings while you were
 home?
 (6) A As far as I knew that's where she was going
 (7) Q And you didn't drink while you were at home in the presence
 (8) of your wife?
 (9) A Not that I can recall, no
 (10) Q Now at some point in time did you resume drinking?
 (11) A Yes
 (12) Q And that was in about May of 1986?
 (13) A It was in the spring, yeah, April or May
 (14) Q So it was about one year after you got out of South Oaks?
 (15) A About a year, yeah
 (16) Q And you had a glass of wine?
 (17) A Yeah, it was a glass, maybe two even
 (18) Q In Manatee, Port Manatee?
 (19) A It was outside of Port Manatee, Florida, near Naples,
 yeah
 (20) Q And after that there were occasions when you drank with
 (21) Exxon Shipping Company employees in Philadelphia at the
 (22) Marriott Hotel outside of Philadelphia?
 (23) A Well, Marriott was close to where we were docked, yeah,
 out
 (24) of Philadelphia
 (25) Q And that was Mr St Pierre and a Mr Dengel?

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- (1) A That's correct
 (2) Q Would it be fair to say that with regard to your decision
 (3) to drink you weren't hiding anything from anybody?
 (4) A I didn't think much about it consciously
 (5) Q You weren't avoiding drinking in front of Exxon
 (6) management? It wasn't an issue was it?
 (7) A Never had been as far as I was concerned, no
 (8) Q In addition to this Philadelphia incident that I talked
 (9) about, you on occasion drank beer with Exxon employees in
 (10) Norfolk or New York?
 (11) A I said that in my deposition, and as best I recall, that's
 (12) where we were trading, yeah
 (13) Q And you'd have a couple two, three beers with - whatever
 (14) it was?
 (15) A Usually it was Mr Dengel and Mr St Pierre, plus Mr St
 (16) Pierre was going through kind of a sloppy divorce
 (17) Q And Baton Rouge -
 (18) MR CHALOS Your Honor excuse me the witness was in
 (19) the middle of an answer
 (20) BY MR O NEILL
 (21) Q I'm sorry, did I cut you off sir?
 (22) A Not really Baton Rouge, yes, I think I'll agree with
 (23) that
 (24) Q And flying home from your last assignment on the Yorktown?
 (25) A Possibly, probably I really don't know

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- (1) Q Would you disagree with the proposition that you had a
 (2) bloody mary or a drink on flying home from your last
 assignment
 (3) on the Yorktown?
 (4) A Entirely possible
 (5) Q Now at some point in time the Yorktown grounds in the
 (6) Mississippi?
 (7) A No not when I was on it
 (8) Q Did the Yorktown ground at all while you were on it?
 (9) A Well -
 (10) Q Where?
 (11) A Bolivar Roads
 (12) MR NEAL Object covered by the discovery master
 (13) Mr O Neill is not aware of it
 (14) THE COURT Is anyone on the plaintiffs side aware of
 (15) discovery master ruling on this point?
 (16) MR O NEILL I'll move on I'm unaware of it I'll
 (17) move on and we can revisit it tomorrow
 (18) BY MR O NEILL
 (19) Q With regard to your time aboard the Yorktown you'd drink
 (20) on occasion with Exxon Shipping Company employees not on
 the
 (21) vessel from 1985 to 87?
 (22) A Rather refer to them as shipmates
 (23) Q Shipmates?
 (24) A Yeah
 (25) Q Did anybody from 85 to 87 during this Yorktown period

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- (1) come and ask you anything about AA aftercare the availability
 (2) of AA how you were doing emotionally from Exxon Corporation
 (3) or Exxon Shipping Company?
 (4) A Well, considering I thought it was a private matter if
 (5) they had broached the subject beyond or proceeded beyond
 how
 (6) are you doing, I probably would have slammed the door in
 their
 (7) face
 (8) Q But the point is nobody did including Sheehy and
 (9) Tompkins?
 (10) A Tompkins, with the exception of the alcohol policy, no
 (11) Now, I was kind of in the dark of who knew what, to tell you
 (12) the truth
 (13) Q Did Mr Sheehy ever say anything to you about AA?
 (14) A No
 (15) Q Aftercare?
 (16) A No
 (17) Q The availability of AA meetings?
 (18) A No
 (19) Q The availability of your family as a support network?
 (20) A No You kind of lost me on the last one
 (21) Q Is it a fair statement to say, Captain, that from 85 to
 (22) 87 you had no knowledge that either Mr Sheehy or Mr Koops
 (23) were monitoring you specifically for alcohol use?
 (24) A I had no specific knowledge of that, no
 (25) Q And the subject of alcohol use, your alcohol use never came

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- (1) up with either of those gentlemen did it?
 (2) A Not that I'm aware of or can recall no
 (3) Q How about anybody from Houston headquarters Mecca is that
 (4) what you guys call it From '85 to '87 did anybody from
 (5) Houston headquarters Dr Montgomery or anybody like that talk
 (6) to you about whether you were going to AA meetings whether you
 (7) were drinking at all?
 (8) A Not specifically, no
 (9) Q Now you had - let's again take this through the end of
 (10) your Yorktown period
 (11) With regard to your AA attendance through the end of your
 (12) Yorktown tour of duty you continued to go at home?
 (13) A Yeah
 (14) Q And you continued to - your wife continued to go to
 (15) Alanon or at least that's what she told you?
 (16) A Yeah
 (17) Q And for at least the last year you had resumed drinking at
 (18) least on occasion?
 (19) A Hu
 (20) Q And would it be fair to say you did not tell your wife you
 (21) had resumed drinking?
 (22) A I don't know if the subject came up or not I don't think
 (23) so no
 (24) Q So the answer is no?
 (25) A Yeah, I would have to say no

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- (1) Q Now let's move on to the Exxon Valdez The topic of the
 (2) Exxon Valdez and at some point in time did somebody from
 (3) Shipping Company raise with you the topic of the Exxon Valdez
 (4) being assigned to the Exxon Valdez?
 (5) A Yeah It was Captain Martineau who was port captain on
 (6) the west coast fleet at the time He approached me It was an
 (7) officer's conference in '86 sometime, possibly spring of '87
 (8) I really - it's hard to remember this In Houston and asked
 (9) me if I would - somebody was retiring or was leaving the
 (10) Valdez, and they asked me if I was interested in going over
 (11) there from the Yorktown
 (12) Q Do you think that was Andy Martineau that asked?
 (13) A Yes
 (14) Q And what did you say?
 (15) A I was pretty ambivalent on the subject There was pluses
 (16) and minuses to both jobs I said if you can't find anybody,
 (17) give me a shout
 (18) Q Was that the only conversation that you had with anybody
 (19) from Exxon Shipping Company with regard to reassignment of
 (20) Valdez?
 (21) A I can't pin down the date of that conference in my mind's
 (22) eye, but I think I went back and did another short hitch on
 (23) Yorktown I may or may not have, but I thought I returned to
 (24) the Yorktown and then somebody whether it was Andy or
 (25) somebody else, Sheehy, told me somewhere in that hitch that I would be

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- (1) transferring after that hitch
 (2) Q So we have two conversations We have Andy Martineau's
 (3) talk with you in Mecca and then some time later on either
 (4) your port captain or somebody else tells you you're going to
 (5) the Valdez?
 (6) A Yeah they do a follow up and say you're going whenever
 (7) the schedules are going to work out
 (8) Q In either of those discussions was the subject of AA
 (9) aftercare emotional well being drinking were any of those
 (10) discussions talked about - were any of those subjects talked
 (11) about?
 (12) A Subjects? Not that I recall, just -
 (13) Q When were you reassigned to the Valdez?
 (14) A I believe it was the fall of '87
 (15) Q When was your next - when was your first tour of duty with
 (16) the Exxon Valdez?
 (17) A That was late fall, early winter, I believe
 (18) Q Yeah it was Were you aboard the vessel over Christmas?
 (19) A '87 into '88?
 (20) Q Yes
 (21) A Yeah, I believe so
 (22) Q There is a tradition - at that point in time there was a
 (23) tradition in the fleet a legitimate tradition at that point in
 (24) time of providing Christmas wine?
 (25) A Yes

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- (1) Q So that for the Christmas meal and is it also the New
 (2) Year's meal?
 (3) A As I recall, Thanksgiving, Christmas and New Year's
 (4) Q Exxon would provide wine for dinner?
 (5) A Yes
 (6) Q Did you drink any wine on board the vessel the Christmas
 (7) wine?
 (8) A My recollection is my habit was generally of those at sea
 (9) on the holidays, I would go down and toast the crew But I did
 (10) this year - or that year on the Valdez, but the wine wasn't -
 (11) it was a wine before its time or something, but I didn't - it
 (12) wasn't very good I just didn't finish drinking it
 (13) Q Now at the time you were assigned to the Valdez was one of
 (14) the reasons that you were assigned to the Valdez because you
 (15) had a Prince William Sound pilotage endorsement?
 (16) A No
 (17) Q Your position is that it was not?
 (18) A No, that wasn't - subject wasn't even broached
 (19) Q Does the company save money if the master of the vessel
 (20) has a Prince William Sound pilotage endorsement?
 (21) A No, actually they lose money, they did at the time
 (22) Q Your testimony is that the company loses money?
 (23) A Well, at the time they would - if I'm allowed an
 (24) explanation?
 (25) Q Sure

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- (1) A At the time they were paying those masters who had the
 (2) endorsement 175 bucks inbound 175 bucks outbound and
 majority
 (3) of the masters in the fleet didn't have the pilotage
 (4) endorsement, and they were doing the same work and not
 being
 (5) recompensed for it
 (6) Q Did you get paid the 175 for the pilotage endorsement?
 (7) A Yes
 (8) Q And in point of fact if a vessel the trade that the Valdez
 (9) was in did not have an officer on it with a pilotage
 (10) endorsement they would have to hire a local pilot isn't that
 (11) right?
 (12) A No, pick them off of Rocky Point like everybody else
 (13) Q Where is Rocky Point?
 (14) A It's at the top of the Valdez Arm
 (15) Q So is it your testimony that from 1987 to 1989 there was no
 (16) requirement for pilotage from Hinchinbrook entrance up to
 Rocky
 (17) Point?
 (18) A You mean to have an officer on board with a pilotage
 (19) endorsement?
 (20) Q That's a correct statement?
 (21) A The majority of the ship masters for Exxon didn't have it
 (22) Q My question was is it your testimony that there was no
 (23) requirement to have a master from Hinchinbrook up to Rocky
 (24) Point to have an officer from Hinchinbrook to Rocky Point that
 (25) had a pilotage endorsement? I want your testimony to be

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- (1) clear I don't care what other vessels did What was your
 (2) understanding of the requirement?
 (3) A My understanding, my lay understanding was if you had
 it,
 (4) fine, if you didn't fine
 (5) Q And it was your business to know? You say it was my lay
 (6) understanding but as the captain of that vessel it was your
 (7) business to know whether there was a requirement for a pilot
 (8) from Hinchinbrook to Rocky Point because if you didn't know
 (9) and there was a requirement you would be violating the law?
 (10) A My history goes back a little further because I got the
 (11) pilotage in 1977, I went up there and trained specifically for
 (12) that route, and saw the evolution of the waivers over the
 years
 (13) where you had ships larger than the Valdez coming in there
 with
 (14) foreign-speaking crews with no pilotage
 (15) Q Foreign speaking crews that is vessels from foreign ports
 (16) fall under a different regimen and different set of rules than
 (17) do vessels that are owned by U S companies with U S flags
 (18) that run a trade between San Francisco and Valdez isn't that
 (19) right?
 (20) A Well, you get in a pretty murky area there If the vessel
 (21) is registered it could be considered on foreign articles
 (22) Q So your testimony is, as to the matter of the Exxon Valdez
 (23) from 1987 to 1989, you were of the view that there was no
 (24) requirement for a pilot from Hinchinbrook entrance up to Rocky
 (25) Point, and that that's the way you operated your business

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- (1) there'
 (2) A My view was I had knowledge that there was ships
 transiting
 (3) that area within the Exxon fleet friends of mine who had no
 (4) pilotage endorsement who were some old timers like
 myself had
 (5) it That's all I knew The legalities of it, I'm not sure
 (6) Q Let's explore that If from 1987 to 1989 there in fact was
 (7) a pilotage requirement from Hinchinbrook to Rocky Point -
 (8) let's assume that for the sake of the discussion - I know you
 (9) don't agree with it as we sit here Let's assume that If
 (10) there was that requirement at least your knowledge would
 (11) indicate to you that that requirement was violated on a
 (12) somewhat regular basis by Exxon Shipping Company vessels?
 (13) A Yeah, every ship - all the ships trading up there, not
 (14) just Exxon exclusively
 (15) Q Was the practice of having vessels Exxon Shipping
 Company
 (16) vessels from Hinchinbrook up to Rocky Point without a pilot
 (17) was that practice condoned by Exxon Shipping Company or do
 you
 (18) know?
 (19) A I don't know if it was condoned but the requirement as I
 (20) understood it was waived over in '81 '85 and '88, and those
 (21) masters or mates that had the endorsement retired They
 (22) weren't replaced
 (23) Q Would it -
 (24) A On those particular ships a master would come on there,
 (25) would have no endorsement or he would go up there like

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- (1) everybody else
 (2) Q Pilotage is a serious subject isn't it?
 (3) A You have to expand on the question
 (4) Q Well what does it take to get a pilot's license for an
 (5) area?
 (6) A You have to have a prerequisite number of trips, take a,
 (7) what's known as a local knowledge or general knowledge
 test of
 (8) that specific area that you want to get the pilotage
 (9) endorsement for, and depending on the port, whether they
 give
 (10) you blank piece of paper or a silhouetted outline of the
 (11) navigational area you're getting it for, you just fill in the
 (12) blank and recreate a chart from memory, basically
 (13) Q Did you at one point do that for Prince William Sound?
 (14) A Yes
 (15) Q Was it - Prince William Sound there was a number of
 (16) drawings though wasn't it?
 (17) A Had you -
 (18) Q Instead of having one drawing on one piece of paper it was
 (19) six or seven drawings?
 (20) A No, it was one
 (21) Q Do you recall -
 (22) A No, it was one
 (23) Q What kinds of things do you put in on the drawing?
 (24) A As I recall at the time, you had to identify the 12
 (25) lights There were VTS lanes were up to your discretion
 They

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- (1) were trying to elicit input from mariners where to put them
 (2) Q How about the Bligh Reef buoy?
 (3) A Yeah Number 9 buoy was there at the time
 (4) Q And how about the buoy on -- what is the first aid to
 (5) navigation that you see right before the Bligh Reef buoy over
 (6) on the left as you re coming out?
 (7) A Outbound would be the Busby Island beacon
 (8) Q Was that on there too?
 (9) A Yeah
 (10) Q And so the purpose was of this exercise was to make sure
 (11) that somebody that was certified as the pilot knew the area?
 (12) A Well, yeah, generally speaking, yeah, had a working
 (13) knowledge of it
 (14) Q More than generally you had to specifically detail the
 (15) aids to navigation?
 (16) A Well, at that time, they were kind of sparse There was
 (17) only 12 of them
 (18) Q Do you remember what they are today?
 (19) A Pretty much, yeah Not the characteristics of the
 (20) individual ones
 (21) Q Let s talk if we could was there a leave between the
 (22) Yorktown and the Valdez?
 (23) A I'm pretty sure there was
 (24) Q And did you go home during that leave?
 (25) A Yeah must have

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- (1) Q Did you attend AA?
 (2) A I have to say yes
 (3) Q Beg your pardon?
 (4) A I probably did, yeah
 (5) Q Was your wife still attending Alanon?
 (6) A Yeah, I think so
 (7) Q You still had a sponsor then didn t you or you had your
 (8) second temporary sponsor?
 (9) A Yeah, second or third They were moving or leaving town
 (10) whatever
 (11) Q Now in February 1988 the Valdez docks in Long Beach?
 (12) A February of '88? I guess she might have yeah, all right
 (13) Q And --
 (14) A Yeah, I guess so
 (15) Q And indeed when the vessel did dock in Long Beach there
 (16) was a regular practice of the departing crew members to get
 (17) together at either a joint called the Yankee Clipper or the
 (18) Yankee Whaler?
 (19) A Usually the people predominantly that were going on
 (20) vacation that lived in the east coast were getting the redeye
 (21) while they waited for the limo to take out to the Yankee
 (22) Whaler
 (23) or would stop at the Yankee Clipper
 (24) Q And have a couple beers?
 (25) A On occasion I did that with 10 or 12 other people
 (26) Q Sit around and drink beer?

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- (1) A Yeah waiting for the limo yeah
 (2) Q And they were primarily Exxon people?
 (3) A Well they were shipmates you just spent two or three
 (4) months with
 (5) Q And they included Chuck Kimtis the chief engineer?
 (6) A Yes
 (7) Q And Nate Carr?
 (8) A Nate, yeah
 (9) Q And Mr Enright?
 (10) A Pat Enright yeah
 (11) Q And Katherine Haven?
 (12) A Well, I have a vague recollection she was there once but
 (13) she lived on the west coast Usually her husband would
 (14) drive
 (15) down and pick her up
 (16) Q Do you have a recollection of that on occasion she drank
 (17) with you?
 (18) A I remember her being there Whether she just said
 (19) goodbye
 (20) and took off, I don't know
 (21) Q How about a Butch Ogen (ph)?
 (22) A Butch yeah
 (23) Q I want to talk a little bit about Portland?
 (24) A Uh huh
 (25) Q Just so we re oriented on what I m going to talk about
 (26) Early in 1988 do you fly back from the east coast to
 (27) Portland?

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- (1) A No, I thought it was in May
 (2) Q Is that when it is?
 (3) A Late spring sometime She was down in the yard
 (4) Q May?
 (5) A Yeah
 (6) Q And you were on the east coast and you fly back to
 (7) Portland?
 (8) A Well I was on vacation and flew to Portland yeah
 (9) Q Let s take the vacation just prior to going to Portland
 (10) Where was vacation?
 (11) A I think that go around I brought a couple yachts up from
 (12) the Caribbean to the northeast That was -- most of my time
 (13) was spent doing that, and then I flew back to work
 (14) Q Did you spend any time at home?
 (15) A A little bit, yeah
 (16) Q When you were at home did you go to AA?
 (17) A I couldn't really say whether I did or not I may have
 (18) Q Was your wife going to Alanon then?
 (19) A I believe so
 (20) Q Did you drink at home when you were there?
 (21) A I wasn't home all that much that hitch, as I recall
 (22) Q Did you drink when you were at home?
 (23) A I don't think so I don't remember
 (24) Q As a normal practice you didn't drink -- after you got out
 (25) of South Oaks as a normal practice you didn t drink when you

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- (1) were home did you?
 (2) A Normal practice, yeah, because nobody familiar - my folks
 (3) don't drink, my wife's folks don't drink
 (4) Q And your wife wasn't drinking or was she?
 (5) A She occasionally would drink, yeah
 (6) Q But you did not drink in the presence of your wife?
 (7) A Not that I can - my recollection we went to a wedding,
 (8) you know, somewhere in there
 (9) Q One wedding?
 (10) A Yeah some cousin or something got married
 (11) Q As a general practice you did not drink in the presence of
 (12) your wife?
 (13) A No
 (14) Q And that was a different regimen than prior to going to
 (15) South Oaks because prior to going to South Oaks, you would
 (16) drink in front of your wife?
 (17) A I did most of my drinking in front of my wife, yeah
 (18) Q Now coming back from this vacation to Portland you flew
 (19) back and you met a guy on the airplane and as a result of some
 (20) bet or another you lost a bet with regard to a beer or you won
 (21) a beer?
 (22) A I don't know who, we had a bet about the luggage We had
 (23) to transfer planes in Salt Lake One of us bet our luggage
 (24) would make it and one of us said it wouldn't
 (25) Q Was it a Delta flight?

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- (1) A Yeah
 (2) Q Been there, done it God that was such a pit I
 (3) shouldn't say that about Delta but I think I have some
 (4) privilege in the court when they sue me
 (5) When you got off the airplane in Portland and Captain
 (6) Stalzer met you?
 (7) A That's correct
 (8) Q And you had a couple vodkas with Captain Stalzer?
 (9) A I heard - I don't know I bought this fellow a beer, and
 (10) I had a drink
 (11) Q And you did that while you were waiting for your luggage?
 (12) A Yeah, waiting to see the results It was going to get
 (13) there, it was just going to be a little bit late
 (14) Q And then you went to dinner that night?
 (15) A About seven hours later
 (16) Q And was Stalzer at dinner?
 (17) A Yeah, he, myself and the chief mate went to dinner
 (18) Q And Stalzer is an Exxon captain?
 (19) A He was the alternate master on the Valdez
 (20) Q And you had wine with dinner?
 (21) A Yeah, I think the three of us split a bottle of wine
 (22) Q On this trip to Portland did you have a beer with Mr
 (23) Cousins in his apartment or your apartment?
 (24) A We were there The ship got squared away, they were
 (25) there
 (25) about 30 or 40 days And I had a beer with Mr Cousins in

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- (1) there somewhere yeah
 (2) Q How about Mr Carr he's an Exxon employee?
 (3) A Yeah
 (4) Q Did you have a beer with Mr Carr on the vessel?
 (5) A No I saw his testimony to that I had a beer with him the
 (6) Friday before He was taking off for his daughter's wedding
 (7) in Seattle My recollection he yanked it out of the back of
 (8) his rent a-car
 (9) Q So you were sitting in the car drinking beer?
 (10) A No, we were standing there in the parking lot he had it in
 (11) the trunk He was waiting for a cab to take him to the
 (12) airport
 (13) Q So you disagree with him about that?
 (14) A Yeah, I recall having a drink with him
 (15) Q If you would have drunken a beer aboard the vessel would
 (16) that have been a violation of the company policy?
 (17) A Yes As I understood it, yes
 (18) Q Now at some point in time the subject of Henry Weinhardt
 (19) comes up do you know what that -
 (20) A Yes
 (21) Q It's a beer?
 (22) A Yes
 (23) Q Out of Portland?
 (24) A Used to be
 (25) Q Still is Tell me about that?

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- (1) A Mr Kimtis had mentioned, who was the chief engineer at
 (2) the
 (3) time, since he departed we were living side by side over in
 (4) some rented apartments while the ship was in dry dock I
 (5) had
 (6) mentioned - we were working kind of long hours and he
 (7) had
 (8) mentioned that he had been trying to find some and he
 (9) couldn't
 (10) find anything I don't know whether the ensign had gobbled
 (11) it
 (12) all up, but he couldn't locate any, and that morning I had
 (13) gotten hold of the rigger foreman, asked him if he knew
 (14) where
 (15) any was, and he says yeah, I can track some down, I'll get
 (16) you
 (17) a six pack by this afternoon That afternoon came and went
 (18) and
 (19) I was fixing to leave and go back to the apartment, and I
 (20) called up this rigger foreman, he had a walkie-talkie with a
 (21) private channel, I called him up and asked him if he'd been
 (22) able to locate the Henrys, and he says, yeah, sure, I'll meet
 (23) you by the gangway I met him at the gangway, he gave me
 (24) a six
 (25) pack of beer, and I went back to the apartment.
 (16) Q And drank the beer there with who?
 (17) A Mr Kimtis It was either that evening or the next
 (18) evening
 (19) Q Now at some point in time when Mr Herb Leyendecker - do
 (20) you know who he is?
 (21) A Yes
 (22) Q Who is he?
 (23) A He was, at that time, in the repair section of the
 (24) engineering group, Exxon Shipping out of Houston, but he

was up

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- (1) in Portland I think basically checking some invoices because
- (2) this particular shipyard was kind of complex in the sense that
- (3) we were trying to rectify a lot of guarantee items that the
- (4) ship was roughly new, she had come out of the shipbuilder's
- (5) yard and there was a squabble about a lot of deficiencies that
- (6) had come out of the builder's yard, and he was up there
- (7) assisting in that procedure
- (8) Q Would it be fair to say that he was a part of Exxon
- (9) management?
- (10) A In the grand scheme of things, yeah, I guess so I really,
- (11) over the years I never had any contact with him
- (12) Q Your answer is yes?
- (13) A Yeah
- (14) Q And at some point in time Mr Leyendecker asked you about
- (15) the Henrys or the transmission over the walkie talkie?
- (16) A The next day, he came over and asked me about it and I
- (17) told him essentially what I told you, said you could search
- (18) my
- (19) room or Chuck, Mr Kimtis' room, refrigerator, quarters,
- (20) whatever you want they were kind of torn up because of the
- (21) repairs He did and I assured him there had been no
- (22) violation
- (23) of the alcohol policy that I was aware of
- (24) Q And you did inform Mr Leyendecker that you drank the beer
- (25) back at your apartment?
- (26) A Yeah it was either my apartment or Mr Kimtis'
- (27) apartment
- (28) Watched the Bruins and the Edmonton Oilers

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- (1) Q Important thing, Mr Leyendecker was told about you
- (2) drinking the beer?
- (3) A Yeah
- (4) Q Who is Mr Myers?
- (5) A Paul Myers is - was, when I first joined the Valdez, he
- (6) was the port engineer who was the engineering counterpart
- (7) of
- (8) the port captain for Andy Martineau He was port engineer
- (9) He
- (10) had been the construction superintendent of the Valdez and
- (11) her
- (12) sister ship, the Long Beach in San Diego
- (13) Q Who was in May of 1988?
- (14) A At that time they had evolved the management scheme of
- (15) things where there was no longer a port captain or port
- (16) engineer, and they converted over to a line management
- (17) format
- (18) where there was a titular head of a group of ships who was
- (19) known as the ship group coordinator and he kind of wore
- (20) both
- (21) hats of the port captain and port engineer and that was
- (22) what
- (23) Mr Myers was
- (24) Q As the - on an organization chart would he appear as your
- (25) boss?
- (26) A He would be my direct supervisor, yes
- (27) Q In May of 1988 he was your direct supervisor at least in
- (28) terms of an organization chart?
- (29) A Yeah, essentially, yeah
- (30) Q And in May of 1988, did Mr Myers approach you with regard
- (31) to this radio transmission incident the Henrys incident?

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- (1) A It was later than May We discussed it - the way it
- (2) works generally speaking you have a couple repair
- (3) inspectors
- (4) at that time who supervise the repairing of the vessel The
- (5) ship group coordinator isn't day to day involved I don't
- (6) think Mr Myers is up in Portland that much
- (7) Subsequent to the Portland shipyard period and trip to
- (8) Valdez and down to the Lower 48, he sat in with me for five,
- (9) six, seven hours Basically debriefed me item by item of
- (10) what
- (11) I saw in the yard period and what I liked or didn't like And
- (12) that - the Henrys subject came up as an aside during that
- (13) period some time
- (14) Q What did you tell him?
- (15) A I essentially told him -
- (16) Q Same thing you told me?
- (17) A Same thing I told you, yeah
- (18) Q And did Mr Myers at this point in time ask you anything
- (19) about AA aftercare, recovery, emotional maintenance anything
- (20) like that?
- (21) A He said he just wanted to ensure that there was no
- (22) violation of the alcohol policy, and I assured him there
- (23) wasn't And he went on to the next subject
- (24) Q And when we talk about no violation of the alcohol policy
- (25) that is the beer was not consumed on the vessel?
- (26) A Best of my knowledge I got to the bottom of the
- (27) gangway
- (28) so it was never physically on the vessel

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- (1) Q But Mr Myers concerned expressed to you wasn't a
- (2) generalized concern about you or drinking, it was a specific
- (3) concern about beer being on the vessel? Do you want me to try
- (4) it again?
- (5) A Yeah violation of the alcohol policy
- (6) Q Now the summer of 1988 - sounds like a movie doesn't
- (7) it - you were on leave between July 24th and September 26th or
- (8) about that?
- (9) A Sounds about right
- (10) Q Did you attend AA meetings during that period of time?
- (11) A If I was home I guess I did, but that's - summer of '88
- (12) I know I was running around working on some boats That
- (13) point
- (14) in time I really couldn't tell you what that summer - if I had
- (15) a week or two off, I would be surprised
- (16) Q Let's see if I can help you out using your transcript
- (17) Let's go to page 1849 of the transcript, line 9 and why don't
- (18) you just take a look at it and see if it refreshes your
- (19) recollection and then I'll ask you the question again
- (20) A Yeah, okay
- (21) Q Does it make sense that during that period of time you
- (22) attended AA maybe three to five times a week?
- (23) A Yeah if I was home, yeah, during that time period
- (24) Q Now during that period of time did you do any heavy
- (25) drinking?
- (26) A I guess in September I did, yeah

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- (1) Q The heavy drinking was with an Exxon employee?
 (2) A Yeah
 (3) Q Now I want to talk for a minute about something that's been referred to as the four hour rule
 (4) A Uh huh
 (5) Q Do you have an understanding of the four hour rule?
 (6) A Essentially, shall not - Coast Guard says you shall not consume alcoholic beverages less than four hours prior to assuming your duties
 (7) Q In October of 1988 you - or September October 1988 you attended some kind of a gathering with yourself Ray Jones Paul Myers and Harvey Borgen do you recall that?
 (8) A Yeah, it was a luncheon in San Francisco
 (9) Q Were those the four people that were there?
 (10) A Yeah
 (11) Q Let me ask you a question Up to this point in time were you at all aware of the fact that you were supposedly being monitored?
 (12) A I don't know about monitored in the structured sense Paul Myers, once I started working for him, I started calling him LaMonte Cranston he was like a shadow, I couldn't shake him
 (13) Q Would it be fair to say you didn't know you were being monitored?
 (14) A Not in a checklist format no
 (15) Q And you met with Myers and Harvey Borgen who is Harvey

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- (1) Borgen?
 (2) A He was the west coast fleet manager
 (3) Q At this meeting in October, was the subject of your emotional health discussed the subject of AA discussed the subject of drinking discussed?
 (4) A Not particularly, no It was a 20 year congratulatory 20 year survivors award for me, I guess, luncheon
 (5) Q In February of 1989 you attend a conference in Dallas radio school?
 (6) A It was a radio school, yeah
 (7) Q And you were there for three weeks?
 (8) A Yes
 (9) Q And you attended Alcoholics Anonymous meetings in Dallas during that three week period?
 (10) A Well, I looked into it, and they had a little different deal, they have clubhouses where you just go in there and drink coffee, basically, that was their version of it No meetings per se
 (11) Q Did you go to three different gatherings?
 (12) A Well, they weren't really gatherings, and there is people there coming and going I looked them up in the phone book and attended, yeah
 (13) Q What's a closed meeting?
 (14) A Ostensibly it's for - it's a meeting that's not open to the public, although closed meetings are open to the public,

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- (1) anybody can walk in
 (2) Q For alcoholics isn't it?
 (3) A People that want to consider themselves alcoholics I guess, yeah
 (4) Q How do you introduce yourself at the beginning of the closed meeting Is there an introduction that goes around?
 (5) A No
 (6) Q People don't stand up and say hi my name is Joe Smith and I'm an alcoholic?
 (7) A Only the speaker
 (8) Q Was the Dallas AA meeting one or two or three times you attended gatherings AA gatherings in Dallas the last time you went to AA?
 (9) A Best I can recollect, yeah
 (10) Q I want to talk about the so called launch incident and I only use that so we can focus our attention on the subject so we know what we're talking about
 (11) About when did this situation occur?
 (12) A It was - we had come up from discharging down in Long Beach and San Pedro, split discharge, and we headed up to San Francisco, anchored We had about one lighter left in there So the Galveston come alongside, it was in March 13th 14th somewhere around there 1989
 (13) Q Of 1989 So this is about two two and a half weeks before the Valdez incident?

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- (1) A No, later, maybe the 18, 17, 18 It was the trip south before the -
 (2) Q Before going north before the fateful voyage?
 (3) A You got it
 (4) Q You went ashore at had dinner that night at a restaurant called Viva?
 (5) A The best I can recall I went up to Viva North Beach
 (6) Q And you had wine with dinner?
 (7) A Yeah
 (8) Q And you were alone?
 (9) A At that time, yeah
 (10) Q When you drank the wine you were alone?
 (11) A Yeah, at dinner, yeah
 (12) Q And you got on a launch at some point later on that evening to go back to the Valdez?
 (13) A Yeah, the midnight boat, 11.30
 (14) Q Was a Mary Williamson on that boat?
 (15) A I believe I saw her and a number of other people, yeah
 (16) Q Did you talk at all with Ms Williamson?
 (17) A A little bit on the launch landing, a little bit on the launch, yeah
 (18) Q Did you talk at all with Ms Williamson about her captain Captain Reeder?
 (19) A In passing I just said, how is he doing She said, all right I think she mentioned he had his son with him for a few

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- (1) days riding up and down the bay
 (2) Q Did you say anything disparaging of Captain Reeder on the
 (3) launch?
 (4) A Not particularly I didn't really recall talking to her
 (5) much about him at all
 (6) Q How was your demeanor on the launch? Would you say it
 was
 (7) restrained jovial boisterous?
 (8) A I don't know, you got to shout to be heard, open exhaust -
 (9) that launch was an open exhaust launch You couldn't hear
 (10) yourself think
 (11) Q Now at some point you get back to the Valdez and you call
 (12) Captain Reeder on the radio?
 (13) A Yeah
 (14) Q And what do you say to Captain Reeder?
 (15) A Well, prior to that I received notification that the Coast
 (16) Guard was going to pay me a visit in the morning, and we, at
 (17) that point we had been modernized enough to where we had
 cell
 (18) phones, so I called up the Coast Guard inspection office,
 the
 (19) night number to find out what all this was about, because
 (20) supposedly we were going to be issued a citation for
 something
 (21) we had done in San Francisco Bay, and we had only been
 there
 (22) for about 12 hours and I wanted to know what hell was
 going
 (23) on
 (24) And the Coast Guard man there checked his notes and he
 said
 (25) a commander would be coming out first thing in the morning
 to

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- (1) either issue us a citation or discuss the issuance of a
 (2) citation for disabling the main engine in San Francisco Bay,
 (3) which you have to report that and have tug boats in
 (4) attendance And I inquired further of him, and he says well
 -
 (5) I said the main engine on the ship since we've been here
 (6) today has never been disabled We did have a tug in
 (7) attendance when we were doing some engine work for
 about 20
 (8) minutes in case the main engine were to be disabled And I
 (9) said, where did you receive this information And he said
 we
 (10) received it from the master of the Exxon Galveston
 (11) And I had taken it in the shorts for Captain Reeder in
 (12) 1977, and at that time I told him I wasn't going to be so
 (13) demure if he tried to pull some stunt again And I went - I
 (14) used some language that probably wasn't appropriate for
 30
 (15) seconds and then we got about our business and he let go
 (16) Q What inappropriate language did you use?
 (17) A Same words you used yesterday
 (18) Q Those weren't my words then were they?
 (19) A Well no
 (20) Q Duuhc bag'
 (21) A It was a stream of consciousness
 (22) Q Scum bag?
 (23) A Yeah
 (24) Q In fact you used words worse than those didn't you?
 (25) A Well, yeah I know most of them, yeah

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- (1) Q Would you describe that as an unusual radio
 communication
 (2) or for you is that just a regular radio communication?
 (3) A No I don't think I've ever done that before or since
 (4) Q It's unusual conduct isn't it?
 (5) A Well the circumstances called for unusual conduct
 (6) Q I need to find my next stack My handwriting isn't good
 (7) enough to write these out in an outline so I just rip all
 (8) these pages apart
 (9) This incident that we've just talked about where you talked
 (10) to Captain Reeder over the phone let's focus from the time
 (11) when you got to the west coast to the Valdez up to that point
 (12) in time?
 (13) A Okay
 (14) Q Isn't it true captain that you have no knowledge that you
 (15) were allegedly being monitored specifically for alcohol use by
 (16) either Mr Myers or Mr Borgen at any time between 1987 and
 the
 (17) grounding of the Exxon Valdez?
 (18) A With the exception of a lot of contact with Mr Myers,
 (19) which I thought was odd, then again I don't know Mr Myers
 I
 (20) had no specific knowledge that there was a monitoring
 program
 (21) in place specifically designed for me no
 (22) Q Would it be fair to say that when you've been asked that
 (23) question before you didn't raise Mr Myers?
 (24) A Maybe I'd have to - probably not
 (25) Q Sir can you find a document in front of you that has on

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- (1) it a sticker that has number 127 and it looks like this
 (2) A Yeah, I got it Okay, yeah
 (3) Q Exhibit 127 has been pre admitted It's a document that
 (4) was taken off of the Exxon Valdez after the grounding We only
 (5) have terrible copies of 127 but I'm going to pull up the first
 (6) paragraph or two and see if we can see it any better What is
 (7) Exhibit 127?
 (8) A It was a list of joints in San Francisco that was compiled,
 (9) as I was told, by a law student who was in the Navy at the
 (10) taxpayer's expense, and he compiled this while getting his
 law
 (11) degree, he's now working for the justice department He
 was a
 (12) classmate of Ms Haven's who is a third assistant, second
 (13) assistant on the Valdez, in college they were classmates
 He
 (14) gave it to her She distributed a bunch of copies on the
 ship
 (15) Q Do you recall when you came into possession of yours?
 (16) A She had a bunch of copies, I would say, in summer or fall
 (17) of '88
 (18) Q So would it be fair to say from either the summer or fall
 (19) of 88 through the grounding there was a copy of exhibit
 (20) plaintiffs Exhibit 127 either in your office aboard the Valdez
 (21) or in your stateroom bedroom?
 (22) A Yeah, it was kicking around with a bunch of stuff
 (23) Q Were you ever aware of the fact that Steve Day talked to
 (24) Paul Myers about this Mary Williamson Captain Reeder
 passage?
 (25) A Not that I'm aware of, no

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- (1) Q And from the time of the Reeder telephone call you spent
 (2) the next three days with Paul Myers on the vessel trying to fix
 (3) the turbocharger?
 (4) A More or less, yes We went out and had a couple false
 (5) starts came back and anchored it, and redid it two or three
 (6) times
 (7) Q And in those three days and those were the two or three
 (8) days after your telephone conversation?
 (9) A Walkie-talkie yeah
 (10) Q The subject of either Mary Williamson and her statements
 (11) about coming over on the launch or the Captain Reeder
 (12) telephone conversation never came up between you and Mr
 Myers?
 (13) A Well, he was living on the ship, and the Galveston never
 (14) come back alongside, so I don't know - no, didn't Not with
 (15) me and Mr Myers no
 (16) Q I'm going to read you a list of names of Exxon employees
 (17) and ask you whether from the time you got out of South Oaks
 (18) until the time you left San Francisco for the faithful voyage
 (19) you drank with them?
 (20) A Okay
 (21) Q Carlos Hogan?
 (22) A Oh, yeah
 (23) Q Nate Carr?
 (24) A Uh huh
 (25) Q Mr Cousins?

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- (1) A Yeah
 (2) Q Brian Dengel?
 (3) A Yes, sir
 (4) Q Kevin Dick?
 (5) A Yeah
 (6) Q Patrick Enright?
 (7) A Uh huh
 (8) Q Kathy Haven?
 (9) A Uh huh
 (10) Q Charles Kintis?
 (11) A Yes
 (12) Q James Kunkel?
 (13) A Yes
 (14) Q Kunkel is a yes?
 (15) A Yes
 (16) Q Joel Roberson?
 (17) A Yes
 (18) Q Thomas St Pierre?
 (19) A Yes
 (20) Q Captain Stalzer?
 (21) A Yes
 (22) Q Robert Sturgis?
 (23) A Oh, yeah, yes
 (24) Q Let me ask you briefly about Mr Kagan
 (25) A Uh-huh

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- (1) Q Do you recall any conversation in '88 or '89 with Captain
 (2) Stalzer about Kagan?
 (3) A I believe Captain Stalzer, in February I guess it was
 (4) '89, in just going through the normal relief procedure of
 (5) what's going on, you know what's the next orders what
 needs
 (6) repairing you know just the normal routine you go through
 for
 (7) two or three hours every time one master would leave the
 other,
 (8) he indicated to me that there had been a teletype from
 somebody
 (9) in the fleet manning section who was - I think I said in my
 (10) deposition I think it was Ron Floyd who worked in Human
 (11) Resources that concerning Mr Kagan and Captain Stalzer
 gave
 (12) it to me, and said this will be - he says they want to make
 (13) sure that we do a 28 day evaluation of Mr Kagan's
 performance
 (14) while he's on here, his overall performance
 (15) Q Why?
 (16) A The reasons as I recall, weren't delineated in the
 (17) teletype, and I don't know if Stalzer articulated them to me
 or
 (18) not
 (19) Q Did Stalzer indicate to you that Kagan needed improvement
 (20) in steering?
 (21) A I don't recall him saying steering in general, steering
 (22) specific It was more in general that he needed watching
 And
 (23) Captain Stalzer and the Chief Officer Kleess already
 completed
 (24) a 28 day evaluation on him and mailed it in and I was to do
 the
 (25) same.

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- (1) Q So the vessel leaves San Francisco on its way to Valdez
 (2) and -
 (3) MR O NEILL Your Honor I'd like to bring up a
 (4) couple big charts can we take a three or four minute stretch
 (5) THE COURT Sure let's standby everybody stay in
 (6) place If you want to stand up and stretch everybody can do
 (7) it
 (8) BY MR O NEILL
 (9) Q We're ready are you ready captain?
 (10) A Yes, sir
 (11) Q If you get in front of you Exhibit 91-A Exhibit 91-A has
 (12) been pre admitted It is a transcript of the communication
 (13) between you and the Coast Guard on your way in?
 (14) MR CHALOS Excuse me, Your Honor I object to the
 (15) characterization It's a communication between his ship the
 (16) Exxon Valdez and the Coast Guard
 (17) BY MR O NEILL
 (18) Q I'll ask the question What is 91 A?
 (19) A Communication between the Valdez and Valdez traffic
 prior
 (20) to - prior to taking arrival at Cape Hinchinbrook, yeah
 (21) Q Does the Coast Guard ask the Valdez whether the Valdez has
 (22) a pilot on board?
 (23) A Yeah, it asks if the master or mate has a pilot
 (24) endorsement
 (25) Q What does the Valdez answer back?

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- (1) A In the affirmative yeah
 (2) Q So the Coast Guard asks the Valdez whether it has a
 (3) pilot - whether it either has a master or a mate has a pilot a
 (4) endorsement and the vessel answers back yes?
 (5) A Yep
 (6) Q Now does - do you pick up Murphy on the way in?
 (7) A Yeah
 (8) Q And about where do you pick him up?
 (9) A West southwest of Rocky Point at the pilot station
 (10) Q Right about here (indicating)?
 (11) A In that general area
 (12) Q Do you come in to the traffic lane?
 (13) A No
 (14) Q Do you come in wide of the traffic lane?
 (15) A Yeah
 (16) Q And you pick him up there is a station here?
 (17) A They gunk hole there they live on a boat it's a little
 (18) gunk hole they tie up to a mooring buoy there is not a
 (19) physical structure
 (20) Q Not the Four Seasons Seattle?
 (21) A No, it's just a mooring they tie up to, there is a pilot
 (22) boat
 (23) Q So you pick up with Murphy here and then you go on in and
 (24) dock at the port?
 (25) A Yeah uh-huh

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- (1) Q And about what time was that?
 (2) A The time we got tied up finished up around midnight
 (3) Q And then what did you do?
 (4) A Met with the, whoever the boarding agent was, I don't
 know
 (5) who it was, got the mail sorted the mail, passed out the mail
 (6) with the crew and went to bed
 (7) Q And you got up the next morning?
 (8) A Uh huh
 (9) Q And you went into town?
 (10) A Yeah
 (11) Q And did you go into town about 11?
 (12) A Left the terminal at 11, checked out of the gate
 (13) Q And you went into Alamar?
 (14) A Yeah, I was driven to - the offices of Alamar Alaska
 (15) Maritime Agencies
 (16) Q Let's talk a little bit about the town of Valdez
 (17) A Uh huh
 (18) Q Alamar is downtown?
 (19) A It's in town, yeah I never made the -
 (20) Q Pretty small downtown?
 (21) A Yeah
 (22) Q Sort of wish we had a - can we pull up a white screen so
 (23) we can just draw on it just pull up a document will you See
 (24) if I can do this Let's put Alamar here It's on the far side
 (25) of the street and then there is a street towards the water

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- (1) that runs like this and the flower shop is like here and the
 (2) Pipeline Club is like here is that about right?
 (3) A Well you got the relative bearings about right I don't
 (4) have the distances right
 (5) Q Takes only about four or five minutes to walk from Alamar
 (6) to the flower shop?
 (7) A Yeah I guess
 (8) Q Couple streets?
 (9) A As I recall, yeah
 (10) Q And then there is a road that comes into town here and the
 (11) pizza joint and the - what's the name of the other joint next
 (12) to it it goes by two names I've heard it referred to it as
 (13) the Harbor Bar?
 (14) A Club Bar or the Harbor Bar
 (15) Q There are two signs and then the fishing boats are right
 (16) about here The Westmark Hotel is over here?
 (17) A I think this thing is skewed The small boat harbor is
 (18) down over here
 (19) Q In any event is this pretty close we'll put distances on
 (20) these things now From here to here looks a little compressed
 (21) doesn't it?
 (22) A Yeah, this should be over here
 (23) Q Off the screen a little bit
 (24) It's possible to walk from the pizza joint to Alamar in
 (25) about ten minutes isn't it?

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- (1) A Pizza joint to Alamar?
 (2) Q Uh huh
 (3) A The way I walk it would take a little longer
 (4) Q I've done it in ten minutes, chubby as I am
 (5) A I don't walk very fast I would take a little longer
 (6) Q The Pipeline Club right here is directly across the street
 (7) from the flower shop?
 (8) A Yeah
 (9) Q And you can walk from Alamar to the Pipeline Club in about
 (10) five minutes?
 (11) A Yeah, it wouldn't be much longer than that
 (12) Q And there are two ways to do it, at least there was two
 (13) ways at the time, you can go broad and go by Day's Department
 (14) Store which is right here, or you can go down that way, isn't
 (15) that right?
 (16) A Yeah, I think so - I think to get to this drag here you
 (17) can cut through a parking lot or something
 (18) Q But it isn't New York City is it?
 (19) A No
 (20) Q Just to orient us a little bit Pretty good huh Do you
 (21) know how many hours it took me to learn how to do that
 (22) Let me get on with our business and see if we can get 15
 (23) minutes worth of work done
 (24) So you go to Alamar from the vessel?
 (25) A Uh huh

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- (1) Q And while at Alamar you make a couple of phone calls two or three phone calls?
- (2) A Two or three I make The chief engineer had a couple to make as well
- (3) Q And the phone calls span from like 11 to 11 37 or 11 38
- (4) There are call slips for them
- (5) A Yeah, in that neighborhood
- (6) Q And at 12 00 you go to your testimony is that you go to the pizza joint Pizza Palace I think it's called or Mike's Palace?
- (7) A Yeah, 12 or so, Captain Murphy picks us up
- (8) Q Do you have a pizza there?
- (9) A No, we didn't - we each had individual meals whatever it was
- (10) Q And you had iced tea with your meal?
- (11) A Yeah
- (12) Q And are you certain as you sit here that you had iced tea with your meal?
- (13) A Yeah
- (14) Q And you eat from noon until 1 30 2 00 ish issue?
- (15) A Well, I think we got there after noon, so it was probably more like 2 ish
- (16) Q And Bob Arts picks up the bill?
- (17) A Yeah, we met him and his wife and child He, unbeknownst
- (18) to us he picked up the bill when we were leaving, and I was

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- (1) introduced to the skipper of the Arco Juneau, he was in there,
- (2) too
- (3) Q Then your testimony is you go to the flower shop?
- (4) A Yeah, driven back to Valdez market or Hobby Hut, they are adjoining buildings I ordered flowers there before so I went in there
- (5) Q And you ordered flowers for your daughter and your wife?
- (6) A Yeah
- (7) Q And there is a receipt for the flowers that you ordered?
- (8) A Uh huh
- (9) Q And that's like 2 00, 2 30?
- (10) A Yeah, but I usually, when I've been in there I've usually talked to her, she's a nice woman, she's from Long Island, likes to catch up on what's going on in Long Island Hasn't been there in 30 years
- (11) Q And then your testimony was after that you went to the Knickknack Shop?
- (12) A Couple of them, Sugar & Spice I usual look at, and then there is an Alaskan import that's kind of kitty-corner
- (13) Q How long did you spend at the flower shop and the Knickknack Shop?
- (14) A The flower shop is probably close to 45 minutes, 50 Two shops, back to Alamar - two shops That's an hour, 10, 15 minutes
- (15) Q Now I'm going to state the proposition that you went into

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- (1) the Pipeline Club at about 3 00?
- (2) A No it wouldn't have been that early
- (3) Q Your testimony in your deposition was you got there at 4 30 but I'm stating the proposition that you went there at 3 30 is that a true statement?
- (4) A Not to my mind's eye
- (5) Q Have you ever told anybody you went into the Pipeline Club at about 3 00?
- (6) A As I recall, reading over the interview I gave Delozier after the grounding, the morning after the grounding, I mentioned something about the Pipeline Club and 3 00
- (7) Q Captain Delozier was a Coast Guard -
- (8) A Warrant officer
- (9) Q - who was investigating the grounding as part of his duties?
- (10) A Yeah
- (11) Q And you were interviewed by him?
- (12) A Uh huh
- (13) Q And you did tell Warrant Officer Delozier that you went into the Pipeline Club at about 3 00 or shortly thereafter?
- (14) A Could have, yeah
- (15) Q You did tell him that didn't you?
- (16) A Yeah
- (17) Q And you knew that when you make a statement like that to a Coast Guard officer who is performing his duties after an

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- (1) incident like the Exxon Valdez that that is an important statement?
- (2) A Well I didn't consider it at that juncture the morning after the grounding, or that afternoon after the grounding, I didn't consider trying to reconstruct that afternoon the utmost of importance in my mind's eye what was going on in my life
- (3) Q Well you've raised the subject of this interview We're eventually going to get to 4 30 to 6 30 in the afternoon and when we get to 4 30 or 6 30 you will admit that you had at least three drinks vodkas?
- (4) A Yes
- (5) Q Whether they are singles or doubles we'll get to tomorrow And you had or at least ordered a drink over at the Harbor Club while you were waiting for the pizza?
- (6) A And the taxi, yeah
- (7) Q Now I want to go back to Mr Delozier you just poo-pooed what you said to Warrant Officer Delozier? You call a warrant officer Mr don't you?
- (8) A I don't know what they - I'm not familiar with protocol
- (9) Q Right before you talked to Delozier they had taken blood from you hadn't they?
- (10) A An hour or so
- (11) Q And in the interview you knew the interview was being transcribed, didn't you?
- (12) A I think there was a micro recorder there

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- (1) Q And Mr Delozier was an officer of the Coast Guard?
 (2) A Yeah warrant officer yeah
 (3) Q And he told you before he got into the sum and substance of
 (4) how much you had to drink that that was what he was going to
 (5) be
 (6) talking about isn't that a correct statement? Let's get his
 (7) interview in front of us Let's get Delozier's interview in
 (8) front of you It's up there it's Exhibit 826 Looks like
 (9) this
 (10) MR CHALOS Your Honor may we approach the bench
 (11) please
 (12) (Bench Conference off the Record)
 (13) THE COURT Ladies and gentlemen we're kind of at a
 (14) good stopping point and we're going to have to sort something
 (15) out here We're not of one mind as to exactly what happened
 (16) here It will take a few minutes to straighten it out so we
 (17) might as well send you on your way Please mind my
 (18) instructions about not reading anything not listening to
 (19) anything about this case and please do keep me posted if there
 (20) are any problems with the telephones please We will
 (21) reconvene at 8:00 tomorrow morning The jury is excused at
 (22) this time Counsel will please stay
 (23) (Jury out at 2:00 p.m.)
 (24) THE COURT We need a read back on what took place
 (25) after Mr O'Neill said in substance I want to give you a
 (26) proposition and if you could find that place and then tell us

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- (1) THE COURT Mr O'Neill
 (2) MR O NEILL My position is twofold
 (3) Number one he brought it out so the door is open I was
 (4) going to impeach him with the document but he brought it out
 (5) so he opened the door The second point is the provision in
 (6) the Code of Federal Regulations which I've never seen before
 (7) but I listened when he read it says in order to promote full
 (8) disclosure and facilitate determinations as to the cause of
 (9) marine casualties no admission made by a person during an
 (10) investigation under this part or part four of this title may be
 (11) used against that person in a proceeding under this part
 (12) except for impeachment The proceedings in this part are the
 (13) Coast Guard proceedings described in the Code of Federal
 (14) Regulations This paragraph only deals with those Coast
 (15) Guard
 (16) proceedings
 (17) MR CHALOS Your Honor if I may just respond
 (18) Captain Hazelwood responded to a baited question There was
 (19) only one other person he told about 3:00 so it had to be as a
 (20) result of the interview that he had so Mr O'Neill when he
 (21) asked that question knew that he was setting him up in a
 (22) clever way to get the response that he got so I don't think we
 (23) can fairly say that Captain Hazelwood opened the door by
 (24) blurting out something about an interview there was only one
 (25) person that he told that and it was in one place and it was in
 (26) that interview And there is another section here Your

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- (1) what was said after that for a number of lines and we'll learn
 (2) something I think
 (3) (Record read)
 (4) THE COURT I think that's probably enough It
 (5) indicates my memory of who first raised the Delozier interview
 (6) was wrong Where does that leave us?
 (7) MR CHALOS May we remove this
 (8) MR O NEILL Yeah Mike go ahead
 (9) MR CHALOS Your Honor this issue of the Coast Guard
 (10) interview has been briefed and argued before the magistrate
 (11) and at the time that it first came up we cited a CFR section to
 (12) Magistrate Ruskin, specifically 46 CFR section 5.1013 B which
 (13) reads as follows In order to promote full disclosure and
 (14) facilitate determinations as to the cause of marine casualties
 (15) no admission made by a person during an investigation under
 (16) this part or part four of this title may be used against that
 (17) person in a proceeding under this part except for impeachment
 (18) So the argument to the magistrate was that this document
 (19) if it was to be used at all would be for impeachment purposes
 (20) and the magistrate agreed with us and in fact during the
 (21) deposition this was in the course of the deposition we had a
 (22) phone a telephone conference about it and the magistrate
 (23) agreed that the only use of that document would be for
 (24) impeachment purposes and that's been our position all along
 (25) Your Honor

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- (1) Honor that expands It's section again 46 CFR section 5.551
 (2) entitled admissions by respondent
 (3) No person shall be permitted to testify with respect to
 (4) admissions made by the respondent during or in the course of
 (5) an
 (6) investigation under this part or part four of this title except
 (7) for the purpose of impeachment And the fact of the matter is
 (8) Mr Delozier's interview is in the form of testimony by Mr
 (9) Delozier as to what Captain Hazelwood told him
 (10) THE COURT In the first place I think the question
 (11) that was asked was not an inappropriate or unfair one Second
 (12) place, although there have been no problems with this
 (13) testimony I believe that Captain Hazelwood must, in fairness
 (14) be treated as an adverse witness Request was made to treat
 (15) him as such I made no comment I think at the time the request
 (16) was made but given the fact that the captain is a defendant in
 (17) this case he is not an ordinary witness In light of the fact
 (18) that he raised the Delozier report I will allow you to
 (19) continue inquiring about it
 (20) MR O NEILL Thank you Your Honor
 (21) THE COURT I do not believe the regulations of the
 (22) Coast Guard preclude the use of that kind of statement in civil
 (23) proceedings such as this I do not question that it would be
 (24) inappropriate to use the statement given to the Coast Guard
 (25) investigator in the course of Coast Guard proceedings, that
 (26) would be prohibited except for impeachment purposes but I'll

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- (1) allow you to inquire about it in these proceedings
- (2) MR O NEILL Thank you Your Honor
- (3) THE COURT We ll adjourn for the day and see you
- (4) tomorrow at 8 00
- (5) THE CLERK This court is adjourned until 8 00
- (6) tomorrow morning
- (7) (Proceedings recessed at 2 15 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

Look-See Concordance Report

UNIQUE WORDS 3,108
TOTAL OCCURRENCES 12,819
NOISE WORDS 385
TOTAL WORDS IN FILE 42,905

SINGLE FILE CONCORDANCE

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NOISE WORD LIST(S)
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NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD 17

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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA
) Case No. A89 0095 CIV (HRH)
) Anchorage Alaska
 (5) The EXXON VALDEZ) Wednesday May 11 1994
) 8 00 a m
)
) TRANSCRIPT OF PROCEEDINGS
) TRIAL BY JURY 7th DAY
 (10) BEFORE THE HONORABLE H RUSSEL HOLLAND JUDGE
) VOLUME 7 Pages 404 605
) Realtime Transcription

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(1) PROCEEDINGS
 (2) THE CLERK All rise
 (3) (Call to Order of the Court)
 (4) THE COURT Good morning this is a continuation of
 trial in A89 0095 civil in re the Exxon Valdez If we could
 (6) have Captain Hazelwood resume the stand please
 (7) Do you understand sir that you are still under oath?
 (8) THE WITNESS Yes
 (9) THE COURT Go ahead
 (10) MR O NEILL Thank you Judge
 (11) CONTINUED DIRECT EXAMINATION OF JOSEPH
 HAZELWOOD
 (12) BY MR O NEILL
 (13) Q Captain I've put on the top of the stack there where we
 (14) left off yesterday and I put a copy what was marked for
 (15) identification as plaintiffs Exhibit Number 826 That s a
 (16) copy of Mr Delozier s interview?
 (17) A Yes
 (18) Q This copy of Mr Delozier s interview was one that at some
 (19) point in time was made available to you and you compared it
 (20) your lawyers compared it to the original tapes and made fixes
 (21) or notations on it?
 (22) A Yes
 (23) Q And let s assume and I m willing to stipulate that for the
 (24) purposes of this proceeding that all your fixes and notations
 (25) are such that this now corresponds to the actual interview

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(1) tape?
 (2) A Yes
 (3) Q And to your knowledge this corresponds with the interview
 (4) tape as you ve marked it up or your lawyers have marked it up
 (5) A That s correct
 (6) MR O NEILL Offer 826
 (7) (Exhibit 826 offered)
 (8) THE COURT Objection?
 (9) MR CHALOS No
 (10) THE COURT It s admitted
 (11) (Exhibit 826 received)
 (12) BY MR O NEILL
 (13) Q Specifically when did this interview take place?
 (14) A Time here is 1305 1 00 in the afternoon
 (15) Q Of the day after the wreck?
 (16) A The day of the wreck
 (17) Q And where did it take place?
 (18) A At my office
 (19) Q On the vessel?
 (20) A Yes
 (21) Q Who was present?
 (22) A Mr Delozier, myself, Fish & Game trooper Michael Fox
 and
 (23) assorted other people that were coming and going
 (24) Q Did you know who Mr Delozier was?
 (25) A He had introduced himself earlier in the morning, yes

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- (1) Q Just prior to the interview they had taken blood?
 (2) A A couple hours prior
 (3) Q And did you know that the interview was being transcribed?
 (4) THE COURT Or recorded?
 (5) BY MR O NEILL
 (6) Q Or recorded?
 (7) A Not particularly no I have a recollection Trooper Fox
 (8) said he had a micro cassette recorder
 (9) Q I d like to go to page 007 of the Exhibit PLX 826 227 it s
 (10) on the bar code page?
 (11) A Uh huh
 (12) Q And I m going to call your attention to a question on the
 (13) bottom of the page that I ve circled on the TV set and it
 (14) appears to me that the question reads there have been ah
 (15) some suggestions and ah statements concerning the fact that
 (16) ah ah you had some alcohol or the odor of alcohol on you
 (17) Do you see that question?
 (18) A Yes
 (19) Q Then on the next page the discussion continues and you say
 (20) well I had one of those phony beers Moussy and I had been
 (21) ashore and I had been ashore with - do you see the discussion
 (22) there?
 (23) A Yes
 (24) Q I want to shortcut this to some extent by - Captain Murphy
 (25) called your attention in the interview to the fact that there

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- (1) had been some discussion as to whether you had been drinking
 or
 (2) not?
 (3) A Captain Murphy?
 (4) Q I m sorry Mr Delozier?
 (5) A He mentioned it, yeah
 (6) Q And then he got into the subject of asking you about
 (7) drnking isn t that a correct statement?
 (8) A Somewhere, yeah
 (9) Q And he asked you did you have anything to drink at the
 (10) Pizza Palace?
 (11) A Yes
 (12) Q And you say that you had a beer at the Pizza Palace a real
 (13) beer?
 (14) A According to this interview, yeah
 (15) Q Is that what you said?
 (16) A Yes
 (17) Q Did you have a beer at the Pizza Palace?
 (18) A No, no, nor did I have a piece of pizza
 (19) MR O NEILL I d like to go to page 12 of the
 (20) interview notes Can we have page 12?
 (21) BY MR O NEILL
 (22) Q In the interview notes to the Coast Guard officer you tell
 (23) him that at about 3 00 you looked into the Pipeline Club do
 (24) you see that?
 (25) A Yeah, this point was - Trooper Fox had jumped in there I

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- (1) don t think it was Delozier
 (2) Q Is that a correct statement though? You told him that?
 (3) A Went by the Pipeline at 3 yeah
 (4) Q And you looked to see if anybody was in there off ship?
 (5) A That s what I told him yes
 (6) Q And then on the next page of the interview notes the
 (7) subject comes up again all right so somewhere around 1500 to
 (8) 1530 you were at the Pipeline Answer yeah
 (9) Do you see that?
 (10) A Yes
 (11) Q So on two different occasions you put yourself or placed
 (12) yourself in this interview at the Pipeline Club is that a fair
 (13) statement?
 (14) A In this interview, yeah
 (15) Q And your testimony today testimony yesterday was you
 (16) weren t at the Pipeline Club around 3 or 3 30 is that a
 (17) correct statement?
 (18) A That s correct
 (19) MR O NEILL Now I want to go to page 12 of the
 (20) interview notes Will you pull up 12 for me?
 (21) BY MR O NEILL
 (22) Q And on page 12 of the interview notes you state with regard
 (23) to the beer that you claim to have had it was now at the Harbor
 (24) Club do you see that?
 (25) A Yes

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- (1) Q I want to go back to page 8 Page 8 was where you talked
 (2) for a minute about the beer at the Pizza Palace?
 (3) A Yes
 (4) Q And that discussion is right here I m going to put a one
 (5) there Do you see that?
 (6) A Yes
 (7) Q And then the warrant officer asked you anything of - any
 (8) other alcohol consumption after the pizza Do you see that?
 (9) And you say well these Moussys I had one of them prior to
 (10) sailing It s I guess not alcohol It s an alcohol free
 (11) beer is that what it s called a Moussy non alcoholic and you
 (12) just had one of these when you came back one or two prior to
 (13) sailing one or two prior to sailing
 (14) Do you see that?
 (15) A Yes
 (16) Q Did you tell him about the vodkas you had?
 (17) A No
 (18) Q Why not?
 (19) A Well, the whole context of this interview was taking place
 (20) in a trying condition and he had originally asked me, he
 asked
 (21) me about the grounding of the ship, and in the beginning of
 the
 (22) interview I tried to relay at much as I knew at that point
 (23) Q And then at some point in the interview he was going to say
 (24) to you that there had been some talk about drinking and he was
 (25) going to ask about that isn t that right?

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- (1) A He started to mention that At that time we were trying
 (2) to get lined up for lightering we had another rising tide and
 (3) I just wanted to get rid of him I didn't want to waste my
 (4) time with him to reconstruct the events of the previous
 (5) afternoon, which weren't very important to me at the time
 (6) Q Would it be fair to say with regard to what you drank that
 (7) day you were less than frank with him?
 (8) A Yes
 (9) Q In here you talk about being at the Pipeline Club at 3 00
 (10) in the Delozier interview?
 (11) A I make a reference to that and I also make a reference to
 (12) 7 00 at the Harbor Club Everything is about an hour or so
 (13) out
 (14) of whack
 (15) Q Well you make two references to being at the Pipeline Club
 (16) at 3 or 3 30 don't you? We can go over them again
 (17) A Yeah
 (18) Q So at least in the Delozier interview you place yourself at
 (19) the Pipeline Club at around 3 or 3 30 in the interview?
 (20) A In the context of this interview, yeah
 (21) Q And in the context of - let me ask you directly You
 (22) admit to being in the Pipeline Club from 4 30 to 6 30?
 (23) A Yes
 (24) Q And you admit to having three drinks from 4 30 to 6 30?
 (25) A That's correct, yes, sir
 (26) Q And you admit to being in the Harbor Club around 6 30

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- (1) 7 00?
 (2) A No, a little bit later than that, after we had ordered the
 (3) pizza and stood outside for a short while and ducked in
 (4) there
 (5) to get out of the weather
 (6) Q While you were in there in the process of ordering your
 (7) drink do you recall the bartender lining the bottles up?
 (8) A No, he pointed out the selections he had He didn't
 (9) physically line the bottles up He said this is what we have
 (10) available (indicating)
 (11) Q And between 6 and getting back to the ship did you ever
 (12) get in the proximity of the - after leaving the Pipeline Club
 (13) at 6 or 6 30 after that and before getting back to the ship
 (14) did you ever get to the proximity of the Pipeline Club again?
 (15) A We were picked up by the cab that drove us all back to
 (16) pick
 (17) up a crew member from another ship And we waited in the
 (18) cab
 (19) while the driver went in and got him
 (20) Q Now I want to talk about the time from 2 00 to 4 30
 (21) A Uh huh
 (22) Q Your testimony is between 2 and 4 30 you went to the flower
 (23) shop that's across the street from the Pipeline Club?
 (24) A Yes, it was - well, started there yeah
 (25) Q And you know the owner there?
 (26) A I had met her before, yes
 (27) Q And you bought flowers there?
 (28) A Well, I ordered some

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- (1) Q And they mailed them And then you went to a place call
 (2) Sugar and Spice?
 (3) A Sugar and Spice and looked around there It was just
 (4) touristy type of shop and then there is another one that
 (5) kind of kitty corner to it on the opposite corner
 (6) Q Are they near the flower shop or were they? I looked for
 (7) Sugar and Spice and I couldn't find it
 (8) A It may be gone now, I don't know
 (9) MR CHALOS Your Honor I object because I saw Sugar
 (10) and Spice so I don't think it's fair for Mr O Neill to say
 (11) that It's just down the street
 (12) THE COURT You may cross exam on it
 (13) BY MR O NEILL
 (14) Q How far how many minutes does it say take to walk from
 (15) flower shop to the Pipeline Club?
 (16) A Flower shop to the Pipeline Club? Oh goodness, a
 (17) minute or
 (18) so
 (19) Q Just directly across the street?
 (20) A Yeah
 (21) Q Now after spending the afternoon in the town of Valdez
 (22) you go back to the vessel?
 (23) A That's correct
 (24) Q And the vessel had a planned departure of about 10 00?
 (25) A When I was in the Alamar office noon time, or noon ish
 (26) contacted the vessel and they had - when I left the vessel

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- (1) physically, it was 9 00 in the evening When I received
 (2) information in the Alamar office, talked to the second ma
 (3) chief mate on the radio, they had advanced the sailing, or
 (4) moved the sailing up to 10 00, or later, due to the cargo
 (5) availability
 (6) Q One thing I want to go back to the afternoon just for a
 (7) second
 (8) Who did you have drinks with at the Pipeline Club? Were
 (9) they people off the ship?
 (10) A Yes
 (11) Q And that was Glowacki and Roberson?
 (12) A Yeah Initially, Mr Glowacki was in there when I arrive
 (13) and then Mr Roberson came in there later
 (14) Q And your recollection is you had three drinks in the
 (15) Pipeline Club?
 (16) A Yes
 (17) Q And if I was to say that they were in glasses that were
 (18) about this tall and they were free poured would you take any
 (19) disagreement with me on that (indicating)?
 (20) A Well, I ordered vodka on the rocks, and they were in a
 (21) three or four - three inch tumbler glass full of ice, free
 (22) poured, yes
 (23) Q And vodka up to the top of the glass with the ice?
 (24) A Yes
 (25) Q And the drink when you ordered a drink at the Harbor Club

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- (1) were you with anybody from Exxon Shipping Company?
 (2) A I was with Mr Roberson and I had stepped in because it
 (3) was too crowded in the Pizza Palace and to get out of the
 (4) weather And we just didn't feel like standing in this guy's
 (5) establishment without ordering something We ordered
 (6) drinks
 (7) and Mr Glowacki ordered a drink he ordered Mr Glowacki
 (8) was
 (9) In there with us The three of us were there together
 (10) Q And that's when he showed you the array of bottles he had
 (11) on the bar with regard to vodka?
 (12) A Yes, it's - I just wanted to twist Mr Glowacki's tail
 (13) He's a Polish immigrant He doesn't like anything Russian
 (14) Q Alamar is the ship agent?
 (15) A Yes
 (16) Q Could you tell me what a ship agent is?
 (17) A Generally an agent, or an agency provides support for the
 (18) vessel when you come in, mail services, if people are sick
 (19) they
 (20) will make sure - make an appointment with a doctor If you
 (21) need to order parts or supplies, you go through them They
 (22) are
 (23) your shore representative In this instance, they are an
 (24) outside contractor
 (25) Q Have you ever had a drink at the Pipeline Club or the
 Harbor Club or any drinking establishments in Valdez when any
 representatives of Alamar were there? Is it out of the
 question?
 A I believe that evening I saw Gretchen Dunkin walked
 through

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- (1) the Pipeline Club, she was there
 (2) Q Did you say hi to her?
 (3) A I said hello, yeah
 (4) Q How about on prior occasions?
 (5) A Over the years, I would have to say yes
 (6) Q Thank you
 (7) Now at some point between the vessel passing Hinchinbrook
 (8) and coming in and the vessel departing 9 10 or about 9 10
 (9) did you have any discussion with anybody about ice ice out off
 (10) of Columbia Glacier?
 (11) A Well, I had discussions with the vessel traffic on the
 (12) inbound voyage, yeah, because I had to go out of the lanes
 (13) to
 (14) avoid the ice
 (15) Q Did you and Murphy ever talk about it, that you recall?
 (16) A Prior to sailing, or in the process of letting go the
 (17) lines, I inquired of him what his knowledge was of the
 (18) current
 (19) ice conditions in the Columbia Glacier - the ice out of
 (20) Columbia Bay, Point Freemantle area into the lanes He
 (21) relayed
 (22) to me that he had overheard a conversation of the Arco
 (23) Juneau,
 (24) I believe, on the radio, that it had to divert around the ice
 (25) earlier in the evening
 Q We talked for a minute yesterday about the four hour rule
 with regard to drinking
 A Yes
 Q Would you agree with this proposition that on the evening

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- (1) of March 23rd 1989 you violated the four hour rule?
 (2) A Unintentionally yes
 (3) Q Did you - the answer is yes I violated the rule?
 (4) A Yes as it turned out
 (5) MR CHALOS Your Honor objection
 (6) THE COURT What's the objection?
 (7) MR CHALOS He gave his answer and Mr O'Neill
 (8) mischaracterized it
 (9) THE COURT No he didn't The answer was qualified
 (10) and he asked a followup question that's okay
 (11) BY MR O'NEILL
 (12) Q Would it be fair to say that both with regard to your first
 (13) vessel assignment on the Exxon Philadelphia and your last
 (14) vessel assignment on the Exxon Valdez that you violated
 (15) Exxon's alcohol policy?
 (16) A Yes
 (17) Q Now when you got back to the vessel it was about 8 40?
 (18) A Approximately, yes
 (19) Q And the pilot was there?
 (20) A Yes
 (21) Q And you got ready to go?
 (22) A Uh-huh
 (23) Q Are you aware at all - this is going to be a diversion
 (24) into the so called six on/six off rule which really isn't a
 (25) six on/six off rule it's Statute 8104 Have you ever had any

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- (1) discussions about that?
 (2) A I've seen - yeah, over the years, yeah
 (3) Q And let me see if I can state it right because I may not
 (4) have stated it right in my opening you help me with that and
 (5) we'll get it right
 (6) When a vessel is going to leave port like the Port of
 (7) Valdez if an officer is going to stand a watch he has to have
 (8) had six hours off duty in the prior 12 hours?
 (9) A Yes, exclusive of - there are some qualifications to that
 (10) including mooring and unmooring That can be within that
 (11) six
 (12) hours Six hours off duty prior to assuming on his own a
 (13) bridge watch exclusive of a pilot or anybody else that's
 (14) sailing a normal bridge watch
 (15) Q Had you ever sailed on an Exxon vessel in a situation in
 (16) which none of the deck officers had six hours off in the 12
 (17) hours immediately preceding the sailing?
 (18) A I'm sure I have at some point in my seagoing career, yes
 (19) Q Are you aware of any specific policies or procedures that
 (20) Exxon Shipping Company had whereby mates were required to
 (21) report to the master before sailing how many hours off duty
 (22) they had in the 12 hours immediately preceding the sailing?
 (23) Was there a policy in place for you to check this six on and
 (24) six off - I guess six on/six off rule?
 (25) A What's the six on part?
 Q I'm sorry the requirement that we're talking about?

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- 1) A Yeah
 (2) Q Was there a policy in place for that?
 (3) A You mean prior to sailing head count how many hours have
 (4) you had off?
 (5) Q Yeah
 (6) A Not a formalized policy, no
 (7) Q When you left the dock in Valdez did you know at that
 (8) point in time whether there was a violation of 8104 or not?
 (9) A I assumed there was not because it was an easy load
 There
 (10) was no topping off of tanks, which require extra mates
 around
 (11) It was a light load, if you can use that expression, she
 wasn't
 (12) filled up, so the tanks weren't pressed up, which usually
 (13) requires you extra manpower to do Pretty straightforward
 one
 (14) man could have handled the whole load
 (15) Q Would it be fair to say on that evening you did not know
 (16) the specific amount of rest or off duty time or off duty time
 (17) each of the mates had?
 (18) A I had no specific recantation of their hours worked or not
 (19) worked, no
 (20) Q Do you recall any Exxon policy that had the effect or the
 (21) purpose of making deck officers aware of 8104?
 (22) A Not a specific policy that I was aware of no
 (23) Q Had you ever discussed 8104 with the ship's officers that
 (24) were on the Valdez that night Cousins LeCain or Kunkel?
 (25) A The previous trip, yes

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- (1) Q With which one?
 (2) A All three of them, and taking corrective action
 (3) Q Could you go to page 1992 of your deposition transcript
 (4) A Yes
 (5) Q And I'm going to read the questions and answers beginning
 (6) on line 5 of 1992 down to line 25 and you follow and tell me
 (7) if I read them correctly?
 (8) A Yes
 (9) Q At any time before the grounding do you recall ever having
 (10) any conversations or discussions with Gregory Cousins
 regarding
 (11) that statute Your answer the statute per se The question
 (12) or the actual rule that comes out of the statute Answer no
 (13) Same question for Second Officer LeCain do you recall any
 (14) discussions you ever had with him regarding the statute
 (15) Answer no Question have you ever had any discussions
 (16) regarding that statute with First Officer Kunkel Answer not
 (17) the statute per se I relieved him on some occasions on
 (18) different scenarios to have him get some rest Question
 (19) right but did you ever - you say statute per se Did you
 (20) ever have any discussions with First Officer Kunkel regarding
 (21) the rule of - with the statute Answer no
 (22) Were those the questions given and the answers given?
 (23) A Yes
 (24) Q While we're on that subject were there any records that
 (25) were kept on the ship time cards time entries that would

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- (1) allow Exxon Shipping Company to monitor or know with regard
 to
 (2) watch officers whether there was any compliance with 8104?
 (3) A With the exception of - chief mate would normally - Mr
 (4) Kunkel did keep a workbook for his activities on a daily
 (5) basis But the second or third mate wouldn't
 (6) Q Was there a formal way for Exxon Shipping Company to
 know
 (7) or monitor 8104 because of the ship's records?
 (8) A You mean a monthly or weekly submission?
 (9) Q Yes Yeah
 (10) A Not that I'm aware of, no
 (11) Q Now let's go back to the voyage and if we could we're
 (12) going to use this exhibit with these numbers on it Exhibit
 (13) Number 86 Can you see this?
 (14) A Yeah
 (15) Q Where the number 1 is that's about where Valdez dock is
 (16) and the vessel leaves at about 9 12?
 (17) A The last line, yeah
 (18) Q Means you throw the last line off is that when you log it?
 (19) A Usually it's when the last line is aboard the vessel and
 (20) clear
 (21) Q And then at this point in time right here did you go down
 (22) to your stateroom where the number 2 is?
 (23) A No, I went down a little bit earlier and then I was back up
 (24) around number 2
 (25) Q So you went - sometime between 1 and 2 you went down to

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- (1) your stateroom you were back up where number 2 is and then
 (2) A No, further where he shaped up for the Narrows
 (3) Q Right about here (indicating)?
 (4) A After the turn, yeah
 (5) MR NEAL Could I come across? When he says right
 (6) about here I can't know what he's saying
 (7) MR O NEILL Sure
 (8) BY MR O NEILL
 (9) Q So you'd like to move 2 over to about here?
 (10) A Approximately, yeah
 (11) Q Is that fair?
 (12) When you went below did you tell Mr Murphy?
 (13) A No, I told Mr Cousins
 (14) Q My question was did you tell Murphy?
 (15) A That's not my practice, and I didn't, no
 (16) Q And then where the number 3 is the Valdez passed through
 (17) the Narrows?
 (18) A No, she entered the Narrows
 (19) Q From here to here then from the 3 to where this is she
 (20) passes through the Narrows is that fair?
 (21) A Yes she's transiting the Narrows
 (22) Q Were you below then?
 (23) A Up to about where your lower mark is
 (24) Q I'll put a 3 A where the lower mark is is that fair?
 (25) A Yeah

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- (1) Q And then where the number 4 is were you called then to
 (2) come back up by Mr Cousins?
 (3) A No the 3 A
 (4) Q About 3 A Mr Cousins calls you up?
 (5) A Yeah
 (6) Q And?
 (7) A I came up
 (8) Q Is that about at 5?
 (9) A No, 3 A, like I say
 (10) Q So you came up at 3 A?
 (11) A Yeah, prior to Potato Point yeah
 (12) Q Murphy departs at about point 6?
 (13) A Approximately there, maybe 7
 (14) Q And at 7 right after Mr Murphy departs - Captain Murphy
 (15) it is isn't it?
 (16) A Yes
 (17) Q You advise the VTC that you would move to TSS inbound
 (18) traffic line if no conflicting traffic?
 (19) A I had some transmissions before that
 (20) Q Did you have a transmission at about 11 25 and advise them
 (21) that you were going to do that?
 (22) A Well, initially I told them the pilot was off and I was
 (23) going to be hooking up to sea speed I was outbound, and
 (24) subsequent to that, when I started observing the ice on the
 (25) radar, I told them I was be leaving the TSS to go around the

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- (1) Ice and eventually end up in the inbound traffic lane, which
 (2) the normal practice
 (3) Q And at about point 8 you advised the VTC that you re going
 (4) to alter course to 200 and reduce speed to 12 knots?
 (5) A Yes, I recall that
 (6) Q Now I want to stop just here for a second When you
 (7) advised the VTC that you re going to alter the course to 200
 (8) this line is about 200 right?
 (9) A Uh huh
 (10) Q And when you say I m going to reduce the speed to 12
 (11) knots was that an accurate statement of your intent?
 (12) A Well, my intent was to maintain the speed that I was going
 (13) because I had never increased to sea speed as I had
 (14) informed
 (15) them earlier
 (16) Q And indeed at this point your speed was below 12 knots?
 (17) A It was 11-ish
 (18) Q So when you say I m going to reduce the speed to 12 knots
 (19) you were already below 12 knots?
 (20) A I was going to maintain what I was at rather than increase
 (21) speed as I had informed them before
 (22) Q The transmission says reduce speed to 12 knots?
 (23) A Well, the prior transmission said increase speed
 (24) Q But this one says reduce speed to 12 knots?
 (25) A Uh-huh
 (26) Q And at this particular time you were already below 12

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- (1) knots?
 (2) A Yes I had not increased speed
 (3) Q And then at point 9 you changed the course from 200 to 180
 (4) and you order Mr Claar to steady on 180 and put the steering
 (5) on auto gyro?
 (6) A That s correct yeah
 (7) Q And at point 10 Claar puts the steering at auto gyro or
 (8) do you know?
 (9) A I know He put it in a few minutes after he steadied up
 (10) Q And point 11 you discuss turning the con over to Cousins
 (11) and instruct him to bring the vessel back into TSS when abeam
 (12) of Busby Island?
 (13) A Busby Island light
 (14) Q This is the light right here halfway between 14?
 (15) A Yes
 (16) Q At point 12 the vessel leaves the TSS completely?
 (17) A Yes
 (18) Q At point 13 you put the engine in Load Program Up?
 (19) A Yes
 (20) Q And would you explain to us what Load Program Up is?
 (21) A Low speed diesels, as engines, power plants as the Exxon
 (22) Valdez has is a - to go from your maneuvering speed which
 (23) you
 (24) use around the harbor to a sea speed, or a full speed, you
 (25) have
 (26) computerized program that brings this engine up gradually
 (27) over
 (28) a 48 minute period It increases approximately 24
 (29) revolutions

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- (1) with an increase The speed is at 55 rpm's and it goes to 78
 (2) to 80 over a 25 minutes period, and it s a gradual program
 (3) because of the heat dissipation As the engine fires faster
 (4) there is more heat generated and it has to be over a period
 (5) of
 (6) time to safe the engine, and it's run by a computer which
 (7) push
 (8) a button, notify the engineers that it's going up You can
 (9) stop it at any time and reverse it, stop the program at any
 (10) time you want, but it takes about a 43 to 47 minute evolution
 (11) to get up to the increased speed
 (12) Q Now at the 13 point where we put the program into Load
 (13) Program Up 14 you advise Cousins - is 14 when you leave the
 (14) bridge?
 (15) A Approximately, yeah
 (16) Q So you advised Cousins that you were going to leave the
 (17) bridge and turn when he got abeam of Busby Island you did
 (18) that up on 11?
 (19) A Well, we discussed it there, yeah
 (20) Q And then - and then when you get down here to 14 you leave
 (21) the bridge and you advise him to turn - to telephone when the
 (22) turn is started and that you would be back in a few minutes?
 (23) A I told him to call me when he started the turn at Busby
 (24) Island light and indicate to me how things looked at that
 (25) juncture
 (26) Q Now you said you would be back in a few minutes?
 (27) A Words to that effect, yes, a few minutes

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- (1) Q Was it two minutes?
 (2) A A few minutes
 (3) Q At the time you left the bridge to the Busby Island light
 (4) would it be fair to say that you were about two minutes away?
 (5) A Two to three You can look out the window and see it
 (6) yeah
 (7) Q And so two minutes before you were to make the turn you
 (8) left the bridge with Mr Cousins on the bridge?
 (9) A Yes
 (10) Q Was there another ship s officer on the bridge at that
 (11) point in time?
 (12) A At that point in time, no
 (13) Q And to your knowledge between your leaving the bridge and
 (14) the vessel running aground was there another ship s officer on
 (15) the bridge other than Mr Cousins?
 (16) A Just the lookout who had a license, but not an assigned
 (17) officer, no
 (18) Q Now you leave the bridge here and did you get a call two
 (19) minutes later saying I ve started the turn or three minutes
 (20) later saying I ve started the turn?
 (21) A It was approximately then
 (22) Q So your testimony is is that two minutes later Mr Cousins
 (23) called you and said I started the turn?
 (24) A I ve commenced turning the vessel everything looks all
 (25) right

- (1) after a number of drinks that vessel would have turned and
 (2) missed the reef wouldn t it?
 (3) A I can think of no reason why I couldn t have turned it
 (4) Q And indeed from the time you left the bridge well through
 (5) this period here when you were below there were a number
 (6) opportunities to turn? You could have turned here here her
 (7) here here and missed the reef?
 (8) A Yes an action could have been taken
 (9) Q Action could have been taken until probably down in here
 (10) MR NEAL Could you say what down in here is?
 (11) MR O NEILL I m sorry down where 17 or 19
 (12) THE WITNESS In that general area yeah
 (13) BY MR O NEILL
 (14) Q Now let me ask you another question while we re here
 (15) There is something on the charts called a red zone?
 (16) A Yes, on every chart
 (17) Q And it comes out - does it come out like this?
 (18) A There is a red sector on Busby Island light, yeah, which
 (19) goes down to about the buoy
 (20) Q Just a little right of the buoy isn t it?
 (21) A Roughly, and it goes up to the northwest
 (22) Q And it s a line on the navigation chart? I ruined this
 (23) nice exhibit?
 (24) A Well, it s a faint line
 (25) Q It s technically called a red zone?

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- (1) Q And that this was two minutes after you left the bridge?
 (2) A Two to three minutes, and it was coincided with my
 (3) predicted time abeam of Busby Island, yeah
 (4) Q So your testimony is that Mr Cousins made this telephone
 (5) call right about here?
 (6) A Yes
 (7) Q What does Mr Cousins say?
 (8) A He said it could have been a couple minutes later, I
 (9) believe
 (10) Q Did the vessel start to turn here?
 (11) A Obviously not, no
 (12) Q You can feel when the vessel starts to turn can t you?
 (13) A Not that ship, no
 (14) Q You can t?
 (15) A Not with 10 degrees at wheel
 (16) Q Where were you?
 (17) A Right in my office
 (18) Q Did you go down to talk to Mr Glowacki about any personal
 (19) problems?
 (20) A Personal problems?
 (21) Q I m just asking?
 (22) A No As far as I know, he was in the engine room
 (23) Q Now let me ask you a question and I m - it hasn t been
 (24) asked before and I m going to ask it frankly
 (25) If you had been on the bridge here here here here even

- (1) A Red sector
 (2) Q And why is it there?
 (3) A On most navigational aids that are land based, there is
 (4) red sector to indicate - there is a white characteristic of
 (5) the light which is unique to the aid to navigation, and it
 (6) indicates that that aid to navigation, if you re in the red
 (7) sector, you re in some sort of danger, it s not the relative
 (8) angle to that particular aid that you re - you should be at
 (9) Q If you get down here and you see the Bligh Reef buoy on t
 (10) starboard bow and then abeam would you agree with me tha
 (11) you ve got some trouble on your hands?
 (12) A Abeam, yes Starboard bow, not particularly
 (13) Q Is it the coolest place to be to be in the red sector?
 (14) A No
 (15) Q We talked yesterday about pilotage for a couple minutes
 (16) A Uh-huh
 (17) Q And I want to go back to that subject but before I do -
 (18) MR O NEILL I m through with that
 (19) MR NEAL I ll get it or help
 (20) BY MR O NEILL
 (21) Q If the Busby Island light is broad on the bow would you
 (22) agree with me you have some problems?
 (23) A Using that scenario?
 (24) Q Yeah
 (25) A On the 180 heading?

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- (1) Q Yeah
 (2) A Cause me some concern yeah
 (3) MR CHALOS Excuse me Your Honor I think Mr
 (4) O Neill misspoke You said Busby Island light and you didn't
 (5) mean that
 (6) BY MR O NEILL
 (7) Q I meant the Bligh Reef light on the bow I did misspeak
 (8) I think we knew what we were talking about?
 (9) A Yes
 (10) Q You knew Mr Cousins had no pilotage endorsement for
 Prince
 (11) William Sound?
 (12) A Yes
 (13) Q Now I have a question for you on a document called the deck
 (14) logbook What is a deck logbook?
 (15) A It's a running account of the operations of the vessel
 from
 (16) the deck perspective Basically, the overall operation
 There
 (17) is an engine log that's kept as well, which deals with
 (18) succinctly engineering matters
 (19) Q I want to deal with the big blueprint like one The
 (20) engineering one is a smaller one?
 (21) A Same size
 (22) Q It is? I want to deal with the deck one and not the
 (23) engineering one
 (24) A Yeah
 (25) Q Who makes the entries in the deck logbook?

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- (1) A Various watch officers and myself as master, the three
 deck
 (2) officers and the master
 (3) Q What kind of entries do you put in there?
 (4) A Generally related to the operation of the vessel, where
 (5) your navigational position is on a watch by watch basis
 The
 (6) weather, courses steered, the list of the crew members that
 are
 (7) on those particular watches There is a section for 24 hours
 (8) chronicling events of statistical data, mild steam, distance
 (9) run - I should say, distance to go at sea voyaging Then
 (10) there is a chronicling of the important events when the ship
 is
 (11) along the dock
 (12) Q What does it mean to be in port?
 (13) A Well, it's kind of a broad brush stroke, you could be in
 (14) port and tied up to a dock, port activities which would be
 (15) different - you could be physically in the port and moving
 (16) before you get tied up
 (17) Q What does it mean entering and leaving port?
 (18) A It depends on the port Entering and leaving the port -
 (19) Q How about San Francisco?
 (20) A San Francisco, would be the - usually from the Bar
 passage
 (21) In, San Francisco Bar
 (22) Q Is there a name for those islands?
 (23) A No, San Francisco Bars
 (24) Q Do you review the deck entries?
 (25) A Yes

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- (1) Q Part of your job?
 (2) A Yes, to make sure they are appropriate if they are not
 (3) correct
 (4) Q When do you review them?
 (5) A Usually I review them on a daily basis
 (6) MR O NEILL Do we have these submitted?
 (7) BY MR O NEILL
 (8) Q Do you have this up there?
 (9) A I don't see it I'm sorry
 (10) Q You do?
 (11) A Yeah
 (12) Q Could you break it open and could we go to Wednesday the
 (13) 22nd of March I'm sorry this is Exhibit 140 which has been
 (14) pre admitted
 (15) Are we on the date Wednesday the 2nd 2nd of March?
 (16) A That's correct
 (17) Q And this is the day you were coming into Valdez?
 (18) A Yes
 (19) Q And the entry for the watch from 12 00 to 4 00 which is
 (20) the second to the bottom entry on the page do you see that?
 (21) A No, I think you're a segment too low
 (22) Q I want to get to the entry at 17 is that 1700 hours?
 (23) A Yeah, that's the 4 to 8 watch, not the 12 to 4
 (24) Q What time?
 (25) A 17 to 20

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- (1) Q This is on the evening coming in?
 (2) A That's correct
 (3) Q So on the evening coming in there is an entry made at 1700
 (4) hours that says various off Hinchinbrook?
 (5) A Yes
 (6) Q What does that mean?
 (7) A Those were the courses steered
 (8) Q And Hinchinbrook is -
 (9) A The - marks the entrance, Hinchinbrook - Cape
 (10) Hinchinbrook marks the entrance to Prince William Sound
 (11) Q And the next entry there says master piloting?
 (12) A Yes
 (13) Q Do you see that?
 (14) A Yeah
 (15) Q Does that mean that you were piloting the vessel?
 (16) A I was physically doing the navigation, yes
 (17) Q Doesn't say physically doing the navigation it has master
 (18) piloting?
 (19) A That's the definition of piloting
 (20) Q Well let's follow that through Over in the right hand
 (21) column it says 1950 watch relieved master piloting do you see
 (22) that?
 (23) A Yes That's when Mr Cousins came up
 (24) Q But you were still piloting?
 (25) A Yes, I had taken Mr Kunkel's watch

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- (1) Q And then there is an entry in the next line that says pilot
 (2) aboard 2022 Rocky Point do you see that?
 (3) A Yeah
 (4) Q And then there is an entry at 2100 that says pilot conning?
 (5) A Yes he was conning the vessel
 (6) Q And would it be fair to say that at about the time of the
 (7) entry at 1700 or 1800 hours there was a radio transmission from
 (8) the VTC to your vessel asking whether you have a master or a
 (9) mate that have a pilot s endorsement for Prince William Sound?
 (10) A Yes
 (11) Q And the vessel responded affirmative?
 (12) A Yes
 (13) Q And those were the written records at the time you entered
 (14) Prince William Sound on March 22nd?
 (15) A Yes
 (16) Q Now I want to go to the vessel running aground The
 (17) vessel runs aground?
 (18) A Yes
 (19) Q And then what happens?
 (20) A Well, I received a phone call from Mr Cousins saying that
 (21) we were in serious trouble, and concurrent with that phone
 call
 (22) I could feel the grounding occurring, and I ran up to the
 (23) bridge
 (24) Q And about what time was that?
 (25) A I would - before I - the reconstruction analysis, I ve

- (1) of Bligh Reef?
 (2) A Fetched up hard aground
 (3) Q Around north of Goose Island off Bligh Reef You weren t
 (4) near Goose Island were you?
 (5) A We were north of it but I had Mr Cousins take a positio
 (6) to find out where we were and where we were aground
 Looking
 (7) at the time, I couldn t believe that we were on Bligh Reef
 (8) Q But you weren t near Goose Island were you?
 (9) A Time-wise we should have been down in that latitude, b
 l
 (10) can recall at that time thinking we hit some uncharted
 object
 (11) I couldn t believe we hit Bligh Reef
 (12) Q Would it be fair to say that at the time you phoned this
 (13) call in then to the Coast Guard you didn t know where you
 were?
 (14) A No, I had a position on the chart, but my mind wouldn t
 (15) accept the fact that we hit it I checked Mr Cousins'
 (16) position that I ordered him to take, but I wasn't accepting
 (17) Q Would it be fair to say then at the moment that you called
 (18) the Coast Guard Mr Cousins had shown you where you were
 on
 (19) the chart but you thought you were someplace else?
 (20) A I checked the position myself My mind still didn t want
 (21) to accept it
 (22) Q Now in the moments that follow and then the minutes and t
 (23) hours do you try to rock the vessel off of the reef?
 (24) A No
 (25) Q Did you try at all to rock the vessel off of the reef?

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- (1) seen seven or eight minutes after midnight
 (2) Q Seven or eight minutes after midnight?
 (3) A Yes
 (4) Q And then what activities consumed your attention for the
 (5) next hour?
 (6) A Awful lot of them Basically trying to find out the
 (7) condition of the vessel, alerting the crew, taking
 precautions
 (8) to ensure the safety of the crew Trying to take precautions
 (9) to ensure the safety of the vessel best I could
 (10) Q Did you report back into the Coast Guard with regard to the
 (11) grounding?
 (12) A Yes, I reported
 (13) Q And how many minutes after the grounding was the report?
 (14) A I reported - I reported the grounding that you played
 (15) yesterday, I guess it was, or the day before, 18 or 19
 minutes,
 (16) something like that
 (17) Q Why didn t you call them immediately?
 (18) A I had about a thousand other things to try to accomplish
 (19) Q We re going to play with the Court s permission that
 (20) section where you report back to the VTC and then we re going
 (21) to talk about it
 (22) (Audio tape played)
 (23) BY MR O NEILL
 (24) Q Now in that transmission you say we ve fetched up hard
 (25) north - we ve fetched up hard around north of Goose Island off

- (1) A I thought about it initially for a couple minutes when I
 (2) first arrived up there, as any mariner would involved in a
 (3) grounding I thought that wouldn't be very prudent
 (4) Q It would be bad judgment?
 (5) A In that situation, it wouldn't be the proper thing to do
 (6) no, to back her off the reef
 (7) Q Or to rock it off the reef?
 (8) A I don t know how you rock a ship off a reef
 (9) Q Okay you re the captain I m going to play with the
 (10) Court s permission another segment of the VTC tape and we
 (11) going to talk about what we just talked about now
 (12) (Audio tape played)
 (13) BY MR O NEILL
 (14) Q Would it be fair to say that at or after 1 00 you ve told
 (15) the Coast Guard that you were trying to extract the vessel from
 (16) the reef?
 (17) A I remember reading those words and hearing them
 (18) Q Did you say them? Do you have any doubt that you said
 (19) them?
 (20) A Nope
 (21) Q Did you see oil boiling up the sides of the ship?
 (22) A Both sides, yes
 (23) MR O NEILL I want to ask you about an exhibit that
 (24) your lawyer is going to use Can you put the other map up?
 (25) BY MR O NEILL

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- (1) Q It s Exhibit Number 851 for the record I just want to
 (2) establish two things with this chart Is this where - about
 (3) where you thought the leading edge of the ice was that
 evening?
 (4) A Well, I know Mr Blank (ph) and I went around and around
 (5) with this
 (6) Q We ll fix it however you want me to fix it?
 (7) A That s the major concentration of ice I thought roughly
 (8) indicated by there a silhouette
 (9) Q You re aware that Mr Cousins places the ice rght here?
 (10) A No, I m not His testimony is - he comports with mine,
 (11) generally He s got a leading edge line which doesn t
 indicate
 (12) the concentration of ice
 (13) Q Is this his leading edge line?
 (14) A It s a leading edge outer limit of some ice, but the
 (15) concentration he indicated comports with mine
 (16) Q Have we discussed that fairly?
 (17) A Reasonably fairly
 (18) Q At some point in time there is a detachment that boards the
 (19) vessel Do they come out in a helicopter The vessel is
 (20) aground on Bligh Reef and sometime people come aboard?
 (21) A About 10 or 11 In the morning, yeah
 (22) Q Do you recall making a statement to a member of the
 (23) boarding party in response to the question what s the problem
 (24) answer you re looking at it?
 (25) A I remember saying that to - they came out in a boat It

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- (1) was Mr - Lieutenant Commander Falkenstein, Warrant
 Officer
 (2) Delozier, and I believe it was Dan Lawn I do recall making
 (3) that statement I thought it was one of the more absurd
 (4) questions that s been asked of me The problem was pretty
 (5) obvious what was wrong, what the problem was
 (6) Q Sir you have three documents in front of you which has
 (7) been pre admitted and they are 827 828 and 829 They are
 (8) agreements
 (9) A 28 and 29 I've got Okay, yeah
 (10) Q Do you get to three of them before you?
 (11) A Yeah
 (12) Q 827 is an agreement to waive statute of limitations and
 (13) time bar defenses between you and your wife and Exxon
 (14) Corporation and Exxon Shipping Company?
 (15) A That's correct
 (16) Q And Exhibit 828 is a dispute resolution agreement between
 (17) you and your wife and Exxon Shipping Company and Exxon
 (18) Corporation?
 (19) A That s correct
 (20) Q And 829 is an agreement - extension of an agreement to
 (21) delay statute of limitations and time bar defenses between you
 (22) and your wife and Exxon Corporation and Exxon Shipping
 Company?
 (23) A That's correct
 (24) Q Do you have an outstanding dispute with Exxon Corporation
 (25) and Exxon Shipping Company?

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- (1) A In my mind s eye, yes
 (2) Q Have they asserted any claims against you?
 (3) A Not that I m aware of no
 (4) Q Are you participating with Exxon Corporation jointly in the
 (5) defense of the case?
 (6) A As far as this litigation goes, yes, my attorneys are
 (7) Q Is there a joint defense agreement?
 (8) MR NEAL Your Honor could we approach the bench?
 (9) (Bench Conference off the Record)
 (10) THE COURT Ladies and gentlemen of the jury with
 (11) respect to Captain Hazelwood s last testimony about a defense
 (12) agreement I want you to disregard that testimon, We may or
 (13) may not have something further to say to you about the subject
 (14) later but as of right now you should disregard that
 (15) testimony
 (16) BY MR O NEILL.
 (17) Q Captain how much are you out of pocket yourself with
 (18) regard to attorneys fees in this case?
 (19) A Attorneys fees, as of today, none
 (20) Q And that is because your attorneys fees are being paid by
 (21) Exxon Corporation or Exxon Shipping Company or both?
 (22) A Would assume, one of those entities
 (23) Q And with regard to the day to day representation of the
 (24) defense of this case this particular civil case would it be
 (25) fair to say that you and your lawyers work on a day to day

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- (1) basis with Exxon Corporation and Exxon Shipping Company?
 (2) A I don't My lawyers may on occasion
 (3) Q You know they do don t you?
 (4) A Well, I know who they are, and I assume that's what they
 (5) are doing
 (6) Q Where are you presently employed?
 (7) A Present I m working for Mr Chalos in his firm in New
 York
 (8) Q And Mr Chalos is your lawyer and you work in his law
 (9) office?
 (10) A Yes
 (11) Q And Mr Chalos is the one whose fees are paid by Exxon
 (12) Corporation or Exxon Shipping Company?
 (13) A Yes
 (14) Q And on occasion in the law office do you ever fill out
 (15) time sheets?
 (16) A I have in the past, yeah
 (17) Q And the reason for that is so when they bill the client
 (18) they know who to charge the time to and what the size of the
 (19) bill ought to be?
 (20) A Yeah
 (21) Q And on occasion you ve filled out time sheets with regard
 (22) to working on Exxon matters isn t that right?
 (23) A Yes, I have
 (24) Q So between the day of the grounding - let me ask you you
 (25) testified earlier - well I ll move onto something else

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- (1) You talked when we started a little bit about the subject
 (2) of episodic heavy drinking?
 (3) **A Yes**
 (4) Q And you talked when we started on the matter about the fact
 (5) that that was a problem for you?
 (6) **A Well, in relation to these bouts of depression, or whatever**
 (7) **you want to call them yeah**
 (8) Q Was there any heavy drinking in the days leading up to or
 (9) the days following the grounding of the Exxon Valdez by you?
 (10) **A Not that I m aware of, no**
 (11) Q So within the week before was there any heavy drinking?
 (12) **A No**
 (13) Q Within the week after was there any heavy drinking?
 (14) **A No**
 (15) Q You ve attended AA for a number of years?
 (16) **A I did, yes**
 (17) Q Have you ever heard the expression denial is not the name
 (18) of a river in Egypt?
 (19) **A I've heard it, yeah**
 (20) Q You ve heard it at AA meetings?
 (21) **A I ve heard it elsewhere**
 (22) Q Have you heard it at AA meetings?
 (23) **A I guess I have, yeah**
 (24) Q Would it be fair to say that as a result of your experience
 (25) in AA meetings that you know that a symptom of the disease of

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- (1) alcoholism is a lack of honesty or truthfulness with regard to
 (2) your drinking?
 (3) **MR CHALOS I object to the form of the question**
 (4) **Your Honor**
 (5) **THE COURT I ll allow the question**
 (6) **THE WITNESS I assume that s one component yeah**
 (7) **BY MR O NEILL**
 (8) Q And you ve said that there was no binge drnking or heavy
 (9) drinking at or about the time of the incident Did you drink
 (10) after the incident?
 (11) **A No I think the last drink I recall having is March 23rd,**
 (12) **1989**
 (13) Q Did you drink on the airplane with Mr Cousins from
 (14) Anchorage to Seattle when you came back after the incident?
 (15) **A No**
 (16) Q Are you certain of that?
 (17) **A Yes**
 (18) Q Now let s just assume - for the sake of discussion let s
 (19) just assume for the sake of discussion that you did Wouldn t
 (20) you say that it was a manifestation of an unhealthy attitude
 (21) towards drnking?
 (22) **MR CHALOS Your Honor I object to that question**
 (23) **There is no basis for it the witness has denied that he drank**
 (24) **on the airplane going down**
 (25) **THE COURT I ll sustain the objection**

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- (1) **MR O NEILL Thank you**
 (2) **BY MR O NEILL**
 (3) Q We talked about your wife going to Alanon and I wasn t
 (4) sure when she began going to Alanon?
 (5) **A She began sometime after I left South Oaks**
 (6) Q Do - looking back over your drinking history do you feel
 (7) that you re a normal drinker?
 (8) **MR CHALOS Excuse me Your Honor I hate to**
 (9) **interrupt can we have a time frame you re talking about after**
 (10) **1985**
 (11) **MR O NEILL Good question**
 (12) **BY MR O NEILL**
 (13) Q How about up to going into South Oaks?
 (14) **MR CHALOS Excuse me Your Honor I m sorry about**
 (15) **this but we have a ruling on incidents prior to 1985**
 (16) **MR O NEILL I m not asking about any incidents I m**
 (17) **asking his view**
 (18) **MR CHALOS Same thing**
 (19) **THE COURT Let me hear the question again please**
 (20) **MR O NEILL I ll reask the question**
 (21) **BY MR O NEILL**
 (22) Q Up to the time that you went into South Oaks did you feel
 (23) that you were a normal drinker?
 (24) **THE COURT I ll allow him to answer the question**
 (25) **THE WITNESS I felt that I on occasion on my**

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- (1) vacations I abused alcohol There was also times on my
 (2) vacations that I drank normally in between those abusive
 (3) periods I d have a glass of wine with dinner and go about my
 (4) business
 (5) **BY MR O NEILL**
 (6) Q Have you ever felt bad about your drinking?
 (7) **A You mean physically bad?**
 (8) **Q Emotionally bad?**
 (9) **A Back then there were occasions when I became**
 (10) **concerned**
 (11) **about it, these abusive periods, yes**
 (12) Q Have you ever lost any friends because of drinking?
 (13) **A Not that I m aware of - I - no**
 (14) Q Have you ever gotten into fights while drinking?
 (15) **A No**
 (16) Q Why did you resume drinking in 86?
 (17) **A At that particular time, it was a pretty good piece of fish**
 (18) **I was looking at and it looked like it would go good with a**
 (19) **glass of wine, so I had a glass of wine**
 (20) Q Was that your one year anniversary of coming out of South
 (21) Oaks?
 (22) **A Chronologically, I suppose it was, yeah**
 (23) **MR O NEILL Could we take a break for the morning**
 (24) **break right here because I may be finished and I just have to**
 (25) **go through my notes I realize it s unusual**
 (26) **THE COURT Why don t we just stand by for two or**

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- (1) three minutes while you do that
 (2) MR O NEILL Thank you Judge
 (3) (Off record)
 (4) THE COURT Ready?
 (5) MR O NEILL I m right too
 (6) BY MR O NEILL
 (7) Q So the record is clear Mr Cousins testimony and we all agree that Mr Cousins testimony is as follows that from the
 (8) Bligh Reef light to this edge of the ice can we all see this
 (9) that s eight tenths of a mile eight tenths of a mile to a
 (10) mile Okay This dot is where the light is Now are we all
 (11) happy with the Bligh Reef light?
 (12) MR CHALOS I m happy Mr O Neill
 (13) MR NEAL I m happy the matter has been straightened
 (14) out
 (15) THE COURT Thank you gentlemen Mr O Neill was
 (16) there anything -
 (17) MR O NEILL Yeah I have a couple questions and I ll
 (18) be finished in ten minutes and I ll sit down And Captain if
 (19) I m not finished in ten minutes you can say why don t you sit
 (20) down and I ll sit down
 (21) THE WITNESS I ll leave that to my attorneys
 (22) MR O NEILL Well I ve never seen a lawyer do it yet
 (23) and I want to see it for the first time
 (24) BY MR O NEILL

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- (1) Q At the time you left the bridge were you relying on the
 (2) Coast Guard to navigate your vessel?
 (3) A I had a general reliance on the Coast Guard to observe
 (4) my
 (5) vessel and follow its track to the Bligh Reef and below area
 (6) as
 (7) I was instructed by the Coast Guard they would be doing
 (8) Q Do you know that the responsibility of the master or pilot
 (9) for safe navigation and prudent maneuvering of his vessel is in
 (10) no way lessened or relieved by the Coast Guard VTS
 (11) regulations
 (12) or at least that s the Coast Guard s position?
 (13) A Well, the Coast Guard s position in there and what they
 (14) articulated to me when I first started going up there in their
 (15) own VTS center where they displayed to us, instructed us
 (16) and
 (17) told us what they were going to do with their radar system,
 (18) which would include tracking the vessels to the Bligh Reef
 (19) area
 (20) and below, and monitoring our positions, and if there were
 (21) violations they would notify us immediately and tell us to
 (22) take
 (23) corrective action, that's the premise I was operating under
 (24) Q Have you at all times been familiar with the policies and
 (25) procedures of the United States Coast Guard including the
 (26) provisions in the Prince William Sound traffic center manual?
 (27) A Traffic center manual, yes, and the users manual, yes
 (28) Q And Exhibit 101 do you have a copy of that up there? It s
 (29) been pre admitted
 (30) A I think I do, yeah
 (31) Q See if we can pull this up Can I borrow your copy so I

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- (1) can pull it up on the screen?
 (2) A Sure
 (3) Q We ll have to do it the old fashioned way I want to go to
 (4) paragraph C at the top of page 3?
 (5) A Yeah
 (6) Q Paragraph C at the top of page 3 reads under normal
 (7) circumstances the VTC will exercise no direct control over
 (8) vessel movements in the VTS area However when the
 (9) situation
 (10) dictates the Coast Guard will exert control over vessel
 (11) movements by invoking this regulation And then the last
 (12) sentence is responsibility of the master or pilot for safe
 (13) navigation and prudent maneuvering of his vessel is in no way
 (14) lessened or relieved by this regulation
 (15) Do you see that?
 (16) A Yeah
 (17) Q And you were aware of that regulation weren t you?
 (18) A Yes
 (19) Q Do you recall specifically when you dropped out of the
 (20) aftercare program?
 (21) A I think it was June, late June, early July
 (22) Q Of 85?
 (23) A Yeah
 (24) Q I want to ask a couple brief questions about turn around
 (25) time
 (26) A Uh huh

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- (1) Q Was there a procedure for reporting turn around times to
 (2) Exxon after each port call?
 (3) A Yeah, there was kind of a double headed procedure You
 (4) would leave the load or discharge port, whatever it was, you
 (5) would give some general times on a Telex message to the
 (6) office
 (7) you were working for or under Further, at the next port, you
 (8) would mail an abstract for the whole port evolution for that
 (9) Q And turn around time is how quickly the vessel gets into
 (10) port and out of port?
 (11) A Generally speaking, yeah, from sea buoy to sea buoy
 (12) Q And was part of your evaluation as a captain the turn
 (13) around time of your vessels?
 (14) A I never thought about it I guess it was, yeah
 (15) Q That was your understanding?
 (16) A I guess I knew about it, but I never paid much attention to
 (17) it
 (18) Q What is this - we ve talked about AA sponsors but I never
 (19) asked you what a sponsor is?
 (20) A He or she, depending, is someone you tend to trust and
 (21) confide in basically to show you the ropes
 (22) Q What ropes?
 (23) A AA, rather than the whole group
 (24) Q Have I been fair in the questions?
 (25) MR CHALOS Your Honor I object
 (26) THE COURT Sustained with no reflections

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- (1) MR O NEILL Captain I want to thank you for your
 (2) patience I realize what a difficult thing it was and I have
 (3) no further questions Your Honor
 (4) THE COURT Thank you You may cross examine Who
 (5) will go first Mr Neal?
 (6) MR NEAL Sure I'll go first
 (7) CROSS EXAMINATION OF JOSEPH HAZELWOOD
 (8) BY MR NEAL
 (9) Q Good morning Captain Hazelwood I'm Jim Neal and we've
 (10) met You know I represent the Exxon defendants?
 (11) A Yes, sir
 (12) Q I'll ask you a few questions about your testimony and then
 (13) with the permission of the Court that we've talked about I
 (14) will ask other questions that are relevant to the proceeding I
 (15) hope
 (16) If I ask you a question about your testimony or direct
 (17) your attention to testimony you gave yesterday or this morning
 (18) and I somehow misquote it or what I say about the testimony is
 (19) not your recollection you correct me will you?
 (20) A Yes, sir
 (21) Q I won't intentionally misquote you
 (22) You testified that in response to questions by Mr O Neill
 (23) that there was a Graves report Ben Graves report made as a
 (24) result of a conversation that he had with you in May of 1985
 (25) do you remember that?

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- (1) A Yes
 (2) Q In that conversation you acknowledge that sometime in the
 (3) past prior to this South Oaks you had violated the company's
 (4) alcohol policy?
 (5) A As regards drinking on company vessels, yes
 (6) Q Right And you were asked were you reprimanded for that
 (7) in any way and you said no?
 (8) A Yes
 (9) Q Were you aware of the alcohol policy in regard to voluntary
 (10) self-seeking of help?
 (11) A I was generally aware of it, yeah
 (12) Q Did you understand that that policy once that was done
 (13) wiped the slate clean so to speak?
 (14) A Yes, as I understood it, when you sought - you self
 (15) identified and sought help, your past crimes were forgiven
 (16) Q You would not expect to be reprimanded for something that
 (17) happened some time ago prior to the South Oaks would you?
 (18) A No
 (19) Q Now Captain Hazelwood when did you approximately
 (20) approximately return to duty after your South Oaks and your 90
 (21) day leave of absence?
 (22) A It was in late August of 1985
 (23) Q And you returned to the Exxon Yorktown?
 (24) A That's correct
 (25) Q That was a part of the Gulf Coast Fleet?

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- (1) A Yes
 (2) Q That was following I believe you said your conversation
 (3) with Dr Vallury?
 (4) A Yes
 (5) Q When Dr Vallury told you he had told a Dr Montgomery of
 (6) Exxon Shipping Company that you were fit to return to sea
 duty?
 (7) A Yes he indicated to me that he - I don't know who called
 (8) who, but he indicated to me he had conversed with Dr
 (9) Montgomery
 (10) Q And said what?
 (11) A That I was fit for sea duty
 (12) Q That you were fit for sea duty?
 (13) A Yes
 (14) Q And you took that to mean he was telling Dr Montgomery
 (15) Exxon that you were fit for sea duty?
 (16) A Yes
 (17) Q Now where was the Yorktown located?
 (18) A When I joined her?
 (19) Q Yes
 (20) A In Jacksonville, Florida
 (21) Q In Jacksonville?
 (22) A Yes
 (23) Q Let's see your home is in Long Beach correct?
 (24) A Long Island, New York
 (25) Q New York?

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- (1) A Yes
 (2) Q And did you go directly to the vessel or did you go
 (3) somewhere else?
 (4) A I went via Houston Stopped in Houston for an evening
 (5) Q And I believe you said you met with a Mr Sheehy?
 (6) A Captain Sheehy and Mr Tompkins
 (7) Q Now Mr O Neill said in his opening statement and guess
 (8) where they went the first time to a bar Would you explain
 (9) was this in a hotel?
 (10) A Yes
 (11) Q Would you explain where this was that you met Mr Sheehy
 (12) A It was in the lobby, as I testified to yesterday, it was
 (13) just an open air lounge area, I guess, with umbrellas and
 (14) trees It was just out in the middle of the lobby
 (15) Q Was there a registration desk to register there?
 (16) A Adjacent to it, yeah
 (17) Q Were there other things in that lobby such as a store
 (18) oceans counter whatever you call it?
 (19) A Restaurant, stores, even some offices, I think
 (20) Q Now after your meeting with Mr Sheehy and I believe
 (21) you - Mr O Neill brought out that there may be a disagreement
 (22) between you and Mr Sheehy as to what was said do you
 remember
 (23) that?
 (24) A Oh, yeah, yes
 (25) Q That meeting occurred sometime August 1985 When was the

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- (1) first time you were ever asked to recount the details of that meeting?
- (2) **A I believe it was in my deposition**
- (3) **Q So that was this year wasn't it?**
- (4) **A Yeah**
- (5) **Q And that's some how many five four - nine years later?**
- (6) **A Nine years later**
- (7) **Q Now after that you had a conversation with Mr Tompkins?**
- (8) **A Yes**
- (9) **Q Would you tell the ladies and gentlemen of the jury the position that Mr Tompkins had at the time of this conversation with him in August of 1985?**
- (10) **A He initially just shook hands and welcomed me back to the fleet, and then he sat me down and he - Mr Tompkins is never**
- (11) **one to mince words, he can make a point very effectively, and**
- (12) **in his own inimitable style, he informed me there would be no**
- (13) **toleration or violation of the alcohol policy in the future, and he was pretty emphatic about it It was, I guess, you**
- (14) **know, take him out to the wood shed type of tone he was using**
- (15) **Q You testified yesterday and I have your testimony here and I'll ask you to explain this if you would You were**
- (16) **asked were you told that you were going to be monitored**
- (17) **Answer well in his inimitable fashion Mr Tompkins indicated**
- (18) **to me I was going to be watched**
- (19) **And then you were - the next question is did he tell you**

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- (1) that you were going to be watched and you say he didn't verbalize that, no That's off page 344
- (2) **What are you saying there? Did you infer that from this conversation that you were going to be watched but he didn't exactly use those words?**
- (3) **A He didn't exactly use those words I had worked for Mr Tompkins enough I could draw from inference**
- (4) **Q What did you draw?**
- (5) **A That I would be watched for any violation**
- (6) **Q Now then you were asked yesterday that if you were offered a shore side assignment as port captain and you said that Exxon probably knew better than to offer you that do you remember that?**
- (7) **A Yes**
- (8) **Q Then you went on to say - that's at page 345 You went on to say that in answer to a question you told Captain Pierce you were interested in shore side assignment didn't you and you answered I said I might be interested in relieving him**
- (9) **Question that was as port captain as a shore side assignment**
- (10) **And you said, if he was really desperate yeah**
- (11) **Now what did you mean by that?**
- (12) **A Well, he had expressed some reservations about how much**
- (13) **longer he would have to be in Texas, and I said if you really**
- (14) **get desperate and you really can't find anybody to take the job**
- (15) **off your hands, I'd do you a favor and I'd do it if I was asked**

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- (1) **for a short period of time, but I wasn't going to do it as a**
- (2) **permanent**
- (3) **Q And when you said yesterday that Exxon probably knew better**
- (4) **than to offer you a shore side assignment were you saying that**
- (5) **your perception was that they knew that you wouldn't take it**
- (6) **other than a temporary relief of Captain Pierce?**
- (7) **A Well, I made my feelings known pretty well in the past that**
- (8) **I signed onto that lash up to sail their ships, not to push a pencil or be a desk jockey**
- (9) **Q Now Captain talk a minute about after you got before and**
- (10) **after I guess you got back to your vessel**
- (11) **Exxon had a policy of having fleet officers conferences**
- (12) **did they not?**
- (13) **A Yes**
- (14) **Q And these were conferences where masters and senior**
- (15) **officers would attend?**
- (16) **A Yes**
- (17) **Q And the - and your supervisors would attend?**
- (18) **A Yes**
- (19) **Q Had you attended fleet officers conferences before your**
- (20) **leave of absence?**
- (21) **A Yes, I think the most immediate one was in January of 85**
- (22) **Q But you'd been with the company now - in 85 you'd been**
- (23) **with the company some 17 years?**
- (24) **A Yes**

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- (1) **Q And you'd attended a number of fleet officers conferences**
- (2) **with your supervisors had you not?**
- (3) **A That's correct**
- (4) **Q Before your leave of absence did you drink alcoholic**
- (5) **beverages at these conferences with your supervisors?**
- (6) **A On some occasions I can recall socializing with them**
- (7) **yeah,**
- (8) **and then some I didn't**
- (9) **Q My question was before your leave of absence before your**
- (10) **leave of absence before South Oaks you attended a number of**
- (11) **fleet officers conferences?**
- (12) **A Yes**
- (13) **Q And at these conferences some or all of them your**
- (14) **superiors would be there all of them I guess?**
- (15) **A Uh huh**
- (16) **Q At these conferences before your leave of absence did you**
- (17) **drink alcoholic beverages before your leave of absence?**
- (18) **A Yes**
- (19) **Q Now then after your leave of absence, when you came back**
- (20) **in August, 1985 you also resumed attending these fleet**
- (21) **conferences?**
- (22) **A That's correct**
- (23) **Q And there again your supervisors would be in attendance?**
- (24) **A Yes**
- (25) **Q Did you drink alcoholic beverages after your leave of**
- (26) **absence at these conferences attended by your supervisors?**

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- (1) A No
 (2) Q Captain going on you attended various schools I believe
 (3) provided paid for by Exxon did you not to improve yourself
 (4) and your profession?
 (5) A That s correct
 (6) Q One of these schools was a three week course radio school
 (7) that consumed some two or three weeks?
 (8) A Yes
 (9) Q Where was that?
 (10) A That was in Dallas Texas
 (11) Q And that was also after your South Oaks and your leave of
 (12) absence right?
 (13) A Yes
 (14) Q Did you drink any alcoholic beverages during that period of
 (15) time?
 (16) A No
 (17) Q Now in addition to that you had occasions after your leave
 (18) of absence to have lunch with your supervisors did you not?
 (19) A Lunch and dinner, yeah
 (20) Q After your South Oaks and your return to duty did you
 (21) drink alcoholic beverages on these occasions?
 (22) A No
 (23) Q Was there alcoholic beverages available?
 (24) A Yes
 (25) Q Let me go back and say going back to these fleet officers

- (1) Q Much more?
 (2) A Yeah
 (3) Q After your leave of absence at South Oaks did it appear to
 (4) you that you had contacts with your supervisors that other
 (5) masters didn t have? Say at fleet conferences or something
 (6) like that?
 (7) A Fleet conferences with Mr Koops, I would have to say
 (8) yes,
 (9) and the west coast fleet it was Mr Myers They had
 (10) changed
 (11) around the port captain business so he became my
 (12) supervisor as
 (13) opposed to Mr Koops, so there was more interaction with
 (14) Mr
 (15) Myers with me than I witnessed than other masters that
 (16) were
 (17) attending
 (18) Q I will get to the west coast
 (19) MR NEAL Judge I m abiding by your wishes as
 (20) always but particularly when it comes to a break
 (21) THE COURT Ladies and gentlemen we ll take our first
 (22) recess at this time Please don t have any discussions about
 (23) the case During our recess I would like to see lead counsel
 (24) it needn t be you Mr O Neill it can be Mr Oesting if he s
 (25) here Mr Lynch and -
 (26) MR CHALOS Chalos
 (27) THE COURT Chalos in chambers
 (28) THE CLERK This court is in recess for 15 minutes
 (29) (Recess at 10 03)
 (30) (Jury in at 10 17)

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- (1) conferences after your leave of absence in South Oaks when
 (2) you
 (3) didn t drink any alcoholic beverages were alcoholic beverages
 (4) available?
 (5) A Yes
 (6) Q What did you drink?
 (7) A Usually club soda, or ice water or ice tea
 (8) Q Captain prior to your - prior to your South Oaks and your
 (9) leave of absence you understand what I m pointing out here so
 (10) I can make a distinction before and after?
 (11) A Yes
 (12) Q Before South Oaks and your leave of absence did you have
 (13) occasions to meet with your supervisors?
 (14) A Yes
 (15) Q After your leave of absence did you have occasions to meet
 (16) with your supervisors?
 (17) A Yes
 (18) Q We talked about Mr - Mr O Neill talked about no
 (19) monitoring and so forth
 (20) After your leave of absence compare the times you meet
 (21) with your supervisors after your leave of absence at South Oaks
 (22) with the times before that is in number Did you meet with
 (23) them much more frequently after your leave of absence?
 (24) A Yes
 (25) Q More contacts?
 (26) A Yes, much more

- (1) THE CLERK All rise
 (2) THE COURT Counsel for the record I will not be
 (3) giving any further instruction on the matter that we discussed
 (4) MR NEAL May I proceed Your Honor?
 (5) THE COURT Yes you may
 (6) BY MR NEAL
 (7) Q Captain Hazelwood after the leave of absence you returned
 (8) to the Yorktown which you said was a part of the Gulf Coast
 (9) Fleet?
 (10) A Yes, sir
 (11) Q Who were your supervisors there between August of 85 and
 (12) the fall of 87 when you testified you were transferred to the
 (13) west coast?
 (14) A My liaison was Captain Sheehy He was a peer more than
 (15) a
 (16) supervisor, but I interacted with him My direct supervisor
 (17) would have been Mr Koops, the fleet manager
 (18) Q Did you have occasion to see Mr Sheehy and Mr Koops
 (19) between that period August 85 and when you transferred to
 (20) the
 (21) west coast in 87?
 (22) A Yes,, every time we get into the Texas ports, whether it s
 (23) Texas City or Baytown or Houston, usually double header,
 (24) first
 (25) I d spend time with Captain Sheehy and then followed by
 (26) Mr
 (27) Koops
 (28) Q In other words they didn t come together they would come
 (29) one after the other to see you?

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- (1) A Yes
 (2) Q Did they spend some considerable time with you?
 (3) A Usually a couple hours with either one or both
 (4) Q Would they come every day you were in port or would they
 (5) divide that up?
 (6) A Usually in that trade we were only in port for the one 24
 (7) hour period normally
 (8) Q Now I want to go and ask you about a matter that may
 (9) not - may kind of seem off the wall to you now but it would
 (10) be important later on
 (11) Do you know a Captain Ivan Mihajlovic?
 (12) A Yes, sir
 (13) Q Is that the way to pronounce that name?
 (14) A Yes, Mihajlovic
 (15) Q Directing your attention to - well you tell me did you
 (16) have occasion to have Captain Mihajlovic to come aboard the
 (17) Yorktown while you were the master?
 (18) A Yes, he came aboard, I want to say in the spring or
 (19) summer
 (20) of 1986
 (21) Q Where was the Yorktown at that time?
 (22) A She was - we were anchored, my ship, the Yorktown was
 (23) anchored in Cherokee Grande, the Republic of Panama
 (24) Q He came aboard and what did he do?
 (25) A First he anchored next to me, brought his ship in and
 anchored it, and subsequent to that, that afternoon,
 evening,

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- (1) he took a launch over and came up to my office, stateroom
 area,
 (2) and -
 (3) Q Could you speak up just a little bit? I m - Mr Cohen is
 (4) a little bit hard of hearing
 (5) A He came out, the launch, and came over and proceeded
 to
 (6) search my quarters and my office
 (7) Q Proceeded to search your quarters in your office?
 (8) A Yes
 (9) Q Did you invite him to do that?
 (10) A No
 (11) Q Tell us about that search of your - of your office and
 (12) your quarters Did he open drawers?
 (13) A Yes
 (14) Q Pull them out?
 (15) A Pulled them out.
 (16) Q Look in them?
 (17) A Yes
 (18) Q Did he open the refrigerator?
 (19) A Yes
 (20) Q Did he make a pretty full search of your offices and
 (21) quarters?
 (22) A Yes
 (23) Q Then what happened?
 (24) A Then I showed him the rest of the ship
 (25) Q Did you ask him Captain what's going on?

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- (1) A Not specifically but from my previous experience with
 (2) Captain Mihajlovic I always kind of let him have his head
 (3) Q Now I want to ask you a series of questions that gets into
 (4) a matter that Mr O Neill brought up You went into this South
 (5) Oaks on April 1st 1985 is that correct?
 (6) A Yes
 (7) Q And you left there on April 28th 1985 or there about?
 (8) A 28th or 29th, yeah
 (9) Q Now I believe you testified that you didn't have anything
 (10) to drink alcohol from April 1 1985 to May 1986 is that
 (11) correct?
 (12) A That's correct
 (13) Q Something over a year?
 (14) A Uh huh
 (15) Q If I remember the testimony you said that you had a glass
 (16) or two of wine in May of '86?
 (17) A Yes
 (18) Q In Manatee Florida Port Manatee?
 (19) A Well, the ship was there, it was in that area, Bradenton
 (20) Tampa Bay
 (21) Q With who did you have that glass or two of wine?
 (22) A Just myself
 (23) Q Was that with dinner?
 (24) A With dinner
 (25) Q And that's the first time you had a drink since April 1

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- (1) 1985?
 (2) A That's correct
 (3) Q Now Mr O Neill continued to ask you if you had drinks
 (4) between that and your transfer to the Exxon Valdez in the fall
 (5) of '87 again approximately a year and a half is that
 (6) correct?
 (7) A Yes
 (8) Q And you testified that you had a drink with Mr Tom St
 (9) Pierre and Mr Dengel in Philadelphia?
 (10) A Yes
 (11) Q How long after that was it from your May '86 glass of wine
 (12) or two?
 (13) A I think that was in the late summer or early fall, August
 (14) or September
 (15) Q Do you have an estimate of the months?
 (16) A That would have been three months, four months later
 (17) Q Did you have anything to drink between the May '86 and your
 (18) Philadelphia occasion?
 (19) A No
 (20) Q Now then you testified that you had a drink in either - by
 (21) the way who were Tom St. Pierre and Mr Dengel?
 (22) A Mr St Pierre was the chief engineer of the Yorktown and
 (23) Mr Dengel was at that time second assistant
 (24) Q So you got a chief engineer on a vessel and a second
 (25) assistant engineer?

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- (1) **A Yes**
 (2) **Q** Would you think would you call them Exxon officials or
 (3) would you call them Exxon employees?
 (4) **A Worse than that, they were friends of mine**
 (5) **Q** I think maybe - let me go back were they Exxon officials
 (6) or -
 (7) **A Shipmates**
 (8) **Q** Now then you testified again that you had a drink in
 (9) Norfolk or New York was that the next time after the
 (10) Philadelphia event that you had anything to drink?
 (11) **A Yeah, it was either Norfolk or New York, I m not sure**
 (12) **which**
 (13) **Q** Either one was that the next time you had anything to
 (14) drink after the Philadelphia -
 (15) **A That s correct**
 (16) **Q** Who did you have that drink or drinks with?
 (17) **A Same individuals, Mr St Pierre and Mr Dengel**
 (18) **Q** Chief engineer and a second assistant engineer
 (19) How long after that was your Philadelphia -
 (20) **A It was two or three months**
 (21) **Q** So you said - during this year and a half period I m
 (22) taking them all right you said you had a drink in Baton Rouge
 (23) after the Norfolk or the New York drink Who was that with?
 (24) **A That was the same, Mr St Pierre and Mr Dengel, yes**
 (25) **Q** How long was that after the Philadelphia - I mean the

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- (1) **Norfolk or New York?**
 (2) **A I'd have to say a month**
 (3) **Q** And then you said finally you said you had a drink flying
 (4) home from your last assignment before the transfer is that
 (5) correct?
 (6) **A Yes**
 (7) **Q** And that was a bloody mary on the plane?
 (8) **A Uh huh, yes**
 (9) **Q** Now if I count that for the year from April 1 1985 until
 (10) the fall of 87 that s roughly a year and a half isn t it?
 (11) **A Yes**
 (12) **Q** And is it your testimony that during that period of time
 (13) you had occasion to have a drink one two three four five
 (14) times during the year and a half?
 (15) **A That's about it, yeah**
 (16) **Q** Would you call that binge drinking?
 (17) **A Not in my mind's eye**
 (18) **Q** Am I correct in also saying that none of these were in
 (19) violation of Exxon Shipping Company s alcohol policy?
 (20) **A No**
 (21) **Q** That is correct?
 (22) **A That s correct, yes**
 (23) **Q** And am I correct in saying that none of these were in
 (24) violation of any Coast Guard policy?
 (25) **A None no**

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- (1) **Q** Moving on I hope you were transferred to the west coast
 (2) fleet in August 1987 correct?
 (3) **A Yes**
 (4) **Q** And what were you - when were you assigned there in
 August
 (5) or September of 1987?
 (6) **A Yes**
 (7) **Q** What were you assigned to?
 (8) **A The Exxon Valdez**
 (9) **Q** What trade tell me - I guess that s the term or where
 (10) was the Valdez when you got there where was it going to and
 (11) from? What was the trade of the Valdez?
 (12) **A Trade was the crude oil trade, loading in Valdez Alaska**
 (13) **and trampling - not trampling, travelling down to Puerto**
 (14) **Armuelles and the Republic of Panama on the central side**
 (15) **Q** Down in South America?
 (16) **A Yes, discharging there On the return voyage, stopping**
 in
 (17) **Long Beach, California to change crew, refuel, restore an**
 just
 (18) **do maintenance**
 (19) **Q** And then head back to Port of Valdez?
 (20) **A Yes, that s correct**
 (21) **Q** So load in the Port of Valdez go to Panama Central
 (22) America discharge come back stop in Long Beach stay the
 (23) awhile while you re being provisioned?
 (24) **A Well at that time you stay there quite awhile**
 (25) **Q** Several days?

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- (1) **A Yes**
 (2) **Q** And then head back to the Port of Valdez?
 (3) **A Yes**
 (4) **Q** And turn around and do it again over a period of time?
 (5) **A Yes**
 (6) **Q** Did you come to know a man in Long Beach by the name o
 (7) Doug Larsen?
 (8) **A Yes**
 (9) **Q** Who is he?
 (10) **A** He at the time was the agent, I think the head of the
 (11) **agency office of Exxon, and it's similar to Mr O'Neill s**
 (12) **question, Exxon in some ports had their own agency in**
 some
 (13) **ports not, like Alamar, and he was an Exxon employee**
 (14) **Q** He was an Exxon employee doing the same thing as ship
 (15) **agents do like Alamar but he was an Exxon employee?**
 (16) **A Yeah, there doing the same thing**
 (17) **Q** How long did you see Mr Larsen?
 (18) **A Well, coming up from Panama, you would see him on th**
 (19) **customs entry of the vessel handling the paperwork,**
 customs,
 (20) **immigration, and crew repatriation if there were any That**
 (21) **would be right on arrival, as soon as the anchor went down**
 he
 (22) **was there with a boarding party And that would take two**
 (23) **three hours From that point, period of time we had**
 undergone
 (24) **some guarantee items I would see him two or three times**
 (25) **week for the next week**

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- (1) Q And these two or three times you would see him how long would they be?
- (2) A They would be two to three hours
- (3) Q And he would be out there that period of time two or three times a week?
- (4) A Yeah
- (5) Q Did you get any idea that he might be monitoring or watching you?
- (6) A Well, I got a feeling that he was watching me I don't know about monitoring That word I have a little trouble with
- (7) Q Well I do too I think about these things
- (8) A Well, I think of it as a satellite tracking me somewhere Watching me, because the nature of his job and my interaction with him, outside of the initial customs and immigration entry stuff, normally in the past I had always done it over the phone
- (9) Q In other words he would come out and spend two or three hours with you when you could have done your business over the phone?
- (10) A Yeah, I'd always done that in the past
- (11) Q Now do you know a Mr Paul Myers?
- (12) A Yes
- (13) Q Where did you first meet Mr Myers?
- (14) A I first was introduced to him at an officers conference in 86, just shook hands with him The first interaction I had

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- (1) with him was in Long Beach in 87 when I joined the Exxon Valdez
- (2) Q Did there come a time in early 1988 when he became your immediate supervisor?
- (3) A Yes The reshuffling of the deck where they eliminated - went to a line management, got rid of the port captains and port engineers, he became a ship group coordinator which in essence was my immediate supervisor
- (4) Q How often from the time you joined let's say in August September of 1987 you joined the Valdez until the grounding how often did you see Mr Myers?
- (5) A Well, with the exception of the repair period in Portland where he wasn't really involved, I - every time the ship was in Long Beach and/or San Francisco he was there
- (6) Q Did he spend a good bit of time with you on these occasions?
- (7) A As I mentioned yesterday, I was going to rename him Lamont Cranston, he was my shadow Every time I turned around, he was there
- (8) Q Captain not - everybody in this courtroom may not know who Lamont Cranston is Believe me I do but Lamont when you say that was a character who was the Shadow?
- (9) A Yeah
- (10) Q And used to be a saying that the Shadow knows or something like that right?

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- (1) A Yes I'm sorry dating myself
- (2) Q He was there every time and he was shadowing you is that a fair statement?
- (3) A Shadowing, more like a mother hen
- (4) Q Did he ever sleep aboard the Valdez when you were there?
- (5) A Yes
- (6) Q Let me go now - could I have the deposition 1843 44
- (7) Captain you testified - by the way let me ask you about Mr Myers You said he was mother henning you and shadowing
- (8) you Did you get the perception that he was watching you or monitoring you?
- (9) A Well, watching, yes, to the extent that - yeah, watching me That's the impression I got I don't know how he treated other people
- (10) Q Now then let me go to this Henry's incident that you related yesterday The Valdez was in dry-dock right?
- (11) A That's correct
- (12) Q In the Portland shipyard?
- (13) A That's correct
- (14) Q And dry dock means it's out of the water and lifted up being worked on is that correct?
- (15) A Essentially out of commission
- (16) Q Can't go anywhere?
- (17) A No
- (18) Q But you still don't - while it's in dry dock unlike when

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- (1) you're at sea you don't live aboard the vessel right?
- (2) A No
- (3) Q You live in apartment somewhere in the town or around the shipyard?
- (4) A Or hotel, yeah
- (5) Q All right You testified at Mr O'Neill's question yesterday that sometime while this vessel was in dry-dock in May of 1988 the Portland shipyard you asked something over the walkie talkie about where are the Henry's do you remember that?
- (6) A Well, words to that effect, more where were the -
- (7) Q Well -
- (8) A Whatever it was
- (9) Q Don't pay any attention to what I recollect What did you testify yesterday?
- (10) A I was following up a request I had made of a shipyard worker earlier in the day and I was leaving for the day and asked him if he had any - done anything about it If not, it didn't make any difference
- (11) Q That was over the walkie talkie?
- (12) A That's correct
- (13) Q You were getting ready to leave the vessel for the day to go where?
- (14) A Back to my apartment
- (15) Q Ashore?

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- (1) **A Yes**
 (2) **Q** And you testified I believe that the next day or
 (3) thereafter not that night but the next day Mr Leyendecker
 (4) came up asked you about that searched your quarters?
 (5) **A My quarters and the chief engineer s quarters yes**
 (6) **Q** And said something to you about something to the effect I
 (7) don t see any sign you re violating the alcohol policy or
 (8) something to that effect am I correct about that? What did he
 (9) say?
 (10) **A I assured him there was no violation of the alcohol policy**
 (11) **and invited him to search anything he wanted He satisfied**
 (12) **himself and went back about his business**
 (13) **Q** Now getting more to the point you told him you testified
 (14) yesterday that the six pack was for you and Mr Kimtis to
 (15) drink that night at your quarters offshore?
 (16) **A No, it was more of a favor to Mr Kimtis He had inquired**
 (17) **about it, and I said I d see what I could do, and I -**
 (18) **Q** What did you tell Mr Leyendecker?
 (19) **A I said we watched a hockey game and that's what the beer**
 (20) **was for, myself and Mr Kimtis**
 (21) **Q** Now then you said something that was a little bit unclear
 (22) to me You said you thereafter met Mr Myers - by the way
 (23) was Mr Leyendecker your superior?
 (24) **A No**
 (25) **Q** Did he have any power to hire or fire you or discipline

- (1) **A Not like what I told Mr Leyendecker**
 (2) **Q** Am I correct you don t have any recollection of telling Mr
 (3) Myers that?
 (4) **A No because it was - it wasn t very big news or it**
 (5) **wasn t -**
 (6) **Q** Okay Captain I have one more thing in this area I want
 (7) to direct your attention to St Patrick s Day March 1989?
 (8) **A Yeah**
 (9) **Q** Was that one of these times when Mr Myers was on your
 (10) vessel and shadowing you?
 (11) **A Yeah, we were shadowing each other, I guess**
 (12) **Q** Did he stay there that night on the vessel?
 (13) **A He stayed the night before and I believe he was plannin**
 (14) **to**
 (15) **stay that evening as well**
 (16) **Q** Were you and Mr Myers involved in a conversation
 (17) regarding
 (18) St Patrick s Day?
 (19) **A Evening of St Patrick's Day, evidently there is a big**
 (20) **celebration in San Francisco I wasn t aware of, but after**
 (21) **dinner we had - Mr Myers and I had eaten dinner together**
 (22) **in**
 (23) **the officers' mess hall, and we walked over to the crews'**
 (24) **mess**
 (25) **hall, which is adjacent, to discuss some repairs with the**
 (26) **repairmen who were eating in there and there was a bunch**
 (27) **of**
 (28) **crew members dressed up in their shore clothes getting**
 (29) **ready to**
 (30) **get a 6 00 p m launch to go to shore I think Mr Myers**
 (31) **asked**
 (32) **them what they were going to shore for and they indicated**
 (33) **St**

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- (1) **you?**
 (2) **A Not that I'm aware of**
 (3) **Q** You said something a little later that you met a month or
 (4) six weeks later with Mr Paul Myers who was your supervisor
 (5) right?
 (6) **A Yes**
 (7) **Q** And you said you met for five or six hours with him on a
 (8) number of subjects?
 (9) **A Yes**
 (10) **Q** Now did you say yesterday that you told Mr Myers that you
 (11) had consumed any of this beer with Mr Kimtis?
 (12) **A I don't know what I said yesterday The time with Mr**
 (13) **Myers, it was almost an aside in the long litany of business**
 (14) **we**
 (15) **were conducting, and he asked me about the incident, and I**
 (16) **briefly told him what beer had - the reference to the beer**
 (17) **and**
 (18) **the walkie-talkie had been, and that I explained it to Mr**
 (19) **Leyendecker what the actual drinking of the beer, I don't**
 (20) **know**
 (21) **if I - I don't think that subject was discussed with Mr**
 (22) **Myers**
 (23) **Q** You don t have any recollection then of telling Mr Myers
 (24) that you consumed beer?
 (25) **A No**
 (26) **Q** Unlike what you told Mr Leyendecker?
 (27) **A No**
 (28) **Q** Pardon me?

- (1) **Patty's Day and they indicated there was some party goinc**
 (2) **uptown And he said something to the effect, he says, well**
 (3) **be**
 (4) **good boys and girls because you got to remember, the son**
 (5) **of a**
 (6) **bltch is sleeping on board tonight**
 (7) **Q** Who was he referring to?
 (8) **A He was referring to himself**
 (9) **Q** Did you say anything?
 (10) **A Yes**
 (11) **Q** What did you say?
 (12) **A I corrected him I said, on this ship, I m the son of a**
 (13) **bltch**
 (14) **Q** Captain were you aware that Mr Myers was asking
 (15) members
 (16) of your crew whether you were drinking or not?
 (17) **A No**
 (18) **Q** Now let me move onto another subject You started sailing
 (19) as an officer for Exxon in 1968?
 (20) **A That s correct**
 (21) **Q** How old were you then?
 (22) **A 21**
 (23) **Q** And then -
 (24) **A 22, excuse me**
 (25) **Q** You were out of collage?
 (26) **A Yes**
 (27) **Q** Let me ask you about that If you want to be - generally
 (28) if you wanted to be an Exxon officer hopefully work your way

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- (1) up to a master the general path was to go to a maritime college is that correct?
 (2) **A In my vintage yeah**
 (3) **Q When you got out of this college you got a bachelor s degree?**
 (4) **A Yeah**
 (5) **Q And you also got something else didn t you?**
 (6) **A Yes**
 (7) **Q What was that?**
 (8) **A You had your third mate s license**
 (9) **Q Third mate s license from what agency?**
 (10) **A United States Coast Guard**
 (11) **Q By the way is that the agency of the United States that has the duty of ensuring or should I say monitoring safety on the seas?**
 (12) **A They are in charge of safety of the United States waters, yeah**
 (13) **Q Now then when you re out of there and you re a third mate that means if you can get a job you can sail on a vessel as a deck officer third mate?**
 (14) **A Yes**
 (15) **Q And that s the lowest of the deck officers correct?**
 (16) **A Well, yes, nowadays There used to be a fourth officer, a fourth mate**
 (17) **Q Let s say as far as in the 70s on is concerned?**

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- (1) **A Yeah**
 (2) **Q That would be the lowest of the deck officers?**
 (3) **A Yes**
 (4) **Q Now starting when you were 22 in 1968 when were you - when did you become licensed as a master?**
 (5) **A I think that was about '76 or -7**
 (6) **Q You were licensed by the Coast Guard?**
 (7) **A Yeah**
 (8) **Q And then when did you sail for Exxon as a master either a step up master or permanent master whatever you call it?**
 (9) **A It was two years later, 19 - February or early March of 1979**
 (10) **Q 1979 What age were you then I didn t keep -**
 (11) **A 33**
 (12) **Q Now and you were sailing as a master at the time of the grounding?**
 (13) **A Yes**
 (14) **Q Captain is it fair to say that your annual salary at the time of the grounding from Exxon was approximately a hundred thousand dollars?**
 (15) **A I would say with benefits included, yeah**
 (16) **Q Approximately a hundred thousand dollars a year?**
 (17) **A Or a little less**
 (18) **Q And what was your rotation?**
 (19) **A A nominal schedule of 60 days on and 60 days off**

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- (1) **Q So over a year s period of time of that approximately a hundred thousand dollars you could be at home or doing something else approximately six months of the year?**
 (2) **A Approximately yeah**
 (3) **Q And indeed some of these occasions you told the jury yesterday you did in your off time bring yachts up from Florida and so forth?**
 (4) **A Deliver yachts yes**
 (5) **Q I want to ask you this quickly because I m not sure this has been made clear to the jury and it may become important in this case You get out of the academy and you re a third mate you re licensed as a third mate okay?**
 (6) **A Yes**
 (7) **MR NEAL I ll lead him if that s all right with Mr O Neill to get it into the record**
 (8) **MR O NEILL Have fun Jimmy**
 (9) **BY MR NEAL**
 (10) **Q In order to become a second mate you have to sail for a certain period of time as a third mate?**
 (11) **A 365 days of sea time**
 (12) **Q So that may mean more than a year if you have this 60 on 60 off?**
 (13) **A Yes**
 (14) **Q You sail for two years as a third mate and then what else do you do to go up a mate?**

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- (1) **A Take another test**
 (2) **Q And who gives it?**
 (3) **A Coast Guard**
 (4) **Q And you take and pass?**
 (5) **A Yes**
 (6) **Q Then you re licensed as a second mate but you re capable of sailing as far as a second mate is concerned?**
 (7) **A That s correct**
 (8) **Q And then is it fair to say once you sail as a second mate you - you have to sail a certain period of time as a second mate before you can take an exam for a first mate?**
 (9) **A A second mate for 365 sea days before you can take the license**
 (10) **Q You have to sail two years before you can take the exam to become a first mate?**
 (11) **A That s correct**
 (12) **Q Then you take the test and you pass it and become a first mate?**
 (13) **A That s correct.**
 (14) **Q Now then what do you have to do to get from first mate to a master?**
 (15) **A A year sea time as chief officer or chief mate, or first mate qualifies, 365 days at sea You can sit for the master's license**
 (16) **Q And you take that and you take that license to become a**

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- (1) master and if you pass the license by the Coast Guard you then
 (2) will be licensed as a master?
 (3) **A Yes**
 (4) Q Now then -- and that happened in --
 (5) **A 76**
 (6) Q 76 Now at that point as far as the Coast Guard is
 (7) concerned you can get a job and sail any vessel on any sea is
 (8) that correct?
 (9) **A Any sea or any inland water of the United States**
 (10) Q Including Prince William Sound?
 (11) **A Yes**
 (12) Q Now could you at that point just being licensed be able
 (13) to sail as a master for Exxon Shipping Company?
 (14) **A Yes I mean, theoretically, you fulfill the legal**
 (15) **requirement**
 (16) Q What about Exxon's requirements?
 (17) **A They had a few other inhouse requirements of their own**
 (18) Q As a matter of fact before you could sail as a master for
 (19) Exxon you had to go to what's called a ship handling course?
 (20) **A Ship handling course and a simulator course and some**
 (21) **other**
 (22) **medical related courses**
 (23) Q Let's take the ship handling course As far as the Coast
 (24) Guard is concerned you can go ahead and sail a ship like the
 (25) Valdez right?
 (25) **A Or larger, yeah**

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- (1) Q Or larger By the way you said the Valdez here that Mr
 (2) O Neill brought up to you was by far not the largest vessel
 (3) that went into Prince William Sound or what did you say?
 (4) **A Well, in the grand scheme of things, it's kind of a**
 (5) **mid-size**
 (6) Q Mid size okay Now then back to the Exxon Shipping
 (7) Company before you could sail as a master for Exxon Shipping
 (8) Company you had to take certain other courses right?
 (9) **A It was their requirement yes**
 (10) Q Was one of those a ship handling course in Grenoble
 (11) France?
 (12) **A Yes**
 (13) Q Pretty good duty isn't it?
 (14) **A It's probably the best -- or it is the best in the world**
 (15) Q And how long did that course take?
 (16) **A The course I took was eight days**
 (17) Q Eight days in France okay Who paid for that course?
 (18) **A Exxon did**
 (19) Q Did you have to do anything else before even though you
 (20) had a master's license and now you had eight days in the ship
 (21) handling course did you have to do anything else at common
 (22) order to sail as a master?
 (23) **A At that time, there was some bridge training simulator**
 (24) **time**
 (25) **we had to put in in Kings Point New York at a bridge**
 (25) **simulator**

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- (1) Q Let me move this along and leave the masters although
 (2) these courses weren't required by the Coast Guard?
 (3) **A No**
 (4) Q Let me move that along and talk about the other deck
 (5) officers the senior deck officers let's say the first mate
 (6) They have got their license from the Coast Guard Do they have
 (7) to have any additional training before they can sail for Exxon
 (8) **A Chief mate, to step up, to master?**
 (9) Q Yeah to step up to master
 (10) **A My experience was always, even if, including, I remember**
 (11) **a**
 (12) **master dying and they wouldn't step up the chief mate**
 (13) **because**
 (14) **he didn't have the training They had to fly in a properly**
 (15) **trained master, or an Exxon trained master**
 (16) Q Would they send these senior deck officers to Grenoble
 (17) France?
 (18) **A Yeah, they would**
 (19) Q Even while they were first mates?
 (20) **A Yes**
 (21) Q Did they require simulator training for the first mates?
 (22) **A Simulator training I think went down all the way to third**
 (23) **mates**
 (24) Q Third mates okay And I wanted to ask you about that
 (25) What about third mates were sent to simulator training?
 (25) **A Yes In my time there, yeah**
 (25) Q Now in terms of the just briefly the equipment on vessels

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- (1) like the Valdez that is a fully automated state of the art
 (2) vessel I guess at the time of the grounding is that right?
 (3) **A It was as advanced as they get for large tankers, yeah**
 (4) Q How would you -- how did Exxon provide for training of the
 (5) officers junior officers let's see in some of the things on
 (6) a vessel like the Valdez?
 (7) **A They had a variety of schools for both deck and engine**
 (8) **officers and the crew even were included in some**
 (9) **occasions,**
 (10) **but for the deck end of the things, the crude oil washing,**
 (11) **clean your tanks with your cargo, sounds a little odd, but**
 (12) **that's how it's done, and all the more sophisticated**
 (13) **equipment,**
 (14) **everybody was sent to the school It was usually run by the**
 (15) **manufacturer of that particular equipment to learn how to**
 (16) **use**
 (17) **It long before they ever set foot on the deck of the ships**
 (18) Q Did they provide training videos and manuals for your
 (19) junior officers?
 (20) **A Those were available at all times on the ship, yes**
 (21) Q I'm going to change subjects now Captain and may I
 (22) approach the --
 (23) MR NEAL May I approach the witness Your Honor?
 (24) What is this exhibit number 3450?
 (25) UNIDENTIFIED SPEAKER 3450
 (25) BY MR NEAL
 (25) Q Captain I hand you what is -- you have a copy of it?
 (25) **A I've got plaintiffs' exhibit**

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- (1) Q Well look at this and see if that's the same thing we're talking about?
- (2) A It appears to be I'll work from your copy
- (3) Q And Captain in sailing with Exxon a long period of time you recognize that document do you not?
- (4) A Yes, as it evolved over the years yeah
- (5) Q What is it?
- (6) A It was originally a lot thinner than this it's a -
- (7) basically a document put out by the shipping company and its predecessors to give guidance in how to operate their ships
- (8) Q I'm going to show if you can -
- (9) MR NEAL Your Honor this is under the category of learning old dogs new tricks or maybe not learning
- (10) BY MR NEAL
- (11) Q Captain what is that?
- (12) A That's the title page, second edition, navigation bridge for organization manual - navigation and bridge
- (13) Q This document Navigation and Bridge and Organization Manual was that a document that was on the Valdez?
- (14) A Yeah, it was in the required library of publications
- (15) Q Required to be on the vessel?
- (16) A Yeah
- (17) Q Were the officers required to read and study and be familiar with this document?
- (18) A Yes they were and sign off There is a sign off sheet

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- (1) included
- (2) Q These were instructions put on your vessel that were at least guidelines for what you're supposed to do?
- (3) A Yes
- (4) Q Let me ask you Captain if there was a first principle that was to guide all operations and guide all officers of Exxon Shipping Company fleet?
- (5) A Essentially everything was secondary to safe operation
- (6) Q Safe operations Let me ask you to turn to page 1 of that bridge navigation and organization manual Now here comes the test Do you have that?
- (7) A Yeah, I do
- (8) Q Would you read 1.1 purpose of manual for the members of the jury?
- (9) A The purpose of this navigation and bridge organization manual is to assist the master and deck officers in planning for the safe navigation of their vessel in order to ensure that all the desired safety criteria are considered, it is essential to consult all sections of the manual including pertinent appendices for guidance
- (10) Q So the purpose the safe navigation of the vessel is that right?
- (11) A That's correct
- (12) Q Now I want to go to one other part of that You see what I've got here now?

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- (1) A Yeah
- (2) Q Read the first two sentences of section 1.2 of this manual?
- (3) A The prime objective when navigating company vessels is the safety of personnel vessel and cargo Speed and economy while important are secondary to safety considerations
- (4) Q Speed and economy are important while secondary to safety considerations Captain in your years with Exxon was that the guiding principle that you were told to follow?
- (5) A Yes
- (6) Q Now that I know that I can do that I'm going to quit while I'm ahead
- (7) Captain would you turn to page 6 of that manual where it says duties of the master - and the master that means you right?
- (8) A Yeah, okay
- (9) MR NEAL Would you go ahead and do that Would you bring up on the screen that part
- (10) UNIDENTIFIED SPEAKER I'm not sure I can
- (11) MR NEAL Excuse me Your Honor If you bring up page 6 on that I'll see if I can do this
- (12) BY MR NEAL
- (13) Q Let me see Can you read that? By the way this is duties of the master right?
- (14) A Right
- (15) Q Can you read that?

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- (1) A Yes Within the limitations outlined in paragraph 2.1.5 sub part H below, the master must be on the bridge whenever conditions present a potential threat to the vessel such as passing in the vicinity of shoals rocks or other hazards present any threat to safe navigation
- (2) Q No in order to get clear H down there that exception from the above didn't apply on March 23rd 1989 did it?
- (3) A No
- (4) Q So we're not dealing with exception Leaving the exception out then this manual says the master must be on the bridge It doesn't say should does it?
- (5) A No
- (6) Q The master must be on the bridge whenever conditions present a potential threat to the vessel such as passing in the vicinity of shoals Shoals for a sea lover are - land lover what is shoals?
- (7) A Shallow water, basically
- (8) Q Rocks or other hazards which represent any threat to navigation right?
- (9) A Uh-huh
- (10) Q Doesn't this vessel say Captain if those conditions exist it's not should you must be on the bridge?
- (11) A Well -
- (12) Q If those conditions exist?
- (13) A If the potential threat exist, not those conditions, not

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- (1) **the way I read it If you perceive a potential threat**
 (2) **Q But if that happens you're supposed to - must be on the**
 (3) **bridge?**
 (4) **A That's correct, yeah**
 (5) **Q Now is it your position that on March 23rd 1989 at 11 52**
 (6) **in the evening those conditions did not exist?**
 (7) **A That's my opinion**
 (8) **Q Captain let me talk about another matter here now Was**
 (9) **there - Mr O Neill asked you something about I think about**
 (10) **fatigue six hour rule et cetera Was there a company policy**
 (11) **regarding possibly fatigue of officers?**
 (12) **A Yes, it was -**
 (13) **Q There was a policy?**
 (14) **A Oh, yeah**
 (15) **Q What was the policy?**
 (16) **A Policy was these various officers conferences you**
 (17) **questioned me about before was - it was verbalized to us**
 (18) **and**
 (19) **later hard copied that if you felt or perceived or even had a**
 (20) **notion that your people, whether it was crew or officers**
 (21) **deck**
 (22) **or engine, were being overworked just order more people,**
 (23) **or if**
 (24) **that wouldn't solve the problem or wouldn't - wasn't a quick**
 (25) **fix, just stop what you're doing**
 (26) **Q Stop what you're doing?**
 (27) **A Yes**
 (28) **Q If you're at the berth stop operation?**

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- (1) **A Stop cargo operations**
 (2) **Q What if you were just leaving the berth and you found out?**
 (3) **A Couple times, I've done it once, and the masters I've**
 (4) **sailed with, take the ship to an anchor, and everybody goes**
 (5) **to**
 (6) **sleep for 12 or 14 hours**
 (7) **Q Is that the term drop anchor just drop anchor?**
 (8) **A Yeah**
 (9) **Q Was that the company policy if you saw any sign of**
 (10) **fatigue that's what you should do?**
 (11) **A As I understood it, yes**
 (12) **Q And you say you were advised of that at several fleet**
 (13) **officers conferences and there was some sort of what was it**
 (14) **hard copy letter circulated?**
 (15) **A In the circular files as I recall in the '86, '87 time**
 (16) **frame**
 (17) **Q Consistent with that policy have you ever stopped a vessel**
 (18) **for rest?**
 (19) **A Well, on occasion, I've held off sailing for six or eight**
 (20) **hours I was on a ship where we had to go to an anchor, the**
 (21) **master took us to an anchor when I was chief mate, and**
 (22) **there**
 (23) **has been occasions where I could perceive a potential**
 (24) **fatigue**
 (25) **problem arising in a port and ordered more people to be**
 (26) **there**
 (27) **when the ship arrived and retained them on board**
 (28) **Q Was that consistent with this policy that you discussed?**
 (29) **A Yes**

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- (1) **Q Now Captain let's move briefly to the voyage that led to**
 (2) **the grounding March 23rd 1989 I believe - did you have an**
 (3) **occasion before casting off to see First Mate Kunkel Second**
 (4) **Mate LeCain and Third Mate Cousins?**
 (5) **A Yes they were all up on the bridge prior to letting go**
 (6) **Q Did you have discussions with them?**
 (7) **A Yes**
 (8) **Q Did you see any sign of fatigue whatsoever in those three**
 (9) **gentlemen?**
 (10) **A No, they had all the lights on and they looked fine I**
 (11) **asked Mr Kunkel, I asked him on the phone earlier and I**
 (12) **asked**
 (13) **him in person how the load went, and he said it was very**
 (14) **easy**
 (15) **to load, nothing complicated**
 (16) **Q You said something about this should have been easier than**
 (17) **other times because it didn't require any topping off Would**
 (18) **you explain what you mean by topping off?**
 (19) **A Topping off a tank, it's like yourself serve gas station,**
 (20) **if you're only going to put five bucks in, just watch the dial**
 (21) **and shut it off at five bucks as opposed to topping off when**
 (22) **you're going to fill the tank You don't have to run it out**
 (23) **the spigot, and when you're topping off tanks in a tanker,**
 (24) **it's**
 (25) **a little more pressurized drill than your self serve station**
 (26) **you usually have to break out a couple extra people As**
 (27) **you're**
 (28) **filling one tank, you have to be spilling into the next and**
 (29) **this particular voyage that was none of that All the tanks**

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- (1) **were well below the main deck You have gas station inside**
 (2) **there and you just watch the gauge When it gets to a**
 (3) **certain**
 (4) **number, you shut the valve off go to the next tank It was**
 (5) **much less complicated load**
 (6) **Q Is there an officer when you have a master a chief mate**
 (7) **a second mate a third mate is there an officer who has**
 (8) **generally the primary responsibility to see that the six hour**
 (9) **rule that Mr O Neill referred to plenty of rest occurs?**
 (10) **A Generally speaking, it was handled by myself, the years**
 (11) **ago I was chief mate by the chief mate, because he was running**
 (12) **the**
 (13) **show cargo wise and manpower wise in port**
 (14) **Q Because if you're loading - if you're discharging ballast**
 (15) **dirty ballast in the Port of Valdez and you're loading crude**
 (16) **oil and you've done it a number of times do you generally**
 (17) **know what work is required?**
 (18) **A Yeah, and not to correct you but usually those are two**
 (19) **separate entities, you pump the ballast first, then you load**
 (20) **So it's simpler than most ports Most ports you'll be**
 (21) **pumping**
 (22) **ballast and loading 10 or 12 cargoes This, you pump the**
 (23) **dirty**
 (24) **ballast and then you load, so there is really only one thing**
 (25) **going on at a time**
 (26) **Q Would you call Chief Mate Kunkel who was the chief mate**
 (27) **an experienced chief mate?**
 (28) **A At that time, yes**
 (29) **Q Would a chief mate just know by having done this how**
 (30) **many**

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- (1) hours of rest that his officers and himself should be able to
 (2) get or say off duty rather than rest?
 (3) A Yeah, he would know going in prior to ever getting to the
 (4) dock, and as the cargo evolution evolved he would be
 aware of
 (5) who was doing what
 (6) Q You said that you had had discussions with Mr Kunkel -
 (7) Mr Cousins Mr LeCain and Mr Kunkel about the six hours rest
 (8) and the 12 hours we ve talked about do you remember that?
 (9) A Well I asked Mr Kunkel how the load went
 (10) Q I mean generally Let s talk about before this trip You
 (11) testified that you had conversations with them about this six
 (12) hour rule or rest period et cetera right?
 (13) A I had generally discussions with them about getting
 (14) adequate rest, yeah
 (15) Q And then you were asked if you hadn t said in your
 (16) deposition that you had no discussion and you said not the
 (17) statute per se What did you mean by that?
 (18) A Well, I didn t break out the statute in all its sub parts
 (19) and put a chart on the bulkhead and say, boys, mark your
 hours
 (20) In here so we keep a running account of everybody's rest
 time,
 (21) duty time and off duty time I mean their watch duty was
 (22) predicated by the watch duty schedule It s pretty
 (23) straightforward
 (24) Q When you say you didn t discuss the statute per se you
 (25) discussed the substance of the statute?

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- (1) A Yeah, the general substance, yeah
 (2) Q Then he asked you something about getting in and turning
 (3) around You come into Valdez and by the way if it is
 (4) summertime you don t discharge dirty ballast do you? I take
 (5) myself farther than what I - you come in you discharge your
 (6) ballast and you load your crude oil?
 (7) A I always carried a little bit of dirty ballast
 (8) Q But you discharge that and you take on your load right?
 (9) A Yeah
 (10) Q Did the - and then you come on out?
 (11) A Yeah
 (12) Q Mr O Neill asked you something about whether turn around
 (13) the time of turn around in Port or Valdez anywhere had
 (14) something to do with your evaluation do you remember that?
 (15) A Yes
 (16) Q Did Exxon Shipping Company ever put any pressure on you
 for
 (17) a rapid turn around in the Port of Valdez?
 (18) A No
 (19) Q Was the company policy in Valdez like other ports If it s
 (20) not safe to leave don t go? Would that be a fair statement?
 (21) A As far as Exxon Shipping, yeah
 (22) Q Did you ever yourself stay over in the Port of Valdez
 (23) after your scheduled departure or beyond normal loading time?
 (24) A Yeah
 (25) Q Would you - one or more times?

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- (1) A Myself personally, I did it once and I was on a couple
 (2) other ships that did it I think that I know, you know
 (3) Q Did you notify Exxon Shipping Company that you were
 staying
 (4) over?
 (5) A Yes
 (6) Q Was there any criticism whatsoever for you for doing that?
 (7) A Not from Exxon Shipping, no
 (8) Q Well that s what we re talking about that s my client
 (9) Was there any from either Exxon?
 (10) A No, no Exxon
 (11) Q Those are our clients?
 (12) A Yeah, no
 (13) Q Then I want to ask you something about ice What was the
 (14) Exxon Shipping Company ice policy in regard to Prince William
 (15) Sound in 1988 and 1989?
 (16) A It would be basically guided by this document and
 navigate
 (17) your vessel safely
 (18) Q What does that mean?
 (19) A Well, if you chose not to leave, you didn t leave If you
 (20) thought the ice conditions were such not to sail, you had
 that
 (21) option, you could stay tied up to the dock
 (22) Q Was that explained to you by your supervisor?
 (23) A I don t think it had to be, I understood it
 (24) Q You had the book?
 (25) A Well, predating the book I knew it

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- (1) Q Now Captain on the night of the grounding you had a man
 (2) named Greg Cousins who was licensed by the Coast Guard to
 sail
 (3) as a second mate?
 (4) A That s correct
 (5) Q That is the higher office but was in fact sailing as a
 (6) third mate correct?
 (7) A That's correct
 (8) Q Had you sailed with Mr Cousins before this voyage?
 (9) A I had sailed with Mr Cousins around Cape Horn when he
 was
 (10) an able-bodied seaman or crewman studying for his license,
 (11) because I was helping him study then in 1982, and I believe
 if
 (12) I'm not mistaken, this was his third tour of duty on the
 Valdez
 (13) Valdez
 (14) Q And so you had sailed with him at least two prior tours on
 (15) the Valdez?
 (16) A Yeah, I think one of those we staggered a tour It was
 (17) half of my tour and half of his, something like that
 (18) Q Do you think you had adequate occasion to observe Mr
 (19) Cousins competence and seamanship?
 (20) A Yes
 (21) Q What was your observation as to his competence and
 (22) seamanship?
 (23) A I had high regard for it and including his basic ship
 (24) handling skills, as well
 (25) Q Now Mr Kagan he was an able bodied seaman on the night
 of

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- (1) the grounding?
 (2) **A Correct**
 (3) **Q And he was at the helm?**
 (4) **A Yes**
 (5) **Q Had you ever sailed with Mr Kagan before?**
 (6) **A Well In 1984 - or the winter of '84 I had sailed with**
 (7) **him for a round trip on the east coast for about 10 or 12**
days
 (8) **Q And he was certified by the Coast Guard as a competent**
 (9) **able bodied seaman is that correct?**
 (10) **A That s correct**
 (11) **Q Had you occasion to observe Mr Cousins steering a boat?**
 (12) **A Cousins or Kagan?**
 (13) **Q Kagan I beg your pardon**
 (14) **A I'd seen him steer in that - 1984, I have one specific**
 (15) **recollection of him steering halry condition and he did just**
 (16) **fine, and he had been practicing steering on the Valdez the**
 (17) **previous three weeks and did all right, did fine**
 (18) **Q Finally Mr O Neill asked you if Exxon Shipping Company**
 (19) **he d say did they ask you if you d been drinking did they ask**
 (20) **you this did they ask you that After your return to duty**
 (21) **Captain Hazelwood what did you expect to be judged on?**
 (22) **A Just on how I ran the ship**
 (23) **Q Your performance?**
 (24) **A My performance**
 (25) **Q Let me ask you about that You were in the west coast**

- (1) **MR NEAL Excuse me just a moment Your Honor Thank**
 (2) **you Captain Hazelwood**
 (3) **CROSS EXAMINATION OF JOSEPH HAZELWOOD**
 (4) **BY MR CHALOS**
 (5) **Q Good morning Captain Hazelwood**
 (6) **A Good morning**
 (7) **Q I don t need to introduce myself to you do I?**
 (8) **A No**
 (9) **Q Captain do you presently hold any seagoing licenses?**
 (10) **A Yes, I do**
 (11) **Q What license do you hold?**
 (12) **A Masters unlimited oceans license**
 (13) **Q Who issued that license?**
 (14) **A United States Coast Guard**
 (15) **Q Is the Coast Guard the federal agency the United States**
 (16) **federal agency in charge of promoting safety at sea?**
 (17) **A Safety at sea, yes in the United States waterways**
 (18) **Q What does your license permit you to do?**
 (19) **A Be a master of any ocean going or inland water craft I**
the
 (20) **United States, or any ocean craft**
 (21) **Q Does that include supertankers?**
 (22) **A Any craft yeah**
 (23) **Q Does it include supertankers the size of the Valdez?**
 (24) **A Valdez or larger**
 (25) **Q Captain can you today walk out of this room and go on**

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- (1) **fleet during part of the year '87 and part of the year 1988**
 (2) **right?**
 (3) **A Yes**
 (4) **Q Did the company have a policy of making awards to vessels**
 (5) **and their crews for outstanding performance?**
 (6) **A Yes, they did**
 (7) **Q What was that award called?**
 (8) **A As I recall, it was the - it was the Gulf Coast Award and**
 (9) **a West Coast Award It was a fleet manager safety award**
 (10) **Q Fleet managers safety award Maybe you ve answered my**
 (11) **question but I ll ask you what was the primary basis for this**
 (12) **award? What did they look at?**
 (13) **A The primary basis was safety, with a number of**
subsidiary
 (14) **criteria**
 (15) **Q Now you and Captain Stalzer were the alternate captains**
 (16) **that means you had replaced each other for 1987?**
 (17) **A That's correct**
 (18) **Q What vessel what vessel got the fleet managers award for**
 (19) **1987?**
 (20) **A The Valdez, and '88**
 (21) **Q And I ll ask it What vessel got that award based on**
 (22) **safety performance for 1988?**
 (23) **A It was the Valdez as well**
 (24) **Q And who was the master of the Valdez?**
 (25) **A Myself and Captain Stalzer**

- (1) **board a ship as a master if you could get a job?**
 (2) **A Yes**
 (3) **Q When did you last renew your license?**
 (4) **A April of 1992**
 (5) **Q When you renew your license does the Coast Guard hav**
the
 (6) **authority to reject any request for renewal?**
 (7) **A Yes, as per the application yeah**
 (8) **Q Did the Coast Guard reject any request that you made for**
 (9) **renewal?**
 (10) **A No**
 (11) **Q Does your license contain any restrictions on it?**
 (12) **A No**
 (13) **Q Does it contain any restrictions that say - that says you**
 (14) **cannot drink alcohol?**
 (15) **A No**
 (16) **Q Does it contain any restrictions that says that someone ha**
 (17) **to monitor you?**
 (18) **A No**
 (19) **Q Does it contain any restrictions that require you to go to**
 (20) **AA?**
 (21) **A No**
 (22) **Q Captain I d like to direct your attention to the morning**
 (23) **of March 23rd 1989**
 (24) **A Uh huh**
 (25) **Q There has been testimony already that you left the Alyesk**

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- (1) terminal in the company of Mr Glowacki the chief engineer?
- (2) **A Yes**
- (3) Q Mr Roberson the radio officer?
- (4) **A Yes**
- (5) Q And Mr Bradley who was a Southwest pilot?
- (6) **A Yes, Captain Bradley**
- (7) Q Now did you get gate checked before you left Alyeska?
- (8) **A Yes**
- (9) Q Did you have to sign out?
- (10) **A Yes**
- (11) Q And was your time logged when you checked out?
- (12) **A Yes**
- (13) Q I d like to put up exhibit 3454 No came out sideways
- (14) **A Put that thing on its side**
- (15) Q We ll have to look at it like this There we go
- (16) Captain with apologies to Mr Neal this is a young dog
- (17) trying to learn a new trick Let me see if I can figure this
- (18) out
- (19) Captain see if I can get some color here the this the
- (20) time that you left 10 59 where I m pointing?
- (21) **A Yes**
- (22) Q Right there 10 59 and you returned at 8 24 that evening
- (23) can you see that?
- (24) **A Yes**
- (25) Q Why don t I go - here this is much better 10 59 and

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- (1) 8 24?
- (2) **A Yeah**
- (3) Q I guess I have to get a little older
- (4) Okay you ve left the terminal you were driven by Captain
- (5) Bradley were you not?
- (6) **A Yes**
- (7) Q All three of you in addition to Captain Bradley were in
- (8) his car?
- (9) **A Yes**
- (10) Q The whole time that you left the terminal until the time
- (11) you arrived in Valdez?
- (12) **A That s correct**
- (13) Q Where did you go?
- (14) **A Went to the - I forgot the name of the building, but it**
- (15) **houses the Alamar offices**
- (16) Q Were you dropped off in front of that building?
- (17) **A Yes**
- (18) Q At what time was that?
- (19) **A I would say probably 11 20 or 11 30**
- (20) Q Did you go - was the Alamar offices upstairs?
- (21) **A Yes**
- (22) Q Did you go from the street level upstairs immediately?
- (23) **A Yes**
- (24) Q All three of you?
- (25) **A All three of us, yes**

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- (1) Q Now Captain you heard the testimony of Ms Harrison the
- (2) bar maid at the Pipeline Club?
- (3) **A Uh huh**
- (4) Q She said that a gentleman that she identified as you was in
- (5) the Pipeline Club between 11 30 and 12 00 do you remember
- (6) that?
- (7) **A I heard that testimony, yeah**
- (8) Q And do you remember she said that that gentleman stayed
- for
- (9) 20 to 30 minutes?
- (10) **A Yeah**
- (11) Q In the Pipeline Club?
- (12) **A Yes**
- (13) Q Captain where were you between the hours of 11 30 and
- (14) 12 30?
- (15) **A For the most part, I was in the Alamar office**
- (16) Q What do you mean for the most part?
- (17) **A Part of that time I was probably - the three of us came**
- (18) **downstairs to wait for Captain Murphy He said he was on**
- his**
- (19) **way**
- (20) Q Were the three of you in the Alamar office the entire time?
- (21) **A Yes, I was in one office adjacent to Mr Glowacki, and in**
- (22) **the other office - Mr Roberson was in a anteroom or**
- waiting**
- (23) **In the front of the office**
- (24) Q When you went downstairs to be picked up by Captain
- Murphy
- (25) did the three of you go together?

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- (1) **A That's correct**
- (2) Q Other than being in two different rooms did you ever leave
- (3) each other s sight for that one hour that we re talking about
- (4) approximately? Is that one hour?
- (5) **A No**
- (6) Q Captain what did you do at the Alamar office?
- (7) **A I made some phone calls to the Lower 48, essentially**
- (8) **concerning ship's business**
- (9) Q What was the practice when you made telephone calls at
- (10) Alamar did you have to fill out something?
- (11) **A A log sheet for their phone usage so their invoicing I**
- (12) **suppose would match up with their phone bill**
- (13) Q And on that log did you put the phone number that you
- (14) called and the reason for the call?
- (15) **A Yes**
- (16) Q Did you do that in this instance?
- (17) **A Yes**
- (18) Q How many phone calls did you make?
- (19) **A Three**
- (20) Q Let me pull up exhibit what is it 3455 this one I
- (21) don t know how we can fix but let me go over here and point
- (22) this out Let me just take the first two
- (23) Captain the first one here has a telephone call to
- (24) Benicia do you see that?
- (25) **A Yeah**

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- (1) Q I m looking at the one on the left side?
 (2) A Yes
 (3) Q And it has a time of 11 00 do you see that?
 (4) A Yeah
 (5) Q Was that the correct time that you made the call?
 (6) A It couldn t have been I put 11 down, but it couldn t have
 (7) been that early because I was still at the gate at 11 00
 (8) Q Let me ask you is this your handwriting?
 (9) A Yes
 (10) Q So you wrote out this message slip did you not?
 (11) A Yes
 (12) Q Is it your testimony that that 11 00 was a mistake on your
 (13) part?
 (14) A Have to be, yeah
 (15) Q Let s look over at the next one that s another telephone
 (16) call to Houston?
 (17) A Yes
 (18) Q That s again your handwriting?
 (19) A That's correct
 (20) Q You made that call?
 (21) A Yes
 (22) Q What s the time on there?
 (23) A That's 11 30, a m
 (24) Q Let s look at the third
 (25) MR CHALOS Can we somehow turn it?

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- (1) UNIDENTIFIED SPEAKER Yes
 (2) BY MR CHALOS
 (3) Q Captain this third one has a time of 11 58?
 (4) A Correct
 (5) Q Do you see that?
 (6) A Yes
 (7) Q Is that your handwriting?
 (8) A Yes
 (9) Q And who did you call there?
 (10) A The other two I indicated names 2796, I don't recall that
 (11) extension This was personnel
 (12) Q You made that call did you?
 (13) A I made the call, I remember it s two different reasons I
 (14) had to call Houston, one was some personnel related
 (15) inquiries
 (16) and the other was - I forgot what the other one was
 (17) Q Captain on the first call the one that you said was a
 (18) mistake where you had 11 00?
 (19) A Yeah
 (20) Q Do you have any opinions as to what that time what you
 (21) meant by that time?
 (22) A The only thing I can think of, I meant 12, just misread my
 (23) watch
 (24) Q Now on that call you called someone in Benica What is
 (25) Benica?
 (26) A That is the headquarters of the west coast fleet office

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- (1) Q Do you recall who you spoke to on that day?
 (2) A According to the names listed it was -
 (3) Q Can we have that twisted around again? You spoke to
 Sampsa
 (4) O Card (ph)?
 (5) A It s Tom Shearer G T Shearer Tom Shearer and Kay
 Case
 (6) Mr Shearer was ostensibly in charge of the personnel
 matters
 (7) In the west coast fleet, and Mrs Case was the port steward
 (8) So one was personnel related and the other was supply
 related
 (9) Q Captain on that day when you went ashore were you
 wearing
 (10) a sailor s hat?
 (11) A No
 (12) Q A white or gray sailor s hat?
 (13) A No
 (14) Q Now you say you got picked up somewhere between is it
 (15) 12 15 or 12 30 by Captain Murphy?
 (16) A That's the best I can recall
 (17) Q And you Captain Murphy Chief Engineer Glowacki and M
 (18) Roberson all four of you got into a car that was driven by
 (19) Captain Murphy?
 (20) A That's correct
 (21) Q And Captain Murphy drove you over to the Pizza Palace?
 (22) A That's correct
 (23) Q How long did that take that drive?
 (24) A We waited around a few minutes for him, and the whole
 (25) thing, probably 10 or 12 minutes

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- (1) Q Now you ve testified that at the Pizza Palace you did not
 (2) have anything to drink alcoholic is that correct?
 (3) A Yes
 (4) Q You only had ice tea?
 (5) A Yes
 (6) Q And there has been testimony and I think you testified
 (7) that you left there sometime between 1 30 and 2 00 probably
 (8) closer to 2 00 is that correct?
 (9) A It was an hour or more there I would say closer to 2 00
 (10) Q When you left did you get back in Captain Murphy s car
 (11) with Mr Glowacki and Mr Roberson?
 (12) A Yes
 (13) Q Did the four of you drive back to the center of town?
 (14) A Yes
 (15) Q And were you dropped off then in front of a place called
 (16) the Hobby Hut?
 (17) A Yes
 (18) Q And you and Mr Roberson went into the Hobby Hut
 (19) immediately after you were dropped off?
 (20) MR O NEILL I m going to object because the
 (21) questions are leading
 (22) MR CHALOS Your Honor I was just laying a
 (23) foundation
 (24) MR O NEILL I don t mind on those subjects but -
 (25) THE COURT Okay

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- (1) BY MR CHALOS
 (2) Q Captain once you were dropped off in front of the Hobby
 (3) Hut what did you do next?
 (4) A Myself and Mr Roberson went in and did some - myself
 and
 (5) Mr Roberson, Mr Glowacki figured out what we were going
 to
 (6) do and Mr Roberson and I entered the Hobby Hut
 (7) Q What was your plan?
 (8) A Mr Glowacki was going to go look for some newspapers,
 (9) because there was, as I recall, there was a couple empty
 (10) newspaper machines there in front of the store that was
 (11) adjacent to the Hobby Hut Mr Roberson wanted to get
 some
 (12) magazines or something I was going to order some flowers
 for
 (13) my wife and daughter and we made a sketchy plan we would
 meet
 (14) back at the Pipeline Club at a later time when everybody
 (15) finished their individual chores
 (16) Q Did you have any particular time in mind?
 (17) A No
 (18) Q Now after you made your plan with the other two gentlemen
 (19) what did you do?
 (20) A Mr Roberson and I entered, excuse me, entered the
 Hobby
 (21) Hut He looked around for a few minutes and he said he was
 (22) going to take a walk around town and he was going to go up
 to
 (23) the post office and mail something
 (24) Q What time do you believe that you first entered the Hobby
 (25) Hut?

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- (1) A Somewhere around a quarter to 2 to 2 00 as best -
 (2) Q You heard the testimony of Mrs Delozier the bar patron?
 (3) A Uh-huh
 (4) Q Did you on March 23rd 1989 go into the Pipeline Club at
 (5) 1 45 p m ?
 (6) A No
 (7) Q Were you in the Pipeline Club at any time between 1 45 p m
 (8) and 2 45 p m ?
 (9) A No
 (10) Q Did you on that day wear a golf hat?
 (11) A No
 (12) Q Did you have a hat with a snap on it that day?
 (13) A No
 (14) Q Were you wearing a hat that day?
 (15) A Yes
 (16) Q What kind of hat were you wearing?
 (17) A Just a black driving cap
 (18) Q A what?
 (19) A Driving cap, I think they call them, driving a car
 (20) Q Did that hat have a snap on it?
 (21) A No
 (22) Q Captain how at all are you?
 (23) A Six feet
 (24) Q What was your age in March of 1989?
 (25) A 42

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- (1) Q Did you wear your beard the same way in 1989 as your beard
 (2) is today?
 (3) A I wore it the same It was a little less gray then
 (4) Q Captain did you ever have that beard as Mrs Delozier
 (5) described it shaved from your chin to your lip?
 (6) A No
 (7) Q Has it always been in the same condition please show the
 (8) jury as it is today?
 (9) A More or less, yeah
 (10) Q Captain while we were on Mrs Delozier and Mrs Harrison
 (11) you heard Mrs Harrison s testimony to the effect that she and
 (12) Mrs Delozier met the day after the grounding and saw your
 (13) picture on television or in the newspaper do you remember
 (14) that?
 (15) A Yes
 (16) Q Do you have a recollection of when the first time was your
 (17) picture appeared in either a newspaper or either on television?
 (18) MR O NEILL Objection foundation
 (19) MR CHALOS Your Honor he can tell me if he
 (20) remembers when the first time that was
 (21) THE COURT I ll allow the question
 (22) THE WITNESS The first time I had any idea that I had
 (23) been photographed or - was Tuesday or Wednesday following
 the
 (24) grounding
 (25) BY MR CHALOS

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- (1) Q On that Saturday Captain had any pictures been taken of
 (2) you that were published as far as you knew?
 (3) A No, nobody knew what I looked like
 (4) Q Let s go to the Hobby Hut You say you went there between
 (5) a quarter of 2 and 2 00?
 (6) A Somewhere in that time frame, yeah
 (7) Q Did you know - had you ever met the owner before?
 (8) A I had gone in there and ordered flowers previous years
 and
 (9) gotten to know her and knew who she was, yeah
 (10) Q What was your purpose in going to the Hobby Hut?
 (11) A Easter was coming up, and as my practice has been since
 my
 (12) daughter was born, all holidays I wired her some flowers if I
 (13) was away from home
 (14) Q While you were in there Captain did you place an order
 (15) for flowers?
 (16) A Yes
 (17) Q Was there a receipt that was written up for your order?
 (18) A Yes, she -
 (19) Q Let me pull up Exhibit 3458
 (20) MR CHALOS Your Honor just so I m careful on this
 (21) the two previous exhibits have been pre admitted but I would
 (22) offer them into evidence
 (23) MR O NEILL No objection
 (24) MR CHALOS Can I offer this one?
 (25) MR O NEILL No objection

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- (1) THE COURT When you say they have been pre admitted
- (2) I m not sure what you mean by that
- (3) MR CHALOS Let me do it more formal
- (4) THE COURT Exhibit 3450 was the first one you dealt
- (5) with
- (6) MR CHALOS I offer that
- (7) (Exhibit 3450 offered)
- (8) THE COURT Any objection?
- (9) MR O NEILL None
- (10) THE COURT Admitted
- (11) (Exhibit 3450 received)
- (12) MR CHALOS Exhibit 3455 I offer that into
- (13) evidence
- (14) (Exhibit 3455 offered)
- (15) MR O NEILL No objection
- (16) MR CHALOS And I m now offering 3456 into evidence
- (17) (Exhibit 3456 offered)
- (18) MR O NEILL No objection
- (19) THE COURT Both 3455 and 3456 are admitted
- (20) (Exhibit 3455 and 3456 received)
- (21) MR CHALOS Thank you Your Honor
- (22) BY MR CHALOS
- (23) Q Captain do you have a recollection of seeing this receipt
- (24) when you ordered the flowers?
- (25) A As she wrote it out, I was giving her the information,

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- (1) yeah
- (2) Q Let me point up to the upper left hand corner was that
- (3) your home telephone at the time?
- (4) A At that time, yes
- (5) Q And is that address your home address?
- (6) A Yes
- (7) Q And you see down here where it says FTD and then there is a
- (8) number?
- (9) A Yes
- (10) Q Do you see that portion?
- (11) A Yes
- (12) Q Now Main Street Florist is that a florist in your home
- (13) town?
- (14) A Yes
- (15) Q And this number here 516 do you recognize that as being a
- (16) local Long Island number?
- (17) A Area code, yes, and 271 exchange
- (18) Q Is that a Huntington number?
- (19) A Huntington exchange, yeah
- (20) Q Did you want a saying on there?
- (21) A Just Happy Easter Allison and Sue
- (22) Q Allison is your daughter?
- (23) A Yeah
- (24) Q And Sue is your wife?
- (25) A Yes

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- (1) Q And Jeff is that your nickname?
- (2) A Well, that s my given middle name that I go by
- (3) Q Now Captain do you have a recollection of about what tir
- (4) this transaction took place?
- (5) A She was verifying all this stuff right in the first few
- (6) minutes I came in there, so 2 00
- (7) MR CHALOS Could you pull up the next exhibit which
- (8) is Exhibit 3457 A which I offer into evidence
- (9) (Exhibit 3457 A offered)
- (10) MR O NEILL No objection
- (11) THE COURT 3457 A is admitted
- (12) (Exhibit 3457 A received)
- (13) MR CHALOS That s good enough
- (14) BY MR CHALOS
- (15) Q Now Captain I m going to show you this exhibit Do you
- (16) see the entry for Huntington New York?
- (17) A Yes
- (18) Q Now is that the same number for florist that we had on the
- (19) previous exhibit?
- (20) A 271, I think it s the same exchange and area code I m
- (21) sure about the 0150
- (22) Q This the Hobby Hut telephone record and the time Mrs
- (23) Kaiser made the call?
- (24) A 1402 or 2 02 in the afternoon
- (25) Q Captain how much longer after Mrs Kaiser made the

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- (1) verifying calls did you remain in the Hobby Hut?
- (2) A I looked around and purchased some cards as well and
- (3) probably talked with her for 35 or 40 minutes
- (4) Q What time do you estimate you left the Hobby Hut?
- (5) A I don t know, probably quarter to 3 to 3 00
- (6) Q Where did you go after that?
- (7) A As I testified to earlier, I went to Sugar and Spice and
- (8) then to Alaska Imports, or Exporting It was another tour
- (9) shop which is katty corner to Sugar and Spice
- (10) Q How long did that process take you?
- (11) A Each one of them, it was 20 minutes So 40 minutes
- (12) probably, total
- (13) Q So if you left at a quarter of 3 from the Hobby Hut What
- (14) time would that place you by the time you finished with the
- (15) other two shops?
- (16) A Somewhere around 3 45 or so
- (17) Q Now Captain did you between 3 00 and 3 30 go into the
- (18) Pipeline Club?
- (19) A No
- (20) Q You told Mr Delozier the day following the grounding whe
- (21) you were interviewed that you were in there - that you stoppe
- (22) in between 3 and 3 30 do you remember that?
- (23) A I remember reading that
- (24) Q Captain why did you tell that to Mr Delozier if it didn t
- (25) happen?

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- (1) A That whole interview was kind of a blur to me There was a
 (2) lot going on I didn't -- still had some grave concerns for
 (3) the safety of the ship and my crew There was phones
 ringing,
 (4) people coming and going I was trying to get some fenders
 hung
 (5) off the sides so we could lighter He was pestering me
 about
 (6) an interview, and he said he wanted to talk to me about what
 (7) you know about the grounding, and I gave him that, and he
 (8) started asking me about reconstructing the previous day's
 (9) events, which were -- I wasn't focused on what had gone on
 the
 (10) day before Really wasn't very high on my priorities of what
 (11) happened the day before in town
 (12) Q Captain what was your state of mind when you gave that
 (13) interview to Mr Delozier?
 (14) A State of mind was somewhere between shock, terror,
 worry,
 (15) everything that's rolled in I guess it comes under the
 (16) umbrella of trauma, but I was just trying to function I was
 (17) running on adrenaline, some emotion, and that's about it
 (18) Q Captain at that point in time looking back at it now do
 (19) you believe you were thinking clearly?
 (20) A I was doing my best to act clearly and control myself to
 (21) try and act and get the job done on the ship, the deck of the
 (22) ship, to protect my people Whether I was acting or thinking
 (23) clearly, it was more instinctive than that I don't know how
 (24) much I was thinking about
 (25) Q Captain when you were in town how many bags were you

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- (1) carrying?
 (2) A Just one hard attache case
 (3) Q And that's all you had the entire time you remained in
 (4) town?
 (5) A Yes
 (6) Q One bag?
 (7) A Yes
 (8) Q Now what time did you -- by the way after you went to the
 (9) Sugar and Spice and the other place you said it was around
 (10) 3 30 what did you do next?
 (11) A I went up to -- back to the Alamar office I was looking
 (12) for Mr Arts who was the president or the manager of the
 (13) agency, and he had paid for our lunch, Captain Murphy,
 Roberson
 (14) and Glowacki, unbeknownst to us until we were getting
 ready to
 (15) pay the bill I was going to thank him for that, and also
 (16) there is a lady in there that I usually try to buy some fish
 (17) from, Carla Hilgendorf, and I asked her earlier when I was in
 (18) there to inquire and see what we could get delivered to the
 (19) ship, or for the crew to eat And she was there, but Arts was
 (20) not She said she didn't have any fish available then She
 (21) said Arts was either out of the office or he may be
 downstairs
 (22) where I believe his wife had a business of some sort So I
 (23) thanked her I spent five or ten minutes talking to her, and I
 (24) went below to Arts' wife's business, and the door was
 locked
 (25) Then I left

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- (1) Q Before we leave the Alamar offices I just want to go back
 (2) to the first time you were there Were there people in the
 (3) offices that saw you and Mr Glowacki and Mr Roberson in
 (4) there?
 (5) A Yeah Mr Arts the manager was there at the time I
 (6) think he was on his way out Pat Caples, Gretchen Dunkin
 and
 (7) Carla Hilgendorf I just learned her last name recently but I
 (8) think it's Hilgendorf, they were in there
 (9) Q All right
 (10) A And they sat us -- gave us which phones to use myself
 and
 (11) Mr Glowacki
 (12) Q And they remained in there the whole time as far as you can
 (13) recall?
 (14) A Yes
 (15) Q Except for Mr Arts who left?
 (16) A He was on his way out as we were entering
 (17) Q Captain what time did you first arrive at the Pipeline
 (18) Club?
 (19) A I would say somewhere in the neighborhood of 16 -- 4 30
 (20) Q Prior to your arrival at the Pipeline Club did you have
 (21) anything to drink of an alcoholic nature that date?
 (22) A No
 (23) Q Now when you arrived at the Pipeline Club was Mr Glowacki
 (24) already there?
 (25) A Yes, he was

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- (1) Q Did he have a drink already?
 (2) A Yes
 (3) Q What did you do?
 (4) A I said, I'm going to buy myself a drink, George, do you
 (5) care for one He said, no, I'm fine
 (6) Q What did you do next?
 (7) A I proceeded to the bar and ordered a Stolichnaya on the
 (8) rocks
 (9) Q Did you get that?
 (10) A No, they said they didn't have that
 (11) Q Did they give you a different brand?
 (12) A I said whatever you got, just the house brand
 (13) Q Captain do you know the difference between a double drink
 (14) and a single drink?
 (15) A Yes
 (16) Q What did you get?
 (17) A Best of my knowledge, it was a single, and that's what I
 (18) ordered
 (19) Q Well you know the difference you said?
 (20) A Yes
 (21) Q Was it a single or a double?
 (22) A It was a single drink, yeah That's what I ordered
 (23) Q And that's what you got?
 (24) A Yes
 (25) Q What did you do next?

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- (1) A I returned to the table where Mr Glowacki was seated
 (2) already and just started talking
 (3) Q Did there come a time when you were joined by Mr Roberson?
 (4) A Yeah, I would say 15 to 20 minutes later Mr Roberson
 (5) arrived
 (6) Q What did Mr Roberson do when he arrived?
 (7) A He asked if we wanted something to drink and we said
 no,
 (8) we re fine And he went to the bar and got a beer
 (9) Q You were still working on your first drink?
 (10) A Yeah
 (11) Q Did there come a time when Ms Dunkin came in?
 (12) A She came in a little later, yes She was off work and she
 (13) had just been running an errand something about her dart
 (14) tournament or something
 (15) Q Did she spend a few minutes with you and Mr Roberson and
 (16) Mr Glowacki?
 (17) A Just a couple minutes we were talking, and said Happy
 (18) Easter, stuff like that, and see you next trip
 (19) Q Did there come a time when you had a second drink?
 (20) A Yes
 (21) Q Did you order the second drink?
 (22) A I think when we all finished our initial drink I offered
 (23) to buy a round for the three of us and I went up and bought
 a
 (24) beer for Mr Roberson and another single vodka on the
 rocks for
 (25) myself, and a gin and tonic for Mr Glowacki

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- (1) Q You brought the drinks back to the table yourself?
 (2) A That s correct
 (3) Q Now did there come a time when you had a third drink?
 (4) A Yes, sometime thereafter when we all finished again, Mr
 (5) Glowacki, did what I - bought a round
 (6) Q Who bought the third round?
 (7) A Mr Glowacki
 (8) Q Did you tell him what you wanted?
 (9) A Yes
 (10) Q What did you tell him you wanted?
 (11) A I told him just get me a vodka on the rocks
 (12) Q Captain tell the jury if you will what the three of you
 (13) were doing while you were having these drinks?
 (14) A Well, it's the curse of the seaman that all you talk about
 (15) on the ship is what s going on ashore, and when you get
 ashore
 (16) all you talk about is what's going on on the ship Basically
 (17) that was it, just talking about different things on the ship,
 (18) people and personalities and just that was basically it
 (19) Q How would you describe the manner in which the three of
 you
 (20) were drinking were you throwing the drinks back or were you
 (21) sitting there socializing and drinking?
 (22) A Just sitting there gabbing and socializing, really, just
 (23) telling sea stories
 (24) Q Captain let me go back to Alamar again for a second When
 (25) you left the ship you mentioned something about a sailing
 board

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- (1) being set for 9 00 sailing?
 (2) A 9 p m yeah
 (3) Q Is there an actually - we re talking about a sailing
 (4) board Is there an actual board where the time of sailing is
 (5) posted?
 (6) A Physical chalkboard that hangs right by the top of the
 (7) gangway Whenever you exit the ship, it s there so you
 could
 (8) read it
 (9) Q As you were exiting did you read it?
 (10) A Yes
 (11) Q What time was sailing time set for that evening?
 (12) A 9 p m that evening
 (13) Q Now when you arrive at Alamar office did there come a time
 (14) when you find out that was changed?
 (15) A I overheard a conversation - or I heard the chief mate -
 (16) it was either the chief mate or the second mate, I'm not sur
 (17) Mr LeCain, which means it would have been after 12, that
 (18) when his watch began, trying to contact the Alamar office
 and I
 (19) had picked it up, I picked up the radio, they have a VHF
 radio
 (20) there, and I responded to the ship
 (21) Q What was said?
 (22) A They said the cargo availability is slipping so the sailing
 (23) board is going to be moved to a later time, an hour Sailing
 time would be 10 00 or later
 (25) Q Now based on your experience what does it mean when th

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- (1) sailing board is set for 9 00 or 10 00 Does it mean you sail
 (2) right at that moment?
 (3) A Usually it s a little bit later There is some slippage in
 (4) there, but make sure everybody is there, ready to go
 (5) Q So is it fair to say that when you were in the Pipeline
 (6) Club that afternoon you believed the sailing time would be
 (7) 10 00 or later?
 (8) A Definitely what I believed, yeah
 (9) Q In all the years that you ve been sailing Captain have
 (10) you ever had occasion where you saw the sailing time moved
 up
 (11) as opposed to put back?
 (12) A You mean shifted to an earlier time?
 (13) Q Yes
 (14) A Definitely not in Valdez because they are very computer
 (15) oriented and they have - the terminal, my experience is the
 (16) have got a very accurate inventory control and they can
 predict
 (17) when you're going to have your cargo It's never been
 earlier,
 (18) it's always been later Occasionally in an odd circumstanc
 in
 (19) some of the ports worldwide when they ran out of cargo six
 (20) hours ahead of your projected sailing time, they just said
 get
 (21) out of here, we don t have anymore cargo for you but neve
 in
 (22) Valdez, no
 (23) Q Captain sitting in the Pipeline Club did you expect that
 (24) the time would be moved back up to 9 00 after you received th
 (25) notice of 10 00 for later sailing?

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- (1) A You mean made to an earlier time than 9 p m ?
 (2) Q Yes
 (3) A Definitely not
 (4) Q Let s go back to the Pipeline Club you have the third
 (5) drink that Mr Glowacki has ordered and brought over to you
 (6) did you have any more drinks in the Pipeline Club?
 (7) A No
 (8) Q What time did you - strike that let me go back Once Mr
 (9) Roberson arrived at the Pipeline Club did you all three of
 (10) you remain together the rest of the time until you got back on
 (11) the vessel?
 (12) A Yes
 (13) Q Did you ever separate at any time?
 (14) A No
 (15) Q You finished your last drink which was about what time?
 (16) A Neighborhood of 6 30 or so
 (17) Q What did you do next?
 (18) A Walked over to the Pizza Palace That's where we were
 (19) going to order a couple pizzas to take back to the ship
 (20) Q You were taking the pizzas back for yourself?
 (21) A No, for the crew members
 (22) Q On the ship?
 (23) A Some engineers
 (24) Q Whose idea was it to order the pizza?
 (25) A Chief engineer, Mr Glowacki

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- (1) Q When you finished your last drink at the Pipeline Club
 (2) other than the suggestion to go and get some pizzas was it
 (3) your intention to go back to the ship at that point?
 (4) A Yeah, via the pizza business, we were going back to the
 (5) ship
 (6) Q How long did it take to walk over from the Pipeline Club to
 (7) the Pizza Palace?
 (8) A Probably five to seven, ten - probably seven minutes
 (9) Q What did you do when you arrived at the Pizza Palace? Tell
 (10) us about it
 (11) A The three of us went into the ordering area, and it's kind
 (12) of a restrictive anteroom there We placed our order, and it
 (13) was either myself or Mr Glowacki called for a cab, I'm not
 (14) sure who There is a pay phone right there, and we called
 (15) for a cab
 (16) Q At the same time?
 (17) A It was concurrent I don't know if it was exactly at the
 (18) same time
 (19) Q Now you said you left the Pizza Palace around 6 30 Could
 (20) it have been later - I m sorry I meant the Pipeline Club?
 (21) A It could have been, yeah
 (22) Q Now the three of you went into the Pizza Palace together?
 (23) A That's correct
 (24) Q You ordered the pizza?
 (25) A Yes

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- (1) Q And called for a cab about the same time?
 (2) A Yeah I think the line was - people picking up orders it
 (3) was a busy time and I think Mr Roberson and I stepped
 (4) outside
 (5) so Mr Glowacki could stand in line without making it a
 (6) congo
 (7) line
 (8) Q Was the place crowded at the time?
 (9) A Yes, very
 (10) Q What was the weather like outside?
 (11) A It had been spitting a little snow, kind of damp and kind
 (12) of March weather in Valdez
 (13) Q Did you have anything to drink in the pizza place?
 (14) A No
 (15) Q Now did there come a time when you stepped outside of the
 (16) pizza place?
 (17) A Yeah, at my suggestion or Mr Roberson s suggestion,
 (18) I m
 (19) not sure which, we said, get out of the way, we're impeding
 (20) the
 (21) flow of traffic Kind of like the tables over there, you just
 (22) can't - too many people trying to occupy the same place, so
 (23) we
 (24) stepped outside the Pizza Palace
 (25) Q And at this time it was snowing or spitting?
 (26) A It was spitting a little snow or rain, it was freezing
 (27) Q What did you do next?
 (28) A Well, we stood out there like - myself and Roberson and
 (29) Jerzy Glowacki came out, and we were just standing there
 (30) basically in the rain I don t know who, it was more like a

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- (1) group decision, why don't we get out of the rain, I thought
 (2) we
 (3) were smarter than this
 (4) Q What did you do to get out of the rain?
 (5) A We stepped into the adjacent building, which is a bar
 (6) Q What s the name of that place?
 (7) A I ve heard it called the Club Bar and the Harbor Club
 (8) Q What did you do in there?
 (9) A We stood for another couple minutes looking at each
 (10) other,
 (11) and I guess we figured we didn't want to occupy this guy s
 (12) establishment, so we went over and proceeded to order
 (13) some
 (14) drinks
 (15) Q Did you go up to the bar to order the drinks?
 (16) A Yeah
 (17) Q Was the place more or less crowded than the Pizza Palace?
 (18) A It was pretty empty as I recall
 (19) Q Did the three of you order drinks?
 (20) A Yes
 (21) Q What did you order?
 (22) A Once again, to tweak Mr Glowacki, I asked if the guy had
 (23) any Stolichnaya and he didn't, and he said this is what I got
 (24) And I said whatever you got, the bar vodka, ordered a single
 (25) vodka on the rocks
 (26) Q Was the drink served to you?
 (27) A Yes
 (28) Q Did you drink it?

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- (1) A I don t think so About the time the drink arrived the
 (2) cab pulled up We went out to check on the cab, and when
 the
 (3) cab pulled up, we went outside Jerzy went in the pizzas
 were
 (4) done, it was all a concurrent event
 (5) Q So is it your testimony you don t have a recollection of
 (6) drinking that last drink?
 (7) A Yes, I didn't - I remember it being served, and right in
 (8) the same time frame, I m not going to say the same
 nanosecond
 (9) we could see through the window the cab pulling up, and
 let s
 (10) get out of here
 (11) MR CHALOS One more question in this area Your
 (12) Honor and we can break
 (13) BY MR CHALOS
 (14) Q Captain assuming your recollection is correct that you
 (15) didn t have that last drink what time was the last drink that
 (16) you had prior to that?
 (17) A Sometime prior to 6 30
 (18) Q When you had that last drink were you aware of the four
 (19) hour rule?
 (20) A Yes
 (21) Q Did you believe at that time that by having that drink that
 (22) you would be in violation of the four hour rule?
 (23) A I didn't think I would be violating it, no
 (24) Q Why is that?
 (25) A Because I was under the information and belief that it

- (1) Erma Lee?
 (2) A Yeah
 (3) Q She says a man that she identified as you came into the
 (4) Pipeline Club at 7 p m do you remember that?
 (5) A Yes
 (6) Q Were you in the Pipeline Club at 7 p m
 (7) A No
 (8) Q Have you ever met her before?
 (9) A She didn t look familiar
 (10) Q You didn t recognize her from the picture of the video?
 (11) A No
 (12) Q Now you were picked up by the taxi at the Club Bar were
 (13) you not?
 (14) A Yes
 (15) Q Together with Mr Glowacki and Mr Roberson?
 (16) A That's correct
 (17) Q And did all three of you get into the taxi?
 (18) A Yes
 (19) Q What happened next?
 (20) A He said - the taxi driver said that I m going to pick up
 (21) another fare that s going back to the terminal at the Pipeli
 (22) Club So we drove - or he drove to in front of the Pipeli
 (23) Club and he said, I ll be back in a second, go in and get
 them
 (24) Q Did the taxi driver in fact drive over to the Pipeline
 (25) Club?

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- (1) was - we were going to sail at ten p m or later
 (2) MR CHALOS We ll pick up I think this is a regular
 (3) break I ll pick up from the Club Bar back to the ship after
 (4) the break
 (5) THE COURT Be in recess now for 15 minutes
 (6) THE CLERK Court is in recess for 15 minutes
 (7) (Recess at 12 02)
 (8) (Jury in at 12 15)
 (9) THE CLERK All rise
 (10) THE COURT Mr Chalos
 (11) MR CHALOS Thank you Your Honor
 (12) BY MR CHALOS
 (13) Q Captain Hazelwood I just want to cover two subjects before
 (14) we leave in the taxi from the bar
 (15) A Yeah
 (16) Q You mentioned that you wore that day a cap?
 (17) A Yeah
 (18) Q You called it a driving cap?
 (19) A I think that's how they are sold
 (20) Q Is that a floppy type hat?
 (21) A No, it's a hard - well, blocked shell hat It's got a
 (22) body to it
 (23) Q It s like one of those English driving hats?
 (24) A Yeah
 (25) Q Captain you heard the testimony and saw the video of Mrs

- (1) A Yes
 (2) Q Did you or any of the other two men that you were with get
 (3) out of the taxi when you got there?
 (4) A No
 (5) Q Did you go over to the Pipeline Club on that occasion?
 (6) A No
 (7) Q You remained in the taxi?
 (8) A Yes
 (9) Q Were you joined eventually by a fourth gentleman?
 (10) A Yes
 (11) Q Do you remember his name?
 (12) A No
 (13) Q Does the name Allen MacGregor help refresh your
 (14) recollection?
 (15) A Found out later that was his name but at the time I did
 (16) know his name
 (17) Q Was he a crew member on another ship?
 (18) A Yeah, I believe he was going to be dropped off at berth
 (19) four on an ARCO tanker
 (20) Q On an ARCO ship?
 (21) A Yeah
 (22) Q Were you sitting in close proximity to Mr MacGregor in the
 (23) taxi and the taxi driver?
 (24) A Taxi driver - as I recall I was in the front seat with the
 (25) taxi driver Mr Glowacki and Mr Roberson were in the b

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- (1) seat He had a rear facing seat that Mr MacGregor got into
 (2) We didn't see him really well because he got in the rear
 (3) facing seat in the back of the station wagon
 (4) Q How long was the ride in the taxi from the Pipeline Club to
 (5) the terminal?
 (6) A 20 some odd minutes, yeah, about 25 minutes
 (7) Q Now when you arrived at the terminal please tell us what
 (8) happened what did you do?
 (9) A We -
 (10) Q When I'm talking about the terminal I'm talking about the
 (11) terminal gate?
 (12) A Yeah, there is a gate in front where you whatever vehicle
 (13) you're driving in you have to get out of and in getting out of
 (14) the gate, you turn over your ID cards to one guard who
 (15) you off that you actually in essence left the place to begin
 (16) with, you're not coming in from the outside Then anything
 (17) that you have on you, your bags, packages, anything, you
 (18) proceed with them into the security area where you have to
 (19) all your bags and everything else and, basically like an
 (20) airline security counter, except you open everything Then you
 (21) pass through a metal detector They kind of eyeball you,
 (22) and
 (22) then you're allowed to - at the same time the outside guard
 (23) is
 (23) going through whatever vehicle checking the seats and
 (24) underneath, and the trunk to make sure there is no
 (25) contraband
 (25) or alcohol or drugs brought in Then you're allowed to enter

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- (1) whatever vehicle you arrived in
 (2) Q Captain when you got to the gate did you have to get out
 (3) of the taxi and walk a certain distance to get to the shack to
 (4) the gate shack?
 (5) A Yes
 (6) Q Based on your experience are you being observed while
 (7) you're doing this?
 (8) A You're being observed by the guy that collects your
 (9) cards,
 (9) seaman's cards, and I think they have a couple TV cameras
 (10) outside
 (11) Q Once you're inside the shack once you went inside the
 (12) shack how many security guards were there?
 (13) A One outside, and I believe two inside
 (14) Q How far away were you from the security guards inside the
 (15) shack?
 (16) A Just a table width As close as this U S Marshal - or
 (17) Federal Marshal's check point They stand on one side, you
 (18) stand on your side
 (19) Q Couple feet?
 (20) A Couple feet
 (21) Q Did you have occasion to speak to the guards when you were
 (22) in there?
 (23) A Conversed with them, yeah, just how are you doing
 (24) Q Did they engage you in conversation?
 (25) A They responded, as I recall

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- (1) Q Do you have an understanding of what their job is besides
 (2) looking for contraband and liquor?
 (3) A Well essentially to make sure everybody is in a fit
 (4) condition to travel down to the docks they don't go slipping
 (5) off their catwalks or injuring themselves within the terminal
 (6) Q Did you understand a part of their job was to check for any
 (7) signs of alcohol impairment?
 (8) A That's what I mean by a fit condition, yeah
 (9) Q Were you or your two crew members stopped by the guards
 (10) at
 (11) all?
 (11) A With the exception of opening up our bags no
 (12) Q Were you passed through the security checkpoint?
 (13) A Yes
 (14) Q After you left the security checkpoint where did you go?
 (15) A Reboarded the cab, proceeded down a windy road there
 (16) down
 (16) to the waterfront, stopping at berth four to let this Mr
 (17) MacGregor out of the stern of the station wagon and then
 (18) we
 (18) proceeded on to berth five
 (19) Q How far is the end of the jetty - you have to cross a
 (20) jetty do you not to get to the ship?
 (21) A Well, there is some riprap built up there on the
 (22) shoreline You have to kind of come down and then you go
 (23) out
 (23) this catwalk that extends on the to the berth
 (24) Q I called it a jetty you call it a catwalk How long is
 (25) this catwalk?

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- (1) A Judging from the chart, I'd say about a quarter of a mile,
 (2) a little better It projects off the land in a catwalk
 (3) fashion
 (4) Q It's over water this catwalk?
 (5) A Yes
 (6) Q And where is the gantry - strike that Where is the
 (7) gangway for you to get on the ship?
 (8) A Well at the end you come up a small rise and a ramp and
 (9) there is a ganger of pipes at the manifold there and you
 (10) have
 (10) an articulated telescoping, I guess four-piece gangway that
 (11) goes up, down and over
 (12) Q Captain through the miracle of modern technology I have a
 (13) video of that very thing that you're talking about and if the
 (14) court would allow me to play it maybe you can walk us through
 (15) it Would that be all right?
 (16) MR CHALOS I'm now publishing Your Honor Exhibit
 (17) DX 155 Any objection?
 (18) MR O NEILL (Indicating)
 (19) THE COURT Any objection?
 (20) MR O NEILL None Judge
 (21) THE COURT Exhibit 155 of defense is admitted
 (22) MR O NEILL That one is even better whatever that
 (23) was
 (24) (Exhibit DX 155 received)
 (25) BY MR CHALOS

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- (1) Q Captain when this video comes up will you walk us through
 (2) it tell us what you re seeing?
 (3) A Yeah
 (4) Q This is the Port of Valdez This is where town is
 (5) Captain where I m pointing?
 (6) A It s In the upper right hand corner
 (7) Q And to leave town you leave from here you come all the
 (8) way around the bay here the port?
 (9) A Yes
 (10) Q And the Valdez terminal is down here?
 (11) A Yes
 (12) Q Look at this?
 (13) A Overview of the berthing area road coming in and you re
 (14) inside the terminal
 (15) Q Would you mind keeping your voice up Captain?
 (16) A I'm sorry You re inside the terminal These are the four
 (17) and five berth The one on your right is where we dropped
 (18) the
 (19) other fellow off, the ARCO ship was tied The red line
 (20) indicates - I wasn t far off there is the gantry
 (21) Q Captain what was the weather when you were walking
 (22) across
 (23) the catwalk?
 (24) A It was still spitting snow and cool
 (25) Q What are we looking at here?
 (26) A That s the gangway there You have the loading arms
 (27) connected there, the steel pipes basically, the steel loads

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- (1) Q Now that ship was in a light or semi light condition that
 (2) we just saw?
 (3) A It looked like it It wasn t on there long enough
 (4) Q That wasn t the condition of your ship that night in that
 (5) picture that we saw?
 (6) A No, ours was significantly lower
 (7) Q Did that make the gangway steeper?
 (8) A Yeah, because it rises and falls as the ship goes up and
 (9) down
 (10) Q We have some more here?
 (11) A View of the same
 (12) Q Incidentally is there any difference between berth four
 (13) and five in physical structure?
 (14) A Essentially, no I think the compass heading that faces
 (15) the berths are eight degrees, as I recall
 (16) Q Is that the only difference?
 (17) A Certainly essentially they are the same berth yes
 (18) Q What are we looking at here?
 (19) A This is the side view of the same catwalk It's supported
 (20) over the water as it leads out to the berth
 (21) Q The one in the back is 5?
 (22) A That's correct
 (23) Q And the one here is berth 4?
 (24) A Yes
 (25) Q That s the catwalk you were talking about?

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- (1) A Yeah it s wide enough I think to get a car or truck on
 (2) Q Now this ship is in a light or fairly light condition is
 (3) it not?
 (4) A Yeah she s just getting unloaded not too much She s
 (5) reflecting she s got some oil in her so she s getting
 (6) somewhat
 (7) lower
 (8) Q Now this right here Captain is this what was on the
 (9) ship that stairway going down to the ship?
 (10) A Yeah, that was a shipboard view this is a shore side vie
 (11) of the same contraption
 (12) Q What is this showing?
 (13) A Walking down the covered wagon here that protects yo
 (14) from
 (15) the elements as you re coming down This telescopes,
 (16) these
 (17) steps just telescope in the upper section as you go into to
 (18) the
 (19) ship This kind of -
 (20) Q There s getting onto the ship?
 (21) A Yeah, it's nearly a vertical ladder at the end
 (22) Q You heard Mr Roberson say there was snow on the treads
 (23) A Yeah
 (24) Q Is that how you recollect it?
 (25) A Yeah for the portion that was uncovered, yeah
 (26) Q This is supposed to simulate what you saw that night Can
 (27) you walk us through?
 (28) A I guess somebody coming down the same catwalk The
 (29) is
 (30) some snow falling

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- (1) Q Do you remember the night being something like this?
 (2) A Yeah
 (3) Q Does it approximate the conditions that you saw that night?
 (4) A I would have to say so Wasn t snowing quite that hard
 (5) Q What s he doing now?
 (6) A He s climbing up, making his approach to the gangway I
 (7) board the vessel
 (8) Q Now Captain you said you had a valise when you went into
 (9) town?
 (10) A Yeah
 (11) Q Did you have it with you when you went -
 (12) A Down the catwalk and up the gangway, yes
 (13) Q Were you using one hand or two hands to make this climb?
 (14) A One hand
 (15) Q Where is he now?
 (16) A Now he's at the top of the telescoping portion You hav
 (17) to go through a little maze there, swinging gate and up on
 (18) this, It s approximately about the same angle, as I recall
 (19) seeing it
 (20) Q As you recall it that night?
 (21) A Yeah, the draft she was at and the state of the tide
 (22) Q Do you remember snow on the handrails?
 (23) A Yeah, but it wasn t that pretty It was a little sloppler,
 (24) icy I think the deck looked like that, but -
 (25) Q Once you get on the ship do you have to negotiate some

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- (1) additional steps?
 (2) **A Yeah, you have these ramps that go past side to side**
 (3) **Q Captain now you re on the ship Basically you did the**
 (4) **same thing that this gentleman in the picture did?**
 (5) **A Essentially, yeah**
 (6) **Q Did either Mr Glowacki or Mr Roberson - strike that**
 (7) **let me ask you this**
 (8) **When you got on board did you run into any of your crew**
 (9) **members?**
 (10) **A I met at the manifold there where you saw these steel**
 (11) **pipes, or steel hose, the pump man who was securing the**
 (12) **blanks,**
 (13) **the pipe that had been disconnected, and the pump man -**
 (14) **Q What s his name?**
 (15) **A Jack Stewart**
 (16) **Q Did you stop and talk to Mr Stewart?**
 (17) **A Just for a moment or two I asked him what s the deal**
 (18) **He**
 (19) **said, we finished early, we're getting ready to go I said**
 (20) **okay I proceeded back From there I encountered -**
 (21) **Q Excuse me Captain how close were you to Mr Stewart**
 (22) **when**
 (23) **you encountered him?**
 (24) **A Conversational distance Two, three or four feet**
 (25) **Q What did you do next?**
 (26) **A I was proceeding aft to enter the house area to proceed to**
 (27) **the bridge and I encountered Ms Jones, able bodied**
 (28) **seaman**
 (29) **whose picture was shown the first day of the trial, and she**
 (30) **was**

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- (1) **In the process of rolling up the fire hose that had been let**
 (2) **out for safety precautions during the loading She was**
 (3) **putting**
 (4) **it away, getting ready for sea**
 (5) **Q Did you speak with her?**
 (6) **A Yeah, for a minute or two, said how are things going, see**
 (7) **you when we get going**
 (8) **Q How close were you to Ms Jones when you encountered**
 (9) **her?**
 (10) **A A foot or two away, two or three feet, the same as Mr**
 (11) **Stewart**
 (12) **Q What did you do after you spoke with Ms Jones?**
 (13) **A Then I entered the house**
 (14) **Q Excuse me when you say the house you re talking about**
 (15) **this structure here the white structure?**
 (16) **A Yeah, the living quarters, basically,**
 (17) **Q All right Captain let s just stop there a second Before**
 (18) **you went into the house you told us about coming across a**
 (19) **catwalk up the gantry down the gantry across some piping**
 (20) **ramps and piping In all that time did you have any problems**
 (21) **negotiating the catwalk the gantry or the ramps leading over**
 (22) **the manifolds?**
 (23) **A No**
 (24) **Q Did you stumble at all?**
 (25) **A No**
 (26) **A No**
 (27) **Q Did you fall down?**
 (28) **A No**

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- (1) **Q Did you believe Captain that you were in any way impaired**
 (2) **at this time by alcohol?**
 (3) **A No**
 (4) **Q Did you feel intoxicated?**
 (5) **A No**
 (6) **Q You come into the house now what did you do?**
 (7) **A Walked up the six flights of stairs on the starboard side**
 (8) **Q You walked up the stairs?**
 (9) **A Yeah**
 (10) **Q Did you have any problem negotiating the stairs?**
 (11) **A No**
 (12) **Q Again with one hand you negotiated those stairs?**
 (13) **A Yeah**
 (14) **Q Then what?**
 (15) **A Entered my office, put down my briefcase and proceeded**
 (16) **to**
 (17) **the bridge**
 (18) **Q Did you encounter anyone on the bridge?**
 (19) **A On the bridge was Mr Cousins was there, Captain**
 (20) **Murphy,**
 (21) **and Pat Caples from the Alamar office was there No, that s**
 (22) **it**
 (23) **Q Did you speak with Captain Murphy on that occasion?**
 (24) **A Yeah I said, how are you doing He had - he said fine,**
 (25) **be ready to go in a few minutes get you on your way**
 (26) **Q Captain when you got back to the ship who told you that**
 (27) **you were going to be sailing at 9 00? Who was the first person**

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- (1) **to tell you?**
 (2) **A I think when I went to the bridge shortly - the official**
 (3) **word, I called on Mr Kunkel, called him on the telephone,**
 (4) **but**
 (5) **I got the unofficial word from Mr Stewart**
 (6) **Q When you first came on board?**
 (7) **A Yeah, plus I got enough experience to know when the**
 (8) **hoses**
 (9) **are coming off you're getting underway pretty soon**
 (10) **Q Were you surprised when you were told by Mr Stewart?**
 (11) **A Not by him, but I was surprised when I saw the hoses**
 (12) **coming**
 (13) **off and the gaugers when we returned**
 (14) **Q Why is that?**
 (15) **A Because I expected to sail an hour or more later**
 (16) **Q Did you speak to Captain Murphy did you say anything to**
 (17) **Mrs Caples at that point?**
 (18) **A She asked me for a couple times, and I had to call down to**
 (19) **Mr Kunkel to get them And then she said, do you have**
 (20) **anything to mail, and I keep a couple open mail pouches in**
 (21) **my**
 (22) **office, and I said yeah I went down with her to my office,**
 (23) **and picked them up**
 (24) **Q Let s talk about this a second Where is your office in**
 (25) **relation to the bridge?**
 (26) **A It s directly below it, 15 or 16 stair steps**
 (27) **Q How long does it take you to get from your office to the**
 (28) **bridge if you were in a hurry?**
 (29) **A I haven t timed it, but a matter of eight or nine seconds,**

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- (1) I would think
 (2) Q Captain did you - when you went down who went first?
 (3) Did you go first or did Ms Caples go first?
 (4) A I don't recall
 (5) Q Did you have any problems negotiating the steps down to
 (6) your office?
 (7) A No
 (8) Q What did you do when you got to your office?
 (9) A I checked the mail in the envelopes to make sure they
 were
 (10) going to the right place, because you have about three
 (11) different addresses you mail all this stuff to, west coast
 (12) fleet office, Houston, and some to an international division
 in
 (13) Florham Park, New Jersey, and make sure the stuff in the
 bigger
 (14) envelopes is the proper address for its contents, basically,
 so
 (15) you didn't have any cross connected, you know
 (16) Q Did you gather the mail together for Mrs Caples?
 (17) A Yeah
 (18) Q Now Captain how close were you to Mrs Caples when you
 (19) first saw her on the bridge?
 (20) A Three or four feet
 (21) Q How about Captain Murphy?
 (22) A I was a little farther away, and then I got a little closer
 (23) to him
 (24) Q Now when you were down in your office how close were you
 (25) to Mrs Caples?

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- (1) A Just a couple feet I was behind the desk and she was at
 (2) the end of the desk, the corner
 (3) Q After you finished giving Mrs Caples the mail what did
 (4) you do next?
 (5) A Went back up to the bridge
 (6) Q Who did you meet with up there?
 (7) A Mr Cousins first and then subsequently Mr Kunkel and
 Mr
 (8) LeCain
 (9) Q What was the purpose of meeting with Mr Cousins Mr
 (10) Kunkel and Mr LeCain?
 (11) A Initially Mr Cousins, he was in charge of testing the
 (12) navigation gear to make sure it was working properly before
 we
 (13) took off And I asked him, you know, is the steering gear
 (14) working, the radar is functioning, radios He says yeah,
 (15) everything is pretty well squared away
 (16) Q You asked him all those questions?
 (17) A Uh huh
 (18) Q How about Mr Kunkel?
 (19) A Of him I asked, again what I talked to him earlier on the
 (20) phone from the cargo room, and asked him how the load
 went He
 (21) said no problems Essentially that was it, with the
 exception,
 (22) I said, as soon as you're squared away, give me a copy of
 the
 (23) cargo figures
 (24) Q Why did you ask him for that?
 (25) A My habit I always want the cargo figures any port I go

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- (1) to, and I do my own cargo calculations
 (2) Q Do you also have to forward those figures on to anyone?
 (3) A Not the cargo figures specifically until later in the
 (4) voyage, but the -
 (5) Q All right Now you said you spoke to Mr LeCain as well?
 (6) A In a general sense I said hi, Lloyd how is it going
 (7) You're going to be on the bow letting go
 (8) He said okay I said, let the head lines and the breast
 (9) lines, the spring, the last line on the ship, and I turned to
 (10) Mr Cousins and told him he was going to work on the stern
 (11) letting the stern go with the crew
 (12) Q Did you instruct either one of them or both of them as to
 (13) what you wanted done with the lines?
 (14) A Both of them
 (15) Q Captain this interchange that you had with your officers
 (16) is that your normal presailing routine?
 (17) A Uh huh
 (18) Q Is that what they call the precheck before you leave?
 (19) A It's my precheck, yeah
 (20) Q How long did that entire process take?
 (21) A That evening, just a couple minutes because it's - they
 (22) are experienced men, and knew the drill
 (23) Q Now did you have occasion to speak to Pilot Murphy in the
 (24) first few minutes that you came up?
 (25) A Yeah

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- (1) Q I don't mean the first time the second time you returned?
 (2) A Yes, I did
 (3) Q What did you and Captain Murphy speak about?
 (4) A First, after I had given these guys their marching order
 (5) I realized I hadn't checked with them first, and I said I guess
 (6) that's all right, and he said yeah, that's fine Didn't want
 (7) to supersede his authority I asked him at that point, or
 (8) shortly thereafter when we were in the - heaving in the line
 (9) process if he had any knowledge or heard anything about
 what
 (10) the ice conditions were outside the Valdez Arm
 (11) Q Did you at that point ask him to get you an ice report?
 (12) A No, the report I asked him a little later But at that
 (13) time, I wanted to know what he knew at that point in time
 (14) Q Did he convey to you what he knew?
 (15) A Yes
 (16) Q Did you process that information?
 (17) A Yes
 (18) Q Did you make a decision that it was safe to leave the berth
 (19) and make the transit of Prince William Sound at that point
 (20) based on that ice report?
 (21) A That and some other factors, yeah But the ice was
 cranked
 (22) into that equation and it didn't seem to present a problem
 (23) Q Was the ice report that you received from Captain Murphy
 (24) basically about the same - was the ice in the same condition
 (25) as you saw it the night before?

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- (1) A Well except for the tidal affects notwithstanding - it
 (2) sounded like he overheard the transmissions He said on
 his
 (3) radio of a ship that had to transit out he had to monkey
 around
 (4) in the lanes, or maneuver around in the lanes is how he put
 it
 (5) Q That s what he reported to you?
 (6) A Yeah, and it sounded similar to the ice I encountered on
 (7) the inbound the evening before
 (8) Q Did you crank that into the calculations that you were
 (9) considering?
 (10) A Yes
 (11) Q That you might have to leave the lanes?
 (12) A I kind of assumed I would have to
 (13) Q Did Captain Murphy concur in your decision to leave it back
 (14) at that point after you discussed the ice?
 (15) A Yes, in the sense that he said yes, it s been caving a
 (16) little recently, but he didn't register any alarm that it was
 (17) as bad as it could be or was in the past
 (18) Q Captain if you thought it was unsafe to leave the berth at
 (19) that point either because of ice or any other condition do you
 (20) have the authority to keep the vessel tied up there?
 (21) A Yes
 (22) Q Until the conditions subsided or passed?
 (23) A Uh-huh
 (24) Q Captain now you re about to let go Do I have you on the
 (25) bridge?

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- (1) A Yeah
 (2) Q Where are you at this time?
 (3) A On the wing of the bridge
 (4) Q You have a walkie talkie?
 (5) A Yes
 (6) Q Who are you talking to?
 (7) A Essentially at that juncture just the watch mates, Mr
 (8) LeCain on the bow and Mr Cousins on the stern
 (9) Q Mr Kunkel is on the bridge with you?
 (10) A He's - yes
 (11) Q He s taking orders from Pilot Murphy Mr Kunkel at this
 (12) point?
 (13) A Well, he's taking orders - at that point, Captain Murphy
 (14) is not giving any
 (15) Q Are you giving the orders at this point?
 (16) A Yeah
 (17) Q What orders are you giving?
 (18) A I'm just telling him what sequence to take their lines in
 (19) And they sing out as they clear the water And they are
 (20) proceeding to the next line so we know where our status is
 in
 (21) being tied up along the dock
 (22) Q Are those orders that you re giving?
 (23) A Yes
 (24) Q You re not repeating orders you re giving those orders
 (25) are you not?

- (1) A Yes
 (2) Q Did you have any problems untying the ship that night?
 (3) A Not that I recall no
 (4) Q Once the last line was aboard does Captain Murphy take the
 (5) con at that point?
 (6) A Yeah he starts working the tug boats that s his style
 (7) Q Now after you finished taking all the lines on board did
 (8) you remain on the bridge?
 (9) A Yeah
 (10) Q Until what time?
 (11) A Well, shoved her off the dock with the boats started
 (12) moving, we were underway turned - Mr Cousins had
 returned to
 (13) the bridge to relieve Mr Kunkel, so Mr Kunkel could turn in
 (14) Q Do you remember what time that was?
 (15) A That would probably, on that ship, stowing those lines
 (16) those are pretty big lines, probably be at least 30 minutes
 (17) after the last line
 (18) Q So that would be 9 42?
 (19) A 9 42 or a little after that
 (20) Q Did you receive any radio calls from anyone while you were
 (21) up on the bridge?
 (22) A Shortly thereafter Mrs Caples called from, I assume it
 was
 (23) her office or somewhere, on a VHF call requesting the time
 of
 (24) last line clear of berth and bunkers on departure
 (25) Q Do you remember what time that was?

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- (1) A It was shortly before ten or so, yeah
 (2) Q Were you on the bridge at the time?
 (3) A Yes
 (4) Q Did you give her that information?
 (5) A Well, first I had to contact the chief engineer, so I
 (6) called him up, or called, I believe one of the assistant
 (7) engineers in the engine room, and said I need fuel and water
 (8) figures for departure for the agent, and he - call them up
 (9) here or bring them up, different chiefs have different styles
 (10) Some insist on bringing you a written copy, some will be
 (11) informal and do it over the phone, but Mr Glowacki is the
 type
 (12) to deliver a written copy So he called me up and said, I'll
 (13) have them up in about 10 or 15 minutes
 (14) Q Did he bring them up?
 (15) A Yes
 (16) Q He came up himself?
 (17) A Yes
 (18) Q Did you subsequently convey that information to the agent?
 (19) A Yes
 (20) Q About what time would that have been?
 (21) A I would say 10 10, 10 15, somewhere in there
 (22) Q When did you leave the bridge thereafter?
 (23) A Probably another 10 or 12 minutes
 (24) Q I take it then you disagree with Captain Murphy Captain
 (25) Murphy s testimony who said he thought you left about 20

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- (1) minutes or so after you got underway?
 (2) A Yeah that I took off I mean he may have lost track of
 (3) me and he's piloting the ship
 (4) Q So your testimony is you remain continuously on the bridge
 (5) until about 10 15 or so?
 (6) A Something like that yeah
 (7) Q Now Captain when you left the bridge did you tell anyone
 (8) where you were going?
 (9) A Just the third mate
 (10) Q Was it his watch?
 (11) A Yes
 (12) Q What did you tell the third mate?
 (13) A I said I'll be - I'm going down to my office if you need
 (14) me or anything looks amiss, give me a shout
 (15) Q Why were you going to your office at that point?
 (16) A I was going to start calculating the cargo
 (17) Q Why did you choose that point to calculate the cargo?
 (18) A It's normally my practice to do that upon completion of
 (19) loading, but since we were sailing early, I didn't have that
 (20) time, the luxury of that time to do it
 (21) Q You were running behind in your paperwork?
 (22) A I was running behind, yeah
 (23) Q How long did you remain off the bridge?
 (24) A Well, I started working on it for another few minutes, and
 (25) then - I mean, it's not complicated math I came up again
 and

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- (1) took a look at Entrance Island, prior to Entrance Island We
 (2) were lining up in the Narrows and I had left instructions with
 (3) Mr Cousins to call me in the Narrows which he did in a few
 (4) minutes
 (5) Q Let's stop a second You said you came up to the bridge?
 (6) A Yeah
 (7) Q Where did you go?
 (8) A I just went over took a look and made sure Middle Rock
 was
 (9) lined up where it was supposed to be and it shaped up
 (10) Q And was it?
 (11) A Yeah
 (12) Q Now you say you received a call from Mr Cousins while the
 (13) vessel was in the Narrows?
 (14) A As it was approaching Middle Rock, the middle of the
 (15) Narrows, if you will
 (16) Q What did Mr Cousins say?
 (17) A He said everything is fine It's a pretty simple transit
 (18) really
 (19) Q Let me ask you about that What speed do tankers go when
 (20) they are transiting the Narrows?
 (21) A You're restricted to 12 knots inbound and 6 knots
 (22) outbound
 (23) Q Your vessel wasn't doing any more than 6 knots?
 (24) A You're restricted to that, and you got a radar gun on you
 (25) tracking you

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- (1) Q By the Coast Guard?
 (2) A Yes
 (3) Q Is there an escort tug with you at the time?
 (4) A Yes
 (5) Q Is that area a one way zone?
 (6) A Yeah restricted to one-way traffic
 (7) Q What does that mean?
 (8) A There can be no conflicting traffic
 (9) Q You had known Captain Murphy for a number of years?
 (10) A Yes
 (11) Q Do you have an opinion as to his competence as a pilot?
 (12) A None whatsoever
 (13) Q You had no opinion?
 (14) A No problem with it
 (15) Q Did you believe he was a competent pilot?
 (16) A Oh, yes
 (17) Q Did you have any doubt that he could maneuver a vessel
 (18) through the Narrows with no problems?
 (19) A None at all He does it every day
 (20) Q Was there anything happening while the vessel was going
 (21) through the Narrows?
 (22) A No
 (23) Q An uneventful passage?
 (24) A Extremely so, yeah
 (25) Q What time did you return to the bridge?

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- (1) A I got a call from Mr Cousins sometime later, and he said
 (2) we're coming up the end of the Narrows and the pilot will be
 (3) getting off in awhile
 (4) Q Let me put up Exhibit 52 plaintiffs Exhibit 52 It's the
 (5) bell book I think this has already been admitted
 (6) Captain is this the bell book for the vessel for the
 (7) evening of March 23rd? No this looks like the 22nd Next
 (8) page sorry
 (9) That's the bell book for that voyage is it not?
 (10) THE COURT Excuse me Mr O'Neill you gave me a
 (11) nod I don't know if that exhibit has been admitted
 (12) MR O NEILL Do you want to offer it?
 (13) MR CHALOS Let me offer plaintiffs Exhibit 52
 (14) (Exhibit 52 offered)
 (15) THE COURT Is there an objection?
 (16) MR O NEILL No objection
 (17) THE COURT Exhibit 52 is admitted
 (18) (Exhibit 52 received)
 (19) BY MR CHALOS
 (20) Q Captain is this the bell book for that day?
 (21) A It is yeah
 (22) Q Looking at it what time did your vessel come abeam of
 (23) Potato Point?
 (24) A 2253, which is 10 53 in the evening
 (25) Q Is that it right there?

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- (1) **A That s the entry yeah**
 (2) **Q Now how soon after the vessel arrived at Potato Point were**
 (3) **you on the bridge?**
 (4) **A I was there before it got to Potato Point**
 (5) **Q Now when you came back up on the bridge did you have**
 any
 (6) **conversations with Captain Murphy?**
 (7) **A Yes**
 (8) **Q Did you speak with him again about the ice?**
 (9) **A Yes I recall he requested an ice report from the Coast**
 (10) **Guard**
 (11) **Q At your request?**
 (12) **A Yes, an updated ice report**
 (13) **Q Did he in fact get the ice report?**
 (14) **A Well, we listened together, essentially**
 (15) **Q After you got the ice report did you deem it safe to**
 (16) **continue the voyage?**
 (17) **A Yes**
 (18) **Q Did you figure that you would be able to maneuver around**
 (19) **the ice - strike that**
 (20) **Was your plan at this point to maneuver around the ice?**
 (21) **A My plan was, yes**
 (22) **Q Did you deem it to be a safe maneuver and a maneuver that**
 (23) **you could accomplish that night based on what you heard?**
 (24) **A Based on what I heard and had done before, yes**
 (25) **Q Captain why did you ask for an updated ice report?**

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- (1) **A It was just another source of information available to me**
 (2) **It wasn't too illuminating, but it told me something**
 (3) **Q Did you have any concern about the safety of the vessel?**
 (4) **A I always have that concern, but I mean, it wasn't - I**
 (5) **wasn't fearful, you know**
 (6) **Q In other words was that one of the factors you were**
 (7) **considering to make sure that you had a safe passage?**
 (8) **A Yeah, to get as much information as you can**
 (9) **Q Captain if you had gotten a report that ice was across the**
 (10) **entire system not only the TSS but way over to the area where**
 (11) **you eventually went did you have the authority to turn that**
 (12) **ship around and go back to the dock?**
 (13) **A Oh, yeah Yes**
 (14) **Q I take it that based on what you heard you believed that**
 (15) **you could make it safely around?**
 (16) **A Yes The substance of the report, as I recall, was that**
 (17) **the Arco Juneau had transited the area and had to**
 maneuver
 (18) **around the ice, which indicated to me it was pretty simple**
 (19) **Q Now Captain there came a time when Captain Murphy left**
 the
 (20) **vessel?**
 (21) **A Yes**
 (22) **Q That was at Rocky Point I think you said?**
 (23) **A Shortly before or after, in the general vicinity of Rocky**
 (24) **Point**
 (25) **Q Is it customary that when a pilot leaves that you sign a**

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- (1) **pilot ticket?**
 (2) **A Yes**
 (3) **Q Why are you smiling?**
 (4) **A Sometimes you get rid of the pilot without signing his**
 (5) **ticket**
 (6) **Q And you don't have to pay right?**
 (7) **A Oh, no you pay, but it s just the principle**
 (8) **Q Let me put up for you the pilot ticket that you signed that**
 (9) **night It s Exhibit DX3461 is that right?**
 (10) **MR O NEILL It s been pre admitted**
 (11) **MR CHALOS I offer it Your Honor**
 (12) **(Exhibit DX3461 offered)**
 (13) **THE COURT DX3461 is admitted**
 (14) **(Exhibit DX3461 received)**
 (15) **BY MR CHALOS**
 (16) **Q Captain is this your signature here?**
 (17) **A Yes**
 (18) **Q You signed that ticket that night?**
 (19) **A Yes**
 (20) **Q I d like to put up now Exhibit DX 3460 which is the pilot**
 (21) **ticket for the day before Is that the ticket that you signed**
 (22) **the night before?**
 (23) **A Yeah, appears to be**
 (24) **Q Is that your signature again?**
 (25) **A Yeah, the Joe is spelled out instead of the initial**

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- (1) **Q On the 23rd you put J Hazelwood and on the 22nd you put**
 (2) **Joseph J ?**
 (3) **A Joseph J**
 (4) **Q And the writing is the name?**
 (5) **A Yeah**
 (6) **Q Do you normally sign one or the other?**
 (7) **A Either way**
 (8) **Q Captain Murphy departs at around 11 24 I think you said**
 (9) **is that right?**
 (10) **A Yes**
 (11) **Q What did you do then?**
 (12) **A Made sure he got off safely, and I saw him onto his pilot**
 (13) **launch instructed Mr Cousins, and the look-out had come**
 back
 (14) **to escort him off, make sure it was a safe scamper down**
 Jacob's
 (15) **ladder instructed them to make up the Jacob's ladder and**
 (16) **removing the look-out from the bow to the wing of the**
 bridge
 (17) **When that task was complete, I informed Mr Cousins we**
 were
 (18) **going to call the watch**
 (19) **Q What does that mean?**
 (20) **A Call the next watch via telephone, two sailors that were**
 (21) **coming up on the 12 to 4 watch and the second mate, Mr**
 LeCain,
 (22) **and I asked him if he wanted me to call Mr LeCain or he was**
 (23) **going to take care of that, and he said no, we made an**
 (24) **arrangement that when we let go I was going to let him sleep**
 in
 (25) **a little bit And at that moment, you know, this is all a**

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- (1) conversation I had with him that took a minute or so at the
 (2) wing of the bridge as I was looking over then I returned
 (3) inside the wheelhouse
 (4) Q How long was Mr Cousins off the bridge helping the pilot
 (5) away from the vessel?
 (6) A Well, he went down with him a few minutes before that 24
 (7) time, so he was gone from that 20 time and since she was
 (8) loaded it was a short ladder, so it would have rolled the
 (9) thing up, probably gone 15 18 minutes
 (10) Q During that period of time you were up there by yourself
 (11) were you not?
 (12) A Myself and the helmsman
 (13) Q Captain after the pilot left you called the vessel
 (14) traffic center do you recall that?
 (15) A Yes
 (16) MR CHALOS Your Honor I have here copies of
 (17) plaintiffs Exhibit 90 A that was admitted into evidence
 (18) yesterday With your permission I would like to pass them out
 (19) to the jury so they can follow along
 (20) THE COURT Mr Murtiashaw do we have that?
 (21) THE CLERK 90 A
 (22) THE COURT Oh 90 A
 (23) BY MR CHALOS
 (24) Q Everyone okay? I'm going to pass one up to Judge Holland
 (25) and to Captain Hazelwood here

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- (1) THE COURT I already have one here
 (2) MR CHALOS I feel like Santa Claus
 (3) BY MR CHALOS
 (4) Q Captain let me direct your attention to the third page -
 (5) yes one two three starting with the entry at 2324 and 54
 (6) seconds do you see that on page 3 Page 3 being the cover
 (7) sheet is one?
 (8) A Oh 54, yeah
 (9) Q The cover sheet is one then there is a page and then it's
 (10) the third one?
 (11) A Uh huh
 (12) Q Actually - all right 2324 do you see this?
 (13) A Yes
 (14) Q You call the VTC at that point?
 (15) A Yes
 (16) Q And then we go over to the next page?
 (17) A Uh huh
 (18) Q And we're at 2325 and one second So that's 11 25 and one
 (19) second?
 (20) A Uh huh
 (21) Q Could you read what you said to the VTS?
 (22) A At 2325 5
 (23) Q Yes?
 (24) A Yeah, we have departed the pilot or disembarked the
 pilot,
 (25) excuse me, and this time we're hooking up to sea speed and
 the

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- (1) ETA at Naked Island 0100 over
 (2) Q Let's stop right there Captain Is that the customary
 (3) transmission that vessels make once they drop off the pilot?
 (4) A In the Port of Valdez, yeah Usually it's either departed
 (5) the pilot station or disembarked the pilot, either one they
 (6) are interchangeable
 (7) Q Now when you said you were hooking up to sea speed what
 (8) did you mean?
 (9) A We were on full ahead and maneuvering speed, the 55
 (10) revolutions about 11 and a half, 12 knots, as I explained to
 (11) the jury before, there is - sea speed would involve this 48
 (12) minute program to step her up
 (13) Q Let's just stop there a second You mentioned full ahead
 (14) maneuvering speed?
 (15) A Uh-huh
 (16) Q That's not full ahead sea speed?
 (17) A No
 (18) Q There is a difference?
 (19) A Yes
 (20) Q And at full ahead maneuvering speed your top speed is
 (21) what?
 (22) A Things being equal, that draft, about 12 knots
 (23) Q And your full sea speed is how much?
 (24) A About 16
 (25) Q So it takes somewhere between you said 42 and 48 minutes
 to

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- (1) go an additional four knots four and a half knots?
 (2) A Four knots of speed
 (3) Q So they come back to you at 11 25 and 19 seconds and
 roger
 (4) that sir request an updated ice report when you get down
 (5) through there over?
 (6) A That's correct
 (7) Q Now Captain the ice reports that you were getting from
 (8) when you were talking with Captain Murphy was he getting
 those
 (9) from the Coast Guard station?
 (10) A Yeah, he got one that I overheard and the other one is ju
 (11) prior to dropping him off
 (12) Q Where did you get that information from?
 (13) A Well, at 2249, this is one I requested coming through th
 (14) Narrows The ice report, please, Captain Murphy
 requesting of
 (15) it VTC, at 10 49 in the evening
 (16) Q This was after you and he discussed getting an ice report?
 (17) A I asked him for an updated ice report So there are
 (18) numerous small pieces of ice, free mantle going to Glacier
 (19) Island As I recall, it didn't give me a whole lot of
 (20) information
 (21) Q Do you know where VTC gets their ice reports from?
 (22) A Generally my experience has been from the inbound and
 (23) outbound ships
 (24) Q So they are asking you in this transmission once you get
 (25) down there to give them a - call them back and give them an

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- (1) ice report is that right?
- (2) **A Yeah, and those vary in accuracy and detail Some guys say**
- (3) **there is a bunch of ice, some guys give bearings and ranges**
- (4) **Q You come back at 2325 and 5 seconds four seconds later**
- (5) **and I saw okay I was just about to tell you that by judging**
- (6) **by our radar I will probably divert from the TSS and end up in**
- (7) **the ah inbound lane if there is no conflicting traffic**
- (8) **over Is that what you said?**
- (9) **A Yes**
- (10) **Q What did you mean - first of all had you looked at your**
- (11) **radar at that point?**
- (12) **A Yes**
- (13) **Q What were you seeing at this time?**
- (14) **A Bounced it out a couple ranges and as we were getting out**
- (15) **of the - down the road a bit, it was only a minute or two, you**
- (16) **could start to see the formation of the ice of where it was**
- (17) **located**
- (18) **Q At this point did you want to get a little closer to see**
- (19) **what the situation looked like?**
- (20) **A Yes, definitely**
- (21) **Q Now you re telling them that you re probably going to**
- (22) **divert from the TSS what did you mean by that?**
- (23) **A It's the traffic lanes**
- (24) **Q Hold on one second Captain**
- (25) **Can you see this Captain from where you are?**

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- (1) **A Yeah**
- (2) **Q At the time that you make this call what did we say 2325?**
- (3) **A Yes**
- (4) **Q You tell me and I ll put my figure wherever you want**
- (5) **Where were you?**
- (6) **A Right at the top of the outbound lane**
- (7) **Q Up here?**
- (8) **A Move it down a little bit**
- (9) **Q Right there where my finger is?**
- (10) **A Uh-huh**
- (11) **Q Approximately here?**
- (12) **A Uh-huh**
- (13) **Q You re telling them that you re going to depart the TSS?**
- (14) **A Traffic separation scheme**
- (15) **Q What was the traffic separation scheme?**
- (16) **A That's the system of inbound and outbound lanes**
- (17) **Q Is the southbound lane part of the traffic separation**
- (18) **scheme?**
- (19) **A That's part of it**
- (20) **Q This middle zone what s it called?**
- (21) **A Separation zone**
- (22) **Q And this middle lane?**
- (23) **A That's the inbound lane**
- (24) **Q And does TSS in your mind encompass the whole scheme?**
- (25) **A Yes**

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- (1) **Q So what were you telling them when you told them you were**
- (2) **leaving the TSS -**
- (3) **A Quick and dirty look at it the ice further down indicated**
- (4) **to me that we were going to be out of the lanes at some**
- (5) **junction altogether**
- (6) **Q At this point you knew you would leave completely from the**
- (7) **lanes altogether?**
- (8) **A I had a pretty good certainty that we would, and I had left**
- (9) **the lanes inbound**
- (10) **Q Well let me talk to you about that When you came up the**
- (11) **night before that s what you re talking about?**
- (12) **A Yes**
- (13) **Q Did you divert out of the lanes completely?**
- (14) **A Yes**
- (15) **Q Where was the ice the night before?**
- (16) **A Right about where you had your figure there**
- (17) **Q Right in there?**
- (18) **A A little bit below**
- (19) **Q Right in there?**
- (20) **A Yes**
- (21) **Q And you maneuvered around the ice?**
- (22) **A Yes**
- (23) **Q Past here and then back into the lane?**
- (24) **A Yes**
- (25) **Q Did you give a similar report the night before to them?**

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- (1) **A Probably similar or even more simple On the inbound,**
- (2) **you**
- (3) **tended, because you were already over there, you said I ll**
- (4) **be**
- (5) **out of the lanes for a few minutes going around the ice It**
- (6) **didn't involve crossing over**
- (7) **Q Let s continue on with what you told them Then you say I**
- (8) **will probably divert from the TSS and end up in the inbound**
- (9) **lane if there is no conflicting traffic?**
- (10) **A Uh huh**
- (11) **Q What did you mean?**
- (12) **A The general formation of the ice or obstruction caused by**
- (13) **the ice that I saw was - would have shoved me out of the**
- (14) **lanes**
- (15) **at one point and then I would center to re-enter and proceed**
- (16) **down the inbound lane**
- (17) **Q So your plan was to come down get around the ice and get**
- (18) **back into this lane?**
- (19) **A And enter the system**
- (20) **Q And was it your plan to call them again at that point is**
- (21) **that what you re saying to them?**
- (22) **A Well, my plan was either at that point when I was in the**
- (23) **inbound lane, or back when I was in the outbound lane, back**
- (24) **where, essentially, the ship belonged**
- (25) **Q So they come back to you at 2325 and 42 seconds and they**
- (26) **say ah no report of traffic I ve got the Chevron California**
- (27) **one hour out then the Arco Alaska - I m going to skip the**
- (28) **ah - right behind them but they are an hour out from Cape**

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- (1) Hinchinbrook Out on that over
 (2) Now Captain when you made this call and told them what you
 (3) were going to do did you believe that VTS had the authority to
 (4) tell you no if they deemed it unsafe for you to make the
 (5) maneuver?
 (6) **A Yes**
 (7) **Q** Did they say anything to you about what you just told them
 (8) you were planning to do?
 (9) **A No, they rogered that**
 (10) **Q** Did you believe on the basis of the conversation that you
 (11) had with them on the radio that you had authority to make the
 (12) maneuver that you just told them you were going to make?
 (13) **A I did on that evening prior to that, yeah, previous**
 (14) **occasions**
 (15) **Q** Then you come back 9 seconds later or 11 seconds later
 (16) and
 (17) you say that will be fine yeah we may end up over in the
 (18) inbound lane outbound transit is that what you were talking
 (19) about before?
 (20) **A Yes**
 (21) **Q** Then you say we'll notify you when we leave the TSS and
 (22) cross over the separation zone over What do you mean by
 (23) that?
 (24) **A Normally, I'd give them a shout when we actually cleared**
 (25) **out of the lanes or - and my practice was to give a shout**
 (26) **when**
 (27) **you came across the separation zone coming back in**

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- (1) **Q** All right so at this point you've told them that you are
 (2) going to increase your speed am I correct?
 (3) **A As soon as we dropped Captain Murphy off back**
 (4) **Q** And that you're going to divert outside the lanes to avoid
 (5) some ice?
 (6) **A Yeah**
 (7) **Q** That's what you told them?
 (8) **A Uh huh**
 (9) **Q** That's what you believe you told them?
 (10) **A Yeah**
 (11) **Q** Captain I'm going to before I ask a question -
 (12) **MR CHALOS** Your Honor I'd like to offer into
 (13) evidence the VTC transmissions of the two ships that
 (14) immediately preceded the Exxon Valdez out from Valdez that
 (15) night One was the Arco Juneau and the other was the
 (16) Brooklyn It's defendants Exhibit 5933 and 5934
 (17) (Exhibits 5933 and 5934 offered)
 (18) **MR O NEILL** We have no objection
 (19) **THE COURT** Defendants 5933 and 34 are admitted
 (20) without objection
 (21) (Exhibits 5933 and 5934 received)
 (22) **MR CHALOS** I would offer at this time Exhibit -
 (23) defendants Exhibit 3466 which is a comparison based on the
 (24) two exhibits that were just admitted Your Honor of the
 (25) transmissions that were made by the Arco Juneau and the

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- (1) Brooklyn and those made by Captain Hazelwood Have you
 (2) seen
 (3) that exhibit?
 (4) (Exhibit 3466 offered)
 (5) **MR O NEILL** I like it
 (6) **MR CHALOS** You like it?
 (7) **MR O NEILL** We have no objection
 (8) **THE COURT** Then that was 3466?
 (9) **MR CHALOS** Yes Your Honor
 (10) **THE COURT** 3466 is also admitted
 (11) (Exhibit 3466 received)
 (12) **MR CHALOS** This one we're going to do with a blow up
 (13) and the screen at the same time so everybody can follow along
 (14) **BY MR CHALOS**
 (15) **Q** This is 3466 Now Captain when we get into this exhibit
 (16) let me ask you about your next transmission You made
 (17) another
 (18) transmission at 2330 and 54 seconds that's 11 30 and 54 a
 (19) you say yeah at the present time I'm going to alter my course
 (20) to 200 and reduce my speed to about 12 knots to ah went
 (21) way through the ice and a Naked Island ETA might be a little
 (22) bit out of whack but once we get clear out of the ice of
 (23) Columbia Bay we'll give you another shout over
 (24) Captain between the time that you made this transmission
 (25) at 2330 and the previous transmission which was 2325 do
 (26) you see that -
 (27) **A Yeah**

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- (1) **Q** - five minute interval?
 (2) **A Yeah**
 (3) **Q** What were you doing during that five minutes?
 (4) **A Essentially I was looking at radar and figure out what**
 (5) **course, given the presentation of the ice that I saw at radar**
 (6) **screen, what course to steer to get around it**
 (7) **Q** Were you studying the ice at this point?
 (8) **A Yes**
 (9) **Q** And what was your determination at this point?
 (10) **A Well, I wanted to see what 200 looked like I don't know**
 (11) **if that was going to be enough, 200 compass direction**
 (12) **Looked**
 (13) **like a good start**
 (14) **Q** So you changed course to 200?
 (15) **A Yes**
 (16) **Q** And you were still studying the ice at this point?
 (17) **A Yes, on the new heading, basically**
 (18) **Q** Now you said to the VTC at this point that you're going to
 (19) reduce your speed to 12 knots do you see that?
 (20) **A Yes**
 (21) **Q** And Mr O'Neill this morning pointed out that you were
 (22) doing about 12 knots or even a little bit less at this point?
 (23) **A Yeah**
 (24) **Q** Why did you tell them that?
 (25) **A Because I had given them an earlier - I assumed he was**
 (26) **tracking me, might be wondering why the hell, if I was**
 (27) **hooking**

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- (1) up to sea speed why I wasn't going any faster
 (2) Q Did you make a conscientious decision when you were looking
 (3) at the radar not to put it up to full sea speed?
 (4) A Yes
 (5) Q Is that what you were reporting here that you were
 (6) maintaining your speed?
 (7) A Basically that I hadn't increased at all, or hooked up, and
 (8) I was maintaining speed
 (9) Q And 12 knots I think you said represents full ahead
 (10) maneuvers?
 (11) A Between 11 and-a half and 12
 (12) Q Were you at full ahead maneuvering at this point?
 (13) A Yes
 (14) Q Now you say you use a word that's not commonly used in
 (15) the
 (16) English language word w e n d what does it mean?
 (17) A It means to maneuver, or change direction That was
 (18) the -
 (19) Q Is that a nautical term?
 (20) A No, not that I know of
 (21) Q Does the word wend imply a series of course changes is
 (22) that what you're implying?
 (23) A Well, it's almost like maneuvering around something It's
 (24) not going to be an abrupt turn, but it's going to be a series
 (25) of maneuvers
 (26) Q And here you tell them when you're going to call them next

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- (1) time?
 (2) A Yeah
 (3) Q That's when you get around the ice?
 (4) A Get around the ice and squared away back in the lanes,
 (5) I'll
 (6) have a better shot at figuring out ETA of Naked Island
 (7) Q And they say to you Roger that sir be awaiting your
 (8) call traffic standing by
 (9) Did you take that as permission to go ahead with the
 (10) maneuver you just told them?
 (11) A Whether it was granting permission or agreeing with what
 (12) I
 (13) was doing, I didn't make the distinction
 (14) Q Did they have authority to stop you or prevent you from
 (15) doing your contemplated maneuver if they wanted?
 (16) A Yes
 (17) Q Now Captain you were asked this morning why you didn't
 (18) report a subsequent course change to 180 do you remember
 (19) that?
 (20) A Yeah
 (21) Q First of all why did you change course from 200 to 180?
 (22) A After a few moments I could see that 200 wasn't going to
 (23) do
 (24) It
 (25) Q You were looking at the radar at the time?
 (26) A Looking at the radar and the picture I was getting, I would
 (27) be a mile off the ice and a mile off of Busby Island, and that
 (28) worked out to be 180, nice round number
 (29) Q You were processing the information that you were taking in

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- (1) from the radar?
 (2) A Yes
 (3) Q Now when you came to 180 course 180 you didn't report
 (4) that to the Coast Guard is that right?
 (5) A No
 (6) Q Did you consider the previous report you gave them was
 (7) sufficient to let them know that you were maneuvering at
 (8) different headings?
 (9) A Basically that I would be maneuvering There is no
 (10) requirement for course changes that I was aware of
 (11) Q Well I want to ask you about that Is there anything in
 (12) the VTS manual or anything that you know from experience that
 (13) requires you to tell them whenever you make a course change?
 (14) A No
 (15) Q Okay Captain let me now compare what you told the VTS
 (16) or
 (17) the VTC and what the Brooklyn and the Arco Juneau told them
 (18) incidentally you know that the Brooklyn and the Arco Juneau
 (19) went outside the traffic lanes do you not?
 (20) A Yes
 (21) Q Before we do that let me just show - introduce one more
 (22) exhibit and I'll show it to the jury?
 (23) MR CHALOS Your Honor I offer at this time
 (24) defendants Exhibit 1733 Alpha 1733 Alpha It's the track
 (25) lines of the Brooklyn and Arco Juneau
 (26) (Exhibit 1733 A offered)

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- (1) MR O NEILL We have no objection
 (2) THE COURT 1733 -
 (3) MR CHALOS No wait a minute I'm wrong
 (4) MR O NEILL He's wrong we do have an objection We
 (5) got a million of them
 (6) MR CHALOS We have a little confusion at the
 (7) podium I think it may be a different number Your Honor -
 (8) Your Honor I withdraw the last offer and correct it to Exhibit
 (9) 1735 Alpha
 (10) (Exhibit 1735 A offered)
 (11) THE COURT Is there an objection to 1735 A?
 (12) MR O NEILL No sir, I was just taking a stretch
 (13) THE COURT 1735 A is admitted
 (14) (Exhibit 1735-A received)
 (15) BY MR CHALOS
 (16) Q Captain Hazelwood take a look at this if you don't mind?
 (17) A No
 (18) Q Here is the track of the Brooklyn do you see that?
 (19) A Yeah
 (20) Q That's the orange?
 (21) A Yes
 (22) Q And the Arco Juneau is the -
 (23) A Yellow
 (24) Q - yellow looking at this chart Captain did they both
 (25) leave the lanes?

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- (1) A Yes
 (2) Q This is the outbound lane here?
 (3) A Yes
 (4) Q This is the separation zone and this is the inbound lane here?
 (5) A Yeah
 (6) Q And they both diverted outside of that did they not?
 (7) A Yes
 (8) Q As a matter of fact it looks to me and you can correct me if I m wrong the Juneau came closer to Bligh Reef buoy than your vessel was intended to come?
 (9) A Yeah, and a lot faster, too, as I recall
 (10) Q Let me now put up the transmissions Maybe we can put them
 (11) on the bar code and roll them up
 (12) Captain have you had a chance to study the two
 (13) transmissions?
 (14) A Yeah, pretty much
 (15) Q The three transmissions?
 (16) A Yeah
 (17) Q Have you had a chance to compare them to your
 (18) transmission?
 (19) A Yes
 (20) Q Did the Brooklyn tell VTS what their speed or their course
 (21) would be?
 (22) A No
 (23) Q Did the Brooklyn tell the VTC that they were going to leave

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- (1) the lanes completely?
 (2) A No
 (3) Q Did they tell them that they were going to call them back
 (4) and let them know when they came back into the lanes? I m
 (5) talking about the Brooklyn?
 (6) A Brooklyn, I don't see any of that
 (7) Q Take a look now at the Arco Juneau Did he give him his
 (8) speed or his course?
 (9) A No
 (10) Q Did he tell them that he was leaving the TSS completely?
 (11) A No
 (12) Q He did tell them though he ll let them know when he s back
 (13) in the southbound lane which is similar to what you said or
 (14) something to that effect?
 (15) A Yeah give them a shout when he's coming back
 (16) Q Captain comparing the three transmissions that is the
 (17) Brooklyn the Arco Juneau and the Valdez do you have an
 (18) opinion as to who gave the most information to the VTC?
 (19) A I gave them a lot more than the other two
 (20) Q Who gave them - based on your opinion who gave them a
 (21) clearer indication of what their intentions were you or the
 (22) other two vessels?
 (23) A Well, I gave them a better picture of what I was doing, and
 (24) with an intention that flowed from that You know, I guess I
 (25) did

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- (1) Q Captain was the transmission that you made your custom
 (2) transmission to VTC based on the number of years you were
 (3) there for the maneuver that you were contemplating?
 (4) A The first one part to the pilot station hooking up to see
 (5) speed and stuff I think everybody uses that The other
 (6) ones I
 (7) was making up as I went along, because that s - essential
 (8) the information I was giving them was what I was seeing a
 (9) went along That s the manner in which I gave it over the
 (10) years, yeah
 (11) Q Was it an accurate description of what you were seeing an
 (12) what you were doing?
 (13) A Pretty much I probably could have chosen my syntax
 (14) little more carefully, but essentially, yeah
 (15) Q Now Captain there was some testimony this morning that
 (16) when you change course to 180 do you remember that?
 (17) A Uh huh
 (18) Q Let me take this down so it s not distracting Do you
 (19) remember that testimony?
 (20) A Yes
 (21) Q At some point you instructed the helmsman to put the ves
 (22) on autopilot did you not?
 (23) A Yes, after he steadied up on the new heading
 (24) Q Of 180?
 (25) A That's correct
 (26) Q What time was that about?

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- (1) A That would have been 2345 or so, 44, 43, somewhere in
 (2) there
 (3) Q That s when you told him to steady up and put it on
 (4) autopilot?
 (5) A Uh huh
 (6) Q Had Mr Cousins come back to the bridge at this point?
 (7) A He was - he wasn t there, he was rapidly approaching
 (8) He
 (9) was there momentarily
 (10) Q Why did you put the vessel on autopilot?
 (11) A Essentially I wanted a good steady heading to work on
 (12) and
 (13) look on the radar to make sure the maneuver that I had d
 (14) was
 (15) having the desired effect in relation to the ice and not
 (16) having
 (17) to watch the helmsman at the same time
 (18) Q Did you feel that by putting it on automatic pilot he
 (19) would get a steadier course?
 (20) A That's been my experience, yeah
 (21) Q If you steer a steadier course do you get a clearer
 (22) picture on your radar what you re looking at?
 (23) A Well, it's not wobbling around You get a more empiric
 (24) view of what you're involved in
 (25) Q Was that your reason for putting it on autopilot?
 (26) A Essentially, yeah
 (27) Q Is there any prohibition any regulation government
 (28) regulation that restricts the use of autopilot in Prince
 (29) William Sound?

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- (1) A None that I m aware of
 (2) Q Anything in the Exxon bridge organizations manual that
 (3) would have prohibited from using the autopilot?
 (4) A Just from the contrary It allows it It specifically
 (5) allows it
 (6) Q How long did the autopilot remain on?
 (7) A I would say for a total of two to three minutes
 (8) Q Did Mr Cousins become aware of the fact that the autopilot
 (9) was on?
 (10) A Yes
 (11) Q How did he become aware of that?
 (12) A He became aware of it at the wheel change at
 approximately
 (13) 2350 At that point in time, helmsmen were relieving each
 (14) other, changing the steering
 (15) Q Where were you in relation to the helmsman?
 (16) A About eight feet away
 (17) Q Where was Mr Cousins in relation?
 (18) A Next to me, standing right next to me
 (19) Q What if anything did the helmsmen say to each other when
 (20) they relieved the watch?
 (21) A Indicated - the helmsman said the course is 180 steady
 on
 (22) gyro, the terminology we use to indicate the autopilot
 (23) Q What s the customary way that helmsmen change the watch?
 (24) Do they sort of whisper to each other?
 (25) A No, they sing it out so the watch officer can hear it and

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- (1) anybody else, and each other
 (2) Q Do they speak in a voice louder than conversation?
 (3) A A little louder than conversation
 (4) Q Did you hear them?
 (5) A I heard that I heard Mr Kagan who was relieving
 (6) acknowledge that by repeating the information he had just
 been
 (7) given, and as he departed the wheelhouse, the relieved
 (8) helmsman, Mr Claar, informed me and Mr Cousins of the
 same
 (9) information
 (10) Q Do you have any doubt in your mind that Mr Cousins heard
 (11) what you heard?
 (12) A No, because at that juncture he was standing there right
 (13) next to me He said, this time we'll get it off I said,
 (14) yeah, course change coming
 (15) Q He said what?
 (16) A Take it off the auto gyro
 (17) Q So that indicated to you that he knew it was on the auto
 (18) gyro?
 (19) A Oh, yeah
 (20) Q Was the - by the way what does it take to get this the
 (21) vessel out of auto gyro back into helm steering?
 (22) A Push a button
 (23) Q That s it?
 (24) A Yeah
 (25) MR CHALOS Do we have the steering stand picture

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- (1) Let me put this up
 (2) MR CHALOS Your Honor I offer at this time
 (3) defendants Exhibit 0176
 (4) (Exhibit 0176 offered)
 (5) MR CHALOS Which is a picture of the button that one
 (6) would push in getting the steering out of gyro
 (7) MR O NEILL. No objection
 (8) THE COURT Defendants 0176 is admitted
 (9) (Exhibit 0176 received)
 (10) BY MR CHALOS
 (11) Q Captain what you re looking at here is part of the
 (12) steering stand?
 (13) A Uh-huh
 (14) Q It s right there where the helmsman steers the vessel?
 (15) A Just to the side of the wheel
 (16) Q Right on the same stand?
 (17) A It's all in an enclosed module, yeah
 (18) Q Once the vessel is in autopilot as you described what do
 (19) you have to do to get it off?
 (20) A Push the button that s marked helm
 (21) Q This is it right here?
 (22) A Yes
 (23) Q That s all you do?
 (24) A Yes
 (25) Q How long does it take to get it out of gyro?

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- (1) A Less than a second You just push the button
 (2) Q Captain before you left the bridge that night did you -
 (3) was the steering taking out of autopilot?
 (4) A Yes
 (5) Q Did you hear them take it out?
 (6) A I heard him give the order, and he engaged in that
 process
 (7) Q Who was that?
 (8) A Mr Cousins
 (9) Q You saw him go over to take it out of the autopilot?
 (10) A Yes
 (11) Q Captain sitting here today do you have an opinion as to
 (12) whether or not the autopilot had anything to do with the
 (13) grounding of the Exxon Valdez?
 (14) A None that I'm aware of It has none
 (15) Q You have an opinion, and what is your opinion?
 (16) A The opinion, it has no bearing whatsoever
 (17) Q Captain while I m on the subject subject of navigational
 (18) equipment, was this vessel equipped with a fairways option?
 (19) A Yes
 (20) Q Could you explain to us please what a fairways option is?
 (21) A Well, at various ports around the world you can have -
 (22) basically it's a seaboard or a computer program that will
 (23) overlay on your radar screen of a specific geographic area
 (24) I've overlaid electronic lines, if you would, like these
 (25) traffic lanes that Mr O'Neill used this morning it will

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- (1) overlay it on the radar screen That s all it is but it s
 (2) site specific In other words It would be for New York
 (3) harbor San Francisco harbor You load in another program
 for
 (4) each different port They are not all - they just don t
 (5) appear out of thin air
 (6) Q Did you ever use the fairways option on this ship?
 (7) A No
 (8) Q In Prince William Sound?
 (9) A No
 (10) Q Why is that?
 (11) A My experience with them in their various modes from
 (12) different manufacturers is they tend to wander You place
 (13) them - that is your relative position to land or whatever
 (14) changes, these things don t The software isn t adaptable
 and
 (15) not perfected or whatever the problem is that exists, the
 whole
 (16) overlay starts to drift, and you spend an inordinate amount
 of
 (17) time trying to realign the overlay instead of using the radar
 (18) for what it's intended
 (19) Q Would you in your experience use a fairway option as
 (20) something to navigate by?
 (21) A No
 (22) Q In the list of order of things that you would use as
 (23) navigational aids starting with your own eyes first where
 (24) would you put the fairway option?
 (25) A It would be in negative numbers someplace

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- (1) Q Captain let s go back to the moment that Mr Cousins comes
 (2) back on the bridge after he drops off the pilot?
 (3) A Uh huh
 (4) Q What are you doing at this time?
 (5) A As I recall, the report radar, the 180 heading, line it up,
 (6) the situation, just standing there
 (7) Q What are you doing?
 (8) A Well, I'm looking at the situation and what s ahead of me
 (9) Q Where is Mr Cousins?
 (10) A He came in the port side of the wheelhouse standing next
 to
 (11) me
 (12) Q He came over and stood with you?
 (13) A Yeah
 (14) Q Can he see into the radar with you?
 (15) A Certainly
 (16) Q Do you have the cover on or off?
 (17) A It s off
 (18) Q So you re both looking at the screen?
 (19) A Yeah
 (20) Q Are you talking to him?
 (21) A Yeah
 (22) Q What are you saying?
 (23) A Initially I said, what do you think of this situation, I'm
 (24) going to run it down to Busby Island and we should be clear
 of
 (25) this, all this And he agrees He says, the ways it's set up,

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- (1) you got a mile off the ice and a mile off Busby Island t
 (2) a nice straight heading parallel indexing tracking dov
 (3) the radar just a simple shot
 (4) Q Are you getting input from him at this point?
 (5) A Yeah, he's looking at it, and he proceeds to the othe
 (6) radar and fires it up on a higher range and he comes b
 (7) mine and he says the picture is jogged So we got two
 radars
 (8) on it, one at a longer range and one at a shorter range
 (9) Q What do you mean by higher range ?
 (10) A Longer range out
 (11) Q When you are over at the port radar what range do you
 (12) the radar set at?
 (13) A I m altering between 6 and 12
 (14) Q So you re ahead 6 to 12 miles?
 (15) A Yes
 (16) Q To get a picture of the ice?
 (17) A Yes, and occasionally 24, but that s really, no need
 (18) Q You don t get as sharp a picture?
 (19) A No, it's well beyond the range of any ice, and it s
 (20) superfluous
 (21) Q So Mr Cousins walks over to the starboard side radar?
 (22) A He went over to the starboard radar and whatever re
 (23) was working from, he changed it to a lower or higher I
 (24) he went to a lower
 (25) Q Did you at this point believe he was assessing the

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- (1) situation for himself?
 (2) A He was taking another set of eyes looking at the sea
 (3) situation
 (4) Q How long did you and Mr Cousins stand at the radars
 (5) together?
 (6) A We were there, I had him get a fix a few minutes earl
 (7) when he first arrived, and we were navigating, discuss
 this
 (8) ice situation from 12 minutes, 10 to 12 minutes
 (9) Q At that time was the ice situation changing at all?
 (10) A Well, we were getting a better view of it because our
 (11) relative position was getting closer to it
 (12) Q Did the leading edge of the ice as you saw it at that
 (13) time change at all? In other words was it further into the
 (14) lanes closer to the lanes further down?
 (15) A It got more defined, I don't know if it changed It got
 (16) better - more definition to it
 (17) Q Let me put up -
 (18) MR CHALOS Your Honor I m going to offer at this
 (19) time DX1729 on the screen and we have the same exhibit
 (20) blown up in person
 (21) (Exhibit DX 1729 offered)
 (22) MR CHALOS I think the definition is better in
 (23) life What exhibit is that?
 (24) UNIDENTIFIED SPEAKER 1729
 (25) MR CHALOS 1729 With your permission

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- (1) THE COURT What is it?
 (2) MR CHALOS I would offer 1729 into evidence
 (3) THE COURT What is it?
 (4) MR CHALOS It s a blowup of the chart that he drew
 (5) at his deposition as how he perceived the ice to be
 (6) MR O NEILL And Mr Cousins too
 (7) MR CHALOS And Mr Cousins as well
 (8) MR O NEILL We have no objection
 (9) THE COURT Defendants 1729 is admitted
 (10) (Exhibit DX 1729 received)
 (11) MR CHALOS Your Honor with your permission I would
 (12) like to do it both ways I think you get a clearer picture
 (13) with this
 (14) BY MR CHALOS
 (15) Q Captain can you see that?
 (16) A Yes
 (17) Q Now when you were standing at the radar with Mr Cousins -
 (18) A Uh huh
 (19) Q - do you remember that?
 (20) A Yes
 (21) Q How did you see the ice?
 (22) MR CHALOS Your Honor would it be all right for the
 (23) witness to come down and point as to what he was looking at?
 (24) THE COURT Does he have a pointer there?
 (25) MR CHALOS Oh you know how to do it with a

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- (1) pointer?
 (2) THE COURT Do it either way
 (3) MR CHALOS Good luck
 (4) THE WITNESS How do you get rid of it?
 (5) MR CHALOS Hit the screen with the pen No no not
 (6) that way with a pen What would you like to do?
 (7) THE WITNESS Point it out
 (8) BY MR CHALOS
 (9) Q All right come down We re from the old school You have
 (10) a pointer?
 (11) All right Captain I want to know when you were standing
 (12) at the radar - step back so the ladies and gentlemen of the
 (13) jury can see
 (14) What did you - come around this side this way so Judge
 (15) Holland can see as well Show us where you saw the ice?
 (16) A After we were on the 180 heading, we steadied up on the
 (17) due
 (18) south heading Generally this was the outline, this apex in
 (19) here, and then it trailed off over into this area due south
 (20) We were coming down, and this (indicating) stuck like a
 (21) thumb
 (22) into the north bound lane
 (23) Q Pointing to C now that s where Busby Island was?
 (24) A Busby Island and the light was right here There is a
 (25) little lobe right there
 (26) Q Where is your ship at this time?
 (27) A The ship, as I had lined up, would be one mile off the

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- (1) light and one mile off this ice right there Busby Island
 (2) Q So you were shooting between the leading edge and the
 (3) light was that your plan?
 (4) A Yes
 (5) Q Where was the ship when you were looking at the ice in this
 (6) situation?
 (7) A It was up in here mile mile and a half
 (8) Q Where was Bligh Reef light?
 (9) A Bligh Reef light was down in here
 (10) Q That was Bligh Reef light?
 (11) A The buoy
 (12) Q Yeah the buoy I meant
 (13) How much room was there based on what you were seeing
 (14) between the leading edge of the ice and Bligh Reef buoy?
 (15) A This area here?
 (16) Q Yes
 (17) A About two miles
 (18) Q Incidentally Captain how far is Bligh Reef buoy from
 (19) Busby Island light?
 (20) A I think it s five miles, something like that yeah
 (21) five ish
 (22) Q So your plan at this point when you re talking to Cousins
 (23) is to shoot between Busby Island light one mile off on your
 (24) port hand and one mile from the leading edge of the ice on
 (25) your starboard hand?

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- (1) A Being equidistant between the two
 (2) Q Did you discuss that with Cousins?
 (3) A Yes
 (4) Q Did he at that time say to you Captain I don t see the
 (5) ice the same way you see it?
 (6) A No, he agreed with my assesment
 (7) Q Did you have - at this time did you tell him that you were
 (8) thinking about going below?
 (9) A Not in the first -
 (10) Q At what point in time did you tell Mr Cousins that you
 (11) were contemplating going below?
 (12) A It was - first I solicited his input and asked him if he
 (13) thought it looked like a decent maneuver to do or a do able
 (14) maneuver to do, and if he had any reservations I d like to
 (15) hear
 (16) about that, so I tried to elicit that from my junior officers
 (17) Q This was before you decided to go below?
 (18) A Yeah And he said this is a piece of cake, or words to
 (19) that effect And then I leave a moment or two later I said,
 (20) do you want to handle it, do you want to do the turn He
 (21) says
 (22) yeah, no problem
 (23) Q Hold on a second Captain Tell us about your management
 (24) style How do you interact with junior officers what is your
 (25) style?
 (26) A Normally if they show any aptitude for the job I try to
 (27) encourage them to take on more and more responsibility to the

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- (1) extent of - as they rise to the higher ranks they don't end up
 (2) one day never having done the job just stand out on the bridge
 (3) wing for ten years and the master will delegate all the mates
 (4) to do everything and then when these poor buggers get out up
 (5) to being masters they are scared out of their BVDs because they
 (6) never done that stuff before
 (7) Q Is it your practice to try to give them as much experience as possible?
 (8) A As much experience as they want
 (9) Q Is it also your style to talk over situations with your mates get their input when you're up on the bridge?
 (10) A Oh, yeah, yes
 (11) Q Did you have - strike that
 (12) You told Mr. Neal that you believed Mr. Cousins was a competent mate is that correct?
 (13) A Yes
 (14) Q Did you have any doubts that Mr. Cousins could accomplish the maneuver that you were contemplating?
 (15) A No, because the previous voyage he had performed the maneuver with me standing there I don't say the exact same maneuver, but a similar maneuver, going around the ice out of the lanes and brought the ship back in and brought it into the outbound lane
 (16) Q When you say the previous voyage are you talking about the previous night?

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- (1) A No, two weeks before outbound, or a month before, I guess
 (2) It was
 (3) Q You did the exact same maneuver?
 (4) A It was the same area and it involved leaving the lanes to avoid ice and we came back in and he performed that
 (5) Q On occasion did you give him the con?
 (6) A Yes
 (7) Q And did he perform the tail ends of the maneuvers himself?
 (8) A Yes
 (9) Q Did that involve a course change?
 (10) A It involved two or three course changes
 (11) Q Did he accomplish those course changes with no problem?
 (12) A No problem whatsoever
 (13) Q Okay Captain now you and Mr. Cousins you tell Mr. Cousins that you're thinking about going down below is that right?
 (14) A Yes, uh huh
 (15) Q What did you tell him?
 (16) A I told him I was going down below, I had some paperwork to complete and give me a call when he's commenced the turn abeam of Busby Island
 (17) Q What orders did you give him before you left?
 (18) A I -
 (19) Q Well what I'm asking did you tell him that you wanted him to come abeam of Busby?

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- (1) A Abeam of Busby Island light and alter course to re e
 (2) and come down the southbound lane - or the inbound
 (3) Q Did you point to him on the radar -
 (4) A On the radar
 (5) Q - visually what you wanted him to do?
 (6) A Yes to Busby Island light and we both visually look out
 (7) the window, you could see it flashing away
 (8) Q You said you also told him to call you when he started t
 (9) maneuver?
 (10) A Started the maneuver, yes
 (11) Q What did he say when you gave him those two orders?
 (12) A He said no problem, the machine -
 (13) Q Did you ask him at all if he felt comfortable with the situation?
 (14) A I asked him initially if he thought it looked like a goo
 (15) idea And the second time I asked him if he felt comfo
 (16) doing it, and he said yes to both
 (17) Q The first time you didn't tell him you were contemplating
 (18) leaving the bridge?
 (19) A No
 (20) Q And the second sometime you asked - told him and y
 (21) asked him if he was comfortable doing the maneuver?
 (22) A Doing the maneuver, assuming that
 (23) Q And what did he say?
 (24) A He said, fine, no problem

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- (1) Q At that point did you have any doubt in his ability to ma
 (2) the maneuver that you asked him?
 (3) A None
 (4) Q Captain what was the visibility when you left the bridge
 (5) A We dropped Murphy off you could see down the hol
 (6) there,
 (7) you could see Busby Island, so it's about eight and a h
 (8) miles minimum at least eight and a half to ten miles
 (9) Q Captain Murphy said that when you were leaving Valde
 (10) harbor that the visible - it was snowing or something like
 (11) that Had the visibility improved?
 (12) A Well, I think it stayed the same outside Valdez
 (13) Intrinsically has its own weather system, but once you
 (14) coming around the corner it was a heck of a lot better
 (15) outside
 (16) than it was leaving the dock yeah
 (17) Q Just before you departed the bridge could you see Bus
 (18) Island light?
 (19) A Yeah
 (20) Q You had the ship on course of 180 is that right?
 (21) A That's correct
 (22) Q That's a cardinal point?
 (23) A Yes
 (24) Q Could you explain to the jury what that is?
 (25) A Cardinal points are just north east south and west
 (26) four biggies Simplifies the navigation if you can steer
 (27) those courses, because everything is due east, due west

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- (1) relevant terms
 (2) Q So when you told Mr Cousins to start his turn when he came
 (3) abeam of Busby Island you were on a course where is it true
 (4) all he had to do was stand in the wheelhouse look out the
 (5) door when the light came perpendicular to him he was abeam?
 (6) A Uh huh
 (7) Q Is that right?
 (8) A That's it
 (9) Q How difficult Captain was the turn that you were asking
 (10) Mr Cousins to make what did that involve?
 (11) A Compared to normal everyday third mate ship handling
 (12) duties?
 (13) Q Yes
 (14) A On a scale of one to ten, ten being the most difficult ship
 (15) handling challenge that would be expected of him, I would
 rate
 (16) this about a two
 (17) Q Did you have any doubt in your mind that Mr Cousins could
 (18) carry this maneuver out?
 (19) A No, I had no doubt whatsoever
 (20) Q Did you have any doubt that the helmsman Mr Kagan could
 (21) carry out any orders that he would get from Mr Cousins?
 (22) A No, none whatsoever
 (23) Q What did it involve once they got abeam of Busby what did
 (24) he have to do?
 (25) A Turn the wheel ten degrees to the right, and that's it

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- (1) Q When you say turn the wheel tens degrees to the right
 (2) what does that involve?
 (3) A Turning the steering wheel about two spokes to the right
 (4) Q Like that (indicating)?
 (5) A That's it Or you can do it with one figure, it's power
 (6) steering
 (7) Q Ship has power steering?
 (8) A You bet
 (9) Q It's a new ship
 (10) Captain you mentioned with respect to Mr Kagan that you
 (11) were involved in some sort of I think you used the word hairy
 (12) situation in 1984 when you watched him steer?
 (13) A Yeah
 (14) Q Can you elaborate on that?
 (15) A It was the first time I'd ever seen brother Kagan, and
 (16) wintertime, coming into Galveston, Texas, we had anchored the
 (17) night before in the fog, and as the weather patterns develop
 (18) down there - there was a big blue northern come through
 that
 (19) roles all the fog out, clears everything up, and there was
 (20) about a hundred ships anchored all around the sea buoy,
 and in
 (21) those years they had finally installed a queuing system, you
 (22) took a number, you were assigned a number so you didn't
 all
 (23) rush the pilot station at once like they used to, and we were
 (24) coming up there and it really started blowing and the pilots
 (25) couldn't come out of the jetty, couldn't come to the

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- (1) breakwater In other words, wanted to us come inside pick
 (2) them up And the ship wasn't much of a handler it was the
 (3) Exxon Yorktown, she was kind of wind driven wasn't a
 really
 (4) sporty rig in ballast which she was And fortunately I'd
 done
 (5) that when I was a mate that a master showed me I had no
 (6) compunction, just drove it in there Mr Kagan was on the
 (7) lions share of the helm, we had to gorge a couple sheers
 steer
 (8) on range instead of a course, because a course you're
 (9) constantly setting, just keep it steady on the ranges, 20
 (10) degrees of side slip And I remember this, because I
 remarked,
 (11) he did a good job, a lot of helms I would have been worried
 (12) about That was my first exposure to Mr Kagan
 (13) Q Did he follow your orders on that occasion?
 (14) A Yes
 (15) Q Did he carry them out?
 (16) A Yes
 (17) MR CHALOS Your Honor I'm at good point to change
 (18) subjects
 (19) THE COURT Ladies and gentlemen we'll adjourn for
 (20) the day Please remember my instructions Would everybody
 (21) please remain seated until we're through
 (22) Please remember my instructions that you not listen to or
 (23) watch any media broadcasts of the trial please don't read the
 (24) newspapers please don't do any reading or investigating on
 (25) your own about the case you'll hear all you need to hear about

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- (1) it in court.
 (2) There was an inquiry from one of you what happens if
 (3) someone gets ill The first thing that happens if someone on
 (4) the jury gets ill is that we ask you to consult a physician as
 (5) quickly as possible so that we can get a reading on what your
 (6) situation is We do have to stand down if someone is ill until
 (7) we reach the point where we decide that the thing to do is to
 (8) excuse the person if it's going to be awhile before he or she
 (9) can come back to join us If it's something that can be
 (10) cleared up quickly we will stand down for a reasonable amount
 (11) of time and get fixed up and go on But we do have to stand
 (12) down if someone is ill
 (13) We will reconvene at 8 00 tomorrow morning
 (14) MR O NEILL Could we see Your Honor for two minutes
 (15) on a subject.
 (16) THE CLERK. Court is adjourned until 8 00 tomorrow
 (17) morning

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(19)	DX 155 received	539
	52 received	559
(20)	DX3461 received	562
	5933 and 5934 received	573
(21)	3466 received	574
	1735 A received	579
(11)	STATE OF ALASKA)	
(22)	0176 received	586
	Reporter's Certificate	
	DX 1729 received	592
(2)	DISTRICT OF ALASKA)	
	I Leonard J DiPaolo a Registered Professional	
(4)	Reporter and Notary Public	
	DO HERBY CERTIFY	
(5)	That the foregoing transcript contains a true and accurate transcription of my shorthand notes of all requested	
(6)	matters held in the foregoing captioned case	
	Further that the transcript was prepared by me	
(7)	or under my direction	
	DATED this day	
(8)	of 1994	
(11)	LEONARD J DIPAOLO RPR	
	Notary Public for Alaska	
(12)	My Commission Expires 2 3 96	

Look-See Concordance Report

UNIQUE WORDS 2 810
TOTAL OCCURRENCES 11,795
NOISE WORDS 385
TOTAL WORDS IN FILE 39,962

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S) NOISE.NOI

INCLUDES ALL TEXT OCCURRENCES

IGNORES PURE NUMBERS

WORD RANGES @ BOTTOM OF PAGE

MAXIMUM TRACKED OCCURRENCE THRESHOLD 50

NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD 18

LIST OF THRESHOLD WORDS

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May 12, 1994 Federal Trial Transcript

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There is a change in the title of proceedings.

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Vol 8 606

(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re) Case No A89 0095 CIV (HRH)
 (5)) Anchorage Alaska
 The EXXON VALDEZ) Thursday May 12 1994
 (6)) 8 00 a m
 TRANSCRIPT OF PROCEEDINGS
 (9) TRIAL BY JURY 8th DAY
 (10) BEFORE THE HONORABLE H RUSSEL HOLLAND JUDGE
 VOLUME B Pages 606 B21
 Realtime Transcription

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(1) P R O C E E D I N G S
 (2) THE CLERK All rise
 (3) (Call to Order of the Court)
 (4) THE COURT Good morning ladies and gentlemen
 (5) MR O NEILL Good morning Judge
 (6) THE COURT This is the continuation of trial in case
 (7) A89 0095 Civil in re the Exxon Valdez
 (8) Captain Hazelwood you understand you re still under oath?
 (9) THE WITNESS Yes sir
 (10) THE COURT Mr Chalos
 (11) MR CHALOS Thank you Your Honor good morning
 (12) Good morning ladies and gentlemen Captain Hazelwood
 good
 (13) morning
 (14) THE WITNESS Good morning
 (15) CONTINUED CROSS EXAMINATION OF JOSEPH
 HAZELWOOD
 (16) BY MR CHALOS
 (17) Q Captain we spoke yesterday about a briefcase that you had
 (18) with you when you were in town?
 (19) A Yes
 (20) Q Same briefcase you brought back to the ship?
 (21) A That's correct
 (22) Q What did you have in that briefcase?
 (23) A Just a small notebook and I took ashore a small notebook
 to
 (24) remind me of what phone calls I had to make and to
 purchase
 (25) some postcards and cards in town and put them in the

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(1) briefcase
 (2) Q Was that briefcase searched when you got to the Alyeska
 (3) gate?
 (4) A Yes
 (5) Q Captain I want to put us back on the ship You remember
 (6) yesterday we left off with you about the walk off the bridge?
 (7) A Yes
 (8) Q I d like to recap the situation if I may as it existed
 (9) just before you walked off the bridge at 11 53 p m on March
 (10) 23rd 1989?
 (11) A Very well
 (12) Q The vessel had been put on - had been taken off the
 (13) autopilot as you were walking off is that correct?
 (14) A That's correct
 (15) Q You had engaged the load program up?
 (16) A Yeah, engaged that, and informed Mr Cousins of that
 (17) Q At what time did you do that?
 (18) A 581 or 582, as I recall, by the bell book
 (19) Q That s 11 51 or 11 52?
 (20) A Yes
 (21) Q Okay Did you tell Mr Cousins that you had engaged the
 (22) load program up?
 (23) A Yes
 (24) Q You said yesterday Busby Island light was visible?
 (25) A Visible, clear on the radar and clear visually out the

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- (1) wheelhouse windows
 (2) Q You also told us you had ten miles of visibility?
 (3) A Last check I looked it was eight and a half to ten miles
 (4) yes
 (5) Q You had five miles or more to the Bligh Reef buoy?
 (6) A Yes
 (7) Q You had discussed the maneuver that you were planning with
 (8) Mr Cousins?
 (9) A Twice yes
 (10) Q You stood at the radar with him for ten minutes discussing
 (11) the maneuver?
 (12) A Yes
 (13) Q You had told Mr Cousins that you were about to go below?
 (14) A Yes
 (15) Q For a few minutes?
 (16) A Yes
 (17) Q And did he protest at all when you told him that?
 (18) A No, he said fine, said, "I can handle it," or words to that
 (19) effect
 (20) Q Okay Now you said that Mr Cousins told you that he was
 (21) comfortable with the situation?
 (22) A The initial conference if you will, that we had, he was
 (23) comfortable He saw no problem with the maneuver and
 (24) then
 (25) when I inquired whether he could handle it himself he had
 no
 (26) problem either, either the proposed maneuver or him
 handling

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- (1) the maneuver
 (2) Q Now you told us you had previous experience with Mr
 (3) Cousins with a similar maneuver?
 (4) A Similar maneuver, yeah It was in the same area
 (5) involved
 (6) the same situation, we were out of the lanes avoiding the
 (7) ice,
 (8) and he completed the maneuver
 (9) Q Your vessel at this time was on a course of 180?
 (10) A 180, yes
 (11) Q With the leading edge of the ice one mile to your starboard
 (12) and Busby Island light one mile to your port?
 (13) A That's correct
 (14) Q You were about to go past the leading edge of the ice as
 (15) you saw it on the radar?
 (16) A The way I saw it on the radar, it was going to be the apex
 (17) of the ice would be just about abeam of Busby Island light,
 (18) both would be a concurrent event.
 (19) Q You told us you believe that there was sufficient sea room
 (20) to make the maneuver that you were contemplating?
 (21) A With a ship that handled that well, yes, more than
 (22) sufficient
 (23) Q Well let me ask you about the handling
 (24) How did the Exxon Valdez handle with the load that she had
 (25) on that evening?
 (26) A Very well, she was a good handling ship
 (27) Q Now you had previously called the Coast Guard and told

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- (1) them your intentions?
 (2) A Yes
 (3) Q What did you expect the Coast Guard to be doing at this
 (4) point?
 (5) A My understanding from the very beginning in 1977 was
 (6) they
 (7) would as represented and showed to us they had a radar
 (8) system
 (9) that would track the vessels continuously from the dock to the
 (10) area south of Bligh Reef
 (11) Q Did you expect to be tracked that night when you went
 (12) below?
 (13) A I had the expectation, yeah
 (14) Q Did you expect anything else from them?
 (15) A I had a general expectation given that they were there to
 (16) watch vessels that if they saw something untoward or
 (17) detected
 (18) any hazard that we didn't - on the ship, they would alert us
 (19) Q Did you understand that they had a statutory duty to warn
 (20) vessels if they were standing into danger?
 (21) A I understand that was their duty, to prevent collisions and
 (22) groundings I don't know about a statutory, the statutory
 (23) nature of it
 (24) Q Now you had told Mr Cousins to when he got abeam of
 (25) Busby to turn back into the lanes?
 (26) A Yes
 (27) Q You considered the maneuver that you wanted Mr Cousins
 (28) to
 (29) make a simple maneuver?

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- (1) A Yes As I explained yesterday on a scale of zero to ten
 (2) on what a third mate normally does, it's about a two
 (3) Q And you believed that what you wanted Mr Cousins to do
 (4) was
 (5) well within his capabilities and the capabilities of a licensed
 (6) second mate?
 (7) A Well I - a licensed second mate nominally yes but Mr
 (8) Cousins personally, certainly
 (9) Q You asked Mr Cousins to call you when he started the
 (10) maneuver?
 (11) A Yes
 (12) Q And your office was 13 steps or ten seconds below the
 (13) bridge was it not?
 (14) A Roughly
 (15) Q And you had telephone in your office?
 (16) A Two, yeah
 (17) Q Two telephones?
 (18) A Yes
 (19) Q Okay Captain when you went below at 2353 did you
 (20) consider the safety of the vessel?
 (21) A Yes
 (22) Q What was your judgment as to the safety of the vessel and
 (23) the maneuver that you were planning to make?
 (24) A Safety was I didn't feel it was any way compromised, it
 (25) was
 (26) a reasonable maneuver Ships that I'd been on had been
 (27) doing
 (28) it all along It was - there was no eminent peril that I

Vol 8 606

(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re:) Case No. A89-0095 CIV (FRH)
 (3)) Anchorage Alaska
 The EXXON VALDEZ) Thursday May 12 1994
 (4)) 8:00 a.m.
 TRANSCRIPT OF PROCEEDINGS
 (5) TRIAL BY JURY JURY SELECTION AND 8th DAY
 (6) BEFORE THE HONORABLE H. RUSSEL HOLLAND JUDGE
 VOLUME 8 Pages 606 821
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(1) PROCEEDINGS
 (2) THE CLERK All rise
 (3) (Call to Order of the Court)
 (4) THE COURT Good morning ladies and gentlemen
 (5) MR O NEILL Good morning Judge
 (6) THE COURT This is the continuation of trial in case
 (7) A89 0095 Civil in re the Exxon Valdez
 (8) Captain Hazelwood you understand you're still under oath?
 (9) THE WITNESS Yes sir
 (10) THE COURT Mr Chalos
 (11) MR CHALOS Thank you Your Honor good morning
 (12) Good morning ladies and gentlemen Captain Hazelwood
 good
 (13) morning
 (14) THE WITNESS Good morning
 (15) CONTINUED CROSS EXAMINATION OF JOSEPH
 HAZELWOOD
 (16) BY MR CHALOS
 (17) Q Captain we spoke yesterday about a briefcase that you had
 (18) with you when you were in town?
 (19) A Yes
 (20) Q Same briefcase you brought back to the ship?
 (21) A That's correct
 (22) Q What did you have in that briefcase?
 (23) A Just a small notebook and I took ashore a small notebook
 to
 (24) remind me of what phone calls I had to make and to
 purchase
 (25) some postcards and cards in town and put them in the

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(1) briefcase
 (2) Q Was that briefcase searched when you got to the Alyeska
 (3) gate?
 (4) A Yes
 (5) Q Captain I want to put us back on the ship You remember
 (6) yesterday we left off with you about the walk off the bridge?
 (7) A Yes
 (8) Q I'd like to recap the situation if I may as it existed
 (9) just before you walked off the bridge at 11:53 p.m. on March
 (10) 23rd 1989?
 (11) A Very well
 (12) Q The vessel had been put on - had been taken off the
 (13) autopilot as you were walking off is that correct?
 (14) A That's correct
 (15) Q You had engaged the load program?
 (16) A Yeah engaged that and informed Mr Cousins of that
 (17) Q At what time did you do that?
 (18) A 581 or 582 as I recall by the bell book
 (19) Q That's 11:51 or 11:52?
 (20) A Yes
 (21) Q Okay Did you tell Mr Cousins that you had engaged the
 (22) load program?
 (23) A Yes
 (24) Q You said yesterday Bushy Island light was visible?
 (25) A Visible clear on the radar and clear visually out the

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- (1) wheelhouse windows
 (2) Q You also told us you had ten miles of visibility?
 (3) A Last check I looked it was eight and a half to ten miles
 (4) yes
 (5) Q You had five miles or more to the Bligh Reef buoy?
 (6) A Yes
 (7) Q You had discussed the maneuver that you were planning with
 (8) Mr Cousins?
 (9) A Twice yes
 (10) Q You stood at the radar with him for ten minutes discussing
 (11) the maneuver?
 (12) A Yes
 (13) Q You had told Mr Cousins that you were about to go below?
 (14) A Yes
 (15) Q For a few minutes?
 (16) A Yes
 (17) Q And did he protest at all when you told him that?
 (18) A No he said fine said I can handle it or words to that effect
 (19)
 (20) Q Okay Now you said that Mr Cousins told you that he was
 (21) comfortable with the situation?
 (22) A The initial conference if you will that we had he was
 (23) comfortable He saw no problem with the maneuver and then
 (24) when I inquired whether he could handle it himself he had
 (25) no
 (26) problem either either the proposed maneuver or him
 handling,

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- (1) the maneuver
 (2) Q Now you told us you had previous experience with Mr
 (3) Cousins with a similar maneuver?
 (4) A Similar maneuver yeah It was in the same area
 involved
 (5) the same situation, we were out of the lines avoiding the
 ice
 (6) and he completed the maneuver
 (7) Q Your vessel at this time was on a course of 180?
 (8) A 180 yes
 (9) Q With the leading edge of the ice one mile to your starboard
 (10) and Busby Island light one mile to your port?
 (11) A That's correct
 (12) Q You were about to go past the leading edge of the ice as
 (13) you saw it on the radar?
 (14) A The way I saw it on the radar it was going to be the apex
 (15) of the ice would be just about abeam of Busby Island light
 (16) both would be a concurrent event
 (17) Q You told us you believe that there was sufficient sea room
 (18) to make the maneuver that you were contemplating?
 (19) A With a ship that handled that well, yes, more than
 (20) sufficient
 (21) Q Well let me ask you about the handling
 (22) How did the Exxon Valdez handle with the load that she had
 (23) on that evening?
 (24) A Very well, she was a good handling ship
 (25) Q Now you had previously called the Coast Guard and told

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- (1) them your intentions?
 (2) A Yes
 (3) Q What did you expect the Coast Guard to be doing at this
 (4) point?
 (5) A My understanding from the very beginning in 1977 was
 they
 (6) would be represented and showed to us they had a radar
 system
 (7) that it would track the vessels continuously from the dock to
 the
 (8) area south of Bligh Reef
 (9) Q Did you expect to be tracked that night when you went
 (10) below?
 (11) A I had the expectation yeah
 (12) Q Did you expect anything else from them?
 (13) A I had a general expectation given that they were there to
 (14) watch vessels that if they saw something untoward or
 detected
 (15) anything that we didn't see on the ship they would alert us
 (16) Q Did you understand that they had a statutory duty to warn
 (17) vessels if they were standing into danger?
 (18) A I understand that it was their duty to prevent collisions and
 (19) groundings I don't know about a statutory the statutory
 (20) nature of it
 (21) Q Now you had told Mr Cousins to when he got abeam of
 (22) Busby to turn back into the lanes?
 (23) A Yes
 (24) Q You considered the maneuver that you wanted Mr Cousins
 to
 (25) make a simple maneuver?

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- (1) A Yes As I explained yesterday on a scale of zero to ten
 (2) on which a third mate normally does it's about a two
 (3) Q And you believed that what you wanted Mr Cousins to do
 was
 (4) well within his capabilities and the capabilities of a licensed
 (5) second mate?
 (6) A Well I - a licensed second mate nominally yes, but Mr
 (7) Cousins personally certainly
 (8) Q You asked Mr Cousins to call you when he started the
 (9) maneuver?
 (10) A Yes
 (11) Q And your office was 13 steps or ten seconds below the
 (12) bridge was it not?
 (13) A Roughly
 (14) Q And you had telephone in your office?
 (15) A Two yeah
 (16) Q Two telephones?
 (17) A Yes
 (18) Q Okay Captain when you went below at 2353 did you
 (19) consider the safety of the vessel?
 (20) A Yes
 (21) Q What was your judgment as to the safety of the vessel and
 (22) the maneuver that you were planning to make?
 (23) A Safety was I didn't feel it was any way compromised it
 was
 (24) a reasonable maneuver Ships that I'd been on had been
 doing
 (25) it all along It was - there was no eminent peril that I

could detect or in my judgment was present that threatened the vessel.

(13) Q Did you consider all the things that we just went through before you left the bridge?

(14) A Yes.

(15) Q All right, Captain, why did you leave the bridge?

(16) A At that time, there was no -- giving all those factors that I had in mind, there was no pressing need for me to do the maneuver. I had some calculations I was working on that I'd gotten some weather update and there was a storm brewing in the Aleutians. It was heading towards Prince William Sound and I wanted to make sure either we got out and passed in front of the storm enabling us to make a tide window or an area that we were shooting for in Long Beach, or in the converse, I'd have to stay in Prince William Sound.

(17) Q Captain, when did you get that weather report that you're referring to?

(18) A I got one between the ship and the -- between the dock and the Narrows and I got another one after dropping Pilot Murphy off. Just turned on the VHF radio.

(19) Q Could you not make those calculations on the bridge?

(20) A I had started them down in my office and that's where I was. I -- I could have -- yes.

(21) Q What do you mean, you started them in your office?

(22) A I started them and then Pilot Murphy was going to get off

and we were approaching Potato Point so I came back up.

(23) Q This is the first time you went below, is that what you're talking about?

(24) A The second time.

(25) Q No, no. You started the calculations the first time you went below?

(26) A Well, I did the cargo calculations. They don't take too long and I started on this next round of calculations. It's just a speed time distance.

(27) Q While you were down below, did Mr. Cousins call you?

(28) A Yes.

(29) Q When did he call you?

(30) A As I was sitting at my desk, there's a clock over my desk, he called and said we started -- "I've started to alter course and I looked up and it was -- time I predicted we'd be able to, it wasn't too hard to figure out, it was 55 or 56, you know, just a quick glance at the clock and it was the right time or the appropriate time that he should be turning."

(31) Q You expected to be called about that time?

(32) A Yes.

(33) Q Now, what -- tell me exactly what Mr. Cousins said to you?

(34) A He said, "We're commencing the turn now" and I said, "How does it look?" And he said, "Fine, we may further on down the road get into a little bit of ice, but he said, "No problem. I asked him if Mr. LeCain had appeared yet. He said no

and I said, "Okay, I'll be up in a few minutes."

(35) Q Did you expect Mr. LeCain to go up to the bridge at some point?

(36) A Yes. I -- as I testified to the other day, he and Mr. Cousins had worked out their own arrangement about calling him, but I assumed he'd be up there in a couple minutes.

(37) Q Mr. LeCain was the second mate, was he not?

(38) A That's correct.

(39) Q Now, when he made this report to you, did that cause you any concern?

(40) A No, because he was doing what he -- I had instructed him to do and it was the right time.

(41) Q Well, at least he was reporting, he was doing what you instructed him to do?

(42) A Yes.

(43) Q Did he express any concern about what he was looking at, the situation that he was looking at when he called you?

(44) A No.

(45) Q How was his voice when he was talking to you?

(46) A Fine. I mean, it was just -- sounded normal to me.

(47) Q Was there any anxiety in his voice?

(48) A No.

(49) Q Any panic?

(50) A No.

(51) Q Any indication that he believed himself to have a problem?

A No.

(52) Q If you detected Captain from what he told you that he was concerned about the situation, what would you have done?

(53) A Well, I would come right up to the bridge. I mean, I've sailed enough with Mr. Cousins where he had called me to the bridge for various situations, so --

(54) Q He had called you previously to come to the bridge when he was in doubt about something?

(55) A Yeah, in traffic situations or fog or various navigation situations that crop up from time to time. I had no doubt that he would call me.

(56) Q Did you ask him -- did you ask him if there would be any problem up there?

(57) A I asked him -- I think -- I asked him how it looked. He relayed to me that further on down the line we may be near the ice near the leading edge. I think he said, but I said, "Would it cause any problem?" He said, "No, not that he could foresee."

(58) Q If Mr. Cousins had asked you to return to the bridge, what would you have done?

(59) A Been right there.

(60) Q Did he in fact ask you to return to the bridge?

(61) A No.

(62) Q Captain, do you know what caused the grounding of the Exxon Valdez?

(63) A No.

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- (1) Q Do you know why the turn was not made in time?
- (2) A No
- (3) Q Captain if your orders were followed that night - that
- (4) is coming aboard of Busby and turn her back into the lanes - do
- (5) you have any doubt that the vessel would not have run
- (6) aground?
- (7) A Certainly not
- (8) Q Captain looking back with the benefit of 20/20 hindsight
- (9) if you knew that night what we know today would you have left
- (10) that bridge?
- (11) A Certainly not
- (12) Q All right Captain you're down below in your room. You're
- (13) doing your calculations to figure out your tide and weather
- (14) windows you said. What does that mean?
- (15) A It was more of a concern about the - the weather because
- (16) all these slack tanks
- (17) Q What slack tanks?
- (18) A We didn't as I discussed the other day we didn't fill
- (19) them all up there was a bunch of slack tanks and I had
- (20) gotten
- (21) mouse trapped in the Gulf of Alaska -
- (22) Q Captain?
- (23) A - previous year yeah
- (24) Q I told you yesterday that English is my second language.
- (25) What's that mean mouse trapped?
- (26) A Getting your tail in a crack
- (27) Q That I understand okay I had a different vision of

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- (1) mouse trapped. What does mouse trapped mean?
- (2) A Well you're just in a situation that's not very pleasant
- (3) But it was with these slack tanks it's the easiest way to
- (4) explain it is trying to carry a bucket half full of water. It
- (5) sloshes around, and if it's filled up it's a little bit easier
- (6) to contain the water and it doesn't slosh back and forth
- (7) Within a tanker like the Valdez if you get a motion going
- (8) it's called free surface effect, the water goes back and forth
- (9) and when it inevitably happens is the ship will be going this
- (10) way
- (11) and the moving liquid is going the other way. And we had a
- (12) bunch of furniture rip out of - and lighting fixtures and
- (13) telephones rip off the bulkhead
- (14) Q This was in a previous experience?
- (15) A Yeah the previous winter
- (16) So those slack tanks for stress purposes you have to live
- (17) with for the reduced draft going into Long Beach. I didn't
- (18) want to get in a situation where I was weather bound with all
- (19) these slack tanks, and there was a possibility existed if I got
- (20) down to Hinchbrook and it didn't look good I'd just turn
- (21) around and go back and anchor
- (22) Q Captain based on your experiences would you characterize
- (23) March as being the month where you get the worst of the lows
- (24) in
- (25) that area?
- (26) A Usually from late January through the end of March
- (27) Q All right Captain you're done in your office. You said

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- (1) you got a telephone call from Mr. Cousins a second telephone
- (2) call?
- (3) A Yes
- (4) Q You remember that?
- (5) A Yes
- (6) Q What did he say to you?
- (7) A He said words to the effect that we're - we're in serious
- (8) trouble and as he was uttering those words I could feel the
- (9) vessel running aground
- (10) Q What did you feel?
- (11) A I felt a series of - not severe but not insignificant
- (12) either - jolts
- (13) Q What did you do?
- (14) A Hung up the phone and ran up to the bridge
- (15) Q Captain put us on the bridge that night. Tell me from the
- (16) moment that you were running up the stairs what happened
- (17) what
- (18) did you do? What did you feel?
- (19) A I knew intuitively that something was wrong pretty
- (20) seriously wrong. You don't take belts like that on a ship. I
- (21) mean there weren't - it wasn't like I'd hit a stone wall at
- (22) 80 miles an hour in a car but it was - having enough
- (23) experience I knew that something was not quite as it should
- (24) be
- (25) I raced up the stairs entered the chart room area which is
- (26) in the rear of the wheelhouse deck. I looked out came -

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- (1) started to come around the port side and I looked out and I
- (2) could see Mr. Cousins and Ms. Jones standing by. They
- (3) had a
- (4) flood light turned on on the port wing of the bridge looking
- (5) over the side down at the water. At that moment, there was
- (6) a - a bathroom or a - right there and I open - I vomited
- (7) into the commode
- (8) Q Why did you do that?
- (9) A I - knowing what I'd learned in the last 20 or 30 seconds
- (10) it just felt like I'd been hit in the bread basket with about a
- (11) ten pound ball
- (12) Q All right Captain. What did you do after that?
- (13) A I went tried to pull myself together composed myself
- (14) went out do the port wing where they were standing still
- (15) observing it, and looked over and I could see the - the oil
- (16) bubbling up on the port side. I left them there. I went to
- (17) the starboard wing and flipped on the - the other flood light
- (18) on the starboard facing down in the water, and flipped that
- (19) on. I could see oil boiling at a pretty good clip starboard
- (20) side
- (21) I looked aft and could see the barb the propeller, the
- (22) weight of the propeller angled off the stern so I knew there
- (23) was some rudder put on it right rudder, and with that I
- (24) came
- (25) back into the wheelhouse. With that
- (26) At that same time - or they were there when I got in the
- (27) wheelhouse

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- (1) off the reef?
 (2) A Oh yeah
 (3) Q Tell us about it
 (4) A It's every - the three big nightmares of every mariner
 (5) collisions fire and grounding. The grounding your first
 (6) visceral instinct is when you hit something bow on is you
 want
 (7) to back off it get away from it
 (8) Q Did you consider putting the engine in reverse at that
 (9) point?
 (10) A I considered it but I -
 (11) Q Did you do it?
 (12) A I didn't consider it very long because I figured it could
 (13) do more harm than good
 (14) Q Did you ever put your engine in reverse?
 (15) A No
 (16) Q From your experience and your training when a vessel runs
 (17) aground going forward -
 (18) A Yes
 (19) Q - what is the classic way to - to remove that vessel from
 (20) the grounding?
 (21) A General rule of thumb for something that runs aground is
 (22) you want to remove it the way it came in. Just retrace your
 (23) path and reverse or like backing a car up
 (24) Q How would that be done?
 (25) A Like backing a car out of the snow

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- (1) Q You would put your engines in reverse?
 (2) A Yeah
 (3) Q But you didn't do that?
 (4) A No
 (5) Q At any time?
 (6) A No
 (7) Q Captain Mr. O'Neill played for you and for the jury
 (8) yesterday the call that you made to the Vessel Traffic Center?
 (9) A Uh huh
 (10) Q That was done about 19 minutes after the grounding
 (11) thereabouts?
 (12) A Yeah
 (13) Q 18-19 minutes. You were doing all the things that you
 (14) told us about before you made that call?
 (15) A Yeah, and as well as started to have a conversation again
 (16) with Mr. Glowacki about engine room personnel that we may
 (17) be
 (18) looking at evacuating the engine room personnel because
 (19) they're below sea level, and I didn't want them running the
 (20) risk of ending up in a flooded engine room
 (21) Q Tell us how you felt when you picked up that microphone to
 (22) call the Vessel Traffic Center
 (23) A As I said before it was like I'd been hit right in the
 (24) bread basket with a sledgehammer and couldn't - I was
 (25) having
 (26) trouble catching my breath. Semi-hyperventilating, I guess
 (27) Just the world is I'd known it had just come to an end. It
 was

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- (1) the worst experience or worst nightmare I could ever
 imagine
 (2) and I wanted to be anywhere else but perched on Bligh
 Reef
 (3) Q All right. You picked up the mike and you made that call?
 (4) A Uh huh. Well, I'm sure - I remember picking up the mike
 and
 (5) calling the Coast Guard. The words I - I remember it was
 (6) almost a surreal event to me because I had this microphone
 in
 (7) my hand talking to somebody over the air waves and you
 know
 (8) it was just almost a detachment of what they could do and
 they
 (9) weren't going to levitate me away or "Beam me up, Scottie."
 (10) Q What was your state of mind at the time?
 (11) A Well, I was - there was a good healthy chunk of fear
 (12) there and I don't know if it was a realization but a
 (13) recognition that I'd better not panic, that I've got to try to
 (14) control the situation. I don't know if it's - not a muchismo
 (15) thing or anything like that but just make sure that people
 (16) working under me see that I'm not panicking so they don't
 (17) panic basically
 (18) Q Captain after you called the Vessel Traffic Center -
 (19) A Uh huh
 (20) Q - they came right back to you and said they saw you on the
 (21) radar?
 (22) A Yes
 (23) Q That was very quickly after you made the call?
 (24) A Well according to the tape yeah they got right back to
 (25) me. I - I don't really recall what the response was

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- (1) Q Now after you made the call to the Vessel Traffic
 (2) Center -
 (3) A Uh huh
 (4) Q - what did you do next?
 (5) A Mr. Cousins came back up and informed me. I think Mr.
 Jones
 (6) came with him at some point in time Mr. LeCain second
 (7) in line
 (8) came up and I started assigning them duties which
 (9) included
 (10) lowering the lifeboats to the embarkation deck basically
 (11) putting them down ready to be used if necessary. Charged
 the
 (12) fire main or basically put pressure to the fire main in case of
 (13) a fire
 (14) And we have these steel monitors on deck fire stations
 (15) with big nozzles and foam - and put foam or water had
 them
 (16) brought them in brackets put the hold downs on them had
 them
 (17) released and ready to be swiveled if fire erupted in some
 (18) part
 (19) of the vessel
 (20) And either Mr. LeCain or Mr. Cousins, I don't recall which
 (21) I had him go to the foam room which is adjacent to the mess
 (22) hall about six decks down -
 (23) Q You said foam?
 (24) A Yeah fire fighting foam and lined had that manifold lined
 (25) up in case we wanted foam instead of water to combat
 anything
 (26) And then I believe it was Mr. LeCain I sent forward to walk
 (27) out the starboard anchor
 (28) Q What does that mean?

(1) Q Who is they ?
 (2) A Mr Cousins and Ms Jones
 (3) I told Mr Cousins to go put - get a fix make a round of
 (4) bearings and put it on the chart
 (5) Q Why did you do that Captain?
 (6) A To find out what - where and what the hell we had hit
 (7) Checked the engines they were still running. Called the
 (8) engine room and I don't know who I got but I said Put me
 (9) through to the chief engineer
 (10) I spoke to Mr Glowacki and I said We've run aground I'll
 (11) get back to you in a minute just wanted to let him know the
 (12) situation He said okay
 (13) I then proceeded - having noticed the rudder was on hard
 (14) right I had Mr Kagran who was the helmsman in I said Bring
 (15) the wheel I brought it back in five degree increments gently
 (16) to midship
 (17) Q Why did you tell him to bring the wheel back in five degree
 (18) increments?
 (19) A Well she seemed to be steady the way she was and I just
 (20) wanted to put her midship and see if there was any change
 (21) in
 (22) the - the engine running and the wheel on best of my
 (23) intellect would allow that was the dynamic situation as she
 (24) impacted whatever she had hit and doing it in the reverse
 (25) taking the wheel off and then stopping the engine and just
 (26) seeing what she would - basically what she would do if she

(1) heard it once and people were coming out in their
 underwear and
 (2) ready to jump over the side and I didn't want to create a
 (3) stampede of people out of a sleep
 (4) Sent Mr - or Ms Jones and Mr Cousins below I called
 (5) back to the engine room spoke to Mr Glowacki again told
 (6) him
 (7) I was going to start slowing the engine down And did that
 (8) in
 (9) increments slowed it down to a stop
 (10) Once the engine was stopped I think Mr Kunkel at that
 (11) time came up to the bridge the chief officer and he said
 (12) What's going on he was kind of wide eyed and I said Okay
 (13) Jim this is basically the situation as I knew it and I want
 (14) you to go down and start sounding all the tanks basically
 (15) find out where we're leaking what's losing oil what's
 (16) garring
 (17) seawater, and just a general status condition as near as he
 (18) could ascertain of condition of the hull
 (19) He did that
 (20) I called Mr Glowacki in the same time frame and said
 (21) informed him that the situation as I knew it or best I knew it
 (22) at that time and told him to sound the engine compartment
 (23) there's some tankage down there and void spaces to get a
 (24) sounding
 (25) Q What does sounding mean?
 (26) A Well you physically find out the level of liquid in the
 (27) tanks if it's rising or falling It's like basically reading
 (28) a gauge to see if something's coming in or something's

(1) would change in her attitude or anything
 (2) Q All right What else did you do?
 (3) A Well I had them bring - slowly got it to midship and she
 (4) didn't seem to change a whole lot I called Mr -
 (5) Q Excuse me Captain When you say she didn't seem to
 (6) change what do you mean by that?
 (7) A The heading of the ship the way she - compass heading
 (8) She seemed to stay right there
 (9) I called Mr Glowacki back At the same time I had Mr
 (10) Cousins - I instructed Mr Cousins and Ms Jones to go
 (11) below
 (12) decks and wake everybody up that was off watch and
 (13) resting
 (14) have them - every crew member supplied with a survival
 (15) suit
 (16) big rubber Gumby suit basically have them available and
 (17) ready
 (18) to go with their life jackets and get fully clothed but be -
 (19) we have a situation we don't in emergency yet but it's a
 (20) situation be ready to take orders if necessary
 (21) Q Captain excuse me did you consider ringing the general
 (22) alarm at this point?
 (23) A I considered it for a second or so but I had the second
 (24) in mind ring a general alarm on me once and put the whole
 (25) crew
 (26) It's not something that's done lightly at all The only time
 (27) you ring that is when you're abandoning ship or there's a
 (28) fire,
 (29) a true life threatening emergency that's existing at the time
 (30) I mean it's just not done People on a ship hear a
 (31) general alarm go off my experience 30 years ago in the sea
 (32) I

(1) going out
 (2) Q Captain your engines stayed on for about ten minutes after
 (3) you ran aground?
 (4) A Roughly yeah
 (5) Q Did you prior to turning them off did you consider
 (6) turning them off before that?
 (7) A That was my first instinct to get off the reef
 (8) Q No no no turning your engines off Did you consider -
 (9) A Well as I explained earlier I wanted to do it in reverse
 (10) order the rudder and then the engine I didn't consider
 (11) shutting them right off no
 (12) Q Okay Is there a reason why you didn't shut your engines
 (13) off immediately?
 (14) A Well there was a static condition a dynamic condition
 (15) that had turned into a static condition and she - whatever she
 (16) had impacted and she was - once the rudder was removed
 (17) she
 (18) held her heading she didn't change her heading and she
 (19) started
 (20) starting to lean one way or another yet And the - I had a
 (21) general perception because she had hit how first is she
 (22) came
 (23) in that it may be whatever she had impacted the engines
 (24) were
 (25) keeping her in that static condition at the time and
 (26) shortly thereafter after the rudder was removed or
 (27) neutralized if you will I started slowing the engine down
 (28) Q Now Captain you mentioned that you had some sort of
 (29) instinct at that time or some feeling that you wanted to get

(1) A You engage it on the winch and lower it down until it finds the bottom and then disengage it from the winch rather than
 (2) just turning on the gravity so to speak letting the break go
 (3) letting it fall and all the chain piles up It's not going to
 (4) hold that well just to put it on the bottom ready to go and
 (5) walk out the port anchor to the water's edge, because - in
 (6) that time frame Mr Kunkel had returned with an initial
 (7) assessment as I recall of what was breached and what was
 (8) not
 (9) Q Let's talk about that
 (10) Mr Kunkel came up according to the testimony somewhere
 (11) around 12 30 12 35 or so?
 (12) A Uh huh
 (13) Q You have a recollection of that?
 (14) A Shortly after his first visit
 (15) Q And he had some numbers with him?
 (16) A Yeah he had some numbers and a -
 (17) Q What did Mr Kunkel say - excuse me Captain let me
 (18) withdraw that question
 (19) Where did Mr Kunkel get those numbers?
 (20) A He went down to the cargo room five decks down and they
 (21) have a cargo monitoring station it's like a big
 (22) two dimensional pictures of the ship that's got gauges for
 (23) every tank and you can tell what's - like a bunch of gauges
 (24) gauges can tell what's coming in or going out And that's
 (25) where he obtained them from

(1) Q Okay What did he tell you about those numbers?
 (2) A He indicated to me that fore peak of the forward end of the
 (3) ship was making water in other words water was coming in and
 (4) all the center starboard cargo and ballast tanks the ones on
 (5) the center line and on the starboard side were losing oil
 (6) except for two starboard - it was a ballast tank and it was
 (7) making oil - or something was coming in back to five center
 (8) the aftermost center tank The four starboard ballast tank, he
 (9) said was intact or just wasn't registering so much, and I
 (10) said okay go down and keep monitoring those figures and see what
 (11) happens next basically
 (12) Q Did you deduce from the first report that Mr Kunkel gave
 (13) you that your port side tanks were intact?
 (14) A Yeah he said there was no movement outside some -
 (15) there
 (16) was no movement essentially in the port side of the ship in
 (17) the levels of oil
 (18) Q After you spoke to - did you give Mr Kunkel any other
 (19) instructions?
 (20) A That -
 (21) Q This is now the first meeting I know we're going to talk
 (22) about a second meeting
 (23) A I don't think so Yeah, I think that was it
 (24) Q Okay Shortly after you spoke to Mr Cousins you started
 (25) the engines up again did you not?
 (26) A Yes

(1) Q Sorry Mr Kunkel
 (2) A Kunkel
 (3) Q Yes
 (4) Is that right?
 (5) A Yes
 (6) Q Why did you start the engines up?
 (7) A Shortly after he left I could detect where the ship was
 (8) starting to list a port
 (9) Q What does that mean?
 (10) A Well it didn't make a whole lot of sense to me at the time
 (11) because the - if she's losing - all things being equal if
 (12) the center of the ship is going she won't go this way or that
 (13) way she won't lean one way or the other she'll come up or
 (14) down evenly side to side, but with the port side intact and
 (15) oil being lighter than water it should retain some buoyancy
 (16) so what knowledge I had I assumed there was deep water on the
 (17) port side because nothing had been impacted
 (18) Q You mean it wasn't damaged?
 (19) A It wasn't damaged The starboard side being damaged and
 (20) losing cargo theoretically should have been getting and
 (21) equalizing with the water it should have been going the other
 (22) way It should have been port side should have been pushing
 (23) it over to starboard
 (24) Q And what was happening?
 (25) A It was going the other way and I didn't want -

(1) Q The ship was leaning to port?
 (2) A Learning this way and I didn't want to have it - the -
 (3) the port side was intact if you shove it down far enough or it
 (4) gets shoved down by whatever force is causing this it's
 (5) going
 (6) to be like trying to hold a bench hall under water sooner or
 (7) later it's going to pop up And I theorized that theoretically
 (8) it's - pop the whole ship off and now you've got a ship off
 (9) the reef with essentially two thirds of the hull gutted out
 (10) Q What were you trying to do when you started up the engine?
 (11) A I wanted to see if I could start the engines use the
 (12) rudder a bit change the heading to get her to go to
 (13) starboard
 (14) Q That was your plan?
 (15) A My have plan yeah master plan
 (16) Q Was your plan at that time to get try and get the vessel
 (17) off the reef in any way?
 (18) A No I wouldn't have done it that way
 (19) Q What would you have done if you wanted to get her off the
 (20) reef?
 (21) A If I wanted to attempt to get off I could have pushed two
 (22) buttons and gone sc speed full astern in about two
 (23) minutes
 (24) Q You didn't do that?
 (25) A No
 (26) Q I want to talk to you about that but before I do that let
 (27) me put on the data logger

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(1) MR CHALOS Your Honor the data logger is
 (2) Plaintiffs Exhibit 81 and I offer it into evidence if it
 (3) hasn't been offered into evidence
 (4) (Exhibit 81 offered)
 (5) MR O NEILL We have no objection
 (6) THE COURT Plaintiffs Exhibit 81 is admitted
 (7) (Exhibit 81 received)
 (8) THE COURT We have a couple of screens out here
 (9) Mine's out and the witness screen is out
 (10) THE CLERK Turn it on
 (11) THE COURT I never turned it off
 (12) THE CLERK They turn them off at nights
 (13) MR CHALOS That's why I like these things Your
 (14) Honor
 (15) BY MR CHALOS
 (16) Q Captain what are we looking at here in Exhibit 81?
 (17) A This is what's called a data logger. It's like - it's a
 (18) printout that comes in a form basically like a grocery market
 (19) receipt spits out a tape. It records the time and in a
 (20) 24 hour clock mode the date and reflects what the engine is
 (21) doing how it's performing how many revolutions and what
 (22) mode
 (23) it's in bridge control or engine control. You see the "BC"
 (24) means bridge control
 (25) And the order that the engine is given there's dead slow
 (26) in there, path ahead and astern forward or back

(1) A Yeah
 (2) Q And how much horsepower are you cranking up at full ahead
 (3) maneuvering?
 (4) A Somewhere around four thousand four or five hundred
 (5) Q So that's about 25 percent of the available power?
 (6) A Yes
 (7) Q How much horsepower are you cranking out when you're on
 (8) dead slow ahead roughly?
 (9) A It's about 30 - probably about 2,000 maybe 4,000
 (10) horsepower
 (11) Q So you're running dead slow ahead all the way up until
 (12) 12:40?
 (13) A Yes
 (14) Q Then you go to half ahead?
 (15) A Yes
 (16) Q That's half ahead maneuvering?
 (17) A Yes
 (18) Q How much horsepower is there?
 (19) A That would be about 5,000
 (20) Q Okay and you continue on until about 12:56?
 (21) A Uh huh
 (22) Q Is that right?
 (23) A Yes
 (24) Q So you're bringing the engines slowly up now?
 (25) A Yes

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(1) Q This tape comes out of the engine room there's a -
 (2) A There's a printer down there that prints out - and I've
 (3) forgotten exactly what the increments are. I think it's every
 (4) 30 seconds or so but gives the status of the engine
 (5) Q Let's start here
 (6) This is where you first stopped the engine at around
 (7) 12:20 - see this up here?
 (8) A Uh huh
 (9) Q It says 9:20 but that's Greenwich time is that right?
 (10) A Yes
 (11) Q And there's a nine hour difference?
 (12) A At that time yeah
 (13) Q So it reads the engine is stopped and it remains stopped
 (14) until about 12:36 am I right? 12:36 am on March 24th?
 (15) A Uh huh
 (16) Q Okay Then at 12:36 you start her up and you put her dead
 (17) slow ahead am I correct?
 (18) A Yes yes
 (19) Q Captain just so we get a frame of reference how much
 (20) horsepower does this engine generate if you're on full ahead
 (21) emergency?
 (22) A Emergency mode, which is a hundred and two percent of
 (23) capacity it cranks out about 308 - the RTAs crank out about
 (24) 33,000 horsepower
 (25) Q 33,000 horsepower?

(1) Q What are you doing with your rudder at this time?
 (2) A Well initially before I ever started the engine we cycled
 (3) the rudder hard right hard left three or four times and timed
 (4) it
 (5) Q What does that mean?
 (6) A Well you put it all the way over one way and all the way
 (7) over the other and basically with a stopwatch timed it in order
 (8) sure it responded in the time frame that I wanted it to or
 (9) should have which indicated to me there was no
 (10) obstruction on
 (11) pinnacles astern that were back there
 (12) Q Why did you do that? I mean why were you -
 (13) A I just wanted to make sure the stern was clear as much
 (14) as
 (15) I could. That's all I had to go with a feeler I guess
 (16) Q That's why you started the engine that slow at that time
 (17) to see if the propeller was clear back there?
 (18) A Yes, well clear back and - and there was no violent
 (19) motion it was going to change. What I was living with or
 (20) what
 (21) I was living with or looking at then wasn't - I didn't
 (22) perceive it as life-threatening right then and I didn't want to
 (23) do anything that was going to make it life-threatening
 (24) Cautiously proceeded
 (25) Q Now Captain at some point at 12:56 you went to full
 (26) ahead?
 (27) A Uh huh
 (28) Q What was the state of the tide at this point?

(1) A State of the tide was on the rise. Calculated that and I
 (2) had another concern that the tide would create more
 buoyancy in
 (3) that port side and the port list and a rising tide were dual
 (4) concerns of lifting the vessel
 (5) Q You expected high water at what time?
 (6) A I remember it was looking at a condensed timetable the
 (7) pilot supplies, condensed version. It was somewhere
 around
 (8) 1 15 or 1 20, something like that, I recall
 (9) Q Now at 12 56 you went to full ahead maneuvering is that
 (10) right?
 (11) A That's correct
 (12) Q Eventually gets up to about 55 rpms - see this?
 (13) A Yes
 (14) Q And at that rpm you're generating 8 500 horsepower?
 (15) A Approximately yeah
 (16) Q Did you ever exceed 8 500 horsepower at any time while you
 (17) were on the reef?
 (18) A No
 (19) Q Did you ever push those two buttons and get it up to
 (20) emergency full ahead?
 (21) A No
 (22) Q Is there any indication here at all that at any time
 (23) between the time you started the engine at 12 36 until the time
 (24) you stopped the engine at 1 41 of you putting the engine in
 (25) reverse?

(1) A No
 (2) Q Okay you continued full ahead until about 1 40 in the
 (3) morning full ahead maneuvering that is?
 (4) A Yeah
 (5) Q Until about 1 40 in the morning and then you stopped it by
 (6) 1 41 is that correct?
 (7) A Yes
 (8) Q Captain while you were running your engine and
 maneuvering
 (9) your rudder what happened?
 (10) A She tended to - I found a heading where she finally came
 (11) to start to lean to starboard a bit and you could physically
 (12) feel her almost settle like she was coming to rest if you
 (13) will like she didn't have this herky feeling that she had
 (14) before where she was leaning to port
 (15) Q Did you based on what information was coming in to you
 and
 (16) your own intuitive sense did you deduce that your vessel was
 (17) on the ledge at that point?
 (18) A The way she responded with the rudder the small
 increments
 (19) of rudder - I don't think I used more than five to ten degrees
 (20) of rudder with the engine running - it confused me because
 (21) she seemed to pivot either well right around her normal
 (22) pivoting point, which is about a third of the way back from
 the
 (23) bow
 (24) I mean she seemed to respond if very vessel has a pivot
 (25) point when you turn it it doesn't slide sideways. It is

(1) some of that but depending on the trim of the vessel it'll
 (2) turn but - and it seemed to me she was almost impaled on a
 (3) rock you know like a point she turned very freely but at
 (4) the same time she was reporting damage further aft so I
 (5) couldn't figure out how she could be damaged further aft
 and be
 (6) pivoting so freely. It was almost like she was on a ledge but
 (7) she wasn't and I just couldn't - it didn't make sense to me
 (8) Q And what was your plan at this point using the rudder and
 (9) the engine?
 (10) A Just to get her to settle with a starboard list if you
 (11) will and in a falling tide get her over that high water get
 (12) her to a falling tide where she would - there would be less
 (13) water to force her up with the remaining buoyancy
 (14) Q Did she eventually list to starboard and settle down?
 (15) A She listed to starboard yeah
 (16) Q What did you do after that happened?
 (17) A Stopped the engine
 (18) Q So you got whatever you were trying to do and that is to
 (19) get her to go to starboard as opposed to port?
 (20) A Yeah
 (21) Q And Captain Mr O'Neill played for you yesterday a
 (22) tape -
 (23) A Uh huh
 (24) Q - of a call that you made to the Coast Guard at 1 07
 (25) a.m. this is while you were still running your engine in full

(1) ahead maneuvering?
 (2) A Uh huh yes
 (3) Q And in that tape you're telling Commander McCall - who
 (4) was the captain of the port - that you're trying to extract
 (5) the vessel from the reef do you remember that?
 (6) A Yes
 (7) Q Why did you tell him that?
 (8) A I would assume all I could say was just wishful thinking
 (9) I sure - I wasn't doing that
 (10) Q What do you mean by that?
 (11) A Maybe it was just a pie in the sky idea. I sure wasn't
 (12) taking any action to achieve that
 (13) Q When you say action you mean like putting your engines
 (14) in reverse?
 (15) A Yeah
 (16) Q Or using the full power available to you?
 (17) A Or full power of the vessel yeah
 (18) Q What was your state of mind Captain when you made that
 (19) call?
 (20) A Wasn't a whole lot better than when I'd made the initial
 (21) call
 (22) Q Looking back on it now Captain do you believe you were in
 (23) shock at the time?
 (24) A I don't know about shock. I was operating on adrenaline
 (25) and instinct is the best way I can describe it. I was just

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(1) going with what -- it was a gut wrenching experience. That's
 (2) about all I had left -- was a piece of my gut to go on and --
 (3) Q Now after you made that call to Commander McCall did
 (4) Chief Mate Kunkel come back to the bridge?
 (5) A He came back and --
 (6) Q What did he say to you?
 (7) A -- in that time frame he said that the stability of the
 (8) vessel was pretty iffy as he could best calculate it the
 (9) stability with the stability computer he had and this was
 (10) about a quarter after one I think or something like that in
 (11) that time frame
 (12) Q You remember that being after the call to the Coast Guard?
 (13) A Pretty sure I do yeah I mean I remember standing in the
 (14) forepart of the wheelhouse with the radio in my hand and
 (15) coming around and saying I let's go back in the chart room
 (16) and
 (17) he said the stability was kind of iffy as best he could
 (18) ascertain and I told him Well we're not going anywhere
 (19) but
 (20) he -- told him to be prepared to ballast down four starboard
 (21) was still intact be ready to flood that if necessary
 (22) Q What effect would that have?
 (23) A Put more weight on the starboard side
 (24) Q Would that cause the ship to go down lower?
 (25) A Deeper, yes
 (26) Q And you told us you sent Chief -- or Second Mate LeCain
 (27) forward to walk out the anchor prior to that is that right?

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(1) A Put the starboard anchor -- walk the starboard anchor and
 (2) put it in the water and the port anchor to the water's edge
 (3) Q Captain if indeed you were trying to get the vessel off
 (4) the reef is putting your anchor down and telling your chief
 (5) mate to prepare to ballast down one of the tanks consistent
 (6) with someone trying to extract the vessel from the shoal?
 (7) A No
 (8) Q What is it more consistent with?
 (9) A Best trying to hold your position there or staying there
 (10) Q Is that what you were trying to do at that point?
 (11) A Essentially I was trying to stabilize the vessel
 (12) Q And hold her on the reef?
 (13) A Well, hold her on whatever the obstruction was, the reef
 (14) pinnacle or ledge, whatever she had impacted with
 (15) Q Yesterday -- I want to turn to another subject
 (16) Yesterday your radio officer Mr. Roberson testified -- or
 (17) it was the day before -- testified that at some point a call
 (18) came in from Mr. Myers on the MARSAT telephone?
 (19) A Uh huh
 (20) Q You remember that?
 (21) A Yes
 (22) Q That was in that time frame when -- the 12:30 to 1:00 time
 (23) frame as best you remember is that right?
 (24) A Yeah right in there because I remember him coming up
 (25) to
 (26) the bridge and saying, Paul Myers wants to speak to you in the

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(1) radio shack on the radio
 (2) Q And did you go down below to speak to him in the radio
 (3) room?
 (4) A Momentarily yeah
 (5) Q How long did you remain in the radio room?
 (6) A I -- he handed me the phone Paul said good morning or
 (7) hi
 (8) or whatever and I said -- responded and I think we -- I don't
 (9) know if time was impressed or not but it seemed like two
 (10) minutes I was on the phone with him and then I left
 (11) Q You gave him a report as to what happened and what was
 (12) going on?
 (13) A As near as I can recall I said Yes we're aground I
 (14) don't know -- I think he testified that I said something about
 (15) the ice or -- you know I really -- I don't recall much of what
 (16) I said to him
 (17) Q Okay Mr. Roberson testified that one of the things that
 (18) he heard you say was that it's my fault Do you remember
 (19) that?
 (20) A I could have said that yeah
 (21) Q No Do you remember Mr. Roberson saying it?
 (22) A I remember Mr. Roberson saying it
 (23) Q Okay do you remember saying that?
 (24) A The way I was feeling right then I -- more than likely I
 (25) could have said that or words to that effect
 (26) Q Okay if you said words to that effect what did you mean

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(1) by that?
 (2) A Master of the ship you assume that responsibility for
 (3) things that happen whatever happens
 (4) Q Well did you at that point in your mind as master of that
 (5) ship accept the responsibility for that grounding?
 (6) A Of course
 (7) Q Did you at any time after you got your wits about you and
 (8) you were up there did you call the third mate over and start
 (9) yelling at him or castigate him in any way?
 (10) A No
 (11) Q Did you yell at the helmsman or castigate him?
 (12) A No
 (13) Q Now Captain at some point the Coast Guard came on
 (14) board
 (15) am I correct?
 (16) A Yeah
 (17) Q That was about 3:30 in the morning?
 (18) A Yes
 (19) Q You talked with them?
 (20) A Yes
 (21) Q You --
 (22) A The Coast Guard and I think Mr. Lawn too
 (23) Q Mr. Lawn was with the Department of Environmental
 (24) Conservation?
 (25) A Conservation in Valdez yes
 (26) Q You had a chance to speak to all three gentlemen?

(1) A Yes
 (2) Q In close proximity to them?
 (3) A Yes
 (4) Q Did you give them a report of the situation?
 (5) A What I knew of it essentially the damage that I knew to
 (6) the ship and how - yeah essentially I give them all the
 (7) information that I had
 (8) Q How long did you spend with them briefing them and telling
 (9) them what happened - so on and so forth?
 (10) A That initial meeting Mr. Iwata wasn't so much - he
 (11) wanted
 (12) to avail himself of the satellite telephone so I escorted him
 (13) to the radio room, showed him how to work it and kind of put
 (14) the radio operator in charge of him so he could do the
 (15) calling
 (16) that he had to do. And then proceeded with Mr. Delozier
 (17) and
 (18) Lieutenant Commander Falkenstein. Probably two hours
 (19) with
 (20) them.
 (21) Q During that period of time Captain did they have a chance
 (22) to observe you - your demeanor - your mannerisms?
 (23) A Yeah I was - you know - with them.
 (24) Q Did they have a chance to watch your walking?
 (25) A Yes
 (26) Q You spoke to them?
 (27) A Yes
 (28) Q Did they ever indicate to you at any time that you were
 (29) with them that they believed that you were impaired?

(1) manual based on the circumstances that he finds himself in?
 (2) A Yeah he would have to be. Otherwise if you had a
 (3) manual
 (4) that would predict all possible scenarios you would have a
 (5) manual that would more than fill this courtroom. You just
 (6) run it - you can't codify every expected situation in
 (7) navigating a vessel any vessel.
 (8) Q Okay. Now in this manual there are certain watch
 (9) conditions that - that tell the master and the officers how
 (10) they should act in a particular situation. Are you aware of
 (11) that?
 (12) A Well not so much act but what the manning
 (13) requirements of
 (14) each situation for the bridge navigation team should be.
 (15) Q Okay there are four watch conditions are there not?
 (16) A As I recall yeah.
 (17) Q A B C and D?
 (18) A Yeah.
 (19) Q And you've heard - well let me put the watch conditions
 (20) on the screen. We can talk about them. Let's start with C.
 (21) There's going to be some testimony in this trial Captain
 (22) that some captains and Exxon take the position that Watch
 (23) Condition C applied on the night of the grounding?
 (24) A Uh huh.
 (25) Q Okay. Let's look at Watch Condition C.
 (26) A Okay.
 (27) Q Okay?

(1) A No.
 (2) Q Or intoxicated?
 (3) A No.
 (4) Q Did they ever indicate to you that they wanted to remove
 (5) you and relieve you of your duties?
 (6) A No.
 (7) Q Did - as best as you know did they have the authority to
 (8) do that?
 (9) A Yes.
 (10) Q Captain I want to change subjects again please I want
 (11) to talk about - excuse me one second let me just get this out
 (12) of the way.
 (13) I want to talk about the Exxon bridge organization manual.
 (14) How do you characterize that manual?
 (15) A It's essentially a guide or guidelines for the navigation
 (16) the safe navigation of Exxon ships at the time - or was.
 (17) Q Does the captain have any discretion in interpreting that
 (18) manual?
 (19) A Yes. In the introduction it said it's there - I believe
 (20) is words - or words to the effect that it's there to provide
 (21) guidance, guidance and -
 (22) Guidance and you are guided by it and you interpret it. It
 (23) was all explained to me that it's there to help you interpret
 (24) situations.
 (25) Q Is the captain left with the discretion to interpret that

(1) A Yeah.
 (2) Q There we go we'll have it blown up. It says here Watch
 (3) Condition C applies in situations such as in restricted waters
 (4) with clear visibility and high density traffic.
 (5) A Yeah.
 (6) Q That's - or when entering or leaving port with clear
 (7) visibility regardless of traffic?
 (8) A Yeah.
 (9) Q See that?
 (10) A Yeah.
 (11) Q On the night of March 23rd were you in restricted waters
 (12) with clear visibility and high density traffic?
 (13) A I would consider them restricted waters with clear
 (14) visibility but there was no traffic.
 (15) Q Okay so that section doesn't apply in your judgment?
 (16) A No.
 (17) Q Is that right?
 (18) A Yes.
 (19) Q Incidentally is there anything in that manual in the
 (20) bridge organization manual that defines restricted waters?
 (21) A No I think that's - that's left to the eyes of the
 (22) beholder.
 (23) Q Which is the captain?
 (24) A Yes or the one -
 (25) Q How about clear visibility? Does it define clear

(1) visibility?
 (2) A Not specifically no. That's a little clearer no pun
 (3) intended
 (4) Q How about high density traffic does it define high density
 (5) traffic?
 (6) A Usually - no there's no specific definition but usually
 (7) multiple vessels
 (8) Q Okay how about the second condition when entering or
 (9) leaving port with clear visibility regardless of traffic?
 (10) A Uh huh
 (11) Q Did that condition apply?
 (12) A No because we had dropped the harbor pilot off and
 (13) were
 (14) clear of the port of Valdez
 (15) Q So in your mind once you dropped the pilot off at Rocky
 (16) Point you're clear of the port is that what you're saying?
 (17) A It's my determination evidently it's Mr. LeGrange's
 (18) determination too the videotape the vessel had left the
 (19) port
 (20) of Valdez
 (21) Q You're talking about Exhibit 2 where Mr. LeGrange had said
 (22) the port of Valdez was here?
 (23) A Yeah and the vessel had left the port
 (24) Q Now if Watch Condition C applied - would that require two
 (25) officers to be on the bridge?
 (26) A As I - as I recall yeah two officers required
 (27) Q Okay let's take - what condition did you believe applied

(1) A Uh huh
 (2) Q You said you started up there in 1977 that's when you got
 (3) your pilotage endorsement?
 (4) A That's correct
 (5) Q When you took the test that was a written test was it
 (6) not?
 (7) A Yes
 (8) Q Okay and that test was a memorization test?
 (9) A Essentially you memorized the characteristics of the 12 -
 (10) at the time there was 12 aids to navigation in that area
 (11) Q 12 aids over how big an area?
 (12) A The run is 48 miles roughly
 (13) Q Did anybody ever take you out to the Coast Guard - before
 (14) they gave you your license your endorsement they take you
 (15) out
 (16) and ask you to show them how you navigate a vessel?
 (17) A No they had chartered a maritime overseas ship the
 (18) Overseas Chicago and 30 or 40 of us sat on the ship and
 (19) rode
 (20) up and down Prince William Sound for 25 round trips
 (21) Q What I'm talking about is before the Coast Guard gave you
 (22) that endorsement did a Coast Guard officer get on the ship
 (23) with you and watch you navigate or pilot the vessel?
 (24) A You mean a practical exam?
 (25) Q Yeah
 (26) A No
 (27) Q Was it a driving test?

(1) on the evening of March 23rd?
 (2) A My determination was Watch Condition A
 (3) Q Let's look at Watch Condition A Okay?
 (4) A Yeah
 (5) Q Watch Condition A applies in situations such as in open
 (6) waters with clear visibility and regardless of traffic or in
 (7) restricted waters with clear visibility and little or no
 (8) traffic
 (9) A Yeah
 (10) Q Did the first condition apply?
 (11) A No I wouldn't consider we were open waters in the open
 (12) ocean no
 (13) Q Okay did you consider that you were in restricted waters?
 (14) Were you in restricted waters as you define the term?
 (15) A In my definition yeah they were restricted waters
 (16) Q With clear visibility?
 (17) A Clear visibility
 (18) Q And was there any traffic there that night?
 (19) A Not at that time no
 (20) Q Okay Under Watch Condition A how many officers are
 (21) required to be on the bridge?
 (22) A One deck officer
 (23) Q All right Captain I want to change subjects again
 (24) Mr. O'Neill asked you some questions about pilotage You
 (25) remember that?

(1) A No
 (2) Q It was a written test wasn't it?
 (3) A Yes
 (4) Q Now when you first started up there was there - was a
 (5) pilot required someone with a pilotage endorsement required
 (6) from Cape Hinchinbrook all the way up to the state pilot
 (7) station at Rocky Point?
 (8) A Yes
 (9) Q Was that requirement eased over the years?
 (10) A The first notification or easing that I was - I was aware
 (11) of was in 1980 or '81
 (12) Q Let me put up a - by the way how did you become aware of
 (13) it?
 (14) A Well there were ships coming in there, foreign flag ships
 (15) that wanted a pilot and they - they went out there with a -
 (16) what's the name of that boat the Blue Moon was the name
 (17) of the
 (18) boat that went out there and used that as a pilot launch It
 (19) subsequently sunk the pilots ran it aground on Montague
 (20) Island
 (21) and gutted it slipped into oblivion It was kind of
 (22) dangerous
 (23) and snotty boarding out there at Cape Hinchinbrook It's a
 (24) rough patch of water, so they didn't want to go out there
 (25) anymore and they requested the Coast Guard ease the
 (26) pilotage
 (27) requirement if you will
 (28) Q Do you recall seeing the captain of the port order to that
 (29) effect?

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- (1) A I saw a couple of them. More so I saw the ships coming in
(2) not speaking English ships much larger than the Valdez
(3) and
(4) going up to Rocky Point
(5) Q With no one with a pilotage endorsement on board is that
(6) what you're saying?
(7) A Yeah, and never been there either
(8) MR CHALOS Let's put up the first copy of the port
(9) order. This is exhibit Defendants Exhibit 2420 Your Honor
(10) which I offer into evidence
(11) (Exhibit 2420 offered)
(12) MR O NEILL No objection
(13) THE COURT Exhibit 2420 of the defendants is
(14) admitted
(15) (Exhibit 2420 received)
(16) BY MR CHALOS
(17) Q Okay This is dated October 12 1981?
(18) A Uh huh
(19) Q Have you seen this captain of the port order?
(20) A Yeah, the - I've seen this or saw this one back then
(21) because it refers to the Blue Moon
(22) Q Okay Was this the start of the easing of the regulations
(23) as you - you indicated?
(24) A Yes and I think there was - yeah because they could
(25) only
(26) do it daylight daylight only
(27) Q So in 1981 the pilotage requirement was eased to permit

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- (1) vessels without someone with a pilotage endorsement to go into
(2) Prince William Sound in daylight hours?
(3) A As I understood it yeah
(4) Q And in the summertime that's almost the whole day isn't
(5) it?
(6) A Yes
(7) Q Now Captain did you ever become aware of any proposals
(8) by
(9) the Coast Guard to do away with the pilotage requirement
(10) entirely?
(11) A Yeah through a couple sources
(12) Q Tell us about it
(13) A One was when I was on the east coast and there was a big
(14) clamor amongst the east coast pilot associations because
(15) they
(16) were - there was a notice of proposed rule-making kicking
(17) around Washington D C to waive pilotage in Prince William
(18) Sound but at the same time they had pork-barreled some
(19) other
(20) pilotage regulations that affected the east coast specifically
(21) affected some of these east coast pilot associations and
(22) they
(23) were pretty exercised about it and they were fighting,
(24) Q What did you understand from the discussions about it with
(25) the Prince William Sound pilotage?
(26) A It was related to me, or I saw the paper some pilot showed
(27) me they were going to waive it altogether, there would be no
(28) requirement whatsoever
(29) Q Do you have a time frame for that?

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- (1) A That it would have been about '85 I was on the east coast
(2) sailing the east coast
(3) Q All right late '85?
(4) A Fall of '85
(5) Q Okay You said there was some other sources?
(6) A Yes subsequent to that and talking to fellow mariners
(7) I mentioned to Mr O'Neill yesterday, Fallon at least was
(8) requiring anybody to get it anymore
(9) Q What's that time frame?
(10) A That would have been '85 '86, '87 they had - there were
(11) younger officers coming up and sailing master up there
(12) without
(13) the pilotage endorsement in the Exxon fleet and those of us
(14) -
(15) the Oregon bunch if you will from '77 didn't We still had
(16) it from the olden days but I was the youngest guy up there
(17) in
(18) '77 that got it but those other fellows most of them had
(19) retired and they weren't - a lot of them weren't replaced
(20) with
(21) people with endorsements
(22) Furthermore at one of those management conferences I
(23) went
(24) to say in '86 Mr Frossi got up and told us it was being
(25) waived or in the process of being waived
(26) Q The pilotage requirement?
(27) A Yes
(28) Q Did there come a time when you saw a letter from Mr
(29) Martineau who is the west coast - what is his fleet manager
(30) ship coordinator?

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- (1) A When I joined the Valdez in '87 he - in reviewing the
(2) circular letter west coast fleet letter book he took all the
(3) company correspondence and put it in a book in
(4) chronological
(5) form he sent a cover letter with an underlying document that
(6) was from the Alaska Maritime Agency
(7) He was the port captain at the time Alaska Maritime
(8) Agencies
(9) MR CHALOS This is Defendants 3493 Your Honor -
(10) I'm sorry 83 3483
(11) THE COURT 3483
(12) MR O NEILL No objection
(13) THE COURT 3483 is admitted
(14) MR CHALOS Thank you
(15) MR O NEILL Welcome
(16) (Exhibit 3483 received)
(17) BY MR CHALOS
(18) Q Let's look at this letter Did you see this letter when
(19) you returned to the west coast?
(20) A Yeah I'm reviewing the fleet letter west coast fleet
(21) letter number 1686
(22) Q This letter says - this is from Mr Martineau says the
(23) attached letter from Alaska Maritime Agencies explains the new
(24) pilotage requirements for Prince William Sound Alaska then
(25) they ask you to review it Let's take a look at that letter
(26) now

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(1) This is dated October 16th 1986 The letter from Alaska
 (2) Maritime is dated September 19 1986 Did you read this
 (3) letter sir?
 (4) A Yes sir
 (5) THE COURT Part of the same exhibit
 (6) MR CHALOS September 19 1986
 (7) MR CHALOS Yes that s part of the same exhibit
 (8) Your Honor
 (9) THE COURT Go ahead
 (10) BY MR CHALOS
 (11) Q The pilotage waived now requirements Can you see that?
 (12) A Uh huh
 (13) Q Can you read the first paragraph please?
 (14) A I ffective - effective September 1st 1986 the United
 (15) States Coast Guard requirement for daylight passage
 (16) Prince
 (17) With in Sound h is been - for vessels without pilot age h is
 (18) been
 (19) waived All non pilot age vessels will be able to transit from
 (20) Cape Hinchinbrook to the pilot station at all hours, as long
 (21) as
 (22) visibilities remains two miles or gre iter the same remains
 (23) true for the outbound lines from the pilot station to Cape
 (24) Hinchinbrook
 (25) Q Okay Captain let s stop for a second
 (26) In 1986 1987 1988 and 1989 where was the pilot station?
 (27) A The only pilot station I knew was Rocky Point
 (28) Q So when you read this Captain you read that first

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(1) paragraph?
 (2) A Uh huh
 (3) Q What did you conclude?
 (4) A Well before you had to do it in daylight and now as long
 (5) as you got two miles of visibility you could come day or
 (6) night
 (7) without pilot age to the pilot station
 (8) Q Well that - it says here for non pilotage vessels?
 (9) A Yeah
 (10) Q Right you see that?
 (11) A Yeah
 (12) Q What did you conclude from that?
 (13) A Well - I concluded th it if you didn't have a pilotage
 (14) endorsement now you weren't bound to the daylight only
 (15) restriction now you could do it at night as well
 (16) Q So you could go up any time?
 (17) A Yeah without anybody having a pilotage endorsement
 (18) Q Let me ask you this Did that mean - what we just read
 (19) did that mean that someone who had never been in the area
 (20) before didn't have a pilotage endorsement could go from
 (21) Cape
 (22) Hinchinbrook -
 (23) A Yeah
 (24) Q - up to the pilot station at Rocky Point?
 (25) A Yeah
 (26) Q At any time?
 (27) A Yes

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(1) Q Right Without having someone with a pilotage
 (2) endorsement?
 (3) A Yeah In a sense it - this letter taken in conjunction
 (4) with what I knew is almost - I won't say nonsensical but
 (5) common sense would dictate th it easiest way to explain it
 (6) if
 (7) you had two ships coming up there one pilotage one with
 (8) an
 (9) endorsement like myself on his license or her license and
 (10) another ship come up there with no officer whatsoever with
 (11) an
 (12) endorsement both would be treated equally with the
 (13) exception
 (14) th it they would say since I had the endorsement I had to be
 (15) there If I didn't have the endorsement I wouldn't have to
 (16) be
 (17) on the bridge
 (18) It just doesn't make any sense In essence it waives the
 (19) piloting
 (20) Q So what you re saying then that if they re going to let
 (21) someone whose never been up there before go in without an
 (22) endorsement and it made no sense that someone with an
 (23) endorsement had to stay on the bridge the whole - the whole
 (24) transit?
 (25) A Yeah bec use if I was master of a ship without a pilotage
 (26) endorsement I wouldn't be required to be up there but
 (27) since I
 (28) had it I had to be up there
 (29) Q And from this letter you deduced that the pilotage
 (30) requirements had been waived?
 (31) A I concluded they d been waived and with the legislation
 (32) th it preceded it th it they were trying to waive it except they

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(1) kept sandbagging other regulations on it
 (2) Q Captain did you ever speak to the Coast Guard about this?
 (3) A Yes
 (4) Q Who did you speak with?
 (5) A Commander McC ill
 (6) Q What did Commander M Call tell you about pilotage?
 (7) A I was over in town in '8 - I think it was the summer
 (8) of 88 and stopped in to discuss another matter with him
 (9) and
 (10) asked him at the behest of my chief mate at the time who
 (11) was
 (12) interested in getting the pilotage and possibly joining the
 (13) Southwest State Pilots - Captain Murphy's organization he
 (14) was
 (15) exploring that possibility and I asked for him how does it -
 (16) In this day and age how do you go about getting pilotage
 (17) And
 (18) he said Well we don't give it anymore we re not going to
 (19) require it and it ll be a matter of law shortly
 (20) So he says Tell him not to bother The federal government
 (21) will not require th it pilot age anymore He says - th it s
 (22) what
 (23) he told me and I passed that on to the chief mate
 (24) Q All right Going back to this letter from Alaska Maritime
 (25) there are three - three conditions here The third one says a
 (26) bridge navigation team one of the requirements if you had no
 (27) pilotage says a bridge navigation team consisting of an extra
 (28) watch stander under the direction of a deck officer other than
 (29) the one on watch must report the vessel s position every ten
 (30) minutes while navigating from Cape Hinchinbrook to Mc Intagu

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(1) Point
 (2) Do you see that?
 (3) A Yes
 (4) Q Where is Montague Point in relation to Cape Hinchinbrook?
 (5) A It's - it's directly across. It's the other side of
 (6) Hinchinbrook Entrance
 (7) Q So that's way way down from Bligh Reef is that right?
 (8) A Yes. It's the entrance from - passage from the Gulf of
 (9) Alaska into Prince William Sound
 (10) Q 30 miles away from Bligh Reef?
 (11) A More like 38
 (12) Q Okay, so in your mind does point 3 apply to the area
 (13) around Bligh Reef?
 (14) A Not to my understanding, no.
 (15) Q Now I want to show you that 88 the - I want to show you
 (16) the 1988 proposed rule making by the Coast Guard. It's Exhibit
 (17) 2430. Defendants 2430 which I offer into evidence.
 (18) (Exhibit 2430 offered)
 (19) MR O NEILL: No objection.
 (20) THE COURT: Defendants 2430 is admitted.
 (21) (Exhibit 2430 received)
 (22) MR CHALOS: This is going to be very hard to read
 (23) but let me ask you some questions, Captain.
 (24) BY MR CHALOS:
 (25) Q Were you aware of the 1988 proposed rule making to do
 away

(1) matter?
 (2) A No.
 (3) Q What do you mean by that?
 (4) A Upon my termination they had supplied me with counsel
 for
 (5) a couple days and that was it. And that's when I
 approached
 (6) you.
 (7) Q Let me ask you this. There did come a time when Exxon
 (8) started to reimburse you for your legal fees, did it not?
 (9) A Yes.
 (10) Q Do you have an understanding as to why they did that?
 (11) A My understanding was that they were threatened with
 legal
 (12) action under the employment laws of the State of California
 and
 (13) the State of Delaware. They complied with either one or both
 of
 (14) those statutes to reimburse an employee involved in civil
 (15) litigation within the scope of his employment. Correctly?
 (16) Q Did Exxon, to the best of your knowledge, ever pay your
 (17) fees voluntarily?
 (18) A Not to my knowledge of mine.
 (19) Q Now Captain, you were also asked some questions about
 (20) working for the law firm of Chalos and Brown?
 (21) A Yes.
 (22) Q What do you do for Chalos and Brown?
 (23) A Some consulting and investigative work and some light
 (24) paralegal.
 (25) Q What type of consulting?

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(1) with pilotage completely in Prince William Sound?
 (2) A Not this document specifically, only what Commander
 McCull
 (3) informed me the Coast Guard's position is.
 (4) Q Which was in 1988?
 (5) A I believe it was the summer of '88, yeah.
 (6) Q Captain, when you left the bridge of the Exxon Valdez on
 (7) the night of March 23rd, 1989, did you believe that pilotage
 (8) from Prince William Sound had been waived?
 (9) A Yes, for all intents and purposes, as far as I knew.
 (10) Q Did you, when you left the bridge, did - did the lack of
 (11) a - strike that
 (12) When you left the bridge, did Mr. Cousins' lack of a
 (13) pilotage endorsement enter into your reasoning process?
 (14) A Not at all. Not - minimally, if any, because it wasn't -
 (15) his ability was what counted because the endorsement was
 not
 (16) required, so -
 (17) Q Did you believe that Mr. Cousins had the qualifications to
 (18) be conning the vessel in the area that you left him?
 (19) A Yes, both legally and his competence was - he had the
 (20) qualification of competency and licensing, he had the
 (21) qualification.
 (22) Q All right, Captain. Yesterday you were asked some
 (23) questions about Exxon reimbursing you for your legal fees?
 (24) A That's correct.
 (25) Q Did Exxon always reimburse you for your legal fees in this

(1) A Mostly on maritime cases and various matters.
 (2) Q Did you do that work for Chalos and Brown prior to 1989?
 (3) A Yes.
 (4) Q On occasion?
 (5) A I think there was two or three occasions.
 (6) Q Captain, how long have you and I known each other?
 (7) A Unfortunately, it's coming up on 27 years.
 (8) Q I don't blame you for saying that.
 (9) You and I went to school together, did we not?
 (10) A That's correct.
 (11) Q We went to a maritime college together?
 (12) A Yes.
 (13) Q We knew each other long before 1989?
 (14) A Yes.
 (15) Q I'm afraid to ask you this question, but I will. Do you
 (16) consider us friends?
 (17) A Yes.
 (18) Q Was it on the basis of your friendship that you came to us
 (19) in 1989 -
 (20) A Yes.
 (21) Q - when you got into this situation?
 (22) A Yes.
 (23) Q All right, Captain. I want to change subjects.
 (24) Mr. O'Neill read a number of names to you. Do you remember
 (25) of people that you drank with over the years?

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(1) A Yes
 (2) Q Since 1985 that is?
 (3) A Yes
 (4) Q And Mr Neal covered a period up to about the end of 1987
 (5) do you remember that?
 (6) A Yeah
 (7) Q I'm going to read you the names that Mr O'Neill read to
 (8) you and ask you some questions
 (9) A Mr Ogen do you remember him?
 (10) A Yes
 (11) Q Mr Kimtis?
 (12) A Kimtis yes
 (13) Q Mr Carr?
 (14) A Yes
 (15) Q Mr Enright?
 (16) A Yes
 (17) Q Do you remember that?
 (18) A Yes
 (19) Q Okay Now with Mr Ogen when and where did you have a
 (20) drink with him?
 (21) A I think with Mr Ogen and those names you just listed
 (22) Q I have more but I just want to break it down
 (23) A Yeah those times you just read Mr Ogen we were ill
 (24) waiting for an airplane in Yankee Whaler waiting for the
 (25) limo
 (26) to pick us up and take us to LAX in Long Beach

(1) So possibly we did do the same thing if we were waiting for a
 limo
 (2) at a later date
 (3) Q Let me see if I have this right
 (4) With Mr Kimtis you recall one incident in Long Beach where
 (5) you had a beer with the rest of the people we just named?
 (6) A Yeah
 (7) Q And you had you said three beers with him in Portland?
 (8) A Either two or three I don't know if he had four or we
 (9) split - I don't really recall
 (10) Q How about with Mr Carr? Other than this incident did you
 (11) drink with him at all?
 (12) A He - we shared a beer when he was going up to his
 (13) daughter's wedding in Seattle - in Portland
 (14) Q That was in Portland you told us about that?
 (15) A Yeah
 (16) Q This was the one where you said it was in the parking lot?
 (17) A Yes
 (18) Q And that was just a beer you had then?
 (19) A Yeah, and then he got picked up by a cab and went off to
 (20) his daughter's wedding
 (21) Q Okay Now Mr Enright was with you in Long Beach he was
 (22) there at that - that occasion?
 (23) A I remember him being there we got off together I don't
 (24) know if it was '88 or - what specific date I don't recall
 (25) Q All right Mr O'Neill asked you yesterday about drinking

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(1) Q When was that?
 (2) A I guess I would say after - early part of '88
 (3) Q Okay So was Mr Ogen Mr Kimtis Mr Carr and Mr
 (4) Enright at this - at this particular time in the Yankee
 (5) Whaler?
 (6) A Yeah we were all sitting there together waiting for limos
 (7) to take us to the airport
 (8) Q What did you drink with them?
 (9) A As I recall I just had a - you know it was a beer, and
 (10) we were all going on vacation
 (11) Q You had one beer?
 (12) A Yeah that's all we had time for We got there and shortly
 (13) thereafter the limo arrived and we just rode out to the
 (14) airport
 (15) Q Did you drink with Mr Ogen again?
 (16) A I don't think so I - I may have in that same setup He
 (17) was there a couple times as I recall as third mate and we
 (18) may have got off the same time together
 (19) Q How about Mr Kimtis? Did you drink with him again after
 (20) that?
 (21) A I drank with him in Portland the incident Henry's
 (22) grounding, we came and went together, we were on the
 (23) same - we
 (24) were in sync with each other, I'd come back as master, he'd
 (25) come back as chief engineer, so we'd always get off
 together

(1) heavy with an Exxon employee sometime in 1988 you
 remember
 (2) that?
 (3) A Yes
 (4) Q Was that with Mr Enright?
 (5) A Yes
 (6) Q What were the circumstances that led you to drink heavy
 (7) with him?
 (8) A Well we had - I received the word first that this Mr
 (9) Kimtis, the chief engineer, had died in his sleep We went
 up
 (10) and tried to get to the funeral in time
 (11) Q How old was Mr Kimtis?
 (12) A Same age as I was
 (13) Q And what happened?
 (14) A Got in contact with Mr Enright and then we missed the
 (15) funeral and we - kind of sad He liked Mr Kimtis He was a
 (16) second assistant engineer and worked for him and I we
 were
 (17) working together each tour and had a lot in common
 age-wise
 (18) and experience-wise, and we were just - he was a good
 friend
 (19) of mine and he just died in his sleep
 (20) Q Were you upset over his death?
 (21) A Quite yeah
 (22) Q Were you depressed over his death?
 (23) A Yeah pretty much It's kind of a sad thing
 (24) Q Other than this one incident where you drank heavy did
 (25) you at any time between 1986 when you started drinking till

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- (1) the time of the grounding drink with anybody from Exxon in the same way heavy -
- 2 A No
- 3 Q - as you said?
- 4 A No
- 5 Q Did you ever have any other sessions of heavy drinking?
- (6) A No
- (7) Q Now let me give you some other names
- (8) You mentioned Mr Cousins?
- (9) A Yes
- (10) Q When did you drink with Mr Cousins?
- (11) A We shared a beer either in May of '88 Portland shipyard either his apartment or my apartment I've forgotten which
- (12) Q What did you have on that occasion?
- (13) A One beer We were discussing some business
- (14) Q Did you drink with Mr Cousins at any other time?
- (15) A No
- (16) Q Did you ever drink on the ship with him?
- (17) A No
- (18) Q Now you mentioned Mr Dengel Did we already speak about
- (19) Mr Dengel?
- (20) A Mr Dengel and Mr St Pierre yes
- (21) Q We spoke about both of them?
- (22) A Yes
- (23) Q Did you ever drink with them after your return to the west

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- (1) coast in 1987?
- (2) A No I didn't I haven't seen them Well I've seen Mr Dengel a couple of times
- (3) Q Did you drink with him?
- (4) A No
- (5) Q What about Mr Dick and Mr Sturgis?
- (6) A Kevin Dick was a chief mate and Mr Sturgis was a third or
- (7) second mate, got off the ship off the Valdez once and bumped
- (8) into them at the LAX airport at the terminal and they either
- (9) bought me a drink or a beer or I bought them a drink or a beer
- (10) Q What year was that?
- (11) A That was sometime in '88
- (12) Q What did you drink on that occasion?
- (13) A Whatever I bought for them or they bought for me I really
- (14) don't remember I remember it was right there at the terminal
- (15) the gate area
- (16) Q Was it more than one drink?
- (17) A No
- (18) Q What -
- (19) A They went their way and I went mine We were both catching
- (20) airplanes
- (21) Q Okay You spoke about Mr Enright already?
- (22) A Yeah
- (23) Q How about Ms Havens Katie Havens?
- (24) A I drank some wine with her and her husband in Long Beach it

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- (1) dinner one night I think that was in the fall of '88 and then again went to dinner with her and her husband and a friend
- (2) of theirs in San Francisco in late '88
- (3) Q What did you have on that occasion?
- (4) A I think it was just wine with dinner
- (5) Q That's it?
- (6) A Best I can recall yeah
- (7) Q Okay so you had two - two incidents with Ms Haven one in Long Beach and one in San Francisco?
- (8) A Uh huh two
- (9) Q Did you ever drink on board the vessel with Ms Haven?
- (10) A No
- (11) Q We talked about Mr Kimtis already?
- (12) A Yes
- (13) Q How about Mr Kunkel did you ever drink with him?
- (14) A I recall having a beer with him at the lunch landing in Long Beach I was going home He was going home - I - I recall having a beer in his presence or with him I don't know
- (15) if he had one or not
- (16) Q Okay that was on one occasion?
- (17) A Yeah
- (18) Q How about Mr Roberson?
- (19) A Just the afternoon of the grounding
- (20) Q Okay Did you drink with him at all prior to that?
- (21) A No

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- (1) Q Well I'm going to add one more because Mr O'Neill forgot him How about Mr Glowacki?
- (2) A The afternoon of the grounding yeah
- (3) Q Okay Is that it with Mr Glowacki?
- (4) A Yes
- (5) Q How about Mr Stalzer Captain Stalzer?
- (6) A Just as I testified to earlier when he picked me up at the airport in Portland drank or something Portland airport in payment of a bet for a guy and we had some wine seven or eight
- (7) hours later with dinner myself him and the chief officer
- (8) Q Now Captain other than when you had three beers with Mr Kimtis - two or three beers you said?
- (9) A Uh huh
- (10) Q And a couple glasses of wine when you were with Ms Haven and a couple of glasses of wine when you were with Mr -
- (11) Captain Stalzer and the one incident that you spoke about with Mr Enright Did you on any of those occasions have more than one drink?
- (12) A I have to give you a qualified no that possibly I might have had two on one of those occasions but I can't - no more
- (13) than two
- (14) Q I counted as you were talking eleven times where you've had a drink in about a 15 or 16 month period before the grounding am I correct? That sound about right to you?
- (15) A I guess 15 or 16 months yeah

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- (1) Q You consider that excessive drinking?
- (2) A Not by my definition
- (3) Q Other than the Mr. Enright incident that you told us about
- (4) was your drinking done in a socializing way?
- (5) A It was a purely social function - yeah nothing - yeah it
- (6) was social drinking.
- Q Do you know a Mr. Shaw - Jim Shaw?
- (8) A Yes
- (9) Q Did you see Mr. Shaw at any time between 1985 and 1987?
- (10) A No
- (11) Q At all?
- (12) A At all
- (13) Q Don't get mad at me - Captain
- (14) A I'm mad at him
- (15) Q I know - Did he have a reputation in the fleet as being a
- (16) gossip?
- (17) MR O NEILL Objection relevant foundation
- (18) MR CHALOS I'll withdraw it Your Honor
- (19) THE COURT Thank you
- (20) BY MR CHALOS
- (21) Q Did you at any time see Mr. Shaw when you'd been drinking?
- (22) A I had dinner with Mr. Shaw in 1981 and a group of other
- (23) people or something
- (24) Q After 1985 did you ever see Mr. Shaw at all?
- (25) A I saw him once in San Francisco in 1988 for about 30

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- (1) seconds
- (2) Q Had you been drinking on that occasion?
- (3) A No
- (4) Q Where did you see him?
- (5) A I was coming out of the gym on the Exxon Valdez and he
- (6) was
- (7) trying to steal food from us to supply to the Exxon
- (8) Galveston
- (9) and I refused to let him do it and that was it, for about a
- (10) minute there
- (11) Q Did you ask him to leave your ship?
- (12) A No - I just said we're not going to - we do this every
- (13) trip, they come bum boating over to us for stores - if they
- (14) want to starve their people let them starve - We were
- (15) getting
- (16) tired of feeding the fleet
- (17) Q I want to talk to you about the Portland incidents - the
- (18) Henry's incidents - Was your ship disabled at the time?
- (19) A Well it was under repair - It wasn't going - The engine
- (20) was pulled apart - She was up on blocks
- (21) Q It was in dry dock - wasn't it?
- (22) A It was in dry dock - She certainly wasn't going anywhere
- (23) Q And you weren't living on board that ship at the time - were
- (24) you?
- (25) A No - for a portion of time we were living in rented rooms
- (26) basically in a hotel
- (27) Q Captain - there's going to be some testimony that I think
- (28) it's Mr. Day or Mr. Leydencker found some empty cans or
- (29) empty

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- (1) bottles of Henry's beer in some trash containers at various
- (2) places on the ship - Let me ask you - how many people from the
- (3) dry dock company were on the board the ship at any one time?
- (4) A Two or 300
- (5) Q These were workers?
- (6) A Yeah
- Q Yard workers?
- (8) A Yard workers - contract workers - assorted workers
- (9) Q And they all had access to these trash bins?
- (10) A Yes - As I understood the testimony was the dumpster
- (11) was
- (12) on the dock but I'm not mistaken - They were dumpsters
- (13) that
- (14) they moved on the ship every day
- (15) Q Did you ever bring any beer aboard the ship while you were
- (16) in Portland?
- (17) A No
- (18) Q At all?
- (19) A No
- (20) Q Did you ever have any beer or liquor in your room aboard
- (21) the ship in Portland?
- (22) A No
- (23) Q Did you ever have any beer or liquor in your room at any
- (24) time after 1985 on the ship?
- (25) A No
- (26) Q Did you ever violate the company policy - alcohol policy - at
- (27) any time after 1985 by bringing alcohol on board the ship?

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- (1) A No - No
- (2) Q Do you know a Mr. Masciarelli?
- (3) A Vaguely - I know him
- (4) Q Did you ever drink with him on board the ship?
- (5) A No
- (6) Q Do you know a Mr. Emel - Mike Emel?
- (7) A I know who he is - He was an oiler, I believe - I sailed
- (8) with him for a short period of time
- (9) Q Did you ever drink in front of him or in his presence on
- (10) board the ship?
- (11) A No
- (12) Q Were you ever intoxicated on board the ship in Mr. Emel's
- (13) presence?
- (14) A No
- (15) Q Were you ever intoxicated on board the ship at any time?
- (16) A No
- (17) Q Since 1985 - I'm talking about?
- (18) A That's correct
- (19) Q I'd like to ask you about the launch incident
- (20) A Uh huh
- (21) Q Do you remember the testimony about Mrs. Williamson?
- (22) A Yes
- (23) Q Where you at any - first of all - were you out drinking that
- (24) night in San Francisco?
- (25) A As I testified to - I had a glass of wine - some pasta six

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(1) seven hours before Five six seven hours
 (2) Q Is that all you had glass of wine?
 (3) A Yeah
 (4) Q Were you impaired when you got on that launch?
 (5) A Certainly not
 (6) Q Were you intoxicated?
 (7) A No
 (8) Q Were you impolite at all to Mrs Williamson?
 (9) A Not that I was aware of I said hello to her and she
 (10) introduced me to somebody that was in her crew I spent
 (11) most
 (12) of the time with Mr Carr and Ms Jones that were on the
 (13) same
 (14) lunch and a Mr Kleess the extra chief mate I had returned
 (15) talking to them
 (16) Q I wanted to ask you about that What do you mean by you
 (17) retained an extra chief mate in San Francisco?
 (18) A Actually it was a couple days before down in San Pedro or
 (19) Long Beach first and San Pedro double discharge which I
 (20) perceived was going to be kind of marathon hours for some
 (21) of
 (22) the mates
 (23) Q What did you do in that regard?
 (24) A Well the chief mate and second mate were getting
 (25) relieved They were going on vacation and so I just
 (26) retained
 (27) them with their reliefs unless we got up to San Francisco
 (28) to
 (29) make sure we had extra men in power
 (30) Q Were you authorized to do that by the company?

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(1) A I always thought -- assumed I was I wasn't directed to do
 (2) it I took it on my own I called Mr Myers up and told him I
 (3) was going to do that and he said Fine do what you have to
 (4) do
 (5) Q Okay Captain I don't want you to get mad at me but I'm
 (6) going to ask you about Mr Reeder?
 (7) A Uh huh
 (8) Q Had you had an incident with Mr Reeder prior to March of
 (9) 1989?
 (10) A I certainly had
 (11) Q Tell us about it
 (12) A To minimize this he and Mr Paul who is Gulf Coast Fleet
 (13) manager caused myself and -- I was chief officer at the
 (14) time,
 (15) and the captain, they tried to basically have us take the fall
 (16) for their mistake
 (17) Q You felt that they were trying to put the blame on you for
 (18) something they did?
 (19) A We knew it We didn't feel it we knew it
 (20) Q Were you upset with Mr Reeder at the time?
 (21) A Very much so
 (22) Q Did you tell him you were upset?
 (23) A I bumped into him at a subsequent conference and I told
 (24) him
 (25) if he ever tried anything like that again I wouldn't be so
 (26) gentlemanly, and the master was at the same conference
 (27) He was
 (28) a little more emphatic with Mr Reeder and Mr Paul

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(1) Q This is the master that also felt they were trying to put
 (2) the blame on?
 (3) A He didn't feel it We knew it and we had the proof
 (4) Q Let me ask you this In 1989 when you got on the radio
 (5) the walkie talkie -- was that a closed channel by the way
 (6) between two Exxon ships?
 (7) A It was an inhouse walkie talkie channel with private
 (8) crystals yeah
 (9) Q What set you off?
 (10) A As I testified to earlier there was a note there that we
 (11) were being boarded by the Coast Guard because
 (12) supposedly we had
 (13) disabled the main engine and I checked with the engineer
 (14) on
 (15) watch he didn't know anything about it and so I called the
 (16) Coast Guard on a land line or cell phone and asked them the
 (17) sum
 (18) and substance of this boarding or projected boarding and
 (19) he
 (20) told me that the Exxon Galveston the master of the Exxon
 (21) Galveston had called him up and essentially told him we
 (22) had
 (23) disabled the main engine This was because -- it was my
 (24) perception I may have been mistaken but we came into
 (25) anchor
 (26) and the Exxon Galveston came alongside I requested the
 (27) tugboat that assisted the Exxon Galveston alongside to
 (28) remain
 (29) while we did it -- changed over a blind basically in the
 (30) engine room If that went wrong we would have to disable
 (31) the
 (32) main engine but that never occurred and I had a pretty
 (33) strong
 (34) suspicion that Captain Reeder had voiced the tugboat over
 (35) to us

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(1) so we'd have to pry for it and he'd have to write it off on his
 (2) budget The expense would not be incurred by his ship but
 (3) on
 (4) mine
 (5) Q You felt at that time that Captain Reeder was up to trying
 (6) to put something over on you again?
 (7) A Well there had been some other instances I indicated
 (8) Mr
 (9) Shaw had come over there people would come to me
 (10) looking for
 (11) linen and blankets because -- to make his efficiency of
 (12) operation better He basically wasn't supplying the people
 (13) with what they needed and Mr Shaw wanted to borrow food
 (14) from
 (15) me or take food and supply it to them and I refused to give
 (16) it
 (17) to them
 (18) They'd been doing that for almost a year and I wouldn't --
 (19) he could adequately store his vessel That was well within
 (20) his
 (21) purview
 (22) Q Captain is it fair to say you didn't like Mr Reeder?
 (23) A Well I didn't stay awake at nights you know fixating on
 (24) him, but we weren't friends I was kind of ambivalent about
 (25) him We did a professional job prior to that and you know
 (26) lighters and previous history we just went about our
 (27) business
 (28) Q After you had your little tirade and you yelled at him and
 (29) called him all kinds of unpublishable names did you calm
 (30) down?
 (31) A Well there was no calming down to be done It was not
 (32) in

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- (1) emotional outburst It was evidently being a gentleman about
- (2) it doesn't work with him so you had to crank it up a level or
- (3) two and I did and then we went about our business letting his
- (4) vessel go
- (5) Q Well after you yelled at him did you calm down and talk to him?
- (6) A Yeah
- (7) Q In a regular voice?
- (8) A Sure let's get to business
- (9) Q Was the call to Captain Reeder in any way - strike that
- (10) Did the call to Captain Reeder in any way have alcohol involved in it? Did you make that because you were impaired or
- (11) intoxicated?
- (12) A No
- (13) Q You only had one glass of wine you said that day?
- (14) A Yeah, at that point it was one-ish in the morning, it was seven or eight hours before seven hours before
- (15) Q Okay Captain I want to talk now about the time period before you went into South Oaks And I'm almost done
- (16) Prior to going to South Oaks Captain did you ever suffer any blackouts from drinking?
- (17) A No no
- (18) Q Did you ever lose consciousness after drinking?
- (19) A No
- (20) Q You used the term you were never blotto in response to

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- (1) Mr O'Neill's questions when he asked you how did you feel after you had ten to twelve drinks when you were abusing alcohol and you said I wasn't blotto?
- (2) A Yes
- (3) Q What did you mean by that term blotto?
- (4) A My description of the word blotto means - or that condition of blotto would mean where you functioned when you
- (5) didn't know what it was going on you couldn't recall the next day
- (6) what you did the night before
- (7) Q Did you ever have that - that kind of situation?
- (8) A No
- (9) Q When you were abusing alcohol did you ever become intoxicated?
- (10) A Yes
- (11) Q Did you ever become drunk?
- (12) A Yes
- (13) Q Did you feel the effects of - of the alcohol when you were abusing alcohol?
- (14) A Of course yeah
- (15) Q Depending on the number of drinks?
- (16) A Yeah you know you could feel the more you drank the more drunk you got you know
- (17) Q Did people notice when you were abusing alcohol that you were drunk?
- (18) A Yes

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- (1) Q They tell you that? You look drunk?
- (2) A Yes and you had too much to drink
- (3) Q When you were abusing alcohol and you had these sessions where you had ten to twelve drinks -
- (4) A Uh huh
- (5) Q - were there things that you could not do?
- (6) A Yeah most things
- (7) Q Tell us what are those things?
- (8) A Climb up the stairs reid -
- (9) Q Breathe you said?
- (10) A Reid
- (11) Q Oh read?
- (12) A Yeah breathe?
- (13) Q You couldn't climb up the stairs?
- (14) A Well not very well It was sort of a latching motion port to stirboird and couldn't - you know I wasn't going to figure out the meaning of life either I thought process
- (15) wasn't -
- (16) Q Did you stagger around?
- (17) A Yes
- (18) Q Now you said you used to sit on the couch Why is that?
- (19) A It was softer than the floor
- (20) Q Now Captain when you were abusing alcohol did you ever wake up the next day and not remember the events of the night before?

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- (1) A No As I testified to earlier that would be my definition of blotto
- (2) Q Did you during that period when you were abusing alcohol did you ever find that you had to drink more and more to get the same high effect?
- (3) A No About the same amount
- (4) Q Did you ever find that you could drink more before you reached that level of intoxication?
- (5) A Not appreciably
- (6) Appreciably no no
- (7) Q What's the - the answer is no?
- (8) A No
- (9) Q What's the shortest period of time between episodes of abuse prior to 1985?
- (10) A Probably two to three weeks I would say
- (11) Q And what's the longest period?
- (12) A Four to five six months
- (13) Q Between the periods of abuse did you drink at all?
- (14) A Yes
- (15) Q How would you characterize your drinking?
- (16) A Social
- (17) Q What do you mean by that?
- (18) A Normal just a glass of wine with dinner, that was it
- (19) Q At those times would you get intoxicated?
- (20) A No

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- (1) Q Drunk?
 A No
- (2) Q Did you ever suffer any withdrawal symptoms when - in
 (3) between periods of abuse?
 (4) A No
- (5) Q Do you know you understand withdrawal symptoms?
 (6) A Well I've had to have down enough guys with DTs I have
 a
 (7) pretty good idea what it is
- (8) Q Like the shakes is that -
 (9) A Shakes DTs, yeah
- (10) Q You didn't suffer anything like that?
 (11) A No no
- (12) Q Did you ever crave alcohol before South Oaks?
 (13) A No
- (14) Q Have you ever craved alcohol since South Oaks?
 (15) A No
- (16) MR CHALOS Your Honor I have one more area - I
 (17) don't know if you'd like to take a break
- (18) THE COURT Let's take our break now
- (19) Ladies and gentlemen we recessed for 15 minutes at this
 (20) time
- (21) THE CLERK This court is now in recess for 15
 (22) minutes
- (23) (Recess at 10 02)
 (24) (Jury in at 10 22)

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- (1) THE CLERK All rise
- (2) THE COURT Sorry for the delay ladies and gentlemen
 (3) we got a couple of administrative problems taken care of in
 (4) addition to taking our break
- (5) Mr Chalos?
 (6) MR CHALOS Thank you Your Honor
- (7) BY MR CHALOS
- (8) Q Captain Hazelwood before you went into South Oaks you
 (9) mentioned that you were thinking about seeking help?
 (10) A Yes
- (11) Q How long were you thinking about that?
 (12) A Oh I think serious consideration I'd given it probably
 (13) six to eight months prior to
- (14) Q What caused you to look into the South Oaks facility at
 (15) that time?
 (16) A Well I would have to assume - or don't assume I'd come
 (17) to realize, I think, that Captain Pierce's phone call was more
 (18) or less a catalyst
- (19) Q How did you happen to choose South Oaks?
 (20) A Well initially I looked in the yellow pages under
 (21) depression counselor or counseling for depression
 however it's
 (22) listed and it was there, and I heard over the years that it
 (23) was a highly respected facility and it was near my house
- (24) Q Now you mentioned in response to Mr O'Neill's question
 (25) that when you arrived at South Oaks you had your bags packed or

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- (1) you had a bag that was packed?
 (2) A Yeah they - when I called them on the phone the
 previous
 (3) Thursday they suggested if I had the time available they
 (4) suggested the inpatient program which would require you
 (5) residing there
- (6) Q Did you tell them when you called them on Thursday why
 you
 (7) wanted to come in?
 (8) A Essentially what I was going through yeah
- (9) Q You told them you were feeling depressed?
 (10) A On occasion, yeah
- (11) Q And that you would abuse alcohol on occasion?
 (12) A In conjunction with that yes
- (13) Q Were those the conditions that you went in to be treated?
 (14) A That's what I went in for yes That's why I went in
- (15) Q Captain while you were in South Oaks or in the aftercare
 (16) thereafter did anybody ever tell you what your diagnosis was?
 (17) A No
- (18) Q When was the first time that you found out what your
 (19) diagnosis was?
 (20) A When I read it in the newspaper
- (21) Q Since the time that you read it in the newspaper have you
 (22) had occasion to look at the individual disability report or
 (23) IDR?
 (24) A Yes I've seen that document
- (25) Q Let me put that up on the screen Yeah it's hard to

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- (1) read Right there yeah
- (2) Okay actually why don't you - this 300 40 okay
- (3) MR CHALOS Your Honor I don't know if this exhibit
 (4) has been entered into evidence but it's Plaintiffs Exhibit
 (5) 10 If it hasn't I'll offer it
- (6) MR O NEILL I believe it has Judge
- (7) THE COURT Plaintiffs 10 is already admitted
- (8) MR CHALOS That's fine thank you
- (9) BY MR CHALOS
- (10) Q Captain when did you first see this IDR?
 (11) A It's somewhere in this litigation I don't know I last
 (12) year or so
- (13) Q Now there's some numbers 300 40 and 305 02 you see
 that?
 (14) A I'd like to retract the previous answer I filled out the
 (15) top portion
- (16) Q Okay
- (17) A In 1985
- (18) Q This - yeah let's go back to the top
- (19) There that's your handwriting right there?
- (20) A Yes it's my handwriting social security number and the
 (21) checkmark I don't know about the date There is a release
 (22) portion here
- (23) Q You're talking about here?
- (24) A Yeah the release portion which I never released this
 (25) information to the company voluntarily

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- (1) Q You never gave anyone authority to release this
(2) information?
(3) A Never
(4) Q Why was that?
(5) A Because I wanted to protect my privacy
(6) Q Even though you didn't give them permission somebody
from
(7) the South Oaks released this?
(8) A Yes
(9) Q Captain let's go back to - let's leave it the way it is
(10) Did you - did there come a time when you had an - you got
(11) an understanding as to what these numbers mean 300 40 and
305
(12) right there 02 parenthesis DSH dash Roman numeral three
(13) close parenthesis - DSM I got to change my glasses
(14) A Yes I understand it's a code system that physicians use
(15) taking those coded numbers, you enter the DSM III manual
and it
(16) relates to - there's an explanation of what those coded
(17) numbers are And it's my understanding that it's printed in
(18) the newspaper
(19) Q Okay
(20) A Friends in the fourth estate said it was dysthymic
disorder
(21) and alcohol abuse episodic were those - the primary
diagnosis
(22) being dysthymic disorder a mild form of depression
(23) Q Let me just stop you there a second
(24) Does this number 300 40 is that the primary - was that
(25) the primary diagnosis as you understood?

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- (1) A As I understand the way these things are done primary is
(2) the one that comes first
(3) Q Okay What was the primary diagnosis?
(4) A Dysthymic disorder which is a mild form of depression
(5) Q Okay and 305 02 you say is the secondary diagnosis?
(6) A Yes
(7) Q What does that mean?
(8) A As I recall
(9) Q As you understood it?
(10) A As I understood it was episodic abuse of alcohol
(11) Q Was that in fact the condition you went in for to South
(12) Oaks?
(13) A That's essentially the problem that I perceived in myself
(14) and went there for treatment for
(15) Q Captain when you returned to duty in August of 1985 were
(16) you aware that Exxon had a company plan called the employe
(17) health assistance plan or EHAP E H A P?
(18) A That was in place I would say since my recollection was
(19) about '83 it came, received a mailing at home and on the
(20) vessels as well
(21) Q Did that program include help for alcohol and substance
(22) abuse?
(23) A Yes a host of other problems marriage you know
(24) domestic problems personal problems, basically
(25) Q Was this program available to you?

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- (1) A Yes
(2) Q Did you avail yourself of it?
(3) A No
(4) Q Why not?
(5) A Well it involved using an 800 number contacting Texas
(6) basically or wherever whoever the contract provider was I
(7) forgot if it was in Texas or not I didn't think it was
(8) appropriate of a problem of a personal nature you call 800
(9) numbers I'd rather deal with it on a face to face basis
(10) Q Captain since you got out of - since you left South
(11) Oaks
(12) A Yes
(13) Q - did you ever get those feelings of depression again?
(14) A No not really no No more than a normal sadness as you
(15) go through life It's part of living
(16) Q When you attended those AA meetings you said they were
(17) closed meetings and open meetings?
(18) A Yes
(19) Q Did you ever participate in group discussion?
(20) A Some group discussions yeah
(21) Q (Indicating) A fan
(22) A Oh I just heard that
(23) Q Did you ever stand up and speak at these meetings?
(24) A No
(25) Q Did you ever introduce yourself to everyone as an

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- (1) alcoholic?
(2) A No
(3) Q Do you - do you consider yourself an alcoholic Captain?
(4) A Not then nor now
(5) Q When you boarded the vessel on March 23rd 1989 were
you
(6) impaired by alcohol?
(7) A No
(8) Q Did alcohol play any role in the grounding of the Exxon
(9) Valdez Captain?
(10) A No
(11) MR CHALOS Thank you very much
(12) THE WITNESS Back to the book
(13) MR O NEILL If I may cross examination Your Honor?
(14) THE COURT Yes you may
(15) Ladies and gentlemen by agreement the defense counsel
(16) were permitted to go way beyond the extent or scope of Mr
(17) O'Neill's direct examination and questioning Captain
(18) Hazelwood As a consequence Mr O'Neill gets some latitude
(19) now to go through the questioning process to follow up on what
(20) was asked by counsel in their direct what was just essentially
(21) direct examination of Captain Hazelwood
(22) MR O NEILL Thank you Judge
(23) REDIRECT EXAMINATION OF JOSEPH HAZELWOOD
(24) BY MR O NEILL
(25) Q Captain how much time did you spend getting your
testimony

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- (1) ready? How many hours?
 (2) A This sitting down here?
 (3) Q Getting ready to come into court and testify how many
 (4) hours did you work on getting your testimony ready?
 (5) A I'd say total preparation probably six hours
 (6) Q Did you read your entire deposition transcript?
 (7) A No I haven't
 (8) Q Have you read portions of your deposition transcript?
 (9) A I've looked over portions of it, yeah
 (10) Q Did you look over the interview with Mr. Delozier?
 (11) A I think I did, yeah
 (12) Q And did you look over the VTC tapes?
 (13) A Transcripts, yeah
 (14) Q In your normal dealings with people, do you try to be
 (15) honest?
 (16) A I try to be, yeah, I -
 (17) Q When you're talking to somebody about anything other than
 (18) a
 (19) light matter, it's important to be honest, isn't it?
 (20) A Yeah, I would assume so, yes
 (21) Q Now let's talk about - would it be fair to say that
 (22) prior to going into South Oaks, you had violated company
 (23) policy
 (24) with regard to alcohol?
 (25) A Yes
 (26) Q And that your drinking had had some affect on your
 (27) relationship with your job?

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- (1) A I don't know how to answer that. More with my personal
 (2) life, which -
 (3) Q I understand that. But in point of fact, there was now a
 (4) company report by the summer of 1985 that had to do with your
 (5) drinking, isn't that right - the Graves report?
 (6) A Yes, but you asked me about prior to going into South
 (7) Oaks.
 (8) Q Did Captain Pierce, a coworker, call you and talk to you
 (9) about your personal problems?
 (10) A He called me with what he perceived was a personal
 (11) problem.
 (12) Q Now let's take a look at the so-called Graves report for a
 (13) minute. The report goes to the president of the company, the
 (14) law department of the company?
 (15) A Yes.
 (16) Q A third high official in the company?
 (17) A Yeah.
 (18) Q And in it, the report says that you occasionally drank
 (19) aboard ship and the report says that you indicated that you
 (20) came back to the ship from port drunk on several occasions, do
 (21) you see that?
 (22) A That's what his reports says.
 (23) Q Why would Mr. Graves - do you know if Mr. Graves had any
 (24) reason to misstate this or lie about this?
 (25) A I - the only thing I can think, he misinterpreted what I

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- (1) told him, I -
 (2) Q This is in English, isn't it? Drunk, came back from port
 (3) drunk on several occasions?
 (4) A Yes.
 (5) Q Do you know if Mr. Graves had had any motive to lie?
 (6) A Not knowing Mr. Graves, I don't know.
 (7) Q Now Exxon Corporation has stipulated in this case that
 (8) Captain Hazelwood admitted that he had returned to a ship
 (9) from
 (10) port drunk several times. Were you here when His Honor read
 (11) that stipulation?
 (12) A Yes.
 (13) Q Do you have any reason as to why Exxon - let me ask you
 (14) is that a true statement?
 (15) A No, and it wasn't at that time.
 (16) Q What reason would Exxon have and its lawyers have to
 (17) stipulate to something that wasn't true?
 (18) MR. CHALOS: I object, Your Honor. It's asking him to
 (19) speculate on Exxon's motives.
 (20) MR. O'NEILL: I'll reask the question.
 (21) BY MR. O'NEILL:
 (22) Q Do you know of any reason, do you know of any reason
 (23) to alter your years with Exxon and after having an opportunity to
 (24) work on the preparation of this case as to why Exxon and its
 (25) lawyers would stipulate in this court to this jury and this
 (26) judge as to something that isn't true?

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- (1) A No.
 (2) Q You testified that you have a Coast Guard certificate now
 (3) as a captain?
 (4) A Yes.
 (5) Q And you're certified by the Coast Guard to tanker vessels,
 (6) captain tankers and big ships?
 (7) A Any vessels, yeah.
 (8) Q Do you have a job as such?
 (9) A Not at present, no.
 (10) Q And have you had one since the grounding?
 (11) A Yes.
 (12) Q You have?
 (13) A Yes.
 (14) Q A tanker?
 (15) A No, a school ship.
 (16) Q You testified that you won the safety awards in '87 and
 (17) '88?
 (18) A Myself and my crew and my vessel did, yeah.
 (19) Q How about '89?
 (20) A No.
 (21) Q Now you testified in response to the questions from Exxon
 (22) Corporations lawyers, there was some questions about
 (23) self-identification, do you remember those?
 (24) A Yes.
 (25) Q And the questions went along the lines of, "Don't you want

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(1) to encourage self identification and if somebody
(2) self identifies isn't that the kind of behavior that you want
(3) to encourage do you recall that?
(4) A Generally ye ih
(5) Q You didn't self identify did you?
(6) A No No
(7) Q You got a call from Exxon Corporation through Captain -
(8) A Pierce
(9) Q - who said You have a problem I think you ought to get
(10) some help?
(11) A Or work it out or - ye ih
(12) Q And at the same time Mr Graves was reporting - Mr
(13) Graves was investigating instances of drinking prior to you
(14) going into South Oaks?
(15) A Judging from the date of that report ye ih
(16) Q So you didn't self identify?
(17) A No
(18) Q You got caught?
(19) A I - I don't know how Captain Pierce came to call me
(20) Q Now with regard to self identification and this concept
(21) of self identification do you know as you sat there and
(22) testified about it that Exxon Corporation that it was in Exxon
(23) Corporation's interest to say that you had self identified
(24) because it helps them with regard to their argument that they
(25) properly reinstated you in a vessel - you know that didn't

(1) Q Now I want to talk a little bit about your testimony that
(2) you're not an alcoholic
(3) That's your position isn't it?
(4) A Yes
(5) Q Now I want to go back for a minute to your counsel's
(6) opening and I think he used terms like falling down drunk or
(7) wino do you recall that?
(8) A Something like that yes
(9) Q That kind of characterization of people with alcohol
(10) problems really does them a disservice doesn't it?
(11) A It's kind of a stereotype ye ih
(12) Q Because that really -
(13) A Negative stereotype
(14) Q Because the people with alcohol problems that you're aware
(15) of after years of going to AA come from all walks of life -
(16) that's a correct statement isn't it?
(17) A Oh yes
(18) Q All backgrounds?
(19) A Yes
(20) Q It's a disease?
(21) A Well it's - yes as I understand there's - the AMA has
(22) defined it is such
(23) Q And the stereotype of the skid row bum - and I think
(24) that's the expression he used - covers only a very small
(25) percentage of alcoholics doesn't it?

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Vol 8 701

(1) you?
(2) A I'm a little confused now with the -
(3) Q At the time you testified about self identification -
(4) A Yeah
(5) Q - it was you and Exxon Corporation you know that the
(6) concept of self identification was important to their defense
(7) with regard to their reinstating you as a tanker captain you
(8) knew that didn't you?
(9) A The concept of self - I didn't think in those terms, no
(10) Q With regard to this episode of drinking in 1988 the one
(11) where you testified that you had ten or 12 drinks -
(12) A Yes
(13) Q - you were able to drive an automobile after those ten or
(14) 12 drinks weren't you?
(15) A Yes
(16) Q And you did?
(17) A Yes
(18) Q And you had the poor judgment to drive an automobile after
(19) those ten or 12 drinks didn't you?
(20) A Yes
(21) Q And on that same day would it be fair to say that after
(22) you had a number of drinks - three, four five six, seven -
(23) at some point in time you had the poor judgment to continue to
(24) drink didn't you?
(25) A Yes

(1) A It's a percentage of them I don't know how large or
(2) small I really don't know
(3) Q For all we know I could be an alcoholic standing here
(4) isn't that right?
(5) A I suppose so ye ih
(6) MR CHALOS Carry on
(7) MR O NEILL Did you hear that? Did you hear that?
(8) It's a good thing
(9) BY MR O NEILL
(10) Q You went through a 28 day program?
(11) A Yes
(12) Q You came with your bags packed to go through the 28 day
(13) program?
(14) A At their suggestion yes
(15) Q You participated there in what they call group?
(16) A They had individual and group yeah
(17) Q Let's put up the IDR see what was reported to Exxon and
(18) we'll talk about these things Exhibit 208 the treatment was
(19) individual psychotherapy?
(20) A Yes
(21) Q At least as reported here?
(22) A Uh huh
(23) Q Group therapy?
(24) A Uh huh
(25) Q Marital therapy?

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Vol 8 704

- (1) A Yeah
 (2) Q Did you have marital therapy there?
 (3) A Some yes
 (4) Q Alcoholics Anonymous that was parts of the treatment
 (5) prescribed?
 (6) A Well they had a meeting inhouse every night for every
 (7) attendee that was in the residence whether you were -- I
 mean
 (8) the bulimics, manic depressives everybody attended
 (9) monthly
 (10) meeting
 (11) Q Was the treatment as reported to Exxon Corporation did it
 (12) include Alcoholics Anonymous?
 (13) A Yes
 (14) Q Lectures seminars workshops pertaining to alcoholism?
 (15) A Yeah
 (16) Q And did they report to Exxon Shipping Company the Exxon
 (17) defendants After discharge Mr Hazelwood be given a leave of
 (18) absence to get involved in AA Alcoholics Anonymous and
 (19) aftercare?
 (20) A I don't know what they reported to the shipping company
 (21) Q Isn't that what the IDR says?
 (22) A But I don't know where that it goes I assumed it went to
 (23) the
 (24) medical people
 (25) Q Exxon USA even higher up the hierarchy isn't that right?
 (26) A Somewhere in the administrative
 (27) Q Thanks And you went to AA is that a correct statement?

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- (1) A Yes
 (2) Q And you went to the aftercare?
 (3) A Some of it yeah
 (4) Q And then you quit aftercare?
 (5) A Yes
 (6) Q And you went to lectures on alcoholism?
 (7) A While I was an inpatient yeah
 (8) Q And this was as we can see reported to Exxon USA?
 (9) A Somebody there, yeah
 (10) Q Now with regard to your testimony here this morning about
 (11) drinking, and if you have a lot to drink you have trouble
 (12) functioning -- do you recall that?
 (13) A Yes
 (14) Q You can have ten drinks and drive a car can't you?
 (15) A I can get behind the wheel yes
 (16) Q And drive it?
 (17) A Yes
 (18) Q For hours?
 (19) A Well you can drive it yes I don't know about --
 (20) Q Have you ever lied about your drinking?
 (21) A Yes
 (22) Q We know that you've lied to your wife on occasion?
 (23) A Yes
 (24) Q And you lied to Mr DeLozier on occasion too didn't you
 (25) on one occasion that we know of?

- (1) A Yes
 (2) Q Your wife was in favor of help with regard to South
 (3) Oaks?
 (4) A She was in favor at the time to anything I was doing to
 (5) help myself she was in favor of
 (6) Q And all the way through the grounding all the way through
 (7) March 23rd 1989 for three years you never told your wife you
 (8) had resumed drinking did you?
 (9) A I don't think the subject ever came up no
 (10) Q And while you were at home you would go to AA meetings
 (11) and
 (12) she would go to AA meetings?
 (13) A Yes
 (14) Q And occasionally she would go to AA meetings with you?
 (15) A The public meetings yeah
 (16) Q You testified here today that when you went into the
 (17) hospital you were very specific about why you went in You
 (18) said I went in for depression and I went in for episodic
 (19) alcohol abuse That was what I was thinking about when I went
 (20) into the hospital
 (21) Do you recall that?
 (22) A Testimony to that effect yes I went in because moody
 (23) periods yeah And drinking --
 (24) Q But you were very specific in your testimony here today to
 (25) tie it to those two things weren't you?
 (26) A If I answered that way I answered that way yeah

Vol 8 705

- (1) Q And let's go to page 1259 of your deposition transcript
 (2) A Okay
 (3) Q When you were asked the questions about what you were
 (4) thinking or why you went in reading beginning on 1259 line
 (5) 22 and ending on page 1260 line 13 these are the questions
 (6) and answers given at
 (7) Did you have an understanding at that point as to what you
 (8) were treated for? At what point at the point after the
 (9) meeting -- at the points after meeting Dr Vallury and being
 (10) admitted to the hospital?
 (11) Answer No I was never -- it was never articulated or
 (12) said to me
 (13) Question Well what did you think you were being
 (14) treated for?
 (15) Interjection At what point -- another interjection
 (16) At the point when he first checked when he first arrived
 (17) and met with Dr Vallury and checked in
 (18) Answer Well I assumed they knew what they were doing
 (19) and they would treat me for whatever problems I had
 (20) Do you see those?
 (21) A Uh huh
 (22) Q I'll stop there At that point in time you weren't so
 (23) specific about these two problems were you?
 (24) A Well somewhere prior testimony I indicated why I went in
 (25) there

Vol 8 706

(1) Q Did you tie it to the DSMs?
 (2) A No as I mentioned after I saw this IDR I -
 (3) Q Let's talk about that. Here you went into a hospital for
 (4) 28 days?
 (5) A Uh huh
 (6) Q You attended Alcoholics Anonymous for 90 days thereafter?
 (7) A Yeah
 (8) Q You went to Alcoholics Anonymous through February of
 1989?
 (9) A Uh huh
 (10) Q You met with doctors while you were in the hospital?
 (11) A One doctor
 (12) Q And from the time you went into the hospital through after
 (13) the accident your testimony is you never asked anybody what
 (14) you were diagnosed for? That's your testimony?
 (15) A Yes
 (16) Q Okay. You've testified today that you've never blacked
 (17) out?
 (18) A Yeah yes
 (19) Q You've had faulty memory as a result of drinking haven't
 (20) you?
 (21) A Well I couldn't remember trivial matters yeah, yes
 (22) faulty memory
 (23) Q You had sponsors through 1988?
 (24) A Temporary sponsors yes
 (25) Q What's the third tradition in Alcoholics Anonymous?

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(1) A The desire to stop drinking
 (2) Q Plaintiffs Exhibit 127
 (3) What is 127?
 (4) A It's a copy of a bar list for San Francisco City of San
 (5) Francisco and a couple of other places
 (6) Q And you had this for a year in your cabin or just short of
 (7) a year in your cabin?
 (8) A Somewhere around there yeah
 (9) Q And you call it a bar list?
 (10) A Well it's San Francisco bar list I can't read the copy
 (11) too well
 (12) Q Why did you keep it?
 (13) A I thought it was pretty well read. It was pretty funny
 (14) Q Did you ever use it?
 (15) A No
 (16) Q So you've never been to any of these bars in this bar list?
 (17) A Oh I've been to a couple of them
 (18) Q Are these particularly nice joints that are described in
 (19) here?
 (20) A Some are, some aren't
 (21) Q Pretty hard core lot aren't they?
 (22) A No
 (23) Q You want to read some of the excerpts from it out loud and
 (24) we'll make a judgment on that?
 (25) A The whole amount of -

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(1) MR CHALOS Your Honor may I object. This is a
 (2) document that wasn't prepared by this witness. What ver he
 (3) reads is not something that he's written and it's not - it
 (4) doesn't reflect his perception of those places
 (5) THE COURT What was the question again please?
 (6) MR O NEILL I'll - did - I'll move in a different
 (7) direction
 (8) BY MR O NEILL
 (9) Q I want - I don't want to sit here and read this with you
 (10) for an hour
 (11) A Sure
 (12) Q They can read it back in the jury room
 (13) A Sure
 (14) Q I want to talk for a minute about your agreements with
 (15) Exxon Corporation
 (16) A Yes
 (17) Q One of the agreements was finalized the day before your
 (18) deposition is that a correct statement?
 (19) A Yeah the hard copy was finalized yeah
 (20) Q You signed it the day before you were deposed?
 (21) A Yes
 (22) Q Let's take a look for a minute at 827
 (23) A Okay
 (24) Q Can you pull up 827? I'm interested - this is a document
 (25) that you signed correct?

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(1) A Back in '92 yeah
 (2) Q And your lawyer advised you about it when you signed it. I
 (3) assume? Is that a correct statement?
 (4) A Yes
 (5) Q And it was a document that I'm sure you looked at before
 (6) you signed it because it was a document between you and
 Exxon
 (7) Corporation that had to do with the Exxon Valdez isn't that a
 (8) correct statement?
 (9) A That's correct
 (10) Q And would it be fair to say that this document which you
 (11) signed when it defines the incidents at the beginning talks
 (12) about your stay at South Oaks as a quote alcohol
 (13) rehabilitation program?
 (14) A Well participation in a program, yes
 (15) Q In an alcohol rehabilitation program?
 (16) A Very well yes
 (17) Q And if we could go to Plaintiffs Exhibit 828 I have a
 (18) question on Plaintiffs Exhibit 828
 (19) MR O NEILL I want the second page
 (20) BY MR O NEILL
 (21) Q Now Plaintiffs 828 is a document that you signed on
 (22) January 12 1994. Do you see that?
 (23) A That's correct yeah
 (24) Q And that was the day before your deposition?
 (25) A Yes

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- (1) Q And the signatories were you and your wife?
 (2) A Uh huh
 (3) Q And it was signed by A Elmer president Do you know who that is?
 (4) A That's - Mr Elmer is President of the Exxon Shipping
 (5) Company or Sea River Exxon Shipping at the time
 (6) Q What's Exxon Shipping Company called now?
 (7) A I think it's known as Sea River Shipping
 (8) Q And what is the Exxon Valdez called now?
 (9) A The Exxon Mediterranean
 (10) Q It's called the Sea River Mediterranean?
 (11) A Yeah
 (12) Q So they've changed both the name of the Exxon Shipping
 (13) Company and the name of the vessel since the accident?
 (14) A As I understand, yeah
 (15) Q Now the other signatory is John Redman (ph) by Exxon
 (16) Corporation?
 (17) A Yes
 (18) Q And I am sure before you signed this that your attorneys
 (19) gave it some thought and study?
 (20) A Uh huh
 (21) Q And they talked with you about it?
 (22) A Yes
 (23) Q And you're a careful man and you wouldn't sign a document
 (24) dealing with this Exxon Valdez litigation without thinking

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- (1) about that document would you?
 A At this - try not to no
 (3) Q I'm interested in paragraph E on the second page and I'm
 (4) interested with the highlighted section which reads The
 (5) parties agree that neither shall use in any manner deposition
 (6) or trial testimony or any evidence derived therefrom given by
 (7) either party in the Valdez litigation in connection with the
 (8) mediation or arbitration provided for herein
 (9) Do you see that?
 (10) A Uh huh
 (11) Q Now in this -
 (12) A Yes
 (13) Q - agreement and other agreements you agreed to mediate
 (14) or
 (15) arbitrate your disputes with Exxon and Exxon Shipping
 Company
 (16) is that right?
 (17) A At some point in time
 (18) Q And what this paragraph in this agreement does is say you
 (19) can come into this courtroom and Exxon can come into the
 (20) courtroom and testify about what you want here in this
 (21) courtroom but the two of you agree between each other that
 (22) you
 (23) won't use the positions that you take in this courtroom in your
 (24) arbitration isn't that what the paragraph means?
 (25) A Not to my way of thinking
 (26) Q Why don't you read it out loud and we'll talk about it?
 (27) A The parties agree that neither shall use in any manner

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- (1) deposition or trial testimony or any evidence derived
 therefrom
 (2) given by either party in the Valdez litigation in connection
 (3) with the mediation or arbitration provided for herein
 (4) Q That's what the sentence says
 (5) Now why did you not want any evidence any deposition or
 (6) any trial testimony to be used in the mediation or arbitration
 (7) any of this testimony here before this jury why didn't you
 (8) want it to be used later on in any arbitration or mediation
 (9) with Exxon Corporation? Why didn't you?
 (10) A Primarily because it would be a labor discrepancy an
 (11) employment discrepancy
 (12) Q Did you want the freedom to come in here and be able to
 (13) tell a version of the facts or a story and not be bound by that
 (14) version of the facts or story in the later arbitration
 (15) proceedings?
 (16) A That didn't really enter into my mind You're the ones
 (17) that dragged me in here
 (18) Q We dragged you in here?
 (19) A Uh huh, got my deposition
 (20) Q Let's follow that sentence
 (21) I represent fishermen and natives?
 (22) A Certainly yeah
 (23) Q And who was the captain of the vessel that spilled the oil
 (24) that disrupted their fishing seasons and their subsistence?
 (25) A I was

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- (1) Q You dragged us in here didn't you?
 (2) A (No response)
 (3) Q When you were testifying about the Exxon Valdez you used
 (4) a couple of times the expression midsize Do you recall that?
 (5) A Midsize yeah
 (6) Q Were you trying to down play the size of the vessel in your
 (7) testimony?
 (8) A Not specifically no
 (9) Q Were you trying to minimize the size of the supertanker in
 (10) your testimony?
 (11) A No
 (12) Q When you were first asked about meeting with Mr Sheehy
 (13) after your stay at South Oaks -
 (14) A Yes
 (15) Q - the first time he asked it you were asked about it you
 (16) referred to it as a bar/restaurant isn't that a correct
 (17) statement?
 (18) A Bar restaurant lounge whatever I - something to that
 (19) effect yeah
 (20) Q And you heard my opening in which I described it as a bar?
 (21) A Yes
 (22) Q And when the subject was revisited you softened the
 (23) description and you called it a patio didn't you?
 (24) A Sidewalk cafe I think I said
 (25) Q Sidewalk cafe?

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- (1) A Yeah
 (2) Q Despite all of that would it be fair to say that the Exxon
 (3) representative you sat with for this first meeting had a hearing?
 (4) A As I recall yes
 (5) Q Now you talked with Mr Tompkins and you talked about
 (6) these impressions that you got from Mr Tompkins do you
 (7) recall that?
 (8) A Yes
 (9) Q Let's talk about what Mr Tompkins said All Mr Tompkins
 (10) said was Don't violate the company alcohol policy isn't that
 (11) right?
 (12) A In a strong fashion and having worked for him prior to
 (13) that I -
 (14) Q Is that all he said in words?
 (15) A That and it will not be - my violation will not be
 (16) tolerated yes
 (17) Q And he didn't talk to you about your drinking generally?
 (18) A No that subject was not -
 (19) Q And he didn't ask you about the Graves report?
 (20) A No
 (21) Q And he didn't tell you you were going to be monitored did
 (22) he?
 (23) A I came away with the impression I was going to be
 (24) watched
 (25) This monitoring stuff I don't -
 (26) Q Did he say I'm going to watch you or I'm going to have

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- (1) somebody watch you? I want to know what he said
 (2) A No he did not
 (3) Q Now in point of fact as we sit here today it is at Exxon
 (4) Corporation's interest to have you come up here and say I had a
 (5) feeling I was going to be watched Now you know that don't
 (6) you?
 (7) A Well I had the feeling I suppose it would be in their
 (8) interest
 (9) Q As we sit here today you know that it is in Exxon
 (10) Corporation's interest today to have you testify I had a
 (11) feeling I was going to be watched?
 (12) A Yes I suppose it is
 (13) Q Now I want to talk for a minute about the subject of
 (14) shoreside assignments?
 (15) A Yes
 (16) Q And your testimony in response to questions from either
 (17) Exxon Corporation or from your lawyers was They knew I
 (18) wouldn't accept a shoreside assignment or words to that
 (19) effect?
 (20) A Words to that effect, yes
 (21) Q In point of fact you had only one conversation at or about
 (22) this time concerning shoreside assignments with any
 (23) representatives of Exxon Corporation or Exxon Shipping
 (24) Company
 (25) A Isn't that right - and that was the discussion with who?
 (26) A As best I can recall Mark Pierce

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- (1) Q And he asked you about the job and you said I said I would
 (2) be interested in it and I will get back to you at a future
 (3) date We kind of left the future date open
 (4) Isn't that right?
 (5) A Well that it was part of it yes There was more to it than
 (6) that
 (7) Q Have you testified about that conversation?
 (8) A I think I did
 (9) Q Why don't we go to page 1011 of your deposition transcript
 (10) line 15 Did you respond - did you respond to that
 (11) question - that's the question we're talking about relieving
 (12) him
 (13) Answer I said I would be interested in it and I will get
 (14) back to you at a future date We kind of left the future date
 (15) open
 (16) Question Was this in 1983 you think or 1984?
 (17) I think it was in 1983 I think it was when he first
 (18) assumed the role
 (19) Question Did he ever get back to you about it?
 (20) Answer No
 (21) Were those the questions asked and the answers given?
 (22) A Yes
 (23) Q Now I want to talk for a minute about monitoring
 (24) A Uh huh
 (25) Q Let's go to the west - well let me go back to the gulf

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- (1) coast just for a minute Would it be fair to say that from
 (2) 1985 to 1987 you had no knowledge that you were being
 (3) monitored?
 (4) A No specific knowledge It gets back to the - I have
 (5) trouble with the word monitoring I mean to me that it
 (6) assumes
 (7) every time you know somebody's going to jump out of the
 (8) bushes it two in the morning and have you pee in a cup or
 (9) something like that You know there's -
 (10) Q You were asked that question -
 (11) A There's an alter ego trailing you around all the time
 (12) Q You were asked that question repeatedly at your deposition
 (13) and you answered repeatedly I have no specific recollection of
 (14) ever being monitored?
 (15) A Yes Monitored yes
 (16) Q And you didn't qualify it in your deposition transcript
 (17) did you?
 (18) A I probably didn't
 (19) Q And the oath that you took when you gave your deposition
 (20) was the same oath that was administered to you today or two
 (21) days ago or three days ago by the court clerk wasn't it? You
 (22) stood there and you took an oath?
 (23) A Yes
 (24) Q Now in response to west coast questions about monitoring
 (25) you twice used the phrase Lamont Cranston?
 (26) A Uh huh

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- (1) Q Whos' image was that? Was that suggested to you by somebody else in preparation for this testimony or was that your image?
- (2) A It was my image
- (3) Q And how does the whole expression go with regard to Lamont
- (4) A Cranston the shadow?
- (5) A "Only the shadow knows I believe
- (6) Q What does the shadow know?
- (7) A Everything
- (8) Q He knows What evil lurks in the hearts of men only the shadow knows Isn't that the expression?
- (9) A Something along those lines
- (10) Q Now the shadow who you referred to was this guy Paul Myers?
- (11) A Yes
- (12) Q And Paul Myers pops up with regard to you calling him the shadow and the Portland shipyard incidents? Those are two different situations it's the same guy isn't it?
- (13) A Sort of yeah
- (14) Q Are there two Paul Myerses?
- (15) A Not that I'm aware of I don't know two Paul Myerses
- (16) Q And with regard - you testified that Paul Myers spent the night on your ship on occasion?
- (17) A Number of times, yeah
- (18) Q And that was when - for example when he was fixing the

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- (1) turbocharger with you in Portland isn't that right?
- (2) A That was one occasion yeah No it wasn't in Portland San Francisco
- (3) Q San Francisco And you testified from '87 to '89 when asked the question about monitoring under oath at your deposition that you had no specific recollection of being monitored
- (4) A Yeah in the specific - once again with this word monitoring I assume that I would have to have some knowledge of this That -
- (5) Q Now there was the Portland shipyard incidents?
- (6) A Yeah
- (7) Q And that involved Leyendecker and Steve Day?
- (8) A Essentially yes
- (9) Q And this Paul Myers the shadow you met with him some months thereafter?
- (10) A Yes because in that mode you're in a repair mode he has other things to do and repair people generally handle those
- (11) that aspect of the ship's activities
- (12) Q Okay Now this Paul Myers the shadow you met with some months later and the Portland shipyard incident came up?
- (13) A Yes, in his - as we went through a recap of events
- (14) Q And as you sit here today you know that it is important to Exxon Mr Myers knowledge with regard to your drinking is an important subject for Exxon Corporation? You know that don't

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- (1) you?
- (2) A I would assume so yes
- (3) Q How many - I'm going to ask you directly this question
- (4) Did you tell Mr Myers that you consumed beer back at your apartment while watching a sports game yes or no?
- (5) A No
- (6) Q How many versions of that answer have you given?
- (7) A Two or three because I don't know tell you the truth
- (8) MR O NEILL Now let's watch - I'm going to pull up from the videotape of your deposition the first time you were asked that question and answered it Let's see if I can do that
- (9) Do I need to do it again?
- (10) (Videotape Played)
- (11) BY MR O NEILL
- (12) Q So that's the first time you were asked about Mr Myers is that a correct statement?
- (13) A Uh huh yeah
- (14) Q And that was in your deposition and you had raised your hand and sworn to tell the truth?
- (15) A Yes
- (16) Q And then there was a break over lunch?
- (17) A Yes I think so
- (18) Q And after having had the opportunity to confer with your lawyers you came back into the deposition room and said I

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- (1) didn't tell that to Mr Myers?
- (2) A Words to that effect yeah
- (3) Q And then when I asked you on the first day of trial whether you told Mr Myers the same things that you told Mr Leyendecker you said yes didn't you?
- (4) A As I recall that's the way - the fashion your question came out yeah
- (5) Q And then when you were asked the question the first time you didn't tell him about the beer isn't that right?
- (6) A That's right, yeah, correct
- (7) Q And would it be fair to say that each time the story changed you had an opportunity to talk with your lawyer didn't you?
- (8) A It would be fair to say That's who I spend my time with it seems
- (9) Q Now with regard - your lawyer asked you a question about the San Francisco launch?
- (10) A Uh huh
- (11) Q And Mary Williamson and allegations made by Mary Williamson
- (12) about your conduct or behavior on the launch?
- (13) A Something like that, yeah
- (14) Q And your testimony is that your conduct and behavior on the launch was normal gentlemanly? I assume that's your testimony
- (15) as you sit here?
- (16) A What I recall of it I said hello to her and she somebody

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- (1) that was with her and hello to them and then the rest I was
- (2) back talking to fellow crew members from the Valdez
- (3) Q Does Mary Williamson have an axe to grind with you?
- (4) A Not that I'm aware of
- (5) Q I want to talk for a minute about this issue of pilotage
- (6) A Uh huh
- (7) Q And you went through this discussion of these exhibits
- (8) 91 A 140 826 and I want to go for a minute back to the
- (9) things that you said at or about the time of the accident with
- (10) regard to pilotage
- (11) Do you have in front of you Exhibit 826?
- (12) A Okay yeah
- (13) MR O NEILL Can you pull that up for me 826 the
- (14) second page?
- (15) BY MR O NEILL
- (16) Q Now your testimony is now today pilotage is not required
- (17) is that a correct statement?
- (18) A Yes
- (19) Q And in point of fact the pilotage is required - let's
- (20) assume that pilotage is required and you left the bridge that
- (21) wouldn't be the next thing to do? If in fact pilotage was
- (22) required at the point in time that you left the bridge that
- (23) creates problems for you doesn't it?
- (24) A If I was -
- (25) Q If there was not a -

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- (1) A If I perceived that yeah
- (2) Q Now this is the - the Delozier interview?
- (3) A Uh huh
- (4) Q And I want to call your attention to the portion that I've
- (5) highlighted there?
- (6) A Okay
- (7) Q Starting with M B Murphy Okay okay go ahead
- (8) Inaudible Hazelwood and we disembarked him at Rocky
- (9) Point
- (10) approximately 2330 2325 exact time He got on the pilot
- (11) boat I assumed the con of the vessel at that time At Rocky
- (12) Point at Rocky Point the pilot station
- (13) Okay now when you say you assumed the con you're
- (14) referring to from the pilot Hazelwood? Yeah he got off and
- (15) I - the questioner okay I piloted through the waters
- (16) Do you see that expression?
- (17) A Uh huh
- (18) Q So the pilot gets off and then you describe your activity
- (19) as I piloted through the waters?
- (20) A Anybody can pilot You pilot on the Florida Keys and
- (21) there's no pilotage requirement It's a term of art that you
- (22) physically navigate using terrestrial landmarks You pilot
- (23) the
- (24) vessel
- (25) Q At the time you were interviewed by Delozier -
- (26) A Yeah
- (27) Q - were those the questions asked and were these the

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- (1) answers given?
- (2) A Yeah I piloted through the water but -
- (3) Q Now when the Exxon Valdez came in through Hinchinbrook
- (4) did
- (5) the Coast Guard ask the vessel Does your master or mate have
- (6) pilot endorsement for Prince William Sound?
- (7) A Yes
- (8) Q And what was the vessel's answer?
- (9) A In the affirmative yes
- (10) Q Now you can't change the written word can you? Have you
- (11) ever heard that expression?
- (12) A Something like that
- (13) Q On this ship's record I'm going to give you a magic -
- (14) marker and the ship's record is Exhibit 140?
- (15) A Uh huh
- (16) Q At the time you pass Hinchinbrook which is well before you
- (17) get to Bligh Reef coming north -
- (18) A Yeah
- (19) Q - at the 1700 entry it says various off Hinchinbrook
- (20) master piloting Does the ship's record say that?
- (21) A Yes
- (22) Q And over to the right it has 1730 arrival What does
- (23) that mean?
- (24) A You've made your - that's the end of your sea passage
- (25) You pick a point nominally point It varies
- (26) Q And how you're in the port aren't you?

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- (1) A No
- (2) Q That's arrival at the port?
- (3) A No no It's not
- (4) Q And does the record say at 1950 watch relieved master
- (5) piloting?
- (6) A Yeah or - it's master piloting in this one yes
- (7) Sometimes it's master conning
- (8) Q Why don't you read what this one says?
- (9) A Watch relieved master piloting
- (10) Q And then if you go back over to 21 it says pilot conning?
- (11) A Well I didn't say pilot piloting
- (12) Q Well at that point in time Mr Murphy's aboard isn't it?
- (13) A Yeah he's conning and he's piloting So why doesn't it
- (14) say pilot piloting?
- (15) Q At the time - let's go through these exhibits on
- (16) piloting
- (17) Did you get paid for being a pilot for that specific run?
- (18) A Yes I had the pilot endorsement, yeah
- (19) Q You got cash money for that?
- (20) A Uh huh
- (21) Q By or from Exxon Corporation?
- (22) A Much to their chagrin, yeah
- (23) Q Now when you talked about the exhibits 3483 and the other
- (24) ones 24 - what is it 2483 and all of the others those
- (25) documents apply to non pilotage vessels don't they by their

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- (1) terms?
 (2) A Yes
 (3) Q And the Exxon Valdez was a pilotage vessel wasn't it?
 (4) A I guess it would be considered that yeah
 (5) Q And when you talked to Mr. McCall or Commander McCall in
 (6) the summer of 1988 he was discussing proposed or future
 action
 (7) that might be taken isn't that right?
 (8) A And the action that he had already taken that he wouldn't
 (9) be issuing any more pilotage endorsements
 (10) Q No but with regard to the requirement of pilotage
 (11) endorsement he was talking about as your lawyer termed it
 (12) proposed rule makings wasn't he?
 (13) A Yes he said it would be in effect it didn't indicate
 (14) didn't indicate the exact date
 (15) Q Now I want to talk for a minute about your stop at Alamar?
 (16) A Uh huh
 (17) Q And if you recall the exhibits that we were using with
 (18) regard to that stop at Alamar -
 (19) A Yeah
 (20) Q - there were three phone slips?
 (21) A Yes
 (22) Q And you were using those phone slips to establish the fact
 (23) that you were at Alamar from 11 to 12 or from 11:30 to 12?
 (24) A Yes
 (25) Q And in point of fact the time entries on the phone slips

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- (1) aren't accurate are they?
 (2) A One isn't
 (3) Q We know for sure one isn't?
 (4) A Yeah
 (5) Q So with regard to the time slips that you're using to
 (6) establish your presence at Alamar we know that at least one of
 (7) the times is not accurate?
 (8) A You'd have to - yes I agree with that
 (9) Q Now I want to talk a little bit about your hat
 (10) Could you bring up a blank piece of paper on the screen
 (11) just the corner of an exhibit?
 (12) The reason that your hat is important is because the three
 (13) bartenders or the two bartenders and Ms. Delozier describe
 (14) hats in their deposition transcript and their testimony here
 (15) isn't that right?
 (16) A Yes
 (17) Q And you say that you were wearing a English driver's cap?
 (18) A I think that's what they're called yes
 (19) Q And the English driver's cap is shaped like this and has a
 (20) little brim there is that a fair statement? This is the back?
 (21) A Yeah
 (22) Q I'll put front I'll do this like a draftsman and back -
 (23) you got that?
 (24) A Uh huh
 (25) Q That's the kind of cap that you were wearing that day?

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- (1) A Yes
 (2) Q Now one of the ladies described your cap as being a
 (3) golfer's cap do you recall that?
 (4) A I think so yeah
 (5) Q Have you ever seen Payne Stewart Do you know who he is?
 (6) A Yes
 (7) Q He's a professional golfer on the professional golfer's
 (8) tour?
 (9) A Uh huh
 (10) Q Won the U.S. Open in 1981
 (11) Payne Stewart wears a golf hat that's shaped just like
 (12) that doesn't he?
 (13) A They're a little smaller I'm familiar with those It's
 (14) the same manufacturer
 (15) Q Same manufacturer
 (16) And have you ever seen hats that have this sort of patch
 (17) over there and then the bill out - yours didn't have a snap
 (18) didn't it?
 (19) A No
 (20) Q But they do make hats like this that have a snap right
 (21) about here in order to hold that top down to that bill don't
 (22) they?
 (23) A The soft ones
 (24) Q Softer or cheaper ones?
 (25) A Whatever

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- (1) Q And have you ever been to a fisherman's gear shed?
 (2) A Of course yeah
 (3) Q And fishermen wear hats of the same shape that have the
 (4) same general shape that are made out of muslin don't they?
 (5) You've seen those in gear sheds they wear them up and down
 the
 (6) Inlet They wear them in Valdez?
 (7) A Something similar to that yeah
 (8) Q Now with regard to the testimony of the two bartenders and
 (9) Ms. Delozier they place you in the Pipeline Club at noon
 (10) about 2:00 and then later on is that a fair statement?
 (11) MR. CHALOS Your Honor I object That's a
 (12) mischaracterization One bartender had him in there between
 (13) 11:30 and 12 -
 (14) THE COURT We don't need a speech Mr. Chalos
 (15) Just rephrase the question
 (16) MR. O'NEILL I'll reask the question
 (17) BY MR. O'NEILL
 (18) Q With regard to the three people that testified the two
 (19) bartenders and Ms. Delozier do you know of any reason that
 (20) any
 (21) of those three people would lie?
 (22) A I don't know them no
 (23) Q They don't hold a grudge against you?
 (24) A I have no idea
 (25) Q Now they have a version of where you were that day You
 have two versions of where you were that day?

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(1) A I have -
 (2) Q And the first version was given to Mr. Delozier?
 (3) A Yes
 (4) Q And you talking about that version as being at a time of
 (5) chaos hectic do you recall your testimony as to that?
 (6) A It was a hectic time in my life yeah
 (7) Q How many hours after the grounding was that?
 (8) A Approximately 12
 (9) Q Okay so it's a half a day after the grounding
 (10) Now let's listen if we can - we have the tape of the
 (11) interview And let's listen to the tape portions of the tape
 (12) of the interview that asks questions and then we'll talk about
 (13) those questions
 (14) Audio tape played)
 (15) MR O NEILL Is that the best we can get?
 (16) (Audio tape played)
 (17) MR O NEILL I don't think we can hear that well
 (18) enough Your Honor
 (19) (Audio tape played)
 (20) MR O NEILL Could you stop that? I'm going to use
 (21) the transcript I don't think we can hear it well enough
 (22) Let's use a transcript instead We can pull a transcript up on
 (23) the -
 (24) BY MR O NEILL
 (25) Q Let's use the transcript Can you find your copy of the

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(1) transcript and if I can find mine I want to go over the
 (2) Delozier interview and we're going to take a couple of minutes
 (3) with it because we passed it over before It's Exhibit 826 if
 (4) I could have Page 2
 (5) Now this Page 2 I think we already talked about this
 (6) This is the - where the expression pilot - I'm sorry this is
 (7) where the discussion in which the word pilot is used That's
 (8) in this same interview isn't it?
 (9) A Yes
 (10) Q If we could go to the fourth page of the interview -
 (11) I'm sorry the third page - the fourth page of the interview
 (12) Now I'm interested in the middle of the page
 (13) Now you've testified at great length here about all of the
 (14) careful discussion that went on between you and Mr. Cousins
 (15) prior to you leaving the bridge Is that a fair statement?
 (16) A Yes
 (17) Q There was a lot of careful discussion between you and
 (18) Cousins and you had at least two discussions and you looked at
 (19) the radar scope Now how did you describe it to Mr
 (20) Delozier?
 (21) A I had some paperwork to attend down here for a few
 (22) minutes
 (23) and -
 (24) Q I'm not quite there yet I'm right here Ah did you
 (25) leave any explicit instructions as far as when you get through
 (26) such and such a point you will turn to -

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(1) Answer No I didn't - any particular course say at
 (2) Bushy Island turn back but I showed him on the radar where
 (3) the ice was and we'd be ahead of it and we'd be approximately
 (4) here
 (5) okay and once we're ahead of the apex of the ice uh huh
 (6) come
 (7) back to the right and rejoin the traffic lane
 (8) Now that was your description of the Cousins' conversation
 (9) within 12 hours of the conversation happening wasn't it?
 (10) A Yes
 (11) Q And your description in response to the questions from your
 (12) lawyers was five years later
 (13) A Yes
 (14) Q And would it be fair to say that you were asked the
 (15) question Did you leave any explicit instructions as far as
 (16) when you'd get through such and such and such a point you
 (17) will
 (18) turn to - and you answered No I didn't
 (19) A I give that response yeah I didn't -
 (20) Q And would it be fair to say that the response you gave to
 (21) Mr. Delozier is not in your self interest as you sit here
 (22) today?
 (23) A I would agree with that
 (24) Q Now I want to finish this page Your testimony today
 (25) about why you went down to your stateroom was a discussion
 (26) of
 (27) your care about navigation because of a proposed storm
 (28) coming
 (29) off of the Aleutians?
 (30) A Well I'd heard that weather report and then there was -

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(1) I'd done some cargo figures calculations before yeah
 (2) Q Was Mr. Delozier told about this care or concern about the
 (3) storm coming off of the Aleutians?
 (4) A No
 (5) Q In fact you describe it as doing some papers don't you?
 (6) A That's what I was doing yeah
 (7) Q Now you describe Mr. Cousins calling you two minutes after
 (8) you left the bridge to give a report that the vessel had
 (9) turned? You described that today?
 (10) A Yes
 (11) Q Did you describe that to Mr. Delozier?
 (12) A I don't know if he asked about it
 (13) Q Here you talk about I went down to here I was at my desk
 (14) starting to do some papers and I felt a shudder And the
 (15) vessel shuddered and I was about to go up to the bridge when
 (16) the phone rang and he said I believe we're aground?
 (17) A Yes
 (18) Q Now I want to talk for a minute if we could about your
 (19) testimony about rocking the - your testimony about after the
 (20) accident vessel's -
 (21) A Uh huh
 (22) Q - on the reef after the grounding of the Exxon Valdez?
 (23) A Yeah
 (24) Q Okay And would you agree with the proposition that if
 (25) you in fact tried to get the vessel off of the - off of the

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- (1) rec'd that that would evidence a lack of sound judgment?
 (2) A Depends on how you tried to get it off the reef yeah
 (3) Q My statement's a generally fair statement isn't it?
 (4) A Not really I mean it depends upon the procedure you
 (5) took I mean the ship's got to get off the reef eventually
 (6) That's --
 (7) Q You testified here today that you made the judgment not to
 (8) get it off the reef?
 (9) A Yes With the ship's engine
 (10) Q That's right
 (11) A That's all I heard
 (12) Q That's right So at the point in time when you're sitting
 (13) there with the ship's engine on the reef it would be had
 (14) judgment to try to extract the ship just using the ship's
 (15) engine?
 (16) A And rudders yeah
 (17) Q And as you sit here today it is in your interest to have
 (18) your testimony be such that at or about the time of the
 (19) grounding you don't show evidence of bad judgment?
 (20) A It's in my interest and against yours, yes
 (21) Q How many times did you tell people that you were trying to
 (22) extract the vessel from the reef?
 (23) A I mention it here in the Delozier interview and I think two
 (24) transmissions to Commander McCall one or two
 (25) Q And not only is it mentioned in the Delozier interview --

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- (1) Can I have page 5 -- you mention it in the Delozier
 (2) interview -- could I have the -- could you go back two pages?
 (3) Pick it up I think here in the Delozier interview -- see
 (4) if I can call it up The testimony or the statement given to
 (5) Mr. Delozier covers the subject right about here?
 (6) A Uh huh
 (7) Q So it's mentioned once to Mr. Delozier?
 (8) A Well a mention is made yes I experimented with the
 (9) rudder and engines for a few minutes
 (10) Q To extract the vessel off of the rock?
 (11) A Well, that refers to the initial plowing around with the
 (12) rudder and the engine, yes
 (13) Q Would it be fair to say that what you told Mr. Delozier is
 (14) consistent with the several transmissions that you made to the
 (15) Coast Guard with regard to attempts to extract the vessel from
 (16) the rock?
 (17) A No This was a few minutes when I first arrived up there
 (18) and I slowly brought the rudder back and basically saw what it
 (19) was doing
 (20) Q How many times did you tell the Coast Guard you tried to
 (21) extract the vessel from the rock?
 (22) A As I recall, it was -- this response here which was when I
 (23) first arrived on the bridge and the two transmissions
 (24) Q So we have three different statements to the Coast Guard
 (25) that you tried to extract the vessel from the rock?

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- (1) A Three statements yeah
 (2) Q They're all along that line and your testimony here today
 (3) is contrary to the sum and substance of those statements?
 (4) A To the statements yes As well as my actions
 (5) Q Now I want to talk about the Delozier interview I want
 (6) to go to page 7 and the bottom of the interview the very last
 (7) line in which Mr. Delozier calls to your attention quote uh
 (8) there have been some uh suggestions and statements
 (9) concerning uh the facts that uh you had some alcohol and
 (10) odor of alcohol on you
 (11) Do you -- do you see that?
 (12) A Uh huh
 (13) Q So he leads into the subject matter fairly doesn't he?
 (14) A In five years looking back at it now it looks fair
 (15) MR. O NEILL Could I have the next page? I think it
 (16) has page 8 on there a sticker Maybe page 9 I don't know
 (17) It begins well I had one of those phony beers
 (18) BY MR. O NEILL
 (19) Q After he raises the general subject -- after he raises the
 (20) general subject you say Well I had one of these phony
 (21) beers Moussy and I'd been ashore I had lunch with Captain
 (22) Murphy drank ice tea
 (23) That's the pilot?
 (24) Yeah he's an old friend of mine and had lunch over in
 (25) the town

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- (1) Where was that pizza joint?
 (2) Pizza Palace yeah
 (3) So you tell him that you went and you had ice tea in
 (4) response to his concern about your drinking and you don't tell
 (5) him there that you were drinking do you?
 (6) A No
 (7) Q And indeed the discussion gets more specific as you go
 (8) on And he asks All right uh did you have anything to
 (9) drink at the Pizza Palace?
 (10) I had a beer with a piece of pizza picked up before we
 (11) came back One beer yeah
 (12) A real beer?
 (13) A real beer
 (14) Nothing with lunch?
 (15) Just ice tea
 (16) Anything any other alcohol consumption after the pizza?
 (17) Well these Moussys I had one of them prior to sailing
 (18) And I guess it's not alcohol alcohol free beer
 (19) What is it called Moose --
 (20) Moussy nonalcoholic
 (21) And you had one of those after you came back one or two?
 (22) I was just sorting some papers out before we sailed
 (23) Do you see that?
 (24) A Yes
 (25) Q Did you mention that you were drinking vodka at the

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(1) Pipeline Club and that you went over to the Harbor Club and
 (2) ordered a vodka?
 (3) A No
 (4) Q Would it be fair to say that at least in this portion of
 (5) your interview you were minimizing the amount of your
 (6) drinking?
 (7) A I don't know about minimizing. I was compressing the
 (8) whole
 (9) day. I was having a little trouble refocusing on the day
 (10) before.
 (11) Q Were you frank -
 (12) A Confines of the interview people were coming and going
 (13) during this whole interview. I was trying to run a ship.
 (14) Q Were you frank and forthright in your answers to an
 (15) official of the United States Coast Guard who was attempting to
 (16) perform his duties about your drinking?
 (17) A About the events of the day before I compressed them
 (18) all.
 (19) I just wanted to get rid of him.
 (20) Q You compressed whatever drinking you did into one hour?
 (21) A I guess I - yes you could say that.
 (22) Q Now this wasn't just an offhand question was it? Because
 (23) he continues to ask you about drinking isn't that right?
 (24) A I guess he does yeah.
 (25) MR O NEILL Could we get the next page?
 (26) BY MR O NEILL
 (27) Q He asks you Did you uh did you stop at any other

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(1) establishments in town liquor places or bars?
 (2) A Well we went to the Pipeline to see - to see if anybody
 (3) off the ship was in there if we knew anybody. Okay there was
 (4) nobody there so we left and picked up the pizza over at the
 (5) Harbor Club.
 (6) Q Uh huh Did you go by cab to the Pipeline or were you
 (7) just walking?
 (8) A Walking yeah.
 (9) Q Do you see that?
 (10) A Yeah.
 (11) Q And you continue on on the next page - can we get the next
 (12) page?
 (13) A Around yeah just walking around.
 (14) Q Okay did you have any idea what time you stopped in at
 (15) the Pipeline?
 (16) A Oh I'd say 3:30 or so after lunch. And I did some
 (17) shopping.
 (18) So here at this point in time within 24 hours of visiting
 (19) the Pipeline Club you put the time at 3:30 don't you?
 (20) A Or so. I didn't recount step by step the whole day and
 (21) add
 (22) up hours and minutes no.
 (23) Q You can do that five years though after?
 (24) A I certainly can. So can you.
 (25) Q Let's see if you further define this 3:30 then in your
 (26) conversation with Mr. Delozier. Your testimony right now is

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(1) that it's fuzzy. Let's see if you clear it up for him.
 (2) MR O NEILL Can we go to page 12? That's fine.
 (3) BY MR O NEILL
 (4) Q Subject comes up a second time and you talk about it at
 (5) 3:00 don't you?
 (6) A To Mr. Fox yeah.
 (7) Q Does the subject come up a third time? Let's go to the
 (8) next page.
 (9) So the subject comes up a third time in the interview. All
 (10) right. So somewhere between 1:00 and 1:30 you were at the
 (11) Pipeline?
 (12) A Answer Yeah right for a few minutes yeah.
 (13) Do you see that?
 (14) A Yeah.
 (15) Q Three different times in the interview?
 (16) A And 1:00 picking up the cab. That's about an hour out of
 (17) which.
 (18) Q I'm sorry?
 (19) A Well you got the cab at 1:00 you would have gotten -
 (20) Q So would it be fair to say that you've told different
 (21) stories with regard to the amount you had to drink on the day
 (22) of the 23rd?
 (23) A Uh huh yes.
 (24) Q And you've told different stories with regard to when you
 (25) were where in Valdez on the day of the 23rd?

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(1) A Yes times yeah.
 (2) Q And let's talk about your last drink at the Harbor Club.
 (3) A Yes.
 (4) Q Now before you testified to your last - before you
 (5) testified for the first time about the Harbor Club in your
 (6) deposition early this year you were - you were aware that
 (7) both Mr. Glowacki and Mr. Roberson your companions of that
 (8) night had been deposed weren't you?
 (9) A Yeah I'm pretty sure they were.
 (10) Q And you knew that they had testified that you were there in
 (11) the Harbor Club and that you had ordered at least one drink?
 (12) A I didn't recall their testimony. I don't know if I -
 (13) Q And with regard to your testimony that you were in the
 (14) Harbor Club and you ordered this drink but you didn't drink
 (15) it -
 (16) A Yes.
 (17) Q - that testimony fits into your construct that if the
 (18) vessel hadn't have left until ten you wouldn't have violated
 (19) the four hour rule?
 (20) A I suppose it could yes.
 (21) MR O NEILL I'm about to switch and it's high noon.
 (22) THE COURT We'll take our noon recess ladies and
 (23) gentlemen. Please don't have any discussions about the case
 (24) during our recess. We'll be in recess for 15 minutes.
 (25) THE CLERK This court is now in recess for 15

(1) minutes
 (2) (Jury out at 12 00 noon)
 (3) (Recess)
 (4) (Jury in at 12 17 p m)
 (5) THE CLERK All rise
 (6) BY MR O NEILL
 (7) Q I want to go if I would - if I could for a minute to the
 (8) gangplank?
 (9) A Uh huh
 (10) Q Now the tape that we saw with regard to the gangplank that
 (11) you testified to it has a causeway and then what s - do you
 (12) call that articulated structure that goes up in the air you
 (13) had a word for that?
 (14) A Gantry I think it was
 (15) Q Gantry That tape was produced or made by Exxon?
 (16) A I don't know where it came from
 (17) Q It didn't come from you and your lawyers didn't put that
 (18) together?
 (19) A No
 (20) Q And did you see at the end when coming down the stairs
 you
 (21) can see the shadow of the camera man who is coming down the
 (22) stairs with the camera on his shoulder?
 (23) A I think I -
 (24) Q Like this?
 (25) A Yeah

(1) Q And Captain Stalzer at the time was the other captain of
 (2) the Valdez when you weren't captaining the Valdez he was
 (3) captaining the Valdez?
 (4) A That's correct
 (5) Q And he was an Exxon captain with experience in Prince
 (6) William Sound?
 (7) A Yes
 (8) Q Did you respect captain Stalzer?
 (9) A Yeah I respect him as a mariner I don't know how that
 (10) well
 (11) Q Now today as you sit here because of the debate over this
 (12) disaster it's in your interest to have it be Watch Condition A
 (13) rather than Watch Condition C isn't it?
 (14) A Whether it's in my interest or not doesn't enter into the
 (15) way I looked at it that evening
 (16) Q Well let's talk about that for a minute
 (17) If it's Watch Condition C you should have been on the
 (18) bridge?
 (19) A Well two officers should have been on the bridge yes
 (20) Q That's right And when you left the bridge without two
 (21) officers there and it was Watch Condition C you wouldn't be
 (22) compliance with the bridge operation manual?
 (23) A If it was and that's the determination you had made
 (24) earlier As a master If you didn't and it was Watch
 (25) Condition A, you would have been compliance with one
 watch

(1) Q You testified that at least the long causeway that goes
 (2) out -
 (3) A Yes
 (4) Q - was big enough to where you could drive a car or a small
 (5) truck on it?
 (6) A As I recall they have trucks that come down so it's about
 (7) a truck or car width wide
 (8) Q How many years have you been climbing on and off of
 (9) boats?
 (10) A Since I was a kid 13 14
 (11) Q People get on and off those boats women marine
 (12) investigators and such have on occasion got on and off them in
 (13) high heels haven't they? You've seen that?
 (14) A No I haven't I - usually somebody stops them before
 (15) they try it
 (16) Q On the bridge manual you testified that as far as you were
 (17) concerned on the bridge manual it was Watch Condition A?
 (18) A In my evaluation of it yeah
 (19) Q You were fired for not being on the bridge weren't you?
 (20) A Among other things I - it kind of jumps around has -
 (21) Q And Captain Stalzer's going to come here and testify you
 (22) know that?
 (23) A Yes
 (24) Q And you know that in Captain Stalzer's opinion it was
 (25) Watch Condition C?
 A Uh huh

(1) officer
 (2) Q And if in fact your leaving the bridge was in violation of
 (3) the manual you know that that's evidence of your negligence
 (4) don't you?
 (5) A But if I was the one determining it how could I be in
 (6) violation of it?
 (7) Q And you know that that's evidence of your recklessness if
 (8) in fact you're in violation of the manual?
 (9) MR CHALOS I object Your Honor calling for a legal
 (10) conclusion
 (11) THE COURT Rephrase the question
 (12) MR O NEILL Thank you Judge
 (13) BY MR O NEILL
 (14) Q With regard to your position in the courtroom if in fact
 (15) it's Watch Condition C that doesn't help you a heck of a lot
 (16) does it?
 (17) A But it's not a definable fact as I perceive it It's a
 (18) judgment call in the conditions of the person that was there
 (19) the time
 (20) Q So your position is with regard to alleged violations of
 (21) the bridge manual that because you were the captain on the
 (22) ship you're the only one that gets to define what those
 (23) conditions are? So you say it's A then it's A if you say
 (24) it's C then it's C? And you can just sort of walk from the
 (25) problem?

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- (1) A No I m not walking from the problem but if I made the
 (2) determination and five years later you re going to try to
 (3) second guess it fine so be it
 (4) Q The vessel ran aground didn t it?
 (5) A It certainly did
 (6) Q Are you at all a historian with regard to maritime
 (7) matters?
 (8) A In a general sense yes
 (9) Q Did you ever go do any research on Bligh Reef?
 (10) A A little bit
 (11) Q And Bligh Reef as I understand it was charted for the
 (12) first time by an officer serving with Captain Vancouver in
 (13) 1894 1794?
 (14) A It was done earlier th in th it one of the Cook voyages
 (15) Q I think it s named after Captain Bligh but in any event
 (16) its s been charted and on the charts for centuries?
 (17) A Yes
 (18) Q And at least in modern history other than the Valdez
 (19) there have only been two vessels that have run aground on
 Bligh
 (20) Reef do you know that?
 (21) A The Olympia did and there was one other
 (22) Q The Olympia was trying to shoot the gap between Bligh Reef
 (23) and Reef Island?
 (24) A Yes
 (25) Q And it was improperly laden and it hit the reef?

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- (1) A Yes
 (2) Q And that was in the 1940s?
 (3) A Somewhere around there
 (4) Q And my understanding is that in the early 1900s there was
 (5) a vessel that was moored at Alamar that broke loose and
 (6) because it was loose and free floating ran aground on Bligh
 (7) Reef are you at all aware of that?
 (8) A No I m not
 (9) Q The only one you know other than your vessel is the
 (10) Olympia?
 (11) A Yes
 (12) Q And the Olympia was in the 1940s so from the 1940s to the
 (13) 1990s no other vessel had run aground on Bligh Reef to your
 (14) knowledge?
 (15) A Not to my knowledge no
 (16) Q Let me ask you something I was listening when you
 (17) testified and you make yourself out to be a victim I didn t
 (18) hear you say during your testimony that you were sorry Did
 (19) you?
 (20) MR CHALOS Your Honor I m going to have to object
 (21) to that question Is that a question? Is that an -
 (22) MR O NEILL I think I said did you
 (23) MR CHALOS Well -
 (24) THE COURT Ask the question again
 (25) BY MR O NEILL

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- (1) Q Did you say during your testimony that you were sorry?
 (2) A I don t believe I did I don t think I was asked that
 (3) question
 (4) Q Okay Now I want to go over on the voyage out there was
 (5) laborious detailed examination with regard to the voyage out
 (6) And we do have if we want to reconstruct the voyage out we do
 (7) have at least a written record with regard to what you told the
 (8) VTC isn t that right?
 (9) A Uh huh
 (10) Q And I want to go over a couple of the transmissions on the
 (11) way out The transmission that I want to go to is the
 (12) transmission where I put the pen down at 2324 50 Do you see
 (13) that?
 (14) A Yes
 (15) Q Is that entry - is that you talking?
 (16) A As I rec all yes
 (17) Q And the entry is uh Valdez traffic uh uh uh Valdez do
 (18) you see that?
 (19) A Well there s an Exxon before that yes
 (20) Q Exxon uh uh Valdez yeah Exxon Ba is that the Exxon
 (21) Bencicia?
 (22) A No no Baton Rouge
 (23) Q Baton Rouge?
 (24) A Yeah
 (25) Q So you started to misspeak at that point in time with

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- (1) regard to what vessel you were on?
 (2) A In a general sense I was thinking about the Baton
 Rouge
 (3) I guess Captain Murphy prior to him getting off What
 Exxon
 (4) ships were inbound or in the general vicinity
 (5) Q Now I m going to the next page 2325 01 where I ve got the
 (6) pen -
 (7) A Yeah
 (8) Q Is that you talking?
 (9) A Yes
 (10) Q Yes we ve uh departed the pilot or disembarked the
 (11) pilot excuse me and this time hooking up to sea speed and
 ETA
 (12) Naked Island 0100 over
 (13) Do you see that entry?
 (14) A Yes
 (15) Q Isn t the syntax disembark the pilot and isn t that why
 (16) you said excuse me ?
 (17) A No not really Because normally in VTC control areas
 (18) around the country and around the world if you depart the
 (19) pilot station if there is such an animal, or you disembark
 the
 (20) pilot This is - there s no particular pilot station outside
 (21) of - there s no - and I excused myself because I corrected
 (22) myself and we disembarked the pilot
 (23) Q So you misspoke?
 (24) A Yeah I would say I mis articulated, yes
 (25) Q And then you go on to say At this time hooking up to sea

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- (1) speed?
- (2) A That's my standard transmission. Most masters that I've
- (3) heard over the radio over the years use that same
- (4) transmission.
- (5) Q Does the ship's records reflect that at this time you were
- (6) hooking up to sea speed?
- (7) A No, and most of the time, most ships that I've been on
- (8) don't. They give that transmission and then you either
- (9) figure
- (10) out what you're going to do, you hook up to sea speed, you
- (11) slow
- (12) down, sometimes you stop.
- (13) Q I want to go down now to the entry, if I could, at 2330, 54
- (14) where the pen is?
- (15) A Yeah.
- (16) Q Is that you?
- (17) A Yes.
- (18) Q Yeah, at the present time, uh, I'm going to alter my course
- (19) to 200 and reduce speed to about 12 knots to wend my way
- (20) through the ice.
- (21) Do you see that?
- (22) A Yes.
- (23) Q And you weren't reducing your speed to 12 knots, were you?
- (24) A I was maintaining it.
- (25) Q You were already below 12 knots, weren't you?
- (26) A A half a knot. But I call 12 knots, 12 knots in a situation
- (27) like that.
- (28) Q I want to go to the next page, 26 55. And this is your

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- (1) call again after the disaster?
- (2) A Uh, huh.
- (3) Q Would you say it's a disaster?
- (4) A Certainly.
- (5) Q And you say we fetched up a hard ground - hard ground
- (6) north of uh, Goose Island, off Bligh Reef?
- (7) A Yes.
- (8) Q In point of fact, you weren't near Goose Island?
- (9) A I think you asked this yesterday. We went through this
- (10) whole thing.
- (11) Q I understand that I asked it yesterday, but you - you -
- (12) you testified at great length with regard to all of the care
- (13) that went on during the voyage. I want to go through this
- (14) transcript to show that care didn't happen during the voyage.
- (15) A Very well.
- (16) Q And you weren't near Goose Island at all, were you?
- (17) A No, we were north of it.
- (18) Q And you didn't know where you were, did you?
- (19) A I couldn't believe where we were.
- (20) Q Now, there was testimony this morning that we've gone over
- (21) at great length, the subject of trying to get the vessel off
- (22) the reef versus not trying to get the vessel off the reef.
- (23) We'll move on to something else as a concession to the
- (24) shortness of life.
- (25) Now, with regard to the specific point that you told Mr

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- (1) Cousins to turn -
- (2) A Yes.
- (3) Q When you were interviewed by Mr. Delozier, did you
- (4) generally indicate a position on a chart where you told Mr
- (5) Cousins to turn?
- (6) A Which interview?
- (7) Q At any interview?
- (8) A Okay, there's two.
- (9) Q How about the first one?
- (10) A First one was Mr. Delozier and Commander Falkenstein
- (11) shortly after they boarded up in the -
- (12) Q Up in the chart room?
- (13) A Up in the chart room. I believe the chart was there, the
- (14) navigation chart. They asked me in general terms how I
- (15) thought - what had happened and both of them did and I
- (16) pointed
- (17) out to both of them, or either one, that I'd instructed Mr
- (18) Cousins to turn at Busby Island light when it was ahead and
- (19) it
- (20) appeared from the course recorder printout that was
- (21) adjacent to
- (22) the chart table by simple dead reckoning, by how much time
- (23) had
- (24) elapsed [sic] before the course started to change that the
- (25) course was - the course change was started down here
- (26) somewhere
- (27) below Busby Island.
- (28) Q Was a mark made on the chart?
- (29) A I don't recall a - made a rough measurement of the
- (30) distance, I may have made a mark, may have not have. The

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- (1) second interview was made without that chart.
- (2) Q Okay.
- (3) A And the indication was at Busby Island, is well.
- (4) Q I want to go back to the first interview - and I'm glad
- (5) you're clearing that up for me. You know that they take the
- (6) position -
- (7) A One of them does.
- (8) Q One of them takes the position that you indicated on the 38
- (9) fathom mark that that's where the turn was going to be made in
- (10) the first interview?
- (11) A He indicates something to that effect.
- (12) Q And that is different than where you now say the turn was
- (13) supposed to be made?
- (14) A It was different then and it's different now.
- (15) Q And in fact, if - if in fact the turn - would you agree
- (16) with the fact that if in fact you did tell him to turn at the
- (17) 38 fathom mark, that would have reflected poor judgment?
- (18) A It would have reflected poor judgment on my part and his
- (19) part for trying to do something like that.
- (20) Q So would it be fair to say that just prior to leaving the
- (21) bridge, you were outside the traffic separation scheme?
- (22) A Yes.
- (23) Q And you were approaching it?
- (24) A No.
- (25) Q Ice was to the right and land was to the left, a mile on

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- (11) each side?
- (12) A Yes
- (13) Q And you were moving towards the red zone?
- (14) A We were approaching the red zone sector or red sector of
- (15) Busby Island light
- (16) Q And you were in load program up?
- (17) A Yes
- (18) Q And you left the bridge two minutes before the turn?
- (19) A Yes
- (20) Q And your testimony is that Cousins called you two minutes
- (21) after you left the bridge?
- (22) A Within two to three minutes. I mean I looked at the clock
- (23) and it was -
- (24) Q And you know that was -
- (25) A But the appropriate time -
- (26) Q And you know that isn't Mr Cousins testimony?
- (27) A I'm not exactly sure what his testimony is concerning
- (28) that
- (29) Q And you blame it on Cousins don't you?
- (30) A I don't blame it on him no. The turn wasn't made for
- (31) whatever reason, it wasn't made for
- (32) Q With regard to the entire voyage your position as you sit
- (33) here today is that you just did everything super isn't it?
- (34) A Certainly not
- (35) Q Now with regard to the other two vessels that we talked
- (36) about that left the traffic separation scheme - remember you

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- (1) had that chart?
- (2) A Yes
- (3) Q Do you know whether their captains were in violation of the
- (4) four hour rule?
- (5) A Best of my knowledge I met the pilot or the captain of the
- (6) Juneau ashore. I was introduced to him. I don't know
- (7) whether
- (8) he was drinking or not
- (9) Q Do you know whether those vessels ever made it into the red
- (10) zone? They didn't did they?
- (11) A I don't know. I'd have to look at the Juneau's track
- (12) line. He should have been close to it
- (13) Q He was close to it but he didn't go into the red zone?
- (14) A Yeah I really don't know
- (15) Q Do you know if their captains were on the bridge?
- (16) A As I recall, they were, yes
- (17) Q And they had two officers on the bridge didn't they?
- (18) A Well the master and another officer, I would assume
- (19) Q That's right?
- (20) A Yeah
- (21) Q And they didn't hit Bligh Reef did they?
- (22) A No they didn't
- (23) Q I want to just make sure your testimony is clear on a
- (24) variety of things
- (25) A You deny the bottle destruction incident that Joel Roberson
- (26) discusses don't you?

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- (1) A Yes
- (2) Q And you deny drinking on the Exxon Valdez with Nate Carr
- (3) don't you?
- (4) A On the vessel yes
- (5) Q And you deny drinking on board the Exxon Valdez with
- (6) William Masciarelli don't you?
- (7) A Yes
- (8) Q And you deny drinking in Valdez in 1988 with Vern Decker
- (9) don't you?
- (10) A After my deposition I thought about that and it may have
- (11) occurred. I - it's the first time I'd ever thought about that
- (12) luncheon when it was raised in my deposition. It may have
- (13) - I
- (14) may have had a beer at lunch with him or may not have. I -
- (15) Q And you deny telling Mr Graves that you've ever come back
- (16) from the port drunk on occasion don't you?
- (17) A No that's not Mr Graves. He said on several occasions
- (18) Q On several occasions?
- (19) A I deny saying that to Mr Graves yes
- (20) Q And you deny ever having alcohol aboard the Exxon Valdez?
- (21) A With the exception of the Christmas business
- (22) Q And your testimony is that the only time in all your years
- (23) as a mariner that you violated the four hour rule was the day
- (24) the vessel ran aground?
- (25) A In that sense yeah the technical violation, yes. Because
- (26) it was only effect since '88

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- (1) Q And with regard to the testimony of the two bar owners and
- (2) Ms Delozier about your presence at the Pipeline Club you deny
- (3) that those events took place?
- (4) A Those times don't match up no
- (5) Q And you deny that you're an alcoholic?
- (6) A I don't consider myself one no
- (7) Q And we agree that we've had various versions from you on
- (8) drinking in Valdez?
- (9) A Different versions yes
- (10) Q And we've had different versions from you -
- (11) A At different times and different circumstances
- (12) Q That's right. We've had different versions at different
- (13) times in different circumstances?
- (14) A Certainly
- (15) Q So sort of the theory of relative truth isn't it?
- (16) A No
- (17) Q And with regard to the Paul Myers incidents and whether you
- (18) told Mr Myers that you had been drinking or not would you
- (19) agree that we've had different versions of that story?
- (20) A I would have to agree there have been different versions,
- (21) but the conversation that we had was really part of a
- (22) six hour
- (23) meeting, really. It wasn't a big issue
- (24) Q We are clear on the fact that specifically speaking you
- (25) were never told not to drink by Exxon Corporation?
- (26) A That's correct yes

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- (1) Q And Exxon Corporation never inquired into your AA or
(2) aftercare?
(3) MR NEAL Your Honor I do register an objection
(4) here now In the words of Mr O'Neill in the interest of the
(5) brevity of life to go back over this now I - I believe for
(6) the third time Object
(7) MR O NEILL I will sit down in two minutes if I can
(8) just finish up
(9) MR NEAL If he'll sit down in two minutes Your
(10) Honor I'll withdraw my objection
(11) THE COURT Agreed
(12) MR O NEILL Ready? Go
(13) THE COURT Mark
(14) BY MR O NEILL
(15) Q You were never told - nobody ever inquired about your AA
(16) or your aftercare?
(17) A Not specifically no
(18) MR O NEILL I've got nothing else Judge thank
(19) you
(20) THE COURT 15 seconds
(21) MR NEAL This is an unusual animal Your Honor
(22) THE COURT We did talk -
(23) MR NEAL And I don't know what we do
(24) THE COURT Okay we didn't talk about what was going
(25) to happen at this juncture as far as any further examination

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- (1) If you will suggest to me some reasonable amount of time that
(2) each of you want we will make an exception to my usual rule
(3) that we do not have this additional round of examination
(4) MR NEAL Your Honor I'm going to - as a man from
(5) the South and a lawyer I'm going to shock you I'm going to
(6) take one minute And I'll - I'll cede the rest of my time
(7) whatever you would otherwise allow to me to Mr Chalos
(8) THE COURT I'm not going to let you cede any time
(9) but your minute is acceptable
(10) MR CHALOS Your Honor I have somewhere between five
(11) and ten minutes
(12) THE COURT That will be fine
(13) MR O NEILL I think that's fair
(14) RE-CROSS EXAMINATION OF JOSEPH HAZELWOOD
(15) BY MR NEAL
(16) Q Captain Hazelwood?
(17) A Yes
(18) Q You and I went over a lot of subjects yesterday I will
(19) not go back over them I did notice the rather clever
(20) questions of Mr O'Neill and did you perceive from those
(21) questions that he was accusing you of lying and lying to help
(22) Exxon?
(23) A That was the sum and the substance that I got yes
(24) Q And did you understand that he was - perceive that he was
(25) accusing me of seeking to have you lie by virtue of his

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- (1) questions about after you talked to Exxon lawyers you do
(2) such and things? Do you remember that?
(3) A Yeah I don't think he personalized it to you but in
(4) general
(5) Q I am the Exxon lawyer that's talked to you haven't I?
(6) A Yes
(7) Q Is my perception correct that you wouldn't lie to help
(8) Exxon?
(9) A Certainly not
(10) Q Captain Hazelwood I've asked to interview you a couple of
(11) times?
(12) A Yes
(13) Q In the presence of your counsel right?
(14) A Yes sir
(15) Q You've been kind enough to let me do that?
(16) A Yes sir
(17) Q Did I ever suggest say suggest any way in the world that
(18) you tell anything but the truth?
(19) A No, sir
(20) MR NEAL Thank you
(21) RE-CROSS EXAMINATION OF JOSEPH HAZELWOOD
(22) BY MR CHALOS
(23) Q Captain when you had your interview with Mr Delozier -
(24) A Yeah
(25) Q - did you purpose - excuse me? Sorry? Sorry

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- (1) When you had your interview with Mr Delozier did you
(2) purposely lie to him?
(3) A No
(4) Q Tell us please what was going on at that time when you
(5) were called down by Mr Delozier?
(6) A At that time we had the second rising tide after the
(7) grounding We were trying to inflate one fender and bring
(8) another one off that had been supplied by Alyeska We had
(9) taken a second sound of - round of soundings around the
(10) vessel
(11) to find out how deep the water was to figure how the best
(12) approach could be made for the Exxon Baton Rouge which
(13) was
(14) going to lighter or commence taking cargo off
(15) We evacuated the engine room at that point earlier in the
(16) evening We were starting to go back in there and we were
(17) still evaluating We had - we quit leaking oil basically the
(18) oil had run out
(19) The phones were being used or ringing or two or three
(20) helicopter landings with various people coming and going
(21) The
(22) governor was on his way Governor Cowper and an
(23) entourage
(24) It was just pretty chaotic
(25) Q You say you were preparing to make up for another vessel
(1) coming alongside?
(2) A Yes
(3) Q Riggling out hoses?
(4) A What hose we had mooring lines and deck gear that we'd

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- (1) need to secure them alongside
 (2) Q Lot of people running around the ship?
 (3) A The entire crew was up and about
 (4) Q I'm an outsider
 (5) A Outsiders yes
 (6) Q Everybody asking you questions?
 (7) A There were a lot of people asking me questions
 (8) Q Did you have a lot of work to do that day?
 (9) A I had a lot of work to do all day yes
 (10) Q Okay -
 (11) A And the next day after
 (12) Q And Mr O'Neill was questioning you of what you told Mr
 (13) Delozier decided he wanted to ask you about one line Let me
 (14) read - and I'd like to call up Exhibit 16 - is it 1611? Oh
 (15) yeah 826 I'm sorry I want to start with Page 3 F
 (16) MR CHALOS Could you load that up for me? Starting
 (17) down here starting with okay Yes sir - hold on Yeah
 (18) starting with okay right there yeah Yeah right about here
 (19) right about - right right
 (20) BY MR CHALOS
 (21) Q Okay let's read it Okay you say - and then - then you
 (22) say I had to haul more just about due south which would
 (23) be this and you were -
 (24) A Indicating a meridian or longitude line which would be
 (25) north south line

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- (1) Q And then you say - and about here I had some paperwork to
 (2) attend to down here for a few minutes and I asked the third
 (3) mate he had - was comfortable with the situation The course
 (4) we were steering we got down to Busby Island we cleared the
 (5) ice on the radar all haul it back to the right and rejoin the
 (6) traffic system
 (7) Is that consistent with what you said today as far as the
 (8) conversation you had with the third mate?
 (9) A That's a condensed version of the testimony I gave yes
 (10) Q Okay and then he says - next page please page 4
 (11) starting at the top
 (12) All right He says Okay so the intention was to come on
 (13) down to this vicinity?
 (14) Answer Yeah Busby Island get a new fix and the light
 (15) was visible and then he says And swing her back up and swing
 (16) her to the westward again
 (17) Okay and that was about - that was 180
 (18) That's a 180 Well this isn't a course line it's the
 (19) meridians
 (20) Now let me continue on
 (21) Yeah due north and south so basically that's - all
 (22) right so you asked the third mate if he felt comfortable
 (23) yeah And - and he was aware of apprised of the situation
 (24) how I had conned the ship and that it was steering 180
 (25) You said that right?

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- (1) A Yes
 (2) Q And then he said Did you leave any explicit instructions
 (3) as far as when you get through such and such a point - could
 (4) you highlight that please? - No right there right Okay
 (5) it says And did you leave any explicit instructions as far as
 (6) when you get through such and such a point you'll turn to -
 (7) and you start to say No I didn't and he - that's what Mr
 (8) O'Neill read?
 (9) A Yes
 (10) Q And he interrupted you Mr Delozier didn't he?
 (11) A Yes And he said any particular course
 (12) Q And then you say Say at Busby Island turn back but I
 (13) showed him on the radar where the ice was and then he says
 (14) uh huh and you say And we'd be aware of it and we'd be
 (15) approximately here Okay and once we were aware of the
 (16) ice come back to the right and rejoin the traffic
 (17) lane
 (18) Is that all consistent with what you testified to this
 (19) morning?
 (20) A Yes Essentially it's the same thing only -
 (21) Q Did you ever tell Mr Cousins to turn to the 38 fathom
 (22) mark?
 (23) A Never told anybody that
 (24) Q Have you in all your career Captain ever given an order
 (25) for someone to turn at a fathom mark?

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- (1) A Never given or received
 (2) Q North side for somebody to turn at a fathom mark instead of
 (3) say a light that you can see what would one have to do to
 (4) determine first of all that he was at the fathom light?
 (5) A He'd have to first work up a tide to find out the depth of
 (6) the water and compare it to the chart and chart reference of
 (7) tidal data and have the sidesweep sonar so he would know
 (8) the point was coming up before we got to the point It's just not
 (9) done I - I've never heard anything like that
 (10) Q And you certainly didn't do that that evening?
 (11) A No
 (12) Q Now I want to go to page 5 of your discussion with Mr
 (13) Delozier - okay No I want to highlight this right in the
 (14) middle here Yeah I want to blow that up if it's possible
 (15) Could you highlight here starting here rock the boat I
 (16) mean? All the way down Down - rock the boat right
 (17) Now Mr O'Neill again gave you some limited information
 (18) and then asked - you told Delozier you were rocking the boat
 (19) didn't you and you said Yes But let's read what you told
 (20) Mr Delozier about that?
 (21) A Well not rocking the boat
 (22) Q Well maybe - maybe that's a term that Mr O'Neill used
 (23) Let's read what it says
 (24) A Frequently
 (25) Q And he didn't read it so I want to read it to you Okay

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- (1) all right when you arrived on the bridge did you do any -
 (2) wait a minute let's start up above
 (3) He says Was - was that - was there a jolt? No it was
 (4) just - then he says Rock the boat I mean? And then you say
 (5) Well there's a normal vibration of the engines It's - but
 (6) this was you know significant shudder That's not you know
 (7) didn't feel right
 (8) Now you're talking about the grounding aren't you? At
 (9) that point?
 (10) A Yes
 (11) Q Okay Then he says Okay all right When you arrived on
 (12) the bridge did you - did you do anything at that time? And
 (13) you say I was - I tried to rudder and engines for a few
 (14) minutes to see if we could extract it from the situation but
 (15) then -
 (16) Now is that exactly what you did?
 (17) A Essentially, yes I tried using the rudder and engines in
 (18) the first two or three minutes I was up there and returned
 (19) rudder to midship and shut the engine down
 (20) Q Then you say But then I got my faculties about me I was
 (21) a little upset of course but then I thought about it and
 (22) driving her off might not be the best way to go because it just
 (23) exacerbates - exacerbate the damage so I just stopped the
 (24) engines
 (25) A Yes

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- (1) Q That's what you told him about that isn't it?
 (2) A That's all part and parcel of the same -
 (3) Q And isn't that exactly what you told us today?
 (4) A Essentially yes
 (5) Q And isn't that exactly what you did?
 (6) A Yes
 (7) Q Now I want to go back because again I think you had an
 (8) unfair reading of the deposition
 (9) When you spoke about Mr. Pierce and the offer that you
 (10) were - or the coming ashore as a port captain item that you
 (11) were discussing?
 (12) A Yes
 (13) Q Okay on page 1010 starting at the bottom 1010 going to
 (14) 1011 there's a discussion about coming ashore. If you know
 (15) that there was any - any recommendation for you to come
 (16) ashore
 (17) and your answer on page 1011 is as follows the only
 (18) recollection I have of mentioning such a shore assignment
 (19) was - it wasn't put in the form of an offer It was from
 (20) Captain Pierce sometime in the 1983-84 time range He said
 (21) it was a two year hitch he was on and I can't put a real exact
 (22) time on it He still had two years to go roughly in his tour
 (23) as port captain and he mentioned - said in an offhanded way
 (24) but I know him well enough where I don't think he would
 (25) consider - where I don't think and then - he said you
 (26) consider relieving me at the end of my tour

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- (1) He went on further I think to say that I am in charge of
 (2) finding my own relief meaning Mr. Pierce This is the tour as
 (3) a port captain? Yes Yes it was a rotating kind of
 (4) assignment
 (5) Now that's the complete fact is that the way you remember
 (6) your discussion with Mr. Pierce?
 (7) A Yeah pretty much It was back in the '83 to '84 time
 (8) range as I say a year in there He was down there during
 (9) that period of time
 (10) He wasn't real serious about it But he was in charge
 (11) of - as I recall him saying he had to find his own relief
 (12) Q Now Captain going to the pilotage issue -
 (13) THE COURT You've had your ten minutes Mr. Chalos
 (14) MR CHALOS Have I? Your Honor let me just ask two
 (15) final questions and I'll sit down
 (16) THE COURT Two final questions you got it
 (17) BY MR CHALOS
 (18) Q Captain Mr. O'Neill asked you then he didn't want to hear
 (19) the answer Are you sorry for what happened on the night of
 (20) March 23rd 1989?
 (21) A Certainly I'm devastated but he never asked me
 (22) Q He didn't ask you?
 (23) A No
 (24) Q Captain did you testify truthfully here today and
 (25) yesterday and at your deposition?

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- (1) A Yes
 (2) MR CHALOS No further questions Your Honor
 (3) THE COURT You may step down sir
 (4) (Witness excused)
 (5) THE COURT Plaintiff may call its next witness
 (6) MR GERRY If the Court please the plaintiffs would
 (7) like to call Dr. Vallury by deposition
 (8) THE CLERK Raise your right hand please sir
 (9) (The Witness Is Sworn)
 (10) THE CLERK Please be seated Would you state your
 (11) name for the record also your address and spell your last
 (12) name?
 (13) MR KENDE My name is Christopher Kende K E N D E
 (14) 545 West End Avenue New York New York 10024
 (15) DIRECT EXAMINATION OF SIVANCHANDRA VALLURY M
 (16) (Read)
 (17) BY MR GERRY
 (18) Q Could you state your full name and residential address for
 (19) the record please Doctor?
 (20) A My name is Sivachandra S I V A C H A N D R A middle
 (21) initial M as in Mary Vallury V A L L U R Y I reside at 268
 (22) Bayview B A Y V I E W Avenue Massapequa Zip 11758
 (23) Q And by whom are you currently employed Doctor?
 (24) A South Oaks Hospital and I'm also in private practice
 (25) Q What type of private practice do you have?
 (26) A Individual and I also work as a senior psychiatrist at

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(1) South Oaks Hospital
 (2) Q Individual practice you are referring to a psychiatric
 (3) practice?
 (4) A That's correct
 (5) Q Where you see patients?
 (6) A Right
 (7) Q What is your office address for your practice?
 (8) A South Oaks Hospital 400 Sunrise Highway Amityville
 (9) 11701
 (10) Q Could you give us a brief educational background sir?
 (11) A I finished my medical school in Bombay India getting my
 (12) MBBS in 1964
 (13) Q Let me interrupt you What does MBBS stand for?
 (14) A Bachelor of medicine bachelor of surgery It's a British
 (15) equivalent of the M D here
 (16) Q Thank you Please continue
 (17) A I'll skip the details of what I did but pick it up from
 (18) here Came here in August 1967, did my FCFMG and what
 (19) the FCFMG is it's a concomitant examination that brings you on
 (20) par and lets you enter into medicine here Got my New
 (21) York
 (22) State license in 1972 I'm board certified in psychiatry
 (23) since 1975 I'm a general member of the APA since 1975 I
 (24) also have my certification in addiction medicine and it's
 (25) given
 (26) by the American Society of Addiction Medicine I got that in
 (27) 1987 or 1988 I'm not exactly sure as to the exact year

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(1) Q What is addiction medicine?
 (2) A Addiction medicine is an exam that's given in order to
 (3) test
 (4) your proficiency as far as treatment of addiction That is
 (5) anybody abusing any list of addictive substances It deals
 (6) with both the medical as well as the psychiatric aspects of
 (7) addiction
 (8) Q Does that involve any special courses or training other
 (9) than the regular psychiatric training that you've had?
 (10) A It does in the sense that the requisites for even taking
 (11) the exam that you've got to be in one - having finished
 (12) residency in psychiatry general psychiatry and after that
 (13) you've got to be or have to have been involved at least for
 (14) three years in the practice of addiction or the treatment of
 (15) addiction
 (16) You also have to have a letter of reference by somebody
 (17) who
 (18) is in the addiction field in order to take the exam So all
 (19) these are requisites We then take a written examination
 (20) and
 (21) once you pass that you get your certification in addiction
 (22) Q Now the three years of - did you say it was a residence
 (23) in addiction medicine or just experience?
 (24) A No, just the experience in the practice of
 (25) Q Practice Where did that occur?
 (26) A At South Oaks Hospital
 (27) Q Okay could you tell me a little bit more about your
 (28) association at South Oaks Hospital - how did you start what

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(1) were your duties and responsibilities at that point and how far
 (2) they changed through today?
 (3) A Okay At South Oaks Hospital when I first joined South
 (4) Oaks is all of us when we first joined my working situation
 (5) you're in the designation of a staff psychiatrist Then
 (6) having the board certification and the tenure of - after
 (7) three years I was promoted to the designation of senior
 (8) psychiatrist because of the experience and board
 (9) certification
 (10) that I held I've been a senior psychiatrist since that time
 (11) The general duties are again treating patients all that
 (12) treating patients entails which is team meetings and
 (13) keeping
 (14) records of everything that is entered in hospital practice
 (15) Also I have a private practice on the premises where I see
 (16) individuals individually It does not have to be direct with
 (17) hospital practice but my own practice and even in the
 (18) hospital the people I treat I bill privately for It's a -
 (19) the hospital and the psychiatrists on staff have a symbiotic
 (20) working relationship I do a lot of duties as far as hospital
 (21) involvement is concerned For example currently I'm the
 (22) chairman of the pharmacy committee I'm also in the
 (23) quality
 (24) assurance committee so we involve ourselves in various
 (25) committees at given times
 (26) I'm on call at the hospital once every - I would say
 (27) average 14 days which means you sleep on the premises
 (28) and take
 (29) care of people who are ill or other emergencies at night or

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(1) admissions or things like that
 (2) Regarding any significant qualitative change since I joined
 (3) the hospital there's not been any significant qualitative
 (4) change is to what I do today as compared to 1976
 (5) Q What percentage currently of your private practice involves
 (6) addiction medicine?
 (7) A I would say inpatient wise it's very variable but at any
 (8) given time it's 25 percent on an average would be in
 (9) addiction
 (10) medicine
 (11) Q Now I just may have mis - that would include patients
 (12) you're treating inpatient basis?
 (13) A Inpatient
 (14) Q And your outside outpatient practice?
 (15) A Outpatient would be much less than that It would be
 (16) about 14 days three four percent that I follow on an
 (17) ongoing
 (18) basis Consultation wise again I do do consultations but
 (19) on
 (20) a continuum of treatment I would be seeing about two or
 (21) three
 (22) percent
 (23) Q Now of the 25 percent who you are treating on an inpatient
 (24) basis what percentage of that have alcohol abuse - strike
 (25) that
 (26) What percentage have alcohol abuse problems currently?
 (27) A Out of that 25 percent I'd say about 50 percent of the
 (28) people that I have in the addiction program currently would
 (29) be
 (30) alcoholic

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(1) Q Does it occur that you treat someone for alcoholism on an
 (2) inpatient basis and then continue to follow them on an
 (3) outpatient basis?
 (4) A No. The reason why I don't do that is because after the
 (5) inpatient episode is over I send them to AA. I send them to
 (6) outpatient departments or individuals that have groups
 (7) pertaining to alcohol. Group therapy works very well with
 (8) any
 (9) of the addiction. Individual therapy does work but it's not
 (10) usually as effective as a group. And since I don't run group
 (11) therapy, I usually send them for care to other people who
 (12) either run groups or to an outpatient department.
 (13) Q Did it occur that - ever while you were at South Oaks that
 (14) you continued treating on an outpatient basis yourself
 (15) someone who had been treated by you as an inpatient for
 (16) alcohol
 (17) abuse?
 (18) A If they had a major defective disorder, depression or
 (19) something that I put them on medications for I would follow
 (20) them, but even then I'd follow them - my rule of thumb
 (21) usually
 (22) is once a month for medication management, keeping in
 (23) touch
 (24) with how they are doing with whomever I referred them to.
 (25) Q Do you remember treating Captain Hazelwood?
 (26) A Yes. I can recall treating him, but I do not have an
 (27) independent recollection of the details. Again I remember
 (28) treating him, but not the details.
 (29) Q Is it your normal practice to provide a diagnosis when you

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(1) Q Is dysthymic a different abuse from alcohol abuse episode?
 (2) A Yes.
 (3) Q What is the difference between a provisional diagnosis and a
 (4) discharge diagnosis?
 (5) A A provisional diagnosis would be a working diagnosis
 (6) when
 (7) someone comes into the hospital. After you've come to
 (8) know the
 (9) individual for some time then it becomes more definite a
 (10) diagnosis.
 (11) Q You use the terms alcohol free and sobriety
 (12) interchangeably?
 (13) A That's right.
 (14) Q When the term alcohol free is used was there a time factor
 (15) in that if you recall? By alcohol free was there a reference
 (16) in time for how long one would be alcohol free?
 (17) A Again if I might qualify it or go slightly off what is
 (18) being asked in treatment again, for any alcoholism my
 (19) own
 (20) philosophy and the general direction that anybody in
 (21) treatment
 (22) takes is a lifetime of sobriety. In a practical sense we
 (23) don't tell the individual. We tell them that it has got to be
 (24) a lifetime of sobriety. In a practical sense we say I let's
 (25) take it a day at a time. Get involved in the treatment get
 (26) involved in meetings. It's that two part that I address with
 (27) anybody that comes into the program.
 (28) Q You don't tell them you have to be alcohol treatment for
 (29) your whole life you say. Let's do it one day at a time?

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(1) first meet a patient?
 (2) A Yes. If I might clarify you had asked about the dysthymic
 (3) disorder, the alcohol abuse episodic. If I might clarify to
 (4) me in treating a patient it's not that significant but in a
 (5) statistical fashion or in the order it's a primary dysthymic
 (6) disorder and the secondary comes in as alcohol abuse
 (7) episodic.
 (8) Q Now what do you mean by primary?
 (9) A That is if a patient come in - comes in that let's say
 (10) features with dysthymia and also with alcohol you put it in
 (11) that order, depending on how the history evolved also or
 (12) what
 (13) was showing at that time. There are differences between a
 (14) dysthymic disorder and let's say a major depression or
 (15) schizophrenic. They have different connotations so even if
 (16) this went to another one of my colleagues we might see it
 (17) differently but the treatment really doesn't differ, you
 (18) address both situations simultaneously.
 (19) Q Is dysthymic disorder a separate diagnosis from alcohol
 (20) abuse episodic?
 (21) A Yes.
 (22) Q What is the difference between the provisional -
 (23) MR RUSSO Your Honor I'd like to object. There's
 (24) been a misreading significant. Counsel said alcoholic abuse
 (25) episodic it's alcohol abuse episodic not alcoholic.
 (26) THE COURT Would you back up and read it again then?
 (27) BY MR GERRY

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(1) A I think the question was you don't tell them they have to
 (2) be alcohol free.
 (3) Q Alcohol free for your whole life?
 (4) A Would you reread the question please?
 (5) Q You don't tell them you have to be alcohol free for your
 (6) whole life you say. Let's do it one day at a time?
 (7) A That we do. I do tell them.
 (8) Q You do?
 (9) A Yes. Once an alcoholic always an alcoholic. Not in a
 (10) demeaning sense but that is the nature of the beast.
 (11) Q So it was your view then that Captain Hazelwood should
 (12) remain alcohol free for the rest of his life on discharge?
 (13) A Yes. I am talking generally. That again what I
 (14) generally practiced would apply to him logically. Again
 (15) specifically what I said to him at that time I don't recall.
 (16) Q What do you generally practice then?
 (17) A A lifetime of abstinence from alcohol.
 (18) Q When you use the term sobriety what do you mean in the
 (19) context of treatment of a patient?
 (20) A That is - again I can only speak for myself. Sobriety is
 (21) somebody who is abstinent from alcohol.
 (22) Q Referring to your treatment of Captain Hazelwood is it
 (23) your testimony that you had no contact whatever with Captain
 (24) Hazelwood from the date of his discharge to the present?
 (25) A That's right.

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(1) Q And then an exhibit is marked 73719 which is a document
 (2) entitled an Individual Disability Report I show that to you
 (3) and that's our present Exhibit 10 Could we call that up on
 (4) the screen please?
 (5) MR. RUSSO Your Honor I want to object I don't
 (6) think that that's the exhibit that's referred to in this - can
 (7) I see that exhibit please? That's not the exhibit
 (8) MR. GERRY Call it up on the screen please
 (9) BY MR. GERRY
 (10) Q Is the name of the patient at the top of the exhibit in
 (11) your handwriting?
 (12) A That is not mine But below the name area that is mine
 (13) Q Everything below the name area is yours?
 (14) A Right
 (15) Q Do you see there - do you see there is something in
 (16) handwriting to the left of your name it looks like your name
 (17) but it is different it is in a different handwriting?
 (18) A Right
 (19) Q That is not your handwriting?
 (20) A No
 (21) Q The record will reflect that is someone else's
 (22) handwriting In addition the phone number beginning 516 on
 (23) the right side of the bottom?
 (24) A Right
 (25) Q That is not your handwriting either?

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(1) A That is not mine
 (2) Q There is a little scrawl next to that and that is not your
 (3) handwriting?
 (4) A That is not mine
 (5) Q The record will reflect that is someone else's
 (6) handwriting We will be getting to that
 (7) Do you recall filling out this form?
 (8) A Not again specifically but I am sure I did
 (9) Q Is this the type of form that you recognize?
 (10) A It is a disability form which we fill out for anybody who
 (11) is in the hospital
 (12) Q Also on the treatment section there is a P 9439 and
 (13) underlined is that something that you wrote?
 (14) A That is not my writing
 (15) Q What about the typed numbers opposite the diagnosis?
 (16) A This would be typed in by our medical records because
 (17) again, we don't spell out the diagnosis because we don't
 (18) know
 (19) whose desk this is going to lie on This is the DSM III, as it
 (20) is set So anybody who receives it, the medical department
 (21) or
 (22) whoever, then looks at the DSM-III and then collates the
 (23) numbers to a diagnosis
 (24) Q These numbers are taken from the DSM III then?
 (25) A Right
 (26) Q They correspond to diagnoses?
 (27) A Right

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(1) Q Dysthymic disorder what number corresponds to that?
 (2) A I would say the 300.40 and the alcohol abuse episodic
 (3) would be 305.02
 (4) Q What are the numbered items one through five on this form
 (5) opposite the column that says treatment?
 (6) A That would be the treatment that the individual is
 (7) receiving at that time
 (8) Q Approximately when was this form filled out?
 (9) A I dated that 4-16-85 so where I signed it below
 (10) Q I see If you recall how did you come to receive this
 (11) form?
 (12) A Again my memory is hazy about this but I can tell you
 (13) that usually the individual gives me the form and says I
 (14) need
 (15) some kind of a disability form filled because people don't
 (16) know
 (17) where I am or what I'm doing kinds of a thing So it is given
 (18) to us or it can be mailed by the company by the personnel
 (19) department It is difficult to say from this form how I got
 (20) it but it can be any number of resources It can be the place
 (21) of employment that mails it to the patient and then the
 (22) patient
 (23) gives it to me and then it is filled out and given to the
 (24) medical department to make copies of it so that in the
 (25) future
 (26) we can have a document
 (27) Q Do you recall how you received this form?
 (28) A I don't
 (29) Q The entry below the treatment section says I believe

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(1) treatment dates and then it is a little hard to read Can you
 (2) read the entry below or the note below that?
 (3) A I can surmise Regular work presently fit for regular
 (4) work
 (5) Q The next one?
 (6) A The next one is -
 (7) Q That is checked no right?
 (8) A That's right That is checked no The other one is -
 (9) Q Looks like presently fit for work with restrictions?
 (10) A That's right
 (11) Q That is also checked no?
 (12) A That's right
 (13) Q Could you read the entry beneath that? Let me read the
 (14) print and I'll let you read the handwriting "If still now not
 (15) now able I estimate patient may return to full duty on and
 (16) then it is blank In the meantime any restrictions
 (17) recommended as a result of this disability are -
 (18) A It says Mr. Hazelwood will complete our 28 day program
 (19) It
 (20) is recommended, given the nature of his job that after
 (21) discharge Mr. Hazelwood be given leave of absence to get
 (22) involved in AA and aftercare
 (23) Q Just to clarify my question is whether as of the date that
 (24) you filled out this form was it your view that the patient
 (25) could not control - return to his work as of that date? Do
 (26) you understand my question?

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(1) A Yes And no in the sense that he couldn't return to work
 (2) as of that date but also into a little past that date or into
 (3) the future So that he could be given a leave of absence to
 (4) get involved in AA and aftercare so not only at the writing
 (5) but also for the future past that writing, that he shouldn't
 (6) return
 (7) Q So based on this form when do you think he should have
 (8) returned to work?
 (9) A The reason why I qualified it so I wouldn't get into the
 (10) question of saying when he would get back to work that is
 of
 (11) that date and into the future and then, as I said in my
 (12) previous testimony that all this is evaluated on an ongoing
 (13) basis
 (14) Now, hypothetically - and this is totally away from it, if
 (15) he was drinking and falling down all over the place he
 (16) wouldn't be going back to work so it belongs in that
 (17) category It has to be evaluated over time There is no
 exact
 (18) spot
 (19) Q Based on this document and your recommendation Doctor
 was
 (20) it your view that the captain could return to work as of this
 (21) date of the discharge from inpatient treatment?
 (22) A No
 (23) CROSS EXAMINATION OF S VAILURY M D (Reid)
 (24) BY MR RUSSO
 (25) Q Just have a few questions on cross examination Referring

(1) THE COURT Looks like L e C a i n
 (2) THE CLERK Thank you sir Please raise your right
 (3) hand
 (4) (The Witness Is Sworn)
 (5) THE CLERK Please be seated in the witness stand
 (6) For the record please state your full name address and spell
 (7) your last name?
 (8) A Michael Woerner W O R N E R 1629 20th Avenue
 (9) Northeast Redmond Washington
 (10) DIRECT EXAMINATION OF LLOYD LECAIN (Reid)
 (11) BY MS WAGNER
 (12) Q Please state your full name and home address?
 (13) A Lloyd Lecain 416, Freshman Place Longwood Florida
 (14) Q What is your present employment today?
 (15) A I'm selling real estate I'm not with Exxon anymore
 (16) Q How long have you not been with Exxon?
 (17) A About four or five months
 (18) Q What were the circumstances of your leaving Exxon?
 (19) A I have post traumatic stress disorder and I was retired
 (20) from Exxon
 (21) Q You have the disorder from the accident?
 (22) A That's correct
 (23) Q Supposing you start with your education and we'll work our
 (24) way up to where you are today If you can after high school
 (25) where did you -

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(1) to the doctor's answer to the last question relating to the IDR
 (2) form I would ask you Doctor to complete your answer if you
 (3) hadn't completed it Do you want the question back again and
 (4) you want to complete your answer fine If no was all you had
 (5) to say then we can stop
 (6) A No was the answer and it is inferred from the record
 (7) Q Referring to the IDR form do you recall how you received
 (8) this form?
 (9) A I don't
 (10) Q Referring to depression what would be done to accomplish
 (11) the alleviation of depression?
 (12) A I don't recall again the specificity but in general there
 (13) are intensive groups on a daily basis There are meetings
 on
 (14) the unit away and apart from the group There are
 individual
 (15) sessions and lectures and workshops one on one
 counseling
 (16) Q Referring to aftercare is aftercare a term of art?
 (17) A That is - aftercare being after the care in the hospital,
 (18) that is what the term implies
 (19) MR RUSSO Thank you
 (20) (The witness was excused)
 (21) THE COURT Call your next witness
 (22) MS WAGNER Thank you Your Honor Plaintiffs call
 (23) Lloyd Lecain by deposition designation This will be a read
 (24) designation
 (25) THE CLERK Is that McCain Lloyd McCain?

(1) A I went to Texas A&M and I graduated from Texas A and M
 (2) Q When you graduated what degree did you get?
 (3) A I got a bachelor of science in marine transportation
 (4) Q And did you get a license at that time?
 (5) A Yes I did
 (6) Q Your third mates license?
 (7) A Yes I did
 (8) Q What year was that?
 (9) A '72
 (10) Q And then what did you do?
 (11) A I went to work for Exxon I went to work as an A B They
 (12) didn't have my third mates jobs available at the time There
 (13) was a shipping slump during the '70s and after 14 days I
 got
 (14) promoted to third mate and I sailed as third mate until I got
 (15) my second mate's license, and as soon as I got my second
 (16) mate's license I sailed second mate and I continued to sail
 (17) second mate
 (18) Q What year did you start working as a second mate with
 (19) Exxon approximately?
 (20) A I would say '77 somewhere around there
 (21) Q So you worked about five years as a third mate?
 (22) A Uh huh
 (23) Q And then from '77 on through the grounding you were
 (24) working as a second mate?
 (25) A That's correct

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(1) Q Did you ever take your mate's exam?
 (2) A No I didn't
 (3) Q After the grounding you remained in the employ of Exxon
 (4) and in what capacity as a second mate?
 (5) A Second mate
 (6) Q On what vessels?
 (7) A I was only on one after that time It was the - I can't
 (8) remember One of our ships was on the west coast running
 (9) from
 (10) Hawaii between Hawaii and Los Angeles San Francisco
 (11) Q Let's work from the grounding on After the grounding you
 (12) remained assigned to the Exxon Valdez for a while?
 (13) A For a while, right
 (14) Q Until when?
 (15) A I don't know that I don't know what they do in the
 (16) office The ship is in the shipyard
 (17) Q Well all I want to know about is when did you leave the
 (18) Exxon Valdez after the grounding You were no longer
 (19) assigned
 (20) to her About what month was that?
 (21) A I would say May around in May
 (22) Q A few months later than after the accident?
 (23) A I stayed 46 days on the ship after the accident
 (24) Q Was your service continuous from August '88 up through the
 (25) grounding or did you serve on other vessels in that period?
 (26) A I was on the Exxon San Francisco for a number of years
 (27) so
 (28) they assigned me to the Valdez and then the Valdez was it
 (29) set

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(1) at the time so I went some 30 days on the Exxon
 (2) Washington
 (3) okay When I got done with that assignment I went home
 (4) for 30
 (5) days vacation And then the Valdez got into port and I went
 (6) and joined the Valdez
 (7) Q In August of '88?
 (8) A Sometime in there
 (9) Q Right Now my question is from August of '88 to March of
 (10) '89 at the time of the grounding did you serve continuously
 (11) during that period?
 (12) A Yes I did
 (13) Q And you went aboard the Exxon Valdez as second mate?
 (14) A That's correct
 (15) Q Can you give me an idea of the number of times you've been
 (16) to the port of Valdez prior to your assignment on the Exxon
 (17) Valdez?
 (18) A I went there when it first opened okay and then I was in
 (19) there - let's make it about 12 times in there total Because
 (20) I was on the ship that ran in there I was - it was the Baton
 (21) Rouge years ago that ran in there And I was on - I believe
 (22) it was the Exxon Baltimore that went in there She was one
 (23) of
 (24) the first nonautomated ships to go in there
 (25) Q So the 12 times would that include the Exxon Valdez?
 (26) A Yes Yes I think so Someplace in that - it's a
 (27) ballpark figure
 (28) Q How long did you sail with Kagan?

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(1) A I sailed with him that last - from the time I joined the
 (2) ship until the time the ship ran aground and a little after
 (3) that maybe 18 days and I sailed with him when he was an
 (4) ordinary seaman a number of years ago back in the '80s I
 (5) watched him He was trying - I mean -
 (6) MR SANDERS Just a minute can we get the question?
 (7) And did you observe him steering at that time
 (8) BY MS WAGNER
 (9) Q And did you observe him steering at that time?
 (10) A I watched him he was trying - I mean -
 (11) Q What judgment did you make as to his abilities?
 (12) A He needed more practice
 (13) Q How did you rate him when he was on the Exxon Valdez how
 (14) would you rate him as a wheels man an average wheels man
 (15) less
 (16) than average above average?
 (17) A I would rate him as in between
 (18) Q You testified at one time he was slightly below normal
 (19) would that be the -
 (20) A We try to be nice to people yes
 (21) Q What did you mean by that?
 (22) A He was like a number of quarter masters you had to
 (23) supervise I'm supposed to supervise them anyway but I
 (24) was - I don't know it's just he was known to have
 (25) steering
 (26) problems You know I watched him That's all
 (27) Q You had to supervise him more than you would someone
 (28) who

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(1) would be rated an above average wheels man?
 (2) A That's correct
 (3) Q So when you say you had to supervise him would that mean
 (4) if he was given an order of let's say right ten degrees
 (5) rudder you would make sure he put the wheel right to start
 (6) with?
 (7) A Yes but I do that with any seaman
 (8) Q What type of supervision did you have to exercise with
 (9) Kagan that you wouldn't feel necessary with a wheels man who
 (10) was above average?
 (11) A I would just keep a constant eye on them okay?
 (12) Q Did you ever discuss with Captain Hazelwood the problems
 (13) in
 (14) connection with Kagan that you've mentioned?
 (15) A Captain Hazelwood just wanted us to observe all the
 (16) quarter
 (17) masters I mean we knew Kagan was having trouble
 (18) steadying up
 (19) so we were watching him watching him close
 (20) Q And you testified that Hazelwood decided to keep an eye on
 (21) Kagan do you recall that?
 (22) A Yes I do
 (23) Q When did you have those discussions with Captain
 (24) Hazelwood? That was prior to the grounding wasn't it?
 (25) A Right One was coming out of San Francisco and that
 (26) was
 (27) about it
 (28) Q Was there anything that prompted you to have the discussion
 (29) with Captain Hazelwood in other words anything that Kagan
 (30) had

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- (1) done that you had to discuss or was it just - or was it just
 (2) in general?
 (3) A Just in general
 (4) Q Also again I'll read you the testimony if you need your
 (5) recollection refreshed but you mentioned something about that
 (6) often - for coming out of Valdez for the first part of the
 (7) transit you had in your mind not to put Kagan on the wheel but
 (8) to put Jones on the wheel do you recall that?
 (9) A Yes I do
 (10) Q And you mentioned that navigation I guess you meant
 (11) traffic is heavier up in the Valdez area?
 (12) A No
 (13) Q What did you mean by that?
 (14) A What I meant was - what I meant was that a lot of - you
 (15) have to take a lot of bearings and things up there take
 (16) positions a lot and it takes a lot of your time to do that
 (17) And as the watch officer I have a right to put on the wheel
 (18) who I want on the wheel and I felt more at ease with the
 (19) young lady She's a Kings Point graduate and I knew she could
 (20) steer
 (21) very well
 (22) Q And that comment you made did you mean during your
 (23) watch?
 (24) A During my watch
 (25) Q You would prefer to have Jones on the wheel?
 (26) A No no I didn't say that I said I was going to put her
 (27) on the wheel first until I got settled down on the bridge I

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- (1) was coming on the bridge I hadn't had much sleep that
 (2) night
 (3) and I wanted to have a little time to get my fixes and get
 (4) everything set up I intended to use Kagan further down the
 (5) sound
 (6) Q So in other words it was your plan on the night of the
 (7) grounding when you were going to come on watch you were
 (8) going
 (9) to have the mid watch is that correct?
 (10) A That's correct
 (11) Q From zero hundred to 0400? And when you came to the
 (12) bridge you were going to have Jones on the wheel was that
 (13) your plan?
 (14) A It wasn't my plan That's what I was thinking about
 (15) doing I never -
 (16) Q You didn't discuss it with Jones at all?
 (17) A No
 (18) Q Going back also you mentioned in connection with Kagan
 (19) that a chief officer had spoken to you about Kagan That is
 (20) Kunkel I believe?
 (21) A Uh huh
 (22) Q Do you recall that?
 (23) A Yes
 (24) Q What did he speak to you about Kagan?
 (25) A He just said to keep a close eye on him Kagan was a little
 (26) weak steering so -
 (27) Q Cousins was present at that conversation?

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- (1) A Yes he was
 (2) Q Do you ever recall telling Captain Hazelwood that Kagan had
 (3) told you he felt nervous?
 (4) A Yes I told Joe that
 (5) Q About steering the loaded vessel?
 (6) A But that's - I say that I have had a number of seaman tell
 (7) me that they get nervous about that It's not anything
 (8) unusual As a matter of fact I prefer someone to tell me
 (9) that
 (10) Q Did you ever have discussions with Cousins concerning any
 (11) prior experience that Cousins had had with Kagan and that
 (12) Cousins had experienced problems?
 (13) A Greg had told me he steered with him once before and he
 (14) said
 (15) something that - he wasn't that good of a helmsman or
 (16) something
 (17) Q What was your work schedule in port on the Exxon Valdez?
 (18) A It was usually six on, six off in port
 (19) Q As opposed to one and three four on and eight off at sea?
 (20) A That's correct
 (21) Q Did you have to work more than 12 hours in a 24 hour period
 (22) when you were in port of Valdez? If you took a 24 hour period
 (23) even though you're not there for 24 hours but would you work
 (24) more than your six hours that you just said?
 (25) A I might
 (26) Q In fact you did did you not? On the night before the

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- (1) grounding from the time the vessel got into the port of Valdez
 (2) until you sailed you worked more than six hours did you not?
 (3) A I believe so
 (4) Q Well if you want I'll read you your testimony But let's
 (5) try and review what you did and then count up the number of
 (6) hours you worked while you were there You arrived in the
 (7) evening is that correct?
 (8) A Uh huh
 (9) Q The night before it was I believe it was on the 22d
 (10) March 22 you arrived in the evening at about 2335 I have
 (11) these times just use this as a rough guide What watch did
 (12) you have going in on the 22nd? Let's take your work schedule
 (13) that date Had you a one and three watch at sea?
 (14) A Right
 (15) Q So you worked eight hours on watch that day would you
 (16) have?
 (17) A Yes I would
 (18) Q And your watches were what?
 (19) A 12 00 to four o'clock at sea
 (20) Q 12 00 to four o'clock all the time you had 1200 to 1600
 (21) and zero hundred to 0400?
 (22) A That's correct
 (23) Q So coming in you would have had the 1200 to 1600 watch
 (24) that afternoon is that correct?
 (25) A Uh huh

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(1) Q And you would have had the mid watch zero hundred to 0400 on the 22d to is that correct?

(2) A Yes

(3) Q So you had eight hours of watch on the 22d Now in addition to those eight hours of watch on the 22d coming in did you work during the daytime other than your watch in the afternoon did you work that morning?

(4) A Are you talking at sea?

(5) Q Concentrate on the day you're coming into Valdez the 22d of March Do you recall did you do any work other than your two watches on the 22d?

(6) A I think I went down and checked the steward's department for an hour Something like that And make sure the charts were ready for coming into port maybe half an hour or so on that but nothing unusual That's standard

(7) Q Then that evening as you were coming in you have certain duties don't you?

(8) A I stood my watch

(9) Q You had 1200 to 1600 Now the vessel is coming into the port of Valdez and ties up at 2335 What duties do you have assigned to you when the vessel is approaching a port?

(10) A Well when we get there I have to supervise tying up

(11) Q You don't have any duties until tying up is that correct?

(12) A Except that's all I have except what I wanted to If I want to catch up with some work or something

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(1) Q You're not assigned anywhere on the deck as a - as the vessel is approaching a port?

(2) A Not as - no

(3) Q You have no duty whatsoever I mean can you be in your room?

(4) A In my room uh huh

(5) Q The minute the vessel came into port at 2335 your testimony was - and I'll try and speed this up you said you remained up from the time - from that time until 5 30 in the morning with cargo Do you recall that testimony or do you want me to read it to you?

(6) A I recall that I was up four hours Four and a half hours on watch I got off around 4 30 and then I did a few other things and then I went to bed at 5 30 by the time I got a shower

(7) Q You slept for two to three hours?

(8) A I slept until about 9 30 in the morning

(9) Q You got up in -?

(10) A I read a little bit I went down to the steward's department and I erased some charts to go back south

(11) Q And then you went on your watch from 1200 to 1600 in the afternoon?

(12) A Right

(13) Q And you went - wound up going to bed that evening at about 2200 does that refresh your recollection? Now this is the

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(1) vining that you're sailing on the 23rd

(2) A It was a little later than that

(3) Q Whatever You testified - what did you do between 1600 and the time you went to bed? Did you have more duties?

(4) A I just went down to the steward's department to see if there was - everything was okay down there And I might have

(5) gone up and checked the charts for a little while I was awake sitting in my chair for a little while reading

(6) Q So you had worked some very long hours if you were - if you were to carve out from your testimony on the -

(7) A That's correct

(8) Q On the 23rd isn't that correct?

(9) A Yes

(10) Q Far more than six hours?

(11) A That's correct

(12) Q Did you have any discussions with Cousins prior to your retiring on the 23rd concerning letting you sleep because you had worked such long hours and Cousins taking part of your watch into the mid watch?

(13) A I can't recall

(14) Q Well now that is - well now that this whole incident is over haven't you reflected on that? You still can't recall whether Cousins said anything to you?

(15) A I believe Greg told me not to come up until he called me something like Lloyd I'll give you a call when I want you to

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(1) come up

(2) Q You didn't make any initial request of him and say I'm tired let me sleep in?

(3) A No he was being a nice guy All the officers cooperated on there

(4) Q And that could be an arrangement made between the officer without telling Captain Hazelwood?

(5) A Well what he did on the radio it's the only arrangement I had with them

(6) Q You don't understand my question In other words you don't need Captain Hazelwood's permission two watch officers can make an agreement between themselves as to letting one stand longer than a four hour watch?

(7) A I often would do that with the chief mate I had 12 00 to four o'clock when we sailed at sea I would hang on till five o'clock and let him sleep a little bit

(8) Q And that was because he worked long hours in port?

(9) A He worked long hours He was the booking officer He worked -

(10) Q Long hours in port?

(11) A He worked hours in port

(12) Q You say worked hours

(13) A He worked watch and maybe hung over He supervises

(14) Q But the whole purpose of what you're doing is because you know that he is working more than eight hours is that correct?

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- (1) A That's correct It was routine
 (2) Q Did you as an officer ever utilize navigation lines in
 (3) your watch standing?
 (4) A Yes We used - most of our ships have it and we use it
 (5) going into Santa Barbara down in the canal I told you I had
 (6) been on Honda ships that's all navigation lines there
 (7) Q They are very beneficial are they not? If you - for
 (8) example if you had an area you didn't want to go into you
 (9) could put a nav line on the right on the scope so that you
 (10) could tell if your vessel happened to get over near that nav
 (11) line you can see the distance between the - your vessel and
 (12) the nav line?
 (13) A They are beneficial but it's an electronic aid to
 (14) navigation
 (15) Q Well within the limitation of the radar they're
 (16) beneficial?
 (17) A That could be beneficial yes
 (18) Q If they are put on properly and within the limitations of
 (19) the radar they are useful?
 (20) A Right
 (21) Q And the same would apply would it not to your
 (22) understanding of the fairway option? If you put on the fairway
 (23) on the scope on the scale that you're on it would show you
 (24) pretty much the same as if you were looking at the chart within
 (25) the limitations of the radar again as to what the limits are

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- (1) of the channel that you're in isn't that correct?
 (2) A Uh huh, that's correct
 (3) Q And you could see where your vessel is vis a vis those
 (4) channel limits again within the limitations? You could see
 (5) whether your vessel was going outside those limits or staying
 (6) within those limits?
 (7) A Let's understand though that you should be taking,
 (8) manual
 (9) bearings You don't rely on a piece of electronic equipment
 (10) Q Alone?
 (11) A Alone
 (12) Q What would you say were the average number of hours you
 (13) worked at sea per day including your four hours in the mid
 (14) watch and the four in the afternoon?
 (15) A That's very hard to say but I always loved my job so I did
 (16) a lot of work that I didn't have to do and things I wanted to
 (17) do But I was always on top when I was on watch
 (18) Q Can you give me even loving your job how many hours a
 (19) day
 (20) did you work?
 (21) A I would say 12 hours a day
 (22) Q And based on your observations what did the other officers
 (23) work?
 (24) A About the same
 (25) Q Were there any complaints of stress or fatigue among the
 (26) officers or crew on any of the Exxon vessels you served?
 (27) A Just normal gripes People get tired that's all

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- (1) Q Nothing that stands out in your mind as any -
 (2) A No
 (3) Q Was there any procedure that Exxon employed in connection
 (4) with reporting anyone you saw drinking aboard a vessel or the
 (5) like?
 (6) A No
 (7) Q You said before you joined the Exxon Valdez in August
 (8) 1988 Was Cousins aboard at that time?
 (9) A No I'm talking about the fateful trip the last trip
 (10) Q And that was the only trip that you sailed with Cousins?
 (11) A Right
 (12) Q Where were you at the time of the grounding? Were you
 (13) asleep?
 (14) A Uh huh Excuse me I was in bed yes
 (15) Q Can you take us from there to - take us from there to what
 (16) happened and what duties you're assigned and so forth
 (17) Where
 (18) did you go when you first learned of it how did you find out
 (19) about it?
 (20) A What happened was I was lying in bed and I felt the ship -
 (21) I felt this feeling of like going aground It is a unique
 (22) feeling for seamen You know what it is I like a slight
 (23) vibrations all right At that point I saw lights coming on
 (24) through the window on deck and I got out of bed and I
 (25) looked
 (26) and then the chief mate opened the door and said I layd
 (27) we're
 (28) screwed This is very bad

Vol 8 801

- (1) Q That was Kunkel?
 (2) A Kunkel yeah So I changed the words So at that point I
 (3) went up to the bridge and looked at what happened and then
 (4) I
 (5) went down and assisted the chief mate and we just - well
 (6) we
 (7) got out our hose lightering I put the anchor down during
 (8) this
 (9) period
 (10) Q Where did you go from the bridge what location?
 (11) A I'll give it to you short I went right to the control
 (12) room where Mr Kunkel was We took a look at what was
 (13) going on
 (14) with the cargo going out of the ship
 (15) Q At what rate was it going out of the ship?
 (16) A I don't know It was just very fast from what we could
 (17) tell
 (18) Q Very fast You previously testified to that and used
 (19) that Now you say from what we could tell What gauge were
 (20) you looking at?
 (21) A We were looking at the ullage gauge They're digital
 (22) and there is - well I've digit it and there is another type of
 (23) gauge there It was just really spinning by there
 (24) Q Could you tell from what tanks this was coming from on the
 (25) vessel?
 (26) A The chief officer was doing that I was just in there
 (27) looking, sort of shaking my head
 (28) Q Did Kunkel say anything to you about the rate at which the
 (29) oil was leaving the vessel?

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Vol 8 804

(1) A Not that I recall We sort - we sort of looked at each
 (2) other and said wow
 (3) Q The gauges were moving constantly were they do you recall
 (4) testifying to that?
 (5) A Yes uh huh
 (6) Q And how long did you stay in the cargo control room?
 (7) A A couple minutes then I sort of went around the ship
 (8) seeing what was going on We had to you can imagine with
 (9) a
 (10) disaster there are all sorts of things going on People were
 (11) opening up soundings seeing where the oil was the water
 (12) was
 (13) Q Just a second You said you went around the ship Did you
 (14) look and see oil in the water around the ship?
 (15) A Yes
 (16) Q Was there a lot of oil in the water?
 (17) A From what I could tell yes
 (18) Q When you went around the ship as you described after
 (19) you - you were in the cargo control room could you smell
 (20) fumes from the oil?
 (21) A Yes
 (22) Q Did you have any fear of fire?
 (23) A Of course I mean it was - we didn't know how badly we
 (24) were hurt
 (25) Q Do you recall testifying at the NTSB that you had a concern
 (26) for the danger of fire or explosion and there was oil all
 (27) around the ship?

(1) A No
 (2) Q There was never any training about that? Now I mean just
 (3) within Exxon Shipping Company?
 (4) A No
 (5) Q Now going to the questions that you were asked about your
 (6) intention for leaving for the watch when you were leaving that
 (7) night had you been called at about midnight?
 (8) A Uh huh
 (9) Q Your intention was to use the other A B that's Ms Jones
 (10) instead of Mr Kagan?
 (11) A (Nods head up and down)
 (12) Q Is one of the reasons that you had that intention because
 (13) Mr Kagan told you that he was slightly nervous about steering
 (14) a loaded laden vessel?
 (15) A That was only part of it
 (16) Q But it is part?
 (17) A Yes
 (18) Q And another part is that I assume you had never seen him
 (19) steer a laden vessel?
 (20) A That's correct
 (21) Q Particularly this laden vessel is that correct?
 (22) A Yes
 (23) Q Is there any other reason?
 (24) A The chief officer talked to us the afternoon before okay?
 (25) And that it would be about it

Vol 8 803

Vol 8 805

(1) A Well that's what I'm saying We had a concern about the
 (2) fire Because - about fire, because of all the oil that was
 (3) in the water An explosion yes because the Coast Guard
 (4) brought a little boat up alongside with an inboard outboard
 (5) engine and we were afraid of them sucking the oil into the
 (6) engine and that would cause an explosion
 (7) Q Did the situation with the oil around the ship and the
 (8) fumes you've described continue throughout the next day of
 (9) March 24?
 (10) A I can't recall It was there But the oil was gone in a
 (11) couple hours We had stopped losing oil at that point
 (12) Q And you no longer saw oil around the ship?
 (13) A We saw oil around the ship, but we weren't losing it the
 (14) way we were Some of it went with the tide Let's face it,
 (15) Prince William Sound was full of oil, everywhere
 (16) Q What about the fumes? Say about 3 00 in the morning, a few
 (17) hours after was there still the presence of fumes around?
 (18) A Yes On deck
 (19) Q Did you have any concern about the stability of the vessel
 (20) after you went in the cargo control room and you saw how fast
 (21) the oil was coming out?
 (22) A Certainly
 (23) Q Were you trained to recognize the physical and
 (24) psychological effects of fatigue or chronic fatigue in your own
 (25) self?

(1) Q What did the chief officer tell you the day before?
 (2) A They said we have to keep an eye on Kagan's steering
 (3) Mike
 (4) sure we watch him That's all
 (5) Q All right Is there any - there's three reasons why you
 (6) had that intention Is there any other reason?
 (7) A No
 (8) Q Did the chief officer say why or did you ask him why we
 (9) have to keep an eye on him?
 (10) A No No It was just you understood that Kagan was a
 (11) little weak on steering, so it was prudent to keep an eye on
 (12) him
 (13) Q And it's part of your job normally to keep an eye on the
 (14) quarter master is that right?
 (15) A Correct
 (16) Q So there wasn't anything unusual for you?
 (17) A To watch the quarter master no
 (18) Q Is it part of the watch officer's job to make sure that
 (19) rudder orders are carried out by the helmsman?
 (20) A That's correct
 (21) Q Is it part of the watch officer's job, to make sure the
 (22) ship is responding to those rudder orders?
 (23) A Yes
 (24) Q If you were on watch and you were in the - let's call it
 (25) an emergency situation as far as the navigation of the ship
 would you be comfortable having Kagan as the helmsman?

Vol 8 806

Vol 8 809

(1) A No I wouldn't be Not if it was something where I needed
 (2) a lot of navigation or I needed to be doing a lot of quick
 (3) navigation I would have a worry in the back of my mind all
 (4) the time I guess that he would have trouble So it's one
 (5) offer those things to be honest with you
 (6) Q Okay That worry would that be there because of what you
 (7) had observed in Kagan or what you had heard?
 (8) A Had heard It's called Pygmalion effect okay
 (9) Q But there was nothing that you had seen that would cause
 (10) you to worry right?
 (11) A But being a prudent merchant marine officer I have to
 (12) take
 (13) all inputs and evaluate what has been given to me
 (14) Q I understand but you had seen nothing in your experience
 (15) with Bob Kagan as a helmsman that would cause you to be
 (16) uncomfortable with him in an emergency?
 (17) A From what I observed I would be - what I observed with
 (18) Kagan I wouldn't - I would feel concern but I would be able
 (19) to use him okay That's the way I would be able to look at
 (20) it But if you could, like I say, you know if you pick on
 (21) somebody or everybody says something bad about people,
 (22) sometimes people lose confidence As far as I'm
 (23) concerned, the
 (24) guy did okay for me
 (25) Q Now you mentioned that you discussed Kagan with Captain
 (26) Hazelwood coming out of San Francisco?
 (27) A Uh huh

(1) of the opinion that Mr Kagan needed extra supervision is that
 (2) correct?
 (3) A My answer is correct
 (4) Q The question I have is what led you to believe that Cousins
 (5) thought that Kagan needed extra supervision?
 (6) A Because he was at that meeting with Jim Kunkel and
 (7) myself
 (8) MR SANDERS May it please the Court some brief
 (9) cross examination of the witness Lloyd LeCain
 (10) CROSS EXAMINATION OF LLOYD LeCAIN (Read)
 (11) BY MR SANDERS
 (12) Q First we're going to refer to the observations Mr LeCain
 (13) made of Captain Hazelwood on the evening of March the 23rd
 (14) Were you on the deck when Captain Hazelwood returned from
 (15) coming ashore?
 (16) A Yes sir
 (17) Q And about what time was that?
 (18) A I can't be sure 7 30 I would think somewhere in that
 (19) window there It's whenever Joe came back I was down
 (20) there
 (21) Q And he had to negotiate the gangway and then come on
 (22) board?
 (23) A That's correct
 (24) Q Did you see him doing that?
 (25) A I saw him when he came on the ship
 (26) Q Did you notice anything unusual about the captain?
 (27) A He seemed normal
 (28) Q Did you exchange words with him?

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Vol 8 809

(1) Q Or just before you left San Francisco?
 (2) A Coming out of San Francisco We were leaving
 (3) Q Was that before or after Kagan steered for you?
 (4) A That was - that was before Kagan steered with me and it
 (5) was just - Joe told me, Lloyd, keep an eye on him
 (6) Q In other words Kagan was coming up to steer and that's
 (7) what prompted the conversation?
 (8) A A lot of times we get a cup of coffee and leave the quarter
 (9) master there and Joe said Get a cup of coffee and keep an
 (10) eye
 (11) on him
 (12) Q Was that the first time you sailed with Kagan as a
 (13) helmsman?
 (14) A The first time, yes
 (15) Q Did Captain Hazelwood tell you why he told you to keep an
 (16) eye on Kagan?
 (17) A No, no, he didn't, not really
 (18) Q He just said Keep an eye on him?
 (19) A Keep an eye on him
 (20) Q Have you had other captains tell you to keep an eye on a
 (21) helmsman before?
 (22) A Yes
 (23) Q I have just one more question and this is sort of putting
 (24) together some of your earlier comments and I want to make
 (25) sure
 (26) I have this right but I think you've testified that Captain
 (27) Hazelwood and Greg Cousins and Mr Kunkel and yourself all
 (28) were

(1) A He asked me something about the sailing board and then
 (2) he
 (3) went about his business it was very brief
 (4) Q How close did you get to him?
 (5) A I would say three or four feet He seemed to be okay
 (6) Q Did you notice anything unusual about him? Did you smell
 (7) anything?
 (8) A No I didn't We were out in the vapors You're not going
 (9) to smell anything anyway in the sulfur fumes Your nose is
 (10) gone
 (11) Q Did you notice anything in his eyes or his face or anything
 (12) that seemed unusual?
 (13) A No It's dark
 (14) Q When he spoke did you notice he spoke differently slurred
 (15) his words or anything else like that?
 (16) A He seemed okay to me I had a very brief conversation
 (17) with
 (18) him
 (19) Q Then I believe before the grounding you had another
 (20) occasion to see him?
 (21) A I saw him on the bridge and he gave me some
 (22) instructions of
 (23) what to do on deck He seemed okay to me
 (24) Q Were the instructions reasonable normal what you would
 (25) expect?
 (26) A I would say so
 (27) Q Were you able to understand him?
 (28) A Yeah

Vol 8 810

(1) Q Did he slur his words in any way?
 (2) A No He was just telling me what to do That's all
 (3) Q Were you close enough then to be able to smell anything?
 (4) A It was three or four feet I guess You know I wasn't
 (5) looking for it so I -
 (6) Q Did you smell anything?
 (7) A No
 (8) Q But you were not in the vapors at that point?
 (9) A No
 (10) Q You were in a closed area Were you able to see him? Was
 (11) there enough light that you could see him?
 (12) A It was dim up there I talked to him I wanted to know
 (13) what we were going to do in letting go
 (14) Q But you didn't notice anything in looking at him that was
 (15) unusual?
 (16) A No
 (17) Q On the occasions you saw him before the grounding - that
 (18) is coming on board at whatever time he came on board and
 then
 (19) up on the bridge before you sailed did he look any different
 or act any different than the previous times you had seen him?
 (20) A He seemed normal to me Joe is just Joe
 (21) Q Now going back to Mr Kagan as I recall your testimony
 (22) here and in other places you had no problems with Kagan's
 (23) steering coming out of San Francisco?
 (24) A I had no problems with him

Vol 8 811

(1) Q With where did he steer coming out of San Francisco?
 (2) A That's going to be - it was in the harbor it was around
 (3) Alcatraz that area
 (4) Q Is that known as confined waters?
 (5) A Yes definitely
 (6) Q So he steered coming out of San Francisco past Alcatraz and
 (7) then I guess out the Golden Gate right?
 (8) A Right
 (9) Q And you were on watch at that time?
 (10) A Part of it I was
 (11) Q And during part of the time you observed him?
 (12) A Uh huh
 (13) Q Did he make any mistakes?
 (14) A Not to my recollection The man was just trying as hard
 (15) as he could okay He knew he wasn't the best, but he was
 (16) giving
 (17) it his all and he was doing a decent job
 (18) Q And did he when you watched him coming out of San
 (19) Francisco you felt comfortable letting him steer?
 (20) A Yes
 (21) Q And after that you felt comfortable letting him steer?
 (22) A That's correct
 (23) Q So your knowledge of where he was weak the sum and
 (24) substance of it was that he was a little weak on steadying
 (25) up?
 (26) A That's correct

Vol 8 812

(1) Q Did anybody say he was weak in terms of being able to
 (2) follow a command of right ten degrees or anything like that?
 (3) A No not to me I don't know if anyone said that
 (4) Q Now just so I'm clear on this I think you said the reason
 (5) you rated Kagan below normal was because you felt that he had
 (6) trouble steadying up on the course is that correct?
 (7) A That's correct
 (8) Q Am I correct that would be in a situation where you were
 (9) steering let's say 180 and you wanted him to come to 245
 when
 (10) he came to 245 he pulled it a bit beyond it or a bit below it
 (11) and it could take him some time to get to -
 (12) A Yes sir
 (13) Q That's different is it not as far as skill is required in
 (14) telling a helmsman to put ten degrees right rudder on the
 (15) wheel?
 (16) A Yes it is different
 (17) Q It's much easier for somebody to carry out a ten degree
 (18) right rudder order than to - than it would be to steady up on
 (19) the course would you agree?
 (20) A That's correct Yes
 (21) Q Did you ever observe Kagan make any mistakes as a wheel's
 (22) man?
 (23) A No I didn't
 (24) Q Did you ever observe Kagan when he was given an order to
 (25) a - from one course to another say a heading change for

Vol 8 813

(1) example you're steering 300 degrees and he is told to come to
 (2) 330 would you ever give an order like that by the way where
 (3) you would just say come right to 330?
 (4) A Come right to 330? Yes I would
 (5) Q You would give an order like that? Did you ever see Kagan
 (6) go past 330 when he was given that type of an order as an
 (7) example?
 (8) A Yes but many seamen would because it's a loaded ship
 (9) MR SANDERS The next two questions concern the
 (10) vessel traffic service in Prince William Sound
 (11) BY MR SANDERS
 (12) Q On March 23rd 1989 did you believe that the Coast Guard
 (13) in the VTC center was monitoring ships going in and out of
 (14) Prince William Sound?
 (15) A Yes
 (16) Q And did you believe that if the vessel was straying off
 (17) course or heading into danger that the VTC would call and at
 (18) least give you an advisory of that?
 (19) A Yes I thought they might
 (20) MR SANDERS All right this is some questions on
 (21) training
 (22) BY MR SANDERS
 (23) Q Can you tell me what type training did Exxon exercise with
 (24) you as a watch stander when you first went to work with them as
 (25) a third mate did you just go up on the bridge and assume a

Vol 8 814

- (1) watch or did you have some kind of training before that?
 (2) A I trained in college
 (3) Q Well once you have your third mate's license you go right
 (4) on watch?
 (5) A Once you have the third mate's license you're the one
 (6) The federal license says I am the third mate I'm qualified
 (7) Q Did you ever have any training where you were left at the
 (8) con of the vessel as watch officer in confined waters? Do you
 (9) understand what I mean by confined waters not out in the
 (10) ocean confined waters where you were allowed to maneuver
 (11) by
 (12) yourself?
 (13) A Yes I did I went to a school back in '81 1981 or '82
 (14) for Hondo shuttle tankers in New York, and at that time we
 (15) out
 (16) only practiced docking a Hondo oil tankers we also had
 (17) some
 (18) exercises coming into Exxon ports Some of our ports are in
 (19) Scotland for Exxon or southern England and the watch
 (20) officers
 (21) and the captain would change positions You know I would
 (22) be
 (23) the captain one time, the captain would be the mate and we
 (24) would have all kinds of -
 (25) Q Was this at a simulator?
 (26) A Simulator, right
 (27) Q And you went to that school?
 (28) A Yes I did
 (29) Q Did Exxon pay for that?
 (30) A They sure did

Vol 8 815

- (1) Q When you went on board the Exxon Valdez were you
 (2) required
 (3) to read any manuals?
 (4) A You are required to read the manuals on the equipment
 (5) and
 (6) as second officer that is my job to know how the equipment
 (7) runs
 (8) Q So you were required to read the radar manual?
 (9) A As far as the radar manual was concerned the operation
 (10) of
 (11) the radar not for repairing the radar or for any of that sort
 (12) of thing, but the basic operation of the radar but radars are
 (13) radars, I mean
 (14) Q With the Exxon Valdez based on your experience when
 (15) she - when she's loaded as she was on the night that you were
 (16) sailing in calm waters - let's say as a hypothetical - if you
 (17) give ten degrees right or left rudder how quickly will it
 (18) respond to that order? The rudder from the time the wheel is
 (19) put over ten degrees? The initial response from the rudder?
 (20) A The rudder usually goes right over When you put the
 (21) wheel
 (22) over, the rudder will follow over It does it within eight
 (23) seconds If it does it within eight seconds the alarm goes
 (24) off You put the rudder over ten degrees let's say if the
 (25) ship's rudder does not come over and meet that within eight
 (26) seconds to ten seconds, an alarm will go off
 (27) Q Now you sailed with Captain Hazelwood for what period of
 (28) time could you just give me approximately prior to grounding?
 (29) A Oh, let's say 35 days, 40 days, you know in between

Vol 8 816

- (1) shots 30 days one shot maybe 15 days the other shot
 (2) Q Did you make any judgment concerning his ability to
 (3) command?
 (4) A I respected Captain Hazelwood He was a good captain
 (5) Q Did you make any judgment concerning his competency his
 (6) over all competency as a captain?
 (7) A I felt he was a competent captain I had no problems with
 (8) Joe I liked Joe He was a good captain
 (9) Q Compared to other captains did he run a loose ship or a
 (10) tight ship or can you describe it?
 (11) A He just ran the ship What can I say? If the ship went
 (12) into - we had all the awards for what we did
 (13) Q You didn't say sail with him for a real long time?
 (14) A No
 (15) Q So you can't make the judgments that you did with other
 (16) captains where you had sailed for many months?
 (17) A You are getting - as far as I'm concerned Joe Hazelwood
 (18) was a competent captain
 (19) Q Okay Did you ever see any alcohol aboard the Exxon
 (20) Valdez?
 (21) A Not to my knowledge
 (22) Q Do you drink?
 (23) A What kind of a question is that?
 (24) Q I mean are you a drinker? Some people are not drinkers at
 (25) all Do you drink?

Vol 8 817

- (1) A I drink a little bit I'll have a glass of wine
 (2) Q Did you ever have any drinks while you were on board the
 (3) Exxon Valdez?
 (4) A No I didn't
 (5) Q To your knowledge did any other officers have any drinks?
 (6) A Not to my knowledge
 (7) Q What about other Exxon vessels did you ever see any
 (8) drinking done on other Exxon vessels?
 (9) A Not to my knowledge
 (10) Q Were there ever any searches conducted aboard any Exxon
 (11) vessels that you served on for alcohol or drugs?
 (12) A Yes
 (13) Q Which vessels?
 (14) A Exxon San Francisco
 (15) Q Where was the search?
 (16) A Baytown Texas
 (17) Q More than one?
 (18) A We're talking about three or four the dogs would come
 (19) down
 (20) and the customs men would be aboard
 (21) Q What year was this sir?
 (22) A It was approximately '86, '87, '88, somewhere in that
 (23) range There were a number of these searches Every time
 (24) we
 (25) would come back from Panama
 (26) Q What about other vessels?
 (27) A It was only on that one ship

Vol 8 818

(11) MR SANDERS That concludes the cross examination
 1 Your Honor
 (12) MS WAGNER Your Honor th good news is that we
 4 almost filled up the day The bad news we have a two hour and
 5 20 minute videotape Would you like us to start that
 (16) THE COURT No ladies and gentlemen we re going to
 7 adjourn for the day Would everyone please keep their seat
 (18) when we re adjourning court If you stand up when we re
 (9) closing the seats make a lot of racket and we really can t
 (10) hear what s going on in the courtroom
 (11) Ladies and gentlemen we ll conclude our day today at this
 (1) time Please don t expose yourself to any media broadcasts
 (13) about this case during our recess this evening We ll see you
 (14) at 8 00 tomorrow morning We re in recess now
 (15) THE CLERK This court is now in recess until eight
 (16) a m tomorrow
 (17) (Jury out at 1 58 p m)
 (18) (Recess)

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(11) EXHIBITS
 (12) 81 offered 634 4
 (14) 2420 offered 654 10
 (15) 2430 offered 662 18
 (17) 81 received 634 7
 (18) 2420 received 654 14
 (19) 3483 received 657 15
 (10) 2430 received 662 21

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(11) I N D E X
 (12) PLAINTIFF S WITNESSES
 (3) CONTINUED CROSS EXAMINATION OF JOSEPH
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 (4) BY MR CHALOS 608 16
 (6) REDIRECT EXAMINATION OF JOSEPH HAZELWOOD
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 (7) BY MR O NEILL 693 24
 (9) RECROSS EXAMINATION OF JOSEPH
 HAZELWOOD 759 14
 (10) BY MR NEAL 759 15
 (17) RECROSS EXAMINATION OF JOSEPH
 HAZELWOOD 760 21
 (13) BY MR CHALOS 760 22
 (15) DIRECT EXAMINATION OF SIVANCHANDRA VALLURY M D
 (16) (Read) 769 15
 (17) BY MR GERRY 769 16
 (19) CROSS EXAMINATION OF S VALLURY M D (Read)
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 (20) BY MR RUSSO 782 24
 (22) DIRECT EXAMINATION OF LLOYD LECAIN (Read) 784
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 (73) BY MS WAGNER 784 11
 (74) CROSS EXAMINATION OF LLOYD LECAIN (Read)
 808 9
 (25) BY MR SANDERS 808 10

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(11) STATE OF ALASKA)
 () Reporter s Certificat
 (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
 (1) Further that the transcript was prepared by me
 (13) or under my direction
 (14) DATED this day
 (15) of 1994
 () JOY S BRAUER RPR
 Notary Public for Alaska
 () My Commission Expires 9 10 97

Look-See Concordance
Report

UNIQUE WORDS 3,038
TOTAL OCCURRENCES
12,659
NOISE WORDS 385
TOTAL WORDS IN FILE
43,048

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S)
NOISE NOIINCLUDES ALL TEXT
OCCURRENCES

IGNORES PURE NUMBERS

WORD RANGES @ BOTTOM
OF PAGEMAXIMUM TRACKED
OCCURRENCE THRESHOLD
50NUMBER OF WORDS
SURPASSING OCCURRENCE
THRESHOLD 19

LIST OF THRESHOLD WORDS

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Captain [112]
Cousins [53]
Exxon [119]
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mean [54]
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Yeah [104]
yeah [101]

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10 22 [1] 686 25
11 30 [2] 726 23 729 13
11 51 [1] 609 19
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12 35 [1] 630 11

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1 15 [1] 638 8
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1 40 [2] 639 2 5
1 41 [2] 638 24 639 6
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3 30 [4] 645 16 739 16 19
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630 6 642 25 643 1 2 4
680 19 801 5
Angeles [1] 786 9
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706 6 8 25
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(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re) Case No A89 0095 CIV (HRH)
) Anchorage Alaska
 The EXXON VALDEZ) Friday May 13 1994
) 8 00 a m
 TRANSCRIPT OF PROCEEDINGS
 TRIAL BY JURY 9TH DAY
 BEFORE THE HONORABLE M RUSSEL HOLLAND JUDGE
 (11) VOLUME 9 Pages 822 1045
 Realtime Transcription

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(1) PROCEEDINGS
 (2) (Jury in at 8 00 a m)
 (3) THE CLERK All rise
 (4) (Call to Order of the Court)
 (5) THE COURT Good morning ladies and gentlemen
 (6) MR O NEILL Good morning Judge
 (7) THE COURT This is the continuation of trial in case
 (8) A89 0095 civil in re the Exxon Valdez Mr O Neill you have
 (9) another witness?
 (10) MR MONTAGUE Your Honor Laddie Montague
 (11) Plaintiffs call as their next witness James R Kunkel as on
 (12) cross examination
 (13) THE CLERK Raise your right hand
 (14) (The Witness Is Sworn)
 (15) THE CLERK Please be seated
 (16) For the record please state your full name your address
 (17) and spell your last name please
 (18) THE WITNESS Okay James Kunkel K u n k e l I just
 (19) moved let s see 15324 Southwest 77th Court Miami Florida
 (20) 33157
 (21) THE CLERK Thank you
 (22) CROSS EXAMINATION OF JAMES R KUNKEL
 (23) BY MR MONTAGUE
 (24) Q Good morning Mr Kunkel
 (25) A Hi, good morning

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 (19) 7550 Denali Street Suite 1505
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(1) Q I m Laddie Montague representing the plaintiffs Have we
 (2) met before?
 (3) A I don't know to be honest with you I don't think so,
 (4) sir
 (5) Q I d like to start by explaining to you that there has been
 (6) a stipulation in this case that for the purposes of this case
 (7) Exxon Shipping and Exxon Corporation are treated as one so
 (8) when I refer to Exxon you don t have to worry about which
 (9) entity or what entity I m referring to unless I specify okay?
 (10) A Okay
 (11) Q Are you presently employed by Exxon?
 (12) A Yes, I m employed by Exxon
 (13) Q And in what capacity?
 (14) A I'm the port captain for Exxon Caribbean Sails It s a
 (15) division of Exxon International now
 (16) Q And that s a shore position?
 (17) A That's correct
 (18) Q You have been with Exxon since 1979 is that correct?
 (19) A 1979, yes
 (20) Q Okay And you were employed by Exxon on March 23 and
 (21) March
 (22) 24 of 1989?
 (23) A Yes, I was
 (24) Q And on March 23 1989 you were serving as the chief mate
 (25) on the Exxon Valdez?
 (26) A Yes

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- (1) Q And it was on the night of March 23 and the morning of
 (2) March 24 that the grounding occurred?
 (3) **A That s correct**
 (4) Q On Bligh Reef?
 (5) **A Yes**
 (6) Q Now you first joined the Exxon Valdez on September 27
 (7) 1988 is that correct?
 (8) **A That was my first tour there, yes I was on board about**
 (9) **two months**
 (10) Q Till the very beginning of December of 1988?
 (11) **A Correct**
 (12) Q And that tour was split you served both under Captain
 (13) Stalzer and Captain Hazelwood?
 (14) **A I believe there was a small portion of that tour with**
 (15) **Captain Stalzer, and then also with Captain Hazelwood**
 (16) Q And then your tour ended on the - well in December of
 (17) 1989 and then you rejoined the vessel for your second tour in
 (18) March March 8th I think it was 1989 is that correct?
 (19) **A Well I think you said December '89 but it was December**
 (20) **88**
 (21) Q I m sorry December 88 you re absolutely right?
 (22) **A Then I went home on vacation and in March of 89, I**
 (23) **believe**
 (24) Q Okay Now at the time that you rejoined the vessel the
 (25) second time in March of 1989 you - you had your master s
 license is that correct?

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- (1) **A That s correct**
 (2) Q But you had never sailed as a master?
 (3) **A No I had never sailed a master**
 (4) Q And when you joined - you joined the vessel at or before
 (5) it was in San Francisco Bay in March of 1989?
 (6) **A That s correct I joined - I m almost positive It was Los**
 (7) **Angeles that I joined in**
 (8) Q Okay so you were on the vessel when it was in San
 (9) Francisco Bay before it left for the Port of Valdez?
 (10) **A Yes**
 (11) Q At that time had you been sent to ship handling school in
 (12) Grenoble?
 (13) **A No, that was after that that I went to ship handling**
 (14) **school**
 (15) Q But even though you were a master at that time you were
 (16) not sent to the ship handling school as of March of 1989?
 (17) **A I was not sent to Grenoble, no**
 (18) Q Could you have sailed as a master on the Exxon Valdez from
 (19) San Francisco?
 (20) **A Yes**
 (21) MR NEAL Objection could by whom the Coast Guard
 (22) or Exxon?
 (23) MR MONTAGUE Well all right let s take it one at a
 (24) time
 (25) BY MR MONTAGUE

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- (1) Q Under the Coast Guard could you have sailed as a master
 on
 (2) the Exxon Valdez?
 (3) **A Yes**
 (4) Q In March of 1989 how about with respect to Exxon?
 (5) **A I don t see why not But to clarify that, they would have**
 (6) **to approve that**
 (7) Q And that approval - did you ever seek that approval?
 (8) **A No**
 (9) Q Now at the time that you were in San Francisco in March of
 (10) 1989 you did not have your pilotage endorsement for Prince
 (11) William Sound is that correct?
 (12) **A That's correct**
 (13) Q And am I also correct that it s your understanding that to
 (14) sail from Cape Hinchinbrook to Rocky Point or vice versa in
 (15) Prince William Sound there had - you needed a pilotage
 (16) endorsement for that area?
 (17) **A At that time, that was my understanding, yes**
 (18) Q Okay Now you eventually got your pilotage endorsement
 (19) isn t that correct?
 (20) **A That s correct**
 (21) Q And that was in 1992?
 (22) **A Well, I believe it was in that time period, yes Around**
 (23) **92**
 (24) Q If I said April 1992 would that refresh your
 (25) recollection?

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- (1) **A Sounds close enough to me**
 (2) Q And could you tell us what you had to do to get that
 (3) endorsement?
 (4) **A Well, there was different phases One phase was a rules**
 of
 (5) **the road examination for the given area Another phase was**
 (6) **what they call a route description I had to write a narrative**
 (7) **essay concerning tides, prominent landmarks, docking**
 (8) **facilities, basically a general description of the Sound area**
 (9) **Then I - from memory, I was asked to draw a chart of the - of**
 (10) **the Prince William Sound area Basically I had a piece of**
 (11) **paper with a grid on it, and the prominent coastal outline**
 (12) **And then in, I was - I had to produce a chart that looked**
 (13) **similar to the NOAA charts that are available now**
 (14) Q And did that include identifying all of the navigational
 (15) aids in Prince William Sound?
 (16) **A That s correct**
 (17) Q And their characteristics?
 (18) **A That s correct**
 (19) Q And did you have to study for that?
 (20) **A Oh, yes**
 (21) Q Did it take a lot of study?
 (22) **A I would say two weeks of general preparation, and then**
 two
 (23) **weeks of very intense study**
 (24) Q And then you -
 (25) **A Then I took the exam**

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- (1) Q Took the test and did the charts and you passed?
 (2) **A That s correct**
 (3) Q And was that helpful to you? Was that helpful to you in
 (4) your knowledge of Prince William Sound?
 (5) **A Oh, yes**
 (6) Q Now didn t you also have to have a certain requisite
 (7) number of trips in and out of Prince William Sound?
 (8) **A That is correct**
 (9) Q And do you remember how many that was?
 (10) **A No, I sure don t It varies for the different levels The**
 (11) **fact that I had a master s license, I believe it was but I m**
 (12) **not sure You could have a reduced number of trips if you**
 (13) **were**
 (14) **sailing master and you had simulator training There were**
 (15) **different levels for different officers, but basically, I**
 (16) **believe it was anywhere between 14 to 20 trips**
 (17) Q And you met that requisite?
 (18) **A Yes**
 (19) Q And did any of those trips have to be at night?
 (20) **A Yes**
 (21) Q How many do you remember?
 (22) **A I m not certain, but it s a percentage of them they**
 (23) **requested that they be at night**
 (24) Q Now I d like to turn a minute to Watch Condition C okay
 (25) as in the Exxon Navigation and Bridge Organization Manual
 (26) **A Okay**

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- (1) Q Do you recall what Watch Condition C is?
 (2) **A Basically I believe it is for entering and leaving port,**
 (3) **and it describes different traffic conditions That s -**
 (4) **Q All right and it determines what officers are to be on**
 (5) **watch?**
 (6) **A That s correct It gives you a guideline as to who should**
 (7) **be on - on the bridge in command of the vessel**
 (8) **Q And is that a minimum guideline as you recall?**
 (9) **A I don t recall that being the terminology used but I would**
 (10) **assume that, yes, that s the minimum requirement**
 (11) **Q So in other words the captain in his discretion can take**
 (12) **a - if the - if the manual calls for a C watch the captain**
 (13) **could call for a D watch which was more severe or strict is**
 (14) **that correct?**
 (15) **A The captain could do that, yes**
 (16) **Q But could it go the other way also?**
 (17) **A Yes**
 (18) **Q Now you weren t on the bridge during the voyage the**
 (19) **fateful voyage on the 23rd of March were you?**
 (20) **A No I was not**
 (21) **Q Okay but did you form an opinion as to whether Watch**
 (22) **Condition C was in effect on that night?**
 (23) **A Based on - on what? I mean -**
 (24) **Q Based on your experience?**
 (25) **A On my experience, I would see - it s my opinion Watch**

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- (1) **Condition C was the watch condition**
 (2) Q Now in Watch Condition C am I correct that two officers
 (3) are required on the bridge?
 (4) **A That s correct**
 (5) Q And one of those officers has to be the master or the first
 (6) mate?
 (7) **A That s correct**
 (8) Q And that s - they re known as the senior officer?
 (9) **A Yes**
 (10) Q And then the other officer on the bridge would be either
 (11) the second or the third mate known as the junior officer?
 (12) **A Correct**
 (13) Q And on that night on March 23 1989 Captain Hazelwood
 (14) was
 (15) the senior officer on the bridge?
 (16) **A Yes**
 (17) Q Supposed to be the senior officer on the bridge?
 (18) **A Yes**
 (19) Q And you retired that night about 2200 around 10 00
 (20) something like that?
 (21) **A That s correct**
 (22) Q Am I correct that one of the reasons to have two officers
 (23) on the bridge is to ensure against one officer making a mistake
 (24) or an error is that correct?
 (25) **A Right, I think the proper term is one man error to avoid**
 (26) **one man error**

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- (1) Q And am I also correct that upon your - when you re leaving
 (2) port going through Prince William Sound there s an increased
 (3) workload on the bridge concerning the navigation of the vessel
 (4) and taking fixes all the stuff you manners do
 (5) **A At times in Prince William Sound, yeah, there is an**
 (6) **increased load**
 (7) Q And the reason is to have four eyes looking out instead of
 (8) two eyes?
 (9) **A Well, more or less it s to have two eyes checking the**
 (10) **other**
 (11) **two So you re constantly checking each other**
 (12) **Q And that doesn t happen when one officer is left on the**
 (13) **bridge?**
 (14) **A That s correct**
 (15) Q Now while Watch Condition C is in effect the senior
 (16) officer should not leave the bridge except for an emergency
 (17) is that your understanding?
 (18) **A Well, yes, for emergency or for a short period of time to**
 (19) **go to the bathroom or whatever**
 (20) **Q We call that an emergency?**
 (21) **A Okay**
 (22) Q And the need to do paperwork would not constitute such an
 (23) emergency in your mind would it?
 (24) **A I would not consider paperwork to be an emergency**
 (25) **Q Now prior to the voyage in March 23 you had traveled**
 (26) **Prince William Sound what about six times or less?**

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- (1) A Well, I had been on a vessel that transited it maybe six
 (2) times but actually on the bridge, I seriously doubt more
 than
 (3) once or twice Most of the time - If I can explain most of
 (4) the time, being the chief mate, the master would take my
 watch
 (5) during the transit of Prince William Sound
 (6) Q And those times that you were on the bridge do you recall
 (7) who the master was?
 (8) A Well, it would have been in 1979 I believe the master's
 (9) name was Lou Starr That would have been on the small
 ships
 (10) that I was on And then in 88 it would have been Captain
 (11) Hazelwood
 (12) Q Were you ever on the bridge when Captain Stalzer -
 (13) A No
 (14) Q So your only experience on the Exxon Valdez going in and
 (15) out of Prince William Sound was with Captain Hazelwood as the
 (16) master?
 (17) A That's correct
 (18) Q And on those prior occasions the occasions prior to the
 (19) fateful voyage was Captain Hazelwood on the bridge while you
 (20) were?
 (21) A This was -
 (22) Q - while you were on watch?
 (23) A In 88?
 (24) Q Any of your trips prior to -
 (25) A As far as I can remember yes

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- (1) Q And that was in accordance with your understanding of the
 (2) way it should have been?
 (3) A Yes
 (4) Q Now I'd like to turn for a minute to a - an A B who was
 (5) on the vessel that night by the name of Robert Kagan You had
 (6) been on vessels before on which Mr Kagan was part of the
 crew
 (7) is that correct?
 (8) A Yes
 (9) Q And prior to the grounding Mr Kagan was given training on
 (10) steering during his tour of duty do you recall that?
 (11) A Say that question again, please, I just want to make sure I
 (12) understand it
 (13) Q Sure Prior to the fateful voyage you were on the vessel
 (14) the Exxon Valdez with Mr Kagan?
 (15) A Right
 (16) Q And you recall that during those times he was receiving
 (17) training on steering?
 (18) A Yes, he was practicing his steering, that's correct
 (19) Q And that would take place in the open seas?
 (20) A Yes
 (21) Q And normally on the open seas or very often the vessel is
 (22) put on autogyro?
 (23) A Yes
 (24) Q Or what landlubbers know as -
 (25) A Well, automatic pilot or cruise control, whatever you want

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- (1) to call it
 (2) Q It's not cruise control steering?
 (3) A Not really cruise Steering okay
 (4) Q And he would steer manually in the open seas for practice?
 (5) A Right for practice we would take it off of automatic and
 (6) he would actually be steering the ship practicing coming to
 a
 (7) course or taking on the water or -
 (8) Q And the reason - the reason that he received that extra
 (9) training was because it was perceived that he needed it isn't
 (10) that correct?
 (11) A No I wouldn't say that I think the reason he received it
 (12) is because he felt he wanted to practice his steering I don't
 (13) believe anybody ordered him or told him to practice
 (14) Q Well you knew from your earlier experiences didn't you
 (15) that he had to be watched as a helmsman?
 (16) A Yes
 (17) Q And you had noticed that he was very poor in changing from
 (18) one course to another on his own without supervision?
 (19) A That's correct
 (20) Q And you recall discussing that with officers aboard the
 (21) Exxon Valdez?
 (22) A That's correct
 (23) Q And you had told them that you had sailed with Kagan in the
 (24) past that he had to be watched?
 (25) A Yes

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- (1) Q And that included Mr Cousins you told that to?
 (2) A Yes
 (3) Q And Mr LeCain the second mate?
 (4) A Yes
 (5) Q And Captain Hazelwood also?
 (6) A I think probably - we had the discussion about all of the
 (7) A Bs, so Kagan had to be discussed The master and the
 chief
 (8) mate always discuss the crew, including all of the officers
 (9) Q So being on - if an officer were on the bridge alone on
 (10) March 23rd - I shouldn't say if When Mr Cousins was on the
 (11) bridge alone on March 23rd outside the traffic lanes trying to
 (12) avoid ice heading towards Bligh Reef in addition to everything
 (13) else he had to do he really had to keep an extra eye on Mr
 (14) Kagan didn't he? Or he should have kept an extra eye on Mr
 (15) Kagan?
 (16) A Well, I think you're asking me to become Mr Cousins
 Now,
 (17) based on what you're saying, if I was on the bridge and I
 was
 (18) out of the traffic lanes, I was avoiding ice and I was
 (19) navigating and I had Mr Cousins on the wheel, yes, I would
 (20) also be paying attention to what Mr Cousins -
 (21) THE COURT Excuse me You're interchanging names
 (22) THE WITNESS Oh okay
 (23) THE COURT Back up and try it
 (24) THE WITNESS Okay if I had Mr Kagan on the wheel I
 (25) would have to watch Mr Kagan But to be honest with you any

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- (1) A B I d be watching regardless of who he was on the wheel
 (2) BY MR MONTAGUE
 (3) Q Now I d like to turn now if I could to your work
 (4) schedule
 (5) A Okay
 (6) Q Both generally and on the night of - well during the 22nd
 (7) and the 23rd of March 1989 We ve already established that
 (8) during the voyage you were asleep in your cabin or you were in
 (9) your cabin?
 (10) A When the ship grounded?
 (11) Q Correct from about 2200 on?
 (12) A That s correct
 (13) Q On the night of the 23rd?
 (14) A Uh huh
 (15) Q And when it grounded you were asleep weren t you?
 (16) A Yes
 (17) Q Now am I correct that the turn around time in the Port of
 (18) Valdez for the Exxon Valdez was about 21 hours?
 (19) A That night, yes, or that trip, yes
 (20) Q Okay and that was in your experience on prior vessels
 (21) that was a shorter time than - than you had encountered in the
 (22) past is that correct?
 (23) A Yes, because most of my experience was on vessels that
 were
 (24) not in the Valdez trade
 (25) Q And in those vessels the turn around time was longer?

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- (1) A Yes
 (2) Q Substantially longer?
 (3) A Well, it really would depend on the port I've been in
 (4) port sometimes for oh, 48 hours Usually a tanker turns
 around
 (5) in about 24 hours or so
 (6) Q 24 that s the norm?
 (7) A That s - that s my experience, yes
 (8) Q Now are you familiar with the federal statute which
 (9) requires an officer being off duty for six of the 12 hours
 (10) prior to his taking a watch while departing a port?
 (11) A Yes
 (12) Q And on the night of the 23rd you did not meet that
 (13) requirement isn t that correct?
 (14) A Well, I don t know what you re saying I didn t meet that
 (15) requirement See, because I - I didn't really go on watch
 (16) Q I understand that s a good point What I m saying is at
 the time of departure you hadn t had six hours off duty in the
 (18) prior twelve hours?
 (19) A I wouldn t say that I definitely had the opportunity to
 (20) have six hours off, twelve hours prior to the ship sailing
 (21) Q All right well we ll go over that in a minute then See
 (22) where we end up
 (23) A All right
 (24) Q Do you recall that most of the time you were not able to
 (25) take six hours off within the twelve hours before leaving port?

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- (1) A There was a number - in my experience as chief mate
 which
 (2) up to the Valdez I guess would be anywhere from five to
 six
 (3) years there were many many occasions when I did not
 have six
 (4) of the previous twelve hours off
 (5) Q Now let s go to the - well let me ask one other
 (6) question Prior to the grounding you did not receive any
 (7) directions from Exxon Valdez about complying with that statute?
 (8) A Now, wait a minute, from Exxon Valdez
 (9) Q I m sorry from Exxon I beg your pardon I misspoke
 (10) Prior to the grounding you never received any directions
 (11) from Exxon about complying with that statute is that correct?
 (12) From on shore?
 (13) A Well, not that I can recall that specific statute, but we
 (14) had definite guidelines from Exxon to observe all
 government
 (15) statutes and regulations, but more importantly, that s what
 my
 (16) license is all about It s my job to comply with rules and
 (17) regulations of the United States Coast Guard and the U S
 (18) Courts Secondary comes Exxon
 (19) Q All right and if somebody doesn t comply with that then
 (20) you re not doing your job is that correct?
 (21) A If someone doesn t comply with that and they do actually
 (22) take the watch then I m not doing my job
 (23) Q Right and is there any procedure in such instances where
 (24) Exxon - that Exxon set up so that they would know that that
 (25) existed?

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- (1) A I don't know if there was any procedures where I was
 (2) supposed to report it, but there were guidelines on how to
 (3) handle it
 (4) Q My question is was there any way for Exxon to know that?
 (5) Had they set up any methodology or modus operandi so they
 could
 (6) determine if the mates such as you and the mates under you
 were
 (7) complying? There wasn t?
 (8) A I m not aware of a reporting procedure no
 (9) Q And there were no overtime records kept by the mates isn t
 (10) that correct? So there was nothing to look at?
 (11) A That's correct
 (12) Q Now let s go to the 23rd the morning of the 23rd Did
 (13) you see Captain Hazelwood before he left the vessel in the
 (14) morning of the 23rd?
 (15) A I ll have to refresh my - the 23rd is the day we're
 (16) loading in Valdez, is that -
 (17) Q 23rd is the day we re loading and the night we depart
 (18) A What was the question now sir
 (19) Q Do you recall that Captain Hazelwood went ashore that day?
 (20) A Yes
 (21) Q You re aware of that?
 (22) A Yes
 (23) Q Did you see him prior to time he went ashore?
 (24) A No, I saw him the midnight of the 22nd, in that time frame
 (25) when the ship docked That would be the last time I saw him

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- (1) **until the ship sailed**
 (2) Q So you didn't see him after 1 00 a m 12 01 a m on the
 (3) 23rd until he came back from shore is that correct?
 (4) **A That s correct**
 (5) Q Now let s talk about watches a minute Each mate has a
 (6) watch assigned to him right?
 (7) **A Yes**
 (8) Q A four hour watch and you take it twice a day?
 (9) **A Yes**
 (10) Q And your watch was the four to eight watch?
 (11) **A On that ship, yes I was on the four to eight**
 (12) Q And that s four in the morning to eight in the morning and
 (13) four in the afternoon to eight in the afternoon?
 (14) **A Correct**
 (15) Q Eight in the evening?
 (16) **A Eight in the evening**
 (17) Q And what do you call that watch does that have a name
 (18) shorthand name?
 (19) **A Well, I ve heard it called the navigation watch**
 (20) Q And Mr Cousins the third mate had the eight to twelve
 (21) watch right?
 (22) **A That s correct**
 (23) Q And Mr LeCain the second mate had the twelve to four
 (24) watch?
 (25) **A Yes**

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- (1) Q Now on the night of the - so on the night of the 23rd
 (2) and the morning of the 24th actually on the 24th Mr LeCain
 (3) was scheduled to replace Mr Cousins on the watch at midnight
 (4) is that correct?
 (5) **A That s correct**
 (6) Q And normally when you replace another officer on a watch
 (7) you get there about ten minutes earlier?
 (8) **A That s correct**
 (9) Q So that he would under normal circumstances report at
 (10) 11 50?
 (11) **A Correct**
 (12) Q Now are you - were you aware prior to the - that night
 (13) and prior to the wreck that Mr Cousins had agreed to let Mr
 (14) LeCain sleep a little longer so -
 (15) **A I was not aware of that, no**
 (16) Q Let s me finish the question so I know what you re not
 (17) aware of
 (18) **A I thought you were finished**
 (19) Q And so the jury knows what you re not aware of
 (20) **A Oh, okay**
 (21) Q You were not aware that Mr Cousins had agreed to let Mr
 (22) LeCain sleep a little later and Mr Cousins would continue to
 (23) stay on watch after his own watch ended?
 (24) **A I was not aware of that**
 (25) Q Okay That wasn't cleared with you?

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- (1) **A No It was not cleared with me**
 (2) Q And that was common practice amongst mates to make
 those
 (3) decisions without clearing them with the senior officer? Well
 (4) where a senior officer wasn't involved?
 (5) **A Yeah, I m trying to make sure that by saying common**
 (6) **practice - I know that it took place I would say 50/50 If**
 (7) **there was a problem or they figured there was a problem,**
 (8) **they d**
 (9) **usually come to me or the master and okay it There was**
 (10) **really**
 (11) **no reason for me to get involved in that unless they felt it**
 (12) **would create a problem**
 (13) Q Okay Now let s - let s turn back to your schedule
 (14) because you - you were - we had a little uncertainty about
 (15) the amount of rest that you ve gotten
 (16) MR NEAL Objection to the testifying by the
 (17) examiner There s a little uncertainty
 (18) MR MONTAGUE I withdraw that
 (19) THE COURT The jury will please disregard the
 (20) remark Go ahead
 (21) BY MR MONTAGUE
 (22) Q Now do you recall what time you docked in the Port of
 (23) Valdez on the night of the 22nd?
 (24) **A I think it was around midnight, the 22nd**
 (25) Q And I ll that from - that you were working from 2200 on
 the 22nd started working?
 (26) **A On the 22nd, yes, it was about - about 2200 when the ship**

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- (1) **was docking**
 (2) Q Okay and then you worked up until about 0130 on the
 (3) morning of the 23rd?
 (4) **A That s probably a close proximity, yeah, about 0130**
 (5) Q Okay then you took an hour s rest from 1 30 to 2 30?
 (6) **A Yeah I would have been off duty**
 (7) Q For about an hour?
 (8) **A No I probably - I think looking at the logbook we**
 (9) **started stripping about 0300, you can correct me if I m**
 (10) **wrong**
 (11) **so they probably called me about 2 30 but I would have**
 (12) **wandered**
 (13) **In the control room sometime a little before three**
 (14) Q Well you testified well we can look at your deposition if
 (15) you want?
 (16) **A Oh, sure**
 (17) Q But on page 35 of your deposition I hope it s up there
 (18) MR MONTAGUE Does he not have the depo?
 (19) THE WITNESS I guess I don t
 (20) MR MONTAGUE May I approach the witness Your
 (21) Honor? I apologize you may get a little eye strain
 (22) THE WITNESS Oh the little guy okay
 (23) BY MR MONTAGUE
 (24) Q You ve seen them before?
 (25) **A All right**
 (26) Q Could you look at page 35 Okay does that have line
 numbers on it that transcript?

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- (1) **A No it doesn't**
 (2) **Q Well if you'd look -**
 (3) **A It's the right hand side I see 1 00 okay**
 (4) **Q Look about six or seven lines the last answer on the page**
 (5) **begins yeah so probably about a little before 3 00 2 30 or**
 (6) **so they probably called me you know to be available to make**
 (7) **sure everything was going fine with the stripping?**
 (8) **A Time out, time out Page 35 right**
 (9) **Q Yes**
 (10) **A Three five**
 (11) **Q 35**
 (12) **A Somebody's going to have to help me because it's not here**
 (13) **This is - so that's page 35, right**
 (14) **MR MONTAGUE This is a messed up copy I apologize**
 (15) **Your Honor may I show the witness my copy even though it has**
 (16) **some lining in it? I apologize Look at the last answer**
 (17) **THE WITNESS Okay**
 (18) **BY MR MONTAGUE**
 (19) **Q Page 35**
 (20) **A Okay**
 (21) **Q Does that refresh your recollection that you were called to**
 (22) **begin stripping at 2 30?**
 (23) **MR NEAL Your Honor that -**
 (24) **THE WITNESS Yeah I - I think I - isn't this just**
 (25) **what I just said I said a little before 3 00 2 30 or so they**

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- (1) **probably called me Well I mean they called me at 2 30 but**
 (2) **I certainly wasn't on duty at 2 30 I was probably sleeping**
 (3) **so a little before 3 00 yeah I went on duty**
 (4) **BY MR MONTAGUE**
 (5) **Q Okay And then you worked until you went on watch at 4 00?**
 (6) **A Sure Okay Do I keep looking at this thing?**
 (7) **Q You don't have to I'm sorry Put it up there And then**
 (8) **you were off watch at 8 00 in the morning of the 23rd?**
 (9) **A Yes**
 (10) **Q And then you checked with Cousins do you recall that?**
 (11) **A Yes, uh-huh**
 (12) **Q And then you rested for between 0900 and 1100?**
 (13) **A Yes**
 (14) **Q Do you remember that?**
 (15) **A Okay**
 (16) **Q And then from 1100 to 1300 you checked to see if**
 (17) **everything was going okay and there was some trouble**
 (18) **keeping**
 (19) **the loading rate high do you recall that?**
 (20) **A No, I kind of doubt if I worked from 11 to 1 00 I mean I**
 (21) **know I had lunch in there for a half an hour minimum and**
 (22) **since**
 (23) **I wasn't on - you know, nothing major was going on, I**
 (24) **probably**
 (25) **had a long lunch, so I mean, if I recall, the deposition, I**
 (26) **worked between 11 and 1 00 So in that time, yes, I was**
 (27) **doing**
 (28) **some work, but I certainly wasn't working the full two hours**
 (29) **Q Okay Could you turn to page 36**

- (1) **A Okay Okay**
 (2) **Q And about six lines down you say so do you recall this**
 (3) **your answer was So I would have been working between 11 00**
 (4) **and probably 1300 o'clock?**
 (5) **A Correct**
 (6) **Q And then I would have knocked off until 5 50?**
 (7) **A 1550**
 (8) **Q 1550 I'm sorry Is that a correct statement?**
 (9) **A Yes**
 (10) **Q And then at 1550 you went up to the bridge to take your**
 (11) **watch?**
 (12) **A Correct**
 (13) **Q Okay and then you -**
 (14) **A Wait a minute, wait a minute I'm sorry 1550?**
 (15) **Q Yes**
 (16) **A I went to the control room, cargo, not the bridge**
 (17) **Q I'm sorry you went to the cargo room but that was where**
 (18) **you assumed your watch?**
 (19) **A Yes**
 (20) **Q You were the watch officer?**
 (21) **A Correct**
 (22) **Q And am I correct then that you worked from that time on**
 (23) **until you retired that evening?**
 (24) **A Yeah, but of course I had a dinner break in there too**
 (25) **Q Okay Now during that period that you were on watch one**

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- (1) **of your duties - you were the cargo officer?**
 (2) **A The chief mate is always the cargo officer**
 (3) **Q Always the cargo officer?**
 (4) **A Right**
 (5) **Q You topped off the vessel is that correct?**
 (6) **A That's correct**
 (7) **Q And you need more than one - you can't do that yourself?**
 (8) **A Well, I wouldn't say you can't do it yourself It's safer**
 (9) **to have two and also it's Exxon's requirement that two**
 (10) **officers be present**
 (11) **Q And in fact you called Third Mate Cousins to help you with**
 (12) **that isn't that correct?**
 (13) **A That's correct**
 (14) **Q And that was because he had the next watch?**
 (15) **A That's correct**
 (16) **Q And what does that mean topping off?**
 (17) **A That's where the tanks are getting to their limit of**
 (18) **capacity that you're going to load at, so the level of the**
 (19) **tanks is getting higher and higher and closer and closer to**
 (20) **the**
 (21) **top of the tank and you have two people there to be sure**
 (22) **that**
 (23) **you don't have an overflow of the tanks**
 (24) **Q Okay and that normally takes about an hour and a half?**
 (25) **A Well, anywhere from an hour to an hour and a half, that's**
 (26) **correct**
 (27) **Q Okay now do you recall that you called Cousins at about**

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- (1) 1800 or 6 00 to help you with that with the topping off?
 (2) **A Well I can - I can assume that I must have called him in**
 (3) **that time period because I know that topping off was at**
 (4) **1830,**
 (5) **so usually you give the guy anywhere from 15 to 20**
 (6) **minutes**
 (7) **notice**
 (8) **Q Well could you turn to Exhibit 18 - well before that**
 (9) **look at 1825 please exhibit It s your NTSB testimony**
 (10) **Plaintiffs Exhibit 1825?**
 (11) **A That's NTSB, right**
 (12) **Q Yes**
 (13) **A I don t know the numbers, but I do know, if you tell me**
 (14) **NTSB, I can figure it out, 1825**
 (15) **Q Did you review that? Have you reviewed that before today?**
 (16) **A Oh, yeah**
 (17) **Q And can you look at this and tell me if this is a copy of**
 (18) **your NTSB testimony?**
 (19) **A Sure, looks - it looks like it, yes**
 (20) **MR MONTAGUE Your Honor I would offer 1825 if it s**
 (21) **necessary I m just using it to refresh his recollection**
 (22) **THE COURT I don t think we need to offer it**
 (23) **MR MONTAGUE Okay**
 (24) **BY MR MONTAGUE**
 (25) **Q Would you turn Mr Kunkel to page 369?**
 (26) **MR NEAL I m sorry I didn t hear it**
 (27) **MR MONTAGUE 369**

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- (1) **BY MR MONTAGUE**
 (2) **Q By the way this testimony was given on May 17 1989**
 (3) **correct?**
 (4) **A It was given when?**
 (5) **Q May 17 1989 Would you look at the front cover?**
 (6) **A May 17th, 1989, yes**
 (7) **Q Okay Little less than two months after the wreck?**
 (8) **A Correct**
 (9) **Q Okay and would you look at line 23 and would you read that**
 (10) **over to line 8 of the next page?**
 (11) **A Okay**
 (12) **Q Read it out loud**
 (13) **A Oh, okay At about 1800, Mr Cousins, the third mate,**
 (14) **came**
 (15) **in and I had him assist me in the topping off operation It**
 (16) **must have been 1830 or so We topped off, couple of tanks**
 (17) **off**
 (18) **Q Okay stop there a minute So Mr Cousins came in at 1800**
 (19) **is that correct?**
 (20) **A At about, I think that's the word, about 1800**
 (21) **Q And then he assisted you?**
 (22) **A We don t push the clock, you know, I m trying to get -**
 (23) **you're - about 1800, okay**
 (24) **Q That was your best recollection -**
 (25) **A Yeah**
 (26) **Q - about 60 days after the grounding?**

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- (1) **A Right that s correct**
 (2) **Q And am I correct that the topping off ended at 1924 hours?**
 (3) **Do you recall that?**
 (4) **A Well I did - I see that, yeah, that s when we finished**
 (5) **cargo, correct**
 (6) **Q So that Mr Cousins was assisting you from approximately**
 (7) **1800 thereabouts to at least 1924 in the topping off?**
 (8) **A Yes**
 (9) **Q Now I d like to turn if I may to what happened once the**
 (10) **Exxon Valdez hit Bligh Reef okay?**
 (11) **You testified that you were asleep And did that impact on**
 (12) **the reef awaken you?**
 (13) **A I awoke about the time of the impact, and I can only**
 (14) **assume**
 (15) **that that s what woke me up**
 (16) **Q Okay And when you woke up you went up to the bridge**
 (17) **correct? Got dressed?**
 (18) **A Well, I got - yes, I got dressed and I went to the bridge**
 (19) **Q And you spoke to Mr Cousins?**
 (20) **A Yes**
 (21) **Q And you asked Mr Cousins what was wrong?**
 (22) **A Yes**
 (23) **Q And he told you that the vessel was aground and the captain**
 (24) **knows is that correct?**
 (25) **A Yes**
 (26) **Q And then you told Mr Cousins that you were going down**

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- (1) **below to the control room?**
 (2) **A Yes**
 (3) **Q Cargo control room?**
 (4) **A Yes**
 (5) **Q And try to get an assessment if there was any damage?**
 (6) **A That s correct**
 (7) **Q And you went to the control room?**
 (8) **A Yes**
 (9) **Q All right when you were on the bridge at that time you**
 (10) **did not speak to Captain Hazelwood is that correct?**
 (11) **A That s correct**
 (12) **Q Now yesterday or the day of - I guess it was yesterday**
 (13) **Captain Hazelwood was recounting all the things that he was**
 (14) **doing after the grounding after all of his responsibilities**
 (15) **and I d like to show you what he said about this yesterday**
 (16) **And I ve highlighted it Can you see that all right?**
 (17) **He said Once the engine was stopped I think Mr Kunkel**
 (18) **at that time came up to the bridge the chief officer and he**
 (19) **said what s going on He was kind of wide-eyed And I said**
 (20) **okay Jim this is basically the situation as I know it and I**
 (21) **want you to go down and start sounding all the tanks**
 (22) **Basically find out where we re leaking what s losing oil**
 (23) **what s gaining seawater and just a general status condition as**
 (24) **near as he could ascertain the condition of the hull See**
 (25) **that?**

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(1) **A** Uh huh
 (2) **Q** That doesn't jibe with your memory does it? You want me
 (3) to keep that on?
 (4) **A** Okay Well I mean the general gist jives [sic] Once
 (5) the engine was stopped I don't know what the hell that
 means,
 (6) because I don't know if the engines were stopped or running
 or
 (7) whatever, but I know I came up to the bridge, and let's see,
 (8) when I came up to the bridge, I - I probably asked him,
 what's
 (9) going on, and I showed him a - this is the first time I see
 (10) him, correct?
 (11) **Q** No
 (12) **A** No? I'm trying to -
 (13) **Q** This is -
 (14) **MR CHALOS** Your Honor I object Mr Montague is
 (15) confused and attempting to confuse the witness
 (16) **THE COURT** Well Ladies and Gentlemen of the Jury
 (17) you're going to have to decide what the order of events here
 (18) was and if counsel's recollection of what was said were the
 (19) sequence of events does not comport with yours your view of
 (20) what happened and what the evidence is will control You may
 (21) continue sir
 (22) **BY MR MONTAGUE**
 (23) **Q** Well let's just clear up what you say again and so we're
 (24) sure
 (25) When the wreck occurred you came up to the bridge AND you

(1) **A** That is correct I did not speak to him
 (2) **Q** Now you went down to the control room and what did you do
 (3) when you went to the control room?
 (4) **A** I looked at the gauges that give me an indication of
 what's
 (5) in the tank, tanks, plural and it was obvious that we had a
 (6) lot of movement in tanks At the time I figured cargo was
 (7) going out of all the center tanks and the three starboard
 cargo
 (8) tanks I also had movement in some of the ballast tanks, so
 (9) they had to be breached in some fashion Picked up the
 phone,
 (10) and I called the bridge I don't know if Cousins answered or
 (11) if Captain answered, but I said - I know I spoke to the
 (12) captain, or I said let me speak to the captain, or I was
 (13) talking to the captain and I told him what I just told you
 (14) **Q** You had concluded by looking at those gauges that the
 tanks
 (15) were losing oil is that correct?
 (16) **A** Yes
 (17) **Q** In fact they were losing oil very rapidly?
 (18) **A** Yes
 (19) **Q** Where's the control room on the -
 (20) **A** You want me to walk over there and show you
 (21) **Q** No it's easier for me to take this to you but if you
 (22) could do it so the jury could see We have a - we have a
 (23) bigger little bigger thing of the bridge if that would help
 (24) you?
 (25) **A** Controlling room is about right there

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(1) just spoke to Cousins you didn't -
 (2) **A** The first time I went to the bridge?
 (3) **Q** First time
 (4) **A** It was - from what I understand it had to happen right
 (5) after the wreck Went to the bridge and I walked into the
 (6) chart room Mr Cousins was coming around into the chart
 room
 (7) and I - Greg what's going on We're aground or I think
 we're
 (8) aground and the captain knows And I said I'm going down
 (9) below to take a look at the gauges and see if I can figure out
 (10) what's happened to the ship
 (11) **Q** And you did that on your own?
 (12) **A** I did that on my own
 (13) **MR NEAL** Your Honor I object to not letting the
 (14) witness answer Your Honor I think he's telling him what
 (15) happened
 (16) **THE COURT** I'm not sure he was finished or not Were
 (17) you finished with your answer
 (18) **MR MONTAGUE** If you weren't I'm sorry
 (19) **THE WITNESS** Yeah I went down to the control room to
 (20) try to assess the damage correct I'm finished
 (21) **BY MR MONTAGUE**
 (22) **Q** And you did that on your own?
 (23) **A** I did that on my own
 (24) **Q** During that visit that first visit to the bridge you did
 (25) not speak to Captain Hazelwood?

(1) **Q** Let's point it the other way
 (2) **A** Right in about there
 (3) **Q** So that was - you had - that was pretty far down control
 (4) room?
 (5) **A** Three or four flights
 (6) **Q** About four flights okay
 (7) **THE COURT** Are you still pointing to an area that's
 (8) in the white house that's on the deck
 (9) **THE WITNESS** Yes
 (10) **MR MONTAGUE** Yes Your Honor it's the last - is it
 (11) the bottom
 (12) **THE WITNESS** Gee I think so
 (13) **MR MONTAGUE** The bottom level
 (14) **THE WITNESS** Yeah I think it's right there
 (15) **THE COURT** Bottom level of the house?
 (16) **THE WITNESS** Yes
 (17) **THE COURT** Thank you
 (18) **BY MR MONTAGUE**
 (19) **Q** Now with this fancy model -
 (20) **A** Just a minute let me try to - it's been a while since
 (21) I've been on the ship It might be the second level, I'm
 (22) not - I'm not positive to be honest with you
 (23) **Q** It's not crucial
 (24) **A** It's so damn long ago
 (25) **Q** It's down there?

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- (1) **A Yeah it s either the first or second level**
 (2) **Q Let me remove the car from this model and let me try to**
 (3) **remove this put this over here**
 (4) **Now I m told this has been admitted into evidence and I am**
 (5) **told that this is a good replica of the tanks inside?**
 (6) **A Pretty close, yeah, good enough**
 (7) **MR MONTAGUE Your Honor could the witness get down**
 (8) **from the stand so that he can point to these things so the jury**
 (9) **can see?**
 (10) **BY MR MONTAGUE**
 (11) **Q Could you come down? And if you can recall can you tell**
 (12) **us which areas you saw were losing oil?**
 (13) **A Right about here is where the - the end of the cargo tanks**
 (14) **are, okay All this area up here, there s no cargo**
 (15) **Q When you say the end that s the -**
 (16) **A That s the front**
 (17) **Q That s the cargo area nearest the back?**
 (18) **A Right, that's the forepeak, the front of the ship is called**
 (19) **the forepeak Then you start cargo tanks, one, two three,**
 (20) **four, five Okay, two and four wings are the ones that are**
 (21) **outside Those are ballast, clean ballast, no cargo So this**
 (22) **would represent no cargo, and everything forward of my**
 (23) **pen, no**
 (24) **Q cargo, okay?**
 (25) **That evening, I felt, by the gauges that there was damage**
 (26) **here, here, here, here, here, here, here here This tank is**

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- (1) **kind of split back here It doesn t -**
 (2) **MR NEAL It s a little bit difficult difficult to**
 (3) **hear over here Your Honor the witness**
 (4) **MR MONTAGUE Come on over**
 (5) **THE WITNESS We saw damage I saw damage here here**
 (6) **here here and here Those are the five center tanks One**
 (7) **starboard the right hand side of the ship three starboard**
 (8) **five starboard Then there s a small tank here we call a slop**
 (9) **tank I don t think I saw damage in that not by the gauges**
 (10) **BY MR MONTAGUE**
 (11) **Q All right when you say damage you found that all those**
 (12) **tanks were losing oil?**
 (13) **A The gauges were moving, right**
 (14) **Q Okay now the forepeak was anything happening in the**
 (15) **forepeak?**
 (16) **A The tape on the forepeak when I left Valdez, and that**
 (17) **means**
 (18) **that it showed the tape, like a float on the bottom, but when I**
 (19) **looked at it, the float had come up about ten feet, if I**
 (20) **remember right, ten or twelve, something, so something**
 (21) **was now**
 (22) **in the forepeak, but I had no idea what it was**
 (23) **Q Thank you you can go back**
 (24) **A Okay**
 (25) **Q Now let s see you called the master and reported what**
 (26) **you - well did you speak to Captain Hazelwood?**
 (27) **A Yeah, I called the bridge and I told Captain Hazelwood**

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- (1) **basically what I ve told the folks in the jury**
 (2) **Q Okay and then am I correct that he - there was a computer**
 (3) **on board called the Load Master computer?**
 (4) **A Yeah right The terminology is loose, Load Master**
 (5) **Ocean**
 (6) **Motion Basically it s a stability computer**
 (7) **Q Okay and he told you to see what you could - put the data**
 (8) **in there and see what you could come up with?**
 (9) **A Correct**
 (10) **Q And by the data it meant the readings off of the gauges on**
 (11) **the tanks that were losing oil?**
 (12) **A Yes**
 (13) **Q And you did that?**
 (14) **A Yes**
 (15) **Q And that took a few minutes?**
 (16) **A Yes**
 (17) **Q And that as a result of that you got these printouts that**
 (18) **came out?**
 (19) **A That s correct**
 (20) **Q As computers do?**
 (21) **A Yeah spit it out**
 (22) **Q And those showed you measures of the stability?**
 (23) **A Yes**
 (24) **Q Of the vessel?**
 (25) **A Yes**
 (26) **Q And also the stresses on the hull?**

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- (1) **A Yes**
 (2) **Q And those stresses would be both bending moments I m**
 (3) **told**
 (4) **by an engineer?**
 (5) **A Yes**
 (6) **Q And sheer stresses?**
 (7) **A Correct**
 (8) **Q Do you know the difference between those?**
 (9) **A Yeah**
 (10) **Q Could you tell us?**
 (11) **A To make it easy, bending just like a pipe, okay Sheer is**
 (12) **a force that's opposite of each other, in other words if you**
 (13) **had a - if you had like a piece of steel here, on one side,**
 (14) **maybe it was pushing up and on one side it was pushing**
 (15) **down, so**
 (16) **that s a force on there That s sheer**
 (17) **Q Okay Now you had not been trained on using this**
 (18) **computer**
 (19) **before had you?**
 (20) **A When I took the job in '88, the chief mate that was on**
 (21) **there showed me how to use the computer, and of course**
 (22) **there**
 (23) **was a manual there so that was the extent of my training**
 (24) **Q Okay you had looked at the manual before?**
 (25) **A Oh yeah**
 (26) **Q And you had not used the computer prior to this time this**
 (27) **was the first time you had actually used it?**
 (28) **A Oh no, we used it all the time From 88, that whole**
 (29) **voyage I had to use that in order to legally sail the ship so**

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- (1) every load every discharge plus the fact that I was learning
 (2) the damn thing - excuse me I was learning the thing and
 you
 (3) know I d - I d have to put voyages and stuff out of my head
 (4) just to get to learn how to use it I mean, you can t be the
 (5) chief mate and not know how to use it
 (6) Q Okay This was the first time that you had used it where
 (7) you were in a situation where the hull was not intact?
 (8) A That is correct, okay
 (9) Q And to that extent that s the first time you ve used it?
 (10) A Yes
 (11) Q So you put all this information in and was there different
 (12) types of conditions that you could fit into the computer or put
 (13) into the computer?
 (14) A That s correct
 (15) Q And do you recall what it was that you put into the
 (16) computer?
 (17) A The first time I told the computer that we were aground
 and
 (18) that we had damage
 (19) Q Okay And did it work?
 (20) A Yes, it worked
 (21) Q And you assumed from the outflow of oil that there had been
 (22) damage to the hull?
 (23) A That s correct
 (24) Q And out of that computer came some sheets?
 (25) A That s correct

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- (1) Q And do you recall what they showed?
 (2) A They showed that the stability of the vessel was okay
 The
 (3) computer basically, alls it does for you is all of the tedious
 (4) calculations Those calculations showed that the stability
 was
 (5) okay to go to sea but it was very marginal It was just
 (6) barely meeting the requirements but they were met
 (7) It showed the bending and the sheer moments to exceed
 (8) allowable limits to go to sea
 (9) Q Okay Now you took that those pages from the computer
 (10) printout up to Captain Hazelwood correct?
 (11) A Yes
 (12) Q And you showed them to him?
 (13) A Yes
 (14) Q Where d you take them into the chart room?
 (15) A Yes
 (16) Q And did you discuss what those showed what they showed?
 (17) A Yes I informed him, of course, that stability looked good
 (18) or acceptable However, we were exceeding sheer and
 ground -
 (19) and bending moments I also pointed out to him that I had
 (20) entered the computer with a grounded damage condition
 and I
 (21) gave him my recommendation at the time
 (22) Q Okay did you tell him that the stability was marginal?
 (23) A Yes But I told him it was- acceptable but marginal the
 (24) exact words I think I used
 (25) Q Do you recall what time it was that you gave him gave him

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- (1) the charts and had that discussion it was about 1 00 wasn t
 (2) it?
 (3) A Well I got to assume
 (4) Q I m sorry I misspoke it s about 0030 is that right?
 (5) A That s right I would say somewhere around midnight 30
 to
 (6) midnight 45 somewhere in there
 (7) Q Now if you ll stick with me I d like to go together if we
 (8) can make up a little chart here Okay? Is the Elmo on? And
 (9) this is as to post grounding activity
 (10) A Okay
 (11) Q On the - I don t think this is all going to fit on the
 (12) 24th Now the first thing that we have is at 0030 you made
 (13) your first report to Captain Hazelwood on the acceptable
 (14) stability and some bending movements and sheer forces
 exceeded
 (15) is that a fair statement?
 (16) A About 0030, yes in that area
 (17) MR MONTAGUE Okay Now can we - can we switch
 (18) over to the file of the documents and call up Exhibit 47
 (19) plaintiffs Exhibit 47 I m sorry wrong document 66
 (20) plaintiffs Exhibit 66 okay Your Honor this has been admitted
 (21) already into evidence And could we get to the third page
 (22) BY MR MONTAGUE
 (23) Q Do you recognize this as a bell logger? If I used the
 (24) right term?
 (25) A This is the - the bell logger that I believe the Valdez

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- (1) class vessel had, yeah
 (2) Q And very briefly can you just tell us what the bell logger
 (3) is and what it showed?
 (4) A Well, first of all, I better qualify my statement here and
 (5) that this is an engineer s document I m a mate, okay, that
 (6) means I run the navigation of the ship This thing gets
 (7) printed down in the engine room, so an engineer looks at
 this
 (8) thing I never see it You know except in court right like
 (9) now you know But basically, it s printed in the engine
 room
 (10) every time a order is given on the bridge, this is printed in
 (11) the engine room
 (12) Q Okay So let s - but you ve seen these before?
 (13) A I saw this after the grounding
 (14) Q Okay and you -
 (15) A That s the first time I ever saw one
 (16) Q Tell me if we can go through this and you can understand
 (17) it okay
 (18) A All right
 (19) Q Let s see if we can get this entry?
 (20) A Can you all read this? It s pretty blurry
 (21) Q Let s see if we can get this entry right here
 (22) That s where the grounding occurred right where it says
 (23) 9 05 that s Greenwich time correct?
 (24) A It should be Greenwich
 (25) Q It s nine hours ahead of Alaska time?

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- (1) **A Uh huh**
 (2) **Q So that would be roughly 005?**
 (3) **A 005 right**
 (4) **Q When the grounding occurred?**
 (5) **MR CHALOS Your Honor I m going to object in so far**
 (6) **as this writing is not an accurate writing What that shows is**
 (7) **a maneuver with the engine at that point but not necessarily**
 (8) **that s where the grounding was**
 (9) **THE COURT I don t understand your objection**
 (10) **MR CHALOS Just that it s an inaccurate description**
 (11) **of the time of the grounding**
 (12) **MR MONTAGUE Well that s what it appears on the**
 (13) **bell logger I m not - I ll stipulate that that s not being**
 (14) **offered for the exact time of the grounding Your Honor**
 (15) **BY MR MONTAGUE**
 (16) **Q Now let s take a look further up Can you see this all**
 (17) **right? It shows if you can follow the arrow that the engines**
 (18) **stopped around 1949 is that correct? You see where the arrow**
 (19) **is?**
 (20) **A This is 091949**
 (21) **Q Looks like 1949?**
 (22) **A All right, yeah, okay**
 (23) **Q And then if you go up the logger you can see where the**
 (24) **engine started again correct And that would be right -**
 (25) **right there is that right? Dead slow ahead that s the first**

- (1) **Q And then the next is it s full ahead at 5619 correct?**
 (2) **A That s correct**
 (3) **Q And again that s maneuvering speed?**
 (4) **A Correct**
 (5) **Q Could we get back to the Eimo? All right so let s fill**
 (6) **this chart in with those numbers Now you went -**
 (7) **A Do I - do I need to see this again?**
 (8) **Q Those are the numbers we read**
 (9) **A Okay, all right**
 (10) **Q Now when you showed those that first computer figures to**
 (11) **Captain Hazelwood he then suggested you go back down to**
 (12) **the**
 (13) **cargo control room and take some more readings?**
 (14) **A Yes**
 (15) **Q And you did that?**
 (16) **A Yes**
 (17) **Q And at that time did you have some troubles with the**
 (18) **computer?**
 (19) **A Yes**
 (20) **Q And when input in the - when you wanted to put in the**
 (21) **grounded mode in the computer you couldn t get it to accept**
 (22) **it?**
 (23) **A That s correct**
 (24) **Q And in fact in using the computer the second time you had**
 (25) **to use the intact program?**
 (26) **A That s what I did**

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- (1) **time it moves off of stop?**
 (2) **A Yeah, it looks like the point you started it s stop, stop,**
 (3) **stop stop and now it s going ahead**
 (4) **Q Okay and that s dead slow ahead correct? And that s at**
 (5) **3557?**
 (6) **A I have to take your word on dead slow ahead, but that s at**
 (7) **09 - I can't read it**
 (8) **Q Well it previously was testified to that s a 3557**
 (9) **A 35 - okay, all right**
 (10) **Q And by the way so no one s misled dead slow ahead is**
 (11) **maneuvering speed not sea speed?**
 (12) **A Correct**
 (13) **Q Do you understand that?**
 (14) **A A slow speed, yes**
 (15) **Q Let s fill in the next part of this chart You don t have**
 (16) **to go back and forth go crazy**
 (17) **The next change in direction I mean in engine speed is**
 (18) **here is that correct? At 4013? We re now just plain old slow**
 (19) **ahead maneuvering speed?**
 (20) **A Right, okay, then you get up to slow right**
 (21) **Q Okay now let s go okay the next is - next change is at**
 (22) **4835 it s up to half ahead?**
 (23) **A Okay, so it kind of wraps around like this**
 (24) **Q Yes**
 (25) **A Okay, yeah, slow then half**

- (1) **Q I mean without a breach in the hull?**
 (2) **A Uh huh**
 (3) **Q And so your next set of figures that came out were for the**
 (4) **vessel being afloat with an intact hull?**
 (5) **A Correct**
 (6) **Q And you put in the readings and the gauges from the**
 (7) **gauges**
 (8) **in the computer?**
 (9) **A Right**
 (10) **Q And they had changed?**
 (11) **A Yes**
 (12) **Q Substantially?**
 (13) **A Yes, they had changed**
 (14) **Q Showed a lot more oil had been lost?**
 (15) **A They had changed, and I don t know - later on we found**
 (16) **out**
 (17) **that not all the oil got lost, it just got moved around, you**
 (18) **know what I mean**
 (19) **Q I understand I m only interested in what - at that**
 (20) **time -**
 (21) **A There was a change in the gauges that much is true**
 (22) **Q All right and those readings at that time indicated to you**
 (23) **that a lot of oil had been lost from those tanks since your**
 (24) **first reading?**
 (25) **A Right**
 (26) **Q And then you put those readings into the computer?**
 (27) **A Yes**

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- (1) Q In the condition we just discussed?
- (2) **A Intact condition yes**
- (3) Q Okay and then you got the second set of printouts right?
- (4) **A Correct**
- (5) Q Okay and that second set of printouts now showed with the
- (6) intact vessel floating in an intact mode showed that the
- (7) bending moments and the sheer forces were not being exceeded
- (8) is that correct?
- (9) **A That's correct**
- (10) Q Okay but the stability was different this time?
- (11) **A Yes**
- (12) Q And it showed - you need a ratio of one to be - that s
- (13) the marginal stability?
- (14) **A Right**
- (15) Q All right and this was - now you had a ratio of less than
- (16) one?
- (17) **A That s correct**
- (18) Q So that showed that there was a problem?
- (19) **A That s correct That showed -**
- (20) Q In the stability?
- (21) **A That the vessel should not go to sea**
- (22) Q And you took those sheets up to Captain Hazelwood?
- (23) **A Yes**
- (24) Q And you told him what we just discussed that there were
- (25) no - that the bending moments and the sheer forces were not

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- (1) being exceeded but the stability was - was below what it
- (2) should be and we should not go to sea?
- (3) **A Well, those are your words I went up there and -**
- (4) Q You tell me what your words are sir
- (5) **A I told him, Captain, I couldn t get the grounding to work**
- (6) **You can see we re intact and we don t meet required stability**
- (7) **but we re - the other things look good, or the other areas**
- (8) **look all right And at that time I think I also recommended**
- (9) **we don t leave the area or don t leave the grounded area**
- (10) Q And he agreed with you?
- (11) **A Yeah, he agreed with me**
- (12) Q And that was about 1 00?
- (13) **A That would have to be in the 1 00 area**
- (14) Q All right now tell me if this is accurate? Second report
- (15) to Hazelwood on unacceptable stability bending moments and
- (16) sheer forces not exceeded is that fair?
- (17) **A That's correct**
- (18) Q What is stability? What do you mean by that term
- (19) stability?
- (20) **A Well, I ll try not to get too indepth in it, but the bottom**
- (21) **line is that stability is expressed so that the vessel will not**
- (22) **roll over and sink or capsize Required stability is a number**
- (23) **that has been predetermined by the naval architects that if**
- (24) **the ship has damage in it it can still be out at sea under**
- (25) **certain weather conditions and it will not capsize So the**

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- (1) **vessel did not meet required stability That did not mean**
- (2) **the**
- (3) **vessel was not unstable didn t mean she would sink It**
- (4) **meant**
- (5) **that she could not go to sea, sustain damage, which we**
- (6) **knew we**
- (7) **had, in that type of weather and remain afloat There was a**
- (8) **possibility of capsizing**
- (9) Q Okay Now the next thing that occurred on the chronology
- (10) was a transmission by Captain Hazelwood to the VTC Were
- (11) you
- (12) present when that took place?
- (13) **A No**
- (14) MR MONTAGUE Your Honor if we could just to fill
- (15) in this chart this was raised yesterday with Captain
- (16) Hazelwood and just to make sure that the chart is correct
- (17) BY MR MONTAGUE
- (18) Q I d like to - could you turn - pick up Exhibit 90 A which
- (19) is a transcript been admitted?
- (20) **A I m getting pretty cluttered here Can I stick it here?**
- (21) **Is that all right?**
- (22) Q Do you have that?
- (23) **A Okay**
- (24) Q And it s about the ninth page you see it s on the eighth
- (25) page you ll see a transmission beginning at 0107 29 at the
- (26) bottom?
- (27) **A Okay, page nine?**
- (28) Q Well there are no pages
- (29) MR MONTAGUE May I approach the witness Your

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- (1) Honor?
- (2) BY MR MONTAGUE
- (3) Q See come to this entry
- (4) **A Okay**
- (5) Q See this entry here?
- (6) **A Okay**
- (7) Q 0107 29?
- (8) **A Uh huh**
- (9) Q Let s look at the conversations on the next page
- (10) **A Okay**
- (11) Q You see in the transmission from the Exxon Valdez -
- (12) **A Uh huh, yes**
- (13) Q And looking at the third line it says and this was
- (14) Captain Hazelwood speaking
- (15) We are working out - that should be our way off the reef
- (16) we ve huh the vessel s been hulled and we re ascertaining
- (17) right now we re are trying to just get her off the reef See
- (18) that?
- (19) **A Uh huh**
- (20) Q Okay and then the next transmission on the same page - on
- (21) the same page?
- (22) **A Okay**
- (23) Q The next transmission from the Exxon Valdez we re in
- (24) pretty good shape right now stability wise We re huh just
- (25) trying to extract her off the shoal here and you probably can

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- (1) see me on your radar Once we get underway I'll let you
 (2) know See that?
 (3) **A Uh huh**
 (4) Q Now I filled that in the chart -
 (5) MR NEAL Your Honor could well approach the bench
 (6) just a moment
 (7) (Bench Conference off the Record)
 (8) MR MONTAGUE Now can we go back to Exhibit 66 real
 (9) quick? And we'll - okay
 (10) BY MR MONTAGUE
 (11) Q Okay now the - am I correct we're back on the bell
 (12) logger that we discussed that it reached full ahead at 5619
 (13) Am I correct that it remained at full ahead until 10 - well
 (14) that would be 0140 30? And that it went to slow ahead and
 (15) again that's maneuvering speed?
 (16) **A Uh-huh, yes that's what it says**
 (17) Q And then it was reduced to dead slow ahead at 0140 43?
 (18) **A Yes**
 (19) Q And it stopped at 0140 53 correct?
 (20) **A Yes**
 (21) MR MONTAGUE Can we go back to the Elmo?
 (22) And I filled in the rest of that chart Your Honor I will
 (23) reserve offering this chart until after cross examination
 (24) THE COURT Okay
 (25) BY MR MONTAGUE

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- (1) Q Now one last point and then I'll be done with Mr Kunkel
 (2) When you first joined the Valdez the Exxon Valdez in
 September
 (3) of 1988 you were waiting for a launch to get to the vessel?
 (4) Do you remember that?
 (5) **A Okay, this is 1988?**
 (6) Q Yeah September
 (7) **A Uh huh**
 (8) Q 1988?
 (9) **A Uh huh that's correct**
 (10) Q And you met Captain Hazelwood at the launch?
 (11) **A I think I met him at the airport**
 (12) Q All right
 (13) **A I think they drove us together in the van**
 (14) Q And while you were waiting for the launch you had a beer
 (15) with Captain Hazelwood?
 (16) **A That's correct**
 (17) Q And that was while you were waiting at the launch to go to
 (18) the Exxon Valdez?
 (19) **A Yes**
 (20) Q And to report to duty?
 (21) **A Yes**
 (22) MR MONTAGUE Thank you very much
 (23) DIRECT EXAMINATION OF JAMES R KUNKEL
 (24) BY MR NEAL
 (25) Q I have a few questions Mr Kunkel and as my colleague

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- (1) Mr O'Neill is fond of saying I will do my best to be - to
 (2) run through these quickly in view of the shortness of life
 (3) I'll run through your background for a moment
 (4) If I'm incorrect in this you let me know okay? Matter of
 (5) fact if I lead you some and I say anything that's not correct
 (6) you stop me because obviously you know how to do that
 (7) **A All right, sir**
 (8) Q You graduated from Maritime Academy in 1974?
 (9) **A Correct**
 (10) Q And you got a third mate's license from the Coast Guard?
 (11) **A Yes**
 (12) Q You then from 74 to 76 worked for the Corps of Engineers?
 (13) **A Yes**
 (14) Q U S Corps of Engineers then you joined the Coast Guard
 (15) and worked for the United States Coast Guard from 76 to 79?
 (16) **A Yes**
 (17) Q And you were employed by Exxon and I'll do the same thing
 (18) I'll call it Exxon although it's Exxon Shipping Company or
 (19) marine department right?
 (20) **A Right**
 (21) Q You were employed by Exxon in 1979?
 (22) **A Yes**
 (23) Q And you have been employed to this date?
 (24) **A Yes**
 (25) Q Although moving around some you got your master's license

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- (1) by the Coast Guard from the Coast Guard in 1987 is that
 (2) correct?
 (3) **A That's correct**
 (4) Q However you did not sail as a master for Exxon at that
 (5) time?
 (6) **A That's correct**
 (7) Q All right And you started sailing as a - as a master for
 (8) Exxon when sir?
 (9) **A Let's see, 94 - summer - it would be the late summer of**
 (10) **1993**
 (11) Q Okay so there's roughly almost four years that you were
 (12) allowed by the Coast Guard to sail as a master but Exxon didn't
 (13) sail you as a master?
 (14) **A That's correct**
 (15) Q Is that because they had more masters than they needed?
 (16) **A Unfortunately, yes, there was not enough master**
 (17) **positions**
 (18) **available**
 (19) Q Now before you started sailing as master did Exxon send
 (20) you to any schools?
 (21) **A Yes**
 (22) Q What schools?
 (23) **A They sent me to the Grenoble Ship Handling School**
 (24) Q That's before they allowed you to sail as a master?
 (25) **A Yes**
 (26) Q All right Did the Coast Guard require you to be sent to

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- (1) Grenoble?
 (2) **A No**
 (3) Q As far as the Coast Guard s concerned could you have
 (4) sailed as a master once they licensed you as a master?
 (5) **A That s correct**
 (6) Q But not for Exxon that is Exxon - Exxon required -
 (7) required training above that required by the Coast Guard?
 (8) **A That's correct**
 (9) Q You had - I ll jump around here a little bit
 (10) Mr Cousins was your third mate on the night of the
 (11) grounding sailing as a third mate although he had a second
 (12) mate s license is that correct?
 (13) **A I don t know if he had a second mate s license I know he**
 (14) **was sailing as third mate**
 (15) Q He was sailing as third mate?
 (16) **A Uh huh**
 (17) Q Had you sailed with Mr Cousins before this grounding
 (18) voyage?
 (19) **A No**
 (20) Q You had not? Had you sailed with him in March of 89
 (21) prior to the grounding voyage?
 (22) **A Yes**
 (23) Q All right Had you had an opportunity to observe his
 (24) competence and seamanship?
 (25) **A Yes**

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- (1) Q Did you have an opinion as to Mr Cousins competence and
 (2) seamanship?
 (3) **A He seemed like a fine young affair**
 (4) Q Would you say he was a competent second mate third mate
 (5) rather?
 (6) **A He was competent third mate**
 (7) Q Mr Kunkel you had only served two tours on the Valdez
 (8) you re in your second tour on the Valdez prior - at the time
 (9) of the grounding right?
 (10) **A That s correct**
 (11) Q Do you know Mr Paul Myers?
 (12) **A Yes**
 (13) Q Did you have occasion on your two tours to see Mr Paul
 (14) Myers a number of times on the Valdez?
 (15) **A At least two that I can definitely recall**
 (16) Q And could there be more?
 (17) **A Yes**
 (18) Q How many could there be two to what?
 (19) **A I wouldn t go higher than four**
 (20) Q Two to four okay
 (21) Mr Kunkel you sailed with Captain Hazelwood prior to the
 (22) grounding trip had you not?
 (23) **A Yes I had**
 (24) Q Did you have an opportunity to observe Captain
 (25) Hazelwood s
 (25) competence and seamanship?

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- (1) **A Yes I did**
 (2) Q Do you have an opinion as to his competence and
 seamanship?
 (3) **A I thought he was one of the best masters I d ever sailed**
 (4) **with**
 (5) Q One of the best masters you ever sailed with?
 (6) **A That s correct**
 (7) Q Captain you ve been - it is captain now isn t it? I can
 (8) call you captain now?
 (9) **A You can call me captain**
 (10) Q All right Captain I ll call you captain You ve been
 (11) with Exxon since 1979?
 (12) **A Yes, sir**
 (13) Q And you ve sailed most of that time that is you ve been a
 (14) mariner?
 (15) **A Yes**
 (16) Q All right During that - from the time you started
 (17) sailing with Exxon until today what has been the first
 (18) principle that Exxon has told you to observe in terms of the
 (19) operation of the Exxon vessels?
 (20) **A They have always stressed safety of the people, the ship**
 (21) **and the cargo**
 (22) Q I ll do this quickly Would you put up - you re familiar
 (23) with the bridge navigation organization manual we ve
 presented
 (24) here in court right?
 (25) **A Yes**

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- (1) Q And that s the front page you re seeing now on the
 (2) monitor - well so quickly I don t know whether you saw it or
 (3) not We - I don t mean we have to be that fast
 (4) **A Yes, that s the cover page**
 (5) Q Okay Now I want to take you to the very beginning of the
 (6) bridge navigation organization manual that is section one
 (7) page one of this manual I ve done this once and I did it
 (8) successfully I m not going to try it again Would you zoom
 (9) in and do your thing on that?
 (10) Does that - is that part of the bridge navigation -
 (11) matter of fact the very first part of the bridge navigation
 (12) organization manual?
 (13) **A Yes, sir, it is**
 (14) Q In the interest of brevity it says the purpose of this
 (15) manual is to assist the master and deck officers in planning
 (16) for the safe navigation of the vessel okay? Moving up to the
 (17) next paragraph can you - I guess you can t zoom in any more
 (18) but are you familiar with this part of the manual?
 (19) **A Yes**
 (20) Q The prime objective when navigating company vessels is the
 (21) safety of the personnel cargo vessel and cargo is that
 (22) correct?
 (23) **A Yes**
 (24) Q Was that what you were taught from the very beginning when
 (25) you started sailing with Exxon?

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- (1) **A Yes I was**
- (2) Q And it says speed and economy while important are
- (3) secondary to safety considerations is that what you d been
- (4) taught for the many years you ve been sailing with Exxon?
- (5) **A Yes, sir, it is**
- (6) MR NEAL Thank you you may take that off
- (7) BY MR NEAL
- (8) Q You talked about Mr Kagan a minute and he required
- (9) supervision Let me ask you this Have you run across in your
- (10) career a lot of A Bs that require supervision?
- (11) **A Yes**
- (12) Q And have you - they are not licensed officers like you and
- (13) the master and the second mate and third mate are they?
- (14) **A They re not licensed correct**
- (15) Q Isn t it part of the job - the con what does the con
- (16) mean? If an officer has the con of a vessel what does that
- (17) mean?
- (18) **A Basically he s in charge of the navigation and safe transit**
- (19) **of the vessel**
- (20) Q Okay That means he s on the bridge there and he s
- (21) telling - he s navigating the thing If he wants to go to
- (22) port 180 he tells the helmsman either to put a rudder
- (23) indicator on like ten degrees left or right or come to a
- (24) course of 180 is that correct?
- (25) **A That s correct**

- (1) Q Okay that s one Isn t there one on each wing?
- (2) **A Two**
- (3) Q That s three Isn t there one hanging down right there
- (4) with where it - if you walked over there it d almost hit you
- (5) in the head?
- (6) **A Right, right**
- (7) Q That s four
- (8) **A Tell me the frfth because I came up with those four**
- (9) Q How about the fiddle board?
- (10) **A Right okay**
- (11) Q That s five?
- (12) **A That s five**
- (13) Q You can watch any one of those five right?
- (14) **A Yes**
- (15) THE COURT Are you going to tell us what the fiddle
- (16) board is
- (17) MR NEAL Let me show you Mr Sanders has a fiddle
- (18) board I ve learned a lot in the last months or two Your
- (19) Honor Some of it I - some of it I mislearned too
- (20) THE COURT Go ahead I don t mean to disrupt
- (21) MR NEAL Well I m going to show it to you before
- (22) it s over Your Honor
- (23) BY MR NEAL
- (24) Q It s a thing that - it s up in front of the helm on the
- (25) wall is that correct?

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- (1) Q When he gives that order what is the first thing he is
- (2) supposed to do?
- (3) **A First - well, gives the order to the helmsman**
- (4) Q Yes sir
- (5) **A To see that it s been executed**
- (6) Q On the Valdez how do you see that that order s been
- (7) executed?
- (8) **A Well, first thing I d do is look at the man to see if he s**
- (9) **doing what I m telling him to do, and then I would look at the**
- (10) **rudder angle indicator or the radar or the bow moving to see**
- (11) **that he s done what I - that what he s done, that I ve**
- (12) **watched**
- (13) **him do, is actually happening to the ship**
- (14) Q And isn t that something that you learn that if you give
- (15) an order you then must see that the helmsman carried it out?
- (16) **A That s correct**
- (17) Q And that s where that s Mr Kagan or somebody else?
- (18) **A That s correct**
- (19) Q Now on the Valdez on the night of the grounding is it -
- (20) is it correct to say that there were not one but if you
- (21) consider the wings five rudder angle indicators on that
- (22) vessel?
- (23) **A If you considered the wings, that s three**
- (24) Q Let me do this quickly isn t there one on the console
- (25) there?
- (26) **A Yes**

- (1) **A That s correct**
- (2) Q Now -
- (3) MR SANDERS Your Honor not only do I have one Your
- (4) Honor I have a number on it This is defendants Exhibit
- (5) 9036
- (6) MR NEAL Your Honor if there s no objection we
- (7) offer defendants Exhibit 9036 into evidence
- (8) (Exhibit 9036 offered)
- (9) MR MONTAGUE No objection
- (10) THE COURT Admitted
- (11) (Exhibit 9036 received)
- (12) MR NEAL I think the Court had rather me go on
- (13) Mr -
- (14) THE WITNESS Okay
- (15) BY MR NEAL
- (16) Q You said that Watch Condition C required two officers on
- (17) the bridge correct?
- (18) **A That s correct**
- (19) Q Now what - whose requirement was that? Was it the Coast
- (20) Guard s requirement?
- (21) **A No**
- (22) Q The Coast Guard didn t require that did it?
- (23) **A No, they didn t**
- (24) Q Who required that?
- (25) **A Who required Watch Condition C?**

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- (1) Q Yeah and two officers on the bridge?
 (2) A That was Exxon s requirement
 (3) Q Exxon s requirement above and beyond any requirement of
 (4) the Coast Guard is that correct?
 (5) A That s correct
 (6) Q All right And did Exxon explain that the purpose of that
 (7) was to avoid - did it tell its officers look two of you on
 (8) the bridge to avoid one man error?
 (9) A That s correct
 (10) Q Okay Now I was going to have you explain but I m going
 (11) to wait see if I can do this quicker Captain Mr - Mr
 (12) Montague asked you about six hour rule and so forth Did the
 (13) company Exxon have a policy regarding what the officer
 (14) should
 (15) do if they saw any sign of any fatigue or tiredness?
 (16) A Yes, they did
 (17) Q What was that policy?
 (18) A That we were told that if we couldn t comply with the
 (19) regulation regarding rest or off duty, or even if everybody
 (20) was
 (21) in compliance with the law, if they were tired or looked tired,
 (22) the master had the authority to literally shut down the ship
 (23) Q That is just -
 (24) A Go to bed
 (25) Q Quit and get rest?
 (26) A That s correct
 (27) Q And if you re at sea or somewhere where it s possible

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- (1) could you drop anchor did that include that in stopping?
 (2) A Yes
 (3) Q Now were you personally told this?
 (4) A Yes
 (5) Q Now Mr Montague asked you that if there were a lot of -
 (6) lot of cases where you didn t get six hours rest in the twelve
 (7) hours before you were to assume the watch is that correct?
 (8) A That s correct
 (9) Q And you said that is true?
 (10) A That s true
 (11) Q All right On those occasions did you in fact assume the
 (12) watch?
 (13) A No
 (14) Q So you didn t do it?
 (15) A No
 (16) Q What happened?
 (17) A I d say - I d say 90 percent of the time the captain stood
 (18) my watch The other times, the two - the two junior officers
 (19) would maybe hold over an hour or two, make sure that I was
 (20) - I
 (21) had my rest
 (22) Q So there wasn t any violation of the six hour rule on those
 (23) occasions?
 (24) A No
 (25) Q Now the six hour rule in order to expedite this the six
 (26) hour rule says that a person an officer cannot assume the

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- (1) watch that is get up there with the con right?
 (2) A Right
 (3) Q Cannot assume the watch on leaving port or immediately
 (4) after leaving port unless he s had six hours off duty in the
 (5) twelve hours immediately prior to assuming the watch is that
 (6) correct?
 (7) A That s correct
 (8) Q Have I fairly stated that?
 (9) A Yes, you have
 (10) Q All right Now then who under the tradition and policy
 (11) who has the primary responsible? I know the master has the
 (12) ultimate responsibility for everything is that correct?
 (13) A Yes
 (14) Q But who has the day to-day responsibility for ensuring
 (15) compliance with the six hour rule?
 (16) A The chief mate
 (17) Q And on the Valdez on the grounding voyage that would be
 (18) you correct?
 (19) A That s correct
 (20) Q Now how did you - how did you go about seeing that the
 (21) six hour rule was complied with?
 (22) A Well, this was - this is my style, this is the way I did
 (23) it As soon as I joined the ship, at the first opportunity, I
 (24) would have a talk with the - the junior officers and the
 (25) second and third mate, and it discussed with them my - the
 (26) way

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- (1) I did things, that I expected them to be honest with me
 (2) report
 (3) any problems And one of the areas was the fact that we
 (4) had to
 (5) make sure we were complying with the six hour rule And
 (6) that
 (7) if they had any problems complying with that, they should
 (8) let
 (9) me know prior to taking the watch
 (10) Q All right sir And did you observe yourself to see if
 (11) there were any tiredness or fatigue or that sort of thing?
 (12) A In general, yes I would always see them, look at them
 (13) Q Did you have a conversation you just described with Mr
 (14) Cousins and Mr LeCain the other officers with you and Captain
 (15) Hazelwood on the voyage that resulted in the grounding?
 (16) A Yes
 (17) Q Now we can go through this if necessary and we can take
 (18) a pencil and do it can t we?
 (19) A Do what?
 (20) Q Let me back up because I m trying to go too fast I think
 (21) Let me ask you this you were - the vessel was leaving the
 (22) dock on the grounding voyage at approximately 9 00 p m is
 (23) that correct?
 (24) A Correct
 (25) Q And you were up there - you were up there on the bridge
 (26) right?
 (27) A Right
 (28) Q So would the six hour rule apply to you then on that
 (29) voyage?

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- (1) **A In my opinion yes**
 (2) **Q All right So then to see if you had six hours rest in the**
 (3) **twelve hours you d go back to 9 00 a m which is twelve hours**
 (4) **from 9 00 p m when the vessel was leaving the dock right?**
 (5) **A Yeah, except you re using the word rest again**
 (6) **Q I m sorry off duty?**
 (7) **A Off duty**
 (8) **Q It does - I m sorry it s off duty not rest?**
 (9) **A Yes**
 (10) **Q Because it s up to the officer whether he rests or not If**
 (11) **he wants to walk around and look at the moon or the stars or**
 (12) **something rather than go to bed that s his business?**
 (13) **A That s correct**
 (14) **Q Thank you for correcting me I m talking about off duty**
 (15) **A Uh huh**
 (16) **Q Now let s look at you on the grounding voyage We have to**
 (17) **start with 9 00 p m is that correct?**
 (18) **A Well, 9 00 p m is when we sailed**
 (19) **Q I say start to go backwards**
 (20) **A Right**
 (21) **Q 9 00 p m we go back to 9 00 a m to determine the twelve**
 (22) **hours is that correct?**
 (23) **A That s correct**
 (24) **Q Mr Kunkel did you have an opportunity to be off duty six**
 (25) **hours off duty during that twelve hour period?**

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- (1) **A Yes**
 (2) **Q All right Did - did Mr LeCain now let s - let s take**
 (3) **Mr Cousins next Mr Cousins went on watch at 8 00 and**
 (4) **during that watch sometime in there the rule would apply to**
 (5) **him would it not?**
 (6) **A Yes**
 (7) **Q In your opinion did Mr Cousins have six hours off duty in**
 (8) **that twelve hour period we re talking about?**
 (9) **MR MONTAGUE I would object No foundation except**
 (10) **where he would have witnessed**
 (11) **THE COURT Sustained**
 (12) **MR NEAL Pardon me sustained? All right sir**
 (13) **BY MR NEAL**
 (14) **Q Let s do this Mr Cousins was on watch his watch started**
 (15) **at 8 00 p m is that correct?**
 (16) **A That s correct**
 (17) **Q Now then would you explain then how you - how you**
 (18) **would**
 (19) **determine that Mr Cousins had six hours off duty in the twelve**
 (20) **hours immediately preceding 8 00 p m ?**
 (21) **A How would I - well, the way I would determine it is Greg**
 (22) **would have come up to me, Mr Cousins, and said Jim, I**
 (23) **didn t**
 (24) **have my six hours off I can t go on watch**
 (25) **Q Is he supposed to do that?**
 (26) **A Yes**
 (27) **Q All right Now let s go back and see if we can go at it**

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- (1) **another way Mr Cousins Mr Cousins was - went on watch at**
 (2) **8 00 p m Now he was on watch from 8 00 in the morning till**
 (3) **12 00 on the 23rd correct?**
 (4) **A 12 00 noon yes**
 (5) **Q 12 00 noon He had an opportunity to go off duty at 12 00**
 (6) **noon then is that correct?**
 (7) **MR MONTAGUE Your Honor same objection again**
 (8) **THE COURT The question was had he had an**
 (9) **opportunity and I ll allow him to answer**
 (10) **MR NEAL I m going to get to a little more detail in**
 (11) **a minute**
 (12) **BY MR NEAL**
 (13) **Q But he s off watch at 12 noon correct?**
 (14) **A That s correct**
 (15) **Q When does he next go on watch?**
 (16) **A 8 00 p m**
 (17) **Q And that s the time we re talking about so that s eight**
 (18) **hours he s off duty?**
 (19) **A That s correct**
 (20) **Q All right Now did he do some things between 12 00 and**
 (21) **8 00?**
 (22) **A Well, I know that he was in there helping me top off**
 (23) **Q And how long approximately did that take?**
 (24) **A Approximately an hour to an hour and a half, maximum**
 (25) **Q Okay that s 8 00 you take off an hour to an hour and a**

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- (1) **half Let s split the difference is that fair enough say an**
 (2) **hour and 15 because you can t be more precise than that**
 (3) **right?**
 (4) **A I don t know, the gentleman stood up I don t know if I m**
 (5) **supposed to stop talking or what**
 (6) **MR MONTAGUE No I had to think**
 (7) **THE WITNESS I ll split the difference with you hour**
 (8) **and 15 minutes**
 (9) **BY MR NEAL**
 (10) **Q All right so that makes it now you take an hour and 15**
 (11) **minutes off of that eight hours is that correct?**
 (12) **A That s correct**
 (13) **Q That makes it now six hours and 45 minutes?**
 (14) **A Uh huh**
 (15) **Q Now do you know of anything else any other time he was on**
 (16) **duty during that period of time?**
 (17) **A Yes, he had to relieve me so that I could go have my**
 (18) **supper, and that would take anywheres from 20 minutes to a**
 (19) **half**
 (20) **an hour**
 (21) **Q Okay let s say this time let s say this is 25 minutes?**
 (22) **A No, I enjoy my dinner, it would be a half hour**
 (23) **Q Let s go a half hour No disrespect sir but seeing you**
 (24) **walk up here certainly convinced me you enjoy your dinner**
 (25) **A All right**
 (26) **Q Let s take a half an hour off of that?**

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- (1) **A All right**
 (2) **Q** Now that six hours and 15 minutes still left right?
 (3) **A That s correct**
 (4) **Q** Do you know of any other duty any other time he had to be on duty during that eight hour period?
 (5) **A No, I don t**
 (7) **MR NEAL** Your Honor have I laid the appropriate foundation?
 (8) **THE COURT** Yes
 (9) **BY MR NEAL**
 (11) **Q** In your opinion sir did Mr Cousins have the opportunity to be off duty six hours prior to assuming watch at 8 00 p m ?
 (13) **A That s correct**
 (14) **Q** All right And now you ve said you did - now we ve taken care of Mr Cousins Let s take care of Mr LeCain When did Mr LeCain when was Mr LeCain going on duty?
 (17) **A He went on duty at noon**
 (18) **Q** Okay now let s take off the - after sailing when leaving port or immediately after leaving port that s when the rule kicks in right?
 (21) **A That s my understanding, yes**
 (22) **Q** All right Now he left approximately 9 00 p m When was he scheduled to go on duty again?
 (24) **A At midnight**
 (25) **Q** At midnight okay now you re three hours away from the

- (1) **A Right**
 (2) **Q** All right Now then he s scheduled scheduled to go back on at 12 00 p m or midnight That s eight hours?
 (4) **A Uh huh yes**
 (5) **Q** Do you know what duties he had during that eight hours between 4 00 p m on the 23rd and midnight?
 (7) **A He would have been called to help the vessel undock which would have been somewhere at that 9 00 undocking**
 (9) **Q** How long in your opinion would he be on duty during that?
 (11) **A Anywheres from an hour to an hour and a half**
 (12) **Q** Is it okay to split the middle again or should you go to one end or the other?
 (14) **A Yeah, you could split it on that one**
 (15) **Q** Okay an hour and 15 minutes You take an hour and 15 minutes away from the eight hours and you again got six hours and 45 minutes Any other duty he had during that period of time?
 (18) **A Not that I m aware of, no**
 (20) **Q** So in your opinion sir did he have an opportunity to - even if you say the rule applies to him did he have an opportunity for 12 hours - I m sorry six hours off duty during the twelve hours immediately preceding his watch at midnight the 23rd?
 (24) **A He had the opportunity, yes**

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- (1) dock when he s schedule to go on duty Whether the rule applies to him where would the vessel be three hours later after leaving the dock at 9 00?
 (4) **A Well, if she hadn t gone aground she s be transiting Prince William Sound**
 (6) **Q** And she d be down somewhere around Bligh Reef?
 (7) **A That s correct**
 (8) **Q** In that vicinity?
 (9) **A Uh huh**
 (10) **Q** Okay Now whether the rule would apply to him or not would determine - would depend on whether around Bligh Reef is considered entering or leaving port is that correct?
 (13) **A That s correct**
 (14) **Q** Because if that still way down there is considered leaving port the rule would apply to him?
 (16) **A Right**
 (17) **Q** If he was not leaving port that is port somewhere is Rocky Point or closer in then the rule wouldn t apply to him would it?
 (20) **A That s correct**
 (21) **Q** In any event right?
 (22) **A Right**
 (23) **Q** Now then let s assume the rule applies to him and say he s scheduled to go on watch at 12 00 He got off watch at four 4 00 p m on the 23rd is that correct?

- (1) **Q** Pardon me?
 (2) **A He had the opportunity, yes**
 (3) **Q** All right Now then did you in fact talk to - talk to - before you all cast off on the night on the trip of the grounding did you have an opportunity to see and discuss matters with Mr Cousins and Mr LeCain?
 (7) **A Yes Yes**
 (8) **Q** Did you detect any signs of fatigue or undue tiredness from either one of them?
 (9) **A No**
 (10) **Q** If you had what would you have done?
 (12) **A I would have let the master know**
 (13) **Q** And the master could have stopped the vessel or stopped operations or stayed in port?
 (15) **A Right**
 (16) **Q** Now one other matter and I will end my cross examination
 (17) **MR NEAL** Your Honor I might even be through Would it be okay if we saved five to ten minutes of listening to me more if we took a break right now and let me review my notes
 (20) **THE COURT** Let s finish it up
 (21) **MR NEAL** Finish it up all right Excuse me just a moment then
 (22) **BY MR NEAL**
 (24) **Q** Captain he talked to you about there were 21 hours of time for turn around on this voyage that led to the grounding The

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- (1) usual is 24 hours or something like that Would the fact that
 (2) the vessel was not - was only partially filled have something
 (3) to do with that turn around time?
 (4) **A Yes**
 (5) Q And would the fact that whatever you call it topping off
 (6) or no topping off - let me ask you this if your vessel is
 (7) full you re right there to the edge of the top of the tank
 (8) right?
 (9) **A Right you re within a foot or so**
 (10) Q Within a foot Okay now if you re carrying what the Valdez
 (11) did that night 1 250 000 barrels rather than something over a
 (12) million and a half barrels that it would hold right? That s
 (13) the approximate cargo that night?
 (14) **A Yes**
 (15) Q Pardon?
 (16) **A Yes**
 (17) Q All right You - you wouldn t come - how close would the
 (18) top come then on that kind of a load? You say you d been
 (19) within a foot if you carried capacity Now you don t carry
 (20) capacity you carry what we agreed you carried how many feet
 (21) would there be between the top of the oil and the top of the
 (22) cargo tank?
 (23) **A On that voyage, the highest tank would have been about**
 (24) **13**
 (25) **feet**
 (26) Q 13 feet from the -

Vol 9 899

- (1) **A From the top of the tank or the overflow to the cargo**
 (2) Q Okay And that space there that has a certain name to it
 (3) doesn t it?
 (4) **A Yes Called the ullage**
 (5) Q Ullage okay And that s the space between the top of the
 (6) cargo and the top of the tank Does the fact that you d have
 (7) not one foot but 12 or 13 feet does that ease the loading
 (8) process?
 (9) **A Yes**
 (10) Q And does it shorten the process?
 (11) **A Absolutely**
 (12) Q All right Now then has this company Exxon Shipping
 (13) Company ever put any pressure on you to have a rapid turn
 (14) around in Port of Valdez?
 (15) **A No one's ever put a pressure on me to have a rapid turn**
 (16) **around**
 (17) Q Do you know of anybody else they put pressure on?
 (18) **A No one s ever told me that**
 (19) Q All right You talked about - you talked about the Ocean
 (20) Motion or this Load Master you were trying to get to work to
 (21) get the stability and stress at the grounding and the second
 (22) time you couldn t get it to work on the damaged or grounded
 (23) mode?
 (24) **A Yes**
 (25) Q Remember that?

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- (1) **A Yes**
 (2) Q Was that the computer or was that you in your excitement?
 (3) **A Well I think it was me in my excitement because the**
 (4) **computer you know it didn t stop functioning**
 (5) Q And it worked the first time you tried it?
 (6) **A Yes**
 (7) Q You know we ve got one more trip for Mr - at least one
 (8) more trip that Mr Chalos must take us on this voyage so I m
 (9) going to let him take Mr Kunkel to the grounding voyage here
 (10) voyage of the grounding
 (11) **THE COURT May I see counsel?**
 (12) **(Bench Conference off the Record)**
 (13) **THE WITNESS Your Honor if he s going to be more**
 (14) **than like ten minutes or so I m going to need a break**
 (15) **THE COURT We re going to stop at 10 00**
 (16) **THE WITNESS Oh okay**
 (17) **THE COURT Go ahead Mr Chalos**
 (18) **MR CHALOS Good morning Mr Kunkel**
 (19) **THE WITNESS Good morning**
 (20) **DIRECT EXAMINATION OF JAMES R KUNKEL**
 (21) **BY MR CHALOS**
 (22) Q Mr Kunkel what time was the sailing board set on the
 (23) morning of March 23rd 1989?
 (24) **A To the best of my memory it was set for 2100**
 (25) Q That s 9 00?

Vol 9 901

- (1) **A 9 00 at night**
 (2) Q Did there come a time subsequent to that when it was
 (3) changed?
 (4) **A Yes**
 (5) Q What was it changed to?
 (6) **A It was changed to 2200, 10 00 at night**
 (7) Q Was that information conveyed to the agent?
 (8) **A That information was conveyed to the agent, the pilots to**
 (9) **the dock, to everybody**
 (10) Q Now did there come a time when the sailing board was
 (11) changed back again to 9 00?
 (12) **A Yes**
 (13) Q When was that done?
 (14) **A Sometime in the afternoon**
 (15) Q Late afternoon as best as you can recall?
 (16) **A The afternoon is the best I can give you**
 (17) Q Okay Was that unusual that is for the sailing time to go
 (18) from 9 00 to 10 00 and then back to 9 00?
 (19) **A Well, it was unusual to go from 9 00 to 10 00, but it was**
 (20) **very -**
 (21) Q Is that a common occurrence to make the sailing board
 (22) later?
 (23) **A That happens all the time, but it was very uncommon to**
 (24) **go**
 (25) **from 10 00 to 9 00**
 (26) Q Back to 9 00

Vol 9 902

- (1) **A Yes**
 (2) Q Is the sailing board something that someone going to shore
 (3) can rely on? In other words as far as the time that you re
 (4) going to sail?
 (5) **A Yes**
 (6) Q Is that -
 (7) **A That s the only instrument they have**
 (8) Q To know when to come back?
 (9) **A Right**
 (10) Q So if someone were to find out that the sailing board was
 (11) changed to 10 00 as opposed to 9 00 they can rely on that
 (12) can t they?
 (13) **A Yes**
 (14) Q Now Mr Kunkel I d like to direct your attention to the
 (15) evening of March 23rd 1989?
 (16) **A Okay**
 (17) Q You with me?
 (18) **A Yes**
 (19) Q Okay You were on the bridge about 2100 that s 9 00?
 (20) **A Yes**
 (21) Q And sometime before that? Little before that?
 (22) **A Yes**
 (23) Q Did you see Captain Hazelwood come up to the bridge?
 (24) **A Yes**
 (25) Q Did he speak to you at that time?

Vol 9 903

- (1) **A Yes**
 (2) Q Were you close to him?
 (3) **A No**
 (4) Q Did you observe him walking on the bridge?
 (5) **A Yes**
 (6) Q How would you describe his movements?
 (7) **A Normal**
 (8) Q Did you at that time see any signs of impairment on Captain
 (9) Hazelwood?
 (10) **A No**
 (11) Q Did you see any signs of intoxication?
 (12) **A No**
 (13) Q Now you were on the bridge during the undocking process?
 (14) **A Yes**
 (15) Q Was Captain Hazelwood on the bridge during that period?
 (16) **A Yes**
 (17) Q During that undocking process did you hear Captain
 (18) Hazelwood giving orders?
 (19) **A Over the radio, yes**
 (20) Q Did you have a chance to observe Captain Hazelwood?
 (21) **A Yes**
 (22) Q Were his orders proper and appropriate for that - for the
 (23) undocking?
 (24) **A Yes**
 (25) Q Did you happen to hear his voice?

Vol 9 904

- (1) **A Yes**
 (2) Q Were his words slurred in any way?
 (3) **A No**
 (4) Q Did he appear to you to be impaired during that process?
 (5) **A During the undocking process**
 (6) Q Yes
 (7) **A No**
 (8) Q Did he appear to you to be intoxicated?
 (9) **A No**
 (10) Q Now Mr Kunkel you stayed on the bridge from
 (11) approximately 9 00 till about 10 00 is that correct?
 (12) **A I was on the bridge a little earlier than 9 00, but I -**
 (13) Q Okay
 (14) **A - I left at 10 00, approximately at 10 00**
 (15) Q And you went below at that time?
 (16) **A Yes**
 (17) Q Was Captain Hazelwood on the bridge the entire time that
 (18) you were up there?
 (19) **A No**
 (20) Q Are you talking now at the beginning of the period he
 (21) wasn t there?
 (22) **A Well, about eight - when I got up there It has to be**
 (23) **somewhere between 8 30 and 9 00 He came up, said hello**
 (24) **how s**
 (25) **everything, then him and the agent went down to do some**
work so
 (26) **he wasn t on the bridge at that time Then he came back up**

Vol 9 905

- (1) Q Yes
 (2) **A Probably well before nine, and we began the docking -**
 (3) **the**
 (4) **undocking process**
 (5) Q Okay Between the time that you started the undocking
 (6) process and 10 00 when you left was Captain Hazelwood on
 (7) the
 (8) bridge the entire time?
 (9) **A Yes**
 (10) Q When you had left at 10 00 did you have an understanding
 (11) with Captain Hazelwood about taking your watch at 4 00 in the
 (12) morning?
 (13) **A Yes**
 (14) Q What was the understanding?
 (15) **A I would not have to get up at 4 00 and go to work**
 (16) Q Why is that?
 (17) **A Well, Captain Hazelwood was going to take my watch**
 (18) Q It s true is it not that he also took your watch the
 (19) night before coming into Valdez?
 (20) **A That s correct**
 (21) Q Was that something -
 (22) **A Well, let me - just so we stay correct, not the whole**
 (23) **watch**
 (24) Q All right
 (25) **A I stood the first hour of my watch coming in, and he stood**
 (26) **the other three hours the last three hours**
 (27) Q Okay Was that something that Captain Hazelwood did

Vol 9 906

- (1) commonly stand your watch coming into port or leaving port?
 (2) **A Almost all the time**
 (3) Q Now you went to bed and you said the next time you came up
 (4) on the bridge was immediately after the grounding?
 (5) **A That s correct**
 (6) Q How soon after you felt the grounding did you go up to the
 (7) bridge?
 (8) **A Well, time is - is tough, but within a few minutes,**
 (9) **Mike - Mr Chalos**
 (10) Q And then that s when you saw Mr Cousins and you went
 down
 (11) below immediately?
 (12) **A That s correct**
 (13) Q Before we - before we get into - before we get into that
 (14) area I just want to ask you a few questions about something
 (15) else
 (16) How do you characterize navigational aids in Prince William
 (17) Sound?
 (18) **A How do I characterize?**
 (19) Q Are they good aids?
 (20) **A Some of the best in the industry**
 (21) Q Is Bligh Reef buoy light a well known navigational light?
 (22) **A Yes**
 (23) Q Is it clearly marked on the chart?
 (24) **A Yes**
 (25) Q Is the Exxon based on your experience with the Exxon

Vol 9 907

- (1) Valdez is that a good handling vessel?
 (2) **A Yeah, she handled well She s - she s a fee, she s a big**
 (3) **ship, so she handled well for the big ships**
 (4) Q Mr Kunkel based on your experience how difficult is
 (5) putting ten degrees right rudder on that ship?
 (6) **A It s probably one of the simplest things you can do**
 (7) Q What does it involve?
 (8) **A Simply turning the wheel looking at the marker and once**
 (9) **that marker gets to ten, you ve put ten degrees of rudder on**
 (10) **it**
 (11) Q Now is making a ten degree right rudder turn at a marked
 (12) navigational aid like Busby Island light within the
 (13) capabilities of a licensed second mate in your opinion?
 (14) **A Yes**
 (15) Q Is it a simple maneuver for a second mate to make?
 (16) **A Yes**
 (17) Q Would you have expected based on your knowledge of Mr
 (18) Cousins that he would be able to make that maneuver with no
 (19) trouble?
 (20) **A Yes**
 (21) Q Okay let s go back to the ship now
 (22) THE COURT Mr Chalos let s take our morning break
 (23) MR CHALOS Oh sorry yes
 (24) THE COURT We ll be in recess now for 15 minutes
 (25) THE CLERK Court is in recess for 15 minutes

Vol 9 908

- (1) (Jury out at 10 02)
 (2) (Recess at 10 02)
 (3) (Jury in at 10 18)
 (4) THE CLERK All rise
 (5) THE COURT Mr Kunkel if you would sit forward in
 (6) the box there a little bit so that the jury will have a better
 (7) view
 (8) THE WITNESS Okay
 (9) MR CHALOS Thank you Your Honor
 (10) BY MR CHALOS
 (11) Q Mr Kunkel before the break I misspoke I called Mr
 (12) Cousins a second mate He was actually a third mate with the
 (13) second mate s license Does that s change your previous
 (14) answers as to whether the turn that we were talking about the
 (15) ten degrees right turn at a navigational aid is no more
 (16) difficult for a third mate than a second mate to make?
 (17) **A It would not change my answer**
 (18) Q In other words it s as simple for the third mate to make
 (19) it as a second mate am I correct?
 (20) **A Yes**
 (21) Q Now Mr Kunkel you testified that sometime around 12 30
 (22) after you had gone down to your cargo control room and gotten
 (23) some figures you came up and spoke with Captain Hazelwood?
 (24) **A Yes**
 (25) Q Do you remember that? How close were you to Captain

Vol 9 909

- (1) Hazelwood at the time?
 (2) **A Very close, within three feet**
 (3) Q How much time did you spend with him?
 (4) **A No more than five minutes, I would say**
 (5) Q During that period of time did you have a chance to
 (6) observe his demeanor?
 (7) **A Yes**
 (8) Q You observed - strike that
 (9) Did you smell my alcohol on his breath at that time?
 (10) **A No**
 (11) Q Was he slurring his words when he spoke to you?
 (12) **A No**
 (13) Q Did he at all appear to you to be impaired or intoxicated?
 (14) **A No**
 (15) Q Did he look to you to be the same as you had seen him the
 (16) day before?
 (17) **A Yes**
 (18) Q When I say the day before I m talking about March 22nd
 (19) when you were coming into Valdez?
 (20) **A Yes**
 (21) Q Now Mr Kunkel when you came up to the bridge at that
 (22) time you told Mr - Captain Hazelwood that the stability on
 (23) the vessel was still good according to your calculator?
 (24) **A Yes**
 (25) Q When you went up there what was your state of mind?

Vol 9 910

- (1) **A I was nervous I ve realized that the vessel was seriously**
 (2) **damaged and I was looking for guidance on how to handle**
 the
 (3) **situation**
 (4) **Q You were looking for guidance from Captain Hazelwood?**
 (5) **A Yes**
 (6) **Q Looking back now on the situation do you believe you were**
 (7) **in shock at the time?**
 (8) **A Well, you d have to define shock I mean, obviously**
 (9) **something traumatic had happened and I was reacting to it**
 (10) **Q At this point in time were you acting on instinct or were**
 (11) **you sitting there clearly thinking about what you wanted to do?**
 (12) **A I d have to characterize it as acting on instinct**
 (13) **Q When you saw Captain Hazelwood did he appear to you to**
 be
 (14) **panicked?**
 (15) **A No**
 (16) **Q Did he appear calm?**
 (17) **A Yes**
 (18) **Q Did he appear to you to be under stress at that point?**
 (19) **A No**
 (20) **Q Now what did Captain Hazelwood tell you to do in that**
 (21) **conversation that you had?**
 (22) **A I think - well, after I told him what I had done and how**
 (23) **I d arrived at the numbers, I asked him if he wanted me to**
 stay
 (24) **up there on the bridge with him and help him out**
 (25) **Q What did he say?**

Vol 9 911

- (1) **A He said no, that the best place for me was down in the**
 (2) **cargo control room assessing the damage and taking care -**
 (3) **supervising the other people that were helping me assess**
 the
 (4) **damage**
 (5) **Q Okay Did you consider those orders to be appropriate?**
 (6) **A Yes**
 (7) **Q Proper?**
 (8) **A Yes**
 (9) **Q Did you discuss ringing the general alarm with him?**
 (10) **A Yes I did I m not sure if it was at that moment in time**
 (11) **but yes I did**
 (12) **Q Tell us what you discussed regarding the general alarm?**
 (13) **A I asked him if he should ring the general alarm**
 (14) **Q And what did he say?**
 (15) **A He said no that there was no need to cause panic until we**
 (16) **knew what the actual situation was And that someone**
 would
 (17) **take care of waking the people up so that they would know**
 (18) **something was wrong**
 (19) **Q Did you agree with that decision?**
 (20) **A Yes, I did**
 (21) **Q Mr Kunkel at that moment did you feel that you could**
 (22) **depend on Captain Hazelwood to handle the situation?**
 (23) **A Yes, I did**
 (24) **Q You ve testified before that when you came up at that**
 (25) **particular time you thought you were thinking in your mind that -**

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- (1) **this might be your last day on earth?**
 (2) **A That s correct**
 (3) **Q After you talked to Captain Hazelwood and you had a chance**
 (4) **to observe him did that fear dissipate?**
 (5) **A Yes, it dissipated but it didn t go away**
 (6) **Q When you saw Captain Hazelwood at that 12 30 meeting did**
 (7) **he appear to you to be in command of the situation?**
 (8) **A Yes, he was**
 (9) **Q In control of his faculties?**
 (10) **A Yes**
 (11) **Q Now you came up a second time you said around 1 00 do**
 you
 (12) **remember that?**
 (13) **A That s correct**
 (14) **Q Do you remember testifying before that you thought it was**
 (15) **between 1 1 00 and 1 20 a m ?**
 (16) **A No, I don t remember saying that But I do remember it**
 (17) **being around 1 00**
 (18) **Q What time?**
 (19) **A Around 1 00 I remember saying around 1 00**
 (20) **Q Let me get your deposition What do you - can you be more**
 (21) **precise when you say 1 00 around 1 00?**
 (22) **A Around 1 00 to me means sometime anywheres in the**
 vicinity
 (23) **of 1 00, 1 15, 1 20, something in that area I think I ve**
 (24) **stated before, and the only reason I - I don t specifically**
 (25) **remember saying what you just said**

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- (1) **Q Yes**
 (2) **A 1 00 to 1 20 I don t specifically remember - remember**
 (3) **that statement That s what your question was**
 (4) **Q Yes Do you have a recollection -**
 (5) **A I have no doubt that I said something to that effect**
 (6) **Q Okay Now between - between the report that you made at**
 (7) **12 30 and the second report okay -**
 (8) **A Right**
 (9) **Q - did you consider Captain Hazelwood to be - as being**
 (10) **responsive to the emergency situation?**
 (11) **A Yes, I did**
 (12) **Q All right When you came up the second time to give a**
 (13) **report to Captain Hazelwood that s when you told him the**
 (14) **stability was marginal but the stresses were good do you**
 (15) **remember that?**
 (16) **A No, I think at that time I did say that the stresses were**
 (17) **good but that the stability was below required, you could**
 not
 (18) **go to sea**
 (19) **Q Okay When you told him that what did he say to you?**
 (20) **A He said, okay, I understand And I believe it was about**
 (21) **that time where he stated go below and let s find out if we**
 can
 (22) **put ballast in the tanks**
 (23) **Q What tanks was he talking about?**
 (24) **A The clean ballast tanks on the ship**
 (25) **Q What did that indicate to you?**

Vol 9 914

- (1) **A That we were going to stay right there on the rock**
 (2) **Q Did he also tell you something about the anchors?**
 (3) **A He either he – either he told me or had – or told me to**
 (4) **have it done, to lower the anchors**
 (5) **Q What does that indicate to you?**
 (6) **A We re going to stay there**
 (7) **Q And when you told him that we shouldn t go to sea did he**
 (8) **say we re going to stay right here or words to that effect?**
 (9) **A Let me see if I can remember exactly what he said I**
 (10) **guess we re not going anywhere , is what he said**
 (11) **Q Now Mr Kunkel you hold a master s license?**
 (12) **A Uh huh**
 (13) **Q You ve got a number of years of experience Is someone**
 (14) **telling you to get ready to ballast get the anchors ready and**
 (15) **we re not going anywhere consistent with someone trying to get**
 (16) **off the reef?**
 (17) **A No**
 (18) **Q Those actions are all inconsistent are they not with**
 (19) **someone trying to get off the reef?**
 (20) **A Those actions indicate to me we re staying on the reef**
 (21) **Q Have you been aground in your career?**
 (22) **A Only once**
 (23) **Q How did – how was the ship extracted from the ground in**
 (24) **that instance?**
 (25) **A Well, I was just in Mississippi River, we hit a mud bank**

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- (1) **and squirmed a little and kept going**
 (2) **Q I see Based on your experience if a ship runs aground in**
 (3) **a forward direction what s the logical way of getting her off?**
 (4) **A Astern**
 (5) **Q Meanings that you back your engines?**
 (6) **A Back your engines up**
 (7) **MR CHALOS Can we have Exhibit 66 plaintiff**
 (8) **Exhibit 66 the data logger Yeah this is fine Well it s**
 (9) **upside down Is this upside down? Is that it? Is that it?**
 (10) **Can you blow that up?**
 (11) **BY MR CHALOS**
 (12) **Q Let me make a representation to you on the basis of an**
 (13) **exhibit that was in The engine was run from about 12 36 a m**
 (14) **A Okay**
 (15) **Q Okay after the grounding?**
 (16) **A Uh huh**
 (17) **Q Till about 1 41 a m so approximately about an hour and**
 (18) **five minutes?**
 (19) **A Right**
 (20) **Q Okay The engine was run in the forward direction at all**
 (21) **times never in reverse okay?**
 (22) **A Uh huh**
 (23) **Q The highest that it was run was a full head maneuvering 55**
 (24) **to 56 rpms okay you with me?**
 (25) **A Uh huh**

Vol 9 916

- (1) **Q Do you know what the horsepower was for this vessel what**
 (2) **the thrust was at full ahead maneuvering?**
 (3) **A No I m not sure**
 (4) **Q Is there a setting for full ahead emergency?**
 (5) **A Yes**
 (6) **Q What does it involve to get a full ahead maneuvering to**
 (7) **full ahead emergency if you wanted to go from full ahead**
 (8) **maneuvering?**
 (9) **A You d have to call down below to the engine room and let**
 (10) **them know that you want to go full ahead emergency**
 (11) **Q But on the bridge it s a matter of pushing one button is**
 (12) **it not?**
 (13) **A You could push the button and do it It s a courtesy to**
 (14) **let the engine room know if you re going to do that**
 (15) **Q You know from your experience that the difference in the**
 (16) **power that s generated from full ahead maneuvering to full**
 (17) **ahead emergency is substantial?**
 (18) **A Well, I want to say off the top of my head that the top is**
 (19) **33,000 or something like that**
 (20) **Q Full ahead?**
 (21) **A Full ahead full blast, but the difference is – there s**
 (22) **quite a bit of difference in full ahead maneuvering and full**
 (23) **ahead emergency**
 (24) **Q Now Captain if you were on the bridge and you wanted to**
 (25) **get off that night what would you have done if you wanted to**

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- (1) **get off the reef?**
 (2) **A Well, I think one of the first – well, let me think about**
 (3) **it Okay, I m on the reef and I know everything that s I know**
 (4) **right now**
 (5) **Q Yes**
 (6) **A Or back then? I mean –**
 (7) **Q Yeah and you decided you wanted to get off the reef what**
 (8) **would you have done?**
 (9) **A Well one of the first things I would have done is back it**
 (10) **down and see if she would get dislodged**
 (11) **Q Would you use any more power than full ahead maneuvering**
 (12) **if**
 (13) **you were going to do that?**
 (14) **A I m going astern**
 (15) **Q Would you use any more than –**
 (16) **A Full astern maneuvering?**
 (17) **Q Yes**
 (18) **A Oh, hell yeah, I d try to get as much as I could**
 (19) **Q You would go to full astern?**
 (20) **A I d call the engine room and get whatever it took to get**
 (21) **the maximum**
 (22) **Q Full astern emergency?**
 (23) **A Right**
 (24) **Q Captain do you remember the vessel listing prior to 1 00?**
 (25) **A Yes**
 (26) **Q And do you remember that sometime after 1 00 she**

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- (1) straightened out and settled on the reef?
 (2) **A Yes**
 (3) **Q** Now the data logger and the course recorder indicates the use of both the engine and rudder for this one hour period?
 (4) **A Uh huh**
 (5) **Q** Do you have an opinion as to whether the use of the engine and the rudder caused any additional damage to the vessel?
 (6) **MR MONTAGUE** Your Honor objection I m not sure
 (7) this witness has any foundation for that to answer that
 (8) question
 (9) **MR CHALOS** Well Your Honor he was -
 (10) **THE COURT** I ll allow him to answer the question if
 (11) he can
 (12) **BY MR CHALOS**
 (13) **Q** Can you answer that question based on what you knew that
 (14) night what you were seeing on your tilt board down in the
 (15) cargo control room?
 (16) **A Yeah**
 (17) **Q** What you were discussing with Captain Hazelwood what
 (18) you
 (19) observing in terms of what the vessel was doing?
 (20) **A Well, based on what I assumed was already the current**
 (21) **damage, I can t imagine how much more damage I was**
 (22) **going to do**
 (23) **to make it any worse**
 (24) **Q** Do you have an opinion as to whether the use of the rudder
 (25) and the engine in the situation that you found yourself in was

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- (1) appropriate?
 (2) **A** Come back with that again I don't understand what
 (3) you re
 (4) asking me
 (5) **Q** In terms of what Captain Hazelwood was doing at that
 (6) particular time and in terms of what ultimately happening
 (7) of the rudder and the engine to have been appropriate?
 (8) **A** I don t think that - I think that you would have had to
 (9) use the engine and the rudder to at least assess the
 (10) situation I was not the master on the bridge, but I think one
 (11) of the first things I d want to know was were we on the
 (12) rocks,
 (13) how hard aground were we, could we easily dislodge
 (14) ourselves,
 (15) would we fall off a ledge In order to ascertain any of that,
 (16) the only thing you have available are the engines and the
 (17) rudder, so using them judiciously, not - not at full capacity
 (18) sounds to me consistent with evaluating the situation
 (19) **Q** And full ahead maneuvering is not using the engine at full
 (20) capacity is it?
 (21) **A** Nowheres near
 (22) **Q** Now Mr Kunkel in your experience have you ever given an
 (23) order to a mate to - or to anyone else to make a turn or a -
 (24) or maneuver a vessel at a fathom mark?
 (25) **A** Never - never with only a - that the only piece of data
 (26) **Q** Have you ever received an order from a captain to come to a
 (27) fathom mark and then make a right turn?

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- (1) **A** No
 (2) **Q** You spoke about pilotage and you said that the pilotage
 (3) endorsement requirements in your opinion were in effect in
 (4) 1989 -
 (5) **A** Yes
 (6) **Q** - for Prince William Sound?
 (7) In connection with that are you aware of any requirement
 (8) or regulation that required a person holding the endorsement to
 (9) be on the bridge in Prince William Sound?
 (10) **A** Not those specific words, no
 (11) **Q** As a matter of fact the regulation only says that the
 (12) person has to be on the ship not on the bridge isn t that
 (13) correct?
 (14) **A** That s correct
 (15) **Q** Are you aware of other ships transiting Prince William
 (16) Sound in 1989 with officers that did not have the pilotage
 (17) endorsement?
 (18) **A** I am now
 (19) **Q** And that s a fact wasn t it that back then there were
 (20) people transiting Prince William Sound with no one on board
 (21) with a pilotage endorsement?
 (22) **A** That is correct
 (23) **Q** Now I want to ask you about the Coast Guard You ve
 (24) sailed up and in Prince William Sound over the years have you
 (25) not?

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- (1) **A** Since the grounding yes
 (2) **Q** You testified to that?
 (3) **A** Yes
 (4) **Q** Did you have an understanding as to whether the Coast
 (5) Guard
 (6) was plotting your vessel above Bligh Reef?
 (7) **A** It was my assumption that when you were in Prince
 (8) William
 (9) Sound, that the Coast Guard was maintaining both a DR or
 (10) dead
 (11) reckoning plot and a radar plot of you in that area between
 (12) Rocky Point and Bligh Reef
 (13) **Q** What expectations did you have of the Coast Guard in
 (14) regards to that plotting and that monitoring?
 (15) **A** Well, their function was to run that area safely, and if
 (16) they felt that I, as a master of the vessel or the officer on
 (17) watch, was coming into danger or doing something wrong,
 (18) speeding, for instance, it was their duty to let me know over
 (19) the radio
 (20) **Q** As an officer as now a captain if your vessel was in fact
 (21) standing into danger above Bligh Reef would you expect them
 (22) to
 (23) call you and let you know?
 (24) **A** Yes
 (25) **Q** Now we spoke - you answered some questions that Mr
 (26) Neal
 (27) had about watch conditions
 (28) **A** Yes
 (29) **Q** Those watch conditions are contained in the bridge
 (30) organization manual that s put out by Exxon

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- (1) MR MONTAGUE Excuse me Your Honor this was covered
 (2) by Mr Neal
 (3) MR CHALOS Your Honor I have a different interest
 (4) here I have just one other question after this two
 (5) questions
 (6) BY MR CHALOS
 (7) Q Mr Kunkel the bridge organization manual the
 (8) interpretation of the contents of the bridge organization
 (9) manual were left to the master of the ship?
 (10) **A That's correct**
 (11) Q And it's the master that sets the watch conditions?
 (12) **A That's correct**
 (13) Q And he can interpret that manual any way he deems
 (14) appropriate under the circumstances?
 (15) **A Yes**
 (16) Q Now in your experience with Captain Hazelwood how would
 (17) you describe his management style vis a vis the way he dealt
 (18) with junior officers?
 (19) **A Very, very relaxed, very professional Basically, the**
 (20) **concept of, do your job, come to me if you have a problem**
 (21) Q Did he give junior officers a lot of leeway in carrying out
 (22) their duties?
 (23) **A Yes**
 (24) MR CHALOS Thank you No further questions
 (25) MR MONTAGUE May I cross-examine Your Honor?

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- (1) THE COURT Yes
 (2) RE-CROSS EXAMINATION OF JAMES R KUNKEL
 (3) BY MR MONTAGUE
 (4) Q Mr Kunkel now call you Captain Kunkel when you - after
 (5) you became a captain you got that training at Grenoble
 (6) France?
 (7) **A Yes - well - after I had my license**
 (8) Q After you got your license?
 (9) **A Right, I had that training at Grenoble, yes**
 (10) Q That's training that Mr Cousins didn't have isn't that
 (11) right?
 (12) **A That's correct, he did not have it**
 (13) Q And when you got your pilotage endorsement you had to
 (14) study things and learn things that Mr Cousins didn't have to
 (15) study and learn isn't that correct?
 (16) **A That's correct**
 (17) Q And wouldn't you say as a navigator or if you were the
 (18) sole person on the bridge you would be much more qualified
 (19) than Mr Cousins was in case there was - a situation arose
 (20) where there was an uncertainty, you would agree with that?
 (21) **A Okay, just - in Prince William Sound, the fact that I**
 (22) **had - let me make sure I understand Prince William Sound,**
 (23) **the fact that I had pilotage, I have - if I had pilotage, I'm**
 (24) **more qualified than someone without pilotage**
 (25) Q Let me ask the question again

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- (1) **A Yeah okay**
 (2) Q In Prince William Sound with the training you had in
 (3) Grenoble and your pilotage endorsement and all the work you
 had
 (4) to do to get it that you were more qualified to be on the
 (5) bridge than Mr Cousins if a situation of uncertainty arose?
 (6) **A That's correct**
 (7) Q And am I correct that if you had been on the bridge that
 (8) night if you had given Mr Cousins a direction to make a turn
 (9) in two minutes when you re out of the traffic lanes heading for
 (10) Bligh Reef you would not have left the bridge until that turn
 (11) was made isn't that correct?
 (12) **A Given these the circumstances that I'm aware of, yes**
 (13) Q Now you were asked a question about Mr Myers Paul
 Myers?
 (14) **A No, I didn't ask any questions**
 (15) Q No you were asked a question
 (16) **A Okay**
 (17) Q And you said that you saw him two to four times on the
 (18) Valdez?
 (19) **A That's correct**
 (20) Q And that was always in California port?
 (21) **A Yeah, I saw him in -**
 (22) Q You left - I'm sorry you can't finish?
 (23) **A I saw him in Los Angeles and San Francisco**
 (24) Q You never saw him other than when he came aboard the
 vessel
 (25) on the night of the grounding you never saw him on the vessel

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- (1) in Valdez did you?
 (2) **A No**
 (3) Q In fact you never saw any other on shore personnel from
 (4) Exxon in Valdez or on the Exxon Valdez while it was in Valdez
 (5) isn't that correct?
 (6) **A Let me just think**
 (7) Q Other than the night of the grounding?
 (8) **A Right No I never saw anybody else, any Exxon shore**
 side
 (9) **staff on the vessel in Valdez**
 (10) Q Now let's talk a minute about Mr Cousins and Mr LeCain
 (11) You were in charge of fatigue right is that the way it was
 (12) described? You were the fatigue officer so to speak you were
 (13) in charge of seeing that your mates were well rested?
 (14) **A The master is in charge He is ultimately responsible My**
 (15) **job would be to relay to him if I perceived on my own or if**
 (16) **they reported a problem with fatigue**
 (17) Q Okay I just want to understand something Mr Cousins
 (18) his watch was from eight to twelve right? From 8 00 in the
 (19) evening to midnight 2000 hours to 2400 right?
 (20) **A Right**
 (21) Q Okay
 (22) **A Yes**
 (23) Q And we have from your testimony that you called him at 1800
 (24) hours roughly to help you with the topping off?
 (25) **A That's correct**

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- (1) Q So he was working from 1800 hours through midnight
 (2) correct? That s clear?
 (3) **A He would have - sometime after 1800 whatever it took him**
 (4) **to shower, get dressed or whatever, you know, so from then on**
 (5) **yes**
 (6) Q Okay Now so he was basically working for six hours up to
 (7) midnight other than taking a shower?
 (8) **A Right**
 (9) Q Okay and then he took what the watch that would be Mr
 (10) LeCain s isn t that correct at midnight?
 (11) **A Well, I don't - I don't know if he took it or not Okay,**
 (12) **I mean he was going to standby for a few minutes I don t**
 (13) **think he was going to take the whole watch**
 (14) Q Well you certainly didn t know what he was going to do at
 (15) the time because you weren t informed?
 (16) **A Right**
 (17) Q Okay but if - as midnight struck he in fact was standing
 (18) watch for Mr LeCain regardless of how long that lasted is
 (19) that correct?
 (20) **A That s correct**
 (21) Q And would not the statute apply to Mr Cousins at that time
 (22) when he was standing the watch of Mr LeCain as to whether or
 (23) not he had six hours on and six hours off twelve hours before
 (24) he assumed the watch? It would wouldn t it?
 (25) **A If they were still leaving port yes**

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- (1) Q Now you testified that both Mr Cousins and Mr LeCain had
 (2) an - I think you used - your counsel used the word
 (3) opportunity quote opportunity end quote to be off duty for
 (4) six hours remember that?
 (5) **A Right, uh huh**
 (6) Q But you don t know as a fact whether or not either of those
 (7) gentlemen Mr Cousins or Mr LeCain were off duty for six
 (8) hours do you? You don t know that as a fact?
 (9) **A I do not know it, no, sir**
 (10) Q And part of Mr - second mate LeCain s duties in addition
 (11) to running a watch were navigation charts?
 (12) **A That s correct**
 (13) Q And to run the steward s department?
 (14) **A That s correct**
 (15) Q And Mr Cousins duties were safety officer?
 (16) **A Yes**
 (17) Q And that requires paperwork right?
 (18) **A Yes**
 (19) Q And to help top off as you ve described and he relieved
 (20) you for dinner right?
 (21) **A He relieved me for dinner, uh-huh**
 (22) Q And he performed a salinity test right?
 (23) **A I think so, yeah I'm not sure**
 (24) Q So while you say they had an opportunity you don t know as
 (25) you sit there now whether or not in fact they had six hours

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- (1) off from the twelve hours preceding Mr Cousins taking the
 (2) watch or Mr LeCain taking the watch at 12 00 is that
 (3) correct?
 (4) **A That s correct**
 (5) Q Now let s talk about the sailing board very quickly Am I
 (6) correct that initially the sailing board was at 2100?
 (7) **A That s correct**
 (8) Q And it was changed to 2200?
 (9) **A Yes**
 (10) Q And then changed back to 2100?
 (11) **A Yes**
 (12) Q And do you recall testifying that it was returned - it was
 (13) changed back to 2100 at 3 30 in the afternoon?
 (14) **A I don t recall saying that, no I m willing to take your**
 (15) **word I said it was in the afternoon, so 3 30 is in the**
 (16) **afternoon**
 (17) Q Could you take a look at your NTSB testimony at 372 page
 (18) number s 372 and if you d look at line two and the answer you
 (19) gave You say so the official board as of about 1530 that s
 (20) 3 30?
 (21) **A Right**
 (22) Q Was 2100?
 (23) **A Uh huh**
 (24) Q Okay
 (25) **A Right**

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- (1) Q So as of 2100 that s 3 30 in the afternoon the sailing -
 (2) change of sailing time was published?
 (3) **A As of 3 30 in the afternoon, 2100 is the current board**
 (4) Q Right and that s the one that actually was in effect when
 (5) you left?
 (6) **A Right**
 (7) Q Okay So now that s - is that information passed on to
 (8) your agent in Valdez Alamar?
 (9) **A Yes**
 (10) Q And is it available at the Alyeska desk?
 (11) **A Yes**
 (12) Q So had Captain Hazelwood instead of - if he had taking
 (13) some leave from sitting in the Pipeline Club and gone to a
 (14) phone and called certainly could have found out in ample
 (15) time -
 (16) MR CHALOS I object Your Honor argumentative
 (17) THE COURT Sustained
 (18) BY MR MONTAGUE
 (19) Q Now you were asked about Captain Murphy - I m sorry you
 (20) were asked about Captain Hazelwood giving orders about
 (21) casting
 (22) off do you recall that?
 (23) **A Yes**
 (24) Q And do you know whether or not Captain Hazelwood was
 (25) repeating orders that were told to him by captain - by Pilot
 (26) Murphy?

Vol 9 930

- (1) **A No I don t know**
 (2) **Q You don t know one way or the other?**
 (3) **A No, sir, I don t**
 (4) **Q And that s something that is not abnormal - it s normal**
 (5) **to where sometimes a pilot will give - tell the captain what**
 (6) **to do? Or is it abnormal?**
 (7) **A No, I mean - I m - normal, abnormal you got me a little**
 (8) **confused here**
 (9) **Q Okay does it happen from time to time?**
 (10) **A Sure**
 (11) **Q Where the pilot will give the orders and the captain will**
 (12) **repeat them over the radio?**
 (13) **A Yes**
 (14) **Q And you don t know whether or not that happened on this**
 (15) **trip or not do you?**
 (16) **A I don t know**
 (17) **Q Now I just want to make certain with respect to the**
 (18) **control room and the computer runs that you did**
 (19) **A Right**
 (20) **Q You want the take a stretch?**
 (21) **A No, I m okay, go ahead**
 (22) **Q The first time you went up with the - you made three trips**
 (23) **to the bridge first you saw Cousins you didn t speak to**
 (24) **Captain Hazelwood and you went down to the control room?**
 (25) **A Right**

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- (1) **Q Then you made your first set of computer runs and you took**
 (2) **that up to Captain Hazelwood?**
 (3) **A Right**
 (4) **Q And that was around 0300 right?**
 (5) **A 0030**
 (6) **Q 0030 okay So the ship grounded sometime after 12 00?**
 (7) **A Right**
 (8) **Q So you did all that within a half an hour roughly?**
 (9) **A Roughly yeah**
 (10) **Q Okay Then you went down again after you showed the first**
 (11) **set of figures to Captain Hazelwood right?**
 (12) **A Uh-huh**
 (13) **Q And then you testified you came up around 1 00?**
 (14) **A Uh-huh**
 (15) **Q And now you re saying - answer to Mr Chalos that it was**
 (16) **between 1 15 could have been as late as 1 15 or 1 20 is that**
 (17) **right?**
 (18) **A That s correct**
 (19) **Q Now if it took you 30 minutes the first time is it likely**
 (20) **that it didn t take you more than 30 minutes the second time?**
 (21) **A I don't understand**
 (22) **Q Let me ask you isn t it more likely that the second set of**
 (23) **figures were brought up closer to 1 00 than 1 20?**
 (24) **A Well, I don t think so This has been asked before If I**
 (25) **went up to the bridge let's say right at 12 30 and I had a**

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- (1) **five minute conversation with Captain Hazelwood By the**
 (2) **time**
 (3) **I m in the control room, it s 22 minutes to 1 maybe 20**
 (4) **minutes**
 (5) **to 1, and not only am I doing calculations but I m talking to**
 (6) **the people that are reporting back to me the conditions of**
 (7) **the**
 (8) **tanks, the pump room, the engine room, the voids, and then**
 (9) **I m**
 (10) **running the figures**
 (11) **So let s say I got the figures by 1 00 So I m on the**
 (12) **bridge, I mean, optimally, sometime after 1 I mean, so -**
 (13) **Q So between 1 and 1 15 is that fair?**
 (14) **A I think that's a fair space estimate**
 (15) **Q Okay I ll accept it**
 (16) **Now if you went to this Grenoble school did they teach you**
 (17) **anything about getting a vessel off the rocks?**
 (18) **A No**
 (19) **Q So how did you become so knowledgeable about getting a**
 (20) **vessel off the rocks?**
 (21) **A Well, I was involved in one of the biggest disasters that**
 (22) **the United States has seen, so -**
 (23) **Q Which was that?**
 (24) **A The Exxon Valdez I mean, I think that s what people have**
 (25) **called it**
 (26) **Q Okay**
 (27) **A So I mean, what do you mean how did I become -**
 (28) **Q I understand that**
 (29) **A I studied, I ve - since the grounding, I have studied the**

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- (1) **best I can to try to get an understanding of what was going**
 (2) **on**
 (3) **with the vessel, and also since then, I ve actually handled**
 (4) **vessels, myself So therefore I m much more experienced**
 (5) **in**
 (6) **knowledge now in the handling of vessels**
 (7) **Q You haven t handled a vessel like the Exxon Valdez in the**
 (8) **predicament it was in?**
 (9) **A No absolutely not**
 (10) **Q Have you ever heard of the proposition of waiting for help**
 (11) **before you wiggle a vessel?**
 (12) **A Yes**
 (13) **Q Or move a vessel at all?**
 (14) **A Yes**
 (15) **Q When it s put on a rock the way the Exxon Valdez was you**
 (16) **ever heard of that?**
 (17) **A Wait for help**
 (18) **Q Don t do anything?**
 (19) **A Well, help may not get there in time**
 (20) **Q I didn t ask you that Have you ever heard that**
 (21) **proposition wait for help?**
 (22) **A Okay, has somebody ever said to me wait for help, is that**
 (23) **what you re saying**
 (24) **Q No you said you studied you said you studied this In**
 (25) **your studies did you ever come across that concept?**
 (26) **A That concept, yes**
 (27) **Q Wait for help?**

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- (1) **A That concept yes**
 (2) **Q** And that wasn't done in this situation was it?
 (3) **A No**
 (4) **Q** Okay Now there was a question about a fathom mark
 (5) remember about whether you would tell somebody to turn at a
 (6) fathom mark?
 (7) **A Correct**
 (8) **Q** You're familiar with these navigational charts right?
 (9) **A Yes**
 (10) **Q** And if you were going to explain to somebody - not give an
 (11) order to turn at a fathom mark but if you were going to
 (12) explain to somebody where you gave an order to turn and at
 (13) that point where you gave - where you gave the order there
 (14) happened to be a fathom mark of let's say 38 okay it would
 (15) not be odd to say that's where I told him to turn where that
 (16) 38 fathom mark sign is or that 38 fathom mark number is that
 (17) would not be -
 (18) **A That's not odd**
 (19) **Q** Okay Now let's talk about the VTC okay? Do you recall
 (20) being asked about the VTC at your - at the NTSB 58 days or so
 (21) after - less than 60 days after the grounding?
 (22) **A Yes, there was - in the course of that hearing, I guess it**
 (23) **was called, yes**
 (24) **Q** Could you turn to page 380 of the NTSB testimony?
 (25) **MR NEAL** Page what? I'm sorry

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- (1) **MR MONTAGUE** 380 380 Do you have that?
 (2) **BY MR MONTAGUE**
 (3) **Q** And start at line 14?
 (4) **A Okay**
 (5) **Q** I'm going to read the question that begins on line 14
 (6) through the answer on line 18 okay?
 (7) **Question** - okay and you tell me if I'm reading this
 (8) correctly and if you were asked this question and gave this
 (9) answer
 (10) **Would you assume that the VTC would be monitoring you in**
 (11) **the vicinity of Bligh Island?**
 (12) **A Right**
 (13) **Q** Answer well I think that's the debate that's going on
 (14) right now you know You are asking me for an assumption I
 (15) do not know the answer I can assume yes
 (16) **Is that the question and answer you gave?**
 (17) **A Yes**
 (18) **Q** And is that truthful to the best of your knowledge?
 (19) **A Yes**
 (20) **MR MONTAGUE** Thank you
 (21) **THE COURT** Captain thank you You may call your
 (22) next witness
 (23) **THE WITNESS** Can I go Your Honor leave go home?
 (24) **THE COURT** As far as I'm concerned
 (25) **MR O NEILL** Take the money and run

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- (1) **THE WITNESS** Take the money and run okay
 (2) **MR GERRY** If the Court please the plaintiffs will
 (3) call Dr David Dinges Could you bring those boards up?
 (4) **THE CLERK** Raise your right hand please
 (5) **(The Witness is Sworn)**
 (6) **THE CLERK** Please take a seat at the witness stand
 (7) **For the record** sir please state your full name your address
 (8) and spell your last name
 (9) **THE WITNESS** My name is David F Dinges
 (10) **D i n g e s** I reside at 44 Oakland O a k l a n d Terrace in
 (11) Bala Cynwyd that's two words first word B a l a second word
 (12) C y n w y d Pennsylvania 19004
 (13) **DIRECT EXAMINATION OF DAVID DINGES Ph D**
 (14) **BY MR GERRY**
 (15) **Q** Dr Dinges we've asked you to come here today and asked
 (16) you to consult with us before about the topic of fatigue is
 (17) that correct?
 (18) **A That's correct**
 (19) **Q** And could you - I have your resume before me and I'd like
 (20) to go - it's pretty thick I'd like to go through it as fast as
 (21) we can so that we can get to the meat of your testimony
 (22) **What do you do at the present time?**
 (23) **A** I'm a faculty member at the University of Pennsylvania
 (24) **School of Medicine, and a scientist that directs the**
 (25) **laboratory**

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- (1) **Q** Now although you're called doctor you're not a medical
 (2) doctor are you?
 (3) **A No, I have a Ph D**
 (4) **Q** When did you get your Ph D ?
 (5) **A** I received my Ph D in 1976
 (6) **Q** From what establishment?
 (7) **A** From St Louis University
 (8) **Q** What was your dissertation in?
 (9) **A** My - you want my dissertation topic?
 (10) **Q** Topic yeah
 (11) **A** It was in visual electrophysiology and the effects of
 (12) **contour density on visual perception**
 (13) **Q** And what was your - your field of study at that time?
 (14) **A** It was in physiological psychology
 (15) **Q** Now although you're not a doctor are you attached to a
 (16) medical school?
 (17) **A Yes**
 (18) **Q** What do you do at the medical school?
 (19) **A** I conduct research direct the laboratory, teach medical
 (20) **students and a great many other things, I'm sure**
 (21) **Q** Do you have a faculty appointment to the school?
 (22) **A** I do
 (23) **Q** Did you start out as most people as an instructor?
 (24) **A** Yes, I did
 (25) **Q** When did you do that?

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- (1) **A In 1979 I was an instructor at the medical school**
 (2) **Q Before that were you a - did you have other positions at**
 (3) **the medical school?**
 (4) **A I was a postdoctoral fellow at the University of**
 (5) **Pennsylvania before that**
 (6) **Q And then you worked your way up from being an instructor**
 (7) **to your present position?**
 (8) **A Yes**
 (9) **Q What is that?**
 (10) **A I m associate professor of psychology and psychiatry at**
 (11) **the University of Pennsylvania**
 (12) **Q Do you have tenure?**
 (13) **A Yes I do**
 (14) **Q What does that s mean?**
 (15) **A Less and less each year**
 (16) **Q What is it supposed -**
 (17) **A I m sorry, Your Honor It s a permanent commitment on**
 (18) **part of the university, meaning that I have passed muster,**
 (19) **so**
 (20) **to speak, as a faculty member, and that the university**
 (21) **embraces**
 (22) **me in a permanent sense as part of their teaching mission**
 (23) **Q And you re not supposed to ever be fired unless you really**
 (24) **mess up right?**
 (25) **A That's the mythology**
 (26) **Q Do you diagnose or treat psychiatric illness?**
 (27) **A No, I do not**

- (1) **Q Which are those?**
 (2) **A I m a member of the National Sleep Foundation I m**
 (3) **associate director of the Institute for experimental**
 (4) **Psychiatry**
 (5) **Research Foundation and I have recently been appointed to**
 (6) **the**
 (7) **board of directors of the American Sleep Disorders**
 (8) **Association**
 (9) **Q About the American Trucking Association Foundation?**
 (10) **A Yes I serve on the medical advisory board of the**
 (11) **American**
 (12) **Trucking Association Foundation**
 (13) **Q You belong to the usual professional and scientific studies**
 (14) **in your area of expertise?**
 (15) **A Yes, I do**
 (16) **Q And you belong to international as well as national**
 (17) **societies?**
 (18) **A Yes**
 (19) **Q You belong for example to the Human Factor Society?**
 (20) **A Yes, I do**
 (21) **Q Do you hold any editorial positions?**
 (22) **A Yes, a great many**
 (23) **Q And what does that mean doctor?**
 (24) **A When you are an editor or serve in an editorial capacity**
 (25) **for a medical or scientific journal, you re obliged to review**
 (26) **articles that are submitted to those journals to determine**
 (27) **whether they're worthy of publication**
 (28) **Q Is that what s known as peer review?**
 (29) **A Yes, it is**

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- (1) **Q You also have hospital appointments even though you re**
 (2) **not**
 (3) **a doctor?**
 (4) **A I am - I mean, I do**
 (5) **Q What do you do in your hospital appointments?**
 (6) **A I direct a laboratory called the unit for experimental**
 (7) **psychiatry at the Institute of Pennsylvania Hospital**
 (8) **Q And do you teach doctors?**
 (9) **A I do**
 (10) **Q Do you consult with governmental agencies?**
 (11) **A Yes**
 (12) **Q And in what field do you consult?**
 (13) **A Primarily in the area of human performance as it relates**
 (14) **to**
 (15) **fatigue**
 (16) **Q And is that your area of expertise doctor?**
 (17) **A Yes, it is**
 (18) **Q Could you name some of the governmental agencies with**
 (19) **whom**
 (20) **you have consulted?**
 (21) **A The National Institutes of Health, the National**
 (22) **Aeronautics**
 (23) **and Space Administration, the Federal Aviation**
 (24) **Administration,**
 (25) **the National Transportation Safety Board, the Office of**
 (26) **Naval**
 (27) **Research, the Air Force Office of Scientific Research, I m**
 (28) **sure**
 (29) **there are more**
 (30) **Q You belong to any - are you a member of any foundation**
 (31) **boards?**
 (32) **A Yes I am**

- (1) **Q And to have an article published in a peer reviewed**
 (2) **journal is that something that scientists strive to do?**
 (3) **A Yes**
 (4) **Q And you sit as sort of judge on that?**
 (5) **A Yes**
 (6) **Q How many of those positions have you held oh in the**
 (7) **last - since 1982 for example?**
 (8) **A It s in my C V I don t know the exact number**
 (9) **Q I count 38 there is that about right?**
 (10) **A It could be**
 (11) **Q Have you also been the principal investigator and project**
 (12) **director of grants?**
 (13) **A Yes, I have**
 (14) **Q What does that mean?**
 (15) **A A scientist s primary activity is to convince federal**
 (16) **agencies who have taxpayers dollars that you can do**
 (17) **scientific**
 (18) **work on topics that are important to the public, and you do**
 (19) **that by submitting grant applications making your argument**
 (20) **for**
 (21) **what you want to study They reviewed by scientific**
 (22) **committees and the best ones are funded**
 (23) **Q If I count that you ve got 19 of those down here is that**
 (24) **about right?**
 (25) **A Yes**
 (26) **Q And are those also in your field of fatigue?**
 (27) **A The vast majority are, yes**

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- (1) Q Have you – you have done right at – done a lot of
 (2) writing haven't you?
 (3) **A Yes I have**
 (4) Q And do you give lectures?
 (5) **A Yes, I do**
 (6) Q Approximately how often do you give lectures outside your
 (7) own institution?
 (8) **A Outside of my institution? It might average once a
 month**
 (9) Q And are you invited to give those lectures?
 (10) **A Yes**
 (11) Q On your – in your area of fatigue?
 (12) **A Yes**
 (13) Q For example on March 22 1990 it's noted that you gave a
 (14) lecture on flight crew fatigue and the underlying causes and
 (15) operational factors and you were an invited speaker at the
 (16) first regional aviation conference at Amman Jordan is that the
 (17) type of thing you do?
 (18) **A Yes**
 (19) Q And are you considered an expert in fatigue in aviation?
 (20) **A I think so, yes**
 (21) Q And have you done experiments and studies for the FAA in
 (22) looking into the causes of fatigue aboard aircraft?
 (23) **A Yes, we have**
 (24) Q Have you done the same thing looking into the causes of
 (25) fatigue in the trucking industry?

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- (1) **A Yes**
 (2) Q And the rail industry?
 (3) **A Not directly in the rail industry**
 (4) Q You've written 35 to 40 original papers?
 (5) **A Yes**
 (6) Q Is that part of the scientific publish or die rule that
 (7) you need to publish like that?
 (8) **A Yes, although they typically examine only a sub set of
 those for quality, the best**
 (9) Q You've also written abstracts of your speeches that you've
 (10) given in various places?
 (11) **A Yes I have**
 (12) Q And that goes on for pages You've written chapters and
 (13) reviews and reports chapters in books?
 (14) **A Yes**
 (15) Q And you've written your own book on sleep and alertness
 (16) have you not?
 (17) **A Yes I have**
 (18) MR GERRY I'd ask Your Honor that Dr Dinges be
 (19) accepted by the Court as an expert in the area of fatigue
 (20) THE COURT Is there objection?
 (21) MR LYNCH No objection to that Your Honor
 (22) THE COURT Dr Dinges qualifications to offer
 (23) opinions in the area of human performance as to fatigue are
 (24) accepted by the Court You may inquire
 (25)

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- (1) MR GERRY Thank you Your Honor
 (2) BY MR GERRY
 (3) Q After you were asked to consult with the plaintiffs
 (4) counsel in this case and to give an opinion were you furnished
 (5) with many documents to review?
 (6) **A Yes**
 (7) Q And did you review them?
 (8) **A Yes, I did**
 (9) Q I have here a list of a hundred and 28 documents that were
 (10) furnished to you they're attached to your report Did you
 (11) review all of them?
 (12) **A Yes, I did**
 (13) Q Did that include more than 30 depositions?
 (14) **A Yes, it did**
 (15) Q Did that include the depositions of all of the mates and
 (16) the master in this case?
 (17) **A Yes**
 (18) Q And did it include looking at the course recorder
 (19) printout?
 (20) **A Yes**
 (21) Q Did you also review much of the NTSB hearing record?
 (22) **A Of the testimony, yes**
 (23) Q Testimony that's what I mean
 (24) Doctor what is fatigue?
 (25) **A Well, in the scientific community, there has been a long**

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- (1) **debate about exactly how to define it The most commonly**
 (2) **accepted definition is fatigue refers to the inability to**
 (3) **maintain acceptable or adequate levels of performance over**
 (4) **time**
 (5) Q And how do you measure fatigue? Do you just look at
 (6) somebody and say they're fatigued or they're not fatigued?
 (7) **A There have been many measurement approaches ranging**
 (8) **from**
 (9) **asking people to say how they feel to physiological**
 (10) **recording,**
 (11) **but the most accepted way of measuring fatigue is through**
 (12) **measurement of performance**
 (13) Q Is it difficult for an individual to determine their own
 (14) level of fatigue?
 (15) **A It can be, yes**
 (16) Q And if a person has a chronic fatigue does it become more
 (17) difficult for them to evaluate themselves?
 (18) **A Yes, in general, as an individual becomes repeatedly**
 (19) **exposed to fatigue, fatigue on a daily basis, they will lose**
 (20) **the ability to accurately judge just how much performance**
 (21) **impairment they may have**
 (22) Q Is sleepiness the same thing as fatigue
 (23) **A Sleepiness is a component to fatigue so that inadequate**
 (24) **sleep or disturbed sleep can produce fatigue, but fatigue**
 (25) **can**
 (26) **also come about from inadequate rest, that is inadequate**
 (27) **periods of time off from work, even if you're not sleeping, so**
 (28) **that sleepiness is a component related to fatigue**

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- (1) Q Can persons build up what is known as a sleep debt?
- (2) **A Absolutely**
- (3) Q What is that?
- (4) **A Well it refers to the fact that each of us has a set amount of sleep that we need on a daily basis, and when we don't acquire it because of our lifestyle, we have little children at home and we can't sleep as much or our work situation, or because we have a disease or a painful disorder,**
- (9) **then each day, even though we may lose only a small amount of**
- (10) **sleep, that loss builds up. It's a debt in effect, so that over a few days, you can become very sleepy from just losing a**
- (12) **small amount of sleep each day**
- (13) Q Can you then pay off your sleep debt by just sleeping for a
- (14) long period of time?
- (15) **A In part you can. If - if you have then a prolonged period where you can sleep without interruption and you don't have a**
- (17) **disease that disturbs your sleep, you have some possibility of**
- (18) **paying it off. But you can't pay it off by just taking small amounts of sleep. You really need a long recovery period.**
- (20) Q Doctor, we asked you to look into the possibility of fatigue playing in role in the wreck of the Exxon Valdez as it pertained especially to the mates aboard the vessel, is that
- (23) correct?
- (24) **A Yes**
- (25) Q You've heard the captain here say that he saw the mates

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- (1) that night and that they didn't appear fatigued, is that definitive for you, is that the end of it for you, then? The
- (3) captain says they don't look fatigued, that's it?
- (4) **A I'm not sure I understand what you're asking me.**
- (5) Q Or do you need to look behind it at what happened before?
- (6) **A Are you asking me would I accept looking at someone to determine whether they were fatigued?**
- (8) Q Right
- (9) **A Well, that has been a question of considerable scientific interest, could you just look at someone and know how fatigued**
- (11) **they were, and the answer is generally no, you cannot. While**
- (12) **it has been tried by scientists, even those of us who regularly**
- (13) **study this phenomena in the laboratory and in the field, it is exceedingly difficult to simply look at someone and know what**
- (15) **their level of fatigue is.**
- (16) Q In the deposition testimony that you've read, you've seen
- (17) that Mr. Cousins said he felt okay, does that fall into the area that we discussed before, that it's very difficult for an
- (18) individual to tell whether he really is fatigued or not?
- (20) fatigued?
- (21) **A Yes, it does.**
- (22) Q And did you take those things into account in coming to
- (23) your opinion and conclusion in this case?
- (24) **A Yes, I did.**
- (25) Q Did you determine the working regime that went on aboard

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- (1) the vessel for the mates?
- (2) **A Yes, I did.**
- (3) Q And you've heard the testimony that they were broken into
- (4) two watches a day, four hours in each watch. Were there other
- (5) duties, however, that they had besides the watch duties?
- (6) **A There were other duties, yes.**
- (7) Q What were they?
- (8) **A Well, Captain Kunkel referred to some of them. I think in one of his answers, but my understanding of them from the deposition record is that the mates, in addition to standing their two four-hour watches each day, had additional jobs that**
- (12) **they were supposed to do as part of their responsibilities. The second mate, for example, Mr. LeCain, was responsible for the navigation equipment and the charts. He also had responsibility for the stores, the food supplies of the steward's department.**
- (17) **The third mate was responsible for safety equipment, updating the manuals and a considerable amount of paperwork.**
- (19) **And the chief mate, as we heard, was responsible for loading and unloading at port and for maintenance of equipment on deck.**
- (22) Q From the materials that you've read, have you determined the approximate workday at sea for each of these mates?
- (24) **A It was clear in the record each mate indicated that 11 to 13 hours or an average of 12 hours a day was a typical workday.**

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- (1) for them.
- (2) Q And now did you have access to any overtime records for
- (3) these people?
- (4) **A There was no overtime record keeping that I was aware of in**
- (5) **any of the materials I reviewed.**
- (6) Q And did you hear the master speak about the developments
- (7) that went on that did away with the overtime records?
- (8) **A I heard the testimony, yes.**
- (9) Q I'll show you, sir, plaintiffs Exhibit 215. And does this exhibit demonstrate what you discovered in your research into
- (11) the background of the company and its treatment of the mates?
- (12) **A Yes.**
- (13) Q So that by 1983 the mates were no longer in a union, they had been declared management and been put on merit salary,
- (15) is that right?
- (16) **A Yes.**
- (17) Q Once they were on merit salary, was overtime - were overtime records done away with?
- (19) **A There was no overtime record keeping once the mates became**
- (20) **a part of merit salary.**
- (21) Q They received a pay increment that was supposed to reimburse them for the loss of overtime, did they not?
- (23) **A That was my understanding from the record, yes.**
- (24) Q Besides the pay increment that they had, was there a ranking system that was used to rank the mates?

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- (1) **A Yes it was - there were performance assessments done and**
 (2) **they were - were ranked then, within the fleet, as to where**
 (3) **they stood relative to other mates**
 (4) **Q And if they were at the top of the rankings did they at**
 (5) **times receive bonus for their good positions in the rankings?**
 (6) **A The record indicated that was possible yes**
 (7) **Q Can you tell us whether or not their willingness to work**
 (8) **hours outside their regular watches was part of the assessment**
 (9) **on the ranking system and the bonus awards?**
 (10) **A One of the items on the evaluation sheets for the mates**
 (11) **indicates willingness to accept additional duties and**
 (12) **undertake**
 (13) **additional work**
 (14) **Q Now you - did you also check to determine whether besides**
 (15) **the watches that they stood and the - and the other systems**
 (16) **that there were other things aboard the vessel**
 (17) **MR LYNCH Could I ask Mr Gerry just identify what**
 (18) **he s going to show the jury before it s -**
 (19) **BY MR GERRY**
 (20) **Q I m going to show you number 216 sir and ask you if those**
 (21) **were items that you identified which would also interrupt the**
 (22) **ability of the mates to sleep or cause them to be unable to**
 (23) **rest at other periods when they would otherwise be off duty?**
 (24) **A Yes**
 (25) **Q And so all the mates were called out to tie up or let go**
 (26) **right?**

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- (1) **A Yes**
 (2) **Q The chief mate had to get some other mates mate or mates**
 (3) **to help him top off cargo?**
 (4) **A Yes**
 (5) **Q Meal times were fixed what s that mean?**
 (6) **A Well, if a mate was off duty and the mate that was on duty**
 (7) **had to take a meal time then the mate that was off duty had**
 (8) **to**
 (9) **be called to relieve that mate and then also had to take their**
 (10) **meal time In other words, you didn t - the meals were**
 (11) **served**
 (12) **at specific times, and if you slept through them you missed**
 (13) **them, but you also had to be available to relieve whoever**
 (14) **was**
 (15) **on watch for the meals**
 (16) **Q So if you were the second mate on the 12 to 4 watch for the**
 (17) **evening meal you couldn t get it right after watch you had to**
 (18) **wait?**
 (19) **A Yes**
 (20) **Q And if you were the - all right when sailing north all**
 (21) **hands had to be present for the weekly fire and boat drill?**
 (22) **A Yes**
 (23) **Q When sailing northbound in ballast sleeping was difficult**
 (24) **especially when the vessel was riding in the trough?**
 (25) **A Yes**
 (26) **Q They still had the time off?**
 (27) **A I don't know what time you re referring to**
 (28) **Q When they were in the bed but you re saying their sleep**

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- (1) **was disrupted?**
 (2) **A Well you have to take into account that in any**
 (3) **environment**
 (4) **where someone s working, that if they have an opportunity**
 (5) **to**
 (6) **sleep and they take that opportunity, that in and of itself**
 (7) **doesn t guarantee they will get the sleep Obviously the**
 (8) **environment in which they sleep is important so that if**
 (9) **you're**
 (10) **working in a job where it s very, very hot, when you try to**
 (11) **sleep or where there s a lot of movement of a vessel, that**
 (12) **can**
 (13) **disturb sleep and so you can - you can actually have less**
 (14) **sleep than you had opportunity for sleep because of that**
 (15) **environment**
 (16) **Q And are there reports in the literature about 40 foot seas**
 (17) **in Alaskan waters interfering with the sleep of the mates or**
 (18) **other persons aboard the vessel?**
 (19) **A I'm aware of one federal transportation report that**
 (20) **indicated sleep disturbance from heavy seas in the Valdez**
 (21) **trades was common, yes**
 (22) **Q Now sir does the federal government pass rules and**
 (23) **regulations in the transportation industry to attempt to avoid**
 (24) **fatigue on the part of persons engaging in those industry in**
 (25) **that industry?**
 (26) **A Yes**
 (27) **Q For example in aviation are there rules as to the**
 (28) **duration of times that pilots may fly and the number of hours**
 (29) **that they can put in in the course of a month?**

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- (1) **A Yes**
 (2) **MR LYNCH Your Honor I have an objection to this**
 (3) **line of inquiry It involves substantial issues of**
 (4) **comparability and I suggested to Mr Murtiashaw that this**
 (5) **might be a matter we could take up with you at the side bar**
 (6) **(Bench Conference off the Record)**
 (7) **BY MR GERRY**
 (8) **Q And Dr Dinges is there also a statute in the shipping**
 (9) **industry 46 USC 8014(a) which attempts to regulate the time**
 (10) **and eliminate the fatigue of mates in the industry?**
 (11) **A Yes**
 (12) **MR GERRY And I d - could I have the Elmo please?**
 (13) **MR LYNCH Could I take a look at that**
 (14) **MR GERRY Yes**
 (15) **BY MR GERRY**
 (16) **Q This is - this is 8104(a) of the federal statutes 46 USC**
 (17) **8104(a) and could you read that to us doctor?**
 (18) **A You want the 8104(a) read?**
 (19) **Q Right**
 (20) **A An owner charterer, managing operator, master,**
 (21) **individual**
 (22) **in charge, or other person having authority may permit an**
 (23) **officer to take charge of the deck watch of a vessel when**
 (24) **leaving or immediately after leaving port only if the officer**
 (25) **has been off duty for at least six hours within the twelve**
 (26) **hours immediately before the time of leaving**

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- (1) Q Did we ask you to in your research into the documents that
 (2) we d given you to determine whether or not the mates had six
 (3) hours rest within the last twelve hours prior to the vessel
 (4) leaving the Port of Valdez on the fateful voyage
 (5) **A No you didn t ask me to do that**
 (6) Q What did we ask you to do?
 (7) **A You asked me to evaluate whether or not the mates had at**
 (8) **least six hours off duty during the twelve hours immediately**
 (9) **prior to the vessel leaving port**
 (10) Q Okay I misspoke myself and used the word rest right?
 (11) **A That s correct**
 (12) Q And you won t accept that?
 (13) **A No, I will not**
 (14) Q Because that isn t what the statute says?
 (15) **A That s correct**
 (16) Q So the question is duty or off duty not whether they have
 (17) rest or anything else?
 (18) **A Off duty is the term**
 (19) Q All right and we did ask you to determine whether or not
 (20) these mates fell - on which side of the line these mates fell
 (21) right?
 (22) **A Yes**
 (23) Q And did you make a determination as to whether any of them
 (24) had six hours off before the 12 that s 2112 p m on the date
 (25) of sailing March 23 1989?

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- (1) **A Yes, I made that determination**
 (2) Q What was your determination?
 (3) **A My determination was neither the chief mate nor the**
 (4) **second**
 (5) **mate nor the third mate had received six hours off duty in**
 (6) **the**
 (7) **twelve hours immediately prior to leaving the port**
 (8) Q What documents did you derive that opinion?
 (9) **A The primary documents for me were their depositions in**
 (10) **addition, however, because there were some questions**
 (11) **regarding**
 (12) **specific times not asked in the depositions, I looked at their**
 (13) **NTSB testimonies**
 (14) Q And did we then together make up a board to show all of
 (15) this?
 (16) **A We did**
 (17) MR GERRY Whether or not we can get this big monster
 (18) in here I don t know We re going to try I told them I
 (19) didn t know if this would work
 (20) MR TODEY I feel just like Vanna White
 (21) THE COURT You don t look like her
 (22) MR GERRY Stipulated Your Honor We all agree to
 (23) that I think that s about the best we can do with that
 (24) THE COURT Lynch come over here
 (25) MR LYNCH Thank you Your Honor
 (26) MR GERRY Can you all see this?
 (27) BY MR GERRY
 (28) Q Now doctor you determined from the record that the vessel

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- (1) arrived in port at 2335 on the 22nd?
 (2) **A Yes**
 (3) Q And left at 9 12 or 2112 on the 23rd right?
 (4) **A Yes**
 (5) Q And that it ran aground at about nine minutes after
 (6) midnight on the 24th?
 (7) **A Yes**
 (8) Q So what we re going to talk about is the period from
 (9) midnight on the 22nd to midnight on the 23rd all right?
 (10) **A Okay**
 (11) Q Now the - could you tell me what the different colors are
 (12) when we use them on the mates?
 (13) **A Well, duty is defined by green and red, and I can tell you**
 (14) **the difference in a moment but for now that s duty Off**
 (15) **duty**
 (16) **is defined by white and yellow times**
 (17) Q What is the difference between the green on duty and the
 (18) red on duty?
 (19) **A The portion of the record that applies to 8104(a), federal**
 (20) **statute is the period from 2112, or the time that the Exxon**
 (21) **Valdez leaves Valdez dock backwards twelve hours So**
 (22) **from 9 12**
 (23) **in the morning, until 9 12 in the evening is the relevant**
 (24) **twelve hour period To highlight that, the duty periods there**
 (25) **have been identified in red, and the rest - or excuse me, the**
 (26) **off duty in yellow**
 (27) Q So the time that we re really - really interested in in

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- (1) the first place is from 9 12 to 2112 right?
 (2) **A Yes**
 (3) Q Now the depositions testimony of the chief mate had him
 (4) working from 11 to 1300 and all this used to be red right?
 (5) **A Yes**
 (6) Q After his testimony this morning because he reminded us
 (7) he d had lunch we took a half hour off right?
 (8) **A That s correct**
 (9) Q Then his testimony was that from 1550 to 2000 he stood
 (10) watch and then was on the bridge to 2145 right?
 (11) **A Yes**
 (12) Q And if we count backwards his time on duty is one two
 (13) three four five six seven hours? Is that it?
 (14) **A It might be just a little more than seven, but yes during**
 (15) **the relevant twelve hour period**
 (16) Q And therefore -
 (17) **A 6 5**
 (18) Q Somebody stole a half hour off of it The statute requires
 (19) six hours off before the sailing right before leaving port?
 (20) **A Six hours off duty, yes**
 (21) Q Was he off duty the requisite number of hours so that he
 (22) could have taken the con on sailing from the port?
 (23) **A He was on duty 6 5 hours, twelve minus 6 5 leaves 5 5**
 (24) **The**
 (25) **statute says at least six hours**
 (26) Q Let s go to Mr LeCain He stood watch and stated that he

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- (1) was off at 4 30 he rested this period At 9 30 he gets up and
 (2) reads and he works in the steward s department he s still off
 (3) work right? And then at noon he goes to work?
 (4) **A Well, the work in the steward s department at 9 30 didn t**
 (5) **specify time so I didn t count that as part of the duty time**
 (6) **although to the extent that he worked there that is duty**
 (7) Q And he erased charts is that part of his duty?
 (8) **A Yes**
 (9) Q We didn t count that against him?
 (10) **A It was not counted, no**
 (11) Q He then went to work at noon and according to his
 (12) testimony worked till five?
 (13) **A Yes**
 (14) Q He worked again from 6 to 6 15 30 6 30?
 (15) **A Yes, again on the charts and navigation equipment is my**
 (16) **recollection**
 (17) Q Then everybody was called out?
 (18) **A To let go**
 (19) Q And he worked then on up until 10 30?
 (20) **A Yes**
 (21) Q Did he have the requisite six hours rest in the twelve
 (22) hours?
 (23) **A No**
 (24) Q How about Mr Cousins? Mr Cousins was on watch from 8 to
 (25) 12 right?

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- (1) **A Yes**
 (2) Q Only three of those count against him on the six hour rule?
 (3) **A Yes**
 (4) Q He went to lunch and then did he do something else?
 (5) **A Yes, he testified that he performed a salinity test and did**
 (6) **some paperwork in his stateroom**
 (7) Q So now at various places in his depo he - did he testify
 (8) to different amounts of paperwork?
 (9) **A Yes, he did He indicated at one point in it was a half**
 (10) **hour, and at another point it was 15 minutes**
 (11) Q So we gave him the least of that?
 (12) **A 15, yes**
 (13) Q And the salinity test was something that he did for the
 (14) benefit of the vessel not for the benefit of himself right?
 (15) **A Yes**
 (16) Q Part of his duty?
 (17) **A Yes**
 (18) Q All right Then he turned to - to relieve the chief
 (19) mate?
 (20) **A Yes he relieved the chief mate for supper for the chief**
 (21) **mate s supper**
 (22) Q And did he say when he went back to his room then?
 (23) **A Well, he was in the cargo control room for some minutes**
 (24) **after that, and - but there was some time off suggested in**
 (25) **the**
 (25) record before 1800

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- (1) Q Then you heard Mr Kunkel testify that he called him at
 (2) 1800 to come down and go to work right?
 (3) **A Yes Mr Kunkel testified he called him for topping off**
 (4) **around 1800**
 (5) Q All right And this gives him 12 minutes to shower and get
 (6) there right that we didn t count although it s red?
 (7) **A Yes**
 (8) Q And one two three four five six seven and a half is
 (9) that correct?
 (10) **A I m reluctant to say with you standing in the way, Mr**
 (11) **Gerry**
 (12) Q I m sorry
 (13) **A Yes That s correct**
 (14) Q So when Mr Cousins went on watch at - when the vessel
 (15) sailed had Mr Cousins had the required six hours sleep in the
 (16) twelve hours before sailing?
 (17) **A I don t know what sleep he had**
 (18) Q I mean had he been off duty I m sorry had he been off
 (19) duty for six hours in the twelve before sailing?
 (20) **A No, he had not**
 (21) Q And he in fact had been off duty only four and a half
 (22) hours?
 (23) **A Yes, that s correct**
 (24) Q Then however after that he continued on until the vessel
 (25) ran aground right?

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- (1) **A Yes**
 (2) Q And that s another three hours?
 (3) **A Yes**
 (4) Q So what was his total time at work or on duty during the
 (5) time he first started here at 8 00 until the vessel ran aground
 (6) at nine minutes after midnight?
 (7) **A About 11 and a half hours**
 (8) Q Out of 16?
 (9) **A Out of 16**
 (10) Q So in 16 hours he had 11 and a half hours on and about five
 (11) off four and a half off?
 (12) **A Yes**
 (13) MR LYNCH Thank you Your Honor
 (14) BY MR GERRY
 (15) Q Without overtime record or some record being kept of the
 (16) mate s time on duty outside their watch hours was there any
 (17) way that Mr Kunkel for example or the master of the Exxon
 (18) Valdez could keep track of whether or not his mates were in
 (19) violation of the 8104? I made another mistake didn t I?
 (20) Could we have this on?
 (21) Now the mates themselves don t violate the statute is
 (22) that correct?
 (23) **A Statute applies to the owner, charter, managing operator,**
 (24) **master, individual in charge**
 (25) Q Okay So that would be the company or the persons they ve

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- (1) delegated the master and the first mate the chief mate
 (2) right?
 (3) A I would read it as the company and the master Whether
 the
 (4) chief mate qualifies as the individual in charge - I heard the
 chief mate testify that it is the master who is ultimately in
 (5) charge
 (6) Q In any event without any overtime rules or other records
 (7) or other records of time off duty or on duty whichever way
 (8) they wanted to keep them would there be any way for that
 (9) person to have an accurate count of his mates and whether or
 (10) not they were legal to sail?
 (11) A No
 (12) Q If the vessel had remained there at the dock for another
 (13) hour then the chief mate would have been legal to sail take
 (14) the watch right?
 (15) A It would have been close to it Probably, yes
 (16) Q If they remained - but he - now did your search of the
 (17) records reveal whether or not the mates knew about the
 (18) statute?
 (19) A My search did indicate that both the second and third
 (20) mates
 (21) were not aware of the statute and could not tell what it
 (22) referred to or what it was
 (23) Q To the extent that the mates were fatigued - let's turn
 (24) our attention now to Third Mate Cousins
 (25) Did you come to any opinion or conclusion as to whether or

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- (1) not Mr Cousins at the time of the grounding was suffering
 (2) from fatigue or -
 (3) A I did
 (4) Q - was fatigued however you put it?
 (5) A I did
 (6) Q And what was your opinion or conclusion?
 (7) A My conclusion was that Mr Cousins suffered from
 (8) performance impairing fatigue that led to mistakes that led
 to
 (9) the grounding
 (10) Q And what items did you take into consideration that would
 (11) lead up to this? What do you think caused this fatigue?
 (12) A Well, to make this kind of an assessment, I needed first to
 (13) establish what the context was in which Mr Cousins was
 (14) performing his duties, and by that, I mean, could we rule out
 (15) other explanations for why he didn't do some of the things
 he
 (16) should have and did other things And it was clear from the
 (17) record that Mr Cousins, at least there was no evidence in
 the
 (18) record that he was impaired from drugs or alcohol
 (19) Moreover, he testified in his deposition that he understood
 (20) his task He had helped the captain formulate what their -
 (21) that critical 15 minutes would involve in terms of the vessel
 (22) He knew what he was supposed to do, turn abeam of Busby
 Island
 (23) light He thought it was a straightforward maneuver, he
 didn't
 (24) think it was beyond his skills, both his - both the master and
 (25) the other mates had confidence in him as he had in himself
 that

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- (1) he could do it So there was every indication in the record
 (2) that this was not something that was outside at least his
 (3) perceived range of ability, and hence he accepted it as part
 of
 (4) what he could do So I couldn't explain it away from the
 (5) standpoint that well, he didn't really understand or he just
 (6) was confused about it
 (7) I then looked at to what extent his own statements about
 (8) the fact that he wasn't fatigued may have played a role in it
 (9) but as I've already said, an individual has a very hard time
 (10) assessing how fatigued they are This happens especially if
 (11) you're chronically fatigued, working 12 hour days, for
 (12) example It's not that you never know whether you're
 fatigued
 (13) but you don't know at the beginning sometimes of a task
 and if
 (14) you're a professional in quotes, and you take your job
 (15) seriously and you're dedicated to your job and you take the
 (16) view that you can do it no matter what, that clouds to some
 (17) extent your ability to know how tired you may be at a given
 (18) time for a critical task
 (19) I then looked at his records during the day to understand
 (20) how much fatigue he may have had present And it was
 clear
 (21) that not only did he not have the hours that would qualify
 his
 (22) vessel or his company vis a vis the federal statute, 8104(a)
 (23) but that it was likely from his 12 hour work days that he was
 (24) suffering some cumulative or chronic sleep debt
 (25) Finally, I noted that Mr Cousins testified that in his

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- (1) deposition, that he extended his watch into that of the
 second
 (2) mate's This is critical The critical time prior to that
 (3) grounding, that 15 minutes prior to nine minutes after
 (4) midnight, was technically the time the second mate should
 have
 (5) been on watch But because the second mate was tired
 Mr
 (6) Cousins made the decision to tell the second mate to take
 his
 (7) time coming up And made the decision that he would call
 him
 (8) later on And as we heard Captain Kunkel testify to this
 (9) morning, he was unaware of that arrangement, and the
 master, I
 (10) think was not entirely aware
 (11) Captain Hazelwood's deposition indicates that he had been
 (12) told that Cousins was going to be allow Mr LeCain to come
 up
 (13) later, but he testified here in this courtroom that when -
 (14) when Mr Cousins called him from the bridge moments
 before that
 (15) grounding, one of the things he asked him was, was the
 second
 (16) mate up yet So that it appeared that both the master and
 the
 (17) chief mate were unaware of an arrangement arbitrarily
 made by
 (18) the third mate and second mate regarding something that
 was
 (19) very important
 (20) Now, the reason it's important is usually the third mate
 (21) finishes his watch at ten minutes to midnight, about the time
 (22) he took that vessel alone on the bridge That's when he

gets

(23) ready for bed And as he testified to the night before he was
 (24) asleep by 1 00 So that typically – that s the wind down time
 (25) and that s the time when biologically, your brain, even –

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(1) whether or not you have a sleep debt you re carrying, is
 (2) preparing you for sleep
 (3) Most of us go through that every night in a ritual before
 (4) bed That s a time when you can have performance
 impairment
 (5) from just working that close to a normal sleep time So the
 (6) combination of those things led me to conclude that fatigue
 was

(7) definitely present
 (8) Q Was there any record of Mr Cousins drinking coffee or
 (9) anything to help him with his sleep problem?
 (10) A The record indicated that Mr Cousins indicated in the
 (11) record that he typically drank 16 cups of coffee a day Now,
 (12) there was not actual depositions material that I saw that
 (13) talked about how much coffee he had the day of the
 grounding
 (14) And coffee s a double edged sword It can help you be more
 (15) alert, but drinking large amounts of it can disturb sleep
 And

(16) hence, it can actually contribute to a sleep debt problem
 (17) Q And 16 cups of coffee per day is there any measure of that
 (18) against caffeine addiction?
 (19) A Well, in my report I mention that 16 cups of coffee a day
 (20) is approximately four times what the Diagnostic and
 Statistical

(21) Manual of the American Psychiatric Association indicates is
 (22) addiction I actually meant, and I want to correct the record,
 (23) intoxication, but roughly a cup of coffee is a hundred to a
 (24) hundred fifty milligrams of caffeine I m talking about
 (25) caffeinated coffee. Let s split the difference and say 125

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(1) milligrams to a cup 16 cups of coffee, then, is 2000
 (2) milligrams of caffeine a day At dosages as low as 250
 (3) milligrams one eighth that you can have insomnia and
 disturbed
 (4) sleep and there s scientific data for that
 (5) So that – let s assume – we know there are individual
 (6) differences Some people can tolerate more of it,
 metabolize

(7) It more quickly with their liver Let s split the difference
 (8) If he s sensitive or very sensitive if it s eight times of
 (9) what would be required It s roughly four times
 (10) Q What kinds of errors do you commonly find made by fatigued
 (11) persons?

(12) A The errors from being fatigued in the scientific studies
 (13) that have been done, there are a variety of them, but the
 (14) primary types of errors are what are referred to as errors of
 (15) omission or lapses

(16) Q And in study what happened in the early morning hours of –
 (17) or the late hours of 3/23 and the early hours of 3/24 how
 (18) would you characterize the errors that were made by Mr
 (19) Cousins?

(20) A I paid especially close attention to this issue of what his
 (21) errors were, because for me, the most salient point about
 (22) whether this is fatigue is the nature of his performance in
 (23) that critical 15 minutes and I would characterize those
 errors

(24) as fatigue errors

(25) Q And what were those errors?

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(1) A Well, he had what he described as a fairly straightforward
 (2) task It was, first of all, a task that involved attention,
 (3) monitoring Why – in general, that is referred to as
 (4) vigilance He had to be vigilant and he had to be vigilant to
 (5) the Busby Island light, that s where he was supposed to
 turn

(6) He had to be vigilant to Bligh Reef specifically the Bligh
 (7) Reef buoy because that s what shows up on radar and that s
 what

(8) the eye can see from the vessel He had to be vigilant as he
 (9) heard Captain Kunkel say to the helmsman, to ensure that
 (10) whatever commands he gave the helmsman, that the
 helmsman

(11) enacted those commands, and he had to be vigilant
 regarding the

(12) rudder angle indicator to make sure that even if the
 helmsman

(13) enacted those orders, that the vessel engaged correctly
 along

(14) the line of those orders

(15) Q And did he from the record that you ve seen and read and
 (16) heard here in court was he vigilant?

(17) A No, he was not

(18) Q What about his time sense is that a problem with fatigue
 (19) people?

(20) A Yes, it is one of the things you see in very tired people,
 (21) is these lapses involve not responding or not responding in
 a

(22) timely manner Your response is delayed and you can
 measure

(23) them on many kinds of tests Well in a task like this where
 (24) you have only so many minutes to make your turn, any delay
 in

(25) making that, for whatever reason, is going to produce a

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(1) potential of putting the vessel on the reef, so that the lapses
 (2) led to delays He lost track of time, and hence, the vessel
 (3) collided with the reef

(4) Q Now did you find any place where Captain Hazelwood
 before

(5) he left the bridge at 2353 gave Mr Cousins any particular
 (6) course to steer?

(7) A Well, my understanding from the depositions record,
 what I

(8) recall is that he, the master, gave Mr Cousins the order that
 (9) when he was abeam of Busby Island, to move it back into
 the

(10) shipping lanes So I don t recall a specific course, degrees
 (11) being given

(12) Q Now when – you ve said before that Mr Cousins appeared

(13) to be able to navigate okay?

(14) A Yes

(15) Q What happens to a fatigued person when he s given a task
 (16) without the task being fully explained to him what he should

(17) do? What does he do then?

(18) A Well, there s a tendency when you re very tired, and we
 see

(19) this in experiments to fall back on an old strategy It s
 (20) called perseveration And it s referred to often time as a

(21) failure to be creative You go back to what worked last time
 (22) for you In Mr Cousin s case, he was a navigator who often

(23) worked on the charts doing fixes, and I think what happened –
 (24) here was he was tired, and even though he – he knew, he
 just

(25) had to look to see Busby Island light, he went back to doing

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- (1) **fixes on the chart and went back into the chart room and**
 (2) **during critical minutes leading up to that grounding**
 (3) **Q In your opinion then was that error caused by fatigue?**
 (4) **A Yes**
 (5) **Q Were all the errors of which you spoke caused by fatigue?**
 (6) **A Yes**
 (7) **Q And in your opinion then was the wreck of the Exxon**
 (8) **Valdez at nine minutes after midnight on the morning of 3/24**
 (9) **was that caused at least by fatigue?**
 (10) **A Yes**
 (11) **Q And was that fatigue induced by the company in part?**
 (12) **A I think company policies and practices led directly to**
 (13) **fatigue**
 (14) **MR GERRY Thank you**
 (15) **THE COURT We ll take our second recess at this**
 (16) **point ladies and gentlemen Please don t have any**
 (17) **discussions**
 (18) **during our recess We ll reconvene in 15 minutes**
 (19) **THE CLERK This court is in recess for 15 minutes**
 (20) **(Jury out at 11 58)**
 (21) **(Recess at 11 58)**
 (22) **(Jury in at 12 18)**
 (23) **THE CLERK All rise**
 (24) **THE COURT Mr Lynch?**
 (25) **CROSS EXAMINATION OF DAVID DINGES Ph D**
BY MR LYNCH

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- (1) **Q Dr Dinges my name is Pat Lynch I m sure you must have**
 (2) **been relieved to see me rather than Ted Carey standing here I**
 (3) **have a few questions about the testimony you ve given this**
 (4) **morning**
 (5) **First of all you recited your list of qualifications is**
 (6) **it correct sir that you have not prior to this time in your**
 (7) **life worked in the merchant marine or maritime industry?**
 (8) **A I was once involved in a maritime case, Mr Lynch, but**
 (9) **other than that, it s correct yes**
 (10) **Q You have never conducted any research involving people**
 (11) **who**
 (12) **work on ships full time have you?**
 (13) **A No, I have not**
 (14) **Q And you have done quite a bit of research on sleep and**
 (15) **sleep and fatigue related problems is that correct sir?**
 (16) **A Yes**
 (17) **Q In fact your personal experience with ships has been**
 (18) **basically the kind of thing that all of us have occasional**
 (19) **tour on a ship or eating on a restaurant ship or something like**
 (20) **that?**
 (21) **A Yes**
 (22) **Q Now you were approached by the plaintiffs to testify in**
 (23) **this case about two weeks before they needed a report from**
 (24) **you**
 (25) **is that correct sir?**
A Approximately, yes
Q And at that time had you formed an opinion about the cause

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- (1) **of the grounding of the Exxon Valdez?**
 (2) **A Which time at the time they approached me?**
 (3) **Q At the time in February of 1993 when Mr Toder asked you if**
 (4) **you d consider taking on this engagement had you formed an**
 (5) **opinion consummate with the opinion you gave to the jury here**
 (6) **this morning?**
 (7) **A I hadn t formed an opinion, no**
 (8) **Q Had you been quoted in the Boston Globe as saying**
 (9) **essentially what you said to the jury this morning?**
 (10) **A Not to my knowledge**
 (11) **MR LYNCH May I approach the witness Your Honor?**
 (12) **BY MR LYNCH**
 (13) **Q This is a portion of Exhibit 4453 which is a computer**
 (14) **service that s a printout of a Boston Globe article of May**
 (15) **28th 1990 Is that a correct at accurate attribution to you**
 (16) **sir?**
 (17) **A The words that are quoted may be I cannot say whether**
 (18) **what the writer wrote outside the quote is or is not what I**
 (19) **said at that time**
 (20) **Q May I? I didn t mean to stand over you but this is the**
 (21) **only copy I happen to have of this document**
 (22) **The words that are quoted are that the Exxon Valdez was a**
 (23) **classic fatigue accident?**
 (24) **A I believe that s what I believed at that time**
 (25) **Q And that was in 1990 correct?**

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- (1) **A Yes**
 (2) **Q Two almost three years before you were first approached by**
 (3) **the plaintiffs in this case?**
 (4) **A Yes, that would be correct**
 (5) **Q And before you did any of the research that you described**
 (6) **in your dealing with dialogue with Mr Gerry about the**
 (7) **materials in this case?**
 (8) **A Yes**
 (9) **Q You started that- you started that work believing this was**
 (10) **a classic fatigue accident isn t that correct?**
 (11) **A It was just a belief**
 (12) **Q And your belief was confirmed?**
 (13) **A After reviewing a great deal of material, that belief was**
 (14) **borne out**
 (15) **Q Now at the end of that two weeks you produced a written**
 (16) **report that you gave to the plaintiffs is that correct?**
 (17) **A Yes**
 (18) **Q In that report you said that at the time of the grounding**
 (19) **just after midnight the third mate had been on duty**
 (20) **continuously since 1900 hours that s from 7 00 in the**
 (21) **evening?**
 (22) **A Yes**
 (23) **Q And intermittently since 1700 hours that s from 5 00 in**
 (24) **the evening?**
 (25) **A Yes**

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- (1) Q In the 16 hours prior to the grounding that is since 800
 (2) hours on March 23 the third mate had been on duty a
 cumulative
 (3) total of 10 hours did you say that?
 (4) **A I believe that s in my report yes**
 (5) Q And so if I take that he had been on duty for ten hours out
 (6) of 16 he d been off duty for six isn t that correct sir?
 (7) **A Well, the arithmetic is correct sir**
 (8) Q Isn t that what you reported in your report to the
 (9) plaintiffs?
 (10) **A In the written report yes**
 (11) Q And you reviewed Mr Cousins deposition did you not?
 (12) **A Yes, I did**
 (13) Q And in Mr Cousins deposition he calculated the time
 (14) which he thought that he had been on duty during the afternoon
 (15) and evening of March 23 isn t that correct sir?
 (16) **A Yes**
 (17) Q And by his calculation he had been on duty under six hours
 (18) of the twelve hours preceding departure isn t that true sir?
 (19) **A I believe that's correct, yes**
 (20) Q Now you do not know do you sir the definition of off
 (21) duty that is accepted in the merchant marine under the statute
 (22) that you cited this morning 8104(a)?
 (23) **A I did not do an evaluation of how people interpret off duty**
 (24) **in the merchant marine**
 (25) Q You don t know whether it is true or not that the - that

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- (1) work that is done at the option and at the discretion of a mate
 (2) should or should not be treated as off duty time is that
 (3) correct sir?
 (4) **A Forgive me, Mr Lynch, could I hear the question back?**
 (5) Q In the - in the activities of Third Mate Cousins that you
 (6) described on your direct examination did you understand from
 (7) his deposition that there were certain times when he was
 (8) required to be at a certain place either by direct order or by
 (9) his standing orders?
 (10) **A Yes**
 (11) Q And that there were certain things that he did which he did
 (12) at his own option because he thought it was convenient to him
 (13) to do them at that time?
 (14) **A If you're referring to work, there s work that he did at**
 (15) **discretionary times, yes**
 (16) Q Yes and you don t know whether in the custom and practice
 (17) of the merchant marine work that is done at the discretion of
 (18) the mate that doesn t have to be done at any particular time
 (19) should be counted as off duty time or on duty time is that
 (20) correct sir?
 (21) **A In the merchant marine how that s interpreted I do not**
 (22) **know**
 (23) Q Do you know what agency of the United States government is
 (24) responsible for determining whether there has been
 compliance
 (25) with 8104(a)?

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- (1) **A The United States Coast Guard**
 (2) Q Do you know whether after this accident the United States
 (3) Coast Guard made any claim that any officer on this vessel
 (4) failed to comply with 8104(a)?
 (5) MR GERRY Object Your Honor irrelevant
 (6) THE COURT Question was does he know whether -
 (7) MR LYNCH Does he know whether the Coast Guard has
 (8) made any charge
 (9) THE COURT I ll allow the question and answer
 (10) MR LYNCH I m sorry I couldn t hear
 (11) THE COURT I will allow the question and answer
 (12) THE WITNESS I made no evaluation of the Coast
 (13) Guard
 (14) BY MR LYNCH
 (15) Q Now would you agree with me Dr Dinges that a person
 (16) could be in compliance with 8104(a) and be quite fatigued?
 (17) **A Yes**
 (18) Q Is it also possible that a person could be out of
 (19) compliance with 8104(a) and be quite alert and able to
 (20) perform?
 (21) **A Are we speaking hypothetically, Mr Lynch?**
 (22) **Q Yes**
 (23) **A Yes**
 (24) Q For example a person might have had a great deal of sleep
 (25) just outside that little twelve hour boundary that you were

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- (1) looking at on your billboard chart?
 (2) **A Hypothetically, yes**
 (3) Q Now in evaluating the fatigue issue you testified to an
 (4) opinion that the Third Mate Cousins was in fact tired Can I
 (5) use that term instead of fatigued?
 (6) **A If you wish, yes**
 (7) Q I m -
 (8) **A I will accept that**
 (9) Q I m not trying to -
 (10) **A No, I will accept It**
 (11) Q It s just easier to say In testifying that Third Mate
 (12) Cousins was in fact tired did you give consideration to the
 (13) amount of rest that he had had to the extent it was disclosed
 (14) by the record?
 (15) **A One of the pieces of information that I was interested in**
 (16) **by way of evaluation was in addition to whether he met**
 criteria
 (17) **for off duty time for certain durations, to what extent when**
 he
 (18) **was off duty did he rest and to what extent did he sleep**
 (19) Q Okay Did you understand from the testimony that you
 (20) reviewed that he had slept from approximately 1 00 to about
 (21) 7 20 in the morning on the night of March 22nd or the morning
 (22) of March 23rd?
 (23) **A Yes, that's what he reported**
 (24) Q And did you understand that he had a nap in the afternoon
 (25) of about three and a half hours?-

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- (1) **A That s what he reported**
- (2) **Q So that s about ten hours of sleep in the preceding 16?**
- (3) **A Approximately**
- (4) **Q Now in your experience doing sleep research is ten hours**
- (5) **of sleep in the prior 24 hour period within that range that**
- (6) **meets people s sleep requirements?**
- (7) **A It is if we make certain assumptions about it And they re**
- (8) **considerable**
- (9) **Q Well just in terms of what the - you know if I were just**
- (10) **reading one of these publications without having someone to**
- (11) **tell me about the assumptions what would it list as the**
- (12) **average sleep range for healthy individuals in the age range of**
- (13) **Mr Cousins?**
- (14) **A The range, which refers to the lowest ever found and the**
- (15) **highest ever found on a regular basis may be anywhere**
- (16) **from two**
- (17) **or three hours on the low end to ten hours average sleep on**
- (18) **the**
- (19) **high end The grand average for most people is around**
- (20) **eight**
- (21) **hours of sleep per day**
- (22) **Q Now you didn t know anything about the specific sleep**
- (23) **experience of Mr Cousins leading up to March 22nd March**
- (24) **23rd**
- (25) **did you?**
- (26) **A No**
- (27) **Q You made the assumption that he must be chronically**
- (28) **fatigued but did you look into in fact what sleep he had in**
- (29) **fact received?**

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- (1) **A In order to answer that, I need to explain that To look**
- (2) **into his sleep may not mean the same thing to me that it may**
- (3) **mean to you in your question What do you mean by "look**
- (4) **into**
- (5) **his sleep ?**
- (6) **Q All I meant was to determine the numbers of hours of sleep**
- (7) **that he got in the say seven days prior to March 22 and March**
- (8) **23**
- (9) **A That information wasn't available to me**
- (10) **Q Did you note that the Exxon Valdez had spent several slack**
- (11) **days in San Francisco prior to its trip to Valdez?**
- (12) **A I have a recollection in the record that there was - there**
- (13) **was time in San Francisco before the journey north**
- (14) **Q And did you understand that there were no loading or**
- (15) **unloading operations going on at that time?**
- (16) **A I don t recall that, but I'll accept that if you say that's**
- (17) **what the record shows**
- (18) **Q Did you have any information I noticed that one of your**
- (19) **charts had a - some information about storms and Mr Gerry**
- (20) **who s been there talked about 40 foot seas Have any**
- (21) **information that the Exxon Valdez had to encounter 40 foot seas**
- (22) **in the five days that it traveled from San Francisco to**
- (23) **Valdez?**
- (24) **A I had no information on the seas during that trip**
- (25) **Q Okay And did you in the materials you reviewed did you**
- (26) **see that it s reported at least by other researchers in the**

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- (1) **field that in the merchant marine people work this - this**
- (2) **particular work schedule that seamen look forward to at sea**
- (3) **time to catch up on their sleep?**
- (4) **A I can t endorse that as something that I know from the**
- (5) **literature Just the opposite**
- (6) **Q Do you not - did you - excuse me Was one of the sources**
- (7) **on which you relied the Pollard report?**
- (8) **A If you re referring to the Volpe transportation center**
- (9) **report that John Pollard and two others authored regarding**
- (10) **fatigue in maritime, yes**
- (11) **Q Didn t that report indicate that sailors are able to**
- (12) **accommodate long hours in port because they catch up on their**
- (13) **sleep at sea?**
- (14) **A That report suggested that some sailors report that but it**
- (15) **also indicated that in the Valdez trade, fatigue is endemic in**
- (16) **the industry and a chronic problem which would suggest**
- (17) **sleep**
- (18) **loss is chronic there**
- (19) **Q Well that s - that caused you to disregard the**
- (20) **information about the question of whether seamen customarily**
- (21) **look to sea time to sleep?**
- (22) **A No, on the contrary I didn't feel I could make that**
- (23) **assumption, nor could I make the assumption that there was**
- (24) **unusual sleep loss in the Valdez trade Instead, I relied on**
- (25) **the scientific literature based on 12 hour shifts We re**
- (26) **looking at people working 12 hours a day in various**
- (27) **industries,**

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- (1) **you find they develop sleep loss that is cumulative sleep**
- (2) **loss**
- (3) **Q There was a little bit of difference there between what Mr**
- (4) **Pollard and his colleagues were addressing and what you were**
- (5) **addressing?**
- (6) **A They were looking specifically at reports of fatigue in the**
- (7) **maritime industry, yes**
- (8) **Q Right on an on going basis?**
- (9) **A I think so, that's still on going**
- (10) **Q You were looking - you were reporting to diagnose the**
- (11) **state of alertness of a specific human being on a specific**
- (12) **date isn t that correct sir?**
- (13) **A I was attempting to determine what factors may have**
- (14) **contributed to fatigue in that individual**
- (15) **Q On a specific date?**
- (16) **A Yes**
- (17) **Q And no information that you had indicated that that**
- (18) **specific individual had encountered the problems with heavy**
- (19) **seas that are sometimes encountered in the Alaska trade isn t**
- (20) **that right?**
- (21) **A Correct**
- (22) **Q Isn t it true Dr Dinges that professionals in your field**
- (23) **and in your work it s been acknowledged that performance**
- (24) **which**
- (25) **is what you gave as the definition of fatigue or not being**
- (26) **fatigued performance can be maintained on a fairly long range**
- (27) **basis by people who s sleep has been cut to 60 percent of the**

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- (1) normal appetite?
 (2) **A No, sir**
 (3) Q Let me show you if I may a publication of yours marked
 (4) DX4409 Your Honor may I approach the witness?
 (5) THE COURT You may
 (6) BY MR LYNCH
 (7) Q Do you recognize that sir?
 (8) **A Yes it is a report I did for the United States Army**
 (9) **research medical development command in I think 1980**
 (10) Q I wish you'd turn with me to page 29 Did you tell the
 (11) Department of Defense that results consistently indicate that
 (12) most performance can be maintained with 60 to 70 percent of
 (13) the
 (14) usual amount of daily sleep?
 (15) **A Forgive me a second, Mr Lynch, and let me look at the**
 (16) **beginning of the sentence**
 (17) **That's what is in the report But I think you're**
 (18) **interpreting it - I think you said over an extended period of**
 (19) **time or a long period of time, and in fact, what we know**
 (20) **since**
 (21) **this report, certainly, from studies of sleep reduction, is**
 (22) **that it only holds for a very acute or short period of time**
 (23) Q I see That's something that was discovered since you
 (24) turned this in to the Department of Defense?
 (25) **A Yes Again, I'd have to look at the date on this, but this**
 (26) **is some very early work**
 (27) Q 1989?

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- (1) **A Well, it was published in 1980, which means the work was**
 (2) **done in the late 70s by us**
 (3) Q I see Now would you agree that a person who could
 (4) consistently get six hours of sleep a night would be well
 (5) within 60 percent or the high end of the sleeping range that
 (6) you were talking about?
 (7) **A It depends very much on that individual's known**
 (8) **biological**
 (9) **sleep need and the quality of the sleep In other words, if**
 (10) **they're healthy, they don't have a sleep disease, if they're**
 (11) **average in their sleep need amount, if they haven't got a**
 (12) **cumulative sleep debt and if there's no environmental**
 (13) **factor**
 (14) **disturbing that sleep**
 (15) Q And you don't know any of those things about Mr Cousins
 (16) do you?
 (17) **A I know that he usually works three hours a day in the**
 (18) **afternoon when he alleged to take the nap I know that he**
 (19) **drinks 16 cups of coffee a day, which can disturb sleep I do**
 (20) **know those things**
 (21) Q You know it can disturb sleep but you don't know that it
 (22) did disturb sleep do you?
 (23) **A That's correct**
 (24) Q As a 16 cup a day man I want to tell you that I sleep
 (25) without any problem Now part of your work something that
 (26) has more or less distinguished you in field and in fact part of
 (27) what you are really recommending to the government in the

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- (1) report that we just looked at is the concept that a person can
 (2) develop a strategy particularly if they work in an area where
 (3) there has to be continuous operations to supplement their
 (4) sleep or even anticipate the need for sleep isn't that true
 (5) sir?
 (6) **A Yes, it is**
 (7) Q And in that field if a person worked in an industry where
 (8) because of whatever Admiral Nelson or somebody else
 (9) decided
 (10) you work four hours on and then you have eight hours off and
 (11) then you work four hours again it would be a natural thing to
 (12) develop a strategy to anticipate your sleep need wouldn't it?
 (13) **A Well, natural thing - yes, but it wasn't so natural when I**
 (14) **proposed the idea to the United States government 15 years**
 (15) **ago,**
 (16) **and we developed the concept of counter measures and**
 (17) **strategies**
 (18) **for trying to cope with continuous operations**
 (19) Q You were dealing with people who were outside the maritime
 (20) industry correct?
 (21) **A No, I was doing that work for the office of naval research**
 (22) **at the time**
 (23) Q Well for the Department of Defense general were you not?
 (24) **A No, for the Office of Naval Research specifically**
 (25) Q And those were people who were working four on/four off?
 (26) **A They were working whatever shifts existed in the United**
 (27) **States Navy**
 (28) Q You were recommending to the United States Navy that it

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- (1) train these people to help them to take the benefit of naps
 (2) which would help them to avoid a sleep deficit isn't that
 (3) correct sir?
 (4) **A Yes In essence, we proposed to the Navy and they asked**
 (5) **us**
 (6) **to do studies to determine it, was if an individual had to**
 (7) **remain awake for an acute period of 50 or 60 hours, how**
 (8) **much**
 (9) **benefit could they get from a nap, and what kinds of things**
 (10) **benefited, did they actually feel better, did they perform**
 (11) **better, and in what way could they perform better, and did it**
 (12) **matter when you took the nap, and that concept was called,**
 (13) **pardon the expression, prophylactic napping**
 (14) Q Now Mr Cousins took a three and a half hour nap on the
 (15) afternoon of March 23rd is that correct sir?
 (16) **A He reported a three and a half hour nap that afternoon, a**
 (17) **catnap he called it**
 (18) Q And in your research you found that approximately a
 (19) quarter of the public can and do sleep even when they're not
 (20) tired to store up energy for possible future work needs is
 (21) that correct sir?
 (22) **A Yes, you can take a nap and it can help with performance**
 (23) **later on**
 (24) Q And in your experience the longer the nap the better in
 (25) helping performance isn't that correct sir?
 (26) **A Approximately, although it's not clear that that**
 (27) **relationship is purely linear It may be curvilinear from what**

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- (1) we now know
- (2) Q Did you know that in 1989?
- (3) A I don t know if at that time I did Mr Lynch
- (4) Q And in your - because you ve not been involved with the
- (5) merchant marine industry you don t know one way or the other
- (6) whether the kind of napping that Mr Cousins engaged in on
- that
- (7) Thursday afternoon was typical of merchant seamen who have
- to
- (8) work the split shift regime?
- (9) A No, but I don t know what s typical I m not sure what you
- (10) mean, and I m not trying to be evasive, just when you use
- the
- (11) word typical with a scientist, we re always going to ask you
- (12) well, what is typical I mean what do you mean by that?
- (13) Q Well I get to ask the questions fortunately
- (14) A That s true, thank you
- (15) Q When you turn the question around on a lawyer he ll tell
- (16) you he gets to ask the questions
- (17) What I meant was that sailors - sailors who have become
- (18) accustomed to working four on/eight off/four on may adapt their
- (19) sleeping patterns so that they can get their rest in a
- (20) different pattern than those of us who work eight or whatever
- (21) number of hours and then go home for the night correct?
- (22) A It s correct, although I have to give the caveat that a
- (23) sailor who has a watch that is biologically incompatible, the
- (24) night shift watch, midnight to four something, may never
- adapt
- (25) and that s what seems to be the case in every other area
- that

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- (1) we look at that, so the adaptation may vary from individual
- to
- (2) individual
- (3) Q Now the watch that Mr Cousins had was from 8 00 p m to
- (4) midnight correct?
- (5) A Yes
- (6) Q And you were saying something about how the body is
- getting
- (7) ready to go to sleep at midnight was that what -
- (8) A For him, according to what his deposition indicated, was
- (9) his habitual sleep time, yes
- (10) Q In other words you got from the fact that he testified
- (11) that on the preceding night that he d been in bed by 1 00 that
- (12) that was his patterned sleep time?
- (13) A Well, that, and the fact that he said he routinely worked
- (14) the watch eight to midnight, and that would be then after
- that
- (15) the time for sleep
- (16) Q Well you know the word when you ask a lawyer about
- (17) typical routinely he s likely to ask you have you ever seen
- (18) the David Letterman show?
- (19) A I have, yes
- (20) Q Do you know what kind of ratings it gets?
- (21) A I don t
- (22) Q Do you know what time it s on?
- (23) A In Philadelphia, it comes on at - after our local news,
- (24) 11 30
- (25) Q And does it go past midnight?

- (1) A I think it does I think it s a one hour show
- (2) Q Did you notice in the Pollard report that the third mate
- (3) who was interviewed by the researchers there followed exactly
- (4) the pattern that Mr Cousins followed? Six hours of sleep
- (5) between watches and three hours in the afternoon?
- (6) A Well there was one instance in there of a pattern that
- may
- (7) have been similar to Mr Cousins reported pattern at that
- (8) time
- (9) Q I think is 4409 the one that you have in front of you?
- (10) A It is
- (11) Q Could you turn to page 45? Was that the effective or the
- (12) essence of your findings as reported to the United States
- (13) Department of Defense in your study of 1980?
- (14) A No that s actually a summary of the relevant literature a
- (15) statement about what we interpreted to be known at that
- time
- (16) Q I see That wasn t your own research because this was
- (17) really suggestive the study and what further could be known
- (18) about when to take the nap is that correct?
- (19) A Yes
- (20) Q Are you familiar with this text Dr Dinges?
- (21) A I am I contributed a chapter to it
- (22) Q And in that chapter did you write that - let met show it
- (23) to you and if you could just read that?
- (24) A It appears -
- (25) Q It appears -

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- (1) A It appears therefore that after - excuse me, let me start
- (2) over It appears, therefore, that afternoon naps, including
- (3) those taken prophylactically before sustained wakefulness
- have
- (4) beneficial effects on performance and physiological sleep
- (5) tendency up to 12 hours after they are taken, although the
- (6) napper may not be fully aware of these benefits
- (7) Q And when you wrote that and published that did you
- (8) consider that to be an accurate reflection of the state of
- (9) scientific knowledge about the effect of the nap on the likely
- (10) fatigue of an average person?
- (11) A Well, I did, but I think the statement is intended to say
- (12) that a nap can help performance, but if you look at the exact
- (13) studies that s these quotes are all coming from that we re
- (14) summarizing, what they actually show is the nap doesn t
- make
- (15) performance normal, it just helps performance It s better
- (16) than no sleep is the point here
- (17) Q We could spend a lot more time on this but isn t it true
- (18) that when you look at those studies they say that a nap
- (19) coupled with a reasonable amount a reasonable percentage of
- (20) sleep returns a person to essentially full performance?
- (21) A It depends The answer is yes, but it depends on that
- (22) latter part, which is a reasonable amount of sleep Once
- sleep
- (23) debt is present, a nap does not guarantee repayment of the
- (24) debt We ve seen that in airline pilots that we ve studied
- and
- (25) others

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- (1) use that to define a sleep of 10 15 20, 30, maybe 60 minutes
- (2) but not three and a half hours That led me that possibly he
- (3) really didn't know He wasn't trying to deceive He may not
- (4) have been aware as to whether that sleep was - had continuity
- (5) was deep or not Could very well have been fragmented loose
- (6) and involved much wakefulness
- (7) Q This report DX4409 where you determined that persons
- (8) could get by with sixty to seventy percent of sleep need for
- (9) how long a period of time could they do that?
- (10) A Well, at the time we were doing that and the military field
- (11) studies that have been done, people can get by on that that way
- (12) for about three, four five, maybe seven days Now we have to
- (13) be careful here, Mr Gerry Get by to me means they don't
- (14) shoot their commanders in a military operation, they still
- (15) shoot at the enemy But eventually, protocol breaks down
- (16) What the field studies show is that at that level soldiers
- (17) begin to refuse taking orders and they'll stop cleaning weapons
- (18) and they engage in other manners that indicate they're becoming
- (19) militarily ineffective, so what you mean by they can continue
- (20) depends very much on your criteria
- (21) Q And in judging Mr Cousins performance in the 15 minutes
- (22) prior to the grounding of the Exxon Valdez on Bligh Reef have
- (23) you heard anything to change your opinion from the fact that
- (24) Mr Cousins was fatigued at that time?
- (25) A No, I have not

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- (1) Q Have you heard anything in the examination to change your
- (2) opinion from the fact that Mr Cousins fatigue is one of the
- (3) causes of his errors at the time of the - leading up to the
- (4) grounding?
- (5) A Nothing to change my opinion
- (6) Q And have you heard anything in the questions that were
- (7) asked that would change your opinion that the company policies
- (8) contributed to his fatigue?
- (9) A I thought about this, particularly in the last three days
- (10) as I listened to testimony At the time I was deposed I was
- (11) asked whether I thought -
- (12) MR LYNCH Your Honor I don't recall having asked
- (13) any questions in this area in cross
- (14) THE COURT I don't either Mr Gerry
- (15) MR GERRY This is my last question Your Honor
- (16) THE COURT Well last doesn't make it something that
- (17) was inquired into
- (18) MR GERRY I understand
- (19) THE COURT Sustain the objection
- (20) BY MR GERRY
- (21) Q And you - so as far as you sit there now you still
- (22) maintain the position that you had when you came in and what
- (23) you testified before right?
- (24) A Absolutely
- (25) Q As to all of your opinions?

- (1) A Yes
- (2) MR GERRY Thank you very much
- (3) THE COURT Thank you doctor you may step down
- (4) THE WITNESS Thank you Your Honor
- (5) THE COURT You may call your next witness and clean
- (6) up the witness stand
- (7) MR O NEILL I'd come up to the podium Judge but
- (8) I'm trapped Plaintiffs call James Shaw by his videotaped
- (9) deposition
- (10) (The Witness Is Sworn)
- (11) DIRECT EXAMINATION OF JAMES SHAW (by video)
- (12) BY VIDEO EXAMINER
- (13) Q Are you employed at the present time Mr Shaw?
- (14) A No, I'm not
- (15) Q By whom were you last employed?
- (16) A Exxon Shipping Company
- (17) Q And when did that employment cease?
- (18) A December the 7th of 90
- (19) Q All right How long had you been employed by them?
- (20) A 13 years and some months
- (21) Q You do have a seaman's card?
- (22) A I had one, yes, somewhere
- (23) Q A seaman's document I guess call it?
- (24) A That's correct
- (25) Q What are the endorsements on the document sir?

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- (1) A Chef, maintenance, mess/maintenance, utility and I think it
- (2) was a wiper
- (3) Q How long did you go to sea altogether?
- (4) A The entire - well, let's see, I'll say approximately seven
- (5) years
- (6) Q Is the first - did you work for any other companies than
- (7) Exxon?
- (8) A When you say any other companies than Exxon, you mean
- (9) during that time or before?
- (10) Q During any of the time that you went to sea?
- (11) A No
- (12) Q Okay How old are you now sir?
- (13) A I'm 44
- (14) Q And what did you do before you went to sea?
- (15) A I was chef in hotels, hotel and restaurant manager
- (16) Basically, that's -
- (17) Q What's your educational background?
- (18) A I have a year and a half of college
- (19) Q All right When you first went to work for Exxon what
- (20) capacity were you hired?
- (21) A I was hired in, I guess you would say, the capacity of mess
- (22) and utility
- (23) Q Okay mess and utility does whatever is necessary around
- (24) the galley and also serving?
- (25) A That's correct

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- (1) Q Let me just ask you can you conclude from the knowledge
 (2) that Third Mate Cousins had six hours of sleep on the night of
 (3) March 22 March 23 that he had sleep debt?
 (4) **A Well, I don't have -**
 (5) Q Can you just answer that question Dr Dinges?
 (6) **A It's hard to answer without an explanation**
 (7) Q Just answer it then you can give an explanation
 (8) **A I think I can obtain an estimate of that, yes**
 (9) Q What about the knowledge that he had six hours of sleep
 (10) leads you to the conclusion that he had sleep debt?
 (11) **A That was going to be my explanation In the broader**
 (12) **context of what we know about Mr Cousins and that work**
 (13) **and the**
 (14) **work/rest cycles**
 (15) Q What you know about Mr Cousins is that he said he didn't
 (16) feel tired?
 (17) **A Yes**
 (18) Q That he had the 8 00 to 12 watch?
 (19) **A Yes**
 (20) Q That he had come up on a five day trip from San Francisco
 (21) been at sea for five days correct?
 (22) **A Yes**
 (23) Q And that he'd been in port for two or three days prior to
 (24) that with the ship slack because of repairs to the
 (25) turbocharger correct?
 (26) **A I took your word for that, yes**

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- (1) Q What about any of those things leads you to the conclusion
 (2) that at that point in time whatever may be true of the nature
 (3) of this work at other times at that point in time Mr Cousins
 (4) had a sleep debt?
 (5) **A That he - none if those things It was other things**
 (6) Q And they were?
 (7) **A He had worked typically worked 12 hours a day, typically**
 (8) **did three hours of work during his afternoon rest period,**
 (9) **three**
 (10) **hours of paperwork, that he drank 16 cups of coffee a day**
 (11) **which can mean he's using it both to help maintain his**
 (12) **alertness and it also may have effect on his sleep**
 (13) Q Did - all these things are may's correct?
 (14) **A Well, yes**
 (15) Q You testified at your deposition that based on your
 (16) research and experience there is nothing inherent in working a
 (17) 12 hour day that will produce chronic fatigue isn't that true
 (18) sir?
 (19) **A I don't recall using the word inherent but if I did I**
 (20) **certainly didn't mean that - what I meant - what I would say**
 (21) **now and what I thought I meant then was that twelve hours**
 (22) **in**
 (23) **and of itself does not guarantee fatigue It depends very**
 (24) **much**
 (25) **on the amount of sleep, the amount of rest, the regularity**
 (26) **and**
 (27) **predictableness of the work, how it occurs from day to-day,**
 (28) **days off, et cetera**
 (29) MR LYNCH I have no further questions Your Honor

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- (1) THE COURT Redirect?
 (2) REDIRECT EXAMINATION OF JAMES DINGES Ph D
 (3) BY MR GERRY
 (4) Q Doctor does it matter whether sleep is lost aboard a ship
 (5) or ashore as to whether or not there is a build up of sleep
 (6) debt?
 (7) **A No Sleep is a great leveler Mr Gerry, king or pauper**
 (8) **shore or landlubber or seaman, it's - you lose sleep, it will**
 (9) **show up in performance and alertness**
 (10) Q When you were quoted in the Boston Globe had you done
 (11) any
 (12) research into the Exxon Valdez?
 (13) **A No, other than the fact that as someone who is asked to**
 (14) **teach the NTSB periodically regarding not specific accidents**
 (15) **investigations, but in general how to evaluate performance**
 (16) **in**
 (17) **an accident and to help with their research, I gather**
 (18) **government reports Not just from them, federal highway**
 (19) **and**
 (20) **many agencies So my laboratory maintains reports and**
 (21) **their**
 (22) **report of the Exxon Valdez was one that we had**
 (23) Q When you talked about in your report you talked about the
 (24) ten hours in the 16 hours prior to the grounding And here you
 (25) talk about 11 What changed between the time of your report
 (26) and the time here that made you change that hourly result?
 (27) **A Well, Mr Kunkel's testimony - I'm sorry, Captain**
 (28) **Kunkel's**
 (29) **testimony this morning that indicated contrary to Mr**
 (30) **Cousins'**
 (31) **deposition that Mr Cousins was called for topping off at**

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- (1) **p m not seven p m , and topping off went for an hour and a**
 (2) **half approximately, ending at 24 minutes after seven and**
 (3) **that**
 (4) **another mate was involved in it, was Mr Cousins That's a**
 (5) **additional hour**
 (6) Q So with the topping off ending at 24 minutes after seven
 (7) did you believe that Mr Kunkel's testimony was more believable
 (8) and what you should use?
 (9) **A Well, I did to the extent that that was also consistent**
 (10) **with what he said two months after the grounding at the**
 (11) **NTSB**
 (12) **testimony**
 (13) Q You've been asked about this nap that was reported by Mr
 (14) Cousins in the afternoon Did you consider that at the time
 (15) you gave your opinion?
 (16) **A I did**
 (17) Q And did you see anything peculiar about that nap?
 (18) **A Well, again, the fact that he had some sleep, frankly, I'd**
 (19) **rather make sure seamen get that sleep in the afternoon**
 (20) **than**
 (21) **not, so it is consistent with certainly the things I've**
 (22) **recommended about napping, but Mr Cousins called that**
 (23) **nap a**
 (24) **catnap Now, later in his deposition, he just said nap, but I**
 (25) **distinctly the first time called that a catnap In 18 years of**
 (26) **researching napping and writing the first definitive text on it**
 (27) **and looking at more than three now people regarding naps**
 (28) **never**
 (29) **one time have I or my associates ever heard an individual**
 (30) **call**
 (31) **a three and a half hour sleep a catnap People consistently**

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- (1) Q How long did you remain in that capacity?
 (2) A I really didn't stay in that capacity I was hired in that
 (3) capacity
 (4) Q Okay what happened to you next then?
 (5) A I was the chef
 (6) Q And how many vessels did you sail on?
 (7) A However many we had at the time
 (8) Q You sailed on most of them?
 (9) A That's correct
 (10) Q Okay What was the year that you were hired?
 (11) A 19 and 7 - 76 or 77 I think it's 77
 (12) Q Now you - you sailed as chef on many ships and then did
 (13) you get a shoreside job with Exxon?
 (14) A That's correct
 (15) Q What was that job?
 (16) A Port steward
 (17) Q Where?
 (18) A In the Houston -
 (19) Q All right and did you change jobs from the time you became
 (20) port steward until the time you were discharged in December of
 (21) this last year?
 (22) A No, I didn't
 (23) Q And always in Houston?
 (24) A That's correct Well, Houston and Baytown
 (25) Q How far apart are they?

Vol 9 999

- (1) A 30 some miles
 (2) Q Okay And is Houston the headquarters of the shipping
 (3) company Exxon Shipping Company?
 (4) A It is now It wasn't when I first was employed with them
 (5) Q When you first became port steward what were your tasks
 (6) what were your jobs?
 (7) A Purchasing essential items for the galley, handling of
 (8) stores or assigning of personal sanitation inspections
 (9) supervision of the departmental personnel within the
 (10) department lining up suppliers, vendors inspecting their
 (11) facilities I guess that's about it
 (12) Q And in doing that job did you go aboard the vessels as
 (13) they came into port?
 (14) A Yes I did
 (15) Q And when you went aboard the vessels with whom would
 (16) you
 (17) discuss your problems?
 (18) A Numerous people, people within the department, the
 (19) captain,
 (20) maybe the chief mate, engineering department, all
 (21) departmental
 (22) heads, basically
 (23) Q So did you then come to know most of the department heads
 (24) of those vessels that sailed in and out of Baytown Houston?
 (25) A Yes I did
 (1) Q In that capacity did you come to know Joseph Hazelwood?
 (2) A Yes I did
 (3) Q When did you first meet him?

Vol 9 1000

- (1) A If I'm not mistaken I may have first met him on board the
 (2) Exxon North Slope and I'm not sure if he was in the position
 (3) of captain already at that time
 (4) Q Were you - were you port steward then or were you -
 (5) A No, I was sailing then at that time
 (6) Q And you were on the North Slope?
 (7) A That's correct
 (8) Q In what capacity?
 (9) A I was the chef
 (10) Q How long did you sail with Mr Hazelwood at that time?
 (11) A My stints sailing really were not really lengthy I
 (12) basically would train personnel Although I was the chef I
 (13) would rotate from vessel to vessel in the training capacity of
 (14) the other personnel, so it may have been for a month and
 (15) then
 (16) It may have been for sixty days, it may have been two
 (17) weeks
 (18) Q The first time you met Hazelwood was on the North Slope?
 (19) A To the best of my recollection, it was
 (20) Q When did you next run into him?
 (21) A On - I may have run into him on several other - numerous
 (22) other locations, because we did meetings and stuff ashore
 (23) I
 (24) probably had met him on some of those but when you say
 (25) the next
 (1) time or the very next time I can't really give you an idea I
 (2) happened to observe him, I guess, this would be aboard the
 (3) Exxon Yorktown some latter years, probably around '83, 84
 (4) time
 (5) frame

Vol 9 1001

- (1) Q And was he sailing as master of the Yorktown at that time?
 (2) A Yes, he was
 (3) Q Now were you in the capacity of port steward then?
 (4) A Yes I was
 (5) Q Did you have occasion to discuss matters with him while he
 (6) was on the Yorktown and you were port steward?
 (7) A Yes, I did
 (8) Q And what can you tell me about his demeanor and his
 (9) character as far as you saw it at that time?
 (10) A His demeanor and character was, to the best of my
 (11) ability,
 (12) that he was capable of handling and making decisions of
 (13) everything he was doing He seemed perfectly fine to me
 (14) Q Okay Did you smell alcohol on his breath?
 (15) A First occasion, no, I didn't
 (16) Q What about the second occasion?
 (17) A Yes, I did
 (18) Q And was that prior to the time that Mr Hazelwood went for
 (19) rehabilitation?
 (20) A No, it wasn't
 (21) Q Okay it was after he had - you understood he had been to
 (22) rehabilitation?
 (23) A Yes, it was
 (24) Q When he came back did you find out at some time that he
 (25) had gone for rehabilitation?
 (1) A Yes, I did

Vol 9 1002

- (1) Q How did you find that out sir?
 (2) **A Through a conversation with port captain Bill Sheehy**
 (3) Q And that s S h e e -
 (4) **A - h y**
 (5) Q h y and that was after he d come back from - from rehab
 (6) or had gone through rehab?
 (7) **A That s correct**
 (8) Q Okay The - and prior to having that conversation with
 (9) Captain Sheehy you had been aware that Captain Hazelwood
 had
 (10) been drinking at the time?
 (11) **A Yes, I was**
 (12) Q That conversation took place in Captain Sheehy s Baytown
 (13) office is that right?
 (14) **A That s correct**
 (15) Q What did - what did you learn there about his alcohol
 (16) treatment if anything?
 (17) **A I really didn t learn anything about his alcohol**
 (18) **treatment The way that I found out where he was in a**
 (19) **conversation that being in the capacity - the position of port**
 (20) **steward I would always frequent the vessels and I just was**
 (21) **aware - I wasn t aware of where he was It was a concern**
 (22) **for**
 (23) **where he was that asked Captain Sheehy where was Joe I**
 (24) **hadn t**
 (25) **seen him lately And he mentioned to me that he had been**
 in
 (26) **one of the treatment facilities**
 (27) Q And did - were you told whether he d gone in there

Vol 9 1003

- (1) voluntarily or was coerced into going or -
 (2) **A No, I was not I did not know**
 (3) Q After having that conversation with Captain Sheehy did you
 (4) then have occasion to meet Mr Hazelwood again?
 (5) **A Yes, I did**
 (6) Q When was that?
 (7) **A Probably a month or two after this conversation I m not**
 (8) **exactly sure when this was, it was probably in 84, again,**
 (9) **after he had come back from -**
 (10) Q 84 85 somewhere in that time?
 (11) **A Somewhere around that time, yes probably 84**
 (12) Q And what was his position at the time you met him again?
 (13) **A He was the captain**
 (14) Q Of what vessel?
 (15) **A The Exxon Yorktown**
 (16) Q And where did you meet him?
 (17) **A In Baytown**
 (18) Q Aboard the vessel?
 (19) **A That s correct**
 (20) Q And had you boarded the vessel in your official capacity to
 (21) take care of the problems any problems they might have?
 (22) **A Yes I did**
 (23) Q And did you speak to Joe Hazelwood at that time in your
 (24) official capacity?
 (25) **A Yes, I did**

Vol 9 1004

- (1) Q Did you smell anything at that time?
 (2) **A No I didn t He was fine**
 (3) Q Was that his first trip on the Baytown as far as you know?
 (4) **A That s correct**
 (5) Q All right And then the vessel went out What was its
 (6) turn around time?
 (7) **A It varied On some occasions it could be six to seven**
 (8) **days, some occasions would be 14 days and back in**
Baytown
 (9) Q Did you have occasion to go aboard the vessel a second time
 (10) when it returned to Baytown?
 (11) **A Yes, I did**
 (12) Q And did you again meet with Mr Hazelwood?
 (13) **A Yes, I did**
 (14) Q What did you notice at that time?
 (15) **A I got the distinct odor of alcohol on his breath**
 (16) Q Could you identify what kind of alcohol from the odor?
 (17) **A I would say it was a bourbon Could be scotch or**
bourbon
 (18) **or whatever**
 (19) Q Did you come to the opinion or conclusion that it was
 (20) bourbon or some alcohol like that rather than something like
 (21) Moussy Beer?
 (22) **A I really didn t dwell on, you know, I just got the distinct**
 (23) **odor of alcohol on his breath and I didn t even dwell or**
ponder
 (24) **on trying to render an opinion what it was**
 (25) Q And when - in point of time where was that how long

Vol 9 1005

- (1) after you d had the discussion with Captain Sheehy about his
 (2) rehabilitation did you notice that?
 (3) **A It was really recent after that. I guess somewhere in the**
 (4) **period of maybe a month or two**
 (5) Q Okay And at that time when you - when you noticed that
 (6) did you report that to anybody?
 (7) **A Yes I did**
 (8) Q How long had the vessel been in at the time you met with
 (9) the captain on that occasion?
 (10) **A I was at the dock before the - before the vessel finished**
 (11) **tying up, so it was coming in as I was at the dock**
 (12) Q Okay so had Captain Hazelwood had any opportunity to go
 (13) ashore and get a drink?
 (14) **A To the best of my knowledge, no**
 (15) Q Did you go aboard the vessel as soon as the vessel came
 (16) in?
 (17) **A Yes, I did**
 (18) Q And did you see Captain Hazelwood very shortly thereafter?
 (19) **A Yes, I did**
 (20) Q Then did you report that incident to anyone?
 (21) **A Yes, I did**
 (22) Q To whom?
 (23) **A I talked to Ms Case, Kimberly Case on the phone about it**
 (24) **briefly and -**
 (25) Q Didn t you - before you talked to Ms Case didn t you

Vol 9 1006

- (1) report it to Captain Sheehy?
 (2) **A I had not finished I talked to Ms Case about this and I**
 (3) **then talked to Captain Sheehy**
 (4) Q You talked to Kimberly Case first?
 (5) **A That s correct**
 (6) Q And then you reported the incident to Captain Sheehy?
 (7) **A That s correct**
 (8) Q And did you think it important to report that Hazelwood was
 (9) still drinking even though he d gone through rehabilitation?
 (10) **A Yes, I thought it was important**
 (11) Q Let me ask you this Was there any other reason that you
 (12) reported it?
 (13) **A I really liked Joe as a person and I - I didn t want what**
 (14) **I felt anything to happen to Joe in a manner of being**
 (15) **terminated from the company I knew Captain Sheehy**
 (16) **really**
 (17) **well I felt for sure that in talking to Captain Sheehy, that**
 (18) **he would get a handle on it if there was a problem**
 (19) Q You had a good feeling for Exxon?
 (20) **A Yes, I do**
 (21) Q You found them to be a reasonable employer?
 (22) **A Yes, I did**
 (23) Q Okay
 (24) **A And do**
 (25) Q They promoted you to a pretty good position?
 (26) **A Fairly yes**

Vol 9 1007

- (1) Q Do you have any reason to want to hurt the company in any
 (2) way?
 (3) **A None whatsoever**
 (4) Q And you like Joe Hazelwood?
 (5) **A Yes, I do**
 (6) Q Do you have any reason to want to hurt him in any way?
 (7) **A None whatsoever**
 (8) Q Okay Was anything done about that first incident when you
 (9) smelled alcohol on Hazelwood s breath and reported it to
 (10) Sheehy? Was any action taken by the company to your
 (11) knowledge?
 (12) **A Other than Captain Sheehy going down and coming back**
 (13) **and**
 (14) **stating to me that he had met with Joe and Joe denied it, to**
 (15) **the best of my ability I am not sure if anything else was**
 (16) **done**
 (17) **or not I don t know**
 (18) Q Okay Well when he came back and reported to you that he
 (19) had talked to Hazelwood and Hazelwood had denied drinking
 (20) did
 (21) you then do anything else about the incident?
 (22) **A Yes, I did**
 (23) Q What did you do?
 (24) **A Because I had mentioned this to Joe - or to Captain**
 (25) **Sheehy, I went to the vessel and I contacted Captain**
 (26) **Hazelwood**
 (27) **and I told him that it was I that had told Captain Sheehy**
 (28) **what**
 (29) **I felt I smelled on his breath I did this because I like**
 (30) **Captain Hazelwood I did not want him to feel that it came**

Vol 9 1008

- (1) **from anyone else I told him that if there was a problem I**
 (2) **hoped he would correct it because personally I thought that**
 (3) **he**
 (4) **was a fine person and one of the better captains that we had**
 (5) **in**
 (6) **the fleet**
 (7) Q And after this first incident that you reported to Sheehy
 (8) Captain Sheehy was there a second incident?
 (9) **A Yes, there was**
 (10) Q And how long ago was that the next trip or the trip after
 (11) or when?
 (12) **A It was the next trip**
 (13) Q And did you board the vessel again?
 (14) **A Yes, I did**
 (15) Q And did you talk to Hazelwood?
 (16) **A I met him in the passage area**
 (17) Q Did you smell anything about him?
 (18) **A Yes, I did**
 (19) Q What?
 (20) **A Distinct odor of alcohol again**
 (21) Q And did you report that to anyone?
 (22) **A No, I didn't**
 (23) Q Did you call Kimberly Case?
 (24) **A We talked about it yes**
 (25) Q Who is Kimberly Case?
 (26) **A She s the port steward at that time on the west coast**
 (27) Q Did she have the whole west coast then as port steward?

Vol 9 1009

- (1) **A That s correct**
 (2) Q All right Had she - did you know her to be a friend of
 (3) Joe Hazelwood s?
 (4) **A Yes, I did**
 (5) Q Was she to your knowledge - what was her relationship to
 (6) Joe Hazelwood?
 (7) **A In the past she had been a friend of Captain Hazelwood s**
 (8) **yes**
 (9) Q Why did you tell her I m sorry not report
 (10) **A During the course of conversation If we have a problem**
 (11) **not really a problem If something should happen on either**
 (12) **one**
 (13) **of the coasts that either she feels I may be capable of**
 (14) **handling better than she can, or if there s a problem with**
 (15) **someone that I may be closer to than she is closer to, or she**
 (16) **is closer to a person than I am, and if we have better**
 (17) **knowledge we would converse It was a intramutual respect**
 (18) **that**
 (19) **we had for each other and the people aboard the vessel**
 (20) **I talked to Kimberly because I wanted to see if maybe she**
 (21) **would have a better idea of what manner in which we could**
 (22) **approach this problem than probably I had done before**
 (23) Q What was her reply to you?
 (24) **A Well, what she said was something to the effect that he s**
 (25) **a**
 (26) **big boy now and he can handle himself**
 (27) Q And did you report this second incident to Captain Sheehy?
 (28) **A No, I didn t**

Vol 9 1010

- (1) Q In your discussion with Kimberly Case did she tell you
 (2) whether or not she was aware that Captain Hazelwood had
 been
 (3) through rehabilitation?
 (4) **A Yes she was aware of it**
 (5) Q On that second occasion was there - was there any way
 (6) that Captain Hazelwood could have gotten ashore and had that
 (7) drink before you met him?
 (8) **A This may have possible because I really didn't see him**
 (9) **immediately after getting aboard the vessel I went through**
 (10) **the galley and I had a few things to do there, so it could have**
 (11) **been possible, yes**
 (12) Q Was there a third occasion when you went aboard the
 (13) Yorktown and -
 (14) **A Yes, there was**
 (15) Q Did anyone go aboard with you?
 (16) VIDEO EXAMINER I'm going to object to the form and
 (17) ask to clarify As I understand the witness testimony this
 (18) would be the fourth time?
 (19) VIDEO EXAMINER Yeah The first time -
 (20) VIDEO EXAMINER Correct So -
 (21) VIDEO EXAMINER This would be the fourth time
 (22) VIDEO EXAMINER So we don't get any confusion
 (23) VIDEO EXAMINER That's fine I appreciate that
 (24) BY VIDEO EXAMINER
 (25) Q This would be after the first two times that you smelled

Vol 9 1011

- (1) alcohol So I'm talking about the third incident but the
 (2) fourth time when you went aboard when he was on the
 Yorktown?
 (3) **A Now what was the question again?**
 (4) Q Was anybody with you that fourth time when you went
 aboard?
 (5) **A When I went aboard the vessel, I had an assistant that**
 (6) **would do several things with me This person was Sam**
 (7) **Pierpoint Ellen Share was also in the company at that time**
 (8) **She had something to do with safety She may have gone**
 aboard
 (9) **with me at that time Frank Pichalsa, works for Ellis Mitchell**
 (10) **may have been - may have gone aboard with me also**
 (11) Q Can I ask you to do something for me Mr Shaw When you
 (12) say she may have it doesn't really give us your best
 (13) recollection Is your best recollection that she went aboard
 (14) with you on that occasion?
 (15) **A I think she did, yes**
 (16) Q All right And who else did you mention I'm sorry I
 (17) interrupted you
 (18) **A Frank Pichalsa with Ellis Mitchell Sam Pierpoint, who**
 was
 (19) **on - he was temporary, well, he wasn't a permanent**
 assigned
 (20) **employee, he was a contract employee with the company**
 (21) Q On that occasion did you go to see Mr Hazelwood?
 (22) **A Yes, I did**
 (23) Q Could you see him?
 (24) **A Not then The door was locked on this occasion**
 (25) Q Was he aboard?

Vol 9 1012

- (1) **A To the best of my knowledge, he was I don't know**
 because
 (2) **the room was locked I wasn't aware**
 (3) Q Did you find out why the room was locked?
 (4) **A Well the personnel aboard the vessel were making**
 remarks
 (5) **to the point that there was a female companion or**
 something in
 (6) **the room with him and they were having a party and Joe**
 was
 (7) **busy**
 (8) Q Okay then did you finally see him that day?
 (9) **A Yes, I did**
 (10) Q All right and at that time did you smell anything on his
 (11) breath?
 (12) **A Yes, I did**
 (13) Q What?
 (14) **A Here again, I got the distinct odor of alcohol**
 (15) Q And were you close enough to him at that?
 (16) **A Yes, I was**
 (17) Q To make that judgment did you decide right then and there
 (18) what it was?
 (19) **A Yes I did**
 (20) Q And you decided it was alcohol?
 (21) **A Yes**
 (22) Q Did you decide it was alcohol?
 (23) **A Yes, I did**
 (24) Q Where did that occur?
 (25) **A This was on the ladder coming down from his room to the**

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- (1) **mess area**
 (2) Q Did you discuss this with Ellen Share?
 (3) **A We had a conversation about it, yes**
 (4) Q And so that's the fourth time you were aboard and the third
 (5) incident Was there a fourth incident when you were aboard the
 (6) Yorktown?
 (7) **A When you say incident, yes, I went aboard the vessel**
 each
 (8) **time it was in As far as Hazelwood, himself, yes, there was**
 (9) **another occasion**
 (10) Q And did that involve a chef aboard?
 (11) **A Yes it did**
 (12) Q What was his name?
 (13) **A Jesse Watts He was a temporary capacity, he wasn't**
 (14) **sailing on the ship He was in a step-up position**
 (15) Q Tell us about that incident
 (16) **A This was in the late evening The vessel had docked I**
 (17) **guess somewhere in the afternoon Jesse had relieved**
 Warren
 (18) **Adams in Tampa Bay or Fort Lauderdale or somewhere He**
 called
 (19) **back He was being relieved that evening to go to paid**
 leave
 (20) **His relief had shown up sometime in the afternoon We**
 were
 (21) **receiving the stores and myself and Sam Pierpoint were in**
 the
 (22) **lower storage area of the steward department putting stores**
 (23) **away, and Jesse came back and he made the statement to**
 me that
 (24) **he had gone ashore and picked up a couple bottles of booze**
 for
 (25) **he and Captain Hazelwood and they were going to have a**
 drink

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- (1) **and wanted to know if I wanted to have a drink with them**
 (2) **Q Did you tell him anything about Captain Hazelwood s rehab?**
 (3) **A I told him that if I ever heard that he had brought a**
 (4) **bottle back aboard the vessel again, that he would never**
 (5) **sail**
 (6) **in that capacity as chef again, and I mentioned to him that I**
 (7) **didn t think that he was doing the best thing in bringing**
 (8) **booze**
 (9) **back for the captain aboard the vessel**
 (10) **Q Did you report that incident to anybody in the company?**
 (11) **A Leslie Pennington**
 (12) **Q What was her position?**
 (13) **A When you say reported" it wasn t really a report, Leslie**
 (14) **Pennington was the - she worked in personnel doing**
 (15) **assignments, headquarters downtown What I stated to her**
 (16) **was**
 (17) **was that we should make every effort not to sail Jesse Watts**
 (18) **with Captain Hazelwood on any other vessels in the future**
 (19) **Q Did you tell her why?**
 (20) **A To the best of my knowledge, I think I did, yes She was**
 (21) **the only person that I talked to in that type of capacity**
 (22) **Q Was anybody present during your conversation with Jesse**
 (23) **Watts do you remember?**
 (24) **A Sam Pierpoint**
 (25) **Q Anybody else?**
 (26) **A Frank Pichalsa probably Here again, I don't want to**
 (27) **definitely say he was I can't say that he was not, but he may**
 (28) **have been there**

Vol 9 1015

- (1) **Q Have you ever been aboard the Exxon Valdez?**
 (2) **A Yes, I have**
 (3) **Q Were you aboard there in 1987 or 88?**
 (4) **A Yes, I was**
 (5) **Q And when was it that you were aboard?**
 (6) **A I was aboard there I guess it was early 1987 and then**
 (7) **again**
 (8) **in 1988**
 (9) **Q All right**
 (10) **A Should I continue?**
 (11) **Q Yeah go ahead**
 (12) **A It was during the time that we were demanning the**
 (13) **department We were removing the mess/utility and we**
 (14) **were -**
 (15) **what we were basically doing was taking three positions**
 (16) **and**
 (17) **doing some of the duties with two personnel that three**
 (18) **people**
 (19) **were doing it in the past**
 (20) **Q Who is the fleet chef aboard at that time?**
 (21) **A On the first location, if I m not mistaken, it may have**
 (22) **been Randy Rockel On the second occasion it was Joe**
 (23) **DeOliveira That's D e-O l e-v e r l-a [sic]**
 (24) **Q And did you have any discussion with DeOliveira about**
 (25) **Hazelwood?**
 (26) **A I didn't have a conversation with him, a discussion**
 (27) **Q A conversation?**
 (28) **A It was a remark I had with him, yes**
 (29) **Q What was that?**

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- (1) **A That he had had a drink with Joe the night prior in his room aboard the vessel**
- (2) **Q Exxon had a policy about people drinking aboard didn't they?**
- (3) **A Yes, they did**
- (4) **Q In your observation was that policy applied evenly to everybody so if there was any drinking automatically the person was fired or was it applied unevenly?**
- (5) **A To the best of my ability it was applied evenly to everyone**
- (6) **Q When you reported Hazelwood's conduct to Sheehy was he fired?**
- (7) **A No, he wasn't**
- (8) **Q Have we covered sir with you all incidents that you know about with Mr Hazelwood related to alcohol after he came back from rehab?**
- (9) **A To, I think the best of my knowledge, I think we have covered all of them, yes**
- (10) **Q Okay on these - on the occasion when you re aboard with Ellen -**
- (11) **A Share**
- (12) **Q Share You mentioned other people were aboard with you on the other occasions when you were aboard were there also people with you?**
- (13) **A There were people aboard with me, yes**

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- (1) **Q Who were they?**
- (2) **A Sam Pierpoint and probably Frank - Frank Pichalski**
- (3) **Q Those were your assistants?**
- (4) **A They were contractors in different capacities, they would do different things, yes**
- (5) **Q All right**
- (6) **MR O NEILL That concludes our examination**
- (7) **IRENE STEWART Your Honor we'd like to present the cross examination of Mr Shaw by videotape**
- (8) **THE COURT You may**
- (9) **CROSS EXAMINATION OF JAMES SHAW (by video)**
- (10) **BY VIDEO EXAMINER**
- (11) **Q Mr Shaw I want to pick up with the conversation or the sequence of events after you had the conversation with Captain Sheehy when you had noticed that Captain Hazelwood hadn't been**
- (12) **around and you say that Captain Sheehy informed you that Captain Hazelwood had been in rehabilitation?**
- (13) **A That's correct**
- (14) **Q First let me ask you that if other records in this case reflect that Captain Hazelwood was in rehabilitation in the spring of 1985 is that - is that consistent with what you're now remembering that this would have occurred in '85? You mentioned a while ago '84**
- (15) **A That sounds right, yes**
- (16) **Q So the conversation that you had with Captain Sheehy would**

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- (1) **have been to your knowledge when Captain Hazelwood first came**
- (2) **back to the fleet after rehabilitation?**
- (3) **A That's correct**
- (4) **Q That would have been in the year 1985 is that right?**
- (5) **A If that's when he came back then that would be in '85**
- (6) **that's correct yes**
- (7) **Q All right And you had a conversation with Captain Sheehy and then I believe it's your testimony earlier that in a month or so you first saw Captain Hazelwood?**
- (8) **A That's correct**
- (9) **Q And I believe - and I want to make sure that I'm right about this but I believe that you indicated that these succeeding times that you saw Captain Hazelwood were either seven days apart or seven to 14 days apart is that right?**
- (10) **A That's correct**
- (11) **Q So the first time you saw Captain Hazelwood aboard the vessel was - do you know whether it was early '86 or was it late '85 or do you recall?**
- (12) **A It was either early '85 or late '86 It was immediately after he had come back though**
- (13) **Q I think I have you backwards You mean late '85 or early '86?**
- (14) **A Or early '86, yes**
- (15) **Q And then the next time that you saw Captain Hazelwood aboard the vessel the time that you were testifying that you**

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- (1) **had this distinct odor of alcohol was seven or 14 days from that first visit?**
- (2) **A That's correct**
- (3) **Q All right and then the time span between the second visit and the third visit or as Mr Gerry says between the first incidents and the second incident was either seven or 14 days right?**
- (4) **A That's correct**
- (5) **Q And then the time span between the third visit and the fourth visit was seven to 14 days is that right?**
- (6) **A One of those time frames there was a little gap between the last one and the other two were closer together Just there was a span between the last time**
- (7) **Q Well I'm leaving out Mr DeOliveira -**
- (8) **A Right**
- (9) **Q - and the Valdez we're leaving that one out**
- (10) **A Correct**
- (11) **Q Between the time that you - let me make sure I get them correct here**
- (12) **Definitely between the second and third there was seven or 14 days?**
- (13) **A Right**
- (14) **Q And between the first and second seven to 14 days?**
- (15) **A Right**
- (16) **Q No the third time I believe - the fourth time - third**

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- (1) incidents fourth time?
 (2) **A Right This is the time frame with Jesse Watts there**
 (3) **was -**
 (4) **Q Well I want to get to the Ellen Share one first and then**
 (5) **the Jesse what s**
 (6) **A Okay**
 (7) **Q Was the Ellen Share one seven to 14 days after the previous**
 (8) **one?**
 (9) **A This was a little longer There was a period of time in**
 (10) **between there**
 (11) **Q How much time?**
 (12) **A I really don't remember, but there was a time frame**
 (13) **between**
 (14) **the two of those**
 (15) **Q You remember talking to me earlier?**
 (16) **A Yes**
 (17) **Q I guess earlier this year?**
 (18) **A Right**
 (19) **Q Do you remember telling me then it was all seven to 14**
 (20) **days either seven to 14 days?**
 (21) **A There are one, two, three occasions now and I - I want to**
 (22) **be correct in saying this Ellen Share - there were two**
 (23) **occasions that I went aboard the vessel with Ellen Share**
 (24) **Now**
 (25) **if it's the first occasion, this probably was the seven to 14**
 (26) **days**
 (27) **The last occasion she also happened to - if I m not**

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- (1) **mistaken, I think Ellen was aboard the vessel also**
 (2) **Q That s when you saw Jesse Watts?**
 (3) **A That s correct**
 (4) **Q Okay So the time with Ellen Share in which you were told**
 (5) **by ships personnel that Captain Hazelwood was locked in his**
 (6) **cabin with a female that was seven to 14 days after that**
 (7) **previous time?**
 (8) **A That s correct, yes**
 (9) **Q And now your recollection is that between that time that**
 (10) **is the locked cabin time we ll call it and the time that you**
 (11) **had this confrontation with Jesse Watts that was more than**
 (12) **seven to 14 days you believe?**
 (13) **A I think it was, yes**
 (14) **Q And do you have any recollection of how much longer?**
 (15) **A I really don t know, but to the best of my knowledge, it**
 (16) **was a little bit longer than - I think, if I'm not mistaken,**
 (17) **this may have been on another tour of duty of Joe's also It**
 (18) **could have been This was just prior - I ll say this, this**
 (19) **was just prior to the ship going to the west coast**
 (20) **Q All right but as far as the other ones they were all**
 (21) **either seven or 14 days apart?**
 (22) **A That s correct**
 (23) **Q Beginning with the first time you saw Captain Hazelwood and**
 (24) **didn t smell anything?**
 (25) **A Right**

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- (1) **Q Through the time of the locked cabin incident?**
 (2) **A Right**
 (3) **Q And then it s your recollection now that the Jesse Watts**
 (4) **incident was sometime longer than either seven or 14 days?**
 (5) **A That s correct**
 (6) **Q Do you remember when we talked the last time though that**
 (7) **it was your recollection then that - that the Jesse Watts**
 (8) **thing was seven to 14 days after the Ellen Share locked cabin**
 (9) **thing?**
 (10) **A I think I may have stated that yes sir**
 (11) **Q Okay**
 (12) **A Yeah**
 (13) **Q Now let s make sure we re talking about - we know exactly**
 (14) **what we re talking about here The ship that s involved in**
 (15) **these incidents is it the same ship?**
 (16) **A Exxon Yorktown, yes**
 (17) **Q It is the same ship?**
 (18) **A Correct**
 (19) **Q And did every one of these visitations of yours to the**
 (20) **Yorktown occur at Baytown?**
 (21) **A Yes, they did**
 (22) **Q Okay so every time we re talking about you Captain**
 (23) **Hazelwood on the Yorktown at Baytown?**
 (24) **A That s correct**
 (25) **Q All right Now let s go to the locked cabin incident**

- (1) **When you - did you actually go up and knock on the captain s**
 (2) **cabin door?**
 (3) **A Yes, I did**
 (4) **Q Was Ellen Share with you when you did that?**
 (5) **A Yes, she was**
 (6) **Q When you later saw the captain in this ladder which is a**
 (7) **passageway of some sort -**
 (8) **A Correct**
 (9) **Q - was she with you at this time?**
 (10) **A Ellen was in the officer s mess area it was right at lunch**
 (11) **time**
 (12) **Q How far was that from you and the captain a step or two?**
 (13) **A Four feet maybe**
 (14) **Q Four feet?**
 (15) **A Yeah**
 (16) **Q Did you discuss with her whether she thought she smelled**
 (17) **alcohol on the captain s breath?**
 (18) **A Not immediately After going back to the office we talked**
 (19) **about it, yes, we did**
 (20) **Q Okay I want to get to that in a minute**
 (21) **Now Ms Share did she overhear - was she with you when**
 (22) **you overheard what the ship s personnel was telling you about**
 (23) **where Captain Hazelwood was with the door locked?**
 (24) **A Yes, she was**
 (25) **Q She was there with you?**

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- (1) **A Yes**
- (2) **Q Now when you got back to the office and had your**
- (3) **discussion with her could you tell us what that discussion**
- (4) **was to the best of your recollection?**
- (5) **A To the best of my recollection it was what we had heard**
- (6) **on**
- (7) **the vessel, that the captain – well, the crew members**
- (8) **seemed**
- (9) **to be upset because, first of all, the vessel was being tied**
- (10) **up This individual that was a deck employee should have**
- (11) **been**
- (12) **on deck This is what they were stating to us now She**
- (13) **should**
- (14) **have been on deck assisting in tying the vessel up was She**
- (15) **was not on deck She was in the quarters with Captain**
- (16) **They**
- (17) **were drinking and doing whatever else they were doing and**
- (18) **that s basically what we talked about**
- (19) **Q All right Did she discuss that with you? Did she chime**
- (20) **in on her part of the discussion or did you simply make these**
- (21) **observations and she nodded her head?**
- (22) **A We talked about it We not only talked about it there, but**
- (23) **we talked about it some on the vessel also, so yes**
- (24) **Q And she talked about where the captain was what was going**
- (25) **on and his condition is that right?**
- (26) **A Ellen had some direct business with the captain on that**
- (27) **day She went up more so to see him than I did, and after we**
- (28) **had heard these remarks and we knocked on the door and**
- (29) **we**
- (30) **couldn t get in We left And went back down to the – the**
- (31) **mess hall She went to the officer s side This was just**

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- (1) **prior to lunch She had coffee I did some other duties, I**
- (2) **listened to the crew members state what they were saying,**
- (3) **and**
- (4) **then we talked, we did talk about everything that we had**
- (5) **either**
- (6) **observed or heard aboard the vessel**
- (7) **Q And she told you what she had observed?**
- (8) **A To a degree, yes**
- (9) **Q And did she say she had observed the alcohol odor?**
- (10) **A I can t really recollect if she did or not I don t know**
- (11) **how close she got to Joe I mentioned to her that I did smell**
- (12) **alcohol I m not sure if she mentioned it to me or not**
- (13) **Q Okay Did she give you her observation that she thought he**
- (14) **might be in the cabin with some woman?**
- (15) **A Well, I got the conclusion that she understood, yes**
- (16) **Q She said – she said words to that effect?**
- (17) **A Yeah**
- (18) **Q Did she seem concerned to you?**
- (19) **A Not really I won t say she didn t seem concerned I**
- (20) **guess there was concern, but concern to what degree, I m**
- (21) **not**
- (22) **sure**
- (23) **Q How did she express this concern do you recall?**
- (24) **A I don t want to really say anything that would incriminate**
- (25) **Ellen or anything, but Ellen was in a position that she was**
- (26) **somewhat – she felt somewhat hampered in other words**
- (27) **doing**
- (28) **some things that she did**
- (29) **Q Let me go to the Jesse Watts thing Mr Shaw**

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- (1) **After you had this conversation with Mr Watts you said**
- (2) **you contacted Leslie Pennington?**
- (3) **A That s correct**
- (4) **Q Was this within an hour or so or a day or so or a week or**
- (5) **so?**
- (6) **A Next morning**
- (7) **Q Next morning?**
- (8) **A That s correct**
- (9) **Q Did you contact her by telephone or in person?**
- (10) **A By telephone**
- (11) **Q All right And had you had occasion to contact somebody**
- (12) **either her or somebody in her position about assignments**
- (13) **before?**
- (14) **A Numerous of times, yes**
- (15) **Q That s fairly routine sit not for you to talk about**
- (16) **them – about assignments to –**
- (17) **A Yeah**
- (18) **Q – people in Leslie Pennington s job?**
- (19) **A That s correct**
- (20) **Q And those communications involved both let s don t put**
- (21) **this guy on this ship anymore or let s make sure that – let s**
- (22) **try to get this guy on this ship either way right?**
- (23) **A To that point, yes**
- (24) **Q And generally speaking are you aware of how those kinds of**
- (25) **notations are preserved?**

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- (1) **A On some occasions, if I m not mistaken, they re probably**
- (2) **placed on the – on the microfiche**
- (3) **Q Right okay and that was your intent was to – is that**
- (4) **correct to let Leslie Pennington know that it s your**
- (5) **recommendation that Jesse Watts not sail on any ship with**
- (6) **Captain Hazelwood in the future?**
- (7) **A That was correct**
- (8) **Q And did you make that clear to her you think?**
- (9) **A I think I did yes**
- (10) **Q You did your best to make it clear to her?**
- (11) **A Right**
- (12) **Q And I believe you told Mr Gerry that you also told her**
- (13) **why?**
- (14) **A To the best of my knowledge, I did, yeah**
- (15) **Q Okay Of course we know from listening to you why but can**
- (16) **you tell us what you told her?**
- (17) **A I wouldn t get in details until probably – into probably**
- (18) **everything, but I m almost sure that I mentioned to her that I**
- (19) **think Jesse and the captain were probably drinking on**
- (20) **board the**
- (21) **vessel We should make every effort not to put him aboard**
- (22) **the**
- (23) **vessel because of Hazelwood s prior treatment, and also**
- (24) **what**
- (25) **the rumors had been in the fleet And to that point where I**
- (26) **just felt it was for the best of his and also the company s**
- (27) **sake and keeping them apart**
- (28) **Q When you had the conversation on the Valdez with Mr**

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- (1) DeOliveira was anybody else present?
 (2) **A** When you say present present in the mess hall itself
 (3) or -
 (4) **Q** Well present to where you feel like they could have
 (5) overheard it or was this a private conversation?
 (6) **A** This was Joe and myself just before we get into the galley
 (7) between the door to the storage room and the door to the
 (8) galley I mean Ms Case and Mary Williamson were also in
 my
 (9) presence when we boarded the vessel Mary Williamson
 was in
 (10) the crew's mess area I think Ms Case was in Captain
 (11) Hazelwood's office at that time So to the best of my
 (12) knowledge, none of them probably heard
 (13) **Q** Okay they weren't close enough to hear?
 (14) **A** No
 (15) **Q** As far as you know?
 (16) **A** No, no
 (17) IRENE STEWART That concludes our cross examination
 (18) MS WAGNER Your Honor plaintiffs call Andre
 (19) Martineau by deposition it will be a videotape
 (20) DIRECT EXAMINATION OF ANDRE MARTINEAU (by video)
 (21) BY VIDEO EXAMINER
 (22) **Q** Captain Martineau for the record would you state your full
 (23) name please?
 (24) **A** Andre Phillip Martineau
 (25) **Q** By whom are you currently employed sir?

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- (1) **A** Exxon Shipping Company
 (2) **Q** I'd - what I'd like to have you do now sir if you would
 (3) is briefly give me an idea of your employment background and
 (4) then I'll go back over and cover it in some detail
 (5) **A** Well, let's see, I worked in tug boats for about a year and
 (6) a half
 (7) **Q** What year was that?
 (8) **A** '72 when I graduated, till January of '73 when I first was
 (9) hired by Exxon
 (10) While at Exxon, I served on various vessels as third
 (11) second, first officer and as master I've been master,
 sailing
 (12) master since August of '81 I've had a few tours in the
 (13) office, one in '75 in Houston, Texas and several years let's
 (14) see, '70 - '85, '86, '87 time frame as port captain on the
 (15) west coast
 (16) **Q** Did you sail on the North Slope?
 (17) **A** Yes, I sailed on her for a while And then I went to
 (18) the Exxon Benicia as chief mate And at some point in time
 in
 (19) August of '80, July of '80, I went to Grenoble, I think - or
 (20) was it '81? I can't remember
 (21) **Q** You had said earlier you were made a master in August of
 (22) '81?
 (23) **A** All right, so in July of '81 I went through Grenoble and
 (24) August of '81, I started sailing master
 (25) **Q** Okay When you were with the Exxon North Slope that was

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- (1) engaged in the Alaskan trade?
 (2) **A** Yes
 (3) **Q** Did you sail on the Benicia during the time that Joseph
 (4) Hazelwood was the master?
 (5) **A** Yes
 (6) **Q** And when was that?
 (7) **A** I don't know
 (8) **Q** Would that have been in 1980?
 (9) **A** Possibly, yes
 (10) **Q** You said you were assigned as a port captain on the west
 (11) coast Where was that located?
 (12) **A** Benicia, California
 (13) **Q** What were your duties as a port captain?
 (14) **A** Well, act as liaison between our administrative staff, 34th
 (15) floor in Houston, and the Benicia office to the fleet Made
 (16) sure company policy was followed in a - in a continuity -
 (17) continuous way I don't know, is that the word I'm looking
 for?
 (18) I also was a representative from the company to - with the
 (19) A-Bs and the Coast Guard I served as the chairman of the
 (20) operations committee for Pacific Merchant Shipping
 Association,
 (21) which was an association that a group of shipping
 companies
 (22) belonged to and we monitored legislation both federal and
 (23) state
 (24) I also served on several committees within the company
 We

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- (1) had what we call an Excell Program that the company was,
 Exxon
 (2) Shipping Company was going through where I served on
 the, on
 (3) several committees there
 (4) I don't know, that's about all I can remember right now
 (5) **Q** As a port captain on the west coast were the masters who
 (6) sailed on the west coast your responsibility?
 (7) **A** Yes
 (8) **Q** How did how long did you serve as a port captain?
 (9) **A** Oh, a little over two years
 (10) **Q** What was your next assignment?
 (11) **A** The Exxon North Slope
 (12) **Q** And that would have been sometime in 1987?
 (13) **A** That's correct
 (14) **Q** Do you recall when that was?
 (15) **A** I think it was about September of '87
 (16) **Q** What trade was the North Slope serving at that time?
 (17) **A** San Francisco to Valdez
 (18) **Q** Was the North Slope carrying crude?
 (19) **A** Yes
 (20) **Q** How big of a tanker is the North Slope?
 (21) **A** She's designed to be 172,000 dead weights tons
 (22) **Q** How long did you serve as the master of the North Slope?
 (23) **A** I've been there since 1987 I'm still the master of it
 (24) **Q** Would you be able to estimate for me how many trips you've
 (25) made up to Valdez during the course of your - if you can?

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- (1) **A No I can't right now A lot**
- (2) **Q Would it be greater than 50?**
- (3) **A I would say I mean just guessing right off the top of my head**
- (4) **head**
- (5) **Q Do you recall when Captain Hazelwood was assigned to the Exxon Valdez?**
- (6) **A He was assigned in 87**
- (7) **Q Was he assigned while you were port captain?**
- (8) **A He started the - yeah**
- (9) **Q The Exxon Valdez was one of the vessels within your ship group ship group?**
- (10) **A Right**
- (11) **Q Okay was the Valdez a new vessel?**
- (12) **A Yes**
- (13) **Q Okay The Valdez was going to serve the west coast fleet?**
- (14) **A Yes**
- (15) **Q Was the Valdez in operation during the time that you were serving as port captain for the west coast fleet?**
- (16) **A Yes**
- (17) **Q During your career did you have any occasion to sail with Greg Cousins?**
- (18) **A Not that I can remember, no**
- (19) **Q How about Mr Kagan?**
- (20) **A Yes**
- (21) **Q When did you sail with Mr Kagan?**

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- (1) **A The last I sailed with him, I believe it was on the Yorktown back 84 uh-huh**
- (2) **Q During the time that Mr Kagan was assigned to the Yorktown were there any occasions when Mr Kagan was at the helm of the Yorktown?**
- (3) **A Yes**
- (4) **Q Do you recall what area the Yorktown was in on those occasions when Mr Kagan was at the helm?**
- (5) **A Well, he steered pretty much in all the areas that the ship transited, Mississippi River, Houston ship channel, New York at sea, Port Everglades, maybe**
- (6) **Q Do you have an estimate as to how many occasions Mr Kagan was at the helm during that time?**
- (7) **A I - no, I don't**
- (8) **Q On the occasions that Mr Kagan was at the helm were you present on the bridge as well?**
- (9) **A Absolutely**
- (10) **Q On each one of those occasions?**
- (11) **A Yes**
- (12) **Q Did you believe that it was necessary for you to be present on the bridge while Mr Kagan was at the helm?**
- (13) **A Whenever I was in pilotage waters, I was always on the bridge**
- (14) **Q Based upon your contact with Mr - Mr Kagan did you form an opinion as to whether Mr Kagan was an individual who needed**

- (1) supervision?
- (2) **A No I thought he did a - a good job steering**
- (3) **Q Had you heard from any source during this time frame that Mr Kagan had a reputation as being an individual who needed a lot of supervision?**
- (4) **A Yes**
- (5) **Q As a port captain were you involved in the transfer of masters to those vessels within your purview?**
- (6) **A Yeah**
- (7) **Q Okay What was the process that you would go through to have a master assigned to a vessel in the west coast fleet generally?**
- (8) **A Well, they would need pilotage, depending on what size vessel they were on, whether it was unlimited pilotage or limited pilotage That would be one of the first things I'd be looking at, and I would generally call them to ask them to see if they would be interested in the move, and if they agreed then I would probably go to Harvey Borgen and get his approval and then it would be done**
- (9) **Q Do you recall about what time the Exxon Valdez came on line for service in the west coast fleet?**
- (10) **A I don't know, it must have been the 86, 1986 time frame right in there, early 87 time frame**
- (11) **Q During the time that you were the port captain for the west coast fleet?**

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- (1) **A That's correct**
- (2) **Q As port captain was it your responsibility to - to get a master to serve on the Exxon Valdez?**
- (3) **A That was a - a joint effort I believe Harvey Borgen wanted to let the senior masters take these vessels out so in a sense, Harvey had a very heavy hand in putting the masters on board these ships In the beginning**
- (4) **Q At the time that the Exxon Valdez came on line was it the largest vessel in the Exxon Shipping Company fleet?**
- (5) **A Yes, absolutely**
- (6) **Q At the time that the Exxon Valdez came on line what steps if any did you take to try to get a master to serve on the Valdez?**
- (7) **A I had responsibility for putting the relieving master on board the Valdez And I believe that was - who was that, was that Mike Stalzer? I forget It was either Bill Greig or Mike Stalzer I had put on there**
- (8) **Q What steps did you go through whether it was Bill Greig or Mike Stalzer what steps did you go through to have that individual assigned to the Valdez?**
- (9) **A The same steps that I just spoke of**
- (10) **Q You called up that person to see if they would be interested?**
- (11) **A Yeah**
- (12) **Q And I'm assuming that they indicated to you -**

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- (1) **A Yes**
 (2) **Q - that they would be?**
 (3) **A Uh huh**
 (4) **Q And your next step was to go to Harvey Borgen?**
 (5) **A That s correct**
 (6) **Q And do you know what Harvey Borgen would then do to have that master transferred to the Exxon Valdez?**
 (7) **A Well, he would just say, yes, that s okay with me, and then I would take care of the transfer of that master**
 (8) **Q You would make sure the paperwork got through?**
 (9) **A There really wasn't any paperwork It was just a matter of finding a new master for the vessel that the master was leaving, in order to go aboard the Exxon Valdez and getting that all arranged with fleet manning and permit assignments to the vessels**
 (10) **Q You say you were charged with getting the relieving master for the Exxon Valdez Typically are there two masters that are assigned to a vessel?**
 (11) **A Yes, and when I say relieving master, they re both the same status, one relieves the other, one is not senior to the other They re on the same level**
 (12) **Q During the time that you served as port captain of the west coast fleet was one of these master slots given to somebody else? For instance did Captain Johnson -**
 (13) **A Yeah, he retired**

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- (1) **Q He retired When did he retire?**
 (2) **A Oh I think maybe he made one trip and retired so it must have been Mike Stalzer was the other master, and then I brought Bill Greig on to fill Walter Johnson s place**
 (3) **Q So after Walter Johnson s retirement Greig and Stalzer were the two masters for the Exxon Valdez?**
 (4) **A Yeah**
 (5) **Q Whose place did Captain Hazelwood take was it Captain Greig? If you remember?**
 (6) **A Yes, yes**
 (7) **Q Okay Now while you were port captain were you informed that Captain Greig was for some reason no longer going to be a master on the Exxon Valdez?**
 (8) **A That s correct**
 (9) **Q What was the reason that he was no longer going to serve as a master for the Valdez?**
 (10) **A He was leaving the company to become a San Francisco Bay pilot**
 (11) **Q Were you charged at that time with the responsibility of finding a replacement master for the Exxon Valdez?**
 (12) **A Yes**
 (13) **Q What did you do to - to fill that slot?**
 (14) **A I called several masters to see if they'd be interested**
 (15) **Q Do you recall who you called?**
 (16) **A I think I called John Mazza and asked him if he was**

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- (1) **Interested and Joe Hazelwood**
 (2) **Q Call anybody else?**
 (3) **A I may have but I don t recall right now**
 (4) **Q Between John Mazza and Joe Hazelwood do you recall who you called first?**
 (5) **A John Mazza**
 (6) **Q Did he tell you that he was interested in serving as master on the Valdez?**
 (7) **A No, he said he wasn't**
 (8) **Q Okay he was happy where he was?**
 (9) **A He was happy where he was**
 (10) **Q What was the next thing you did then?**
 (11) **A Well, I needed unlimited pilotage and it was just - I think it was just he or John Mazza or Joe Hazelwood who were available at that time with unlimited pilotage**
 (12) **Q Were there other masters in the fleet that had unlimited pilotage?**
 (13) **A Uh huh**
 (14) **Q Why is it - what do you mean by were available at that time?**
 (15) **A Well, John Mazza was serving on the east coast He wasn t utilizing his pilotage and he'd been serving there for a while, so I thought he might want a change and come on over to the west coast and use his pilotage Joe Hazelwood, another guy that was on the east coast, was not using his pilotage We**

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- (1) **needed pilotage in those days and we were - I don t know, we were paying a thousand dollars extra per ship for vessels without pilotage The pilots supposedly had to come out the Bligh Reef to put their people on board, and they were charging us extra for that, so those two were on the east coast We needed pilots on the west coast and it just seemed natural to bring one of those over from the east coast with the pilotage rather than - I would just be maintaining a void if I switched people around that were already positioned on west coast vessels with unlimited pilotage**
 (2) **Q Just so I m clear is it your recollection that at that time you believed that Mazza and Hazelwood were the only two masters with pilotage for the Prince William Sound area who were not already working that trade?**
 (3) **A That's correct**
 (4) **Q Just so I m clear you knew that Captain Hazelwood had pilotage for the Prince William Sound?**
 (5) **A Uh huh Yes**
 (6) **Q You however had not had an opportunity to form an opinion as to his abilities as a master is that right?**
 (7) **A Well, at that time, I think I formed the opinion that he was a capable master**
 (8) **Q What did you base that opinion on?**
 (9) **A The fact that he was sailing master with the - in the fleet and that he had a number of years of experience, and my**

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- (1) experience with him as chief mate I thought that he d done an
 (2) excellent job as chief mate, and he had taught me a lot during
 (3) that particular time on the Boston, and I was a green third
 (4) mate and he very calmly sort of took me under his wing and kind
 (5) of got me on my way there with understanding about the
 (6) different procedures and so on so forth on board the ship
 So
 (7) I had a lot of respect for Joe Hazelwood as a seaman
 (8) As far as his ship handling skills that was based on
 (9) hearsay
 (10) Q Part of that also was that you assumed that by virtue of
 (11) him still being a master with Exxon Shipping Company that he
 (12) was a capable master?
 (13) A Absolutely
 (14) Q Okay After he -
 (15) A And he had unlimited tonnage for pilotage
 (16) Q Now you said you also contacted either Sheehy or light
 (17) sell?
 (18) A That s correct
 (19) Q Just so I m clear that this point s covered you don t
 (20) recall what if any feedback they gave you in regards to the
 (21) idea of transferring Joe Hazelwood from the east coast to the
 (22) west coast fleet?
 (23) A Other than they probably - they approved it because he
 was
 (24) transferred
 (25) MR O NEILL We have more tape Judge but it s high

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- (1) 2 00 And this is a good place to stop
 (2) THE COURT Fine thank you Ladies and gentlemen
 (3) we re going to adjourn for the weekend now Especially on the
 (4) weekends when you have more time to look around please stay
 (5) away from newspapers that may be reporting on the case
 please
 (6) stay away from the TV set when they re talking about this case
 (7) if they do Please don t undertake any inquiry on your own
 (8) behalf or on your own outside of court about the case We will
 (9) reconvene again at 8 00 Monday morning I hope you have a
 good
 (10) weekend The jury may leave at this time but I wish counsel
 (11) would remain for just a moment
 (12) (Jury out at 2 02)
 (13) THE COURT How are we doing Mr O Neill?
 (14) MR O NEILL Captain Hazelwood took more time than I
 (15) had expected I have told Mr Neal that I m going to go back
 (16) this afternoon and take a look at our witness list and see if
 (17) we can jetison some of the witnesses We re not far off
 (18) schedule but I do need to get rid of a couple of witnesses to
 (19) get us rght back on schedule
 (20) THE COURT I d appreciate that
 (21) MR O NEILL I intend to do that
 (22) THE COURT Appreciate that Anything else folks?
 (23) Have a good weekend and we ll see you Monday morning
 (24) THE CLERK This court is now in recess
 (25) (Proceedings recessed at 2 03 p 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 2,701
TOTAL OCCURRENCES 12,947
NOISE WORDS 385
TOTAL WORDS IN FILE 44,212

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S)
NOISE NOI

INCLUDES ALL TEXT OCCURRENCES

IGNORES PURE NUMBERS

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MAXIMUM TRACKED OCCURRENCE THRESHOLD 50

NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD 27

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 (1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re) Case No. A89-095 CIV (HRH)
 (3)) Anchorage Alaska
 The EXXON VALDEZ) Monday May 16 1994
 (4)) 8:00 a.m.
 TRANSCRIPT OF PROCEEDINGS
 (5) TRIAL BY JURY 10th DAY
 (6) BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE
 VOLUME 10 Pages 1046 1289
 Realtime Transcription

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(1) PROCEEDINGS
 (2) (Call to Order of the Court)
 (3) THE COURT Good morning ladies and gentlemen of the
 (4) jury
 (5) This is a continuation in the Case No. A89 095 in re the
 (6) Exxon Valdez
 (7) Mr Neal?
 (8) MR NEAL Thank you We were in the midst of
 (9) Mr Andre Martineau's deposition by video tape and that's
 (10) where we'll resume
 (11) THE COURT Fine
 (12) CONTINUED DIRECT EXAMINATION OF MR. MARTINEAU
 (video)
 (13) BY THE PLAINTIFFS
 (14) Q At this time what was your understanding as to Captain
 (15) Hazelwood's ranking amongst the other Exxon Shipping
 Company
 (16) masters?
 (17) MR FLANAGAN Did you have any understanding of the
 (18) rankings?
 (19) A No I didn't I thought he was on the top or amongst the
 (20) top anyway
 (21) Q But you didn't have any specific understanding as to where
 (22) he actually ranked?
 (23) A No I had no idea
 (24) Q I may have asked you this question in regards to this time
 (25) frame before If I did I apologize At the time that you were

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 (1) speaking to Joe Hazelwood about his transfer to the west coast
 (2) fleet had you heard any rumors that he had drunk alcohol
 (3) aboard vessels that he drank alcohol aboard vessels?
 (4) A I may have heard rumors but I don't recall I don't know
 (5) Q Do you recall asking Captain Sheehy at some point in time
 (6) prior to Captain Hazelwood's transfer to the Exxon Valdez
 (7) whether Captain Hazelwood was drinking again?
 (8) A No I don't recall that
 (9) Q If Captain Sheehy testified at his deposition that you made
 (10) that inquiry would you have reason to dispute that?
 (11) A No
 (12) Q After you spoke with either Lutzell or Sheehy what is the
 (13) next step you took in having Captain Hazelwood transferred to
 (14) the west coast fleet?
 (15) A I think I went to see Harvey Borgen and asked him if he
 (16) would approve that
 (17) Q What position did Harvey Borgen hold at that time?
 (18) A He was fleet manager of the west coast
 (19) Q Do you recall what Mr. Borgen told you?
 (20) A The first time I went in he said let me think about it
 (21) Maybe a week had gone by, I think, and we needed to do
 (22) something, and I asked him again, and he said yeah okay
 (23) Something like that That's all I recall I don't recall
 (24) specific conversation that he had with me or I had with him,
 (25) but the general sense of the conversation was that he
 approved

(1) it
 (2) Q Do you recall whether Harvey Borgen made any inquiries in
 (3) regards to Captain Hazelwood?
 (4) A If he did I wasn't privy to that
 (5) Q You don't know what Harvey Borgen did between the first
 (6) conversation with him and the subsequent conversation with
 (7) him
 (8) when he approved the transfer in regards to -
 (9) A No I don't know what he did
 (10) Q Just so I understand the nature of your conversation with
 (11) Harvey Borgen the initial conversation when you went in to
 (12) speak with him were you recommending that Joe Hazelwood be
 (13) transferred to the Valdez?
 (14) A Yeah that was in the form of a recommendation
 (15) Q Prior to this time did anyone speak with you about making
 (16) periodic visits with Captain Hazelwood when he was appointed
 (17) to
 (18) the Exxon Valdez to see how he was doing as the captain?
 (19) A No No
 (20) Q Okay
 (21) Now at that time -
 (22) UNIDENTIFIED SPEAKER Go ahead
 (23) Q At that time no one had indicated to you that Captain
 (24) Hazelwood had been through alcohol rehab?
 (25) A No
 (26) Q Okay
 (27) A I believe - I may have heard possibly have heard

(1) made to transfer Captain Hazelwood to the Exxon Valdez were
 (2) you involved in any discussions with anyone regarding setting
 (3) up a monitoring program to monitor Captain Hazelwood's
 (4) activities as master on the Exxon Valdez?
 (5) A No
 (6) Q Going back to Captain Hazelwood being transferred initially
 (7) to the Exxon Valdez I believe you said there was a short
 (8) period of time during which you were still the port captain and
 (9) Captain Hazelwood was serving as the master of the Exxon
 (10) Valdez?
 (11) A No I don't think he was assigned to the ship or served on
 (12) board the vessel while I was port captain He may have
 (13) you'd
 (14) have the records which testify to that
 (15) Q At some point in time did you become aware that - let me
 (16) begin again
 (17) At some point in time did you become aware as to whether or
 (18) not there was a monitoring system in place to check in with
 (19) Captain Hazelwood to see how he was performing on the Exxon
 (20) Valdez a system over and above what was applicable to the
 (21) other masters within the fleet?
 (22) A No
 (23) Q Prior to being assigned to the Exxon North Slope at the end
 (24) of your tenure as port captain did anyone speak with you
 (25) regarding you performing some monitoring duties of Captain
 (26) Hazelwood over and above the typical monitoring that would be

(1) something to the effect that through rumor don't know who
 (2) told
 (3) it to me that Hazelwood Joe Hazelwood may have had a
 (4) problem
 (5) with - with drinking or alcohol
 (6) Q Do you recall anything more specific than that? Do you
 (7) recall the scope of the problem that he may have had?
 (8) A No It was just through the rumor mill in the fleet that I
 (9) had picked something up like that
 (10) Q Do you recall when you heard this initially?
 (11) A It - it was before the transfer
 (12) Q Did you do anything to try to - prior to recommending the
 (13) transfer of Captain Hazelwood to the Exxon Valdez did you do
 (14) anything to try to confirm or disprove the rumor that you had
 (15) heard?
 (16) A I - I may have As you said Sheehy said I did or
 (17) something like that so it probably did take place
 (18) Q Since your memory has been refreshed let me ask you Did
 (19) it cause you any concern that you had heard these rumors
 (20) about
 (21) an individual that you were now recommending be assigned as
 (22) a
 (23) master of the newest and biggest vessel in the fleet?
 (24) A Well first they were rumors I didn't give any credence
 (25) to rumors
 (26) Q Did you do anything at all to investigate the rumors at any
 (27) time?
 (28) A I don't think I did no
 (29) Q While you were port captain and after the decision had been

(1) done for captains assigned to a vessel?
 (2) A No There wasn't any monitoring that I - that I know of
 (3) Q At the time that you were assigned to the Exxon North
 (4) Slope at that time had anyone ever told you that Captain
 (5) Hazelwood had been through alcohol rehabilitation?
 (6) A No I didn't - I didn't hear anything about that
 (7) Q I think you testified earlier that you began transiting the
 (8) Valdez trade in the mid 1970s and off and on had been doing
 (9) that through to today?
 (10) A 1977
 (11) Q When did you first experience ice in the shipping lanes
 (12) that you had to navigate through?
 (13) A Oh as early as that first year '7- - '77 And
 (14) periodically since then
 (15) Q Okay You said that beginning in 1987 you think the
 (16) conditions began to worsen?
 (17) A Yeah
 (18) Q Okay Let's start with 1987 until today Have there been
 (19) occasions where you've navigated through the ice?
 (20) A Yes
 (21) Q And do you have a typical procedure that you would follow
 (22) during that time frame when navigating through the ice?
 (23) A Yes
 (24) Q During that time frame was - is there - let me begin
 (25) again

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During that time frame had you followed a typical procedure when navigating through ice that you have encountered

in the Prince William Sound area

A It depends on the severity of the ice floe

Q Okay

A One that -- it -- it depends on the severity of the ice floe. But in general I would have a lookout and an officer on the bow another officer on the bridge with me, a helmsman that's about it. And I would proceed slowly through the ice floe

Q You would proceed through the ice floe?

A If I could find leads yes

Q Would the procedure vary depending upon whether it was daytime transit or nighttime transit?

A No, the procedure would not vary

Q Okay All right

Had there been occasions when you've transited through ice in the Prince William Sound area at night?

A Yes

Q And when you were going through ice in the Prince William Sound area was it your practice to be present on the bridge?

A Yes

Q Did you have occasions during the 1987 through today time frame to leave a lane of travel in the traffic separation scheme to skirt around the ice?

A Yes

Q Can you provide us with a point of reference for the Prince William Sound area as to where it was that you left the traffic separation scheme? Was it south of Potato Point for instance?

A Yes

Q Do you recall where it was in relation to Bligh Island?

A Well we -- we transited half a mile off of Bligh Reef buoy so that takes you completely out of the traffic separation scheme

Q And how far south from Bligh Reef buoy did you go before you re-entered the traffic separation scheme?

A We were on a course that would take us back into the separation zone traffic separation scheme. However I was --

I didn't get back into the outbound lane until Naked Island as far south as Naked Island. We were still skirting icebergs through there

Q On this particular transit were you on the bridge throughout the transit?

A Yes

Q Do you recall what speed you were operating your vessel from the time that you first encountered ice until the time that you rejoined the traffic separation scheme?

A It was reduced speed. It -- it -- there were large leads between these pieces of ice so we didn't have to go very slow

we maintained a speed in which we could maneuver

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A Yes

Q Had there been any occasions during that same time frame where you've had to leave the traffic separation scheme entirely in an attempt to avoid ice?

A Yes

Q When did that occur?

A Just before the Valdez ran aground

Q You had transited up to the Prince William Sound area prior -- immediately prior to the Valdez running aground?

A Yes

Q When was that transit? The grounding of the Valdez occurred March 24 1989

A It was -- we had to pull in there for repairs so my outbound transit was I want to say nine to ten days -- let me see here

Well, that whole transit took place in about two weeks' time because we had to pull in there for repairs, but I was outbound about six seven days before the Valdez ran aground

Q This occasion that you were outbound six or seven days before the Valdez ran aground was this a nighttime transit?

A Day Daylight transit

Q You were laden with crude oil at that time?

A Yes

Q The occasion that you were outbound this particular occasion you completely left the traffic separation scheme?

Q Was it a speed less than sea speed?

A Yes

Q Okay Was it substantially less than sea speed do you recall?

A It might have been anywhere from nine to ten knots in that -- in that range. Sea speed is about 15

Q At the time that you encountered the ice did you contact the VTC to tell them that you had encountered ice?

A Yes

Q Did you tell the VTC when you left the outbound lane of travel in the TSS?

A Yes I requested permission to leave

Q Okay When you entered you then entered the separation zone is that right -- the TSS?

A I just requested permission to leave the traffic separation scheme in order to circumnavigate the ice that was encountered

Q Okay At that time that you made the initial contact with the -- at the time you made the contact with the VTC that you're describing had you already determined that it would be necessary for you to completely leave the traffic separation scheme to avoid the ice?

A Yes

Q When you re-entered the traffic separation scheme did you again contact the VTC to tell them that you were re-entering the scheme?

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(1) A Yes
 (2) Q Is that the only occasion that you've had to leave the
 (3) traffic separation scheme to avoid ice in the Prince William
 (4) Sound area?
 (5) A Was that the only occasion?
 (6) Q Yes sir
 (7) A No no That was routine
 (8) Q It was routine to completely leave the traffic separation
 (9) scheme?
 (10) A If you had that much ice in there
 (11) Q Captain Martineau when we broke for lunch I think we were
 (12) talking about some of the occasions in which you had to
 (13) navigate through or around ice while transiting in the Prince
 (14) William Sound area?
 (15) A Yes
 (16) Q Okay I wanted to go back to the one occasion in
 (17) particular the one that occurred a week or so prior to the
 (18) grounding of the Exxon Valdez
 (19) A Uh huh
 (20) Q And I think you said that was a daylight transit
 (21) A Yes
 (22) Q And was that the transit that brought you approximately a
 (23) half a mile within Bligh Reef?
 (24) A Yes Bligh Reef buoy
 (25) Q How was it that you were able to avoid the reef? Is it

(1) you see the white sector of the light you know you're in a safe
 (2) area if you see the red sector of the light that signifies
 (3) that you're in a dangerous area?
 (4) A Yes
 (5) Q On your outbound transit from Port Valdez approximately a
 (6) week before the grounding you say that you did report the ice
 (7) that you had observed to the VTC?
 (8) A Yes
 (9) Q Did you make any statements to them regarding your
 (10) perception of the - of any safety concerns that you believe
 (11) the ice in the lanes presented?
 (12) A Yes
 (13) Q What did you tell them in that regard?
 (14) A Well I don't recall my exact conversation but that this is
 (15) the worst I've ever seen the ice since I started transiting
 (16) Prince William Sound back in 1977 and I thought that
 (17) perhaps
 (18) they ought to restrict transit to daylight - they might
 (19) consider restricting transit to daylight transit only
 (20) Q Okay
 (21) A In view of this
 (22) Q Did you get a response from the VTC?
 (23) A Yes I - this conversation took place with Falkenstein
 (24) Q Okay
 (25) A And his response was thank you very much Captain
 we'll
 take it under advisement, something to that

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(1) well marked?
 (2) A Oh absolutely yes It's well marked We charted a
 (3) course that was - brought us well clear of the reef and well
 (4) clear of the ice floe
 (5) Q In addition to the buoy are there other aids to navigation
 (6) that exist in that area that would assist a navigator in making
 (7) the maneuver that you made?
 (8) A Sure You have a Loran C you have - yes you have
 (9) Loran C you have the islands and coastline provides a
 (10) perfect
 (11) return on the radar to navigate by There's plenty of
 (12) navigational aids if you will, to navigate that area safely
 (13) Q Okay Bligh Reef appears on the ship's radar?
 (14) A The buoy does
 (15) Q The buoy does?
 (16) A Yeah
 (17) Q Is there also if you recall a sector light present on
 (18) Busby Island?
 (19) A Yes
 (20) Q Is that another aid that assists you in navigating through
 (21) the area?
 (22) A Yes, that's correct
 (23) Q And is that a two color sector light red and white?
 (24) A Yes
 (25) Q Just so I'm clear that I understand the process or how the
 light functions does the light function in such a way that if

(1) Q Did you report your observations and your opinion about
 (2) restricting travel to daylight time to anybody at Exxon
 (3) Shipping Company?
 (4) A Yes I sent it in my turn around telex
 (5) Q When would that have gone out?
 (6) A Upon departure
 (7) Q Who would that have been sent to?
 (8) A Well I sent it to my ship group coordinator who was Paul
 (9) Myers at that time
 (10) Q Did you take any other steps to pursue this issue of
 (11) restricting transit to daylight time because of the ice problem
 (12) that you perceived in the area?
 (13) A We - I think we made a - may have notified other ships as
 (14) we passed them Other than that, no, I didn't
 (15) Q Do you recall whether you or someone at your direction
 (16) notified the Exxon Valdez of the ice that you had seen up in
 (17) the Prince William Sound area and your impression that transit
 (18) should be limited to daylight?
 (19) A No I don't recall that taking place, no
 (20) Q Do you have any knowledge as to whether Paul Myers or
 (21) anybody else with Exxon Shipping Company took any steps to
 (22) pursue the issue you had raised in regards to daylight transit
 (23) being limited to daylight travel because of the ice?
 (24) A No
 (25) Q So you don't know if Mr Myers did anything?

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A No

- Q Okay Have you been involved in any discussions since that time with anyone within Exxon Shipping Company regarding your opinion that transit should be limited to daylight?
- A Yes
- Q And who have you discussed that with?
- A Oh I don't remember the names but a lot of people. People on various vessels during meetings and I - I remember talking to Harvey Borgen about it after - after the incident took place and he said he never got the message. Incidentally, I spoke with Paul Myers Paul Myers said he was on the Valdez apparently at the time that the message came into the office, overseeing some repairs. I talked to John Klepper he said he never saw it And one of allocators said he saw it but he thought someone else might pick up on it So -
- Q One of the allocators?
- A Yeah
- Q Do you recall who that was?
- A I think was Britt Perry
- Q You said that Paul Myers told you that he was on the Valdez at the time Did he tell you that because he was on the Valdez he did not see that memo prior to the grounding of the Exxon Valdez?
- A That's what he told me

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- Q In March of 1989 were you aware of any policy amongst some Exxon Shipping Company captains to wait until daylight to transit through the Prince William Sound area when there was ice in the channels?
- A Yeah There was - I forget late '70s early '80s there was what we can call now quite a bit of trash ice in - in that area And at that - it was left to our discretion as to whether we wanted to sail or not but the company would give us full support if we had elected to stay at the berth because of the ice out there until daylight
- And as a matter of fact, now that I recall there was a memo late '70s, early '80s maybe that came out and said that they wanted us to stay at the dock when ice was reported
- Q To your knowledge was that policy ever changed that they wanted you to stay at the dock when ice was reported?
- A Yeah I think it got changed to at the master's discretion and I don't know if there was a letter out or whether this just came verbally to us or what
- Q Do you have any knowledge as to what led to the change in that policy?
- A I think some of the masters were saying it was foolish to stay at the dock when just a few pieces of small ice that wouldn't hurt the vessel in any way, stay at the dock I don't think that - I think they should have left it up to the master's discretion in the beginning so - I think that's the

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- reason why it was changed eventually
- Q Did the policy stay that travel when ice was in the lanes was at the master's discretion did the policy stay at that - up through March of 1989?
- A Yeah I think it did Yeah
- Q Okay At any time that you were up in Valdez were - did you receive any pressure from Alyeska that after - once your vessel was loaded to leave the port?
- A I - pressure? I don't know if that's the right word but certainly they would have questioned our decision to remain at the - at the port If we were looking at weather outside or - and this didn't - it may have happened once to me, if it happened at all, but I think there was some - a general feeling that you would probably get some pressure from them
- Q Are you familiar with a 24 hour rule imposed by Alyeska?
- A Oh, yeah Yes
- Q What is a 24 hour rule?
- A Well, that your vessel can remain alongside the berth for 24 hours after which time you would incur a penalty
- Q Were there occasions when you incurred a penalty?
- A I think there were I don't know - I can't offhand tell you when there were or how many they were but there may have been Yeah
- Q As a master did you try to not incur a penalty?
- A Oh absolutely Yeah

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- Q Was the fact that there was potential of having a penalty assessed against you a motivation for leaving the port within the 24 hours?
- A Well not at the expense or risk of safety It was a motivation in that we made sure all our equipment was operating and running and our people were trained, and the vessel cargo equipment and so on was in good condition That's where the motivation was But not - not at the risk of safety
- Q Was it your understanding in March of 1989 that in the area north of Cape Hinchinbrook south of Potato Point it was necessary for someone to be on the bridge who held a pilotage endorsement for those waters?
- MR THOMAS At all times?
- Q Yeah
- A Like I said the pilotage regulations had changed but in my view I had to be on the bridge because I had the pilotage, I was the only one that had the pilotage I was the one doing the work as pilot so I had to be on the bridge
- Q Okay Was it your understanding that that was the pilotage requirement or - let me ask that again
- Did you believe that you had to be on the bridge in that area that we've described regardless of whether that was a requirement imposed by law or not or that was just your personal belief?
- A It was my personal belief from the standpoint it was

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(1) prudent seamanship for the master to be on the bridge at that point in time

(2) Q Why do you believe it's prudent seamanship for the master to be on the bridge in the area north of Cape Hinchinbrook and south of Potato Point?

(3) A Well it is - it is an area of great concern to environmentalists and other regulatory bodies. It had been customary that in my training and coming up through the ranks there that the master remained on the bridge in pilotage waters. And I was still under the impression or considered Prince William Sound in my view to be pilotage waters.

(4) Q Prior to March of 1989 had you heard any rumors as to whether or not Captain Hazelwood would remain on the bridge of his vessel when the vessel was within these areas that you considered to be pilotage waters?

(5) A I had heard rumors that he didn't remain on the bridge the whole time.

(6) Q From whom had you heard those rumors?

(7) A I don't remember.

(8) Q Had you heard those rumors on more than one occasion?

(9) A Possibly, yes.

(10) Q Do you recall when you would have first heard those rumors?

(11) A Year? Or -

(12) Q If you can. However you can - focus it.

(13) A It was certainly after I got on the North Slope that I had

(1) A No.

(2) Q Is there a particular reason you have not done that?

(3) A We were getting into the pilotage area - picking up the pilot - and more congested - if you will - sea room - so we never had anybody on autopilot in that - in that area.

(4) Q Okay. And just so I'm sure that we're talking about the same area. Let's limit it to north of Bligh Island and south of Potato Point. Have there been any occasions when you have placed your vessel on auto pilot outboard?

(5) A No.

(6) Q Do you agree with the principle that the master is the individual who is ultimately responsible for his vessel?

(7) A Absolutely.

(8) Q The master is in charge of his vessel at all times?

(9) A Yes.

(10) Q During the times you've transited up to Port Valdez has a master have you ever had the VTS issue a rudder order to you?

(11) A Never.

(12) Q Is it your understanding that in fact the VTS can not issue rudder orders?

(13) A Yes.

(14) Q And that's because you're the one that's responsible for the vessel is that right?

(15) A Yes.

(16) Q Do you rely on the Vessel Traffic Service to provide you

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(1) heard it.

(2) Q Did you have an understanding as to whether or not that was a current practice? At the time that you heard the rumors was it your understanding that that was a current practice of Captain Hazelwood?

(3) A Whether it was a practice or whether it had happened occasionally, I don't know. All I heard was that sometimes Joe doesn't stay up on the bridge the whole time.

(4) Q Did you report this rumor to anyone?

(5) A No.

(6) Q Do you believe that it is prudent seamanship for a master holding a pilotage endorsement to be on the bridge of his vessel when transiting Prince William Sound area during ice conditions?

(7) A Yes.

(8) Q Are you aware of any reports or communications which a captain has to complete or send when outboard from Port of Valdez which would require the captain to leave the bridge of the vessel while still in the Prince William Sound area north of Bligh Island?

(9) A No.

(10) Q During the trips that you've sailed up to Port Valdez as a master have there been any occasions during a transit within the traffic separation scheme north of Bligh Island that you have put your vessel on autopilot?

(1) with weather information?

(2) A On occasion yes.

(3) Q Okay. Let me just ask you. What types of information do you rely on the Vessel Traffic Service to provide you with?

(4) A Reports of vessels transiting the area. Ice reports.

(5) Weather reports upon request. Yeah.

(6) MR KLINCKHARDT. Do you have any knowledge as to how far south of Potato Point the Vessel Traffic Service radar coverage extends? Let me limit it to 1989. The early part of 1989.

(7) THE WITNESS. It wasn't very far south of Potato Point.

(8) Q And you had personal knowledge of that?

(9) A When you say personal knowledge, did I go up and ask somebody or -

(10) Q No?

(11) A It's just kind of sort of everybody knew that -

(12) Q Well did everybody know?

(13) A Yeah. I think pretty much - a lot of people knew anyway that radar coverage was - was reduced beyond - beyond Potato Point.

(14) Q As a result is it fair to say that you did not rely on the VTS to provide you with radar coverage in an area - in the area south of Potato Point?

(15) A I never relied on the VTS for any radar coverage.

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(1) whatsoever
 (2) Q You had the radar on your own vessel that you would rely
 (3) on?
 (4) A Yes
 (5) Q Would you agree with the statement that as a master of the
 (6) vessel you would have more knowledge regarding the
 surrounding
 (7) conditions and other than approaching traffic other obstacles
 (8) in the area than what the Vessel Traffic Service would have as
 (9) you're navigating through the Prince William Sound area?
 (10) A Yes
 (11) Q And from your testimony I gather you did not outside of
 (12) the narrows certainly you did not rely on the Vessel Traffic
 (13) Service to provide you with any information regarding the
 (14) position of your vessel in relation to the surrounding land
 (15) masses or reefs?
 (16) A I never relied on them for that information no
 (17) Q So do you know of any Exxon master who was disciplined for
 (18) violating alcohol policies any time in the 1980s prior to the
 (19) grounding of the Exxon Valdez?
 (20) A No
 (21) Q Now did Exxon Shipping Company management did they
 (22) encourage officers to report violations of alcohol policy?
 (23) A Not to my knowledge
 (24) Q At any time before the grounding of the Exxon Valdez are
 (25) you aware of the policy or procedure that Exxon Shipping

(1) memory was refreshed at lunchtime I - I think I called
 (2) Captain Sheehy and asked him if - if there was any
 validation
 (3) to this rumor or I don't know what I asked him to be honest
 (4) with you but at any rate I think things were the signal was
 (5) given to me that everything was okay
 (6) Q Did he tell you that Hazelwood had been through alcohol
 (7) rehabilitation?
 (8) A I don't recall that at all no
 (9) Q Okay Had he told you that Hazelwood had been to alcohol
 (10) rehabilitation in 1985 would you have done anything
 (11) differently with respect to transferring Hazelwood to the Exxon
 (12) Valdez?
 (13) A Oh, I don't think I can I mean I - I think that that's
 (14) in the other people above me in management who had -
 who had
 (15) knowledge of this They were in control I mean I just made
 (16) a recommendation to Harvey Borgen as to who should be -
 who
 (17) might be assigned to the vessel I mean the final decision
 (18) was their or his, not mine
 (19) Q Okay I realize it was Mr Borgen's decision Did you tell
 (20) Mr Borgen about the conversation you had with Sheehy and
 that
 (21) there was reference to the issue of Hazelwood using alcohol?
 (22) A I - I don't recall that conversation at all
 (23) Q Is other than Captain Sheehy did you ever discuss in
 (24) connection with the transfer the subject of Hazelwood and
 (25) alcohol with anyone?

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(1) Company had to monitor a master's use of alcohol?
 (2) A No
 (3) Q At the point in time when you became aware heard
 (4) information that Hazelwood may have a drinking problem - all
 (5) right Did you report that to anyone?
 (6) A No
 (7) Q Did you take any action predicated on receipt of that
 (8) information that Hazelwood may have a drinking problem?
 (9) A Well during lunch recess my memory was refreshed that
 (10) apparently I did call Bill Sheehy and ask him about whether
 (11) Hazelwood was in fact I guess okay to come out here and
 (12) be
 (13) assigned to the vessel
 (14) Q Did you ask Sheehy specifically about whether Hazelwood
 (15) had
 (16) an alcohol problem?
 (17) A No I don't believe I - I think I just referred to a
 (18) rumor if I - if I - yeah
 (19) Q Did you ever act upon any way that you know of the
 (20) information you had that Hazelwood may have an alcohol
 (21) problem?
 (22) A No
 (23) Q Okay It's true is it not that you realized it could be
 (24) a dangerous situation to assign a master to a vessel the size
 (25) of the Exxon Valdez where that master may have an alcohol
 (26) problem? Is that a fair statement?
 (27) A Absolutely Yes I - I - what I heard was rumor
 (28) I'm - I'm not going to operate on rumor I think that as my

(1) A I don't believe I did no
 (2) Q You said you heard rumors about Hazelwood maybe
 drinking
 (3) Other than calling Captain Sheehy did you do anything to
 (4) investigate or inquire as to the veracity of the rumors about
 (5) Hazelwood and drinking?
 (6) A No I didn't
 (7) Q I take it you wanted to put an appropriate person in the
 (8) position of master of the Exxon Valdez right?
 (9) A That's correct
 (10) Q Okay And you certainly weren't going to put in your
 (11) judgment someone who presented a risk to the vessel and the
 (12) cargo of that ship right?
 (13) A That's correct
 (14) Q Okay And you knew did you not that if you put a master
 (15) on that vessel who had an alcohol problem that you may be
 (16) risking a serious catastrophe?
 (17) A First of all I didn't know - if I knew for sure he had an
 (18) alcohol problem he wouldn't have been even a
 consideration in
 (19) my mind all right? Like I said people that knew he had a
 (20) problem and knew about his rehab really had the final
 (21) decision Mine was merely a recommendation
 (22) Q Well why did you recommend someone who you had
 (23) information rumor about that they may have used or may have
 (24) an alcohol problem?
 (25) A Because I didn't consider the rumor to be valid, number

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- (1) one It was just a rumor Number two as I explained before
- (2) Joe Hazelwood in my view was an excellent seaman a skilled
- (3) ship handler He had unlimited pilotage been sailing as
- (4) master for X number of years he was qualified and capable for
- (5) that assignment
- (6) Q Mr Martineau what did you do to determine whether or not
- (7) the rumor about Hazelwood having alcohol problems was valid or
- (8) not?
- (9) A Nothing
- (10) Q Now you mentioned a moment before we broke you were talking about in your judgment Hazelwood was a capable master
- (11) I m paraphrasing you said something to that effect?
- (12) A Yes Yes
- (13) Q You told us this morning that at the time you recommended the transfer you assumed that Hazelwood was in the top of the rankings?
- (14) A That's correct
- (15) Q I want to show you the rankings here for a minute Can you see where Captain Hazelwood ranks 25th out of 34?
- (16) A Uh huh
- (17) Q That in 1987 at the time you recommended his transfer is it true that you were under the mistaken impression that he was ranked high?
- (18) A That's true
- (19) Q Okay

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- (1) And Harvey Borgen didn't tell you otherwise did he?
- (2) A No
- (3) Q And you indicated also at the time that you recommended the transfer in addition to not having seen the rankings you had made no observations regarding Mr Hazelwood's ability for ship handling?
- (4) A That's correct
- (5) Q You told us that what you did in connection with the making the recommendation is you talked to Borgen you talked to Captain Hazelwood and now you recall talking to Captain Sheehy Those are the three people you talked to?
- (6) A That's correct
- (7) Q Okay
- (8) Did you do any investigation to determine whether Captain Hazelwood was an appropriate choice to be master of the Exxon Valdez?
- (9) MR NOLTING I want to know whether he did anything other than talking to those three individuals
- (10) THE WITNESS I don't - I don't recall doing anything else No
- (11) Q Now after the grounding did you have any occasion to speak to Harvey Borgen?
- (12) A Yes
- (13) Q Okay And when was the first time you spoke to Mr Borgen?
- (14) A I want to say about - possibly a month after

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- (1) Q Okay
- (2) A The grounding
- (3) Q Generally what did you talk about?
- (4) A I talked a little bit about my ice message to him and whether he got it And he said he didn't get it
- (5) Q Let me stop you there just for a minute At the time you talked to Mr Borgen a month after the spill was he telling you that he still hadn't got that telex or that he hadn't got it -
- (6) A He hadn't seen it He hadn't seen it Maybe he received it and just didn't see it
- (7) Q Well did he indicate that he hadn't read it?
- (8) A That's true
- (9) Q Did you talk to him about or did you discuss with him at all the cause of the grounding?
- (10) A I think we - we might have discussed some - some reasons that - probably were foremost in my mind
- (11) Q What were the reasons for - most most on your mind Captain?
- (12) A Well I think Joe should have been on the bridge is one reason That's one reason I think that someone had - should have restricted transit in the traffic separation schemes while there was that sort of ice there to daylight transit only whether it be the Coast Guard or our own company And those were the three reasons why I think the Valdez ran aground
- (13) Q Did you discuss after the grounding did you have any

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- (1) discussions with Paul Myers?
- (2) A Yes
- (3) Q Okay When was the first discussion you had with Paul Myers?
- (4) A I had a small stint baby sitting the Valdez while she was out at Naked Island and that's when I confronted Paul about my ice telex
- (5) Q Okay and that would have been when?
- (6) A Four five days before they towed her out I was on her for ten days
- (7) Q So you were on the Valdez for ten days at that point in time?
- (8) A Yeah
- (9) Q And that's when you first talked to Paul Myers after the spill?
- (10) A About the spill yes
- (11) Q Okay And tell us about that conversation?
- (12) A Well I just asked him why he didn't act on my telex and he said that he didn't see it And he was on the Valdez overseeing some repairs when the telex came through the office And he didn't see it
- (13) Q Okay Now what specifically did your telex say?
- (14) A Well it was on a turn around message and I told him we loaded so many barrels of cargo what the delays were, and as - as common practice, we reported if there was any ice in

the lanes and that I thought they may want to consider daylight

(1) transit

(2) Q Did you have the word urgent or anything in the -

(3) A No No I didn't

(4) Q Did you consider the information about recommending daylight transit only an important recommendation?

(5) A Personally I considered it an important recommendation

(6) yes

(7) Q Now at some point in the fall of 1989 did you attend a conference in either Philadelphia or Houston where there were

(8) number of other masters present?

(9) A Yes

(10) Q Okay Which one did you attend?

(11) A Philadelphia one

(12) Q Philadelphia one?

(13) A Um hmmm

(14) Q And that was the first of the two conferences?

(15) A I believe it was

(16) Q And the second conference was for those masters who couldn't make the first conference?

(17) A That's correct

(18) Q Okay And at that conference Mr Larossi started things out by giving a speech about the grounding?

(19) MR FLANNAGAN Is that a question?

(20) MR NOLTING Yes

(1) A Well, the chronological order was that we went through a drug alcohol type course and that lasted for about a day or so And then we went into our session with Mr Larossi for a couple of three days I think that lasted

(2) Q And your session with Mr Larossi did he at some point speak about the grounding?

(3) A Oh yes

(4) Q Okay And tell us about what he said?

(5) A Well the gist of it, what I got out of it was he more or less blamed us for - for what happened He was under the assumption that we were all doing exactly what Joe Hazelwood

(6) did on the vessels which was incorrect He talked about - I remember load program up and - right now I can't really remember too much else

(7) But the general sense, we all felt that obviously he was extremely upset, not only Joe Hazelwood but all of us He was

(8) also upset about promoting Cousins from the unlicensed ranks to the licensed ranks He was against that right from the very beginning Not particularly Cousins but all - all unlicensed people He's reluctant to promote them to the officer ranks

(9) That's about it the general - and we talked about procedures what we thought procedures ought to be

(10) manning levels on the vessel whether we were anchored

(11) lightered alongside the berth and just general things of that nature

Q Now what sort of practices - you said that Mr Larossi was under the mistaken assumption that a number of masters were

(1) doing the same thing that Hazelwood did

(2) A Right

(3) Q Okay And what sort of things did Mr Larossi believe that other masters were doing that Hazelwood had done?

(4) A Again I can't recall My impression was this that - that other masters were not on the bridge other masters were

(5) load programming up and in congested or waters where dangers

(6) were known to be Other masters were in his opinion running

(7) the bridge watch too loosely were not complying with company

(8) policy with regard to the bridge and navigational manual

(9) Just

(10) in general that sort of thing

(11) Q What do you mean when you say load programming up?

(12) A Well, it's the same thing as - as on a steam ship we go from maneuvering speed to full sea speed It sort of impedes

(13) the - the engines from being answered quickly However on a

(14) diesel ship you may have an override an emergency override so

(15) it can be over - it can override it very quickly

(16) Q Okay And is it your understanding that is what the Exxon Valdez was doing at the time of the grounding it was load programming up?

(17) A That's what I heard

(18) Q Okay And do you believe that to be a prudent practice in the area of Prince William Sound between the cape and Potato

(1) Point?

(2) A If you have clear fairways with no obstruction, I - I don't see where that would be a problem

(3) Q Is it prudent if you're out of the shipping lanes?

(4) A I would say no

(5) Q Showing you what's been marked at least for the time being as Martinlau Exhibit No 4 that is a memo from Mr Klepper to Mr Borgen dated November 11 of 1985 where I see you're copied

(6) on this memo?

(7) A Uh huh

(8) Q Okay And just again so we have our point of reference clear At this point in time you were a port captain on the west coast?

(9) A Yes

(10) Q And were those concerns of yours prior to the grounding of the Valdez the fatigue of officers and long work hours?

(11) A Yes Yes

(12) Q And those are items which potentially can jeopardize the safe operation of a vessel if you have fatigued officers?

(13) A Yes

(14) Q At any time before the grounding of the Exxon Valdez did you ever report or tell anyone in Exxon management about your concerns regarding fatigue of officers and long work hours?

(15) A I remember at a conference masters conference where we were

(16) at a certain section with I don't know some doctor, whether

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- (1) Dr. Montgomery or some doctor that I expressed my concerns and
- (2) feelings toward the fatigue factor yes
- (3) Q And to your knowledge did Exxon management do anything based on what you told them?
- (4) A I don't - I don't recall anything coming about after that discussion
- (5) Q What did you tell Dr. Montgomery?
- (6) A Again I - I don't recall the exact conversation but the gist of it was that that fatigue was debilitating both health wise and as far as alertness and ability to think quickly and crisply if you will
- (7) Q And that conversation occurred approximately when? Do you have a general idea?
- (8) A It - it - between '87 and '89 I know that
- (9) Q Prior to the grounding do you know whether Exxon Shipping Company management considered adding an additional loading mate
- (10) at Valdez?
- (11) A No
- (12) Q You mean meaning you don't know one way or another?
- (13) A I don't know one way or another
- (14) Q You mentioned this morning that at the time that you were filling the slot on the Exxon Valdez that one of the things you were looking for was a master who had Prince William Sound
- (15) pilot's endorsement?
- (16) A Yes

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- (1) Q Okay Because if you selected someone who did not have pilot's endorsement [sic] then what you would have to do is you would have to pay for a local pilot to be on the vessel through part of that transit in Prince William Sound?
- (2) A That's correct
- (3) Q So that was an option that you had You could have selected looked at all of the masters and selected one that didn't have Prince William Sound endorsement but paid for a local pilot?
- (4) A I didn't consider it an option It wasn't an option
- (5) Q When you say it wasn't an option is it something you could have done?
- (6) A Oh, yes Yeah
- (7) Q And the reason you did - didn't was because that would cost extra money for Exxon?
- (8) A That's correct
- (9) Q Captain Martineau setting aside the pilotage requirement that Mr. Russo has been asking you about did Exxon Shipping Company have any policy in regard to whether the captain should
- (10) be on the bridge when transiting Prince William Sound?
- (11) A Yeah, they - I think they wanted the masters to be on the bridge If he they had pilotage they were being paid for that and were - were - they were expected to be on the bridge
- (12) Number one, as master of the vessel, just to shepherd their vessels their equipment and so on so forth I think they

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- (1) expected the masters to be on the bridge
- (2) Q And are you familiar with the watch conditions in the Exxon navigation and bridge organization manual as they existed in 1989?
- (3) A Somewhat so yes Yes
- (4) Q At - at a point below Rocky Point and above Bligh Reef at nighttime with ice in the channel what watch condition would have been in effect?
- (5) A Watch Condition D
- (6) Q And what - what would Watch Condition D require in terms of the master's presence would it have required the master to be on the bridge?
- (7) A Yes
- (8) MR. O'NEILL That concludes our examination of Captain Martineau
- (9) MS STEWART Defendants would like to present Captain Martineau's cross examination by video
- (10) CROSS EXAMINATION OF ANDRE MARTINEAU (Video)
- (11) BY MR. RUSSO
- (12) Q Let me move on to one other area Captain Martineau In this conversation with Captain Sheehy that you had before Captain Hazelwood transferred to the west coast fleet in 1987 did Captain Sheehy report to you that Captain Hazelwood had performed well in the gulf coast fleet?
- (13) A I recall that that may have been the case yes

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- (1) Q And isn't it a fact that some reference was made to Captain Hazelwood's alcohol rehabilitation in that conversation?
- (2) A Possibly yes
- (3) Q What did you know about Hazelwood's abilities as a master at that time?
- (4) A Well he had the reputation of being an excellent seaman and I knew that for a fact when I was third mate and he was chief mate I had never - never really observed his ship handling capabilities in tight situations because when I sail with him as master I think we just made I think it was one trip
- (5) to Valdez and one trip to Panama or - he got off There's no test of a master's ship handling skills in those two ports So but he had the reputation of being a good ship master ship handler and a good seaman
- (6) Q From the time that you were appointed - that you took over as master of the Exxon North Slope in September of 1987 until January of 1989 were there any occasions at all where you were present with Captain Hazelwood - let me ask that question first Where you and Captain Hazelwood were together in that time frame?
- (7) A Yes when we went to that schooling in Dallas Texas
- (8) Q That was January of '89?
- (9) A That's correct
- (10) Q Prior to that schooling between the time September of '87 when you took over as master of the North Slope up until that

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- (1) schooling were there any occasions when you were together with
- (2) Captain Hazelwood?
- (3) A No not that I recall
- (4) Q You told us about the dinners or the conference in Dallas and you said it was about a three week conference in January
- (5) A Uh huh Yeah
- (6) Q When the group - let me begin again Was it always a large group that went out for dinner during that time?
- (7) A No not necessarily Sometimes we all went out and others
- (8) people just split up
- (9) Q Okay The occasions during the three weeks in January 1989 when you went out to dinner and Captain Hazelwood was present in your group do you have a recollection of seeing Captain Hazelwood drink alcohol with dinner?
- (10) A No
- (11) Q Do you have a recollection of seeing Captain Hazelwood drink alcohol at any time during those three weeks?
- (12) A No he never - he never drank
- (13) Q Okay Do you recall whether other people in the group whether you witnessed other people in the group drinking alcohol with dinner?
- (14) A Yes
- (15) Q Did you drink alcohol with dinner?
- (16) A Yes
- (17) Q Do you have a specific recollection that someone within the

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- group did not drink alcohol?
- (1) A Joe Hazelwood
- (2) Q Okay
- (3) Going back to 1989 before the grounding of the Exxon Valdez did you have an opinion as to whether pilotage was necessary in Prince William Sound?
- (4) A I suppose I did
- (5) Q And what was that opinion?
- (6) UNIDENTIFIED SPEAKER Can you put a time frame on it?
- (7) Q In 1989 prior to the grounding of the Exxon Valdez
- (8) A The Coast Guard was doing away with a pilotage
- (9) Q Okay And did you agree that that was a good idea that they should do away with pilotage because pilotage was not necessary in Prince William Sound?
- (10) A Yes
- (11) Q Why did you think that pilotage was not necessary in Prince William Sound?
- (12) A Well it's a relatively easy area to navigate We have -
- (13) we navigate areas much more difficult and complicated than Prince William Sound You've got good radar coverage and reflection from points of lands islands and rocky coasts as well as Loran C which was excellent - or is excellent and you've got good aids to navigation far as lighthouse and so on,
- (14) so forth

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- (1) Q I believe you stated in questioning by I believe it was - that for all intents and purposes there was no pilotage in Prince William Sound as far as vessels come in there without pilotage on a routine basis?
- (2) A That's correct
- (3) Q And that was your general understanding of the situation in Prince William Sound prior to the grounding of the Exxon Valdez?
- (4) A That there were vessels coming in there without pilots aboard yes
- (5) Q Did there come a time prior to the grounding of the Exxon Valdez when you were asked to fill out a form for the Coast Guard expressing your opinion as to whether pilotage was required in Prince William Sound?
- (6) A Yes
- (7) Q Do you recall filling that out?
- (8) A Yes
- (9) Q And in that form did you express the opinion that pilotage was not - should not be required?
- (10) A Yes
- (11) Q Had there been any occasions where you've had to take this maneuver leaving the traffic separation scheme during a nighttime transit?
- (12) A Yes
- (13) Q When was that?

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- (1) A I don't remember
- (2) Q In that same area north of Bligh Island and south of Potato Point have there been to up sea speed?
- (3) A Not often a - that's a diesel ship
- (4) Q You're unable to program the vessel up to sea speed?
- (5) A Right
- (6) Q Have there been occasions where you have taken the vessel up to sea speed in that area?
- (7) A Yes
- (8) Q Have you done that at nighttime?
- (9) A Yes
- (10) Q Have you done that during ice conditions?
- (11) A Again it depended on the ice where it was If there was anything in the lane we kept it on maneuvering speed
- (12) Q What is maneuvering speed?
- (13) A Just on a steam ship it allows you to maneuver quickly or allows you to maneuver the engines without delay
- (14) Q How many knots would that be?
- (15) A That might be twelve knots
- (16) MS STEWART That concludes our cross examination (The witness was excused)
- (17) MR JAMIN Good morning Your Honor At this time we have a series of exhibits to add we think by agreement I will list them for the court 47 56 74 104 105 106 114 117 119 228 3600 3490 A alpha

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- (1) THE COURT 3490 A?
 (2) MR JAMIN Correct sir 3786 3723 3787 3790 135
 (3) and DX Defendant's Exhibit 3722
 (4) MR SANDERS We have no objection
 (5) MR JAMIN Thank you Your Honor
 (6) THE COURT Exhibits just listed by Mr Jamin are
 (7) admitted without objection
 (8) (Exhibits 47 56 74 104 105 106 114 117 119 228
 (9) 3600 3490 A 3786 3723 3787 3790 135 and DX3722
 received)
 (10) MR O NEILL The plaintiffs call as an adverse
 (11) witness for examination Captain Michael Stalzer
 (12) Is he here? - I hope
 (13) THE COURT Captain come forward Too much traffic
 (14) out there
 (15) (The Witness Is Sworn)
 (16) THE CLERK For the record sir state your full name
 (17) your address and please spell your last name
 (18) THE WITNESS Michael Anthony Stalzer S T A L Z E R
 (19) And I live at 6623 Devonshire Stillwater Oklahoma
 (20) THE COURT Captain that silver microphone in front
 (21) of you will amplify your voice Pull it a little closer to you
 (22) and speak into it It will help everyone here
 (23) ADVERSE DIRECT EXAMINATION OF CAPTAIN MICHAEL
 STALZER
 (24) BY MR O NEILL
 (25) Q Just so the record is clear I took the little sort of

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- (1) light thing coming out of this bright light right there off
 (2) this exhibit It's been on there the last couple of times we
 (3) used it at Mr Neal's request So the record is clear the
 (4) reason I took it off is so we could see exactly right where it
 (5) is the sort of balloon out here is where the light would go
 (6) and that's how they draw them on navigation charts
 (7) How are you sir?
 (8) A Fine
 (9) Q I put two pieces two stacks of paper in front of you One
 (10) has some exhibits in it that we're going to use and the other
 (11) has your prior testimony in case we need to refer to that in
 (12) the examination
 (13) You're a ship captain?
 (14) A I'm retired from Exxon
 (15) Q You're retired?
 (16) A Yes
 (17) Q You were a ship captain for many years isn't it that
 (18) correct?
 (19) A Yes
 (20) Q And just so we know why you're here you were at the time
 (21) of the grounding of the Exxon Valdez the other captain of the
 (22) Valdez?
 (23) A Yes, I was assigned to the Exxon Valdez
 (24) Q So that Captain Hazelwood had the duty half of the time and
 (25) you had the duty half of the time?

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- (1) A That's correct
 (2) Q And for what years were you the - did you share duties
 (3) with Captain Hazelwood on the Valdez?
 (4) A Captain Hazelwood was assigned there I believe in late
 July
 (5) of 1987 From that time until the grounding
 (6) Q And during that entire period of time you were the also
 (7) the master of the Valdez?
 (8) A When I was on board yes sir
 (9) Q And Exxon Corporation or Exxon Shipping Company is that
 (10) the only shipping company you've ever worked for?
 (11) A Or division of Exxon It was Exxon company USA marine
 (12) department initially when I went to work with Exxon in 1973
 (13) and I continued working with Exxon until earlier this year
 (14) retirement from Sea River in the division of Exxon
 (15) Q You said Sea River?
 (16) A Exxon Shipping Company has a new name Sea River
 (17) Q When did it change its name to Sea River maritime?
 (18) A I think in the fall of last year
 (19) Q Is the Exxon Valdez - is it still called the Valdez?
 (20) A No the Sea River Mediterranean
 (21) Q What's it called Mediterranean?
 (22) A Well it - it was - yeah The Mediterranean I don't
 (23) know if it's the S/R or the Sea River Mediterranean but it's
 (24) the Mediterranean
 (25) Q And the Valdez the Exxon Valdez was named either the S/R

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- (1) Mediterranean or the Sea River Mediterranean after the
 (2) grounding?
 (3) A No after the grounding it was named the Exxon
 (4) Mediterranean when it sailed from San Diego in - in '90 and
 (5) then I think they changed the name here last year but I
 haven't
 (6) followed exactly what they changed it to
 (7) Q Now you became a master in 1979?
 (8) A I received my - I sat for and passed and received my
 (9) masters license in 1979
 (10) Q And when did you begin to serve as a master?
 (11) A 1981 it was my first tour as captain
 (12) Q Would it be fair to say sir that prior to the grounding
 (13) you had heard rumors about Captain Hazelwood and drinking?
 (14) A Yes
 (15) Q And would it be fair as to say sir that you heard those
 (16) rumors from other officers?
 (17) A I had heard rumors all through my years from the middle
 of
 (18) 1970s up till in the 80s of Captain Hazelwood Rumors go
 (19) around and around the fleet, so I have heard rumors
 (20) Q And you did hear the rumors from other officers ship
 (21) officers?
 (22) A Yes sir
 (23) Q And on one occasion in May of 1988 indeed you had a
 (24) couple of drinks with Captain Hazelwood?
 (25) A Yes sir

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- (1) Q And that would be Captain Hazelwood was flying in to
(2) Portland in May of 1988?
(3) A He was coming up to relieve me that's correct in
(4) Portland
(5) Q And the vessel was in Portland for repairs in dry dock?
(6) A It was up in dry dock out of the water that's correct
(7) Q Had you picked Captain Hazelwood up at the gate?
(8) A Yes I met him at the gate at the airport
(9) Q On the way back to picking up his luggage Captain
(10) Hazelwood suggested to you that you have a drink while
waiting
(11) for the luggage and he had a couple of vodkas two vodkas?
(12) A As I recollect that's correct
(13) Q And you had a beer?
(14) A That's correct
(15) Q And then you went down to the shipyard?
(16) A Yes We went to the shipyard
(17) Q And you met with shipyard personnel?
(18) A It was the afternoon meeting going on and I introduced
him
(19) to the ship super and the others that were involved in the
(20) repair work of the ship
(21) Q And you went on board?
(22) A As I recall about five or 5:30 we went on board to come
(23) over and check the contents of the safe and we left the ship
(24) about six or 6:30
(25) Q Then you went to dinner that evening?

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- (1) A Yes, the chief mate picked us up and I think we picked up
(2) Captain Hazelwood about - I want to say seven or maybe it
was
(3) 7:30 and went to dinner that night
(4) Q Who was the chief mate?
(5) A George Dowdle
(6) Q And you did you split a bottle of wine or drink wine with
(7) dinner?
(8) A I believe we did at dinner
(9) Q At that time were you aware that Captain Hazelwood had
been
(10) through some kind of rehabilitation program?
(11) A I had heard rumors to that effect
(12) Q Did you ever check up on the rumors?
(13) A No
(14) Q So at the time that Captain Hazelwood had those two vodkas
(15) and you had wine with dinner you had in fact heard rumors that
(16) Captain Hazelwood had been through a rehabilitation
program?
(17) A Yes
(18) Q Now I wanted to ask in - this will just take a minute
(19) but I wanted to move it out of the way
(20) Had anybody told you at all that Captain Hazelwood was
(21) under any kind of monitoring or surveillance or watch program
(22) to make sure that he wasn't drinking?
(23) A I hadn't been told whether he was or wasn't You have to
(24) understand when he was on the ship I wasn't there so
there
(25) would be no reason for me to know except for you know the
few

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- (1) hours we were together at the terminal
(2) Q You weren't aware of any monitoring program any
monitoring
(3) program were you?
(4) A I was not aware of whether there was or wasn't
(5) Q On Monday it takes me a little while to get up to sea
(6) speed
(7) Q When was is first time that you encountered Mr Kagan as a
(8) helmsman?
(9) A I think it was on the Exxon Valdez
(10) Q And would that be in January of 1989?
(11) A Yes it would
(12) Q And there was some telex that had to do with Mr Kagan that
(13) came - came to you in early 1989?
(14) A Yes
(15) Q Could you tell me about that?
(16) A I could tell you what I had have memory
(17) Q Yes sir
(18) A I think the telex came a day or two before he joined the
(19) vessel and it stated is that he had not sailed his - as A B
(20) for some time and to and to help him out work with him and
(21) evaluate him at 30 and 60 days
(22) Q Did you talk to Mr Kagan at all about his ability skills
(23) as a helmsman?
(24) A When he signed on I asked him if he - how - signing on
(25) board and I asked him if he managed the SRP 2000 that was
the

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- (1) the steering stand up on the bridge he said no I said look at
(2) it before we sail He said he was concerned about his
(3) steering that he had been working on it and I said okay
we'll
(4) try you out and see how you do
(5) Q Did he advise you that he was a little concerned about his
(6) steering?
(7) A I think he did He said he was concerned he was a little
(8) rusty I said we'd try him out and go from there
(9) Q And you ordered him to practice steering?
(10) A That's correct I observed him and when I saw his
(11) abilities, I ordered him to practice steering every night for
(12) 30 minutes under his watch officer
(13) Q Sir I have a document in front of you that has been marked
(14) as Plaintiff's Exhibit 3600 and it looks like this If you
(15) could page through that stack of exhibits and see if you can
(16) find it 3600 has been admitted
(17) Going to the second page of the document on the second
(18) page of the document does your signature appear?
(19) A Yes it does
(20) Q And is the top one or the bottom one of the two signatures?
(21) A The bottom one Signature of master
(22) Q So this one right here (indicating) see how I did that?
(23) A That's correct Yes
(24) Q I am proud of my abilities to do that
(25) This is the second page of Mr Kagan's evaluation isn't it

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- (1) that correct?
- (2) A This is the evaluation that was done after approximately 30
- (3) days yes
- (4) Q So this was he comes on board in early '89 and then after
- (5) 30 days this is his formal written evaluation?
- (6) A That's correct
- (7) Q And the formal or written evaluation was prepared by who?
- (8) A The chief mate Cuv Kleess
- (9) Q And then you approve it?
- (10) A I sign off on it The - when he was the appraiser
- (11) signature is Guy Kleess' signature
- (12) Q I want to go to the text of the thing (indicating)
- (13) Mr Kagan lacks the necessary skills to do the A B's job Do
- (14) you see that sentence?
- (15) A Yes
- (16) Q Was that in the evaluation that you concurred in?
- (17) A He came aboard and hadn't sailed as A B for sometime
- (18) and that's what the telex said I treated him as a new employee
- (19) saw his abilities and ordered some additional training The
- (20) word I got back was he was showing some improvement in
- (21) his steering We evaluated him at the mid point of his tour and
- (22) this is that evaluation So he lacked necessary skills that's
- (23) correct
- (24) Q And I want to go to if I could this portion sentence
- (25) here which reads Mr Kagan has made some effort recently
- He

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- (1) has been practicing steering and he did learn the cargo drops
- (2) but he still requires far too much supervision to be a
- (3) productive crew member do you see that?
- (4) A Yes
- (5) Q Is that consistent with your views at that time when you
- (6) signed that evaluation?
- (7) A That's correct
- (8) Q At some point in time you had a conversation with Captain
- (9) Hazelwood about Mr Kagan?
- (10) A Yes
- (11) Q And would it be fair to say that you gave Captain Hazelwood
- (12) a copy of the telex assigning Mr Kagan to the Valdez?
- (13) A I believe I did give it to him and I read it to him in the
- (14) terminal
- (15) Q Had you informed him you had just piloted an evaluation Mr
- (16) Kagan for the first thirty days and he needed improvement in
- (17) steering he required a lot of supervision?
- (18) A That's correct
- (19) Q And about when was that?
- (20) A That would be February 16th or so whenever I - he
- (21) relieved me maybe the 18th I don't remember the exact
- (22) date
- (23) Q About six weeks before the grounding of the Valdez five
- (24) weeks?
- (25) A Five weeks yes sir
- (26) Q On that evaluation do you recall checking the box that

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- (1) Kagan needed improvement with respect to steering?
- (2) A No Mr Kleess filled out the evaluation
- (3) Q Did Mr Kleess check the box that Kagan needed
- (4) improvement
- (5) with respect to steering?
- (6) A I believe so
- (7) Q Are you aware at all as we sit here today of how Captain
- (8) Hazelwood was ranked in the formal ranking processes within
- (9) the
- (10) fleet in the years 1987 and 1986?
- (11) A Not specifically I did see a designated document that
- (12) had
- (13) rankings in that time frame
- (14) Q Would it be fair to say that from an Exxon Shipping Company
- (15) document you're aware of the fact that in 1986 he ranked 35
- (16) out of 37?
- (17) A Could I see the document please?
- (18) Q In your stack it's Exhibit 104 Exhibit 104 has been
- (19) admitted and Exhibit 104 is upside down
- (20) You've seen these kinds of documents before haven't you?
- (21) A Only as designated documents
- (22) Q Are aware that this comes from Exxon Shipping Company?
- (23) A Yes
- (24) Q Using this document can you tell me how Captain
- (25) Hazelwood
- (26) ranked in 1986?
- (27) A If I read it correctly he was 35 out of 37
- (28) Q And how did he rank in 1987?
- (29) A He was 24 out of 29

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- (1) Q How many times have you been in and out of Valdez?
- (2) A Approximately 60 round trips a year
- (3) Q And that's as a master?
- (4) A Yes I think perhaps a few of those trips were as chief
- (5) mate
- (6) Q And do you have pilotage for Prince William Sound?
- (7) A I do
- (8) Q And what did you have to do to get that?
- (9) A Pass an examination by the U S Coast Guard
- (10) Q And did that examination by the Coast Guard require
- (11) drawing
- (12) in the - at least the navigation significant points in the
- (13) sound aids to navigation?
- (14) A Along the track the route track that's correct
- (15) Q Hazards to navigation?
- (16) A Yes
- (17) Q Bligh Reef?
- (18) A Yes
- (19) Q Bushy Island?
- (20) A No the - the island chart that we were given had the out
- (21) line of the surface area surrounding areas so we put in the
- (22) aids the buoys those points, the fairways Some soundings
- (23) along the routed track
- (24) Q What was the purpose that have - what was your
- (25) understanding of the purpose of that?
- (26) A To make sure you're familiar with the area

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- (1) Q So that if indeed you're lost or some unforeseen event
(2) occurs that you have a knowledge background that allows you
(3) to respond to the situation isn't that right?
(4) A The purpose I think was to make sure you're thoroughly
(5) familiar with the area
(6) Q And when you made a trip in and out of Prince William
(7) Sound you got paid for your pilotage didn't you?
(8) A Yes
(9) Q And when you went in and out of the Prince William Sound
(10) well let's get a little geographical lay of the land. These
(11) are the narrows that's a correct statement?
(12) A Yes
(13) Q And Hinchinbrook is down where my foot is?
(14) A Probably a little lower than that but -
(15) Q And there's a passage down at Hinchinbrook that you go
(16) through and then you enter the traffic separation scheme at
(17) about Hinchinbrook?
(18) A Rock and Cape Hinchinbrook right
(19) Q And the traffic separation scheme extends from there all
(20) the way up until you get in the Port of Valdez?
(21) A Yes
(22) Q And when you hit Hinchinbrook you would log in on some
(23) ship's record the fact that you had arrived?
(24) A Yes I took arrival out of Cape Hinchinbrook
(25) Q And what does that mean?

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- (1) A It ends the sea passage and begins the in port passage
(2) Q And from the time that you arrived at the point of the in
(3) port passage at Cape Hinchinbrook until the time you docked
(4) at
(5) the terminal it was your practice to be on the bridge wasn't
(6) it?
(7) A It was except for a few short minutes when I - when it was
(8) safe to do so and I left the bridge to go to the bathroom or
(9) pick up a heavy coat or something. Only for a few minutes
(10) and
(11) when was safe to do so
(12) Q And I'm going to take the top of this off and the Valdez
(13) had a - even had a bathroom up on the bridge didn't it?
(14) A Up on that deck yes
(15) Q If I may show the jury Your Honor?
(16) THE COURT (Nods head)
(17) BY MR. O NEILL
(18) Q See the actual potty there?
(19) And not only were you on the bridge for the passage except
(20) if you had to go to the bath room or get a coat for a minute or
(21) two but you had another ship's officer on the bridge didn't
(22) you?
(23) A Yes sir
(24) Q And the reason for that was your understanding was from
(25) the time that you passed the Hinchinbrook point to the time you
(26) got up there you were essentially in port?
(27) A I considered it entering port yes sir

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- (1) Q Entering port. And the manual required that to be at a
(2) minimum watch condition C - entering or leaving port?
(3) A It could have been watch condition B, C or D depending
(4) on
(5) the circumstances but -
(6) Q And right at the end of Andy Martineau's deposition
(7) testimony he mentioned Watch Condition D. Watch conditions
(8) B
(9) C and D all required at least two officers on the deck didn't
(10) they?
(11) A Yes
(12) Q So just so we're clear from Cape Hinchinbrook on in no
(13) matter what the watch condition your view was there should be
(14) two officers on deck?
(15) A Yes
(16) Q And one of those officers should be the pilot?
(17) A No I didn't consider the pilot as one of those officers
(18) You're referring to the state pilot?
(19) Q No I'm sorry I misspoke
(20) The company qualified its own pilots?
(21) A Correct From Hinchinbrook into Rocky Point. At Rocky
(22) Point we would pick up a state pilot
(23) Q So from Hinchinbrook which is down here up to Rocky
(24) Point you were the pilot?
(25) A Yes
(26) Q And as the pilot you considered it your duty to be on the
(27) bridge because you were getting paid to be on the bridge?

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- (1) A I did. Although other ships could go through there
(2) without
(3) a pilot
(4) Q Let's talk about those other ships
(5) The other ships that went through there without a pilot
(6) were nonpilotage vessels weren't they?
(7) A Is that the definition of them? They were vessels without
(8) carrying a pilot
(9) Q That's right. But the regulations set up a scheme for
(10) pilotage vessels and a scheme for nonpilotage vessels didn't
(11) it?
(12) A I think if they declared themselves a nonpilotage vessel
(13) they would be yeah
(14) Q The Exxon Valdez was a pilotage vessel wasn't it?
(15) A When I was on board we formed the - in our message I
(16) did
(17) the initial message the 3 hour message, VHF reports to the
(18) Coast Guard that there was a pilot on board. That was me
(19) Q And that was an important transmission wasn't it?
(20) A That was part of the - the initial report
(21) Q So coming in down here at Cape Hinchinbrook you talked
(22) to
(23) the Coast Guard and they would say do you have a pilot on
(24) board and the vessel would answer back affirmative or words to
(25) that effect?
(26) A When I was there yes
(27) Q And are you aware that the evening of March 22nd when the
(28) Valdez came in that there was a transmission in which the

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- (1) Coast Guard asked is there a pilot on board and the Valdez
 (2) answered in the affirmative Are you aware of that?
 (3) A No
 (4) Q Now this is where the state pilot was picked up about
 (5) here?
 (6) A In that general area
 (7) Q When you came back out this is where you dropped the
 (8) state
 (9) pilot off?
 (10) A In that general area
 (11) Q Between here and here or coming back out was it your
 (12) general practice to be on the bridge with the state pilot?
 (13) A Yes
 (14) Q And if you were going to leave the bridge to go to the
 (15) bathroom or to pick up a jacket from here to here or back out
 (16) you would inform both the pilot and the watch officer wouldn't
 (17) you?
 (18) A I normally did yes
 (19) Q Are you aware of any paperwork necessary paperwork that
 (20) would require a captain to leave the bridge between Valdez and
 (21) Hinchinbrook?
 (22) A No
 (23) Q In plying this Valdez trade are aware of any time when you
 (24) had to be summoned back on the bridge by the state pilot?
 (25) A No
 (26) Q I wanted to ask you just a couple of questions about the

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- (1) pilot
 (2) When the pilot is on board the state pilot is on board
 (3) taking the vessel out of - out of the Alyeska terminal up to
 (4) Rocky Point who has ultimate authority between the captain
 (5) and
 (6) the pilot?
 (7) A The master the captain
 (8) Q So if the pilot - it is important for the captain to be on
 (9) the bridge because if the pilot does something wrong or
 (10) imprudent or unwise the captain has the authority to overrule
 (11) the pilot?
 (12) A He has that authority
 (13) Q And this is an obvious question but nobody has asked it
 (14) Once you get past Hinchinbrook and you're out in the sea then
 (15) you only need one over on the bridge is that right?
 (16) A Yes unless we're in heavy or restricted visibility
 (17) Q Then you move into another watch condition but if you're
 (18) out in the open sea and it's calm and the sun is shining and
 (19) there's no hazards to navigation then you just have one
 (20) person?
 (21) A That's correct
 (22) Q One officer on the deck?
 (23) A During the day, yes One officer
 (24) Q At night do you have two?
 (25) A No, one officer but you'll have an lookout and helmsman
 (26) Q You're not aware - I asked you about any paperwork that

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- (1) would have to be done between Hinchinbrook and Valdez but
 (2) you're also not aware of any message traffic that would require
 (3) the captain to leave the bridge between Hinchinbrook and
 (4) Valdez?
 (5) A No The messages that were required we could send by
 (6) VHF
 (7) Q Have you ever put the vessel into automatic gyro while in
 (8) the TSS?
 (9) A I think that's permitted within our regulations but it's
 (10) not my practice to do no
 (11) Q Have you ever turned the control of the vessel over to
 (12) another watch officer while outside the TSS?
 (13) A I think I have done that
 (14) Q When was that?
 (15) A I think in the - in the - in the fall of - December
 (16) or - late '92 I did I had a chief mate that had a masters
 (17) license that had been to Grenoble - it's a ship handling
 (18) school He had pilotage for Prince William Sound he
 (19) wanted to
 (20) practice handling the vessel we were going to Anchorage
 (21) over
 (22) in Knowles Head so I was on the bridge and let him do that
 (23) and
 (24) I served him and talked about how he handled the vessel It
 (25) was a training exercise
 (26) Q Let's talk about this training exercise This is in '91?
 (27) A No this was I think in '9 - late '92 or early '93
 (28) Q So you were going to train this officer and the officer had
 (29) been to the ship handling school in Grenoble?

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- (1) A Yes
 (2) Q He had a masters license?
 (3) A Yes
 (4) Q But wasn't sailing as a master?
 (5) A Correct
 (6) Q He had pilotage for Prince William Sound?
 (7) A Yes
 (8) Q There were two officers on the deck?
 (9) A Yes
 (10) Q And you were there to critique how he did?
 (11) A It was just he and I We were the two officers I think
 (12) the other officer went forward to lower the anchor
 (13) Q So it was you and him and you turned the control of the
 (14) vessel over to him and you were standing there and you could
 (15) say you did this good you did this bad that kind of thing?
 (16) A I let him do the procedure and then we talked about it
 (17) We
 (18) talked about it before we came up to the anchorage area
 (19) and
 (20) then he did the work and then we talked about how it - how
 (21) it
 (22) worked out for him
 (23) Q And you got to watch him do it?
 (24) A Yes
 (25) Q Have you ever proceeded outside the traffic separation
 (26) scheme in the area of the Busby Island light?
 (27) A I - outbound, no Inbound, perhaps We - I typically
 (28) would - would favor the inside of that northbound lane We

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- (1) sometimes made a leave for the pilot there turning to the right he would get on the starboard side but that's past a
- (3) little north of Busby Not down there
- (4) Q So down here you've never done that (indicating)?
- (5) A Not - not down right off of Busby Island
- (6) Q There's a red zone and the red zone are light on the navigation charts comes a little over to the right of the Bligh Reef buoy?
- (9) A Yes
- (10) Q Are you aware of that?
- (11) A Yes
- (12) Q In fact it's on the chart and it says red zone?
- (13) A Red sector
- (14) Q Red sector Is that a neat place to be in you're on a super tanker in the red sector?
- (16) A No, we try to avoid those areas
- (17) Q Why is that?
- (18) A The red sector is - the purpose of the red sector is to help indicate a hazard
- (19) Q It's probably why it's red as opposed to green don't you think?
- (22) A I think the other part of the sector is - could be white Some of them are white some are green Most are white
- (24) Q As a general proposition would you say that if you're going to have to navigate through ice you prefer to do it

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- (1) during daylight hours?
- (2) A Through ice? Yes
- (3) Q I had all these great papers to use with you and I'm not going to be able to use them You made it too easy I have one more topic to do talk about I'll do it in three minutes and then I'll sit down
- (7) It had been reported to you that the other captain of the Valdez Captain Hazelwood left the bridge on occasion after coming in by Cape Hinchinbrook hadn't it?
- (10) A No, that's not - not correct
- (11) Q That was never reported to you?
- (12) A No, not that Captain Hazelwood I made the assumption that it was Captain Hazelwood that he was the other master on board
- (14) Q Tell us about the incident and then I'll sit down
- (16) A Okay Only - on a previous voyage inbound after clearing the Hinchinbrook entrance I think it was the second mate LeCain said you're going to do down and I said no and he mumbled something the other captain I don't know that he was referring specifically to Captain Hazelwood although Captain Hazelwood was the other assigned master at the time And that I don't know what he was going down for or how long or for what reason
- (24) Q Mr LeCain sailed with Captain Hazelwood didn't he?
- (25) A I think he did yes

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- (1) MR O NEILL I have no other questions Judge Thank you
- (3) THE COURT Cross examination?
- (4) CROSS EXAMINATION OF CAPTAIN MICHAEL STALZER
- (5) BY MR NEAL
- (6) Q Captain Hazelwood you and I have met I'm going to ask you some questions on behalf [sic] of the Exxon defendants and
- (8) then?
- (9) THE COURT Monday morning Mr Neal Try that again
- (10) BY MR NEAL
- (11) Q It is Monday morning I'm not even up to full maneuvering speed
- (13) Captain Stalzer we've met I'm Jim Neal I'm asking you some questions on behalf of the Exxon defendants but because there will only be one person here examining you I will ask you some questions on behalf of Captain Hazelwood okay?
- (18) A All right
- (19) Q Let me clear up some things first before - that Mr O'Neill went into Referring to - you said that the red - the red sector of the Busby Island light - and this is somewhere down in here I believe Is that correct?
- (4) A Yes
- (5) Q It's a triangle like that (indicating)?

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- (1) A It's an arc It's a sector of the light
- (2) Q And the sector here over here would be white and written this sector here it would be red?
- (4) A Correct
- (5) Q Let me ask you to assume - and you may assume these facts If - for the purpose of this question Assume that Captain Hazelwood at about 11:52 p.m. or prior there to told Mr Cousins that when you're abeam Busby Island light commence your turn back into the traffic lanes You assume that?
- (11) A Yes
- (17) Q If that order had been followed the Exxon Valdez would have never been in the red sector that night would it?
- (14) A Assuming those facts
- (15) Q Assuming those facts Assuming that Captain Hazelwood said to Mr Cousins Mr Cousins when you're abeam Busby Island light commence your turn back into the traffic lanes asked Mr Cousins he's comfortable with this two or three times and Mr Cousins says he was Now assuming those facts Had that order been carried out the vessel would never have been in the red zone of Busby Island light would it?
- (22) A Assuming those facts that's correct
- (23) Q Now then Mr O'Neill asked you about the change of the name of the Exxon Valdez to the Exxon Mediterranean after the grounding Correct?

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- (1) A Yes
 (2) Q The Exxon Valdez was named Exxon Valdez because it was going to the Port of Valdez?
 (3) A Correct
 (4) Q All right And the Exxon - the vessel now goes to the Mediterranean does it not?
 (5) A That's where she trades now yes
 (6) Q And so these she's called the Exxon Mediterranean?
 (7) A It might be Sea River
 (8) Q Or Sea River?
 (9) A Exxon Mediterranean the last time I was on it yeah
 (10) Q Okay When you talked to Mr Kagan and he showed you an evaluation I don't want to spend a lot of time on this but the ultimate evaluation of Mr Kagan was he needs improvement Isn't that correct?
 (11) A Yes
 (12) Q And there's a line over there that you mark if his performance is unsatisfactory Isn't that correct?
 (13) A Yes
 (14) Q And it was not marked unsatisfactory it was marked needs improvement?
 (15) A Correct
 (16) Q And when he asked you about the - he doesn't have the capacities to be an able bodied seaman -
 (17) A Yes

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- (1) Q - Would you look at that?
 (2) A Lacks the necessary skills
 (3) Q Lacks the necessary skill to be an able bodied seaman there are a lot of skills in an able bodied seaman yes
 (4) Q And just one of them is steering?
 (5) A Yes and what Mr O'Neill didn't read you or he said today doesn't it say he lacks necessary skills to be an able-bodied seaman and he stopped there isn't that correct?
 (6) A Yes
 (7) Q He didn't read you the next few words which says he can't handle a marline spike?
 (8) A Next sentence is his knowledge of marline spike seamanship is deficient
 (9) Q Now you observed Mr Kagan steering, is that correct?
 (10) A Yes
 (11) Q Let's - is you're familiar with the difference between orders to come to a course and orders for a rudder command right?
 (12) A Yes
 (13) Q I'm up here let's assume I'm Mr Kagan or some other able bodied seaman and I'm given an order Let's say I'm on a course of 180 degrees
 (14) A Yes
 (15) Q And you - you give an order you've got the con That means you're the officer in control of the helmsman right?

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- (1) A Yes
 (2) Q You give an order to the helmsman says come to 200 degrees that means you move the - move the wheel and live it up on 200 degrees right?
 (3) A Change the heading to 200
 (4) Q Changed heading to 2006789 that's a more difficult assignment then say a rudder command ten degrees right?
 (5) A Right
 (6) Q And if you get a rudder command and you say come to ten degrees right all he has to do is turn the wheel to where this little finger up here or stylus or whatever you call it goes like that correct?
 (7) A The command would be right ten He would turn the wheel to
 (8) the right until the rudder angle indicate or indicates a right ten and just hold it is there
 (9) Q Or isn't there a little stylus little needle up there up here that you turn that turns with the wheel?
 (10) A There is a dial mechanical indicator which is the rudder order not - not the rudder actual So that would approximate
 (11) the rudder actual
 (12) Q Let me show it to you Let me ask you to assume that Mr Cousins ordered Mr Kagan the helmsman to come to ten degrees right or right ten degrees okay?
 (13) A Yeah
 (14) Q Is that a simple command?

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- (1) A Yes
 (2) Q Was Mr Kagan whatever they may say about his abilities at the marlin spike was he capable of executing that order?
 (3) A Yes
 (4) Q What is a marlin spike? Mr Sanders my partner I think is curious this Monday What is a marlin spike?
 (5) A A marlin spike is either - is a steel spike, if you will much like a nail except a little bit longer and thicker used for splicing wire
 (6) Q Okay Has nothing to do with the steering wheel of the Valdez?
 (7) A No
 (8) Q You said that you had a conversation with Captain Hazelwood
 (9) about Mr Kagan and about the evaluation and so forth correct?
 (10) A Turning the turn over yes
 (11) Q What did Captain Hazelwood say to you?
 (12) A I think - I read the telex to him and gave him a copy of that telex assigning Kagan told him we had done the 30 day evaluation that he needed some improvement in steering and he
 (13) still needed to be supervised a lot And I asked Captain Hazelwood if he knew Mr Kagan and he -
 (14) Q Would you keep your voice up a little bit?
 (15) A I asked Captain Hazelwood if he knew Mr Kagan He said yeah something to the effect, yeah Bob and I go way back
 (16) Q Indicating to you that he had had some experiences and was

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- 1 aware of Mr. Kagan himself?
 2 A Yes
 3 Q From prior experience?
 4 A Yes
 5 Q Now this pilotage thing you had a - you had pilotage
 6 endorsement right?
 7 A Yes
 8 Q Okay And therefore they asked you if you had got pilotage
 9 aboard?
 10 A Correct
 11 Q But if you didn't have pilotage - you didn't have a pilot
 12 allege endorsement or somebody on the vessel didn't have a
 13 pilotage endorsement you tell them I don't have it and you go
 14 right on?
 15 A My understanding that is that you could Coast Guard
 16 would
 17 let you enter
 18 Q And many vessels went in there without pilotage's right?
 19 A Some yeah
 20 Q More of other companies than Exxon is that correct?
 21 A Yeah
 22 Q Now then you testified that in your opinion - by the way
 23 the bridge navigation and organization manual is put out by
 24 Exxon to - to help its officers in the safe transit of
 25 vessels right?
 26 A That's its purpose

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- 1 Q And it in your opinion Exxon required two officers on the
 2 bridge is that correct?
 3 A Yes
 4 Q From - from down here where Mr. Brian said his feet -
 5 Mr. O'Neill said his feet were all the way up here to Rocky
 6 Point correct?
 7 A Into the port
 8 Q That's what Exxon required right?
 9 A Yes
 10 Q Did the Coast Guard require that?
 11 A No
 12 Q And Exxon required it and told their masters to abide - to
 13 avoid one man error right?
 14 A Yes
 15 Q Now Mr. Stalzer Captain Stalzer you were a long time
 16 employee of Exxon correct?
 17 A Yes
 18 Q You began in 1973?
 19 A Yes
 20 Q And you retired a fairly young man like to do so myself
 21 this year
 22 MR GERRY Too late
 23 MR NEAL Too late to retire young you're right
 24 But not too late to retire Thank you Mr. Gerry
 25 BY MR NEAL

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- 1 Q You retired this year?
 2 A Yes
 3 Q And all of those 21 is years were sailing on Exxon vessels?
 4 A Yes
 5 Q You received your license from the Coast Guard in 19 -
 6 A Pardon me I had a temporary short assignment in 1974
 7 To
 8 six months that have was ashore but I was still with Exxon
 9 Q For 21 years and six months you sailed as an officer on
 10 Exxon vessels correct?
 11 A Yes
 12 Q When you received your masters license?
 13 A 1979
 14 Q 1979 When did you sail - that's from the Coast Guard?
 15 A Yes
 16 Q And that says you are fully qualified to sail as a master?
 17 A Correct
 18 Q And when did you start sailing as a master for Exxon?
 19 A 1981
 20 Q Two years later?
 21 A Yes
 22 Q Did Exxon provide any training in that period of time?
 23 A Yes
 24 Q What kind of training? Did you go to France too?
 25 A Yes I did
 26 Q Was that that ship handling school?

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- 1 A Yes it was
 2 Q All right And how long was that school?
 3 A It was about a week
 4 Q Who paid for that?
 5 A Exxon did
 6 Q Was that required by the Coast Guard?
 7 A No
 8 Q Now you said you had something drink or you had a vodka
 9 or
 10 two vodkas with Captain Hazelwood at the airport and then you
 11 shared a bottle of wine that night with dinner?
 12 A I think he had a beer and he had vodkas but yeah, then we
 13 had a bottle of wine at dinner
 14 Q Now that vessel at that time nothing was going on with
 15 that vessel at that time as far as operations correct?
 16 A No, it was up in dry dock
 17 Q The answer is that's correct?
 18 A Would you repeat the question?
 19 Q Was anything going on with the vessel in terms of
 20 transiting or sailing?
 21 A No
 22 Q The vessel was up out of the water?
 23 A Yes
 24 Q Other than that have you ever had a drink with Captain
 25 Hazelwood?
 26 A Up - alcohol no I don't believe so

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- (1) Q Alcohol I m talking about alcohol Isn t that correct?
 (2) A Yes
 (3) Q Never?
 (4) A I don t believe so no
 (5) Q Now as I understand it you d be on the vessel six
 (6) months - I mean two months and then you would be off two
 (7) months correct?
 (8) A Yes
 (9) Q And when you were getting - when you were ending your
 (10) two month tour Captain Hazelwood would be coming in to start
 (11) his?
 (12) A Yes
 (13) Q And you all would meet for a while?
 (14) A Yes
 (15) Q All right And when Captain Hazelwood - a mean a few
 (16) hours or so And Captain Hazelwood when he was completing
 his
 (17) two months you d be coming on?
 (18) A That's correct
 (19) Q And he d take his gear out of the - he d take his gear or
 (20) he d leave the vessel you d go to the quarters he used right?
 (21) A Correct
 (22) Q Both his office and his stateroom?
 (23) A Yes
 (24) Q In the times - in all those times you relieved him did
 (25) you ever see any sign of drinking or possession of alcohol

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- (1) aboard the Valdez?
 (2) A No
 (3) Q You had sailed with Mr Cousins third mate Cousins who had
 (4) the con the night of the grounding?
 (5) A Yes
 (6) Q And you d sailed before that grounding trip?
 (7) A With Mr Cousins?
 (8) Q Yes
 (9) A Yes
 (10) Q Did you have occasion to observe Mr Cousins in regard to
 (11) his competence and seamanship as an officer?
 (12) A Yes
 (13) Q What was your observation?
 (14) A I thought he was a little better than average third mate
 (15) Q Better than average third mate?
 (16) A Yes
 (17) Q Now Captain you have sailed for 20 and a half years with
 (18) Exxon up to this year allowing for that six months you re
 (19) off During all that period of time was there a principle
 (20) that Exxon said you - the officers saying sailing our vessels
 (21) must observe above all others?
 (22) A Safety was paramount
 (23) Q Safety was paramount?
 (24) A Yes
 (25) Q Are you familiar with the bridge navigation and

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- (1) organizational manual?
 (2) A Yes
 (3) Q What does it say?
 (4) A It says well I couldn t quote it but I think it says that
 (5) safety comes first and speed and economy is second to
 concerns
 (6) of safety
 (7) Q Your Honor I m going to question a little bit because I m
 (8) taking both here and -
 (9) THE COURT We ll take our first recess Ladies and
 (10) gentlemen we ll be in recess for 15 minutes
 (11) (Jury out at 10 01)
 (12) (Recess)
 (13) (Jury in at 10 16)
 (14) MR NEAL May I proceed Your Honor?
 (15) THE COURT You may
 (16) BY MR NEAL
 (17) Q Before - I want to offer certain exhibits before going
 (18) into substance and I reviewed those with plaintiffs and they
 (19) have no objections Defendants 3494 3685 3453 225 and
 (20) 275
 (21) MR O NEILL We have no objection
 (22) THE COURT Exhibits just read by Mr Neal are
 (23) admitted
 (24) (Exhibit 3494 3685 3453 225 275 received)
 (25) BY MR NEAL

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- (1) Q Captain Stalzer one question back on Mr Kagan
 (2) Does the Coast Guard require that an able bodied seaman
 (3) receive a certificate that he s competent?
 (4) A Yes he has to complete an examination written and
 actual
 (5) demonstration showing his ability to perform all the duties
 of
 (6) an able bodied seaman to the satisfaction -
 (7) Q Does that include steering the vessel?
 (8) A I don't know what's all included in that It's suppose
 (9) today include all the duties required of an able bodied
 seaman
 (10) Q Well is being a helmsman required?
 (11) A Yes
 (12) Q Did the - at the time of the grounding was Mr Kagan
 (13) certified by the Coast Guard as a competent helmsman?
 (14) A He had a seaman's document as an able seaman yes
 (15) Q Well is the answer to my question yes he was certified
 (16) by the Coast Guard?
 (17) A Yes
 (18) Q As a competent able bodied seaman?
 (19) A Well that's not written on his / card
 (20) Q What is written on his card?
 (21) A Just says he's rated and can sign on as an able bodied
 (22) seaman
 (23) Q And he can sail as an able bodied seaman?
 (24) A Yes
 (25) Q Now I asked you also about the principle that Exxon told

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- (1) its officers that they must obey in sailing Exxon vessels that
 (2) safety was the first principle Those are words Did you put
 (3) those words into effect for your 20 and a half years as an
 (4) officer?
 (5) A Yes
 (6) Q Captain what - did Exxon provide - you've talked about
 (7) training for masters and I want to move on to that
 (8) Did Exxon provide training - provided training for
 (9) masters I believe has been testified by sending them to
 (10) Grenoble France for ship handling simulator training and so
 (11) forth What about the officers below master that is the first
 (12) mate second mate and third mate? Was there training
 (13) provided
 (14) by Exxon for these officers?
 (15) A Yes
 (16) Q Would you tell us about the training?
 (17) A Let me break it into formal and informal training Formal
 (18) training was professional schools that we were sent to like
 (19) Grenoble or simulator training There was medical training
 (20) fire fighting, advanced fire fighting crude oil watch inert
 (21) gas, various professional schools that the officers were
 (22) assigned to On the informal training there was training at
 (23) the conferences and on board the vessel with hands on
 (24) training
 (25) of demonstration - of demos and drills that we conducted
 on
 (26) board including discussion of maneuvering characteristics
 (27) maneuvering the vessel in Williams turns turn the vessel at

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- (1) sea turn or we put life boats in the water - so there was a
 (2) variety of training available
 (3) Q All right sir Now Captain I'm going to show you a
 (4) blown up picture of the bridge Exhibit 225 and ask you some
 (5) questions about that
 (6) Some point during this trial people may want to - to have
 (7) some - can you all see this? Can you see this?
 (8) BY MR NEAL
 (9) Q At some point during this trial we probably need to have
 (10) some explanation here I'll try to do it but it may be that
 (11) you'll have to come down with me
 (12) Tell me tell me what I'm looking at now from what angle?
 (13) A This - this is a photograph of the interior of the bridge
 (14) of the Exxon Valdez looking from the port side toward the
 (15) starboard side
 (16) Q From port side that is the left side?
 (17) A Yes
 (18) Q I'm looking at if I'm out here at the port door going out
 (19) to the wing looking inside correct? Is that right?
 (20) A No, just aft of the door
 (21) Q Well just inside the door
 (22) A Yes
 (23) Q All right Now what is this right here I'm pointing to
 (24) which is -
 (25) A That's the wheel on the SRP 2000 steering stand

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- (1) Q Could I have the other exhibit 2 - Exhibit 2775 steering
 (2) wheel steering console?
 (3) What is this right here? I'm pointing to now on the far
 (4) left side of Exhibit 2775 that was the three centimeter radar
 (5) Q Radar and what about over here (indicating)?
 (6) A That's the ten centimeter radar
 (7) Q So you have a port radar and a starboard radar?
 (8) A Three and a ten yes
 (9) Q Three and a ten And what is out here now? You're looking
 (10) out the front of the vessel over the bow is that correct?
 (11) A That would be - that would be the view out the windows
 (12) yes
 (13) Q What is this round thing right here?
 (14) A That's a rudder angle indicator
 (15) Q What is his function?
 (16) A Its function is to display the position the actual
 (17) position of the rudder
 (18) Q In other words if you turn - I'm showing now - can
 (19) everybody see that? I'm showing now Defendant's Exhibit 225
 (20) and I'm going to ask you if 225 is a very blown up picture of
 (21) the steering console which you can see here on the 225?
 (22) A Yes
 (23) Q All right Then as I understand it moving up to 275 to
 (24) grab the wheel If you turn that wheel to ten degrees what
 (25) will this thing you called a rudder angle indicator do?

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- (1) A It should move over ten degrees right or left
 (2) Q In other words if you said ten degree right and you looked
 (3) up here you will see whether or not the rudder is going to ten
 (4) degrees right?
 (5) A Right that shows the rudder actual
 (6) Q All right Now are there other rudder angle indicators on
 (7) this board so if a person gave a ten or right ten degree order
 (8) he could look how many places and see it's carried out?
 (9) A At least three
 (10) Q At least three inside
 (11) A Yes
 (12) Q All right That would be one right?
 (13) A Yes
 (14) Q There's one down here on the steering console is that
 (15) correct?
 (16) A Correct
 (17) Q And there's one somewhere up here on what we've
 (18) previously
 (19) introduced as called the what?
 (20) A The fiddle board
 (21) Q And one up here?
 (22) A Yes
 (23) Q Is there also a rudder angle indicators out on the
 (24) starboard wing?
 (25) A On each bridge wing, yes
 (26) Q So there are five rudder angle indicators on board this

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- (1) vessel?
- (2) A Yes
- (3) Q Any one of them you could look at and see whether your
- (4) order of ten degree right has been carried out?
- (5) A Correct
- (6) Q Anything else here that - what is this thing up here that
- (7) looks like a submarine -
- (8) A That goes up to the magnetic compass
- (9) Q All right Now let me move over to 275 You've
- (10) talked - we've had some conversation here about automatic
- (11) pilot Strike that
- (12) Ten - if I gave a ten degrees right turn do you see what
- (13) I'm pointing to right now?
- (14) A Yes
- (15) Q What is that (indicating)?
- (16) A That looks like the mechanical dial indicator on the front
- (17) of the SRP 2000
- (18) Q And that moves does it not synchronized with the wheel?
- (19) That is if you turn the wheel ten degrees right that moves the
- (20) wheel over ten degrees?
- (21) A Yes
- (22) Q So if you wanted to be sure you got 10 degrees all you do
- (23) is turn it and this moves over to ten degrees?
- (24) A That indicates the rudder order
- (25) Q But that is instantaneous that goes with the wheel?

- (1) right turn is put on 20 seconds later this computer printout
- (2) is going to reflect that the bow is actually turning
- (3) A Well it's not but a paper trace
- (4) Q Paper trace You can pick up the paper like this and see
- (5) that it's showing a turn right?
- (6) A Yes
- (7) Q This - at night now this rudder angle indicator we talked
- (8) about is that lighted at night?
- (9) A It - yes
- (10) Q Lighted or lit which ever
- (11) A Normally yes
- (12) Q Okay
- (13) Captain in your long experience with the - with Exxon
- (14) has Exxon had an alcohol policy?
- (15) A Yes
- (16) Q What is that policy?
- (17) A Generally -
- (18) Q What was it at the time of the grounding?
- (19) A Generally the use or possession of alcohol in company
- (20) property was prohibited They recognized it was a treatable
- (21) condition and there was a program for treatment penalty
- (22) included up to dismissal and it was enforced
- (23) Q All right So it prohibited possession of alcohol aboard a
- (24) company vessel and it prohibited drinking alcohol aboard a
- (25) company vessel?

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- (1) A Correct
- (2) Q Now if you gave a right ten degrees how long would it
- (3) take for this - the rudder angle indicator to show ten
- (4) degrees?
- (5) A Oh, about five seconds
- (6) Q About five seconds In other words ten degrees right at
- (7) exactly at midnight five seconds later this would show
- (8) that the rudder had actually caught up with the ten degrees and
- (9) had turned ten degrees?
- (10) A Approximately correct Yes
- (11) Q Now then there is such a thing called the course recorder
- (12) on this vessel is there not?
- (13) A Yes
- (14) Q And what is the function of the course recorder?
- (15) A It records the - the heading of the vessel
- (16) Q Now if I give a - if I give an order right or you give an
- (17) order right ten degrees this thing goes over immediately
- (18) Within five seconds you can look up here and see that the
- (19) rudder has gone over ten degrees Now how long would it take
- (20) from the time the order right ten degrees was executed, the
- (21) wheel turned for this course recorder begins to reflect that
- (22) the bow was turning bow of the ship was turning?
- (23) A Well it depends on all of the conditions surrounding the
- (24) weather and everything else But approximately 120
- (25) second
- (26) Q 20 seconds So within 120 - 20 seconds after a ten degree

- (1) A Yes
- (2) Q Now was that policy disseminated or published throughout
- (3) the company?
- (4) A Yes it was
- (5) Q How was it disseminated and public accomplished?
- (6) A A letter was sent to each employee It was discussed the
- (7) policy was discussed at conferences and meetings, and we
- (8) discussed it at meetings on board
- (9) Q And did the company try to enforce this policy?
- (10) A Yes
- (11) Q How?
- (12) A Well how I enforced it we did inspections throughout the
- (13) vessel I myself and other officers We held meetings,
- (14) safety
- (15) meetings I think in fact in February of '89 or so we
- (16) discussed it We conducted searches, customs
- (17) immigrations were
- (18) a party to the sea carrier initiative which required us to
- (19) investigate and log those logs And customs, when we
- (20) came back
- (21) from foreign voyages had the ability to come on and
- (22) inspect
- (23) and they did at times Exxon security at times came on with
- (24) -
- (25) with dogs for searches and it was a posted offense
- (26) Q Now is there such a thing - let's - let's say to the
- (27) Valdez '87 '88 '89 time was there such a thing as a safety
- (28) committee?
- (29) A Yes
- (30) Q What was the function of that ship safety committee?

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- (1) A We met roughly once a month with – with almost everyone on
- (2) board has a monthly meeting we held on board and discussed
- (3) items of safety importance and ways to improve safety of the
- (4) ship
- (5) Q Did you keep minutes of those meetings?
- (6) A Yes
- (7) Q Let me see if I can get these down Doug so we can show
- (8) something else
- (9) I asked you to select out one of these and let's see if he
- (10) could bring up one here now This is Exhibit 3685 Let me see
- (11) if I can do this
- (12) I'm showing you what is Exhibit 3685 and ask if you
- (13) recognize that
- (14) A Yes
- (15) Q Okay What is it?
- (16) A That's the ship safety committee meeting minutes for
- (17) February 7th of 1989
- (18) Q Okay And when were you present at this meeting?
- (19) A Yes
- (20) Q Did you conduct the meeting?
- (21) A Yes
- (22) Q Hmm?
- (23) A Yes
- (24) Q Let me direct your attention to a paragraph about the
- (25) middle of the page

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- (1) Let's start again (indicating)
- (2) Okay – would you work this for me? I should have quit a
- (3) while ago?
- (4) Let me outline this paragraph here I'm talking about
- (5) Would you read that to the members of the jury?
- (6) A USCG Exxon Shipping Company this policy was stayed
- and
- (7) captain made it clear that anyone injured while in port
- should
- (8) be required to face a mandatory blood alcohol test All crew
- (9) members were warned not to have went on drink wine four
- hours
- (10) of standing watch
- (11) Q This was dated February – February 7 1989?
- (12) A Yes
- (13) Q Was there anything that prompted – when it says the
- (14) captain – captain that's you right?
- (15) A Yes
- (16) Q Was there anything that prompted this particular discussion
- (17) at that ship safety committee?
- (18) A The regulations were changing The new Coast Guard
- (19) regulations coming into effect in December I think of '88
- and
- (20) I wanted to make sure everyone was aware of it so we
- discussed
- (21) it
- (22) Q And those regulations that were becoming effective at the
- (23) end of '88?
- (24) A I think they became – effective date was in December of
- (25) 1988 December of 1988

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- (1) Q And for the first time the Coast Guard said that a drink of
- (2) alcoholic beverages within four hours of going on watch was
- (3) prohibited?
- (4) A That's correct
- (5) Q And that's what you're warning your crew of right now this
- (6) new change in the policy?
- (7) A That was part of it We discussed the whole policy
- (8) Q Discussed the whole policy
- (9) Captain one or two other things and I'll sit down Did
- (10) the company did Exxon Shipping Company let's talk about 87
- (11) 88 89 now At the time of the grounding Did it have an
- (12) ice policy regarding transit Prince William Sound while there
- (13) was ice in the Sound?
- (14) A Well there wasn't a specific policy with ice policy
- (15) written on the top of the page Ice was – as I mentioned in
- (16) the bridge organization manual – is a hazard As such we
- (17) had – it was our discretion whether or not to delay sailing
- (18) Q You had the discretion whether or not to leave port or
- (19) enter the sound?
- (20) A Yes
- (21) Q Who had the discretion?
- (22) A The master did
- (23) Q Have you ever heard of a Columbia Glacier Institute
- (24) meeting?
- (25) A Well there was a report in the mid '80s they did a study

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- (1) on the Columbia glacier
- (2) Q Who is they?
- (3) A I think it was industry with some participation by the
- (4) Coast Guard
- (5) Q Was there any conclusion regarding transiting Prince
- (6) William Sound when ice is present was there any conclusion
- (7) reached about what the policy should be in – that mid '80s
- (8) meeting?
- (9) A I think they left it to the discretion of the master
- (10) Q And the Coast Guard and industry?
- (11) A Yes
- (12) Q To your knowledge had that policy ever changed as of the
- (13) date of the grounding?
- (14) A No, it hadn't
- (15) Q And that was Coast Guard policy as well as Exxon shipping
- (16) policy?
- (17) A Yes
- (18) Q It should be left to the sound discretion of the master
- (19) recognizing that safety first is the principle correct?
- (20) A Yes
- (21) Q As a matter of fact Captain did you ever – did you ever
- (22) stay in the Port of Valdez yourself when you thought it was
- (23) unsafe or might be unsafe to leave the berth and transit Prince
- (24) William Sound?
- (25) A Yes

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- (1) Q When was that?
 (2) A August 14th of 1988
 (3) Q And - did you or not let the company know you were staying
 (4) over or let them know that you had stayed over?
 (5) A After I left I - I made it a part of the - which was
 (6) standard routine made it a part of the departure telex to let
 (7) them know that I'd delayed transit yes
 (8) Q Did you ever receive any criticism from the company that
 (9) you had stayed over and stayed at berth?
 (10) A No
 (11) Q Again and then I will stop here -
 (12) In regard to '87 '88 '89 period and talking about going
 (13) into the Port of Valdez discharging ballast and loading and
 (14) getting out was there any pressure in this period from the
 (15) company to have a rapid turnaround in Prince William Sound?
 (16) A No
 (17) Q Finally - maybe - I hope finally in regard to this
 (18) automatic pilot thing how do you put on the automatic pilot?
 (19) A You touch the gyro touch pad on the automatic pilot
 (20) keypad
 (21) there, there's the upper left hand corner here
 (22) Q Right here?
 (23) A Right there
 (24) Q You touch that and you - and you put it on automatic
 (25) pilot?
 (26) A Right and you press that it will go to automatic pilot

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- (1) Q And how fast does it go let's say from helm let's say it
 (2) was on helm you want to put it on automatic pilot You press
 (3) that how fast does it go to automatic pilot?
 (4) A Instantaneously it switches right over
 (5) Q Now you wanted to say it off of automatic pilot and return
 (6) to helm what do you do?
 (7) A You depress the helm button
 (8) Q Am I correct you just press that button right there?
 (9) A Correct
 (10) Q Where I'm pointing on Exhibit 275?
 (11) A Yes
 (12) Q And then will go instantaneously from automatic pilot to
 (13) helm?
 (14) A Yes
 (15) Q Captain one last question
 (16) You and Captain Hazelwood were the masters of the Exxon
 (17) Valdez in '87 and '88 is that correct?
 (18) A Yes
 (19) Q Is there a - is there an award given to a vessel of a
 (20) fleet called the fleet manager's award?
 (21) A The West Coast Fleet Managers award yes
 (22) Q What's that based on primarily?
 (23) A As I recall, it's based on a first on safety, having no
 (24) injuries Second on pollution, having no spills Third on
 (25) casualties there was a form 8021, was a green form That

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- (1) basically having no large machinery casualties and the last
 (2) category was the operating financial performance of the
 (3) vessel
 (4) Q Where they in that order of priority with safety being the
 (5) first consideration?
 (6) A Safety was listed first
 (7) Q And what vessel got the fleet managers award for 1987 and
 (8) 1988?
 (9) A The Exxon Valdez won it jointly with the Exxon Calveston
 (10) in
 (11) 1987 in 1987 and with the West Coast Fleet Managers
 (12) award and
 (13) we won it outright in 1988
 (14) Q And you and Captain Hazelwood were masters in those
 (15) years?
 (16) A Yes
 (17) MR CHALOS Excuse me I have about five minutes
 (18) THE COURT I'm sorry I thought you had this worked
 (19) out
 (20) MR CHALOS We had not Your Honor
 (21) MR NEAL Could we approach the -
 (22) (At side bar off the Record)
 (23) THE COURT Ladies and gentlemen there was a missed
 (24) communication whether Mr Neal was going to do all of the
 (25) examination of this witness or not Mr Chalos has asked for
 (26) five minutes and I've agreed
 (27) CROSS EXAMINATION CAPTAIN MICHAEL STALZER
 (28) BY MR CHALOS
 (29) Q Good morning Captain Stalzer As you know I'm Michael

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- (1) Chalos I represented Captain Hazelwood Captain Stalzer
 (2) you
 (3) spoke about the Portland shipyard matter?
 (4) A Yes
 (5) Q Where you had you said one beer and Captain Hazelwood
 (6) had
 (7) two vodkas at the airport?
 (8) A As I recall, yes
 (9) Q After he had those drinks did he appear to you to be
 (10) impaired or intoxicated?
 (11) A No, he did not
 (12) Q You said you split a bottle of wine between three of you at
 (13) dinner that night?
 (14) A Yes
 (15) Q After that Captain Hazelwood appeared impaired or
 (16) intoxicated to you?
 (17) A No
 (18) Q Is it true he was not to assume his duties until the
 (19) following morning on the ship?
 (20) A He had relieved me at that point in the yard, but there
 (21) were no duties assigned till the next morning at eight
 (22) o'clock
 (23) Q Okay Now Captain you were asked some questions about
 (24) the bridge organization manual?
 (25) A Yes
 (26) Q That bridge organization manual is a guide is it not?
 (27) A It's what's expected of us and I used it as a guide yes
 (28) Q The provisions of that manual the terms and the conditions

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- (1) of that manual are left to the discretion of the captain are they not depending upon the circumstances that he's faced with?
- (2) A Yes
- (3) Q And the setting of the watch condition is within the discretion of the captain is it not?
- (4) A Yes
- (5) Q Now we had some testimony earlier or late last week about watch condition A and the condition for watch condition A is restrictive waters good visibility and little or no traffic
- (6) You with me so far?
- (7) A That's one of the conditions yes
- (8) Q All right There is no definition in the bridge organization manual for restricted waters is there?
- (9) A No there's not
- (10) Q Or clear visibility?
- (11) A No, there's not
- (12) Q Or little or no traffic?
- (13) A No, there's no definition
- (14) Q And as a matter of fact with respect to leaving and entering port which is one of the conditions for watch condition C - do you remember that?
- (15) A Yes
- (16) Q There's no definition for port or when you enter or leave port is there?

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- (1) A No there's no definition
- (2) Q Now Captain with respect to the pilotage test that you took -
- (3) A Yes
- (4) Q That was a memorization test wasn't it?
- (5) A For the most part yes
- (6) Q And you took it you said when in 1978 or 1979
- (7) A Excuse me It might have been 1980
- (8) Q Let's say 1980 For argument's sake no one test your ability to operate or pilot the vessel did they?
- (9) A No We had questions on tides local conditions winds and currents, and draw the chart but there's no demonstration - I mean, going out on a slip
- (10) Q That's what I mean There was no Coast Guard officer standing there with you saying Captain Stalzer what is that navigational aid over there or make a right turn over here or left turn over there Was there anything like that?
- (11) A No
- (12) Q And it's a fact isn't it that if you took the test in 1980 and didn't sail again in that area in 1990 there was no test to test your memory was there?
- (13) A That's correct
- (14) Q When you speak about pilotage vessels going up there and nonpilotage vessels going up there at the same time - do you recall that you said there were nonpilotage vessels going up

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- (1) there?
- (2) A Yes
- (3) Q Those nonpilotage vessels faces the same hazards and navigational situations as the pilotage vessels didn't they?
- (4) A Yes
- (5) Q And as a matter of fact the nonpilotage vessels could be up there for the first time and the captain and crew would have no idea except what they see on the chart as to what the hazards are isn't that correct?
- (6) A Well, in what whatever other you know study that they might have done that's correct
- (7) Q And in they did no studying they don't know the area at all other than what they see the chart?
- (8) A I really don't know what they do or don't know but -
- (9) Q I want to ask you two more questions and then I'm done
- (10) In 1987 you were ranked in the top 20 percent?
- (11) A I think so yes
- (12) Q Do you remember that yes? And in 1989 you dropped down to the 50 percent level Do you remember that?
- (13) A I think it was '86 and '87 were the dates
- (14) Q Sorry '86 you were 20 percent '87 you were in the 50 percent?
- (15) A Correct
- (16) Q Did you do anything different between '86 and different that would cause you to drop like that?

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- (1) A Not that I'm aware of
- (2) Q So those rankings would you agree with they were subjective things?
- (3) A I think they were somewhat subjective yes
- (4) Q And whoever was rating you at the time decided where to place you isn't that correct?
- (5) A It was done by a committee of some sort yes
- (6) Q So if you annoyed the committee they may take into that account wouldn't they?
- (7) A Yes
- (8) Q Captain what was Captain Hazelwood's reputation for navigational skills and ship handling as you knew it?
- (9) A As I knew it it was good
- (10) Q I have no further questions Thank you
- (11) MR CHALOS Thank you Your Honor
- (12) MR O NEILL Sir you're not done yet but I'll be brief
- (13) REDIRECT EXAMINATION OF CAPTAIN MICHAEL STALZER
- (14) BY MR O NEILL
- (15) Q Sir I pulled up on the screen Exhibit 3685 which was the minutes of a seat committee meeting dated 7 February 1989 and I'm interested in a couple of things about it The first thing is this signature here which appears to be the signature of Mr Glowacki Is that his signature?
- (16) A Yes that's what appears yes

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(1) Q Are aware that he went into Valdez with Captain Hazelwood
 (2) the afternoon before the fateful voyage?
 (3) A Yes
 (4) Q So he was at this safety committee meeting?
 (5) A He was
 (6) Q And in the document you talk about the so called
 (7) four hour rule is that right right about here (indicating)?
 (8) A Right If that's the Coast Guard was changing the rules
 (9) and in the summer of '88 become effective and that they
 stated
 (10) that you are not to consume alcohol within four hours of
 going
 (11) upon a watch correct That was part of that change
 (12) Q Would you consume - as a prudent seaman would you
 consume
 (13) alcohol within four hours of going on watch?
 (14) A The regulations changed and prohibited it in 1988
 (15) Q After 1988 as a prudent seaman would you consider
 (16) consuming alcohol within four hours of going on watch?
 (17) A No the - correct I would not consider it prudent The
 (18) rule was you couldn't have alcohol within four hours of
 going
 (19) on a watch or on your normal - in the normal duties
 (20) Q Now as the captain of a vessel would you consider it
 (21) prudent captainship to consume alcohol in front of crew
 (22) members within four hours of an assuming your duties on a
 (23) vessel? Is that a good example?
 (24) A No you shouldn't do that
 (25) Q We were talking about or you and Mr Neal were talking

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(1) about he gave you a number of assumptions The sum and
 (2) substance of the assumptions was - of which was if
 (3) Mr Cousins would have made the turn when he was told to
 make
 (4) the turn he wouldn't have entered the red zone Do you recall
 (5) that line of questions?
 (6) A Yes
 (7) Q Is that a fair summary of what you talked about?
 (8) A Correct If he started the turn abeam of Busby, he
 (9) wouldn't have entered the red zone the red sector
 (10) Q Would it be fair to say if there would have been four eyes
 (11) on the bridge instead of two that you would have greatly
 (12) reduced the opportunity for error?
 (13) A By four eyes you mean another officer?
 (14) Q That's a correct statement
 (15) A Yes, had there about been another officer have prevent a
 (16) one-man navigation error
 (17) Q With regard to entering the red zone that appears to be a
 (18) one man navigation error?
 (19) A Yes, it does
 (20) Q And the purpose of having two officers a purpose of having
 (21) two officers on the bridge is to prevent exactly that kind of
 (22) error isn't it?
 (23) A Part of it, yes
 (24) Q You talked a little bit about the principle of safety and
 (25) safety being paramount Is the four hour rule a safety ironed

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(1) rule?
 (2) A Identify a regulation
 (3) Q Is it a safety on the other hand regulation?
 (4) A Yes
 (5) Q Is the so called six on six off requirement in section
 (6) 8104 of the code a safety rule or regulation in?
 (7) MR NEAL Your Honor I thought we had an
 (8) understanding on this I object I don't get a chance to get
 (9) back up and I didn't go into this at all
 (10) MR O NEILL I'll move on
 (11) BY MR O NEILL
 (12) Q With regard to the Exxon alcohol policy you were asked the
 (13) question did Exxon have an alcohol policy and you answered it
 (14) two fold You said it prohibited intoxicant use and possession
 (15) aboard the vessel and it referred to alcoholism as a treatable
 (16) disease
 (17) A The policy recognizes treatable and there was a program
 (18) for treatment
 (19) Q Would it be fair to say that it is not a safe practice and
 (20) it is not prudent seamanship to drink and drive on the seas is
 (21) it?
 (22) A Correct
 (23) Q I have nothing further Thank you sir
 (24) THE COURT Thank you Captain you may step down
 (25) (Witness excused)

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(1) THE COURT Call your next witness
 (2) MR MONTAGUE Your Honor before we call the next
 (3) witness I'd like to offer an exhibit that was prepared during
 (4) the examination of Chief Mate Kunkel We've modified it some
 (5) to reach any objections that the defendants had to it so I'd
 (6) like to offer it If I may approach the bench plaintiffs
 (7) exhibit 6000
 (8) MR NEAL Your Honor before this is admitted could
 (9) I discuss this with the Court at some recess on the admission
 (10) I have a particular problem with this and I - I can explain
 (11) to it briefly to you now or in recess
 (12) THE COURT Will it interfere with your examination?
 (13) MR MONTAGUE I think it will Your Honor but I don't
 (14) think that what Mr Neal has a problem with if I think I know
 (15) what it is will be material to the question
 (16) MR NEAL I don't think you do Can we discuss it
 (17) just a moment Your Honor?
 (18) (At side bar off the Record)
 (19) MR MONTAGUE Plaintiffs now call Captain Michael
 (20) Clark as an expert witness
 (21) (The Witness Is Sworn)
 (22) THE CLERK For the record sir please state your
 (23) full name your address and spell your last name
 (24) THE WITNESS My name is Michael Clark C L A R K
 (25) My address is 577 North River Road Milford M I L F O R D
 New

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- (1) Hampshire
- (2) THE CLERK Thank you Sir
- (3) DIRECT EXAMINATION OF CAPTAIN MICHAEL CLARK
- (4) BY MR MONTAGUE
- (5) Q Good morning Mr Clark?
- (6) A Morning
- (7) Q Captain Clark excuse me
- (8) Could you tell the jury a little bit about yourself?
- (9) A My name is Mike Clark I'm 46 years old I live in
- (10) New Hampshire I'm married I have a 12 year old daughter
- (11) and
- (12) a seven year old son
- (13) Q Are you presently employed?
- (14) A No
- (15) Q Are you retired?
- (16) A Yes
- (17) Q Could you tell us the last position you held prior to
- (18) retiring?
- (19) A I was master of the tanker Brooks Range
- (20) Q And by whom were you employed?
- (21) A Interocean Management Corporation
- (22) Q What is the Brooks Range?
- (23) A The Brooks Range is a crude oil carrier strictly for
- (24) hauling North Slope crude for - out of Valdez to west coast
- (25) and central American ports
- (26) Q And what was the dimensions of the Brooks Range could you

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- (1) tell us?
- (2) A Her deadweight tons was 173 000320 I lengths overall
- (3) 906,
- (4) beam 173 feet and a deck of 75 feet one and a half inches
- (5) Q Is that fair to say that is just a little bit smaller than
- (6) the Exxon Valdez?
- (7) A Yes
- (8) Q Now could you tell us a little bit about your education?
- (9) A I graduated from Massachusetts Maritime Academy in
- (10) 1970
- (11) with a third mates license, a commission as ensign in the
- (12) naval
- (13) reserve and a bachelor of science in nautical science
- (14) Q All right And how long did you sail as a third mate?
- (15) A I sailed as a third mate graduation 1970 until 1972
- (16) Q And what happened in 1972?
- (17) A I became a second mate
- (18) Q Okay And you continued sailing then has a second mate?
- (19) A Yes until 1974 and I became a chief mate and sailed as
- (20) chief mate until 1979 And that was my first captain's job in
- (21) January 1979
- (22) Q Let's go back to chief mate for a second While you were
- (23) chief mate what kind of vessels were you sailing?
- (24) A When I first started in '74 and '75 I was chief mate on
- (25) coastwise tankers and foreign tankers also but smaller
- (26) ships
- (27) And then in '76 and '77 I was chief mate on much larger
- (28) tankers 265 thousand ton systems
- (29) Q What were the names of those?

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- (1) A The Maryland and the New York
- (2) Q Were they bigger than the Exxon Valdez?
- (3) A Yes
- (4) Q And on those ships did you sail into Prince William Sound
- (5) and the Alyeska terminal?
- (6) A Yes on the New York we made three trips to the Alyeska
- (7) terminal
- (8) Q Okay Did you ever attain your pilotage endorsement to
- (9) Prince William Sound?
- (10) A Yes I did in June of 1978
- (11) Q And did you ever obtain a masters license?
- (12) A Yes I got my masters license in 1977
- (13) Q Okay And was that in 1977 you got your masters license?
- (14) A Yes
- (15) Q And was that for unlimited tonnage?
- (16) A Not right at that time, no
- (17) Q When did it become unlimited tonnage?
- (18) A I think right around my first captain's job just
- (19) afterwards
- (20) Q What was your first captain's job?
- (21) A January of 1979
- (22) Q What was the vessel?
- (23) A The Thompson Pass
- (24) Q Was that the sister ship to the Brooks Range?
- (25) A Yes

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- (1) Q And what was your - well strike that
- (2) Did you sit on the Thompson Pass? Were you sailing into
- (3) Prince William Sound regularly?
- (4) A Yes
- (5) Q And when - you were assigned to the Brooks Range when?
- (6) A In August of that same year 1979
- (7) Q What were you on the Brooks Range infraction you retired?
- (8) A Yes I retired in 1989 - January 1992 and I was on the
- (9) Brooks Range, yes, from August of 1979 until January of
- (10) 1992
- (11) Q By the way Captain why did you retire?
- (12) A I had to work much longer periods and the Exxon
- (13) personnel
- (14) a minimum four months, so I knew I was eligible for my
- (15) 20 year
- (16) retirement in '92 so I discussed it with my wife and thought
- (17) it would be very good idea It was becoming a kind of hard
- (18) for
- (19) my kids and you know they just know you go away They
- (20) don't
- (21) know why you're going away even though you tell them So
- (22) we
- (23) decided I would take that at 20 years and I married my wife
- (24) here the year she graduated from college and she had never
- (25) worked so my wife expressed a desire as to work So she's
- (26) working now and I'm not
- (27) Q You're a Mr Mom now?
- (28) A Yeah Captain Mom Kids and the house cleaning
- (29) Q Now you stated that you obtained your pilotage
- (30) endorsement
- (31) in - for Prince William Sound in 1978?
- (32) A Yes June 1978

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- (1) Q And we've had other testimony describing what it was like
(2) to get that endorsement so I'm not going to take you through
(3) that
(4) But one of the things you had to do was have a certain
(5) amount of trips isn't that correct in the Prince William
(6) Sound?
(7) A Yes
(8) Q Couldn't just get your pilotage endorsement without having
(9) had some experience going in and out of Prince William
Sound?
(10) A Yes
(11) Q And you have any recollection of the number of trips that
(12) were required at that time?
(13) A 12 round trips
(14) Q Okay Now does an officer with pilotage endorsement for
(15) Prince William Sound have any advantages over an officer
(16) without pilotage endorsement?
(17) A Yes
(18) Q Could you explain that?
(19) A Well be more familiar with the port and - and all the
(20) known dangers or procedures and courses and just how
things
(21) worked in general
(22) Q Would that include navigational aids also?
(23) A Yes
(24) Q Did you ever get involved in pilot training trips?
(25) A Yes In 1985 our - the Brooks Range was chartered to

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- (1) British Petroleum and they asked me if I would mind doing
12
(2) round trips while they put on a - a bunch of their masters on
(3) the chartered ships so we went up to Valdez and before we
(4) loaded we made 12 round trips
(5) Q Okay And while you were on those training trips were you
(6) on the bridge were you required to be on the bridge throughout the
(7) transit?
(8) A Yes
(9) Q And were you on the bridge throughout the transit?
(10) A Yes
(11) Q Now in the 13 or so years that you have navigated in and
(12) out of Prince William Sound approximately how many trips
have
(13) you made?
(14) A Well, well over a hundred
(15) Q That's well over a hundred in and well over a hundred out?
(16) A Yes
(17) Q Have you ever had - how many of those trips would be at
(18) nighttime?
(19) A I'd estimate half
(20) Q And how many of those would be at nighttime when you've
(21) encountered ice?
(22) A Maybe half of those so 25 - 25 percent, a quarter of them
(23) Q So about 25 round trips out or so you've encountered ice
(24) at night?
(25) A Yes

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- (1) Q Now do you recall how many times you've gone out of the
(2) Traffic Separation System lanes in those occasions?
(3) A The - you mean the separation zone or -
(4) Q Well no Completely out of the TSS system
(5) A Twice
(6) Q And on both those occasions were you on the bridge
(7) throughout?
(8) A Yes
(9) Q Were you doing the conning?
(10) A Yes
(11) Q Were you on auto gyro?
(12) A No
(13) Q Do you recall what your speed was?
(14) A There was ice present six to eight knots
(15) Q Did you receive any notification from the Coast Guard as to
(16) your position on those occasions?
(17) A As to my position where I was?
(18) Q Yes
(19) A No
(20) Q Were you expecting any?
(21) A No
(22) Q Now have you ever had any charges preferred against your
(23) license by the U.S. Coast Guard?
(24) A No
(25) Q Have you ever been involved in any grounding or collision?

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- (1) A No
(2) Q Your Honor I would offer Captain Clark as an expert in the
(3) overall duties of a captain and navigation duties particularly
(4) Prince William Sound
(5) THE COURT Objection?
(6) MR CHALOS Your Honor may I just have a short voir
(7) dire?
(8) THE COURT You may
(9) VOIR DIRE OF CAPTAIN MICHAEL CLARK
(10) BY MR CHALOS
(11) Q Captain Clark I'm Michael Chalos I represent Captain
(12) Hazelwood You've never qualified as an expert before have
(13) you?
(14) A No
(15) Q And you've never been accepted by any court as an expert
on
(16) any issue before have you?
(17) A No
(18) Q And you never acted as an expert before?
(19) A No
(20) Q You haven't published any articles or books on navigation
(21) in Prince William Sound have you?
(22) A No
(23) MR CHALOS Your Honor I have mixed emotions but
(24) I'll withdraw my objection
(25) THE COURT Ladies and gentlemen the court accepts

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(1) Captain Clark's qualifications to speak and offer opinions as
 (2) to the duties of a captain of a tank vessel
 (3) You may continue
 (4) BY MR MONTAGUE
 (5) Q Well now that Mr Chalos has established you're not a
 (6) professional expert witness let me ask you this question
 (7) At our request at the plaintiff's request Captain did
 (8) you review the various actions and judgments exercised by
 (9) Captain Hazelwood and the orders given by him on March 23
 and
 (10) 24 1989?
 (11) A Yes I did
 (12) Q Okay And in doing so did you review various documents?
 (13) A Yes, I did
 (14) Q Could you tell us if you can best you can remember the
 (15) types of the -- the documents or types of documents that you
 (16) have looked at so far?
 (17) A I've looked at some of the charts from the Exxon Valdez
 (18) the bell logger, the bell book and -- those are all portions of
 (19) the dates in question
 (20) And I've seen portions of the depositions of Captain
 (21) Hazelwood Chief Mate Kunkel third mate Cousins the
 radio
 (22) operator and the chief engineer Glowacki and the VTS VIII
 (23) transcripts of the radio transmissions those dates three
 (24) pages out of the VTS users manual the ice drawings by
 Captain
 (25) Hazelwood and third mate Cousins And that's about all I
 can

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(1) think of right now Probably more but
 (2) Q Probably more okay
 (3) Also were you in the courtroom when are Captain Hazelwood
 (4) testified?
 (5) A Yes
 (6) Q So you heard all of -- most of his testimony?
 (7) A Most -- I didn't hear all of it
 (8) Q Could you tell us Captain what are a masters -- well
 (9) first of all the word captain and mastering they're
 (10) interchangeable aren't they?
 (11) A Yes
 (12) Q And as Mr Stalzer just said the master or the captain is
 (13) in charge of the vessel?
 (14) A Yes
 (15) Q And responsible for it?
 (16) A Yes
 (17) Q All right What are the duties of this -- of a master or a
 (18) captain who's in charge of a vessel? What are their main
 (19) duties and responsibilities?
 (20) A Well, to encapsulate, it's -- you're responsible for the
 (21) safety of the ship the safety of the crew and the safety of
 the cargo And -- to break it down even further maybe at
 sea
 (22) for the safe passage of the vessel from port to port or any
 (23) functions you're performing at sea and in port, safe
 navigation
 (24) of the vessel in any in port moments and any port
 operations

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(1) you're going to have Essentially that the vessel is properly
 (2) manned and operated at all times
 (3) Q Now you mentioned bolting -- I think you used the phrase
 (4) in port and at sea?
 (5) A Yes
 (6) Q What do you mean by in port?
 (7) A In port is to me means from arrival to departure
 (8) Q Okay Now let's take the Port of Valdez Is that what
 (9) it's called the Port of Valdez?
 (10) A Yes
 (11) Q When do you arrive in the Port of Valdez?
 (12) A Cape Hinchinbrook
 (13) Q So once you arrive at Cape Hinchinbrook until you arrive at
 (14) the Alyeska terminal you're in the Port of Valdez?
 (15) A Yes
 (16) Q And when did do you depart the Port of Valdez?
 (17) A When you take departure of Cape Hinchinbrook
 outbound
 (18) Q So you're in the Port of Valdez from the reverse from the
 (19) time you leave the terminal Alyeska terminal until you've
 (20) passed the point at Cape Hinchinbrook is that correct?
 (21) A Yes
 (22) Q And what do you mean at sea?
 (23) A At sea is from when you take departure until you take
 (24) arrival in another port
 (25) Q Now you mentioned the safety of the vessel in port and at

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(1) sea And I take it those are navigational duties?
 (2) A Yes
 (3) Q Now are there also administrative duties that a master or
 (4) captain has?
 (5) A Oh yes
 (6) Q And what are they? Without going into great detail but
 (7) what are they?
 (8) A Oh, well, all the logbook entries and paperwork relating to
 (9) cargo and the operation of the vessel daily messages
 There's
 (10) a lot of paperwork
 (11) Q Captain which is more important safety or paperwork?
 (12) A Safety
 (13) Q Is that paramount?
 (14) A Yes
 (15) Q Now you've heard Mr Neal talk about the safety being so
 (16) important to Exxon Is that a novel idea at sea?
 (17) A No
 (18) Q That's standard isn't it?
 (19) A Yes
 (20) Q Now let's talk a little bit about navigating the vessel
 (21) How do you navigate one of these vessels?
 (22) A With -- always safety in mind
 (23) Q And let's talk about navigating the vessel in port either
 (24) arriving in port or departing port okay? That would be from
 (25) the -- in this case from the Alyeska terminal to Cape

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- (1) Hinchinbrook
- (2) What are your duties as the master?
- (3) A As master from arriving - when arrive in port you con the
- (4) vessel you - physically direct the movements of the vessel
- (5) from the -
- (6) Q Where do you do that from?
- (7) A On that diagram they had from the very front of the bridge
- (8) it has all your instrumentation right across the front of the
- (9) bridge so you can see the speed log and the rudder
- (10) indicator
- (11) and the - the gyro heading and your fathometer and you're
- (12) standing the helmsman right behind you and the radar right
- (13) beside you and you direct the movement of the vessels from
- (14) there The third mate is on the bridge with you or junior
- (15) mate usually the second or third mate and he constantly
- (16) fixes
- (17) the position of the vessel
- (18) Q Could you tell us what you mean fixes the position of the
- (19) vessel?
- (20) A That means he takes fixes and puts down marks on the
- (21) chart
- (22) as to exactly where you are
- (23) Q And is that his main job when he's on the bridge as watch
- (24) officer in port?
- (25) A When you're conning I'd say that's his main job yes
- (26) Q When the second or third mate is on the bridge with the
- (27) master is that main job of the second or third mate is to take
- (28) fixes and chart them?

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- (1) A Yes
- (2) Q And that's what he's trained to do?
- (3) A Yes
- (4) Q Is there any teamwork between the junior officer the
- (5) second or third mate and the master?
- (6) A Oh, yes It's a team
- (7) Q Can you explain how that works?
- (8) A Well, communication going on if I need an a particular
- (9) distance or a particular course or anything like that I'll
- (10) inquire of them or if he's got anything he needs to know
- (11) from
- (12) me he'll be asking me It is a team
- (13) Q And at all times - strike that
- (14) What is your practice about where you are at all times
- (15) entering or leaving the port?
- (16) A On the bridge
- (17) Q Okay Is that a unique practice of yours?
- (18) A No
- (19) Q Is that standard operating procedure throughout the
- (20) maritime industry?
- (21) A Every ship I've ever been on, yes
- (22) Q How would you compare hazards of navigation while going
- (23) in
- (24) and out of port versus the open sea?
- (25) A Well, they're greatly increased
- (26) Q Where?
- (27) A In port

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- (1) Q They're more in port?
- (2) A Yes
- (3) Q Okay And is that the reason for the needing the time
- (4) while you're transiting in or out of port?
- (5) A Yes
- (6) Q Now we heard some talk and testimony about a state pilot
- (7) coming on board the Exxon - any ship coming in at Rocky
- (8) Point
- (9) and then until the - until reaching the Port of Valdez and
- (10) then from the - from the Alyeska terminal out to Rocky Point
- (11) there would be a state pilot Correct?
- (12) A Yes
- (13) Q Does the master's job change in any way when the state
- (14) pilot comes on board?
- (15) A Yes He's not physically conning the vessel any more
- (16) Q Is he - does that give him a chance to leave the bridge
- (17) and go do something else he wants to do?
- (18) A No, absolutely not
- (19) Q What's his job when the state pilot is on the bridge?
- (20) A To oversee what the pilot is doing
- (21) Q And he's to stay on the bridge?
- (22) A Yes
- (23) Q Well the master's cabin traditionally is right below the
- (24) bridge is that right?
- (25) A Usually yes
- (26) Q And what would be wrong with the master just going down

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- (1) into his cabin it's only a little bit away a short time away?
- (2) A Oh yes
- (3) Q Well what would be wrong with that?
- (4) A Well first of all you'd have to be called so you have
- (5) communication involved and if he's not there I can't see
- (6) what's going on if there's a - something happens and he
- (7) needs
- (8) to be called to the bridge he's got to be advised of what is
- (9) wrong Then if he gets up there if something has
- (10) happened he
- (11) can't - he's got to try to correct it It isn't something he
- (12) can prevent from happening, if he saw it happening It's -
- (13) the risk is too great for him to be off the bridge, it's - he
- (14) just can't delegate that to the pilots can't do that
- (15) Q You said something interesting If the captain's not on
- (16) the bridge then he can't prevent a mishap Is that correct?
- (17) A That's true
- (18) Q He can only try to correct it once it happens?
- (19) A Yes
- (20) Q Captain have you seen a simulation of the voyage of the
- (21) track of the Exxon Valdez as it left the Alyeska terminal on
- (22) March 23?
- (23) A Yes
- (24) Q And can you compare that with various meetings from the
- (25) ship to see that that's an accurate course?
- (26) A Yes I looked at it
- (27) Q That is Exhibit 82 and it's pre admitted

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- (1) Your Honor would I would like to do is to - it is relatively short I'd like to play it from beginning to end for the jury to see and then rewind it and go through it with the captain then
- (2) THE COURT If you do what you said the first time we're not going to play it twice stopping it
- (3) MR MONTAGUE No go ahead You can stop it there
- (4) BY MR MONTAGUE
- (5) Q Now Captain can you stop it a moment?
- (6) What is this - what is that little box in the lower right hand corner?
- (7) A This - this box right here (indicating)? That's the time
- (8) Q Okay And that is coordinated with the voyage with the line of the voyage?
- (9) A Yes
- (10) Q Okay And that is not maritime but a m p m time right?
- (11) A Yes
- (12) Q And that is - as it shows there 9 22 p m
- (13) A Yes
- (14) Q Now can we run this until approximately 2100 30 which would be 9 30?
- (15) Okay Now I - I want you to assume for purposes of this question that Captain Hazelwood about that point leaves the bridge okay? And goes below without telling the pilot that he's going below okay? Is that proper seamanship to do that

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- (1) for a master?
- (2) A No
- (3) Q Let's go now and if you would run it until 20 - is
- (4) 11 05
- (5) I want you to assume again Captain Clark that at this point 11 05 Captain Hazelwood is called - or is called sometime before then to come to the bridge because the state pilot Pilot Murphy is departing and Captain Hazelwood then reappears on the bridge
- (6) For that period of time from approximately 9 30 until 11 05 at night Captain Hazelwood is off the bridge Would you assume that?
- (7) A Yes
- (8) Q While the state pilot is on the bridge
- (9) Do you have an opinion as to the judgment exercised by Captain Hazelwood staying off the bridge for that long?
- (10) A Yes
- (11) Q What is that opinion?
- (12) A It was poor judgment
- (13) Q Is that the kind of judgment that you would expect a captain of Captain Hazelwood's experience and as Mr Lynch said in his opening almost legendary reputation for good seamanship is that the kind of judgment you would expect a captain such as that to exercise?
- (14) A No, I wouldn't

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- (1) Q Could you explain why not?
- (2) A Because it's a disregard of his primary duty to be on the bridge take the ship out of port
- (3) Q Now are there some jobs or duties of a master or captain that just can't be delegated to someone else?
- (4) A Yes
- (5) Q And what are those jobs?
- (6) A Taking a ship in and out of port
- (7) Q Let's talk a minute about how you turn one of these vessels Now this we're talking about a vessel here that's in excess of 900 feet long all right? Over three football fields
- (8) What's it like to turn one of these?
- (9) A Well it's not like turning a car or a fishing boat or something There is a - as you are traveling in one direction and you put the rudder over, even though the head of the vessel will turn your actual direction of travel keeps going in the old direction Sort of like if you're steering a car on ice, you turn the wheel and you just keep going in the same direction Eventually you'll start to turn and move in the direction you're headed for
- (10) Q Okay Is it just as easy as turning a car?
- (11) A No
- (12) Q And does it make any sense to try to compare changing a course in one of these vessels fully laden to that of turning a

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- (1) corner with a car?
- (2) A No
- (3) Q To make it turn on a vessel there has to be a rudder command given?
- (4) A Yes
- (5) Q And once you give that rudder command is that the end of the turn?
- (6) A No No you have to watch and make sure that the rudder command is made as you ordered it and to make sure that it's having the desired effect
- (7) Q Is there anything else that has to be done in order to put it on the course that you want it on?
- (8) A Yes you usually have to give counter rudder to slow the turn down
- (9) Q Whose job is that?
- (10) A The master's
- (11) Q In port?
- (12) A In port
- (13) Q Now could we run this to 11 45? Okay that's fine
- (14) Now is that the point that the master - the pilot gets off of the vessel?
- (15) A Yes
- (16) Q Rocky Point? Excuse me?
- (17) A Yes
- (18) Q And tell me which - is this Rocky Point?

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- (1) A No the one next to it
 (2) Q This (indicating)?
 (3) A Yes
 (4) Q And there's a boat there to pick the pilot up?
 (5) A Yes
 (6) Q And now the pilot is off the - the vessel and who takes
 (7) the con?
 (8) A The master
 (9) Q Can he delegate that?
 (10) A No
 (11) Q And when taking the con does that include giving rudder
 (12) orders?
 (13) A Yes
 (14) Q Now you testified a minute ago that to give a - the
 (15) conning the vessel not only includes giving a rudder order but
 (16) to see that it's carried out?
 (17) A Yes
 (18) Q And to see that it has the effect the desired effect?
 (19) A Yes
 (20) Q And then to give any counter rudder that's necessary to put
 (21) it on course?
 (22) A Yes
 (23) Q Can a master do that if he's not on the bridge?
 (24) A No
 (25) Q Now you heard the testimony in this case that Captain

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- (1) Hazelwood told Cousins to turn abeam Busby light abeam
 (2) Busby
 (3) light?
 (4) A Yes
 (5) Q And bring the vessel back into the traffic lane?
 (6) A Yes
 (7) Q And then Mr - Captain Hazelwood left the bridge?
 (8) A Yes
 (9) Q Do you have an opinion as to Captain Hazelwood's judgment
 (10) in taking that course of leaving the bridge at that time?
 (11) A Yeah It was a blatant disregard of his duties
 (12) Q Is that the kind of judgment that you would expect a
 (13) captain of Captain Hazelwood's experience and reputation to
 (14) exercise?
 (15) A No
 (16) Q Now let's go to - down to 1 - to 11 30 and almost
 (17) 11 31
 (18) Okay you there? All right We're about a minute off Go
 (19) another minute That's fine
 (20) Now at that time Captain Hazelwood advises the VTC that
 (21) he's going to move - that he's going to move out of the lanes
 (22) okay? And let's now go to - I'm sorry He advises the VTC
 (23) that he's altering his course to 200 degrees And at a speed
 (24) of - well he reduces his speed to below 12 knots Now let's
 (25) keep that on until 11 40
 (26) What is happening now Captain as this is running?

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- (1) A He's crossing the separation zone
 (2) Q And this is at the course 200?
 (3) A That's about going on 180 now I think
 (4) Q Okay
 (5) A They should be starting right there
 (6) Q Okay Now in changing a course from 200 to 180 is it
 (7) general practice that that should be reported to the VTC?
 (8) A If it's going to take you out of the lanes yes
 (9) Q Well the 200 would take you out of the lanes wouldn't it
 (10) eventually?
 (11) A Eventually yes
 (12) Q But is it good seamanship practice when you're changing a
 (13) course by 20 degrees to report that to the VTC?
 (14) A If it's going to change the point considerably where
 (15) you're
 (16) going to leave the lanes yes
 (17) Q And would that would that change from 200 to 180 would
 (18) that change the point considerably?
 (19) A Yes
 (20) Q All right Now let's go for another three minutes
 (21) Okay Now at this point I want you to assume that the
 (22) vessel is put in autogyro autopilot?
 (23) A Yes
 (24) Q You ever put a vessel in autopilot either while you're
 (25) crossing over the TSS lanes or departing from them or out of
 (26) them?

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- (1) A No never
 (2) Q And do you have an opinion as to whether or not that's a
 (3) prudent practice?
 (4) A It's not a prudent practice
 (5) Q Why is that?
 (6) A Because in confined waters like that you want to be able
 (7) to
 (8) turn the wheel right away without having to go through
 (9) steps
 (10) of pushing buttons and what have you It's just not a
 (11) prudent
 (12) practice good seamanship
 (13) Q Does it take so long to push the button?
 (14) A No Just a second But it's a step and it can always be
 (15) messed up misunderstood It's just not good practice
 (16) Q Do you have an opinion as to the judgment exercised by
 (17) Captain Hazelwood to order the vessel the Exxon Valdez being
 (18) put in autogyro at that position at that time?
 (19) A Yes, it was poor judgment
 (20) Q Is that the kind of judgment would you expect a captain of
 (21) Captain Hazelwood's experience and reputation to exercise?
 (22) A No
 (23) Q Now - okay Let's keep going till we get to - down to
 (24) Busby Island light - Actually if we could stop it at -
 (25) that's fine That's fine there
 (26) Let's - without backing this up at 11 52 Captain
 (27) Hazelwood orders that the engine be put in load program up
 (28) Do
 (29) you know what that is?

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- (1) A Yes
 (2) Q Did you have that on your vessel?
 (3) A No
 (4) Q But you know what it is?
 (5) A Yes
 (6) Q And what is it?
 (7) A It's on there Diesel engine It was a slow increase it
 (8) was 40 minutes or so to bring it from maneuvering speed up
 to
 (9) full sea speed
 (10) Q So when that order was given the vessel was probably
 (11) somewhere about here two minutes earlier something like
 that?
 (12) A Yes
 (13) Q And do you have an opinion as to whether that was a - what
 (14) kind of exercise of judgment that was by Captain Hazelwood to
 (15) put the vessel in load program up on a dark night leaving the
 (16) TSS in icy waters?
 (17) A It was poor judgment
 (18) Q And why?
 (19) A He's coming down he's knowing he's going to be in ice
 (20) close to land, he's got a narrow window between the ice and
 the
 (21) reef, and if anything goes wrong you're going to wind up in
 the
 (22) ice anyway, and as to be - to have speed on the vessel, in
 (23) ice, is not a good thing to do
 (24) Q By the way on a dark night - and this was described as a
 (25) dark night with about eight to ten miles visibility On such a

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- (1) night can you see the ice?
 (2) A No
 (3) Q And can you see ice on the radar?
 (4) A Yes, you can see it on the radar
 (5) Q What you see on the radar does that tell you the size of
 (6) the ice?
 (7) A No
 (8) Q Putting the program in - the vessel in load program up at
 (9) that point in time is that the kind of judgment you would
 (10) expect a captain of Captain Hazelwood's experience and
 reputation for good seaman ship to exercise?
 (11) A No
 (12) Q Can we go for a minute Exhibit 85 the board with the
 (13) overlay
 (14) While that's being done Captain let me divert a minute
 (15) let's assume you're on the bridge with a third mate and you
 (16) give the order to the third mate when you're abeam Busby light
 (17) turn ten degrees right whatever the - ten degrees rudder
 (18) right whatever Is that a simple command to exercise? Is
 (19) that a simple command to be followed?
 (20) A Yes
 (21) Q Now exposure in the same situation the captain says go
 (22) to when we get abeam Busby light turn back into the
 separation
 (23) lanes or into the TSS lanes
 (24) Is that just a simple maneuver to make?

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- (1) A No it's very vague
 (2) Q Can you explain the difficulty that such a - that such a
 (3) particular command has for someone else to follow?
 (4) A Well it's like I said It's vague Could mean anywhere
 (5) in there And if he's talking about the window, then it's -
 (6) the third mate's got to actually con the ship through the
 (7) window of the ice and the reef
 (8) Q Well would you have to chart a course to make a turn to
 (9) follow a command like that? Do you just turn the wheel?
 (10) A I don't know about chart it but you have to know where
 (11) you're going
 (12) Q I'm not talking about you I'm not talking about Captain
 (13) Hazelwood Captain Hazelwood as a captain give a command
 to a
 (14) third mate When you get abeam Busby Island light turn back
 (15) into the lanes What would a third mate have to do before he
 (16) could -
 (17) A He might have to chart a course yes
 (18) Q And that would take time?
 (19) A Little bit
 (20) Q Now Captain this - do you recall hearing testimony that
 (21) Captain Hazelwood and Third Mate Cousins were looking in the
 (22) radar or discussing the ice for a period of time before Captain
 (23) Hazelwood went below?
 (24) A Yes
 (25) Q Okay I'm going to represent to you that this is the

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- (1) version - this is the leading edge of the ice as Captain
 (2) Hazelwood said he perceived it?
 (3) A Yes
 (4) Q And this is the leading edge of the ice as Third Mate
 (5) Cousins says - testified or will testify that he perceived
 (6) it I can say that because it's a deposition
 (7) Is there a significant difference between those two?
 (8) A Yes
 (9) Q And could you explain what's significant about it?
 (10) A The third mate's is much closer to the reef
 (11) Q And in order to avoid the ice and avoid the reef there's a
 (12) very small - what do you call it a window?
 (13) A Yes
 (14) Q And have you figured out what the width of that window was?
 (15) A It's less than a mile
 (16) Q And by going - was it prudent to be going 11 or 12 miles
 (17) per hour to make it through that window?
 (18) A Knots?
 (19) Q Okay
 (20) A Not in my estimation, no
 (21) Q And why not?
 (22) A Because they're close to the ice
 (23) Q And well that's apparent What about the fact that you
 (24) have less time to react?
 (25) A Yes absolutely Just - having an narrow window and
 being

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- (1) that close between the ice and the reef it would not be
 (2) prudent to have much weight on it
 (3) Q By the way how could the captain and the third mate be
 (4) discussing the ice and have such a disparity in where the
 (5) leading edge of the ice is?
 (6) MR CHALOS I object to that question Your Honor
 (7) The third mate Mr Cousins who will testify explains it
 (8) precisely
 (9) MR MONTAGUE Well I'll rephrase the question
 (10) THE COURT I will allow you to examine this witness
 (11) on that subject
 (12) MR MONTAGUE Okay
 (13) BY MR MONTAGUE
 (14) Q What does it suggest to you Captain Clark that the
 (15) after - after supposedly having a conversation they come away
 (16) with such different leading edges of the ice?
 (17) A That they weren't in agreement as to their thinking as to
 (18) where the leading edge of the ice were
 (19) Q Does it at all suggest to you that they weren't
 (20) communicating very well with each other?
 (21) A Yes
 (22) Q Now let's take Captain Hazelwood's leading edge of the
 (23) ice okay? And while I don't have the chart on this board of
 (24) the voyage but am I correct that he said that he wanted to be
 (25) one mile from Busby light and one mile from the leading edge
 of

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- (1) his ice and that he was going due south So he was coming
 down
 (2) this way is that correct right about here he would pass
 (3) through those (indicating)?
 (4) A Yes something like that
 (5) Q Okay
 (6) Did you make a calculation that if Captain Hazelwood had
 (7) stayed on the 200 course rather than divert due south to 180
 (8) whether or not he would have safely cleared the leading edge of
 (9) the ice as he perceived it?
 (10) A Yes I did
 (11) Q And what was your conclusion?
 (12) A That it would have cleared the ice
 (13) Q And did you determine whether he had stayed on that course
 (14) whether he also would have cleared Bligh Reef?
 (15) A Yes, he wrote have
 (16) Q And what was your conclusion? I'm sorry?
 (17) A He would have cleared Bligh Reef
 (18) Q And given that did you form an opinion as to his judgment
 (19) in diverting further out of the lines by going 180 when he
 (20) would have safely stayed in the 200 course?
 (21) A Yes Like if the ice was strong it wouldn't be wise to go
 (22) over that far, nor prudent
 (23) Q By increasing down to 180 did it increase the risks?
 (24) A Yes it got them closer to the reef and land
 (25) Q And is that the kind of judgment you would expect to be

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- (1) exercised by a captain with Captain Hazelwood's experience
 and
 (2) reputation
 (3) A No
 (4) Q Okay Now let's talk about paperwork for a minute okay?
 (5) Are cargo figures and going cargo calculations the type of
 (6) calculations that are sufficiently important to warrant a
 (7) master to leave the bridge while leaving port?
 (8) A No absolutely not
 (9) Q And do you have an opinion as to the judgment of Captain
 (10) Hazelwood in using that as a reason for leaving the bridge
 (11) while leaving port?
 (12) A Yes it was poor judgment
 (13) Q Okay And is that the kind of judgment that you would
 (14) expect from a captain of Captain Hazelwood's ability and
 (15) experience?
 (16) A No
 (17) Q Now Captain Hazelwood also testified that the reason he
 (18) left the bridge after he gave Mr Cousins the order to turn
 (19) when abeam of Busby light - Busby Island light he said - and
 (20) I'll read this verbatim I had some calculations I was working
 (21) on that I had gotten some weather update and there was a
 storm
 (22) brewing in the Aleutians It was heading toward Prince William
 (23) Sound and I wanted to make sure either we got out and passed
 in
 (24) front of the storm enabling us to make a tide window or an area
 (25) that we were shooting for in Long Beach or in the converse

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- (1) I'd have to stay in Prince William Sound
 (2) That's what he said
 (3) Is that a basis for leaving the bridge while conning the
 (4) vessel exiting the Port of Valdez through Prince William
 (5) Sound?
 (6) A No it's not It's primarily duty is get it out of port
 (7) safely
 (8) Q Well he was concerned about the weather and the safety of
 (9) the vessel Is that a valid concern?
 (10) A He's got to get out of port first That's his primarily
 (11) job is getting it out of port
 (12) Q Could you explain that a little more?
 (13) A Well it's the very basic thing was that - that is his
 (14) primary job is to safely navigate the vessel out of port
 (15) Q And then worry about the weather?
 (16) A And then worry about the weather
 (17) Q Are these vessels pretty weather sturdy?
 (18) A Absolutely
 (19) Q Are they built to take storms?
 (20) A Oh yes
 (21) Q You were even in an earthquake in one of these weren't
 (22) you?
 (23) A Yes
 (24) Q And what happened?
 (25) A We had quite a bit of damage from - electrical damage

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- (1) All the electrical equipment was shaken up
 (2) Q How did the ship weather the storm? The earthquake? How
 (3) did the ship weather the earthquake and the seas?
 (4) A There were no seas It was flat calm
 (5) Q Could the - if the - what if the weather - if the
 (6) charting of the weather or calculating the weather was
 (7) important? Could that be done on the bridge?
 (8) A Yes
 (9) Q Was there any reason that had to be done in a cabin?
 (10) A No
 (11) Q And did you form an opinion as to whether it was what kind
 (12) of judgment it was for Captain Hazelwood to determine that he
 (13) could leave the bridge after giving an order while outside of
 (14) the traffic lanes at night trying to divert ice for Mr Cousins
 (15) to get back in the lanes why he could leave the bridge in
 (16) order to do these calculations in his office or his cabin?
 (17) A Yes, it was poor judgment
 (18) Q That the kind of judgment that you would expect to be
 (19) exercised by a captain of Captain Hazelwood's experience and
 (20) reputation?
 (21) A No
 (22) Q Now you recall the testimony that Captain Hazelwood left
 (23) the bridge approximately two minutes before the turn was to be
 (24) made after he spoke to Third Mate Cousins?
 (25) A Yes

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- (1) Q If - let's assume that there really was something that
 (2) caused Captain Hazelwood - that he had to leave the bridge
 (3) Was there an alternate course of action he could have taken
 (4) that would have been more responsible?
 (5) A He could have turned just before he came abeam of
 (6) Busby
 (7) light
 (8) Q In other words turn and then if he had to leave leave
 (9) after the turn was made?
 (10) A Yeah There's no reason why he had to be there wait
 (11) until
 (12) the ship was abeam of Busby
 (13) Q Would that have caused any further risk to the vessel if
 (14) he had turned two minutes earlier?
 (15) A No
 (16) Q Now do you recall the testimony that Mr Cousins called
 (17) Captain Hazelwood and told him that he'd started the turn?
 (18) A Yes, I do
 (19) Q And did he tell him anything else you recall?
 (20) A Yes in Cousins deposition he said he was going to get
 (21) into
 (22) the ice
 (23) Q Cousins said he was going to get into the ice?
 (24) A Yes
 (25) Q And did the captain come up to the bridge at that time?
 (26) A No he did not
 (27) Q Do you have an opinion as to the - apart from the fact
 (28) that he left the bridge already apart from that do you have an

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- (1) opinion as to the exercise of Captain Hazelwood's judgment of
 (2) not coming up to the bridge at that time?
 (3) A Yes I'd say it's extremely poor judgment If third mate
 (4) called me up and told me he was going to get into ice - not
 (5) that I'd be off the bridge any way but I would have flown up
 (6) to the bridge
 (7) Q Why is that?
 (8) A ASAP Because he told me was going to get in the ice
 (9) That's a danger
 (10) Q And Captain Hazelwood didn't do that?
 (11) A No he didn't
 (12) Q Okay He stayed in his cabin?
 (13) A Yes he did
 (14) Q Is that the kind of judgment you would expect the captain
 (15) of Captain Hazelwood's experience and reputation to exercise?
 (16) A No
 (17) Q Now let's go back again to that moment of when Captain
 (18) Hazelwood left the bridge after telling Cousins to turn abeam
 (19) Busby light about two minutes hence
 (20) After Captain Hazelwood left the bridge did Cousins have
 (21) other things that he has to do besides just stand there and
 (22) wait to turn it abeam Busby light?
 (23) A Yeah he's got to do both jobs now on the ship and keep
 (24) a
 (25) record of its position
 (26) Q All right Would you sort of explain again what that is?

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- (1) A The master cons the ship from the front of bridge where
 (2) he's got the instrumentation He can watch and be right
 (3) there
 (4) beside the helmsman and the radar And the third mate
 (5) keeps a
 (6) running track of the position of the vessel going from fixing
 (7) it to putting it on a chart
 (8) Q And it's the latter job that the third mate is used to
 (9) doing is that correct?
 (10) A Yes
 (11) Q And now he's got to do both?
 (12) A Yes
 (13) Q Were you - have you looked at the course recorder from the
 (14) Exxon Valdez on the night of the 23rd and the morning of the
 (15) 24th of March?
 (16) A Yes
 (17) Q And can you tell from that course recorder when the turn
 (18) was made?
 (19) A Yes
 (20) Q And do you recall when that is or do you have to look?
 (21) Should I show you?
 (22) A Looked like about two minutes past midnight
 (23) Q Now when - you heard Captain Stalzer's testimony?
 (24) A Yes I did
 (25) Q So I won't belabor it but when it a turn is made there's
 (26) a simple way to - a foolproof way to check whether or not it
 (27) is carried out isn't that correct?

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- (1) A Yes
 (2) Q And what is that?
 (3) A Well you mean you're talking about the rudder right
 (4) Q Yes Well when the wheel is turned if the order is given
 (5) to turn the wheel X degrees there's a real easy way to make
 (6) sure that the rudder responded isn't there?
 (7) A Yes to look at the rudder angle indicator
 (8) Q Is the rudder angle indicator driven by the turn of the
 (9) helm or is it driven by the actual movement of the rudder?
 (10) A The actual movement of the rudder
 (11) Q So if the angle indicator moves that means the rudder
 (12) moved?
 (13) A Yes
 (14) Q Is that the standard way of determining checking whether
 (15) or not a -- a turn has been effected?
 (16) A It's a way of telling the rudder has moved to where you
 (17) want it but you still got to watch to make sure that that
 (18) amount of rudder is having a desired effect
 (19) Q And that varies on the speed you're going and the load that
 (20) you're carrying?
 (21) A Yes
 (22) Q Whose job is it to do that?
 (23) A The master's
 (24) Q Is there any way a master can do that when he's in his
 (25) cabin?

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- (1) A No
 (2) Q We've heard an awful lot about Watch Condition C and
 Watch
 (3) Condition D and how Exxon has it in their navigation and bridge
 (4) manual Have you heard that testimony?
 (5) A Yes
 (6) Q Apart from the fact that they have it written down in their
 (7) bridge manual is that what they have written there is that
 (8) unique?
 (9) A No It's common practice on every ship I've ever been on
 (10) Q So that that's just putting down what everybody knows or
 (11) the proper ways to con a vessel when you're going in and out of
 (12) port?
 (13) A Yes
 (14) Q And under various conditions?
 (15) A Yes
 (16) Q Not something Exxon made up not novel?
 (17) A No it's not novel
 (18) Q Now let's talk for a minute about the Coast Guard I --
 (19) THE COURT Sounds like you're changing subjects
 (20) We'll take our second break Ladies and gentlemen of the jury
 (21) please don't discuss this matter We'll resume in 15 minutes
 (22) (Jury out at 12:00 noon)
 (23) (Recess)
 (24) (Jury in at 12:16)
 (25) BY MR. MONTAGUE

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- (1) Q Captain Clark I just want to revisit two things very
 (2) briefly to make sure it's clear
 (3) With respect to the weather report and making weather
 (4) calculations as to when a storm might be staged?
 (5) A Yes
 (6) Q Could that have been done as well on the deck -- on the
 (7) bridge as in Captain Hazelwood's cabin?
 (8) A Yes
 (9) Q There was no need for him to be in his cabin to make those
 (10) calculations?
 (11) A No
 (12) Q Secondly someone suggested and I've been using the
 word
 (13) in port and out of port Have you understood that to mean
 (14) going from Cape Hinchinbrook into the Alyeska terminal and
 vice
 (15) versa?
 (16) A Yes
 (17) Q Now I'd like to ask you some questions about the VTC
 (18) Have you in your 13 years ever relied on the Coast Guard to
 (19) monitor or track where you are?
 (20) A No never
 (21) Q And is there a reason for that?
 (22) A Yes
 (23) Q Could you tell us --
 (24) A Because I'm the master of the vessel I know where I am
 I
 (25) don't want them telling me where I am I'd rather rely on my

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- (1) own information
 (2) Q Is your information as good as theirs with respect to your
 (3) vessel?
 (4) A It would be better
 (5) Q Now let's assume just assume for purposes of this series
 (6) of questions that a captain like Captain Hazelwood expects the
 (7) Coast Guard to monitor or track them okay?
 (8) A Yes
 (9) Q In that situation would you expect a captain in exercising
 (10) his judgment would go out of his way to give accurate and
 (11) up to date information to the Coast Guard?
 (12) A Yes he would have to give accurate information
 (13) Q And that would enable the Coast Guard to help track the
 (14) vessel?
 (15) A Yes
 (16) Q Are you familiar with the transcript of the VTC
 (17) communications between the Exxon Valdez and the Coast
 Guard
 (18) prior to the spill on the night of the 23rd and early morning
 (19) of the 24th?
 (20) A Yes
 (21) Q Okay Do you have an opinion as to whether those
 (22) particular communications were accurate and up to date?
 (23) A Do you mean -- could you repeat that please?
 (24) Q Sure
 (25) Having reviewed those transcripts do you have an opinion

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- as to whether the information that was given by Captain
 (1) Hazelwood to the Coast Guard through the VTC
 communications
 (2) whether that information was accurate and up to date?
 (3) A No it wasn't
 (4) Q Did Captain Hazelwood tell the Coast Guard that he changed
 (5) course from the 200 degrees to 180 degrees?
 (6) A No
 (7) Q Did he tell the Coast Guard that he was leaving the bridge
 (8) and leaving the third mate alone?
 (9) A No
 (10) Q Did he tell the Coast Guard that he was turning back into
 (11) the TSS abeam Busby Island light?
 (12) A No
 (13) Q Did he tell the Coast Guard that he had placed the vessel
 (14) in load program up?
 (15) A No
 (16) Q And having done all those things actually on the vessel is
 (17) that the sort of information you would expect a captain to give
 (18) to the Coast Guard if they were relying on the VTC?
 (19) A No I wouldn't
 (20) Q You wouldn't expect him to give that information if he were
 (21) relying on the VTC?
 (22) A Oh Oh yes I would expect him to do that Excuse me
 (23) I misunderstood
 (24) Q And now Captain I would like to show you - Your Honor
 (25)

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- (1) I'm allowed to show this at this time?
 (2) THE COURT (Nods head)
 (3) BY MR MONTAGUE
 (4) Q Okay I would like to show you Captain what we have
 (5) marked as Exhibit - Plaintiff's Exhibit 6000
 (6) Can you read that?
 (7) A Yes
 (8) Q Okay This is a chart which is my attempt to chronicle the
 (9) activities some of the activities after the grounding
 (10) involving Mr Kunkel's reports of the stability and the
 (11) stresses to Captain Hazelwood at 30 minutes after midnight and
 (12) again between one o'clock and 1:15 a.m. on the 24th after the
 (13) grounding the movement of the engines going from dead slow
 (14) ahead maneuvering speed to full speed ahead up through 1:40
 (15) a.m. in the morning And Captain Hazelwood's
 (16) communications to
 (17) the - to the VTC
 (18) Now you've never been in a grounding that is correct?
 (19) A That's correct
 (20) Q And it would be unfair to ask you to assess how somebody
 (21) reacts in a grounding?
 (22) A Yes
 (23) Q But I would like to ask you this Can you make - do you
 (24) have an opinion as to Captain Hazelwood's communications to
 (25) the
 (26) Coast Guard versus the use of the engine and the reports he
 (27) received from Mr Kunkel? Have you tried to form - that sort

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- (1) that out and form some sort of opinion?
 (2) MR CHALOS Your Honor I'm back here I'm going to
 (3) object The witness has testified he doesn't have any basis to
 (4) give such an opinion he's never been aground he doesn't
 (5) know
 (6) what goes through people's mind And he hasn't been
 (7) qualified
 (8) as an expert in post grounding maneuvers and post grounding
 (9) events
 (10) MR MONTAGUE Let me ask a different question because
 (11) I don't intend to get into that
 (12) THE COURT Thank you
 (13) BY MR MONTAGUE
 (14) Q Did you form an opinion as to whether Captain Hazelwood's
 (15) statements to the Coast Guard were consistent with the actions
 (16) that he has taken and the reports that he received from Chief
 (17) Mate Kunkel?
 (18) A I couldn't make any sense of that as to -
 (19) Q And why is that?
 (20) A Because he repeatedly told the Coast Guard he was
 (21) trying to
 (22) extract off the reef but his actions didn't show that so I -
 (23) that's the reason I couldn't make sense of it
 (24) Q Okay Now you have expressed opinions today concerning
 (25) the captain leaving the bridge going through the narrows?
 (26) A Yes
 (27) Q And leaving the bridge after giving Cousins an order to
 (28) turn abeam - to turn when abeam Busby light?

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- (1) A Yes
 (2) Q And then leaving the bridge two minutes before the tack?
 (3) A Yes
 (4) Q And you've given opinions about putting the vessel -
 (5) MR O NEILL Your Honor I'd like to object This
 (6) is repetitive we're going to go through this again
 (7) MR MONTAGUE Your Honor -
 (8) THE COURT I'm sorry You caught me making notes
 (9) What's the question?
 (10) MR O NEILL He's going through - now you've
 (11) testified you have given opinion about leaving the bridge in
 (12) the narrows you've given an opinion about leaving the
 (13) bridge - unless it's some big ending here he's just going
 (14) through his testimony again
 (15) THE COURT Let's don't repeat Let's move on
 (16) BY MR MONTAGUE
 (17) Q You've given a series of opinions about the conduct and
 (18) judgment exercised and performed by Captain Hazelwood that
 (19) evening?
 (20) A Yes
 (21) Q Now I want you to take that conduct as a course of conduct
 (22) rather than - we've looked at each one alternate a time I
 (23) want you to look at it all together and tell us tell the jury
 (24) if you have formed an opinion as to whether Captain Hazelwood
 (25) was a competent captain on that voyage from the time the
 (26) vessel

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- (1) left the Alyeska terminal until it grounded on Bligh Reef?
 (2) Have you formed an opinion as to that?
 (3) A Yes
 (4) Q And what is your opinion?
 (5) A It was incompetent
 (6) Q Okay And do you have an opinion as to whether Captain
 (7) Hazelwood's conduct as a whole his course of conduct on that
 (8) voyage was consistent with a captain - with the conduct you
 (9) would expect of a captain with his experience and with as
 (10) Mr Lynch said an almost legendary reputation for
 seamanship?
 (11) A Yes I have
 (12) Q And what is your opinion?
 (13) A It was not consistent
 (14) Q Do you have an opinion on the claim that the third mate
 (15) Mr Cousins was left on the bridge alone with the helmsman
 (16) just simply messed up a simple term and thus caused the
 (17) wreck?
 (18) A Do I have an opinion?
 (19) Q Yes
 (20) A Yes That's not true
 (21) Q What caused the wreck in your opinion Captain?
 (22) A Captain Hazelwood not being on the bridge to direct the
 (23) vessel's movements
 (24) Q Thank you I have no further questions
 (25) THE COURT You may cross examine

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- (1) CROSS EXAMINATION OF CAPTAIN MICHAEL CLARK
 (2) BY MR CHALOS
 (3) Q Thank you Your Honor
 (4) Captain Clark I suppose a guy with such perfect judgment
 (5) as yourself has never had a close call while you were sailing?
 (6) A What do you mean by close call?
 (7) Q Ever had a close call almost have an accident?
 (8) A Not that I remember no
 (9) Q You ever hear the term but for the grace of God go I?
 (10) A Yes, I've heard that term
 (11) Q Do you ever use it?
 (12) A I suppose I may have in my life at sometime or another
 (13) but
 (14) Q What does it mean to you?
 (15) A That - but for the grace of God go I means that something
 (16) can happen to you also that happens to other people
 (17) Q Yeah And when you were sailing but for one thing and
 (18) another could have had an accident at any time couldn't you?
 (19) A Anybody can have an accident yes
 (20) Q Sure And in that situation you'd be sitting here as a
 (21) defendant and there'd be some paid expert sitting up there
 (22) telling us how bad your judgment was -
 (23) MR MONTAGUE Your Honor I would object to this
 (24) badgering
 (25) MR CHALOS This is cross examination

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- (1) THE COURT It's cross examination but you're getting
 (2) a bit argumentative
 (3) BY MR CHALOS
 (4) Q Isn't that right Captain Clark?
 (5) A No I wouldn't have left the bridge
 (6) Q Captain Clark would've agreed with me that an accident at
 (7) sea are part and parcel of the business?
 (8) A I wouldn't say part and parcel no It happens
 (9) Q Right And they happen to even the most careful of
 (10) captains don't they?
 (11) A I couldn't say that no
 (12) Q Now Captain I want to talk about how you were retained in
 (13) this matter
 (14) You were contacted by an Arthur Blank (ph) who is one of
 (15) the plaintiff's lawyers is that correct?
 (16) A Yes
 (17) Q And at that time he asked you to only criticize the actions
 (18) of Captain Hazelwood didn't he?
 (19) A Yes he gave me a series of questions and they
 (20) concerned
 (21) the actions of Captain Hazelwood yes
 (22) Q Right Now he didn't ask you to comment on the actions of
 (23) anybody else involved with this grounding did he?
 (24) A No
 (25) Q He didn't ask you to critique the third mate the helmsman
 the lookout the Coast Guard did he?

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- (1) A No
 (2) Q When you were first hired it was your understanding that
 (3) you were really being hired to tell Mr Blank your opinion as
 (4) to what caused the grounding of the Exxon Valdez wasn't it?
 (5) A Well over the actions of Captain Hazelwood yes
 (6) Q Just Captain Hazelwood?
 (7) A Yes
 (8) Q Did you ask for any information from Mr Blank as to the
 (9) actions of the other people involved in the grounding?
 (10) A I'm not sure I understand Mr Chalos
 (11) Q In other words when he told you to critique the actions of
 (12) Captain Hazelwood did you ask him to give you any
 information
 (13) relating to what the third mate was doing what the helmsman
 (14) was doing what the lookout was doing what the Coast Guard
 was
 (15) doing?
 (16) A Initially it was all assumed facts he gave me assumed
 (17) facts
 (18) Q And you relied on those assumed facts right?
 (19) A Yes, I did
 (20) Q And those assumed facts only dealt with Captain Hazelwood
 (21) isn't that correct?
 (22) A Yes
 (23) Q And you didn't do any independent verification of those
 (24) facts did you?
 (25) A After my discovery letter I was sent all the backups for

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- (1) the assumed facts
 (2) Q What you were sent was portions of Mr Cousins deposition
 (3) isn't that right? Before you wrote your opinion?
 (4) A Yes before I wrote my opinion I was sent Mr Cousins
 (5) deposition
 (6) Q And as a matter of fact you were sent selective portions
 (7) of Mr Cousins deposition weren't you?
 (8) A No I was sent the whole deposition but told I only had to
 (9) read certain pages
 (10) Q And Mr Blank identified for you what pages he wanted you
 (11) to read?
 (12) A Yes he did
 (13) Q Now let's talk about the way you and Mr Blank handled
 (14) this thing before you gave your opinion
 (15) Mr Blank called you up told you what he wanted you to do
 (16) right - initially?
 (17) A No No initially he read me a series of questions which
 (18) pretty much followed the 15 questions
 (19) Q That's what I'm coming up He called you up and he read
 (20) you 15 questions?
 (21) MR MONTAGUE I'm sorry Your Honor He didn't
 (22) finish his answer
 (23) BY MR CHALOS
 (24) Q I'm sorry Is that your complete answer?
 (25) A Yes

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- (1) Q He read you the 15 questions relating to Captain Hazelwood
 (2) right?
 (3) A Over the phone yes
 (4) Q And then you and he discussed the 15 questions and
 (5) answers?
 (6) A No it didn't go like that
 (7) Q Isn't that what you testified in your deposition?
 (8) A No Not that I remember
 (9) Q Well you tell -
 (10) A He read me the 15 questions
 (11) Q Yes
 (12) A And then I gave him the answers over the phone And
 (13) then
 (14) he recorded them down and -
 (15) Q Let's talk about that
 (16) Mr Blank took down what you say was your answers right?
 (17) A Yes
 (18) Q And then he typed up the questions and the answers and
 (19) sent
 (20) them to you isn't that right?
 (21) A Yes
 (22) Q Okay And then you took those questions and those
 (23) answers
 (24) made some grammatical changes you said - is that right?
 (25) A Yes
 (26) Q And then had them retyped right?
 (27) A Yes
 (28) Q Okay And then you had them sent back to Mr Blank as your
 (29) opinion isn't that correct?

- (1) A That's correct
 (2) Q And when you gave your opinion your initial opinions were
 (3) where you said that you thought Captain Hazelwood had acted
 (4) imprudently and used bad judgment you hadn't reviewed
 (5) Captain
 (6) Hazelwood's deposition had you?
 (7) A No I hadn't
 (8) Q And you hadn't reviewed Mr Kunkul's deposition had you?
 (9) A No
 (10) Q And you hadn't reviewed Mr Roberson's deposition had
 (11) you?
 (12) A No
 (13) Q Or Mr Glowacki's right?
 (14) A No
 (15) Q Or looked at the ice charts or the ice drawings that you
 (16) had right?
 (17) A Right
 (18) Q As a matter of fact the only thing that you reviewed
 (19) before you gave that opinion the opinions that you gave here
 (20) today was the 15 questions that Mr Blank gave you and
 (21) selected portions of Mr Cousins deposition is that right?
 (22) A No I also had the charts off the Exxon Valdez showing
 (23) the
 (24) fixes coming out from the narrows
 (25) Q So those are the three things that you had at that time
 (26) when you gave your opinions?
 (27) A At what time? Over the phone? When I gave them -
 (28) Q No before you sent back the retyped questions and
 (29) answered

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- (1) that you had received?
 (2) A Yes that is a correct statement
 (3) Q Now you said in response to Mr Montague's questions that
 (4) you deem all of Prince William Sound as the Port of Valdez
 (5) right?
 (6) A Yes
 (7) Q Fact of the matter is that on the nautical charts that
 (8) identify Prince William Sound they don't call it the Port of
 (9) Valdez do they? They call it Prince William Sound isn't
 (10) that right?
 (11) A That's what's written in the sound Prince William Sound
 (12) yes
 (13) Q And the legend on the chart says Prince William Sound it
 (14) doesn't say Port of Valdez does it?
 (15) A No, it doesn't
 (16) Q And as a matter of fact there are other ports in Prince
 (17) William Sound aren't there?
 (18) A Yes There's Whittier, Cordova
 (19) Q Right They don't call Prince William Sound port of
 (20) Whittier do they?
 (21) A No they don't
 (22) Q And as a matter of fact the nautical chart - and let me
 (23) show you - this is Plaintiff's Exhibit 847 Your Honor I
 (24) think it's been admitted but if it hasn't I offer it at this
 (25) time

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- (1) THE COURT I still don't have a Plaintiff's Exhibit
 (2) list that I can get into quickly
 (3) Mr Murtagh do you know?
 (4) THE CLERK 847 It was preadmitted
 (5) MR NEAL Yes and also offered on - 5 9
 (6) BY MR CHALOS
 (7) Q This is chart 16708 see that?
 (8) A Yes
 (9) Q This is just the upper reaches of Prince William Sound is
 (10) it not?
 (11) A Right that's the north half
 (12) Q The Port of Valdez is identified very clearly as the Port
 (13) of Valdez isn't it?
 (14) A Yes
 (15) Q And down here where you said was the Port of Valdez it
 (16) says Prince William Sound doesn't it?
 (17) A Yes but you have to remember one thing Port is from
 (18) where you take arrival until where you take departure and
 (19) that's where my ship and every other ship took our
 (20) departure
 (21) was at Cape Hinchinbrook
 (22) Q But the fact of the matter is - that's what you did is
 (23) that what you're saying?
 (24) A Yes
 (25) Q That was by your company's policy?
 (26) A Yes

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- (1) Q But the fact of the matter is the Port of Valdez is this
 (2) area right here is it not?
 (3) A No
 (4) Q It's not?
 (5) A That is what it says on the chart but the Port Valdez is
 (6) when you're in port is from where you take arrival until
 (7) where
 (8) you take departure no matter what the body of water is
 (9) These
 (10) are your in port movements, that's why our port log figures
 (11) everything is figured for in port and even though you have
 (12) to
 (13) travel through that body of water You're still in port and
 (14) that's the port you're going to is Port of Valdez
 (15) Q Now Prince William Sound is a pretty wide body of water
 (16) isn't it once you're in it?
 (17) A Yes, it stretches out there stretch of water
 (18) Q And how long is it from the Port of Valdez as defined on
 (19) the chart here to Cape Hinchinbrook?
 (20) A 63 miles
 (21) Q That's a big port isn't it 63 miles? Isn't it?
 (22) A Big to what?
 (23) Q Big compared to most ports like the port of New York or the
 (24) port of San Francisco or port of Los Angeles?
 (25) A Yes more travel time involved yes
 (26) Q 63 miles?
 (27) A Yes
 (28) Q And just so we're clear you've never seen a chart that

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- (1) identifies Prince William Sound as a Port of Valdez have you?
 (2) A No
 (3) Q All right I think I unplugged something here
 (4) Captain you've mentioned that you've - you have reviewed
 (5) Captain Hazelwood's testimony and Chief Mate Kunkel's and
 (6) portions of Mr Cousins's testimony?
 (7) A Portions of all of those
 (8) Q You've reviewed those recently I take it except for
 (9) Mr Cousins?
 (10) A Yes
 (11) Q All right Now Mr Montague showed you that video do you
 (12) remember that?
 (13) A Yes
 (14) Q The ship traveling through the Port of Valdez on down?
 (15) A Yes
 (16) Q Okay And he said to you that he wants you to assume that
 (17) Captain Hazelwood left the bridge at 2130 Do you remember
 (18) that?
 (19) A Yes
 (20) Q Did you hear Captain Hazelwood say that he didn't leave the
 (21) bridge until sometime after ten?
 (22) A I don't specifically remember that no
 (23) Q Do you remember Mr Kunkel saying that he was up there at
 (24) ten o'clock when he left?
 (25) A Yes I remember Kunkel saying that Captain Hazelwood
 (26) was

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- (1) still there when he left
 (2) Q Okay
 (3) A It was after Cousins relieved him it was just a few minutes
 (4) after that he went down below
 (5) Q Right And I take it you remember Mr Cousins in his
 (6) testimony saying that the captain was up there 10 or 12 minutes
 (7) after he came back up which was around ten o'clock do you
 (8) remember that?
 (9) A Well I believe the first log entry that Mr Cousins
 (10) recognizes as his was 2151 if I'm correct but no one was
 (11) really sure exactly what time that was In my own
 (12) estimation
 (13) only thing is every ship I've ever been on the practice has
 (14) always been whenever the second or third mate was done
 (15) undocking and putting the line out it was - actually really
 (16) it had to be somewhere in that area
 (17) Q Do you have any reason to dispute Mr Kunkel's Mr Cousins
 (18) or Captain Hazelwood's testimony that he was up there until
 (19) sometime after ten o'clock?
 (20) A No, I don't
 (21) Q So when you're asked to assume a fact that it was 9:30 when
 (22) he left that is a wrong fact would you agree?
 (23) A Well, I think the whole thing is kind of in dispute I
 (24) mean but I understand what you're saying
 (25) Q All right Let me ask you this -
 (26) A But you know I mean -

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- (1) Q I don't have a question. Let me ask you a question.
 (2) You also recall reading in Mr. Cousins's testimony did you
 (3) not that the captain told him exactly where he was going when
 (4) he left the bridge?
 (5) A Yes. I believe he said he was going to his room.
 (6) Q And he told him to give him a call when they went through
 (7) the narrows to let him know that everything was okay?
 (8) A Yes. I believe he did.
 (9) Q And you remember Mr. Cousins saying that he came back up
 as
 (10) they were coming abeam of Potato Point at 10:50?
 (11) A No. I don't specifically remember that.
 (12) Q You don't remember that?
 (13) A No.
 (14) Q Now you know Captain William Murphy?
 (15) A I know - Ed Murphy? I don't know.
 (16) Q I meant Ed Murphy. I'm sorry. I know William Murphy.
 (17) Ed Murphy?
 (18) A Yes. I do.
 (19) Q You've sailed with him being your pilot?
 (20) A Yes. He's a good pilot and a fine man.
 (21) Q A competent pilot?
 (22) A Yes.
 (23) Q A pilot who goes in and out of Valdez on a regular basis?
 (24) A Yes.
 (25) Q Who transited the narrows on a regular basis?

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- (1) A Yes.
 (2) Q With ships the size of the Valdez or bigger on a regular
 (3) basis?
 (4) A Yes.
 (5) Q Now you have no doubt that Pilot Murphy is quite capable
 (6) of bringing a ship through the narrows with no problem?
 (7) A He's a capable man, yes.
 (8) Q Do you have any doubt that he can bring a ship through with
 (9) no problems?
 (10) A Any doubt? No.
 (11) Q Now let's talk about this transit through the narrows
 (12) whether a ship goes through the narrows in a loaded condition
 (13) traveling at no more than six knots, right?
 (14) A Yes.
 (15) Q He's got a tug escort with him, does it not?
 (16) A Yes.
 (17) Q The depth of the water in the narrows is 600 feet or more
 (18) isn't it?
 (19) A Yes, hundred fathoms, right.
 (20) Q Times six feet, 600?
 (21) A Yeah.
 (22) Q Now that's no regulation that you know of that requires
 (23) the captain to be on the bridge while the vessel is transiting
 (24) the narrows, is there?
 (25) A Common practice as seaman

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- (1) Q I'm asking you, is there a regulation?
 (2) A You mean a federal regulation?
 (3) Q Federal regulation, state regulation -
 (4) A Not that I know of, no.
 (5) Q Now I take it you're not contending that Captain Hazelwood
 (6) being off the bridge while the vessel was going through the
 (7) narrows had anything to do with the grounding?
 (8) A With the grounding, no. It just - just shows poor
 (9) judgment, that's all.
 (10) Q In fact, the travel through the narrows was quite
 (11) uneventful, wasn't it?
 (12) A Yes.
 (13) Q Let me ask you something. In your deposition, you
 (14) criticized Captain Hazelwood for getting back to the ship
 (15) within 42 minutes of sailing, do you remember that?
 (16) A Yes.
 (17) Q And one of the things that you said was one of the
 (18) functions that he had to do before sailing was to get some
 (19) cargo figures ready to give pass on to the agent and to
 (20) Alyeska, do you remember that?
 (21) A To the agent, yes.
 (22) Q And those cargo figures have to be given either prior to
 (23) sailing or soon thereafter, right?
 (24) A Have to be prior to sailing.
 (25) Q But if you don't have to do it prior to sailing, you could

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- (1) have to do it sometime there after?
 (2) A No, because it's all done with a gauger, it's not something
 (3) you can do later on.
 (4) Q Doesn't the captain have to verify those numbers?
 (5) A Yes, before the transaction's done, if there's a dispute
 (6) you can't just all of a sudden just do it. That all happens
 (7) before you sail.
 (8) Q That's just if you have a dispute. The captain has to work
 (9) up those numbers to make sure they're correct, doesn't he?
 (10) A Yes, but they have to be done when they sail.
 (11) Q Only if there's a dispute, is what you're saying?
 (12) A No, whether there is a dispute or no dispute, whatever,
 (13) the agreement between the gauger and the ship, you know, the
 (14) entities there, that has to be done before you sail.
 (15) Q What happens if they're not done before you sail?
 (16) A Then you'll sail without knowing how much cargo you
 (17) have.
 (18) Q So you have to figure it out at some point?
 (19) A Yeah, before you sail.
 (20) Q All right. Let's talk about - you say that the
 (21) communications that Captain Hazelwood had with the Vessel
 (22) Traffic Center -
 (23) A Yes.
 (24) Q - were not as accurate as they should be, do you remember?
 (25) A Yes.
 (26) Q And you said that you would have - you would have given

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- (1) them a lot more information you would have told them that you
 (2) were altering course all the time would you have told them
 (3) what your course was what your exact speed was at any
 (4) particular moment what you had in mind Do you remember
 that?
 (5) A No I didn't say quite that
 (6) Q Well you wouldn't have done that?
 (7) A No I didn't say that either That I would have let them
 (8) know when I went on 180 that I was planning on going
 outside
 (9) the lanes and giving them a rough approximation Just the
 (10) general idea what I'm doing
 (11) Q Let me ask you this When you use the term TSS all right
 (12) when you use the term? Traffic separation scheme -
 (13) A Yes
 (14) Q You're talking about the whole - the whole system are you
 (15) not? You're talking about the outbound lane the separation
 (16) zone the inbound lane right?
 (17) A Yes
 (18) Q So when somebody tells the VSC the vessel separation
 (19) center that near going out of the TSS they're telling them
 (20) that he's going to leave the whole system isn't he?
 (21) A Yes
 (22) Q Isn't that what Captain Hazelwood said to them when he said
 (23) I'm going to 200 and I'm going out of the TSS?
 (24) A I couldn't quite understand that first transmission that he
 (25) said he was going to I believe it was out of the TSS and
 then

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- (1) down the inbound lane so I don't know how he could
 accomplish
 (2) that I took it to mean there's two different things but that
 (3) he meant separation zone for TSS
 (4) Q You're just speculating now aren't you?
 (5) A Yes it's a speculation yes
 (6) Q TSS has a special meaning it means the whole system?
 (7) A Yes it does
 (8) Q Now have you had a chance to compare the transmissions
 (9) that Captain Hazelwood made to the TSS about his - to the VTC
 (10) rather about his intentions as compared to the transmission
 (11) that were made by the ARCO Juneau and the Brooklyn?
 (12) A Yes
 (13) Q You have?
 (14) A Yes
 (15) Q Why don't we put it up here and let's you and I talk about
 (16) it
 (17) You do know don't you that the ARCO Juneau and the
 (18) Brooklyn both exited the TSS?
 (19) A Yes
 (20) Q And they were the two ships that immediately preceded the
 (21) Valdez out that night?
 (22) A I'm not sure if it was that night
 (23) Q Well that afternoon going into the evening
 (24) A One was in the morning and one was in the evening
 (25) Q Okay

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- (1) A Yeah
 (2) Q All right Let's take - let's take a look at Captain
 (3) Hazelwood's transmission right? He's telling them at 11 24
 (4) p.m. that he's going to exit from the TSS Okay?
 (5) Let's look at the Brooklyn The Brooklyn left the lanes
 (6) left the TSS completely
 (7) Do you see anywhere where the Brooklyn gave a course a
 (8) speed or the fact that they were going to go outside the TSS at
 (9) all?
 (10) A No
 (11) Q Take a look at the ARCO Juneau they record 6 43 a.m. they
 (12) also went out of the lanes Do you see any report from them as
 (13) to speed course or the fact that they were going to leave the
 (14) lanes completely?
 (15) A No
 (16) Q Now as a matter of fact while we're on the subject at
 (17) your deposition you told me did you not that Captain
 (18) Hazelwood's transmissions at 11 24 and at 11 30 p.m. those
 two
 (19) transmissions fully complied with the reporting requirements of
 (20) the VTC isn't that correct?
 (21) A If you say I did yes
 (22) Q I want you to tell me We can look at your deposition if
 (23) you want I want you to try and recall
 (24) A I don't specifically recall saying that If I did then I'm
 (25) sure I did

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- (1) Q You're sure you did?
 (2) A If you say I did I'm sure you're not going to show us
 (3) something I didn't say
 (4) Q We're going to - let's look at page 90 going into 91
 (5) Are you with me?
 (6) A Yes it's marked
 (7) Q Okay Let me read it and ask you if you were asked these
 (8) questions It was marked because I was using that but I
 (9) decided today to give it to you But let me read you the
 (10) questions and the answers and you tell me if those were my
 (11) questions and your answers
 (12) MR MONTAGUE What page?
 (13) MR CHALOS Page 90 starting at page 14
 (14) A I'm 14
 (15) BY MR CHALOS
 (16) Q Yes Let me approach it from a different standpoint then I
 (17) go on to say I want you to assume for the moment that Captain
 (18) Hazelwood called at 2325 and said he was increasing his speed
 (19) to sea speed All right?
 (20) A Okay
 (21) Q And I also want you to assume that he then changes his mind
 (22) and five minutes later he called back and said I am reducing
 (23) my speed to 12 knots Am I correct are you with me so far and
 (24) your answer is yes I'm with you
 (25) The question then is And in fact he operated his engines

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- (1) in conformance with that transmission that is that he was not
 (2) going to increase the sea speed as he previously said but I
 (3) would you keep it down do 12 knots If he had done that did
 (4) he in your opinion notify VTC of the fact that when he told
 (5) them that he was reducing speed to 12 knots as opposed to 16
 (6) knots he let them know what he was doing?
 (7) There's a series - there's an objection and we square it
 (8) away and I go on and say in line 13 In other words assuming
 (9) the facts that I just gave you -
 (10) Answer Right That he was going to increase to full sea
 (11) speed
 (12) Question Yes changed his mind
 (13) Answer Now he's commanding his mind and he's just going
 (14) to do 12 knots
 (15) Question Full ahead maneuver
 (16) Answer Full ahead maneuvering And what was the last
 (17) part
 (18) Question The question is at - if that's what he was
 (19) doing and notified VTS would that he would that comply with
 (20) the reporting requirements of the VTS as you understood?
 (21) And your answer on page 92 is If he told VTS what he was
 (22) doing yes I would say yes I mean if he - I mean you can
 (23) say you're going up to full sea speed and almost be in the
 (24) process or whatever or even starting the rpms started to come
 (25) up and he calls them and tells them well I'm going to do 12

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- (1) knots Now that's in quotations yes he is in compliance
 (2) Do you remember that testimony?
 (3) A Yes
 (4) Q Now Captain you understand the word - let me strike that
 (5) and ask you this
 (6) When you were - when you were up there you made - you
 (7) left your southbound lane to avoid ice on a number of
 (8) occasions did you not?
 (9) A Yes
 (10) Q And twice you told us you went completely out of the
 (11) lanes But - go ahead
 (12) A Yeah I was just going to clarify Once just about like
 (13) what we're talking about here and another time just barely
 (14) Q Okay And in those instances - and plus you had another
 (15) 20 23 times where you just went into either the separation
 (16) zone or the northbound lane?
 (17) A Or around even in my own lane, too, also
 (18) Q In those instances you made a number of maneuvers didn't
 (19) you?
 (20) A Yes
 (21) Q And to make maneuvers you got to change course right?
 (22) A Yes
 (23) Q You didn't report every maneuver change that you made or
 (24) every course change that you made did you?
 (25) A No Not if it was in my own lanes

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- (1) Q Let me ask you something Were you using poor judgment
 (2) when you didn't call the VTS to say hey I just made a bunch of
 (3) maneuvers here I didn't tell you about?
 (4) A No because I was in my own lane
 (5) Q Well that is your judgment You didn't call You said
 (6) Captain Hazelwood didn't call and so he was using poor
 (7) judgment I want to know when you didn't call were you using
 (8) poor judgment?
 (9) A That's not the same He was leaving the lane
 (10) Q But you left the -
 (11) A I would call them and tell them
 (12) Q You told them every time that you made course changed?
 (13) A Not every time I made a course change, but if he was
 (14) going
 (15) in the opposite lane or even out of the TSS
 (16) Q Let me ask you this You criticized Captain Hazelwood for
 (17) putting on the load program up?
 (18) A Yes
 (19) Q Did your vessel have load program up?
 (20) A No
 (21) Q So you don't really know how load program up works do
 (22) you?
 (23) A Well, essentially - I know how it works from the testimony
 (24) that I've read and everything Not the exact mechanics but
 (25) how
 (26) it - you know the principle of it and we did the same thing
 (27) only because we had to - slowly because of our gears, our
 (28) main
 (29) gears we had to slow increase It took us 15 to 20 minutes
 (30) to

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- (1) get up from sea speeds from maneuvering speed
 (2) Q What did you have a diesel?
 (3) A A steam turbo
 (4) Q That's a different fish isn't it?
 (5) A It's a different plant yes
 (6) Q And a different engine really?
 (7) A Yes Different propulsion system
 (8) Q So the answer to my question is you don't have any
 (9) practical experience with the LPU do you?
 (10) A No, I've never used one
 (11) Q Now you said you heard some testimony you heard
 (12) testimony
 (13) that it takes about 45 minutes to increase from 12 knots to
 (14) about 16 knots?
 (15) A Yeah, something like that Right
 (16) Q And you said you did some calculations trying to figure out
 (17) course that the ship steered Do you do any calculations
 (18) trying to figure out how much the speed increased between the
 (19) time that the LPU was put on and the time of the grounding?
 (20) A Well it was on Professor Pouch's (ph) plot
 (21) Q And you took a look at that didn't you?
 (22) A Yes I did
 (23) Q And the fact of the matter is that the speed of the vessel
 (24) didn't even increase one knot from the time that the LPU was
 (25) put on until the time of the grounding isn't that correct?
 (26) A That's correct but what my - what my objection was in my

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testimony that you're trying to get to is just the fact of increasing speed while approaching ice in a narrow window between the ice and the reef that is what my objection was

Q Even increasing half a knot you would criticize?

A Just the fact you were increasing Why would you wanted to increase coming down on ice

Q Let me ask you this as long as you brought up the subject of ice

You were aware are you not that the ice situation the ice calving calving from that Columbia Glacier was getting worse?

A Yes In the 80s

Q Yes it was

And as a result of that ships were required on a routine basis to take evasive action and get around the ice?

A I don't know if I'd call it routine but it happened more directly, yes

Q And it became more frequent as you got into the middle 80s and later right?

A Yes

Q And you knew the Coast Guard knew about the ice didn't you?

A Yes, I did

Q Now you said that you didn't rely on the Coast Guard to tell you your position right?

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A No

Q But you have had experience with the Coast Guard where you yourself were not quite where you should be in the lanes and you got called by the Coast Guard?

A Yes, that happened once in the early '80s

Q And that happened above Bligh Reef?

A Yes

Q Did you assume at that time that they had some way of monitoring you?

A Yes, they had to be seeing me on the radar

Q To know where you were they had to plot your position somehow didn't they?

A I don't know about plot it but on the radar I guess - not on the chart but, yeah Blip on the radar

Q Captain you criticized Captain Hazelwood for using the autopilot you remember that?

A Yes I do

Q Are there any regulations that you're aware of that prohibit the use of - of the autopilot in the Prince William Sound?

A No, there are not but it's just the common practice of seamen not to use it in confined waters

Q Well you know the practice what you do is that correct?

A And everybody else I've ever worked with, yes

Q Now let me ask you this Isn't the use of the autopilot

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with the discretion of the captain?

A Yes

Q Now as a matter of fact Captain since you told us that common practice is not to use it you yourself used it over 30 times in Prince William Sound didn't you?

A In open water well south of Bligh Reef

Q Wait a minute We can't have it both ways Prince William Sound you said was the port now Now you're saying Prince William Sound is open water Which is it?

A No there's only two things in the port perimeter there's in port and at sea I used it in port but only in not confined waters

Q You used it 30 times in Prince William Sound didn't you?

A Approximately yes

Q And you made that decision based on whatever you were looking at that time?

A That's affirmative

Q And whatever it is that you were trying to accomplish at that time?

A Yes

Q And now prior to hearing Captain Hazelwood's testimony you didn't know what was in his mind when he put on the autopilot did you?

A Well from reading his testimony I heard that -

Q You just read that recently?

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A Yes

Q When you made your judgment or your opinion that Captain Hazelwood used poor judgment in using the autopilot you didn't know what was in Captain Hazelwood's mind did you?

A Well, he wanted to trust that more than a helmsman

Q He said that in his testimony But your opinion that he used poor judgment was given before that wasn't it?

A Yes That's affirmative Okay

Q Now I'm having a little trouble understanding Let me see if we can do go through this and you tell me if I'm right or wrong okay? You said that Captain Hazelwood used poor judgment in using the autopilot but there are no regulations prohibiting the use in Prince William Sound right?

A Right

Q Now you've used it a number of times right?

A South of Bligh Reef in open water

Q But you used it in Prince William Sound?

A Yes

Q And it's within the discretion of the master when to use the autopilot?

A Yes

Q Right

Q And when you gave your opinion you didn't know the reason why Captain Hazelwood used the autopilot right?

A Yes

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- (1) Q Okay And you don't know what - what - before you heard
 (2) what Captain Hazelwood said you didn't know what he and
 (3) Mr Cousins were doing at the time did you?
 (4) A Other than what I read in Cousins' deposition
 (5) Q Okay And you don't know - you didn't know how long the
 (6) autopilot was on do you?
 (7) A It was on right after they made the 180 course change in
 (8) the - just as Captain Hazelwood went off the bridge
 (9) Q So what five minutes?
 (10) A Well it didn't matter the time It's just the fact of
 (11) doing it
 (12) Q Okay And you also heard testimony that it only took about
 (13) one push of a button to get it off, didn't you?
 (14) A Yes
 (15) Q And you also testified that you don't contend that the use
 (16) of the autopilot fully had a role in the grounding isn't that
 (17) correct?
 (18) A Right Just that it was an imprudent act counsel
 (19) Q Now given all those facts you're still of the opinion
 (20) that Captain Hazelwood used poor judgment right?
 (21) A Yes
 (22) Q Now Captain you've testified that you thought Captain
 (23) Hazelwood leaving the bridge was a blatant disregard of his
 (24) duties?
 (25) A Yes

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- (1) Q Do you remember that? That in fact is the opinion or
 (2) similar to the opinion you discussed expressed after you
 (3) discussed those 15 questions and answers with Mr Blank isn't
 (4) it?
 (5) A Yes
 (6) Q And you did that before you heard all the testimony that
 (7) Captain Hazelwood gave as to what he was looking at and what
 (8) he
 (9) was thinking about before he left the bridge isn't that right?
 (10) A Yes
 (11) Q Do you remember all that testimony that Captain Hazelwood
 (12) gave?
 (13) A In his deposition?
 (14) Q No here in this courtroom
 (15) A Oh, yes
 (16) Q Were you here?
 (17) A For most of it
 (18) Q But you had already made your opinion about his actions
 (19) didn't you before you heard that testimony?
 (20) A I wouldn't say that I mean okay when I originally did
 (21) my discovery letter I had the assumed facts, then I read his
 (22) deposition and his deposition didn't change any of my
 (23) opinions
 (24) Q What assumed facts did you have about what Captain
 (25) Hazelwood was looking at what he was thinking about before
 (26) he
 (27) left the bridge when you made your opinion that it was a
 (28) blatant disregard of his duties? What assumed facts you have

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- (1) or did you have?
 (2) A The assumed facts that I was given
 (3) Q Well tell us
 (4) A I'm not sure I follow you Mr Chalos
 (5) Q Well you made a judgment that Captain Hazelwood was in
 (6) blatant disregard of his duties before you even knew what
 (7) Captain Hazelwood had to say you say you based that on the
 (8) assumed facts What were those assumed facts that you use?
 (9) A Well, I base my decision that he walked off the bridge
 (10) and - and a -
 (11) Q That's enough?
 (12) A In a - coming down on ice in a dark night with a loaded
 (13) tanker with a narrow window I mean, what else can I say?
 (14) Q That's it that's what you had?
 (15) A Yeah
 (16) Q Let's talk about this narrow window
 (17) How wide was this narrow window even using Mr Cousins or
 (18) that line that was - that was alleged to be Mr Cousins
 (19) leading edge of the ice? How wide was that window?
 (20) A Just slightly less than a mile Eight tenths, if I
 (21) remember right
 (22) Q How wide is this ship?
 (23) A How wide is the ship?
 (24) Q Yes
 (25) A The Exxon Valdez?

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- (1) Q That's it
 (2) A I believe she was 160 something
 (3) Q 160 feet right?
 (4) A Yes
 (5) Q A mile is how far?
 (6) A 6 000 feet
 (7) Q 6 000 feet And the ship is 160 feet?
 (8) A Yes
 (9) Q Sounds like plenty of room to me?
 (10) A It doesn't to me That's a very narrow window, Mr
 (11) Chalos
 (12) Q You're an expert here and you're being paid to talk about
 (13) that?
 (14) A That - that ice situation you see there is as worst as
 (15) I've ever seen, the worst I've seen I've heard of worse but
 (16) I tell you it's a tight spot
 (17) Q Let's stop a second The worst ice situation based on the
 (18) charts that you saw, is that what you're saying?
 (19) A As Mr Cousins drew it
 (20) Q But you didn't see the ice?
 (21) A No I did not
 (22) Q So you don't really know what Mr Cousins was looking at?
 (23) A No but I'm just assuming it was the worst that was there
 (24) because -
 (25) Q Go ahead
 (26) A Because Captain Hazelwood was what two - over two
 (27) miles

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- (1) inboard
 (2) Q We're going to talk about that in one second
 (3) Your Honor I'm going to kill myself before this trial is
 (4) over I keep tripping on wires Snakes here
 (5) THE COURT You guys had all kinds of opportunities to
 (6) work with those they're your wires
 (7) MR CHALOS I'm happy using the old fashioned method
 (8) of putting charts up
 (9) Well neither can you Jim from what I see
 (10) BY MR CHALOS
 (11) Q You had a chance to review this chart?
 (12) A Yes I've seen that
 (13) Q Yeah And you recall Captain Hazelwood saying that the
 (14) leading edge ice as he saw was this line over here
 (15) (indicating)?
 (16) A Yes
 (17) Q Okay Do you know what these red things are?
 (18) A Not sure no
 (19) Q No?
 (20) Do you remember reading in Mr Cousins testimony his
 (21) deposition testimony - do you want to come up here? Let me
 (22) wait for General Schwarzkopf here with his pointer
 (23) Come up here
 (24) MR CHALOS I can use it? Thank you
 (25) MR MONTAGUE Do you know how to open it?

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- (1) MR CHALOS Hope I don't poke my eye it
 (2) MR CHALOS
 (3) Q Do you know what these red things are?
 (4) A They weren't colored on my chart
 (5) Q Do you remember what they are?
 (6) A Yeah they were concentrations of ice as Cousins drew
 (7) Q Right
 (8) Now you recall reading didn't you that when he and
 (9) Captain Hazelwood were standing at the radar back over here
 (10) (indicating) when they were making their plan - do you
 (11) remember that?
 (12) A Yes
 (13) Q There was about a ten minute period where they were
 (14) discussing the ice?
 (15) A Yes
 (16) Q And do you remember Mr Cousins testified that when he and
 (17) Captain Hazelwood were looking at the ice together that he
 (18) saw
 (19) the concentration of ice as depicted in this red -
 (20) A The large pieces as I remember, yeah, but the leading
 (21) edge
 (22) was where he drew it down -
 (23) Q Now wait a minute Let me ask you about this This is
 (24) what he said he saw is the ice when he was standing there with
 (25) Captain Hazelwood and you remember him testifying that this
 (26) leading edge that he drew later on was how he saw the ice as he
 (27) got closer after Captain Hazelwood was off the bridge

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- (1) Do you remember that testimony?
 (2) A I don't specifically know
 (3) Q Now if the ice was concentrated as Mr Cousins drew in
 (4) these red -
 (5) A Yes
 (6) Q Doesn't that comport with what Captain Hazelwood said he
 (7) saw at the time they were standing at the radar?
 (8) A Yes in a way
 (9) Q Now you said - you did some calculations Which by the
 (10) way we haven't seen but never mind we'll wing it
 (11) You said you did some calculations that if the vessel
 (12) stayed on 200 course as opposed to 180 -
 (13) A Yes
 (14) Q - that it's your belief it would have missed the ice?
 (15) A Yeah the position was right - in not quite in the middle
 (16) of the Z in Valdez the separation zone
 (17) Q This one?
 (18) A No the separation zone See the Z
 (19) Q The Z?
 (20) A Yeah
 (21) Q That's right where they changed to 200 would draw you
 (22) right down that beautiful course like this?
 (23) A No it goes a little bit to the east of -
 (24) Q Here?
 (25) A Right somewhere around this there yeah, then keeps
 going

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- (1) down and it was to the east of Cousins leading edge of the
 (2) ice
 (3) and to the west of Bligh Reef buoy
 (4) Q You heard Captain Hazelwood testify that the reason he put
 (5) it on 180 is he wanted to travel a course equidistant from
 (6) Busby Island and the leading edge of the ice one mile?
 (7) A That's what I couldn't figure out
 (8) Q Did you hear that testimony?
 (9) A I heard that testimony, yes
 (10) Q What you're suggesting by going to 200 is for him to pass
 (11) less than a quarter of a mile in the leading edge aren't you?
 (12) A It would have been a little over that I think Probably
 (13) closer to a half a mile But why would you want to be closer
 (14) to the land and get inside of Busby Island and all of that and
 (15) closer to the north end of the reef if he's so close to the
 (16) leading edge of the ice right there as Captain Hazelwood
 (17) drew
 (18) it If it was right there he would have had a real good
 (19) handling on the ice so that's what you always did coming
 (20) out
 (21) there is stay closer to the ice than to the reefs That's why
 (22) you drop your speed, that was the prudent way to do it
 (23) Q Let me ask you this
 (24) You heard Captain Hazelwood say he wanted to stay a mile
 (25) from the leading edge of the ice as he saw it and a mile from
 Busby?
 A Yeah, I heard all that
 Q And in fact that's what he did, isn't it?

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- (1) A Yes
- (2) Q Who is a better judge Captain of a situation as it unfolds on a bridge of a ship at night you sitting here five years later as a paid expert or the guy that is on the bridge making the decisions?
- (3) A Whoever is on scene is - is - has a better handle on what is going on But I've read enough testimony to pretty much
- (4) Q But you weren't there?
- (5) A No absolutely I wasn't there
- (6) Q So you don't know exactly what he was looking at or what he had in mind?
- (7) A Oh no I know what he had in mind He wanted to pass one mile exactly between the ice and Busby I'm just contending that that doesn't make any sense to me Take yourself that far out of the lanes for what reason?
- (8) Q Let me ask you this
- (9) Would you agree with this proposition That reasonable competent mariners can have a difference of opinion as to what course of action to take on - in any particular situation?
- (10) A I don't know about my particular situation but - in some situation
- (11) Q If two reasonable competent mariners are looking at the same situation - right?
- (12) A Yeah there's a possibility they come up with a different answer right

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- (1) Q Would you agree with me they could disagree as to what the best course of a tion is?
- (2) A Right They can disagree
- (3) Q And it wouldn't make one right and one wrong would it?
- (4) A That would depend on the situation
- (5) Q Now with respect to Mr Cousins who was the best judge of his abilities and capabilities you or Captain Hazelwood who sailed with him?
- (6) A Captain Hazelwood, I would imagine
- (7) Q As far as the making a course change once you got abeam of a known navigational aid (indicating) - right?
- (8) A Yes
- (9) Q - would you say that that's well within the capabilities of a licensed second mate sailing as a third mate?
- (10) A Not on any of my ships
- (11) Q It's not?
- (12) A In part I make the - I con the ship
- (13) Q In other words you would never -
- (14) A No mate on any of my ships has ever done any conning I'll tell you that
- (15) Q You would never give your mates a chance to con the vessel to get some experience?
- (16) A Like Captain Stalzer was talking about was going over to the anchorage and letting somebody practice it yes I've done that before but I'm right there I'm in attendance it's my

- (1) responsibility
- (2) Q Let me ask you this You've - that's just your style of management I take it you want to be the man doing the moves in Prince William Sound?
- (3) A It's the captain's primary job to con the ship
- (4) Q But it's also the captain's job to teach his junior officers isn't it?
- (5) A I wouldn't say that I mean -
- (6) Q You wouldn't?
- (7) A It's not - you don't have to
- (8) Q Okay
- (9) Matter of personal preference isn't it?
- (10) A Yes as to whether you want to train someone or not
- (11) Q You said you read Mr Couch's plot?
- (12) A Yes, I did
- (13) Q Did you deduce from reading his plot that if ten degrees of right rudder was used and the turn was commenced at Busby Island light - (indicating) up here using ten degrees right rudder - that the ship should have missed Bligh Reef by a good distance?
- (14) A Well, I heard that somewhere along the line, I don't know if it was plotted ten even five degrees had been put on right of Busby Island it would have missed the reef
- (15) Q As a matter of fact did you do any calculations bringing it down further to see if ten degrees was put on at sometime

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- (1) later whether that would have missed Bligh Reef?
- (2) A I drew it out I'm not exactly sure - you know the exact point but he would have had to come to a course even if he moved down to where the other circle is
- (3) Q Where it says B here?
- (4) A Yeah I believe that they would have had to come to something like 225 which would be like a 45 degree course change
- (5) Q But that -
- (6) A So it might be possible they could have made it, you know
- (7) Q When you say 45 degrees you're not talking about 45 degrees of rudder?
- (8) A No, 180 over to 225
- (9) Q You can get over there with ten degrees of right rudder?
- (10) A It's pretty close You got to think about advance, they're doing 12 knots they're going to go down at least a half a mile any way before they start to turn even with the rudder over hard so I suspect that might be a little bit too close
- (11) Q Just so we're clear - and I know you didn't do all the calculations but just the - the basic calculations that you made
- (12) Ten degrees of Busby if the turn was commenced at Busby or shortly there after they should have cleared Bligh Reef with ease?
- (13) A Yes

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- (1) Q Ten degrees down here at this circle marked as B might
 (2) have made it as well Is that what you're saying?
 (3) A It might have yeah
 (4) Q Did you - you remember reading in Mr Cousins deposition
 (5) that when he called Captain Hazelwood shortly after he got
 (6) abeam of Busby Captain Hazelwood asked him what rudder
 are
 (7) you using and Mr Cousins said I'm using ten degrees and
 (8) Captain Hazelwood said yeah that's fine?
 (9) Do you remember that testimony?
 (10) A No I don't Not specifically no I don't
 (11) Q You don't remember that? You remember Captain
 Hazelwood
 (12) testifying to that?
 (13) A Today?
 (14) Q Not today he didn't testify
 (15) A No, I know I couldn't hear your last word that you said
 (16) at the end of that sentence
 (17) Q Do you remember Captain Hazelwood testifying that that's
 (18) what the mate told him?
 (19) A Not specifically no I don't
 (20) Q Now you said that when Captain Hazelwood was called by
 the
 (21) mate he told him the mate - you said the mate told Captain
 (22) Hazelwood we might be getting into the leading edge of the
 (23) ice?
 (24) A Yes
 (25) Q And then that would have sounded some alarm in your head

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- (1) and you would have run back up to the bridge Do you
 remember
 (2) that?
 (3) A Absolutely
 (4) Q Do you remember exactly what that conversation how that
 (5) conversation went?
 (6) A Yeah just like you just said
 (7) Q No it didn't Captain Hazelwood and Mr Cousins
 (8) testified do you recall this - that Mr - Captain Hazelwood
 (9) asked Mr Cousins what's the situation look like? And
 (10) Mr Cousins said well we started our turn and it looks like
 (11) we may be getting into the leading edge of the ice And then
 (12) Captain Hazelwood said to him is that going to create a
 (13) problem? And Mr Cousins said no it's not going to create a
 (14) problem
 (15) Do you remember that?
 (16) A Yeah, but if some third mate told me we're going to get
 (17) into the ice we got a problem Whether he thinks so or not
 (18) we got a problem
 (19) Q Do you remember that testimony?
 (20) A Yes
 (21) Q Now when you leave the bridge when you were captain did
 (22) you leave instructions to your mates that if they had any doubt
 (23) at all to give you a call?
 (24) A Yes
 (25) Q And could you rely on what the mates told you if they told

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- (1) you that they didn't have any doubts?
 (2) A Depends on the mate Depends on the situation
 (3) Q Right And in this situation who is the best judge of
 (4) whether he could trust Mr Cousins abilities and what he was
 (5) told?
 (6) A The captain
 (7) Q And the captain happened to be who?
 (8) A Captain Hazelwood
 (9) Q You talked about what Mr Cousins had to do when he was
 up
 (10) there do you remember?
 (11) A Yes
 (12) Q Said he had - he laid down a fix right?
 (13) A Yes
 (14) Q Why don't you tell the jury what it takes to do a fix?
 (15) A What kind of fix?
 (16) Q Okay Let me give you these assumed facts
 (17) You're on a course of 180 okay? Your instructions are to
 (18) come abeam of a particular navigational aid like Busby okay?
 (19) Now 180 is a cardinal course isn't it?
 (20) A Yes
 (21) Q All right So that means when you come abeam that's
 (22) pretty easy to figure out that's 90 degrees away from you
 (23) right?
 (24) A Yeah any time you come do that it's easy to figure out
 (25) Q But on a cardinal course it's even easier because it's due

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- (1) east of you?
 (2) A I suppose so It makes even numbers
 (3) Q So you're told to come - when you come abeam to make a
 (4) turn right so the mate wants to take a fix at that point
 (5) right?
 (6) A Yes
 (7) Q What does he have to do to get a fix?
 (8) A What he has to do is very simple, just look on the radar
 (9) and fix he knows what the course is
 (10) Q That's it?
 (11) A That's what told Cousins' inexperience by having to plot
 (12) all that stuff
 (13) Q What he did was he went on the bridge wing and took an
 (14) actual bearing right?
 (15) A Yes
 (16) Q And then he came in and went to the radar and did an arc
 (17) took a range, right?
 (18) A Yes
 (19) Q And then he went into the chart room and laid it on the
 (20) chart right?
 (21) A Yes
 (22) Q How long do you think that all takes?
 (23) A Doesn't take long at all He took too long
 (24) Q There's Mr Cousins?
 (25) A Yeah Just from - just from having to go out and take a

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- (1) visual bearing on something which is coming ahead just showed
- (2) to my way of thinking that he had inexperience
- (3) Q How long would it take a third mate like Mr Cousins to
- (4) give an order ten degrees right rudder?
- (5) A Just as long as it takes to say it
- (6) Q Just like that right?
- (7) A Yes
- (8) Q So you laid down a plot and you say turn ten degrees right rudder right?
- (9) A Yes
- (10) Q And you know that from your experience that that's all the whole thing takes right?
- (11) A Yes
- (12) Q What does Mr Cousins have to do at that point? What is left for him to make sure that it's carried out?
- (13) A He's got to watch the rudder angle indicator make sure it goes over to ten
- (14) Q Just look up right?
- (15) A Make sure the ship is - to where -
- (16) Q All he has to do is look?
- (17) A He has to keep his eye out He's also got to plot his position as soon as he gets over to where he's changed course
- (18) too to make sure it's had the desired effect He doesn't have
- (19) the pilotage so he has to keep plotting his position on the
- (20) chart because he thought in his mind -

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- (1) Q You haven't sailed with Mr Cousins?
- (2) A No, I haven't
- (3) Q So you don't know what his knowledge of Prince William Sound is do you?
- (4) A Well from reading his opinions he didn't have a great working knowledge of it
- (5) Q But you don't know for a fact what his knowledge was and what his knowledge was of navigational aids?
- (6) A Other than what I read in his deposition no I got the impression he was inexperienced
- (7) Q Let's talk let's talk about pilotage because you brought up the issue
- (8) Before the grounding of the Exxon Valdez you had heard from a BP port captain that pilotage - there was a move afoot to do away with compulsory pilotage in Prince William Sound did you not?
- (9) A That's correct
- (10) Q And by the way who owns the Brooks Range?
- (11) A Banks
- (12) Q Banks
- (13) I asked Jim
- (14) Now you knew prior to the grounding of the Exxon Valdez did you not that the requirements for pilotage had been eased over the years to permit nonpilotage vessels to come into Prince William Sound and go up to a certain point without

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- (1) having someone with a pilotage endorsement?
- (2) A That's correct
- (3) Q Let me ask you something I want you to assume for a moment that you have two ships come in to Cape Hinchinbrook at
- (4) the same time one right after the other okay? One has
- (5) someone on board with a pilotage endorsement right - this is
- (6) all pre grounding And the second ship right behind it is
- (7) going up there for the first time the officers have never seen
- (8) Prince William Sound before Okay?
- (9) So the first one says I've got someone on board with a
- (10) pilotage endorsement let's say that someone is the captain
- (11) okay?
- (12) A Yes
- (13) Q Okay
- (14) As a situation existed prior to the grounding your
- (15) testimony is that captain who had pilotage endorsement and
- (16) presumably knew the area well had to stay on the bridge from
- (17) Cape Hinchinbrook all the way up to Rocky Point is that right?
- (18) A By law you're talking about?
- (19) Q As you understood the regulations
- (20) A Yes
- (21) Q Okay The second ship in first time up there the
- (22) officers don't know Prince William Sound from any other place
- (23) in the world - that captain might or might not stay on the
- (24) bridge the whole time Am I correct?

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- (1) A If he's using good judgment yes
- (2) Q But he there's no regulation that says he has to be up there?
- (3) A No there is no regulation
- (4) Q Doesn't that sound strange to you? I mean isn't that an odd situation that someone who don't know the area doesn't have
- (5) to be up there but someone who does has to be up there?
- (6) A Well I don't know about strange
- (7) Q Well it's odd isn't it?
- (8) A It's the way it was
- (9) Q Oh
- (10) Wasn't that one of the reasons why there was a move afoot to do away with compulsory pilotage because the regulations as
- (11) they existed at that time made no sense?
- (12) A I wouldn't say they made no sense, no, because all - what
- (13) you really consider confined water it starts at Bligh Reef, so
- (14) to have - you can scratch your way up to Bligh Reef and then
- (15) get on a state pilot there and be okay you know At least
- (16) you're not in the real bad confined water And then - then
- (17) the master with the pilotage he takes his regular state pilot
- (18) at Rocky Point so I don't know why, that's why I -
- (19) Q I want to ask you But you don't find it - you don't find
- (20) it odd though that someone who doesn't have the pilotage
- (21) is - let me ask you this before I ask that question
- (22) Using that two ship example again -

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- (1) A Yes
 (2) Q - if they re coming in at the same time they re looking
 (3) at the same hazards aren't they?
 (4) A Yes
 (5) Q And they re looking at the same traffic right?
 (6) A Yes
 (7) Q But it s not strange to you that the guy that doesn't know
 (8) the area at all don't know any of the hazards doesn't have to
 (9) be up there but the guy that s been there at least 12 times or
 (10) 20 times or whatever it takes to get your license your
 (11) endorsement does It doesn't seem strange to you?
 (12) A That's the way it was I like I said once you get up to
 (13) Bligh Reef you're really started to get into confined waters
 (14) so
 (15) that makes sense in that respect
 (16) Q We re going to talk about that in one respect Let me ask
 (17) you some questions first When you got your pilotage in '79 -
 (18) A '78
 (19) Q '78 To get the number of trips in you rode a pilot boat
 (20) back and forth right?
 (21) A Yeah, three trips on the New York and then the other nine
 (22) I
 (23) took on a pilot - a - riding ships not riding on the pilot
 (24) boat, riding the ships in and out using the pilot boat to gain
 (25) access to the ships
 (26) Q On those trips you just stood there and observed right?
 (27) A Right

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- (1) Q You weren't conning the vessel you weren't piloting the
 (2) vessel?
 (3) A No I wasn't
 (4) Q So when you got your pilot handling endorsement they
 (5) didn't test you for your ability to pilot or con a vessel?
 (6) A No they did not
 (7) Q As a matter of fact the test was a memorization test
 (8) wasn't it?
 (9) A Essentially
 (10) Q And that was in 1978 Theoretically if you hadn't gone
 (11) back until 1990 - right?
 (12) A Yes
 (13) Q - let s say a 12 year ten year span there was no retest
 (14) to test to see if you remembered everything was there?
 (15) A That's correct
 (16) Q But according to the regulations as you understood them
 (17) the fact that you had a pilotage endorsement said that you were
 (18) qualified to go back and forth with this endorsement right?
 (19) A Yes
 (20) Q Even though you might have forgotten everything that you
 (21) studied ten years earlier?
 (22) A If you forgot everything yeah
 (23) Q Can I have the Alamar letter brought up?
 (24) MR MONTAGUE Your Honor I m going to object to
 (25) that That is not a letter that involved this witness

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- (1) MR CHALOS It s already in evidence
 (2) MR MONTAGUE But it s got nothing to do with it
 (3) MR CHALOS It s in evidence
 (4) MR MONTAGUE No foundation
 (5) THE COURT What is the exhibit?
 (6) MR CHALOS 3483 Your Honor It s the Martineau
 (7) letter with the attachment the Alamar attachment It s
 (8) already been admitted into evidence Your Honor
 (9) THE COURT Mr Murtiashaw is it in evidence?
 (10) THE CLERK Yes it is Your Honor
 (11) THE COURT You may inquire about it
 (12) BY MR CHALOS
 (13) Q Can we go - this is just so the people in the jury - this
 (14) is the cover letter that went to the fleet and which Captain
 (15) Hazelwood testified that he reviewed including the Alamar
 (16) letter I m now going to the second page which is the Alamar
 (17) letter
 (18) Can I have the first paragraph blown up and highlighted?
 (19) Okay Would you mind - see that highlighting there?
 (20) A Yes
 (21) Q Would you mind starting with the re new pilotage would
 (22) you read that first paragraph into the record?
 (23) A Re -
 (24) Q It s not an eye test you can read from over there
 (25) A That s okay I can see that almost better

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- (1) Re new pilotage requirements Effective September 1 1986
 (2) the USCG requirement for daylight passage in Prince
 (3) William
 (4) Sound for vessels without pilotage has been waived All
 (5) nonpilotage vessel will be able to transit from Cape
 (6) Hinchinbrook to the pilot station at all hours as long as
 (7) visibility remains at two miles or greater The same remains
 (8) true for the outbound leg from the pilot station to Cape
 (9) Hinchinbrook
 (10) Q Okay You saw this letter didn't you?
 (11) A Yes, I did
 (12) Q And you read this letter didn't you?
 (13) A Yes I did
 (14) Q Now it talks about a pilot station Do you see that?
 (15) A Yes it does
 (16) Q When you - prior to the grounding of the Exxon Valdez
 (17) there was only one pilot station wasn't there?
 (18) A Yeah no it's almost like there was two because one for
 (19) the pilotage vessels and one for the nonpilotage vessels
 (20) when
 (21) you call a pilot station where you pick up the pilot
 (22) Q Let me ask you this You re familiar with the notice to
 (23) mariners?
 (24) A Yes
 (25) Q You re familiar with the coast pilots?
 (26) A Yes
 (27) Q You re familiar with the code of federal regulations?

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(1) A Yes
 (2) Q And you read all three publications before the grounding?
 (3) A Did I read - I don't think I read the code of federal
 (4) register no I've read the others
 (5) Q In all those publications where is the pilot station from
 (6) Prince William Sound located?
 (7) A Up in the - coast pilots I imagine it's right at Rocky
 (8) Point That's what it states
 (9) Q As a matter of fact that's where you picked up the pilot
 (10) all the time?
 (11) A Yes
 (12) Q Right?
 (13) And in the notice to mariners didn't they identify the
 (14) pilot station as the pilot station at Rocky Point?
 (15) A I don't remember reading it in the notice to mariners
 (16) Q Now you've already agreed with me did you not that
 (17) someone reading this Alamar letter prior to the grounding of
 (18) the Exxon Valdez could reasonable conclude that the pilotage
 (19) requirements were waived to and from the pilot station so long
 (20) as you had two miles of visibility?
 (21) A Say that again?
 (22) Q Do you agree with me that someone reading this paragraph
 (23) prior to the grounding could reasonable conclude that pilotage
 (24) had been waived from the pilot station to Cape Hinchinbrook
 (25) back and forth so long as the visibility on that occasion was

(1) A Yes
 (2) Q Okay Starting on line 18 on 155 the question is Would
 (3) you agree with me reading the first paragraph of this
 (4) letter - that's the letter we're talking about - that it
 (5) seems to imply the pilotage for nonpilotage vessel has been
 (6) waived up to the pilot station assuming the visibility remains
 (7) at two miles or greater?
 (8) Answer Yes
 (9) Question And the same being true for the outbound line
 (10) from the pilot station to Cape Hinchinbrook?
 (11) Answer Yes
 (12) Question In your mind if one were to read this would
 (13) that create a situation where pilotage was required for those
 (14) people that had the pilotage endorsement but not for vessels
 (15) that had no one on board with a pilotage endorsement?
 (16) There's a - an objection it's read back and the question
 (17) is Does that create that impression in your mind reading
 (18) this?
 (19) Answer That - that's what it meant?
 (20) Question No Does it create an impression in your mind
 (21) that a vessel without pilotage - sorry that a vessel with
 (22) pilotage let me start again
 (23) Okay reading the first paragraph does it create an
 (24) impression in your mind that a vessel that had someone on
 (25) board
 (26) with a pilotage endorsement had to comply with all the rules

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(1) two miles or greater?
 (2) A Well it says nonpilotage vessel
 (3) Q I'm going to talk to you about that a second Do you agree
 (4) with me?
 (5) A I'm not real sure if I do here As long as the
 (6) advisability is two miles or greater a ship which does not
 (7) have pilotage can go to the pilot station at all hours Now
 (8) it doesn't specify which pilot station
 (9) Q Could you - well we've already Captain -
 (10) A Yes sir
 (11) Q The only pilot station that you knew about and the only
 (12) pilot station that was in the publication was the one at Rocky
 (13) Point wasn't it?
 (14) A Well, in the regulations yes I should say in the coast
 (15) pilots But everybody knew that the pilot station for the
 (16) vessels without pilotage at Bligh Reef I mean I always -
 (17) even though I never -
 (18) Q How do you know everybody knew that?
 (19) A Even though I never read it I knew that was another pilot
 (20) station
 (21) Q That was the assumption you made?
 (22) A Yes
 (23) Q Go please to page 156 and 157 okay? Actually 155 Can
 (24) you go to 155
 (25) ? Are you with me?

(1) and regulations relating to pilotage but a vessel without
 (2) anyone with pilotage endorsement other than this two mile
 (3) visibility didn't have to comply with any pilotage
 (4) regulations? In other words it was waived as to them?
 (5) Answer Waived as to pilotage requirements? Yes But not
 (6) what had to be done in the sound as to reporting or you know
 (7) any other procedures
 (8) Question I'm with you
 (9) Answer No you know what I mean? But yeah they - they
 (10) don't - what this is saying to me is you don't have to have
 (11) pilotage to bring your vessel up to Rocky Point
 (12) See that?
 (13) A Yeah
 (14) Q That's what you thought when you read this right?
 (15) A That's what it says
 (16) Q Now you said in response to Mr Montague that your
 (17) perception of Captain Hazelwood based on the opinions that
 (18) gave was that he was an incompetent mariner do you
 (19) remember
 (20) that?
 (21) A Yes
 (22) Q You don't know Captain Hazelwood do you?
 (23) A No I don't
 (24) Q You've never sailed with Captain Hazelwood?
 (25) A No I haven't
 (26) Q Have you heard the testimony that we've heard through

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- (1) deposition transcripts and through video tapes and live
 (2) witnesses who have come in here and said that Captain
 Hazelwood
 (3) was a competent mariner the best captain I've ever sailed
 (4) with a good ship handler a great navigator? Have you heard
 (5) that?
 (6) A I wasn't around for those
 (7) Q You didn't hear any of that?
 (8) A No
 (9) Q Okay But you're someone who doesn't know the man
 you've
 (10) never spoken to any of his ship mates who have sailed with him
 (11) over the years have you?
 (12) A That's true
 (13) Q And you've never spoken with any of the pilots who have
 (14) dealt with him up in Prince William Sound is that right?
 (15) A Not that I can remember any specific times to it I do
 (16) remember hearing reading or whatever that he was highly
 thought
 (17) of yes
 (18) Q I wanted to talk a little bit about the answer you gave
 (19) regarding the post grounding
 (20) A Yes
 (21) Q You said the best or the most that you can conclude was
 (22) that his actions that night were different than his words
 (23) right?
 (24) A Yes
 (25) Q And I take it you don't - let me ask you this

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- (1) The actions that you're talking about and what you heard in
 (2) testimony -
 (3) A Yes
 (4) Q - were that the actions he was taking were designed to
 (5) keep the vessel on the reef right?
 (6) MR MONTAGUE Your Honor excuse me This is going
 (7) beyond direct We purposely didn't get into this The only
 (8) thing the witness said -
 (9) THE COURT I think you opened the subject up
 (10) MR CHALOS Thank you Your Honor
 (11) BY MR CHALOS
 (12) Q Captain the actions you're aware of that you said don't
 (13) square with his words?
 (14) A Yes
 (15) Q Were that he never went astern?
 (16) A Yes
 (17) Q Right?
 (18) That he told the mate that they weren't going to go
 (19) anywhere right?
 (20) A Yes
 (21) Q And he that he told the mate to get ready to ballast down?
 (22) A He didn't ballast didn't he? I think I read that
 (23) somewhere
 (24) Q He told the mate to get the anchors ready?
 (25) A Right They put down the anchor, the - one of them The

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- (1) other was at the ready
 (2) Q He used no more than 25 percent of the power available to
 (3) him at any time? That's the maximum he used right?
 (4) A That didn't weigh in my mind
 (5) Q Well those actions to you are the actions of someone
 (6) trying to stay exactly where they are right?
 (7) A Yes In essence I wouldn't understand the wait and the
 (8) rudder use of the rudder but to wiggle it on the rocks like
 (9) that I thought that was not a good idea That would be
 (10) opening up the hull more
 (11) Q But you don't have any evidence do you you don't have any
 (12) facts that the wiggling caused any damage to the hull?
 (13) A No other than just is what I believed it would do
 (14) Q Now Captain you don't have any training in determining
 (15) the level of stress and/or trauma that one would sustain after
 (16) having run aground in Prince William Sound with a - tanker
 (17) loaded down to 57 feet do you?
 (18) A You mean to the captain?
 (19) Q Yes
 (20) A Do I have any training in that?
 (21) Q Yeah
 (22) A No I don't
 (23) Q And you don't know how such stress and trauma would
 affect
 (24) a person in the way he was thinking what he was saying am I
 (25) correct?

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- (1) A No I don't have any training in that no
 (2) Q I have no further questions for you Captain Thank you
 (3) REDIRECT EXAMINATION OF CAPTAIN MICHAEL CLARK
 (4) BY MR MONTAGUE
 (5) Mr Chalos do you want him to have this?
 (6) MR CHALOS No Thank you
 (7) Q Captain Clark let's start at the end for a minute Alamar
 (8) was an Alaska maritime company is that what it's called?
 (9) A Yes, I believe so
 (10) Q Were they an agent for your company?
 (11) A No
 (12) Q Did you get that memo that Mr Chalos showed you in the
 (13) regular course of business?
 (14) A No
 (15) Q And you were asked to just interpret that at your
 (16) deposition?
 (17) A Essentially yes I had seen it once in the course of
 (18) conversation with a port captain and I - I hadn't studied it,
 (19) no
 (20) Q As far as you know on the night that the Exxon Valdez ran
 (21) on to Bligh Reef as to the Exxon Valdez there was a
 (22) requirement for pilotage?
 (23) A Yes
 (24) Q Okay Now let's put that aside
 (25) Putting the pilotage requirement aside does that have

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- (1) anything to do with a master's duty to be on the bridge while
 (2) departing the port while outside of the lanes diverting ice
 (3) two miles from Bligh Reef?
 (4) A Absolutely not
 (5) Q Now when you first were contacted and you had this
 (6) conversation with Mr Blank - do you recall that? He gave you
 (7) some hypotheticals right?
 (8) A Yes
 (9) Q He didn't ask you what the facts are did he?
 (10) A No he never asked me about the facts
 (11) Q He said if the facts are this do you have an opinion?
 (12) A He told me he want me to assume these facts as being
 true
 (13) Q If the facts are such and such do you have an opinion?
 (14) A Yes
 (15) Q Now you've heard - you testified you heard the testimony
 (16) of Mr Hazelwood Captain Hazelwood?
 (17) A Yes
 (18) Q And you've looked at some other things since you first made
 (19) that report?
 (20) A Yes
 (21) Q And have you changed your opinion as to the things you
 (22) testified here today?
 (23) A No
 (24) Q And in fact you have changed your opinion about certain
 (25) things that were in your report isn't that correct - and they

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- (1) weren't in your testimony today?
 (2) A Could you say that again please?
 (3) Q Yes In fact you have changed your opinions as to matters
 (4) that were in your report but to which you didn't testify today
 (5) isn't that correct?
 (6) A I'm not sure I follow you
 (7) Q Okay In your report for example you refer to his being
 (8) 42 minutes late coming to the vessel 42 minutes before it
 (9) left Do you recall that?
 (10) A Yes
 (11) Q And you didn't testify about that today?
 (12) A No I did not
 (13) Q And there were other matters like that that you didn't
 (14) testify to today?
 (15) A That's true
 (16) Q Okay
 (17) Now you were asked about the fact during your direct that
 (18) we assume that Captain Hazelwood left the bridge at 9 30 at
 (19) night before entering the narrows and he came back at 11 05
 and
 (20) Mr Chalos pointed out that it may have been ten o'clock and he
 (21) came back at 11 05 Does that change your opinion?
 (22) A No absolutely not Just that he left particularly
 (23) through the narrows
 (24) Q I wanted to talk about the VTC for a minute and you'll
 (25) recall Mr Chalos showed you this chart comparing the

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- (1) transmissions of three companies of three -
 (2) A Yes
 (3) Q Now no one from the Brooklyn came into this courtroom and
 (4) said they relied on the VTC to track it did they?
 (5) A No
 (6) Q And no one from the ARCO Juneau came into this court and
 (7) said they relied on the VTC to track it did they?
 (8) A No
 (9) Q But Mr Hazelwood did didn't he?
 (10) A Yes
 (11) Q And the questions that you were asked and the opinions that
 (12) you gave were in the context of someone asking the or relying
 (13) on the VTC to track it isn't that correct?
 (14) A Yes
 (15) Q And what you would expect someone who is relying on the
 VTC
 (16) to track it to tell the VTC?
 (17) A Yes you'd have to give them accurate information
 (18) Q Now you testified that you left the TSS all together
 (19) twice?
 (20) A Yes
 (21) Q During your 13 years of transiting Prince William Sound?
 (22) A Yes
 (23) Q And on each of those occasions did you stay on the
 (24) bridge?
 (25) MR CHALOS Your Honor asked and answered

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- (1) THE COURT You may answer it
 (2) A Yes
 (3) Q On each of those occasions were you the one that gave the
 (4) rudder commands?
 (5) A Yes
 (6) Q And on each of those occasions did you watch the rudder
 (7) command as to whether it was effective?
 (8) A Yes
 (9) Q And in each of those occasions did you increase speed?
 (10) A No
 (11) Q And in each of those occasions did you delegate your duty
 (12) as a master?
 (13) A No
 (14) Q Is there anything that Captain Hazelwood could have done to
 (15) prevent this wreck on the Bligh Reef had he been on the
 (16) bridge?
 (17) MR CHALOS I object Your Honor
 (18) THE COURT What is your objection?
 (19) MR CHALOS This has been asked and answered I
 (20) didn't go into this on my cross examination
 (21) THE COURT Sustained
 (22) BY MR MONTAGUE
 (23) Q I have no further questions Thank you
 (24) THE COURT Thank you Captain Clark You may step
 (25) down

Vol 10 1258

- (1) (Witness excused)
- (2) MS WAGNER The plaintiffs would like to call Robert
- (3) Kagan by his deposition and it's a video tape deposition
- (4) There will be three exhibits They have already been published
- (5) to the jury before which are already pre admitted DX 275 DX
- (6) 225 and Plaintiff's Exhibit 3723
- (7) DIRECT EXAMINATION OF ROBERT M KAGAN (Video)
- (8) BY THE PLAINTIFF
- (9) Q Please state your full name?
- (10) A Robert M Kagan
- (11) Q Your home address?
- (12) A 735 Franklin Avenue Harahan Louisiana 70123
- (13) Q What age are you?
- (14) A I'm 50
- (15) Q Did you bring any documents with you?
- (16) A No I didn't
- (17) Q Can you tell us about your education?
- (18) A I went up to the junior year in high school
- (19) Q And then what did you do?
- (20) A I went in the service
- (21) Q What branch?
- (22) A I went in the Navy reserve
- (23) Q Did you sail?
- (24) A No I didn't
- (25) Q What years was that?

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- (1) A 1962 to 1963
- (2) Q And then what did you do?
- (3) A Worked in - in different shore jobs
- (4) Q For how long approximately?
- (5) A 1963 to 1974
- (6) Q Okay And then 1974 what did you do?
- (7) A I went to work for Exxon Shipping Company
- (8) Q And in what capacity?
- (9) A As a - as a mess man in - on Exxon ships
- (10) Q Okay And how long did you work - what are you doing
- (11) today?
- (12) A I'm an - day man a maintenance seaman with Exxon
- (13) Shipping
- (14) Company
- (15) Q So from 1974 until today did you remain with Exxon?
- (16) A Yes, I did
- (17) Q For approximately how many years did you sail as a mess
- (18) man?
- (19) A One year
- (20) Q And then what happened?
- (21) A I went to ordinary seaman
- (22) Q And how long did you remain an ordinary seaman?
- (23) A Till 1985
- (24) Q And then what happened?
- (25) A I got stepped up to an able seaman
- (26) Q And from that point on - did you remain an able seaman?

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- (1) A No I was stepped down back to ordinary seaman
- (2) Q When did that occur?
- (3) A It occurred I think in 8 - 85
- (4) Q And then from 85 did you remain an ordinary seaman?
- (5) A Until 1989
- (6) Q What month?
- (7) A January - January when I signed on with the Exxon
- (8) Valdez
- (9) Q And what happened then?
- (10) A I got stepped up again to an A B
- (11) Q And at the time of this grounding you were an A B ?
- (12) A Yes I was
- (13) Q When you were an ordinary seaman you - you - one of your
- (14) duties was do serve as a lookout?
- (15) A Yes sir
- (16) Q Did you also assume any duties on the helm?
- (17) A No I didn't
- (18) Q - Of the vessel?
- (19) And then I believe it was 1984 did you say you were - you
- (20) used the term I think stepped up to an able seaman?
- (21) A 1985
- (22) Q 85 And you were stepped up to an A B in 1985 from
- (23) ordinary seaman?
- (24) A Yes
- (25) Q What were your duties as an able bodied seaman?
- (26) A Same thing as an ordinary seaman except steered -
- (27) steered

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- (1) and still had lookout duties
- (2) Q Was that the first time you steered the vessels?
- (3) A No sir I practiced steering while I was an ordinary
- (4) seaman
- (5) Q I see But you didn't stand any watch?
- (6) A No
- (7) Q And then I believe you used the term you were stepped
- (8) down?
- (9) A Yes sir
- (10) Q From an able seaman And that was in 1985?
- (11) A Yes
- (12) Q How long did you remain an able bodied seaman before you
- (13) went back to an ordinary seaman approximately?
- (14) A I think four months
- (15) Q And do you recall what the reason was?
- (16) A No I didn't have a reason
- (17) Q Now when you were - when you were an ordinary seaman for
- (18) the second time after 1985 did you again assume the same
- (19) type
- (20) duties as you explained before lookout?
- (21) A Yes
- (22) Q Did you stand any watches on the helm?
- (23) A No I didn't
- (24) Q Did you practice on the helm during that period?
- (25) A Yes, I did
- (26) Q How frequently would you practice on the helm?
- (27) A Every - when I had had off time I would go up and steer

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- (1) for a couple of hours
 (2) Q Okay Well just to give us some idea was it once a month
 (3) or once a week?
 (4) A No It was every -
 (5) Q Weekly would you say?
 (6) A Weekly
 (7) Q Pardon?
 (8) A Weekly
 (9) Q Weekly And you would take the helm for a couple of hours
 (10) an hour or -
 (11) A Yes about an hour
 (12) Q Okay Then in January of '89 you were an A B again?
 (13) A Yes sir
 (14) Q And from that point in January '89 up to the time of the
 (15) grounding on March 24 1989 did you remain an A B ?
 (16) A Excuse me The question -
 (17) Q That s from January of '89 when you became an A B again
 (18) until the time of the grounding did you remain an A B ?
 (19) A Yes I did
 (20) Q And during that period of time did you stand regular
 (21) watches on the helm?
 (22) A Yes I did
 (23) Q And what - explain what those - how frequently did you -
 (24) you had four hours on eight hours off?
 (25) A Yes sir

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- (1) Q Do you remember which four hours they were?
 (2) A I was on the mid watch twelve to four watch
 (3) Q So you had the 1200 1600 in the afternoon?
 (4) A Yes
 (5) Q And you had the mid watch at night from midnight to four in
 (6) the morning is that correct?
 (7) A Yes Yes
 (8) Q And during those four hour watch periods that you had how
 (9) many - how much of the four hour watch period would you be
 (10) at
 (11) the helm?
 (12) A Two hours
 (13) Q And what would you do the other two hours?
 (14) A Stand lookout duties
 (15) Q And then in January of 1989 at the time of the grounding
 (16) when you stood watches as a helmsman was that solely on the
 (17) Exxon Valdez?
 (18) A Yes, it was
 (19) Q When did you first encounter Captain Hazelwood?
 (20) A On the Exxon Yorktown
 (21) Q And was that during the period that you just mentioned that
 (22) you were an A B ?
 (23) A Yes sir
 (24) Q And how long were you on board the Exxon Yorktown while
 (25) Captain Hazelwood was there was captain?
 (26) A I think about a month I - approximately about a month

- (1) Q And when was the next time you encountered Captain
 (2) Hazelwood?
 (3) A On the Exxon Valdez
 (4) Q And was that in February 1989?
 (5) A Yes
 (6) Q Prior to the evening of the grounding - which we ll get
 (7) to had you ever been the helmsman when Third Mate Cousins
 (8) was
 (9) the watch officer?
 (10) A No I wasn't
 (11) Q At 2320 you get called for your mid watch?
 (12) A Yes
 (13) Q What time did you go up to the bridge?
 (14) A I went up at ten minutes to 12
 (15) Q 2350?
 (16) A 2350
 (17) Q Up to that point had you seen Captain Hazelwood?
 (18) A No I hadn't
 (19) Q Would it be correct then the entire day that you ve just
 (20) described which you did you did not see Captain Hazelwood?
 (21) A No, I didn't
 (22) Q So you go up to the bridge at 2350 and then what did you
 (23) do?
 (24) A I forgot my winter gear and I told the watch - the A B on
 (25) eight to 12 to stand by until I got back with my winter gear
 (26) Q Do you remember who that A B was?

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- (1) A Harry Claar
 (2) Q So you went back and got your winter gear?
 (3) A Yes
 (4) Q And then you went back to the bridge?
 (5) A Yes I did
 (6) Q All right When you came back to the bridge what did you
 (7) do?
 (8) A He told me that he was steering 180 and he was on the
 (9) mike
 (10) Q When he says he s on the mike he meant autogyro?
 (11) A Yes
 (12) Q Did you - what else did he tell you?
 (13) A And I repeated it I repeated it after he told me the
 (14) course and the situation
 (15) Q So when you said back to him course is 180 or words to that
 (16) effect?
 (17) A Yes
 (18) Q And you re on the mike?
 (19) A Yes
 (20) Q Did you look around the bridge to see who was on the
 (21) bridge?
 (22) THE COURT We ll stop it right there ladies and
 (23) gentlemen We ll adjourn for the day now Please remember
 (24) my
 (25) instructions that you not read anything or listen to anything
 (26) about this case we ll reconvene tomorrow morning at eight
 (27) o'clock We ll be in recess until that time

(1) (Jury out at 2:00)
(2) (Recessed)

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(1) STATE OF ALASKA)
(2) Reporter s Certificate
(3) DISTRICT OF ALASKA)
(4) I Marianne Y Lindley RPR CM a Registered
(5) Professional Reporter and Notary Public
(6) DO HERBY CERTIFY
(7) That the foregoing transcript contains a true and
(8) accurate transcription of my shorthand notes of all requested
(9) matters held in the foregoing captioned case
(10) Further that the transcript was prepared by me
(11) or under my direction
(12) DATED this day
(13) of 1994
(14) MARIANNE Y LINDLEY RPR
(15) Notary Public for Alaska
(16) My Commission Expires August 21 1995

Look-See Concordance Report

UNIQUE WORDS 2,468
TOTAL OCCURRENCES 13,196
NOISE WORDS 385
TOTAL WORDS IN FILE 43,767

SINGLE FILE CONCORDANCE

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 (1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 (3) In re:) Case No. A89-0095 CIV (HRH)
 (4)) Anchorage Alaska
 (5) The EXXON VALDEZ) Tuesday May 17 1994
 (6)) 8 a.m.
 (7) TRANSCRIPT OF PROCEEDINGS
 (8) TRIAL BY JURY 11th DAY
 (9) BEFORE THE HONORABLE H. RUSSEL HOLLAND JUDGE
 (10) VOLUME 11 Pages 1270 1523
 (11) Realtime Transcription
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Vol 11 1272
 (1) PROCEEDINGS
 (2) (Jury in at 8:02 a.m.)
 (3) (Call to Order of the Court)
 (4) THE COURT Good morning ladies and gentlemen
 (5) Continuation of trial in Case A 89 095 civil in re The Exxon
 (6) Valdez Yesterday we left off with -
 (7) MS WAGNER Mr Kagan's tape deposition
 (8) THE COURT - Mr Kagan's tape
 (9) CONTINUED DIRECT EXAMINATION OF ROBERT KAGAN
 (video)
 (10) BY PLAINTIFF EXAMINER
 (11) Q After you had this conversation with Claar repeating the
 (12) course and Mike did you relieve him?
 (13) A Yes I did
 (14) Q Did he tell you anything else? Are those are the only two
 (15) things you repeated it back and you relieved him?
 (16) A Yes I did
 (17) Q So nothing else was said?
 (18) A Nothing else was said
 (19) Q And then Claar left the bridge?
 (20) A Yes, he did
 (21) Q When you relieved Claar was the captain on the bridge?
 (22) A He - I don't know I didn't see him
 (23) Q Did Cousins say anything to you when you took the duties of
 (24) helmsman and relieved Claar?
 (25) A No he didn't

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 (1) Q Did you observe what Cousins was doing at this time?
 (2) A No I didn't
 (3) Q But he was in the wheelhouse?
 (4) A Yes he was
 (5) Q Now you're in autogyro Tell me what happens next when
 (6) you're on 180 you said
 (7) A Well for a while just steered 1880 and he came up to me
 (8) and told me that we were going to prepare to change - he
 (9) was
 (10) going to go back - he's going to - he accepted that he was
 (11) going to we were going to go on - we were going on - on the
 (12) helm
 (13) Q Okay in other words you were going to go off autogyro and
 (14) on the helm?
 (15) A Yes
 (16) Q And you said for a while you were steering on 180 Can you
 (17) estimate from the time you relieved the watch relieved Claar
 (18) until the time that Cousins told you this?
 (19) A I don't know
 (20) Q Do you know whether it was a few minutes over a minute?
 (21) Would you say it was over a minute?
 (22) A No I don't even - I don't know what time it was
 (23) Q It was a period of time though? It didn't happen
 (24) immediately after you took the watch?
 (25) A No no
 (26) Q Okay Let's just back up a minute You said at 2350 you

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- (1) went up to the bridge you forgot your foul weather gear you
 (2) went back down to your room you come back up to the room
 How
 (3) many decks is it to go down to your quarters from the bridge?
 (4) A I think it's two decks
 (5) Q And you got your foul weather gear?
 (6) A Yes
 (7) Q And then you went back up to the bridge?
 (8) A Yes
 (9) Q Then you relieved the watch What would you say - how
 (10) many minutes did that take you from the time you originally
 (11) went up to the bridge again those two decks?
 (12) A I don't know but I was hustling
 (13) Q Did you run?
 (14) A I was walking fast
 (15) Q Do you know about what time it was that you relieved the
 (16) watch?
 (17) A No I don't
 (18) Q You didn't look at any clock?
 (19) A No
 (20) Q What about the time of 2350 that you gave me before that
 (21) you went up to the bridge? That pretty good time?
 (22) A It's - that's the time we usually relieved
 (23) Q Did you look at a clock at that time or -
 (24) A I looked at - I looked at my watch when I walked into the
 (25) door at 2350

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- (1) Q When you walked into the door of what what room is that?
 (2) A On the - going to the bridge
 (3) Q So when you walked into the bridge it was 2350 the
 (4) original - the first time you went up there?
 (5) A Yes sir I had a light on the passageway going up to the
 (6) bridge
 (7) Q And that was your wristwatch you looked at?
 (8) A Yes
 (9) Q And how did your wristwatch compare with the ship's clock?
 (10) A It was so dark up there I didn't even see a clock up there
 (11) Q I mean normally do you set your wristwatch by the ship's
 (12) clocks?
 (13) A Yes, I do
 (14) Q Okay let's go to when Cousins tells you what's going to
 (15) take it off autogyro Can you remember the words he used
 when
 (16) he said this to you?
 (17) A He said for - he said prepare - prepare to take it off
 (18) the wheel let me take it off the mike we were going to be
 (19) changing course in a little while
 (20) Q Okay And when he said this to you did you repeat this
 (21) back to him?
 (22) A Yes I did
 (23) Q What did you say to him?
 (24) A I said we're taking it off the - we're taking off the
 (25) wheel, taking off the - off the mike and putting on - on the

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- (1) helm
 (2) Q Okay Then tell me what happened next?
 (3) A Then he came up and he said that we're going to take it
 off
 (4) the wheel now I -
 (5) Q Take it off the mike?
 (6) A Take it off the - take it off the mike
 (7) Q He said we're going to take it off the mike now?
 (8) A Yes
 (9) Q Did you say anything back to him at this time?
 (10) A I told him okay
 (11) Q And then tell me what happened next
 (12) A Then we both reached for the - the button and he pressed
 (13) the button
 (14) Q Okay Can you show me looking at exhibit 20047 what
 (15) button you're talking about?
 (16) A This button right here
 (17) Q Let the record show that the witness is pointing to the
 (18) helm buttons on bottom right of Exhibit 20047
 (19) You say you both reached for the button and he pushed it
 (20) first?
 (21) A Yes
 (22) Q Did your hand touch his hand do you recall?
 (23) A I don't remember if it touched it or not
 (24) Q Did he appear to be in a hurry at that time?
 (25) A No he didn't

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- (1) Q I want to just read you your NTSB testimony on that You
 (2) testified at the NTSB - and things were fresher in your mind
 (3) at that time than they are today would you agree with that?
 (4) A I think so
 (5) Q Let me just read you a series of questions right at this
 (6) time they asked you
 (7) I'll start up on top where they on line 3 it says do you
 (8) recall who was in the - who was in the bridge at that time?
 (9) Who was in the wheelhouse at that time?
 (10) Answer My watch partner was on the wing of the bridge and
 (11) so was the third mate
 (12) Question Third mate was the captain on the bridge to your
 (13) knowledge
 (14) Answer I don't think so
 (15) Question Do you recall taking the vessel off gyro
 (16) Answer Third mate took that - took the vessel off the
 (17) gyro
 (18) Question Did you try to do it help him at the same
 (19) time?
 (20) Answer Yes I did
 (21) Question Were your both fingers on the button at the same
 (22) time?
 (23) Answer Well he beat me to it
 (24) Question Okay Was he in any kind of hurry to do this?
 (25) Answer Yes he was

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- (1) A I didn't recall that
 (2) Q Okay Now that I've read that to you does that refresh
 (3) your recollection as to what you testified to at the NTSB that
 (4) you said he was in a hurry?
 (5) A I guess he was
 (6) Q Yeah In any event where you said your recollection was
 (7) better when you testified after the event in 1989 than it is
 (8) today isn't that correct?
 (9) A (Nods head)
 (10) Q Mr Kagan just backtracking a little I'd asked you before
 (11) if you recollected the second time you went up to the bridge
 (12) what the time was And you - you had indicated you didn't
 (13) know for sure And you did know it was about 2350 the first
 (14) time I'd just like to read your testimony at the NTSB and see
 (15) if this refreshes your recollection what the time was after you
 (16) got your jacket and got back up there the second time
 (17) Question Okay did you have to go back to your cabin for
 (18) anything
 (19) Answer Yes I did I had to get my coat
 (20) Question So at the time you got your coat and returned to
 (21) the bridge about what time was it that you relieved the helm
 (22) Answer It must have been about five minutes to 12
 (23) Do you remember testifying that way at the NTSB?
 (24) A I'll - yes I did
 (25) Q Okay And your recollection of events was better at that

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- (1) time than it is today?
 (2) A Yeah
 (3) Q Is that correct?
 (4) A Yeah
 (5) Q You have to answer
 (6) A Yes
 (7) Q Okay
 (8) Okay Then another point I asked you about the interval of
 (9) time between the time you - you took the watch and the time
 (10) that it was taken off the mike and put on helm what that
 (11) interval was from the time you relieved the watch and I
 (12) believe you didn't recollect that time?
 (13) A I didn't
 (14) Q Let me just read you what you testified at the NTSB and see
 (15) if this refreshes your recollection Page 351
 (16) And again I'll start up a little higher so you can get the
 (17) continuity at line eight
 (18) Question There is some times here that are somewhat
 (19) critical and I have to ask some questions about it You came
 (20) up around 2350 the first time is that correct
 (21) Answer Yes I have
 (22) Question And then you went back to get your jacket and
 (23) came back up
 (24) Answer Yes
 (25) Question The first time you came up was the captain on

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- (1) the bridge
 (2) Answer Didn't really - didn't notice
 (3) Question And the second time was he on the bridge
 (4) Answer I didn't - I didn't notice either
 (5) Question Okay How long after that after you came on
 (6) and relieved the third mate and you two take the vessel off the
 (7) gyro?
 (8) Answer I think about - about five minutes I think it
 (9) was
 (10) A Yeah I really don't recall
 (11) Q Well do you recall testifying that way at the NTSB?
 (12) A Well I was just guessing At the - at the times
 (13) Q It was an estimate?
 (14) A Yes it was just an estimate
 (15) Q Now when you - when the third mate beat you to the
 (16) button pushing the button the helm button and it was taken
 (17) off mike gyro and put on helm did you see any lights on your
 (18) steering stand go off then?
 (19) A Yes I did
 (20) Q Okay And were they indicator lights? Look at Exhibit
 (21) 20047 Can you show us the lights over here on the right hand
 (22) side?
 (23) A I don't recall what lights went out
 (24) Q But there are little lights?
 (25) A Yes

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- (1) Q Aren't there on the lower right hand side on this panel
 (2) here which says helm and it also says autopilot on it?
 (3) A Yes
 (4) Q And when you're steering there - in helm for example
 (5) just a general question There's a light indicating opposite
 (6) helm?
 (7) A Yes it does
 (8) Q And then when you switch to autopilot the light on helm
 (9) goes out and the light comes on next to autopilot?
 (10) A Yes it does
 (11) Q Were those the lights you were referring to?
 (12) A Yes I was
 (13) Q Now you're in helm now
 (14) A Yes
 (15) Q You're still on 180?
 (16) A Yes I was
 (17) Q So is it correct that up to this point in time you had not
 (18) received any commands to steering - steering the vessel on the
 (19) helm?
 (20) A No I didn't
 (21) Q You had received no commands?
 (22) A No I didn't
 (23) Q Okay Now can you tell me what happened next?
 (24) A I - after they took the ship off the - off the mike I
 (25) steered for a while on 180 and then he then he gave me
 wheel

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- (1) orders He told me he says oh we're going to change course
- (2) and he - and then he started giving me wheel orders
- (3) Q Do you remember the order of ten degrees right was the
- (4) first order?
- (5) A Yes it was
- (6) Q And do you recall the interval of time after he changed to
- (7) helm that he gave you this order?
- (8) A No I didn't
- (9) Q Let me read you your answer at the NTSB testimony again to
- (10) see if it refreshes your recollection on what you testified
- (11) We'll start up on the top It's on page 337 line two
- (12) Question Okay after the button was pushed the vessel
- (13) was off gyro Did he give you some orders then?
- (14) Answer Yes he did
- (15) Question How soon after that did he give you orders?
- (16) Oh about two or three minutes later
- (17) Question Two or three minutes later?
- (18) Answer Yes
- (19) Do you recall giving those answers at the NTSB?
- (20) A It was a statement
- (21) Q Okay But you do recall giving those answers?
- (22) A I did
- (23) Q And your recollection was better then than it is today is
- (24) that correct?
- (25) A Yes but I - it was an estimate of the times

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- (1) Q It's your best estimate though is it - at that time it
- (2) was your best estimate when you testified?
- (3) A Not - not really I -
- (4) Q Well at the time you gave the NTSB testimony you were
- (5) under oath and you were telling the truth isn't that correct?
- (6) A Yes
- (7) Q And you were giving them your best estimate were you not?
- (8) A Yes I was
- (9) Q Now when the third mate gave you the order for ten degrees
- (10) right rudder that was the first order you received?
- (11) A Yes it was
- (12) Q Do you remember the words he used?
- (13) A He told me ten right
- (14) Q And you say - if I understand you correctly he said
- (15) something to you before he gave the ten degree right order that
- (16) he was going to give you an order Did he indicate to you he
- (17) was going to give you an order?
- (18) A I really - I don't remember what it was -
- (19) Q Well you said ten right is that the way he gave it to you?
- (20) A Yes, he did
- (21) Q And did you say anything back to him?
- (22) A I repeated the order and said ten right
- (23) Q And did he say anything to you after you repeated the
- (24) order?
- (25) A He said very well

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- (1) Q Now when he gave you the order ten right you repeated it
- (2) back tell me what you did
- (3) A I went and executed the command to ten right
- (4) Q Now we had these little pictures before and I showed you
- (5) the indicator just before the helm Do you recall that in
- (6) Exhibit 32502? And when you - you say you went to ten right
- (7) Did you put the helm so the little indicator went over to the
- (8) right to the ten on that indicator?
- (9) A Yes I did
- (10) Q And that indicator then showed that you had the helm at ten
- (11) right is that correct?
- (12) A The angle - the - the - the angle indicator I always
- (13) used the one above on the overhead and that's - that's the
- (14) true - the true rudder angle
- (15) Q The cylindrical one we're talking about?
- (16) A Yes
- (17) Q When you put your helm over to ten right you didn't look
- (18) at all at the indicator above your helm which I'm showing you?
- (19) A No I didn't
- (20) Q So you looked up at the rudder angle indicator on the
- (21) cylindrical one and let me get the exhibit out Take a look
- (22) at that
- (23) This is a daytime photo that's the cylinder you looked at?
- (24) A Yes
- (25) Q And that's Exhibit 32497 And let's look at the night

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- (1) photo again This is Exhibit 32504 That's the same cylinder
- (2) at night?
- (3) A Yes
- (4) Q That you looked at the top right of the picture?
- (5) A Yes it was
- (6) Q And that's your practice to look at the rudder angle
- (7) indicator when you're given an order on the helm is that
- (8) right?
- (9) A Yes Yes it
- (10) Q And the indicator indicated ten degrees?
- (11) A Yes it did
- (12) Q And when you were given that order by the third mate ten
- (13) right and you repeated it you put the helm on immediately
- (14) isn't that correct?
- (15) A Yes I did
- (16) Q Did you look at the rate of turn indicator?
- (17) A I glanced at it
- (18) Q Did you glance at it after you looked at the rudder angle
- (19) indicator or before do you remember?
- (20) A It was after I made a ten - after I made a ten right
- (21) Q After you saw the rudder angle indicator go to ten right?
- (22) A Yes
- (23) Q You looked at the rate of turn indicator?
- (24) A Yes
- (25) Q And which rate of turn indicator did you look at? The one

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- (1) you told us before you always look at?
 (2) A Yes I did
 (3) Q The one on the bulkhead?
 (4) A Yes
 (5) Q And what did that indicator show?
 (6) A Started - it was starting into a turn
 (7) Q It was starting to move to the right?
 (8) A Yes it was
 (9) Q Okay
 (10) Did you look at the gyro at all at this time?
 (11) A Yes, I did
 (12) Q Now while you're observing these things did you notice -
 (13) you looked at the rudder angle indicator as you've testified
 (14) it went to ten degrees right Did you notice what third mate
 (15) Cousins was doing?
 (16) A No, I didn't I was concentrating on my steering
 (17) Q Did you hear him talking at all on the telephone?
 (18) A No, I didn't
 (19) Q About this time?
 (20) A No, I didn't
 (21) Q Or shortly after it?
 (22) A No I didn't
 (23) Q All right Have you this order of ten degrees right which
 (24) you've told us about?
 (25) A Yes

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- (1) Q What was the next thing that happened what was the next
 (2) order you received?
 (3) A 20 degrees right rudder
 (4) Q Okay And how did - how did Cousins the best of your
 (5) recollection what words did he use on that one?
 (6) A He just said 20 degrees right rudder 20 right
 (7) Q He said 20 right?
 (8) A Yes
 (9) Q Pretty much the same as he gave you the ten right?
 (10) A Yes
 (11) Q Correct? And then what did you say if anything?
 (12) A I said 20 right and he executed the 20 degrees right
 (13) rudder
 (14) Q Did Cousins say very well this time too?
 (15) A Yes
 (16) Q He did?
 (17) A Yes he said okay
 (18) Q Now you say I executed it Did you do it in the same
 (19) manner? You looked at the rudder angle indicator?
 (20) A Yes I did
 (21) Q And the rudder angle indicator went over to 20?
 (22) A Yes it did
 (23) Q Okay Now what was the interval of time between the time
 (24) of the ten right order that Cousins gave you and the time of
 (25) the 20 right order that he gave you?

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- (1) A A short while I don't recall which - what I - what the
 (2) time was
 (3) Q And it was a third command?
 (4) A Yes there was
 (5) Q And that command was hard right?
 (6) A Yes it was
 (7) Q Do you remember the words that Cousins used to issue that
 (8) order?
 (9) A He said hard right
 (10) Q And what did you say?
 (11) A I was repeated it said hard right and executed the
 (12) command
 (13) Q When you executed the command did you look at the rudder
 (14) angle indicator?
 (15) A Yes I did
 (16) Q And did it go to 30 degrees or -
 (17) A It - I believe it did 30, 35 degrees, something around
 (18) there
 (19) Q All right Now do you remember the interval of time
 (20) between the second command and the third command?
 (21) A No, I don't
 (22) Q Do you remember whether they were pretty close together?
 (23) A Most - most likely but I still don't remember
 (24) Q Do you recall between the second command of the 20 right
 (25) and the third command of the hard right did you see Cousins
 (26) go
 (27) to the telephone at all?

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- (1) A No I didn't
 (2) Q Did you see him go to the telephone after the hard right?
 (3) A Yes I did I - well I heard him on the telephone
 (4) Q You heard him Now where was he then behind you?
 (5) A He was on the right hand side of me
 (6) Q And is the telephone on the aft bulkhead of the
 (7) wheelhouse - of the wheelhouse?
 (8) A It was on the console
 (9) Q Where is that with relation to you where you're standing?
 (10) A Must be on my right hand side I forgot the configuration
 (11) of the bridge
 (12) Q But you heard him on the telephone?
 (13) A Yes I did
 (14) Q Did you hear what he was saying?
 (15) A I think he said that he was - that I think we're in
 (16) trouble
 (17) Q Okay What was Cousins demeanor - do you understand
 (18) demeanor the word? What was his appearance to you as far as
 (19) whether he was excited or calm during this entire series of
 (20) orders he was giving you from the ten degrees right the 20
 (21) degrees right and the hard right?
 (22) A He was calm
 (23) Q Did you notice any change in his demeanor during this
 (24) period of time?
 (25) A No I didn't

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- (1) Q Now before the hard right which you told us about did you - did you put on any counter rudder?
- (2) A No I didn't
- (3) Q Do you recall telling an NTSB - during an NTSB interview - you were interviewed by the NTSB before you testified?
- (4) A Yes
- (5) Q Do you recall telling them that you put on some counter rudder?
- (6) A Not that I - not to my knowledge
- (7) Q Did you feel the grounding take place?
- (8) A I felt - a few little bumps
- (9) Q Okay Can you fit in where in the sequence of events that we've gone over did you first feel the bumps?
- (10) A No I can't recall
- (11) Q You don't recall whether it was before or after the hard right rudder?
- (12) A It - I don't recall
- (13) Q Were you given any other order after the hard right?
- (14) A I - hard left
- (15) Q And did Cousins give you that order?
- (16) A Yes he did
- (17) Q Now you hear Cousins talking on the telephone and you put on the hard left?
- (18) A Yes

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- (1) Q What was the next order you received at the helm?
- (2) A Hold it at hard left
- (3) Q Who gave you that order?
- (4) A He did
- (5) Q And that was after you felt the bumping and grinding?
- (6) A Yes
- (7) Q And what was the next order you received?
- (8) A I just held the wheel to the hard left
- (9) Q Okay Did you receive an order after that?
- (10) A Yes I did
- (11) Q Who gave you that order?
- (12) A Captain Hazelwood started giving me wheel commands
- (13) Q All right Do you remember what the first order he gave you was?
- (14) A Told me midships, then he hard left hard right and just a few times he did that But I don't recall how many
- (15) Q Do you remember over what period of time he gave you hard left hard right orders?
- (16) A No No I didn't
- (17) Q Do you remember anything about the engines what the engines were doing?
- (18) A No, I don't
- (19) Q What was the captain's demeanor Captain Hazelwood after he came up on the bridge and he gave you the first order of midships and then the hard left hard right which you mentioned

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- (1) while you were on the helm until you were relieved what - did you observe him at all?
- (2) A No I didn't
- (3) Q Did the captain ever make any comments to you at any time after the grounding - at any time not just while you were on the bridge - at any time concerning the performance of your job that night?
- (4) A No he didn't
- (5) Q Let me read you -
- (6) A Oh I'm - I take that back He told me I did a damn fine job
- (7) Q You did a hell of a job?
- (8) A A hell of a job or whatever
- (9) Q When did he tell you that?
- (10) A I was standing behind the wheel and he just - he just looked - he just yelled to me says Bob, you did a hell of a job
- (11) Q And was that when you say you were standing behind the wheel was that during - prior to ten of 2 when you were relieved at 0150?
- (12) A I believe - I believe so
- (13) Q It was during that period of time?
- (14) A Yes
- (15) Q During your time on the Exxon Valdez while you were an A B in January February and March you were standing regular

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- (1) watches on the helm?
- (2) A Yes
- (3) Q Did you have any problems steering the vessel?
- (4) A Chased - I chased the compass one time and the - the third mate chewed me out, and the pilot helped me out bringing it back I overshot the compass a little bit
- (5) Q Do you remember what port that was in?
- (6) A I think we were coming out of Valdez
- (7) Q Okay And when you say you overshot was that when you were given a command?
- (8) A No, it was a course change
- (9) Q A course change to come from one course to another?
- (10) A Yes
- (11) Q When you say you overshot you mean you overshot the course you were ordered to come to?
- (12) A Yes
- (13) Q You went past it?
- (14) A Yes quite a little past
- (15) Q All right And who was the third mate at that time that chewed you out?
- (16) A Nate Carr
- (17) Q Carr?
- (18) A Yes
- (19) Q Have you ever seen your service record before which we've marked as Exhibit 32506?

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- (1) A That's when I was getting evaluated
 (2) Q When you were getting evaluated at each evaluation you re
 (3) showed the evaluation?
 (4) A Yes I am
 (5) Q And then you sign it?
 (6) A Yes
 (7) Q And you can put your comments down?
 (8) A Yes
 (9) Q Okay So starting with the first evaluation report that s
 (10) part of this exhibit it s - it s for a period in February
 (11) March 1986 and you re on the Exxon Lexington and that
 (12) indicates you did not steer at all in confined waters That s
 (13) number nine is that correct? Look down at number nine on the
 (14) right-hand side
 (15) Did you steer in confined waters during that period of
 (16) evaluation?
 (17) A No, I didn't
 (18) Q Let me confirm with you When you were on the Gettysberg
 (19) or the San Francisco did you steer in confined waters?
 (20) A Steered at sea
 (21) Q At sea but not when you were in close to the shore?
 (22) A No I didn't
 (23) Q Okay
 (24) Q Now on the second page of that there s a comment where it
 (25) has notes for improvements It says Robert - you see on the

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- (1) second page?
 (2) A Yes
 (3) Q It says Robert wishes to sail at A B but first he must
 (4) prove himself capable of steering in confined waters and then
 (5) it goes on talking about some other duties
 (6) A Yes
 (7) Q He mentions as part of the comment that considering all the
 (8) time he has been to sea he still has to be told about almost
 (9) everything and it says Mr Kagan does not demonstrate the
 (10) ability to sail able seaman Did he discuss that with you?
 (11) A No he didn't
 (12) Q The next one is in the period of July to September of 1986
 (13) and I m not so sure I have the vessels on this one It
 (14) doesn't - unless I m missing something it doesn't mention the
 (15) vessel Do you remember what vessel you were on then or
 (16) vessels in that period?
 (17) A I don't recall
 (18) Q And this has again cannot rate under steers in confined
 (19) waters
 (20) At this time as I recall your testimony you were an
 (21) ordinary seaman?
 (22) A Yes I was
 (23) Q And then it has not observed
 (24) On the second page it says should become more motivated
 (25) Presently requires too much supervision

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- (1) Did they discuss that with you?
 (2) A They - touched on it
 (3) Q Okay
 (4) The next one is in the period of June through August '87
 (5) And this is on the Exxon Charleston
 (6) A Okay
 (7) Q And again you re still an ordinary seaman at this time
 (8) Now here in steers in confined waters the box is checked
 (9) above normal if I m reading this correctly Steers well to
 (10) pilot s orders
 (11) A Yes
 (12) Q And this was prepared by - it is chief mate Ferrone?
 (13) A Yes it is
 (14) Q Okay On the second page there it says Bob must learn to
 (15) concentrate to maintain his attention span
 (16) Did they discuss that with you?
 (17) A I - yes, he - yes, they did They touched on it and they
 (18) just said you know that -
 (19) Q Did you agree with that comment or -
 (20) A Yes I did
 (21) Q Did you have that problem when you were on the helm?
 (22) A No I didn't
 (23) Q And then it also notes that Bob is not ready at this time
 (24) to sail as A B
 (25) The next one is the period of March '88 to April '88 and

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- (1) you re on the Exxon Baltimore and you re sailing as a
 (2) maintenance seaman in the top right MS?
 (3) A Yes
 (4) Q On the second page it says Mr Kagan requires an
 (5) inordinate amount of supervision and guidance among other
 (6) things Did they discuss that with you?
 (7) A No I think they did
 (8) Q You think they did?
 (9) A Yeah I don't remember
 (10) Q But they always showed you these reports did they not?
 (11) A Yes
 (12) Q In 1988 you were sailing in the steward s department
 (13) isn't that correct?
 (14) A Well partly steward's department partly wiper
 (15) Q And that was into the summer of '88 July and August?
 (16) A Yes
 (17) Q And the box on the bottom of that indicates generally meets
 (18) requirements
 (19) Over to the next one is in - again in August of '88
 (20) you re sailing as an able seaman
 (21) A Yes
 (22) Q And the comment on the second page is Mr Kagan requires
 (23) above-average amount of supervision He must learn to focus
 (24) his attentions to his tasks and not allow himself to get side
 (25) tracked

Vol 11 1298

- (1) Do you have that problem when you were on the helm?
 (2) A No I didn't
 (3) Q Next brings us up to January of '89 and February of '89
 (4) there which you've already testified you were an A B
 (5) A Yes
 (6) Q And under steering under the box - under deck it says
 (7) steers in various conditions and situations I can't read the
 (8) next two words
 (9) I.e. confined waters heavy weather et cetera and the box
 (10) that's checked it looks like needs improvement?
 (11) A Yes Yes
 (12) Q And down on the bottom in your overall performance needs
 (13) improvement is checked
 (14) And on the second page it says Mr Kagan lacks the
 (15) necessary skills to do the A B's job There are other
 (16) comments
 (17) Down a couple of boxes where it mentions about steering it
 (18) says Mr Kagan has made some effort recently he has been
 (19) practicing steering and he did learn the cargo drops but he
 (20) still requires far too much supervision to be a productive crew
 (21) member
 (22) During - with respect to this comment during that period
 (23) were you practice steering?
 (24) A Yes
 (25) Q As an A B ?

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- (1) A Yes I did
 (2) Q So you weren't steering regular watches?
 (3) A I steer on my off time
 (4) Q But were you steering during your regular watch too?
 (5) A Yes I was
 (6) Q But you were doing additional steering?
 (7) A Yes I did
 (8) Q Okay The next one I'd like to call your attention -
 (9) thank you That's been marked
 (10) This is from November 3 '85 to December 29 '85
 (11) VIDEO COURT REPORTER 32507
 (12) Q And this evaluation report is during that period I just
 (13) mentioned You were on the Exxon Gettysberg?
 (14) A Yes
 (15) Q And you were sailing as an ordinary seaman?
 (16) A Yes
 (17) Q And this one is marked below normal down on the bottom on
 (18) your overall performance And under areas of improvement it
 (19) says Mr Kagan has to discipline himself on keeping his mind on
 (20) his work assignment Should concentrate on his present
 (21) assignment which are OS duties and improvement - and I can't
 (22) read the next word - and improve on these duties before
 (23) thinking of going A B And then he has in parentheses which
 (24) he continually talks about
 (25) Exhibit 25 -32509 which is the first letter December 7

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- (1) Did you ever see this document before?
 (2) A Yes I - I yes I did
 (3) Q And the - the letter speaks for itself but it's pointing
 (4) out to Exxon's labor relations coordinator that there have been
 (5) promotions made to the A B seniority list and that you were
 (6) passed over?
 (7) A Yes
 (8) Q And had you had discussed with your union representative
 (9) about this?
 (10) A Yes, we - yes, we did
 (11) Q And you had approved filing a grievance?
 (12) A Yes I did
 (13) Q And this letter asks that you be promoted to A B and to
 (14) pay you the difference in wages and overtime from December 1
 (15) '87 until promoted
 (16) Now the next document which is marked as 32510 which is
 (17) dated February 5 1988 this is in response to this - this
 (18) first letter? Let me ask you this Did you ever see this
 (19) second document before?
 (20) A No, I didn't
 (21) Q Were you made aware of the fact of what Exxon - I'm
 (22) sorry Were you made aware of the content of this letter? Did
 (23) your union representative advise you of - did he advise you of
 (24) the denial that you were not - you were not -
 (25) A Yes

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- (1) Q Did they give you - did they orally advise you of the
 (2) reasons that Exxon gave for the denial?
 (3) A No they didn't
 (4) Q Well in reading the first sentence in the second
 (5) paragraph Exxon has stated that in late 1985 based on his
 (6) continuing poor work performance management made the
 (7) decision
 (8) that Mr Kagan was not qualified to sail as able seaman The
 (9) next paragraph is only one sentence but this is the thrust of
 (10) Exxon's reasons as the letter is written They say since that
 (11) time and they're referring back to the period '85-'86
 (12) Mr Kagan has been assigned only as mate and seaman
 (13) Generally
 (14) his performance has not improved and his supervisors continue
 (15) to indicate he is not prepared to sail as A B Was that
 (16) information ever passed on to you?
 (17) A I don't remember I really don't
 (18) Q The next document that we have is 32511 which is dated May
 (19) 25 1988 Have you ever seen this letter before?
 (20) A No I haven't
 (21) Q This letter indicates that in late 1985 Exxon made a
 (22) decision that you were not qualified to sail in the step up
 (23) capacity of able seaman Were you advised of that at that
 (24) time?
 (25) A Really don't recall
 (26) Q It says in the letter this decision was communicated to
 (27) Mr Kagan in early September So they're talking about

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- (1) September 1985 Does that refresh your recollection?
 (2) A I - I don't remember that far back
 (3) Q And again in the next paragraph it reiterates that you
 (4) have not sailed as an A B and your job performance as mate
 and
 (5) seaman does not warrant promotion Was that communicated
 to
 (6) you in May of 1988?
 (7) A I don't remember
 (8) Q Do you know if anybody was monitoring your alcohol
 (9) possession or alcohol use on board the Exxon Valdez?
 (10) A Not that I know of
 (11) Q Do you know whether on any of the other vessels that you
 (12) were involved with anyone was monitoring either alcohol use or
 (13) possession?
 (14) A Not that I know of
 (15) Q Do you know a Mr Myers from Exxon shipping company?
 (16) A Yes
 (17) Q Did you ever see him on board any of the vessels that you
 (18) were on?
 (19) A I met him once or twice I - I think I am not sure
 (20) Q What's your best recollection as to where you met with
 (21) Mr Myers or you saw Mr Myers from the Exxon vessel?
 (22) A I think it might have been the Exxon Valdez
 (23) Q And do you remember when that was?
 (24) A No I don't
 (25) Q Do you remember where that was?

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- (1) A It might have been out to the grounding
 (2) Q After the grounding?
 (3) A Out - out - most likely
 (4) Q All right do you have any recollection of Mr Myers being
 (5) on board an Exxon vessel when you were on board before the
 (6) grounding?
 (7) A I don't think so I don't know
 (8) Q I'm sorry?
 (9) A I said I don't think - I don't think of know of it I -
 (10) wait a minute I'm getting all messed up
 (11) I might have talked to him on the telephone maybe once or
 (12) twice
 (13) Q So right now as you talk to me you don't remember him
 (14) being on board any Exxon vessel that you were also on board
 (15) before the grounding?
 (16) A Not that I know of
 (17) Q All right
 (18) Were you ever asked by anybody either fellow crew members
 (19) on board the Exxon Valdez or other Exxon vessels about Mr -
 (20) About any drinking by Captain Hazelwood?
 (21) A No I haven't
 (22) MS WAGNER Your Honor that concludes our
 (23) questioning
 (24) MR SANDERS May it please the Court we have some
 (25) continued examination of Mr Kagan and with the Court's

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- (1) permission and indulgence let me put up another thing here to
 help the jury see what he's talking about in the deposition
 (2) MR SANDERS Please go ahead
 (3) CROSS EXAMINATION OF MR KAGAN (video)
 (4) BY DEFENDANT EXAMINER
 (5) Q Well according to this record here April 11 1989 you
 (6) were a maintenance seaman it has maintenance seaman
 seniority?
 (7) A Yes I was just a step up on the Exxon Valdez
 (8) Q You were a step up A B ?
 (9) A Yes
 (10) Q At the time of the grounding?
 (11) A Yes
 (12) Q Now after the grounding did you move from a step up A B
 (13) to a maintenance seaman?
 (14) A Yes I did
 (15) Q And do you recall what date that occurred?
 (16) A I don't recall
 (17) Q Now I have a crew list here of the vessel I'd just like to
 (18) run down You mentioned Captain Hazelwood I'd like to find
 (19) out when you encountered these various individuals before
 (20) Chief mate Kunkel?
 (21) A I've sailed with him before
 (22) Q Before the Exxon Valdez?
 (23) A Yes
 (24) Q How about second officer McCain?

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- (1) A Yes I have
 (2) Q How about third mate Cousins?
 (3) A I - sailed with him once before
 (4) Q How about A B Peacock?
 (5) A I sailed with him before
 (6) Q And the other A B's on the vessel you can look them over
 (7) Can you tell us which ones you sailed with before starting with
 (8) Jones the first Jones?
 (9) A Sailed with Carl Jones Paul Radtke and that's - I think
 (10) that's it
 (11) Q Did you ever suffer from stress or fatigue?
 (12) A No I didn't
 (13) Q Do you know any other crew members on Exxon vessels that
 (14) you heard complain of stress or fatigue from overwork?
 (15) A No I didn't
 (16) Q I have here in documents that been marked as an exhibit
 (17) before 20047 which just shows sort of what the - the helm
 (18) looks like Do you recognize that?
 (19) A Yes I do
 (20) Q And I also have some photographs here I'm going to ask -
 (21) I'm going to ask that these be marked at this time maybe mark
 (22) the ones that I intend to use the witness will - they're
 (23) already marked by the individual that took these and they
 (24) had - and there's a D55 a d61 and a D71 so we'll mark them
 (25) as the next three consecutive exhibits

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- (1) First of all just this Exhibit 20047 did you ever have
- (2) occasion while you were a helmsman - this is prior to the
- (3) night of the grounding - to change the steering mode from helm
- (4) to autogyro or from autogyro to helm?
- (5) A No I didn't
- (6) Q Was it ever done while you were on the helm?
- (7) A Mate is supposed to do the changing on - and calculate
- (8) the - the autopilot
- (9) Q Okay So the mate would do it if it was done What I
- (10) wanted to know is while you were on the helm did a mate ever
- (11) change the steering from helm to autogyro?
- (12) A Yes or -
- (13) Q Or from autogyro to helm?
- (14) A Yes
- (15) Q Now let's just look at some of these photos here and see
- (16) if you - you recognize this This is probably a little better
- (17) picture of the schematic that's on the picture I'm showing
- (18) you Exhibit 32499 and that shows the upper part of the helm
- (19) when you're standing at the helm
- (20) A Yes
- (21) Q And we'll get to some of the instruments there as to what
- (22) they are
- (23) And Exhibit 32497 which shows -
- (24) A That's the rudder angle indicator
- (25) Q Up on the overhead?

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- (1) A Yes
- (2) Q Right? And where is that with relation to you on the
- (3) helm? Is it directly in front of you?
- (4) A It's a - over on the starboard side
- (5) Q You can easily see it?
- (6) A I can easily see it
- (7) Q And the next one is Exhibit 32498 Do you recognize that
- (8) it tells you right on it what it is?
- (9) A Yes It is It's a rate-of turn indicator
- (10) Q It's a rate of turn indicator and that's located on the
- (11) forward bulkhead?
- (12) A Yes it is
- (13) Q And where is that with respect to the helm?
- (14) A I think it's on the port side
- (15) Q Can you easily see that?
- (16) A Yes sir
- (17) Q Okay Just go through the - another pic that we have
- (18) here These were taken - some of these - I can say it was
- (19) taken at night I'll show you Exhibit 32500 Do you recognize
- (20) what that is?
- (21) A That is the TV screen
- (22) Q That little screen if you look at your exhibit is right
- (23) on the - the steering - it's called the CRT display?
- (24) A Yes
- (25) Q That gives you a lot of information you can look at as a

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- (1) helmsman?
- (2) A Yes I could
- (3) Q If you look at that as a helmsman and you were in the helm
- (4) mode that would tell you that wouldn't it?
- (5) A Yes it would
- (6) Q You just look on the bottom left and in this picture it
- (7) says gyro does it not after the mode?
- (8) A Yes it does
- (9) Q So that would mean it was in autogyro?
- (10) A Yes
- (11) Q And that little - little display also on the top the top
- (12) line shows you your gyro heading?
- (13) A Yes it does
- (14) Q Is that then what you would use when you were steering to
- (15) see what your head heading was?
- (16) A I would use the - I would use the repeater I don't like
- (17) to use this screen
- (18) Q All right Where was the repeater that you used?
- (19) A It was on the - it was on the bulk the forward bulkhead
- (20) Q It was the gyro repeater there?
- (21) A Yes it was
- (22) Q And you could see that gyro repeater easily?
- (23) A Yes sir
- (24) Q Then the second little line shows a heading heading - it
- (25) says heading rate in degrees per second That's a rate of

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- (1) turn?
- (2) A Yes it was
- (3) Q Did you ever use that?
- (4) A I just didn't like to use it
- (5) Q Okay If you used a rate of - did you ever use a
- (6) rate of turn indicator?
- (7) A Yes I did
- (8) Q Would you use the rate of turn indicator we looked at
- (9) before?
- (10) A Yes sir
- (11) Q That's Exhibit 32498?
- (12) A Yes sir
- (13) Q You would use that?
- (14) A Yes I would have used that
- (15) Q And that's in degrees per minute is it?
- (16) A Yes sir
- (17) Q And the one on the - the little - on your CRT display is
- (18) it in degrees per second?
- (19) A Yes
- (20) Q And then the third line down says rudder angle in
- (21) degrees That - that's like a rudder angle indicator?
- (22) A Yes
- (23) Q Did you ever use that?
- (24) A I just don't like to use that, I used the one on the
- (25) overhead

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- (1) Q So if I understand your testimony correctly you didn't use
 (2) the CRT display any of these three horizontal lines for what
 (3) they indicated?
 (4) A No, I didn't
 (5) Q But you would use it to confirm the mode you were steering
 (6) when it was a switch of - if you switched like from autogyro
 (7) to helm would you look to see that that said helm up there on
 (8) the CRT?
 (9) A The mate usually takes care of that
 (10) Q Did you ever look at that to see that it did say what the
 (11) mode was?
 (12) A Yes sir
 (13) Q You were in?
 (14) A Yes, I did
 (15) Q Okay Now this next picture is a little better in that it
 (16) shows more of the helm and this is Exhibit 32501 That shows
 (17) the helm?
 (18) A Yes
 (19) Q You would be standing right behind that?
 (20) A Yes
 (21) Q And then it shows the CRT display head?
 (22) A Yes
 (23) Q And in connection with that picture the next exhibit
 (24) 32502 shows what - just above the helm there's a little
 (25) indicator isn't there?

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- (1) A Yes
 (2) Q And is that what this picture shows?
 (3) A Yes it does
 (4) Q Okay Now that little indicator when you turn your
 (5) helm -
 (6) A Yes
 (7) Q That's a helm indicator that shows how much you're turning
 (8) your helm?
 (9) A Yes
 (10) Q It's not a rudder indicator It's a helm indicator is
 (11) that correct?
 (12) A Yes
 (13) Q Okay
 (14) That's pretty much it I have a few more
 (15) Okay the next one is on the forward bulkhead?
 (16) A Yes it was
 (17) Q And that's the rudder angle indicator?
 (18) A Yes Yes sir
 (19) Q And is that what you would use when you looked at the
 (20) rudder angle indicator to see what the rudder is doing?
 (21) A No we still used the one on the overhead
 (22) Q All right But this is another indicator you would have?
 (23) A Yes This is backup
 (24) Q A backup And they both would read the same?
 (25) A Yeah

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- (1) Q I'll give you the Exhibit 32503 which shows the rudder
 (2) angle indicator on the forward bulkhead Where is this rudder
 (3) angle indicator on the bulkhead with respect to the helm?
 (4) A I think it's on the port side
 (5) Q The next picture was taken at night it appears which is
 (6) Exhibit 32504 Would you agree with that?
 (7) A Yes I would
 (8) Q And is that pretty much the way things looked to you the
 (9) night of the grounding? Is that the condition of darkness and
 (10) what was lit up on your bridge the instruments that were lit
 (11) up?
 (12) A I guess Yes they were
 (13) Q Is the - and the rudder angle indicator on the overhead
 (14) which we previous had talked about is lit up too?
 (15) A Yes it
 (16) Q And so you can easily see that?
 (17) A Yes
 (18) Q Now this last exhibit is of the pictures is 32505 And
 (19) can you tell us what this is?
 (20) A That is the repeater
 (21) Q And - sorry Where is that located?
 (22) A That's on the forward bulkhead on the port side
 (23) Q That the repeater you referred to before that you used?
 (24) A Yes sir
 (25) Q And that reads in numbers so you can -

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- (1) A Yes
 (2) Q You can - what is the little two after the 270 there?
 (3) A That's two tenths of a degree
 (4) Q So it shows you the number of degrees and the tenths too
 (5) does it not?
 (6) A Yes Yes it does
 (7) Q Then you can easily see that from the helm?
 (8) A Yes
 (9) Q Now when you executed orders say an order for ten right
 (10) do you immediately look at the rudder indicator to see if it's
 (11) working?
 (12) A Yes I did
 (13) Q When you were on the Yorktown were you assigned to the
 (14) vessel as a step up A B or had you been on there and then
 (15) were stepped up?
 (16) A I was there and I was stepped up
 (17) Q Who was the captain of the Yorktown at the time that
 (18) occurred?
 (19) A I'm sorry Captain Hazelwood was
 (20) Q At the time you were stepped up?
 (21) A Yes
 (22) Q Okay But you said you were on there with him for about a
 (23) month Did you - did he get off after a month?
 (24) A Yes I think he did
 (25) Q But you were in the position for about four months then?

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Vol 11 1316

- 1 A Yes
 Q During any of that period of time that you were on that
 (3) vessel did you steer in restricted waters?
 (4) A Yes I did
 (5) Q Where?
 (6) A The Mississippi River and the port of New York
 (7) Q Did you have any problems during that four months steering
 (8) in either of those places?
 (9) A No I didn't
 (10) Q Had you ever been aground before on any other vessel?
 (11) A No I hadn't
 (12) Q Now I'd like to ask you just a couple of questions about
 (13) your previous experience in steering in confined waters. You
 (14) said you steered in the Mississippi?
 (15) A Yes
 (16) Q And you steered in New York City?
 (17) A Yes
 (18) Q In New York harbor rather?
 (19) A Yes
 (20) Q I think I steered in New York a couple of months
 (21) Mr. Kagan did you have any problems at that time following
 (22) orders?
 (23) A No I haven't
 (24) Q And those occasions were you being given helm orders?
 (25) A Yes

- 1 A Yes I did
 (2) Q Okay And each time you saw the rudder angle indicators
 (3) move right away?
 (4) A Yes I did
 (5) Q Right away?
 (6) A Yes I did
 (7) Q When you testified before the NTSB you remember that up
 in
 (8) Anchorage?
 (9) A Yes
 (10) Q Was that the first time you ever testified under oath?
 (11) A Yes it was
 (12) Q Did you know that you were going to be on television?
 (13) A No I didn't
 (14) Q Did you know that there were a lot of reporters in the
 (15) room?
 (16) A Yes I did
 (17) Q And there were a lot of people in that room?
 (18) A Yes
 (19) Q A lot of people asking you questions?
 (20) A Yes
 (21) Q Were you nervous?
 (22) A Yes I was
 (23) Q Did you try to do your best to answer the questions?
 (24) A The - for the transportation board?
 (25) Q Yes

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- (1) Q As opposed to course orders?
 (2) A Well some source and some helm orders
 (3) Q Okay Did you ever have any problems when you were
 (4) steering with carrying out a helm order?
 (5) A No I haven't
 (6) Q You understand what I mean by helm order don't you?
 (7) A Yes I do
 (8) Q Okay You recall ever steering down in the Houston ship
 (9) channel?
 (10) A Yes I have
 (11) Q Any problems down there?
 (12) A No sir
 (13) Q You testified a moment ago that when you turned the
 (14) rudder when you give a rudder command you repeatedly look
 at
 (15) the rudder angle indicator to make sure?
 (16) A Yes, sir
 (17) Q That the rudder has moved right?
 (18) A Yes I do
 (19) Q And you did that on the night of the grounding?
 (20) A Yes I did
 (21) Q And you did that after the ten degree right rudder order?
 (22) A Yes I did
 (23) Q And you did it after the -
 (24) A Yes I did
 (25) Q And you did it after the hard right rudder order command?

- (1) A Yes
 (2) Q When they were asking you questions about how much time
 had
 (3) last elapsed between one event as opposed to the other were
 (4) you given a basically estimates?
 (5) A Yes I was
 (6) Q For instance when they were asking you how long it took
 (7) you to get from the bridge down to your room to get your foul
 (8) weather gear and then come back up you gave them an
 estimate
 (9) of time Was that just an estimate?
 (10) A It was just an estimate
 (11) Q When they asked you how long it took between the time that
 (12) you took over the wheel and the time that you took it out of
 (13) the - out of the gyro helm into the helm mode was that also
 (14) just an estimate?
 (15) A Yes it was
 (16) Q And when he asked you how long of a period elapsed
 between
 (17) the time that it - that the steering was taken out of helm -
 (18) out of gyro mode to the ten degree right rudder order was that
 (19) also an estimate?
 (20) A Yes it was
 (21) Q And when they were asking you about the interval between
 (22) the ten degree right rudder order and the 20 degree right
 (23) rudder order was that also -
 (24) A Yes
 (25) Q - an estimate? And the same thing with the hard right

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- (1) estimate?
 (2) A Yes
 (3) Q Did you have any particular reason prior to the grounding
 (4) to be paying attention to how long certain things took?
 (5) A No I didn't I was concentrating on my steering
 (6) Q So when you gave these estimates you didn't really know if
 (7) that was exactly the time or some other time?
 (8) A I didn't know or some other time less
 (9) Q Now I'd like to ask you You still have an A B ticket?
 (10) A Yes, I do
 (11) Q You got that A B ticket back in 81?
 (12) A Yes, I did
 (13) Q Was it ever revoked?
 (14) A No, it hasn't
 (15) Q Who issued the A B ticket?
 (16) A Coast Guard
 (17) Q Did you have to take a test for it?
 (18) A Yes, I did
 (19) Q And I take it you passed the test?
 (20) A Yes, I did
 (21) Q Has there ever been any hearings on your A B ticket?
 (22) A No, there haven't
 (23) Q Now I'd like to focus in on that period of time when you
 (24) changed watch with Mr. Claar
 (25) A Yes

- (1) Q Did he appear drunk to you?
 A No he didn't
 (3) Q Did he appear to be in command at that point?
 (4) A Yes
 (5) Q Now you spoke about traces of fumes in the wheelhouse
 (6) after the grounding?
 (7) A Yes
 (8) Q And was that immediately after the grounding?
 (9) A I think it was few hours later
 (10) Q By the time that you left the bridge was - what time?
 (11) A 04 - 0400
 (12) Q Okay Had the fumes dissipated by then had they gotten
 (13) less?
 (14) A I smelled a little bit when I - we had a door open to the
 (15) lower deck and I think it - think it came some trace of it
 (16) came in
 (17) Q Okay Did the fumes cause you any problems?
 (18) A No, it didn't
 (19) Q Were you able to breathe okay?
 (20) A Yes
 (21) MR SANDERS Your Honor that completes the
 (22) defendant's examination of Mr. Kagan
 (23) THE COURT All right The plaintiffs may call your
 (24) next witness
 (25) MR O NEILL Your Honor the plaintiffs offer and I

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- (1) Q You said that when you came on board after you got your
 (2) foul weather gear when you came up on the bridge he told you
 (3) that he is steering 180?
 (4) A Yes
 (5) Q And that the mode was on the mike right?
 (6) A Yes
 (7) Q Did he say that in a loud voice to you?
 (8) A Yes he did
 (9) Q And did you repeat that back?
 (10) A Yes I did
 (11) Q In a loud voice?
 (12) A Yes I did
 (13) Q Was it loud enough to be heard throughout the bridge?
 (14) A Yes, it was
 (15) Q Now when Captain Hazelwood came back on the bridge at
 (16) about the time of the grounding you said he gave you an order
 (17) of midships is that correct?
 (18) A Yes
 (19) Q And thereafter he gave you some additional orders?
 (20) A Yes he did
 (21) Q Did Captain Hazelwood appear calm to you when he gave
 (22) you
 (23) the midship order?
 (24) A Yes he did
 (25) Q Did he appear to you in any way to be impaired by alcohol?
 A No he didn't

- (1) believe by agreement the following exhibit numbers 102 103
 (2) 130 and 846
 (3) (Exhibit 102 103 130 and 846 offered)
 (4) THE COURT Is there objection?
 (5) MR SANDERS No objection Your Honor Wait just a
 (6) minute Your Honor I'm sorry There's an objection Someone
 (7) is standing You can't see
 (8) THE COURT Mr. Chalos is that you?
 (9) MR CHALOS No I'm sitting here quietly Judge
 (10) Mr. Russo
 (11) MR RUSSO How are you? Your Honor we object to 103
 (12) and 130 for lack of foundation
 (13) MR O NEILL My understanding was we had an
 (14) agreement Right now I'll withdraw the offer We talked to
 (15) them -
 (16) THE COURT I understand We'll have some discussion
 (17) about it later Exhibit 102 and 846 are admitted at this time
 (18) (Exhibit 102 and 846 received)
 (19) MR O NEILL My notes indicate that 845 and 847 have
 (20) been admitted To the extent that they haven't been we offer
 (21) them again
 (22) I understand there's no objection
 (23) THE COURT 845 is already admitted 847 is already
 (24) admitted
 (25) MR COHEN The next witness Your Honor is Mark J

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11 Delozier by deposition nonvideo
 (1) COURT CLERK What s the name of the -
 (2) MR COHEN Mark J Delozier
 (3) (The Reader Is Sworn)
 (4) THE CLERK For the record sir please state your
 (5) name address and spell your last name
 (6) THE WITNESS Brian Toder St Paul Minnesota
 (7) T O D E R
 (8) DIRECT EXAMINATION OF MARK J DELOZIER (Read)
 (9) BY MR COHEN
 (10) Q Please state your full name and home address?
 (11) A Mark J Delozier Post Office Box 191234 Valdez Alaska
 (12) 99686
 (13) Q Now would you take a look at the first chart 16707 and
 (14) the second chart 16708 and tell me if you can identify them
 (15) as being the original charts that you looked at when you were
 (16) aboard the Exxon Valdez after the grounding?
 (17) A They are in fact the charts that I looked at on the Exxon
 (18) Valdez
 (19) Q And for the record can we mark them 1613 and 1614 that
 (20) is 16707 will be 1613 which is on the plaintiff's exhibit
 (21) list as 845 and 16708 will be 1614 which is on plaintiffs
 (22) exhibit list as 846 And I m going to identify it Then the
 (23) last one which we didn t mention is 16709 we ll mark that as
 (24) 1615 Okay? So they re right in order one on top of the

1 A CWO3
 1 Q And what does O3 mean?
 (2) A There s four grade levels for warrant officers W 1 W 2
 (3) W 3 and W 4 and I was a three The highest you can go is
 (4) four
 (5) Q So you were next to the highest?
 (6) A Yes
 (7) Q And during your tour of duty with the Coast Guard did you
 (8) ever command any vessels?
 (9) A I was in charge of vessels but I never had a command
 (10) Q Did you ever have any formal training on navigation?
 (11) A What do you consider formal?
 (12) Q Well you know some type of schooling Did you go to any
 (13) Coast Guard schooling or take any correspondence courses?
 (14) A Correspondence courses and on the job training yes
 (15) Q And then you went into the Coast Guard in what capacity?
 (16) What was your rate?
 (17) A As a recruit
 (18) Q And you worked your way all the way up?
 (19) A Yes
 (20) Q And how long were you a chief warrant officer?
 (21) A From '83 until retirement
 (22) Q Returning to March 23 1989 when did you first receive
 (23) notification of the accident?
 (24) A I believe it was between 12.30 and a quarter to one

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(1) other So I ll have you put your sticker on the back or do it
 (2) later or whatever
 (3) Now if you need any of these documents which we ve marked
 (4) as we go along just ask to look at them or to refresh your
 (5) recollection
 (6) How old are you Mr Delozier?
 (7) A 42
 (8) Q And your present occupation?
 (9) A I'm a supervisor with Alyeska Pipeline Service Company
 (10) Q And how long have you been with Alyeska?
 (11) A Since October of '89
 (12) Q And until October of '89 were you in the Coast Guard?
 (13) A I was still in the Coast Guard in October of '89
 (14) Q And then you moved over to Alyeska and left the Coast
 (15) Guard?
 (16) A I detached from the Coast Guard August 15th '89, went
 (17) on
 (18) terminal leave and then physically retired from the Coast
 (19) Guard
 (20) November 1st '89 Began employment with a contractor
 (21) an
 (22) electrical contractor in Valdez in September of '89 and then
 (23) began work in October of '89 with Alyeska
 (24) Q Now how long had you been in the Coast Guard before you
 (25) went to work with Alyeska - for Alyeska?
 (26) A 20 years and ten months 20 years and 11 months
 (27) Q And when you left the Coast Guard your rank was chief
 (28) warrant officer?

(1) Q And who notified you?
 (2) A The traffic center radio watch stander
 (3) Q That was a m or p m ?
 (4) A A m
 (5) Q And what were you instructed to do if anything?
 (6) A I was advised that the Exxon Valdez was aground on Bligh
 (7) Reef and leaking oil and that my presence was requested at
 (8) the
 (9) office
 (10) Q And what time did you arrive at the office approximately?
 (11) A I think it was a quarter to one Somewhere in that
 (12) neighborhood
 (13) Q And how long did you remain there before you departed to
 (14) go
 (15) to the vessel?
 (16) A I think we left Valdez by boat around 2.30 so I was there
 (17) from my arrival at the office until maybe ten minutes before
 (18) my
 (19) departure I had to walk down to the dock to get on the boat
 (20) Q While you were there did you hear any conversations
 (21) between Commander McCall and the vessel?
 (22) A Yes
 (23) Q Now when you departed for the vessel who did you go
 (24) with?
 (25) A Departed from the traffic center?
 (26) Q Yeah going to the Exxon Valdez
 (27) A You mean from the building to the dock?
 (28) Q No I m talking about the boat Who did you go with in the
 (29) boat?

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- (1) **A There was two crew members from the Southwest Pilots Association who were crewing the boat There was Lieutenant**
- (2) **Commander Falkenstein and there was a DEC representative Dan Lawn and myself**
- (3) **Q Now did you have any specific instructions as to what your mission was to be when you got aboard the vessel?**
- (4) **A Just to get out to the vessel**
- (5) **Q Who told you that Commander McCall?**
- (6) **A Falkenstein did**
- (7) **Q And can you tell us what route did you take out to the vessel? How did you get out there generally?**
- (8) **A We went out to the small boat harbor headed across to the south side of the port up towards Entrance Island hugged the east bank, headed out towards Rocky Point and proceeded on over to Bligh Reef from there**
- (9) **Q Now can you tell us in your approach to the vessel did you observe any oil in the water?**
- (10) **A Yes I did**
- (11) **Q And can you describe the thickness of the oil?**
- (12) **A It was quite thick I think I estimated it in previous testimony 12 to 18 inches**
- (13) **Q Did you notice any bubbling of the oil?**
- (14) **A Yes**
- (15) **Q Now what about oil vapors? Did you detect any oil vapors as you approached the vessel?**

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- (1) **A Yes**
- (2) **Q And when did you first detect the vapors?**
- (3) **A I believe it was probably - probably before I actually saw the oil**
- (4) **Q Can you describe the intensity of the odor?**
- (5) **A It was very strong**
- (6) **Q Did you have any concern that there was any danger of fire?**
- (7) **A Yes I did**
- (8) **Q And did you have any other concerns along those lines?**
- (9) **Mr Carey asks along the lines of what?**
- (10) **Well like explosion Did you have any concerns there might be an explosion?**
- (11) **A Yes**
- (12) **Q Now where was it in your approach to the vessel that you saw ice for the first time generally?**
- (13) **A It was towards the southern end of the entrance of Tautlek Narrows The operator of boat that we were on observed it on the radar We slowed down and the deckhand stuck her head out the window to try to spot the ice and we steered around it There was one or two blips on the radar When we passed one of them, it was about four foot in diameter**
- (14) **Q You actually visually saw that or was that on the radar you're judging from?**
- (15) **A The operator of the vessel spotted some blips on the radar I did not look at them on the radar We slowed down**

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- (1) **and when we passed one of them I visually saw one of them**
- (2) **Q Now when you arrived to the Exxon Valdez which side did you board her on? Do you recall?**
- (3) **A On the starboard side**
- (4) **Q And all three - who went aboard?**
- (5) **A All three of us**
- (6) **Q And could you describe where you went after you got aboard the vessel?**
- (7) **A We went up to the wheelhouse**
- (8) **Q All three of you?**
- (9) **A Yes**
- (10) **Q When you got to the wheelhouse who did you observe in the wheelhouse?**
- (11) **A Well there was Captain Hazelwood**
- (12) **Q And where was he located?**
- (13) **A He was on the port, port side of the wheelhouse forward and there was someone else up on the center line or on the starboard side and I don't recall who that was now**
- (14) **Q Now is there anyone else or just those two that you recall?**
- (15) **A As we immediately arrived that's all I believe I remember**
- (16) **Q Now when you say Captain Hazelwood can you describe his position that he was in that is was he standing up was he sitting down? Can you describe his position?**
- (17) **A He was standing up on the port side forward up against the**

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- (1) **glass kind of leaning over on the windowsill and as we came up from the rear behind the chart table and around the corner he turned around and motioned to us We went over and began to talk to him**
- (2) **Q Now did all three of you go over there at one time or did you go over individually?**
- (3) **A We were in a group We all traveled over at the same time**
- (4) **Q And who spoke to him first?**
- (5) **A Commander Falkenstein**
- (6) **Q Did you hear any of the conversation?**
- (7) **A Yes**
- (8) **Q What was said?**
- (9) **A I don't recall**
- (10) **Q How long did Commander Falkenstein talk with him initially in this conversation we're referring to?**
- (11) **A Five to ten minutes**
- (12) **Q And then what happened? Did you talk to the captain then?**
- (13) **A Just briefly**
- (14) **Q Can you describe what your conversation with the captain was about?**
- (15) **A I don't recall**
- (16) **Q When you were having this conversation with the captain did you detect any alcohol?**
- (17) **A I detected an odor of alcohol**
- (18) **Q At what point did you detect the odor of alcohol - and**

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(1) that is when you re going up and you re going to talk with
 (2) him and I want to know when in the sequence of your talking
 (3) with him did - did you detect it?
 (4) A As the discussion was taking place with Commander
 (5) Falkenstein and Dan Iawn we were all kind of huddled
 around
 (6) Captain Hazelwood and during that conversation is when I
 (7) detected an odor of alcohol As far as the exact moment or
 (8) minutes after we arrived I'm not sure
 (9) Q Now can you describe the distance you were from Captain
 (10) Hazelwood when you first detected this odor?
 (11) A It varied Anywhere between two foot from the front of
 his
 (12) face to four foot from the front of his face
 (13) Q Can you describe the intensity of the odor?
 (14) A I felt it was quite strong
 (15) Q Did you reach any conclusions when you detected it?
 (16) A Yes
 (17) Q What conclusion did you reach?
 (18) A That I should pursue the matter
 (19) Q Did you - while you were talking to Captain Hazelwood did
 (20) he do anything with his hands or anything at all which you felt
 (21) he was doing to prevent you from detecting the odor?
 (22) A I concluded that because of the way that he was standing
 (23) and the way that his arm was placed like this (indicating)
 (24) that he may have been trying to attempt to hide any odor
 but
 (25) that was my conclusion That was my assumption

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(1) Q Now you just said he did something like this Can you
 (2) describe for the record what did he do with his hand when you
 (3) said like this so we have it on the record?
 (4) A He was crouched at the windowsill Not crouched He
 was
 (5) standing at the windowsill and he was leaning on the
 (6) windowsill and he was propping his head up (indicating)
 (7) Q With his hand like you have it right now?
 (8) A With his hand And at times he was like this (indicating)
 (9) Q Well let the record show when you said at times like
 (10) this that he put his hand in like a fist type under his lips
 (11) is that what you re saving?
 (12) A Well you can go ahead and describe it This is about
 what
 (13) I think he did (indicating) He was doing this
 (14) Q He put his hand actually over his lip his fingers?
 (15) A To my recollectinn yes
 (16) Q Mr Carey the record should show that the witness has said
 (17) his hand his chin cupped in his hand up to before and during
 (18) some of the time that you ve asked questions and I m not sur
 (19) the record - what you re talking about Mr Blank
 (20) Mr Burns the record should also show that he had his hand
 (21) directly over his lips at some time
 (22) Now after you had this conversation with Captain
 (23) Hazelwood what did you do next?
 (24) A As we backed off from the conversation Commander
 (25) Falkenstein and myself we walked out to the starboard
 bridge

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(1) to decide what we were going to do and as we were walking
 out
 (2) to the bridge wing I mentioned to Falkenstein I asked him if
 (3) he had smelled the odor and he said yes he did And I said
 (4) well we need to do something about that and he said what
 do
 (5) you suggest? I don't remember his exact words but it was
 (6) something of that nature
 (7) And I said we need to call back to the base and have
 (8) someone come in and begin some testing I said we're
 bound
 (9) by - I said we have these new regulations coming in place
 I
 (10) said this is one thing that we will have to look into and we
 (11) need to do it rapidly for the longer we wait the longer we
 may
 (12) not be able to get an accurate test
 (13) Q Now what did you do after this conversation with
 Commander
 (14) Falkenstein?
 (15) A We went back to the wheelhouse and talked some more
 with
 (16) Captain Hazelwood We questioned him on the - no I'm
 sorry
 (17) Back up
 (18) While we were out on the bridge wing we made an attempt
 to
 (19) call the marine safety office We made contact with them
 and
 (20) we advised them that we would make an attempt to call the
 CO by
 (21) way of telephone We went back inside and had some more
 (22) discussions brief discussions with Captain Hazelwood and
 he
 (23) directed us to the radio officer,
 (24) I think he summoned the radio officer, and we went down
 (25) below and he fixed us up with a telephone
 (1) Q And who made the telephone call from the ship?
 (2) A Commander Falkenstein
 (3) Q Did you hear what Commander Falkenstein said on the
 (4) telephone?
 (5) A Yes
 (6) Q Let me just back up a minute When you were up on the
 (7) bridge initially on your arrival did you detect any
 (8) concentration of fumes on the bridge?
 (9) A Yes
 (10) Q Did you detect them in the wheelhouse where Captain
 (11) Hazelwood was?
 (12) A Yes
 (13) Q Did you at any time observe Captain Hazelwood smoking?
 (14) A Yes
 (15) Q Did you have any conversation with Captain Hazelwood in
 (16) connection with that?
 (17) A Yes
 (18) Q And can you describe the conversation you had with him?
 (19) A It wasn't - it wasn't conversation It was - at one
 (20) point in time I walked up to the wheelhouse and Captain
 (21) Hazelwood was there and he was smoking The fumes had
 (22) registered on my mind previous to that I politely walked
 over
 (23) to Joe - Captain Hazelwood I'm sorry And trying not to be
 (24) belligerent or forceful or anything like that, I mentioned to
 (25) him that it might be a good ideas to stop smoking, that there

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- (1) were fumes that were presented
 (2) Q And what was his reply?
 (3) A I don't recall if there was a reply but he did put his
 (4) cigarette out
 (5) Q Now I'd like to direct your attention now to some of the
 (6) interviews you conducted. First the interview of Kagan. Did
 (7) you have that - do you have that in front of you up there
 (8) because I'm going to refer back and forth. Where did you
 (9) conduct the interview of Kagan?
 (10) A In one of the state rooms on the Exxon Valdez
 (11) Q And who was present?
 (12) A Trooper Mike Fox, myself and Mr. Kagan
 (13) Q And do you know whether or whether the interview was
 (14) taped?
 (15) A It was not
 (16) Q Do you recall approximately how long the interview lasted?
 (17) A Probably not more than 30 minutes
 (18) Q Now let's return to my question on Kagan
 (19) When with respect to the interview did you write up Exhibit
 (20) 1607 which is Plaintiff's 98?
 (21) A Following the interview
 (22) Q And during the interview did you take any notes?
 (23) A Yes
 (24) Q And when you wrote up 16 - and then you wrote up 1607
 (25) from
 (26) your notes?
 (27) A Yes

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- (1) Q Off record. As it reads here, deposition exhibit 1620
 (2) which is Plaintiff's Exhibit 99 and 1621 which is Plaintiff's
 (3) Exhibit 98
 (4) On record 1622 and 1623 marked. And I continue
 (5) For the record, what we have done is we have marked the
 (6) NTSB Exhibit 6M as 1622 [sic] which is the same as 1607 except
 (7) that it has two additional pages with that handwriting on it
 (8) We've marked NTSB exhibit 6L as 1622 Plaintiff's Exhibit 99
 (9) which is the same as 1608 except for the cover sheet. It says
 (10) it's an NTSB exhibit and the fact that there's a xerox of a
 (11) chart on the back. And we marked NTSB 1623 - I'm sorry
 (12) We've marked not NTSB. We've marked as exhibit 1623 NTSB
 (13) Exhibit 6K which is the same as previously marked 1609 except
 (14) for the cover sheet
 (15) Okay now let's get back to where we are
 (16) THE COURT Thank you
 (17) Q In this newest exhibit 1621 which again is Plaintiff's
 (18) Exhibit 98 Kagan interview. Mr. Dolzner, do you have that in
 (19) front of you?
 (20) A Yes
 (21) Q If not we can use this original just show him this one.
 (22) You just testified that that handwriting on the last two
 (23) pages -
 (24) A Yes
 (25) Q - is Kagan's?

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- (1) A Yes
 (2) Q Now I'd like to turn next to your - it's Exhibit 1608
 (3) which refers to the interview with Cousins and is also 1622
 (4) Plaintiff's Exhibit 99. If you would look 1622 with the only
 (5) difference is the cover sheet and it has a chart next to it
 (6) You might use 1622 because that has everything that 1608 has
 (7) plus two pages
 (8) First of all we touched on this. You interviewed Cousins
 (9) about ten o'clock you previously testified so that was after
 (10) Kagan is that correct?
 (11) A That's correct
 (12) Q Where was the interview held?
 (13) A This was held in the same stateroom as the interview with
 (14) Kagan
 (15) Q Did you take notes in the same manner you did with Kagan?
 (16) A Yes, yes, I did
 (17) Q And when did you write up Exhibit 22 with respect to the
 (18) interview?
 (19) A Within an hour or two following the interview
 (20) Q Now do you recall whether Cousins indicated to you how
 (21) long the chief may have been out?
 (22) A I believe he indicated that he was up off and on during the
 (23) entire loading of the vessel with captain - and catnaps in
 (24) between
 (25) Q Now did Cousins indicate to you what course the master

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- (1) altered to to steer around the ice if you recall?
 (2) A I believe his course was 180 altered course to 180
 (3) Q And did Cousins ever indicate to you that the master had
 (4) altered to any other course other than 180 to steer around the
 (5) ice that you recall?
 (6) A I do not - I do not believe he did
 (7) Q And did Cousins indicate to you that the master was up on
 (8) the bridge when he took his position of Busby Island?
 (9) A Yes. My recollection is that the course changes or
 (10) change
 (11) that was made was done by the master and then when it was
 (12) settled up on 180 then they relieved each other
 (13) Q And did Cousins actually volunteer this exploit or did you
 (14) ask him a question on this and you say does not recall if he
 (15) actually departed the wheelhouse at that time. He could have
 (16) been behind the chart room curtain
 (17) A Yes. That was - that was -
 (18) Q He just volunteered that?
 (19) A He volunteered that to me uh huh
 (20) Q Also up above I touched on the sentence above you say -
 (21) in the sentence above you say the master briefed him on the
 (22) course and approximate position to start to fair up
 (23) You use the word approximate position. Did Cousins use
 (24) those words or are those your words do you recall?
 (25) A I don't know how it was how he actually described it to
 (26) me. This is my interpretation of what I remembered during
 (27) the

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- (1) **course of the interview with him**
 (2) Q Now based on your interview with Cousins did he tell you
 (3) that the master gave him in effect an approximate position to
 (4) turn as opposed to a precise position?
 (5) **A During the interview it was my interpretation of the**
 (6) **interview that the point in which he needed to turn was an**
 (7) **approximate**
 (8) Q Now after the ten degree right rudder did Cousins ever
 (9) indicate to you that he telephoned the captain prior to the 20
 (10) degree?
 (11) **A No he didn't**
 (12) Q Now then you reviewed with Cousins his work schedule
 (13) during the day?
 (14) **A Yes**
 (15) Q And just so I understand? Work schedule you reviewed with
 (16) him from 1330 to 1700 was it your understanding he was off
 (17) duty and taking a nap for three and a half hours?
 (18) **A Yes**
 (19) Q And from 1730 to 1745 what - it was your understanding of
 (20) what he was doing or did he tell you?
 (21) **A No I don't remember**
 (22) Q Now in this chronology you have here is there any other
 (23) time other than the two I just referred to you that Cousins
 (24) was off duty as you understood it as he was revealing it to
 (25) you?

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- (1) **A No**
 (2) Q Did Cousins ever reveal to you why he remained on the
 (3) bridge for his 20 to 2400 watch past midnight on the bridge?
 (4) **A Yes**
 (5) Q What did he tell you?
 (6) **A That he was going to allow the chief to sleep in a little**
 (7) **longer**
 (8) Q Was it the chief or the second mate do you recall whoever
 (9) was to relieve him?
 (10) Do you remember whether it was the chief or the second
 (11) mate?
 (12) **A It was - it was the second mate**
 (13) Q Did Cousins indicate to you why he was going to allow the
 (14) second mate to sleep in a little longer?
 (15) **A I believe it was just a matter of being polite and feeling**
 (16) **that he was up and about and he had no problems with**
 (17) **taking**
 (18) **you know an additional hour or two**
 (19) Q Now did he tell you that or is that just your assumption?
 (20) **A That's my assumption He described it to me you know**
 (21) **in**
 (22) **very mild terms**
 (23) Q Mr Burns Mark for identification Exhibit 1614 Chart
 (24) Number 16708 17th Edition December 29th 1984 which is
 (25) listed as Plaintiff's Exhibit 846
 (26) Could you indicate what position or positions did he
 (27) Cousins refer to when he showed you the positions that he had

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- (1) put on the chart?
 (2) **A The 2355 positions**
 (3) Q Did you query Cousins at this time concerning where Captain
 (4) Hazelwood told him the turn was to be made which you
 (5) previously
 (6) referred to?
 (7) **A Yes I did**
 (8) Q And how did you ask the question to him do you recall and
 (9) how did you phrase the question to him?
 (10) **A I believe the question that I instructed him was where is**
 (11) **the point where he was instructed to begin his turn**
 (12) Q And that was the question you asked him and how did he
 (13) respond to your question? What did he say?
 (14) **A He indicated this mark right here which is the 38 fathom**
 (15) **mark**
 (16) Q Now before you describe it any further you say he
 (17) indicated Tell me how he did this You asked him the
 (18) question What physically did he do?
 (19) **A I asked him the question he and I were both leaning over**
 (20) **the chart I believe he took a pencil in his hand and I**
 (21) **believe he pointed to the position that he was referring to**
 (22) Q Now where did he point the pencil to - when you describe
 (23) that?
 (24) **A There is a 38 fathom mark which is on a course of**
 (25) **approximately 180 which is due south of the 2355 position**
 (26) **that**
 (27) **he had plotted**

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- (1) Q Okay
 (2) **A It is approximately three quarters of an inch below that**
 (3) **position on the chart**
 (4) Q Now I have your Deposition Exhibit 1624 which bears
 (5) Plaintiff's Exhibit No 843 and ask you if you recognize it
 (6) just as a portion of the chart? Do you recognize the line and
 (7) circle on there as positions you put on the chart?
 (8) **A Yes I do**
 (9) Q Now can you tell us the circle that you have drawn on the
 (10) chart is this the same as what you have just testified to
 (11) orally about where Cousins pointed the pencil to?
 (12) **A That's correct**
 (13) Q Am I correct - and my question to you is did Cousins ever
 (14) indicate to you that Hazelwood told him to turn at the 38
 (15) fathom mark? Did he say it to you that way or did he just
 (16) point the pencil as you previously testified?
 (17) **A He pointed to the 38 fathom mark and then I questioned, I**
 (18) **questioned him and I said, this mark right here? The 38**
 (19) **fathom**
 (20) **mark? And he said yes**
 (21) Q Now other than that did Cousins tell you anything more
 (22) about instructions from Hazelwood where the turn was to be
 (23) made that you recall?
 (24) **A Once he got to that position then he would begin fairing**
 (25) **up Can I correct that? That was when he got to that**
 (26) **position he shall make his turn and begin fairing up**

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(1) Q Now you started to testify about your call to Commander
 (2) McCall What happened when Trooper Fox came aboard?
 (3) A Well we mailed the request by telephone to the Coast
 Guard
 (4) office I was hoping that whatever resource that we
 requested
 (5) would go out to the ship in a timely manner I felt that a
 (6) timely manner would be somewhere in the neighborhood of
 one or
 (7) two hours Later in the morning At about six or 6 30, in
 that neighborhood I informed - I was informed that there
 was
 (9) a boat coming out, and that my person or persons that were
 (10) going to do the test were aboard The boat arrived I did not
 (11) see it pull up, and Trooper Fox met me on the port bridge
 (12) wing I said, Mike, I said are you ready to go? And he said
 (13) that - what's the problem? I said, well, I said, we need to
 do some testing Alcohol testing on the - I believe I
 (15) identified three or four or five crew members and that we
 (16) needed to do it right away
 (17) And he informed me that he was not prepared to do any
 (18) testing and that he was informed back shoreside that he
 was to
 (19) come out and take care of an unruly person So he turned
 to me
 (20) and he also said that he was unable to do anything except
 give
 (21) a hand eye coordination type of a test And I said that will
 (22) not do
 (23) So we parted I went back and got with Falkenstein and got
 (24) on the telephone and made another request
 (25) Q And what happened next with respect to the request for the

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(1) testing?
 (2) A Well the request went to the office and we waited another
 (3) couple of hours I proceeded with some interviews in the
 (4) company of Mike Fox I don't remember the exact time
 when we
 (5) started or what happened precisely But the word CAME
 came
 (6) back to me by way of Falkenstein that there's a possibility
 (7) that there are tox kits on board the ship at which I went and
 (8) located Captain Hazelwood
 (9) I asked him if there were he said yes there were He
 (10) went and got his keys and he went down the hallway the
 (11) passageway and got the kits
 (12) We went into his office and I said here's what we need to
 (13) do We need to start testing these people And he went
 ahead
 (14) and called someone - called somewhere by phone internal
 phone
 (15) and started to round up the people one at a time
 (16) Q Now were there any blood samples taken?
 (17) A I took his word that he couldn't go I believe I went out
 (18) and informed Commander Falkenstein and shortly after that
 Petty
 (19) Officer Connors showed up He was a Coast Guard hospital
 (20) corpsman and I grabbed him and I said what are you doing
 (21) here? And he said well I'm out to do the tests
 (22) I said they have tox kits on board I said is it possible
 (23) to also do blood tests? And he said yes
 (24) Before the testing was started and after the tox kits were
 (25) produced to me I realized that there was a sample bottle
 and

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(1) also blood samples you know equipment to take blood
 samples
 (2) and Captain Hazelwood informed me that it was company
 policy
 (3) that only - I forget how he described it but qualified
 (4) medical type persons were the only people that the
 company
 (5) would allow to draw blood samples from his crew I
 (6) acknowledged that and so forth
 (7) So when Connors came aboard, I asked him if he was
 (8) qualified to draw blood So I went to Captain Hazelwood
 and I
 (9) said, here's Petty Officer Connors he is a qualified - I
 (10) don't know what his qualifications are I know he's a first
 (11) class corpsman Apparently that was sufficient enough for
 (12) Captain Hazelwood to allow us to proceed And I said,
 Captain
 (13) Hazelwood, by the way, I said I'd like to start with you
 (14) He said okay We went into his office And then the blood
 (15) samples were taken and after he was completed we went
 right
 (16) through the line with the other three individuals
 (17) Q With the blood samples?
 (18) A With the blood samples
 (19) Q Now can you place the approximate time that Hazelwood
 gave
 (20) you a blood sample?
 (21) A I would say between 10 30 and 11 a m
 (22) Q And what was done with the blood samples then?
 (23) A Well the tox kits are in styrofoam containers they're
 (24) sealed they have custody tags and so forth on the outside
 You
 (25) break the seal open them up Everything is all sealed up

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(1) There's instructions and a certain procedure you have to go
 (2) through to fill the bottle and - and the blood bottle and
 (3) Petty Officer Connors was perfectly familiar with how to do
 (4) this and I just witnessed what he was doing while this took
 (5) place I was the person who - a tag was made out I
 witnessed
 (6) and signed the tags It was sealed on top of the bottle It
 (7) was placed in side of the Styrofoam container and then the
 (8) blood samples were done and that same procedure was
 followed
 (9) There were certain seals that had to go on top of it - after
 (10) all the samples were complete they were placed in a
 container
 (11) I believe it was a brown paper bag I had them - they were
 (12) all sealed up and I turned to Petty Officer Connors and I
 said
 (13) you shall now take custody of them and get them back into
 the
 (14) office and take them to I believe it was Lieutenant Sharp
 (15) He's an investigator out of the Anchorage office here I'm
 (16) vague on his name but I said take them directly to him
 (17) Q Okay
 (18) A Okay And turn them over
 (19) Q After that did you have anything further to do with the
 (20) samples in your overall investigation?
 (21) A Only the results
 (22) Q And what were they?
 (23) A I don't recall what the -
 (24) Q Well you say only the results What participation did you
 (25) have in the results?

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- (1) A I saw copies of the test results which were then placed
 (2) into the files
 (3) Q During the intermission we played the beginning of Exhibit
 (4) 1612 Plaintiff's Exhibit 95 the date that was marked and
 (5) Mr DeLozier you listened to the beginning of that tape and
 (6) you were able to identify your voice and Captain Hazelwood --
 (7) and Captain Hazelwood's the start of the interview
 (8) A That's correct
 (9) Q Now if we turn to Captain Hazelwood's interview Exhibit
 (10) 1623 Plaintiff's Exhibit 100 that interview went forward at
 (11) 1315 in the afternoon of March 24th?
 (12) A Yes Approximately
 (13) Q Approximately yeah Now in connection with that
 (14) interview did you take any notes did you take notes in
 (15) addition to Trooper Fox taping the interview?
 (16) A Yes
 (17) Q And does the same apply to those notes as what you told us
 (18) happened to the other notes you took?
 (19) A Yes
 (20) Q And then these notes you wrote up exhibit 1623 which is
 (21) listed as Plaintiff's Exhibit 100?
 (22) A Yes
 (23) Q And what time lapse took place between the end of the
 (24) interview and your writing up Exhibit 1623?
 (25) A I believe it was within an hour

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- (1) Q And you did it based on the notes?
 (2) A Yes
 (3) Q Did Captain Hazelwood based on your recollection during
 (4) the interview you had with him ever indicate to you that
 (5) shortly after getting underway from Valdez he went below to his
 (6) cabin and remained there for over an hour?
 (7) A When I interviewed Captain -- Captain Hazelwood I did
 (8) not
 (9) know that he was anywhere other than in the wheelhouse
 (10) from the
 (11) transit from the berth through the grounding except when
 (12) he
 (13) stated to me that he went below
 (14) Q And which you testified to meaning he went below leaving
 (15) Third Mate Cousins up on the bridge with the con?
 (16) A That's correct
 (17) Q Now did you cover with Captain Hazelwood whether he
 (18) instructed Cousins to make the turn?
 (19) A Yes
 (20) Q And where were you physically located on the vessel when
 (21) you were covering this subject with him in your interview?
 (22) A Up in the wheelhouse at the chart table
 (23) Q And it was -- and was chart 16708 which is Plaintiff's
 (24) Exhibit 846 open at that time?
 (25) A Yes it was
 (26) Q You were down in the state's room conducting the basic
 (27) interview with this tape?
 (28) A That's correct

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- (1) Q And after the interview was over is that when you went to
 (2) the chart room?
 (3) A Yes
 (4) Q Do you have any recollection of discussion with Captain
 (5) Hazelwood beyond what was taped at the end of the interview?
 (6) A I don't know when the tape stopped At the conclusion of
 (7) the interview with Captain Hazelwood the interview was
 (8) complete and then sometime following that interview,
 (9) during the
 (10) afternoon hours is when I meant with Captain Hazelwood
 (11) while -- while he was already in the wheelhouse I asked him
 (12) to come over and to describe to me where the point in which
 (13) he
 (14) instructed Third Mate Cousins to turn was
 (15) Q Now did Captain Hazelwood ever indicate to you during the
 (16) interview or use the phrase in referring to where he instructed
 (17) Cousins to turn the 38 fathom mark did he ever indicate to
 (18) you say those words verbally when you were discussing where
 (19) the turn was to be made? Did he say refer to the 38-fathom?
 (20) A During the interview?
 (21) Q During the interview
 (22) A Yes
 (23) Q Mr Burns Which interview now?
 (24) Continuing
 (25) Either one The one in the stateroom or the one up in
 (26) the -- up looking at the chart
 (27) A Yes, while he was looking at the chart

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- (1) Q And do you recall the terminology he used?
 (2) A 38-fathom mark
 (3) Q And when did he say that in the sequence of your
 (4) questioning him?
 (5) A I asked him to show me on the chart where the point he
 (6) had
 (7) instructed the third mate to turn He came over and he
 (8) picked
 (9) up a pencil and circled the 38 fathom mark and I said this?
 (10) And he said the 38 fathom mark this is it I don't remember
 (11) the exact words okay?
 (12) Q All right At any time during your investigation on March
 (13) 24th did you have occasion to go into Captain Hazelwood's
 (14) room
 (15) when he wasn't there?
 (16) A Yes
 (17) Q You can you tell us when you did that, approximately in the
 (18) sequence of events before or after his interview? Let's put
 (19) it that way
 (20) A It was before his interview, and I believe it was before
 (21) the alcohol test
 (22) Q Now for what purpose did you go in his room?
 (23) A I really didn't feel comfortable going into his room his
 (24) stateroom or into his office but at the same time I felt that
 (25) it might be appropriate and Mike Fox was there and he
 (26) questioned me often whether I had searched his room and
 (27) found
 (28) any alcohol or whatever And I tried to relay to Mike Fox
 (29) that
 (30) I didn't believe it was illegal to carry alcohol on board, and

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- (1) even if I did find any alcohol I didn't think that would be
 (2) anything useful However I did proceed and went into his
 (3) stateroom I walked around his bunk I looked in his trash
 (4) can, I looked in the head, and I also believe I looked in his
 (5) small refrigerator and then the trash cans in his office
 (6) Other than that, that was basically the extent of the search
 (7) Q Can you tell us what you found?
 (8) A I found some Moussy bottle, both empty and full I
 (9) believe It's been a long time now and it's a bit hazy
 (10) Q The empties were where do you recall?
 (11) A I believe they were in the trash can
 (12) Q And do you recall approximately how many there were?
 (13) A It seems to me like there was two
 (14) Q Do you recall approximately how many full bottles you
 (15) found?
 (16) A I think there was a bunch of them I think more than what
 (17) we could carry
 (18) Q Did you - this room you were in where his refrigerator
 (19) was that his desk - was his desk there also?
 (20) A Yes, he has an office He has a doorway into his office
 (21) which has a desk and there's a couch and a small coffee
 (22) table,
 (23) there's some other chairs and then you walk from the office
 (24) through an interior door into his stateroom I think there's
 (25) also a door out of his stateroom out into the passageway
 (26) There were papers on his desk I don't know whether it was

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- (1) there - what it was there for you know being processed or
 (2) what There were papers on his desk
 (3) Q All right And I'd now like to conclude my examination I
 (4) just like to turn to the Glowacki summary which is Exhibit
 (5) 1610 Plaintiff's Exhibit 96
 (6) You interviewed him on the 25th of March at about 1600?
 (7) A Yes
 (8) Q Did he tell you where he obtained these tubes from or were
 (9) they just estimates on his part?
 (10) A They were estimates off the top of his head
 (11) Q Now at any time prior to the time you learned from Exxon
 (12) or whoever you learned from by telephone call that there were
 (13) tox - tox kits aboard the vessel did anybody aboard the
 (14) vessel volunteer that they had tox kits aboard?
 (15) A No
 (16) Q Had you asked the captain or anybody if they did have tox
 (17) kits?
 (18) A No I had not
 (19) Q If they had told you that they had tox kits aboard when you
 (20) first determined that it was necessary to do testing would you
 (21) have taken samples as you did when you finally learned that
 (22) there were tox kits aboard?
 (23) A Yes
 (24) Q Now about what time was it when you talked to Commander
 (25) Falkenstein and decided that testing would be appropriate?

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- (1) A Just shortly after our arrival
 (2) Q And you arrived about 3 15?
 (3) A I believe it was around 3 45
 (4) Q All right 3 45 And shortly after that you determined
 (5) that testing would be appropriate?
 (6) A Yes
 (7) Q When did you first tell anybody aboard the vessel that you
 (8) believed testing was appropriate?
 (9) A When I asked Captain Hazelwood if he had the tox kits
 (10) aboard
 (11) Q And when did you ask that?
 (12) A 9 30 in the morning, somewhere in that area It was
 (13) shortly before I began the tests on the other crew members
 (14) Q By Mr Chalos With respect to the testing that you spoke
 (15) about the blood alcohol testing you had mentioned that
 (16) corpsman Connors had come aboard?
 (17) A Yes
 (18) Q And you knew Mr Connors did you not?
 (19) A Yes I did
 (20) Q And you told him what you wanted done in terms of the blood
 (21) testing?
 (22) A Yes
 (23) Q And the first one to give the blood sample was Captain
 (24) Hazelwood is that correct?
 (25) A The blood sample?

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- (1) Q Yes
 (2) A Yes
 (3) Q Did you observe the type of vials that were used for blood
 (4) samples?
 (5) A Yes
 (6) Q Which size vials were they?
 (7) A Test tube size
 (8) Q Do you remember the length?
 (9) A About five inches
 (10) Q Were they all the same size?
 (11) A Yes
 (12) Q Were there stoppers on top of the vials?
 (13) A Yes
 (14) Q And did you participate in marking those vials?
 (15) A I signed or initialed the labels You need the person who
 (16) the specimen came from to initial it and then you needed a
 (17) witness to initial it Connors was the technician who was
 (18) drawing the sample Hazelwood and the other crew
 (19) members were
 (20) the people that the specimen were coming from and I was
 (21) the
 (22) person who witnessed that We all agreed that the
 (23) particular
 (24) sample belonged to that particular person and that
 (25) particular
 (26) specimen was then inserted into that particular package
 (27) that
 (28) resembled the test for that individual
 (29) By Mr Chalos No No You separate the blood samples
 (30) for each individual and put them in a separate box?

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(1) A There were sample kits and we started the urine samples
 (2) first then Connors arrived and then we proceeded with
 Captain
 (3) Hazelwood to start drawing the blood We proceeded to do
 the
 (4) blood tests So we had the whole nine yards put in the kit
 and
 (5) then there was the blood and put in the kit and then the
 (6) whole kit was witnessed and sealed and put away
 (7) Your witness
 (8) MR CHALOS Thank you for that dramatic finish Mr
 (9) Cohen I think I said no no
 (10) Your Honor may I approach the witness? There was one
 (11) answer that was left out I just want to confirm it from the
 (12) original deposition
 (13) MR CHALOS Hello Captain Toder and
 (14) Mr Delozier - remember that line? And you re no - on page 3
 (15) of your answers Captain Toder - this is mine
 (16) THE READER Page 3
 (17) MR CHALOS Sorry On my script Okay The answer
 (18) is no I didn't I'm going to show it to you Sorry no I
 (19) did not (indicating) Okay? Thank you
 (20) CROSS EXAMINATION OF MARK DELOZIER (Read)
 (21) BY MR CHALOS
 (22) Q Mr Delozier I'd like to direct your attention to the
 (23) point where you came on board the vessel and you went up to
 the
 (24) bridge?
 (25) A The time you're talking about or the particular spot?

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(1) Q No no The point in time - the point of time
 (2) A Okay
 (3) Q You got on board around 3 45 you went up to the bridge
 (4) you said Lieutenant Commander Falkenstein and Mr Lawn?
 (5) A Yes
 (6) Q And you approached the master at that point?
 (7) A Yes sir
 (8) Q And you testified that you were in some sort of huddle
 (9) around the captain the three of you?
 (10) A Yes
 (11) Q Were you standing directly in front of the captain at that
 (12) point?
 (13) A I was close to him Were you talking a straight line down
 (14) the beam of the ship or - I was off to the side but I looked
 (15) straight at him He was in front of me.
 (16) Q Well let me see if I can position you He was standing at
 (17) the windows?
 (18) A Uh huh
 (19) Q And I take it you three were facing the windows and facing
 (20) the captain? The answer is yes?
 (21) A Not on my script
 (22) Q But that was the answer Sorry
 (23) How far away were the three of you from the captain?
 (24) A I was within probably as close as two foot and as far away
 (25) as, you know as six foot The average distance was
 probably

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(1) three I mean I didn't stay right in front of him for the
 (2) entire thing I was there I was listening I was observing I
 (3) stepped back you know that type of thing
 (4) Q And I take it Mr Falkenstein was about the same distance
 (5) from the captain?
 (6) A Yeah He was pretty much leading the discussion so he
 was
 (7) more or less closer most of the time
 (8) Q Now when the conversation was going on with the captain
 (9) did you have a chance to observe him?
 (10) A Yes
 (11) Q Was his speech slurred in any way?
 (12) A I didn't distinguish anything of that nature
 (13) Q Did the captain walk about during this period?
 (14) A No very little if any
 (15) Q I'm focussing now on your initial conversation with the
 (16) captain?
 (17) A The initial conversation he was pretty much in the same
 (18) place He just kind of moved his position in that same
 (19) location
 (20) Q Okay I'm going to ask you to describe for us what Captain
 (21) Hazelwood was doing from about four to 4 30 on the morning of
 (22) March 24th 1989 You said that you believe that one of your
 (23) duties in investigating the casualty was to stay out of the way
 (24) as much as possible while at the same time gathering as much
 (25) information as you could without interfering with the work of

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(1) the vessel Do you recall that is that a fair statement?
 (2) A Well I don't believe it was my duty to stay out of the
 (3) way I believe it was the approach that I took for, you know
 (4) accomplishing the goal
 (5) Q Well fair enough I think that's what you said
 (6) A Uh-huh
 (7) Q Was there work going on at this particular point in time
 (8) that is around four o'clock in the morning on March 24th?
 (9) A The work that I - yes there was
 (10) Q Can you describe for us what is happening?
 (11) A The work that I observed was predominantly with the -
 (12) between Captain Hazelwood Tom Falkenstein the chief
 mate and
 (13) then they had some crewmen doing soundings
 (14) Q Did you have occasion at this particular time let's say
 (15) between four a.m. and five a.m. to observe people coming up to
 (16) Captain Hazelwood to speak to him about things they were
 doing?
 (17) A Yes
 (18) Q Do you have a recollection as to who was approaching
 (19) Captain Hazelwood at this point?
 (20) A The only one that I believe may have been - that I may
 (21) have seen in discussion with Captain Hazelwood, may have
 been
 (22) Mr Kunkel and also Mr Falkenstein
 (23) Q At what point in time did Captain Hazelwood ask you to go
 (24) below to his cabin to rest for a while?
 (25) A Probably about five o'clock a.m. 5 30 somewhere in that

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- (1) vicinity
 (2) Q Did he make the request of you?
 (3) A Yes he did
 (4) Q What specifically did he say to you?
 (5) A Things had kind of slowed down to a point you know there
 (6) was a big buildup, you know I'm sure that for them you
 (7) know Here's something totally different and then
 anticipation
 (8) of the Coast Guard and whoever else arriving and then a build
 (9) up of what's going to occur now and then It started to
 (10) diminish and things seemed to be progressing where I'm
 sure he
 (11) was totally beat and felt that about that time it would be a
 (12) good time to catch a catnap which he came up to me and
 (13) actually I was passing in the hallway and asked me if I had
 any
 (14) problem with him catching you know taking a nap
 (15) Q And what did you say to him?
 (16) A I said it would -- I said it was fine
 (17) Q Was it your understanding that when you arrived on the
 (18) vessel that he was in command of the vessel?
 (19) A Yes
 (20) Q And remained in command of the vessel throughout the day
 (21) that you were on it?
 (22) A Yes As far as -- as far as how far into that day I'm not
 (23) really certain right now okay?
 (24) Q Well let's pinpoint it to the time of your interview with
 (25) him

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- (1) A Yes
 (2) Q He was still in command of the vessel?
 (3) A Yes
 (4) Q At that point?
 (5) A Yes
 (6) Q All right Let's back up a second
 (7) Prior to Captain Hazelwood retiring to his room for a
 (8) period of time --
 (9) A Uh huh
 (10) Q -- did you see any signs of intoxication other than the
 (11) smell you perceived to be alcohol on the part of Captain
 (12) Hazelwood?
 (13) A No I don't No I didn't
 (14) Q Did you at any time feel that Captain Hazelwood was not
 (15) capable of commanding the vessel during the period of time
 that
 (16) we're talking about
 (17) Mr Burns who was Mr Delozier lawyer says which period of
 (18) time are we talking about?
 (19) I say up to the moment where he left to go to his room to
 (20) retire
 (21) A No I did not
 (22) Q Now how long was Captain Hazelwood gone to his room
 before
 (23) Mr Fox arrived as best as you can recall obviously?
 (24) A Well if he went to his room between five o'clock and 5:30
 (25) and Mr Fox arrived at six o'clock or seven o'clock I don't

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- (1) know his precise time that he arrived right now then I would
 (2) think it would be the difference between the two I would
 (3) estimate that possibly an hour to an hour and a half, two
 (4) hours
 (5) Q Now I want to deal with the search you conducted of
 (6) Captain Hazelwood's stateroom and office You mentioned that
 (7) you have a vague recollection that you spoke to Captain
 (8) Hazelwood about an hour before you had the conversation with
 (9) him about the tox kits is that correct?
 (10) A Vague recollection, yes
 (11) Q Do you recall what you spoke to him about at that point?
 (12) A No I only -- I just have a vague recollection that I may
 (13) have seen him and -- and if I had seen him I didn't -- I don't
 (14) even -- I don't know if I had talked to him or not
 (15) Q Did you have a chance to observe him either before or
 (16) after you interviewed Kagan up in the wheelhouse or in the
 (17) passageway or in his room?
 (18) A That would have been about the same time frame, and
 again
 (19) I am vague on whether I've seen him then or not
 (20) Q When did you have your conversation about the tox kits?
 (21) A It was in the passageway just outside of his office
 (22) Q Was he coming out of his office at the time or was he
 (23) coming down from the bridge?
 (24) A It seems to me like he was coming out of the engineer's
 (25) office or you know office

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- (1) Q Prior to your discussion with Captain Hazelwood about the
 (2) tox kits --
 (3) A Yes
 (4) Q -- is it your testimony that you never mentioned to him at
 (5) all from the moment you got on the vessel until that
 (6) conversation about the tox kits that you wished to take any
 (7) samples or have anyone tested for alcohol?
 (8) A Yes I believe that's the first incident that I had to
 (9) alert him that -- that there was an intention to be testing
 (10) Q And at that time I take it you also told him you wanted to
 (11) test other crew members as well?
 (12) A Yes
 (13) Q And that was an intention that you had from the very first
 (14) moment that you decide to do an alcohol test?
 (15) A Yes
 (16) Q Now at what point in time did you conduct the search of
 (17) the captain's stateroom and office that you testified about?
 (18) A It was before the tox kits so it was probably eight
 (19) o'clock 8:30
 (20) Q Where was Captain Hazelwood at this point?
 (21) A I don't know his specific whereabouts I believe he may
 (22) have been in the wheelhouse
 (23) Q Was Trooper Fox with you when you were looking through
 his
 (24) stateroom and office?
 (25) A Yes

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- (1) Q You conducted the search together?
 (2) A Well he was kind of pushing me in and I was kind of a bit
 (3) reluctant Yes he was with me
 (4) Q Now let's start with the captain's stateroom Did you go
 (5) into the stateroom?
 (6) A Yes
 (7) Q You looked into the trash bin I take it?
 (8) A Yes
 (9) Q Did you find anything in his stateroom in the trash bins?
 (10) A I'm not sure whether I found the bottles in the office or
 (11) in the stateroom trash can
 (12) Q Do you recall testifying that you found two empty Moussy
 (13) bottles in the trash bin of this office?
 (14) A I found - I believe it was two bottles and I believe it
 (15) was in a trash can Right now I don't recall whether it was in
 (16) his office or whether it was in a stateroom If I stated that
 (17) previously then I think that's more accurate than what I can
 (18) remember right now
 (19) Q All right Because testimony that you would have given at
 (20) the trial or even at the NTSB would have been fresher in your
 (21) mind at that point than it is at this point - today I take
 (22) it?
 (23) A That would be a good assumption
 (24) Q All right back to Captain Hazelwood's stateroom Now
 (25) putting aside the two empty bottles of Moussy?

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- (1) A Yes
 (2) Q Was there anything of alcoholic nature in his stateroom?
 (3) A The two bottles of Moussy which were in his refrigerator
 (4) Q Was that in his state room or in the office?
 (5) A In the office
 (6) Q I'm concentrating now on the stateroom
 (7) A I'm sorry
 (8) Q Was there any indication of any alcoholic beverages in his
 (9) stateroom?
 (10) A No there wasn't
 (11) Q Pardon me I meant office Now we're back in his office
 (12) You found some full bottles of Moussy in his refrigerator?
 (13) A Yes
 (14) Q I think you stepped on my line but never mind You found
 (15) some full bottles of Moussy in his refrigerator?
 (16) A Yes
 (17) Q Did you know prior to going on board the Exxon Valdez what
 (18) Moussy was?
 (19) A No
 (20) Q Have you ever tasted Moussy prior to going on board?
 (21) A No
 (22) Q Have you ever heard of nonalcoholic beer prior to going on
 (23) board?
 (24) A Yes
 (25) Q Have you ever tasted nonalcoholic beer?

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- (1) A No
 (2) Q Did you have an understanding as any point that Moussy
 (3) was
 (4) a nonalcoholic beer?
 (5) A No
 (6) Q You never had that understanding?
 (7) A As of the time that I found the Moussy beer?
 (8) Q Yes
 (9) A No
 (10) Q What did you think Moussy was?
 (11) A Something in a bottle
 (12) Q Did you confiscate any of it?
 (13) A I took a couple of bottles
 (14) Q Do you discuss with Trooper Fox what Moussy might be?
 (15) A Yeah I believe we looked at the label and it said
 (16) nonalcoholic
 (17) Q Did you discuss it with Mr Falkenstein?
 (18) A Yes I believe I did
 (19) Q Was it right around that time?
 (20) A I don't recall
 (21) Q What did you tell Mr Falkenstein about your discovery of
 (22) Moussy?
 (23) A Not much
 (24) Q Did you tell him that someone had told you it was
 (25) nonalcoholic?
 (26) A I don't believe so

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- (1) Q Did at any time did you taste the Moussy beer?
 (2) A No
 (3) Q Now aside from the bottles of Moussy beer in the
 (4) refrigerator and the two bottles in the trash can?
 (5) A Uh huh
 (6) Q Did you find anything else in the office?
 (7) A Anything else in regard to what?
 (8) Q To alcoholic beverages
 (9) A No
 (10) MR NEAL All right -
 (11) MR CHALOS Your Honor I just have two more
 (12) questions and then we'll go into another subject Can we back
 (13) up a second captain? Let me start over
 (14) BY MR CHALOS
 (15) Q Did you find anything else in the office?
 (16) A Anything else regard to what?
 (17) Q To alcoholic beverages
 (18) A No
 (19) Q Did there come a time when Trooper Fox opened the Moussy
 (20) beer and permitted you to smell it?
 (21) A I don't recall that
 (22) Q Do you recall Trooper Fox putting the Moussy beer on his
 (23) hands and then permitting you to smell his hands?
 (24) A No I don't recall that
 (25) MR CHALOS That's it

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- (1) THE COURT Take our recess now ladies and
 (2) gentlemen We'll be in recess for 15 minutes
 (3) (Jury out at 10 02)
 (4) (Jury in at 10 18)
 (5) THE COURT Ladies and gentlemen I have a question
 (6) from one of you asking about the role of the Coast Guard in
 (7) this matter Whether the United States Coast Guard does or
 (8) does not have any responsibility in this matter is not an issue
 (9) in this case We are to focus on the rights and
 (10) responsibilities as between the plaintiffs and the defendants
 (11) the Exxon defendants and Mr Hazelwood If necessary we'll
 (12) follow up with this a little bit more a little bit later
 (13) You may continue
 (14) MR CHALOS I've been preempted for a second Your
 (15) Honor
 (16) THE COURT Would you gentlemen please be seated so we
 (17) can continue?
 (18) MR NEAL We were trying to resolve a dispute Your
 (19) Honor so you wouldn't have to rule
 (20) MR O NEILL It was on your behalf Your Honor And
 (21) we did too
 (22) THE COURT But this is their time
 (23) MR O NEILL I understand and I apologize
 (24) MR NEAL I apologize
 (25) BY MR CHALOS

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- (1) Q Mr Delozier I would like to deal with Trooper Fox's notes
 (2) about his discussion with you on board the Exxon Valdez on
 (3) March 24 1989
 (4) I show you what's been marked for identification as Exhibit
 (5) 1625 and ask you have you seen this document before?
 (6) A No, I have not seen that document before
 (7) Q Mr Delozier have you had an opportunity to look at
 (8) Exhibit 1625?
 (9) A Yes I have
 (10) Q You said in an off the record comment you didn't know that
 (11) you were being interviewed Is that correct?
 (12) A That's correct I was not interviewed
 (13) Q To the best of your knowledge?
 (14) A I know I was not interviewed
 (15) Q Are you saying then that Trooper Fox's characterization
 (16) of his discussion with you is not correct?
 (17) A His characterization of this as being an interview is
 (18) incorrect
 (19) Q Do you have any reason to doubt the - the second to the
 (20) last paragraph where here where he says quote I put some
 (21) Moussy nonalcohol brew on my hands Delozier stated it
 (22) could be what he smelled on the captain's breath He also smelled it
 (23) directly from the bottle for comparison End quote
 (24) A And your question?
 (25) Q Do you doubt that that particular event took place that

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- (1) he's describing?
 (2) A Yes I did do have reason to doubt this
 (3) Q Are you saying that it didn't happen?
 (4) A I'm saying that I have no recollection of this occurring
 (5) Q By reading this does that help refresh your recollection?
 (6) A This document right here reflects in my opinion the
 (7) totality of what he observed and listened to during his stay
 (8) on
 (9) board the Exxon Valdez on the 24th This is not an interview
 (10) where he asked me to come talk discuss listen, et cetera
 (11) and
 (12) then conclude it This is an overall of what he observed
 (13) during it
 (14) Q I accept that -
 (15) A Okay?
 (16) Q - as being your characterization of what he calls an
 (17) interview?
 (18) A Yes
 (19) Q That's fine
 (20) A Okay
 (21) Q What I'm asking specifically is by reading the second to
 (22) the last paragraph -
 (23) A Uh huh
 (24) Q - does that refresh your recollection as to Trooper Fox at
 (25) some point during the day opening a bottle of Moussy putting
 (26) it on his hand and permitting you to smell it?
 (27) A I do not remember that occurring

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- (1) Q With respect to the testing that you spoke about the blood
 (2) alcohol testing you had mentioned the corpsman Connor had
 (3) come
 (4) on board
 (5) A Yes
 (6) Q And you knew Mr Connor did you not?
 (7) A Yes I did
 (8) Q You told him what you wanted done in terms of the blood
 (9) alcohol testing?
 (10) A Yes
 (11) Q After all the samples were taken you said that you wrapped
 (12) them up and gave them to Mr Connors
 (13) Could you observe the type of vials that were being used
 (14) for blood samples?
 (15) A Yes
 (16) Q What size vials were they?
 (17) A Test tube size
 (18) Q Were they all the same size?
 (19) A Yes
 (20) Q Did they have stoppers on top once the blood was - strike
 (21) that Were there stoppers on top of the vials?
 (22) A Yes
 (23) Q Were they all the same color or different colors?
 (24) A The vials that were in the tox kits were all the same
 (25) colors
 (26) Q You mean the stoppers?

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- (1) A Yeah the stoppers okay And Petty Officer Connors
 (2) brought out a kit of his own that included some vials but I
 (3) believe they were different color stoppers
 (4) Q How about the length? What was the length the same?
 (5) A I don't think they were the same but I'm not positive
 (6) Q Which ones were used in respect to the blood - let me
 (7) start again Which ones were used with respect to the blood
 (8) that was drawn from Captain Hazelwood?
 (9) A I don't remember
 (10) Q I now want to deal with the vials that were used for blood
 (11) sample taken from Captain Hazelwood with respect to Captain
 (12) Hazelwood?
 (13) A Umm hmm
 (14) Q Is it your testimony that you don't have a recollection of
 (15) which vials were used for his blood samples?
 (16) A I believe that we started out with the vials that were in
 (17) the tox kits I don't know if we used any additional vials for
 (18) Captain Hazelwood or not
 (19) Q At some point did you run out of vials from the tox kits?
 (20) A I believe the - if there were other vials that were used
 (21) in any of the other persons that were sampled it was
 (22) because
 (23) not enough blood was drawn into one of the vials and then
 (24) once
 (25) it was removed from the needle -
 (26) Q Yeah
 (27) A - it was held up and it was a determination done by Petty

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- (1) Officer Connors that he needs to take a little more okay'
 (2) So
 (3) because there's only, I think two vials per kit instead of
 (4) reinserting more blood into that one then he elected to use
 (5) another vial but I don't recall who or what mix or who got
 (6) which vial
 (7) Q Well do you have a recollection of that type of occurrence
 (8) happen to go Captain Hazelwood's blood samples?
 (9) A No I don't have a recollection that that did occur with
 (10) him
 (11) Q And he was the very first one that was done?
 (12) A Yes
 (13) Q Let me show you what's been previously designated as
 (14) number
 (15) 45 in the - this is like a commercial Wieliczkiwicz/
 (16) deposition Exhibit 1627 is a document entitled Compuchem
 (17) result of blood for Captain Joseph Hazelwood which is attached
 (18) one two three four five six seven pages dealing with the
 (19) chain of custody for the blood of Captain Hazelwood
 (20) Taking a look at page two according to the chain of custody
 (21) document the lab received three ten milliliters red stoppered
 (22) tubes of blood Do you see that?
 (23) A Yes I see that
 (24) Q Does that comport with your recollection of what color
 (25) stoppers were used for Captain Hazelwood's blood?
 (26) A Well, does that mean red blood or red stopper
 (27) Q Red stopper

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- (1) A Yes
 (2) Q Do you recall?
 (3) A It was more of a reddish brown Kind of like that color up
 (4) there on the - what's that wax? Maybe a little bit lighter
 (5) Q And that's what you recall the color being on the stoppers?
 (6) A Yes
 (7) Q Have you ever given a blood test to the Coast Guard?
 (8) A Sure
 (9) Q Do you know how they handle the vial vials in those
 (10) cases? Were they put in the refrigerator?
 (11) A No
 (12) Q They were not or you don't know?
 (13) A These are blood tests for a physical Annual physical
 (14) things of that nature
 (15) Q I see Have you ever handled a urine or a blood sample
 (16) before for any other marine casualty?
 (17) A No
 (18) Q I don't mean the actual physical taking but just the
 (19) handling of the samples themselves
 (20) A No
 (21) Q You ever observed samples being handled?
 (22) A Yes I have
 (23) Q Was there a procedure for handling samples at the marine
 (24) safety office?
 (25) A Yes

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- (1) Q And what was that procedure?
 (2) A I - there was a chain of custody You deliver or you -
 (3) the sample was taken under guidelines I don't recall
 (4) precisely what those guidelines were There was
 (5) safe-keeping
 (6) to ensure that the samples came from the individual that it
 (7) wasn't contaminated Then that - the vial was sterile before
 (8) the sample was taken
 (9) Once the sample was taken it was sealed Witnessed
 (10) Verified by the individual and placed in an appropriate
 (11) container and then safeguards under lock and key until
 (12) such
 (13) time as it could be sent out for testing
 (14) Q In the case of the Exxon Valdez who made the determination
 (15) as to whether in the safe keeping as respected whether the
 (16) vials themselves were contaminated or the samples themselves
 (17) were contaminated prior to sealing? Who made that
 (18) determination?
 (19) A The tox kits came as stated on the package or within the
 (20) package that they are, in fact, qualified and authorized for
 (21) this purpose That I assume means sterile and, you know,
 (22) good
 (23) fit and proper for the use that they're intended
 (24) Q And you satisfied yourself or did Mr Connors satisfy
 (25) himself that that was the case with respect to the kits on the
 (26) Exxon Valdez?
 (27) A I believe we were both satisfied with the integrity of the
 (28) tox kits prior to them being opened Once they were opened
 (29) and

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- (1) then after they were sealed
 (2) Q Now with respect to the procedure that you had at the
 (3) marine safety office for keeping these under lock key - lock
 (4) and key?
 (5) A Uh-huh Uh huh
 (6) Q What was that procedure?
 (7) A I don't know what the written procedure was I'm just
 (8) explaining from what I had observed it was the procedure
 that
 (9) it would be put in a refrigerator under lock and key and to
 (10) await being sent out to a testing lab
 (11) Q What was the purpose of putting these things under lock and
 (12) key in a refrigerator?
 (13) A To safe guard their integrity
 (14) Q So no one would tamper with them I take it?
 (15) A Yes
 (16) Q You testified that you directed Connors to take the sealed
 (17) kits to Lieutenant Sharp?
 (18) A What I said was Sharp I'm not certain I'm not certain
 (19) about his name It was - it started with an S
 (20) Q But in any event there was some officer that they were
 (21) supposed to be delivered to?
 (22) A Yes
 (23) Q Who was Lieutenant Gary Stock?
 (24) A That's the lieutenant I instructed Connors to deliver
 (25) these things.

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- (1) Q That's who you told him to deliver to?
 (2) A Yes
 (3) Q And the instructions you gave to Mr Connors were to take
 (4) these samples and turn them over to Lieutenant Stock?
 (5) A Yes
 (6) Q Did you give him any specific instructions on how to handle
 (7) the samples?
 (8) A No
 (9) Q Was there on March 24 1989 a refrigerator at Valdez for
 (10) the purpose of keeping these type of samples under lock and
 (11) key?
 (12) A There is a refrigerator that has a lock on it which is used
 (13) to put the samples that we take routinely from members of
 (14) Coast Guard The samples are placed in that refrigerator
 for
 (15) safe-keeping until they are either transported - well until
 (16) they're transported to a testing lab The actual refrigerator
 (17) is located in the ward room or the officers mess
 (18) Q When you told Connors to deliver these samples to
 (19) Lieutenant Stock in Anchorage did you expect him to keep the
 (20) samples either in his possession or under the lock and key in
 (21) the refrigerator?
 (22) A My only expectation to him was to safe guard them and to
 (23) deliver them to where I was instructed - strike that
 (24) My only expectation to him was to safe guard them and to
 (25) deliver them to where I instructed him to deliver them to

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- (1) unless he was countered In other words given another
 command
 (2) by someone superior to me directed otherwise I should say
 (3) Q Did you have an expectation that he would keep the samples
 (4) either with him in his physical possession or placed in a
 (5) refrigerator under lock and key when he -
 (6) A That was my expectation
 (7) Q Fine Did you on the morning of March 24 1989 have any
 (8) understanding as to whether the Coast Guard had the authority
 (9) to remove or relieve a master of his duty if that particular
 (10) person was found to be incapable of carrying out his duties as
 (11) a master?
 (12) A I was under the impression that if we found it necessary
 (13) for whatever the reason, that we may have the ability to do
 (14) so But I was not certain that that in fact was the case It
 (15) occurred that I felt or Tom Falkenstein felt actually me
 (16) recommending to him and then him pursuing it, then we
 would ask
 (17) the - recommend that to the CO for his decision
 (18) Q On the morning of March 24th 1989 when you and
 Lieutenant
 (19) Commander Falkenstein went out to the vessel were you acting
 (20) as representatives of the Coast Guard?
 (21) A Yeah Certainly
 (22) Q Now did you at any time on March 24th after you got to
 (23) the vessel ever recommend to Lieutenant Commander
 Falkenstein
 (24) that Captain Hazelwood be relieved of his duties because you
 (25) believed that he was impaired?

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- (1) A No
 (2) Q Mr Delozier on the morning of March 24th 1989 when you
 (3) had the opportunity to observe Captain Hazelwood did you
 (4) see - did you observe other than the smell of alcohol any
 (5) signs of impairment?
 (6) A No
 (7) Q On March 24th 1989 in your observations of Captain
 (8) Hazelwood did you observe any signs of intoxication other than
 (9) the smell of alcohol?
 (10) A No
 (11) Q Thank you Mr Delozier
 (12) MR O NEILL Your Honor -
 (13) MR CHALOS That concludes my cross examination
 (14) MR O NEILL The plaintiffs offer Exhibit 103
 (15) (Exhibit 103 offered)
 (16) MR RUSSO No objection
 (17) MR O NEILL The plaintiffs offer pages 4 5 6 9
 (18) 30 and 31 of Exhibit 130
 (19) MR RUSSO No objection
 (20) (Exhibit 130 Pages 4 5 6 9 30 and 31 offered)
 (21) THE COURT Let me play that back Pages 4 5 6 9
 (22) 30 and 31 of Exhibit 130
 (23) MR O NEILL Yes sir
 (24) THE COURT And there is no objection to that either?
 (25) These two exhibits are admitted

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- (1) (Exhibit 130 Pages 4 5 6 9 30 and 31 admitted)
 (2) MS HANSEN Good morning Your Honor This is Karen
 (3) Hansen for the plaintiffs The plaintiffs call Scott Connor by
 (4) video tape deposition
 (5) DIRECT EXAMINATION OF SCOTT CONNOR (video)
 (6) BY PLAINTIFF EXAMINER
 (7) Q I ask you state your name please sir?
 (8) A Scott M Connor
 (9) Q And how are you employed Mr Connor?
 (10) A I am a chief health services technician with the U S Coast
 (11) Guard
 (12) Q Where are you assigned?
 (13) A Currently assigned to Cleveland Ohio
 (14) Q How long have you been assigned to Cleveland?
 (15) A I have been in Cleveland now for two years four months
 (16) Q How long have you been in the service of the United States
 (17) Coast Guard?
 (18) A Been in the United States Coast Guard 17 years
 (19) Q How long have you been a chief health services technician?
 (20) A For two years five months
 (21) Q Two years
 (22) Well let me go back to the time of the Exxon Valdez
 (23) grounding in March of 1989 What was your position at that
 (24) time?
 (25) A My position at that time was - I was a first class petty

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- (1) officer health services technician I was the Coast Guard's
 (2) medical liaison at Elmendorf Air Force Base in Anchorage I
 (3) was responsible for the well being of -
 (4) Q Let me interrupt you I'm afraid you got a - you got
 (5) ahead of my note taking ability your position in March of 1989
 (6) was what? The title?
 (7) A Medical liaison
 (8) Q Medical liaison And I think you - you started off by
 (9) saying you were a first class -
 (10) A Petty officer at that time
 (11) Q First class petty officer And you were the medical
 (12) liaison?
 (13) A For the Coast Guard at Elmendorf air force base
 (14) Q At Elmendorf And Elmendorf air force base is outside
 (15) Anchorage I believe?
 (16) A In Anchorage
 (17) Q In Anchorage
 (18) What kind of things would you do on a day to day basis?
 (19) A Well I would assist the Coast Guard people with check in
 (20) check out procedures, making appointments, I did physical
 (21) exams
 (22) for the Coast Guard active duty people in the region to
 (23) include
 (24) Anchorage, Kenai, Valdez Assured medical contracts for
 (25) areas
 (26) or Coast Guard units within my area of responsibility were
 (27) in
 (28) order Health record - medical record maintenance things
 (29) of
 (30) that nature

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- (1) Q As part of - as part of those responsibilities did you
 (2) have occasion from time to time to draw blood samples?
 (3) A Occasionally I did
 (4) Q And in the interest of trying to expedite things I believe
 (5) you testified that that was - that that experience was in
 (6) connection with this Coast Guard urine testing program?
 (7) A Correct
 (8) Q All right Now as part of your - as part of your
 (9) corpsman training - and forgive me if you've already testified
 (10) to this - but I assume that as part of your corpsman training
 (11) you learned how to draw blood samples?
 (12) A Yes sir
 (13) Q By way of overview Chief Connor up to the present you
 (14) have any idea how many - how many blood samples you've
 (15) drawn
 (16) question mark?
 (17) A Thousands
 (18) Q And if you could characterize for us Chief Connor out of
 (19) these thousands of blood samples that you've drawn what was
 (20) the reason for the obtaining of the majority of those samples
 (21) if you can - if you can answer it that way?
 (22) A Routine blood chemistries
 (23) Q For Coast Guard personnel and their dependents?
 (24) A For anyone sir
 (25) Q But has most of your experience been with drawing blood
 (26) samples for Coast Guard personnel and their dependents?

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- (1) A No sir
 (2) Q What has - what has been the nature then of most of your
 (3) experience with blood samples?
 (4) A With the Navy
 (5) Q With the Navy all right
 (6) So - and I take it - let me - so in other words - not
 (7) that this is that important but most of your experience on
 (8) blood samples has involved U S Navy personnel and their
 (9) dependents is that a fair statement?
 (10) A Could I clarify it?
 (11) Q Sure please
 (12) A The most of my experience has been in working with large
 (13) Navy clinics where the opportunity to draw large volumes of
 (14) blood has been present regardless of whom came through
 (15) the
 (16) door
 (17) Q Let me move now into the - into the events of March 24
 (18) 1989 when you - when you were assigned to draw blood
 (19) samples
 (20) from certain members of - crew of the Exxon Valdez
 (21) And just - just to lead off into this line of questioning,
 (22) Chief Connor were you in fact assigned on March 24 1989 to
 (23) obtain blood samples from certain members of the crew of the
 (24) Exxon Valdez?
 (25) A Yes, sir
 (26) Q And if you would, sir just tell us how that came about?
 (27) A I was directed by Commander McCall, commanding
 (28) officer of

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- (1) marine safety office of Valdez to - to dispatch to the Exxon
 (2) Valdez with ample materials to draw blood samples
 (3) Q Were - were you in Valdez at the time?
 (4) A Yes sir
 (5) Q And were you there on one of these periodic visits that you
 (6) have previously testified about?
 (7) A Yes, sir
 (8) Q What specifically did Commander McCall ask you to do?
 (9) A He asked me to gather up the necessary equipment
 needed to
 (10) draw blood samples for if possible alcohol and drug
 testing
 (11) Q Did he tell you which crew members you were to draw from?
 (12) A No, sir
 (13) Q Do you - do you recall from whom you drew the samples
 (14) which crew members?
 (15) A Yes, sir
 (16) Q And who - who were they?
 (17) A Captain Hazelwood Gregory Cousins Mr Kagan, I
 believe
 (18) Robert Kagan And Maureen Jones
 (19) Q And at what point did you - at what point did you become
 (20) aware that you were to draw the samples from those four
 (21) specific people?
 (22) A I - that was brought to my attention by either Lieutenant
 (23) Commander Falkenstein - I believe Lieutenant Commander
 (24) Falkenstein when I reported to them in the master's
 quarters on
 (25) board the Exxon Valdez

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- (1) Q Did Commander McCall indicate to you in either
 conversation
 (2) in any fashion that there was any suspicion that - that drug
 (3) or - drugs or alcohol may have had some role in the Valdez
 (4) grounding?
 (5) A Specifically, sir?
 (6) Q Specifically yeah
 (7) A No, sir
 (8) Q Now what did you have - I take it you didn't have the
 (9) necessary equipment with you at the time of your first
 (10) conversation with Commander McCall did you?
 (11) A No, sir, I did not
 (12) Q What did you have to do in order to gather up the necessary
 (13) equipment?
 (14) A I contacted the - the blood - the laboratory at Elmendorf
 (15) Air Force Base and spoke with one of the lead technicians
 to
 (16) make sure that - that I knew where I - I needed that the
 (17) specific equipment that I needed for sample gathering And
 (18) then I went to Valdez community hospital and requested
 those
 (19) supplies
 (20) Q Okay And what - what supplies were those what did
 (21) you - what did you gather up?
 (22) A I needed blood gathering vacutainer tubes vacutainer
 (23) holder vacutainer needles iodine prep pads band aids
 (24) Tourniquet
 (25) Q All right Were you able to - to obtain all the equipment

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- (1) that this individual at Elmendorf had - had told you to get?
 (2) A Yes sir
 (3) Q Is it your recollection that you picked up both gray
 (4) stopper tubes and red stopper tubes at the hospital?
 (5) A It is
 (6) Q Okay Now but you can't recall the exact number sitting
 (7) here today?
 (8) A No
 (9) Q Okay Do you recall what size the tubes were that you
 (10) picked up from the hospital?
 (11) A I believe they were seven millimeter - milliliter
 (12) Q And that's what you've previously testified is it not?
 (13) A Yes Yes
 (14) Q All right Were both the gray stopper and the red stopper
 (15) the same size?
 (16) A To the best of my knowledge
 (17) Q I'm talking now only about the tubes that you picked up at
 (18) the hospital?
 (19) A Correct To the best of my knowledge
 (20) Q All right Now I don't know if - if Mr Thomas has
 (21) gotten into this but if he has, you can tell me Did the gray
 (22) stopper tubes have sodium fluoride in the bottom?
 (23) A Yes Yes
 (24) Q Can you tell us what the sodium fluoride is used for?
 (25) A Sodium fluoride stabilizes the blood so it will not

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- (1) metabolize alcohol while it's sitting
 (2) Q In any event you knew before you went out Valdez that day
 (3) that any samples that you took that would be tested for alcohol
 (4) had to be put into tubes with the sodium fluoride?
 (5) A And a gray stopper
 (6) Q How did you get out to the Exxon Valdez chief?
 (7) A In the helicopter, sir
 (8) Q I believe we've covered the events up to the point of going
 (9) aboard the Exxon Valdez Let me just ask you Chief Connor to
 (10) tell us - to tell us what happens immediately after you
 (11) arrived aboard the Valdez Who did you see where did you
 go?
 (12) A The - the helicopter landed on the deck of the ship, and I
 (13) was met by a crewman, brought up to the passageway
 where the
 (14) master's ship captain's quarters were off of At that point I
 (15) saw Lieutenant Commander Falkenstein He showed me in
 (16) Mr Delozier was there They explained to me that I was
 going
 (17) to draw blood samples on these individuals and at that time
 (18) Cousins Kagan and Jones was sitting
 (19) Q What - let me break it up then What do you recall
 (20) Mr Falkenstein or Lieutenant Commander Falkenstein telling
 (21) you you know up to the point - in this initial stage before
 (22) you actually began drawing the blood samples?
 (23) A I don't recall anything other than hi doc Good to see
 (24) you this morning
 (25) Q Same question about Mr Delozier Do you remember the

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- (1) substance of anything Mr Delozier might have said?
 (2) A Mr Delozier pointed out that these mishap testing kits
 (3) blood and urine testing kits they found on the - they were
 (4) already there on the ship He asked me to look over
 (5) everything see if there s anything else I needed And asked
 (6) me again asked me if there was anything else I needed and
 he
 (7) went - he went and got Captain Hazelwood
 (8) Q The master?
 (9) A Who was not in the room at that time
 (10) Q I may have jumped over this Do you have - what s your
 (11) best recollection of about what time you arrived aboard the
 (12) Exxon?
 (13) A Mid morning ten 10 30 around there
 (14) Q Was it your intention to get these samples and get off the
 (15) ship as quickly as possible?
 (16) A Yes sir
 (17) Q Did you have a helicopter standing by for you as soon as
 (18) you finished to get back?
 (19) A I - I believe that the helicopter w is shut down and just
 (20) waiting for me to finish
 (21) Q Who did you see up there?
 (22) A Mr Delozier Lieutenant Commander Falkenstein
 (23) Q When you spoke to Mr Delozier and Mr Falkenstein did
 (24) they tell you what they wanted you to do?
 (25) A They didn't tell me what I wanted to do They said you're

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- (1) here - oh great you came out to draw the blood samples
 (2) That really wasn't a direction I had
 (3) Q What did you do next?
 (4) A Mr Delozier had explained to me whom I was going to
 draw
 (5) blond samples from and what had been done He said these
 kits
 (6) were found on board these mishap
 (7) Q Now after he gave you the tox kits can we call them tox
 (8) kits?
 (9) A Sure
 (10) Q What you call the mishap kits can we use the word tox
 (11) kits?
 (12) A Yes sir
 (13) Q You agree they re the same You can use that term
 (14) interchangeably?
 (15) A Well, that's your term and I'll follow along I know what
 (16) you're saying
 (17) Q Okay Well any way you ve got the tox kits now from the
 (18) ship and you ve got what you brought out with you?
 (19) A Yes
 (20) Q What did you do next?
 (21) A I took out some of the materials that I brought with me to
 (22) augment the kits to add to the kits And there were some
 (23) additional - there were additional kits there I went through
 (24) those - I went through what was with the kits and I added an
 (25) additional gray topped tube to the kits

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- (1) Q Let s stop a second Let me ask you this When you say
 (2) they were laid out where were these kits laid out?
 (3) A On the desk
 (4) Q On the captain s desk?
 (5) A Yes sir
 (6) Q All right Now let s talk about the size of the vials
 (7) from the kit What were the sizes of those vials?
 (8) A They were larger than the ones I brought
 (9) Q Do you recall previously testifying that they were 15
 (10) milliliters?
 (11) A Yes sir
 (12) Q Okay Is that your recollection?
 (13) A Yes sir
 (14) Q Okay And that s both the gray stopper the red stoppered
 (15) tubes The red stoppered tubes that you took out of the kit
 (16) were - they 15 milliliters as best as you recall?
 (17) A I have stated in previous testimony that yes However I
 (18) believe they were not And I have been shown that they
 were
 (19) not
 (20) Q But you did testify you gave the answers that I read to
 (21) you previously from the trial did you not?
 (22) A Yes
 (23) Q Did you attempt at that trial to express that that is the
 (24) doubts that you had -
 (25) ATTORNEY COLLOQUY What do you mean attempt

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- (1) Q Much the same way you re doing today Do you want to -
 (2) A No not as forcefully as I am today
 (3) Q Okay What was it - sorry What is it that you -
 (4) A Well it's been quite evident to me over the last three
 (5) years that the - the size of the tubes has gone from beyond
 (6) their intended purpose and functionality to an extremely
 (7) important point Everybody keeps asking, everybody keeps
 (8) bringing it up everyone keeps beating on the exact size of
 (9) these took place You're talking of milliliters we're talking
 (10) minor amounts Now, when I went to lab school in a small
 tube
 (11) and a large tube a seven millimeter and a 15 millimeter that
 (12) twice the size plus a milliliter than the small tube
 (13) And when I was asked early in the stages on the size of the
 (14) tubes it just came - just floated right to the top, 7
 (15) milliliter and 15 milliliter 'cause one tube was significantly
 (16) larger than the other Was one six was one 14, was one six
 (17) and one 12 - I can't tell you, I didn't read the labels All
 (18) I assured was I had a gray stopper and a red stopper Made
 (19) sure that the integrity of the glass test tube was intact, that
 (20) there was a vacuum in there that they drew blood properly,
 (21) that the sodium fluoride was in fact located in the
 gray-topped
 (22) tube as specified by the color designation of the stopper
 (23) Were the tubes from the same manufacturer? Probably
 not
 (24) There are multiple manufacturers of this piece of laboratory
 (25) equipment Testing equipment

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- (1) Is there a possibility that I incorrectly stated the size
 (2) of the tubes? At this point I believe there's a hundred
 (3) percent chance that I misstated the size of at least one of
 (4) those tubes, be it the 15 or the 7 The 15 may have been a
 12,
 (5) it may a 14 was I hundred percent sure then? No All I was
 (6) using was instant recall of what I had been exposed to as
 from
 (7) my initial training and working in laboratory settings and
 (8) drawing blood in the Coast Guard and Navy clinics air force
 (9) clinics, wherever I may have been
 (10) Was the overall characteristics of the tubes different?
 (11) Yes, to a degree
 (12) Were they each made out of glass? Did they each have a
 (13) rubber stopper? Yes they did
 (14) Q And was one of them bigger than the other?
 (15) A One of them was bigger than the other Exactly to the
 (16) milliliter or cc, I can't tell you
 (17) Q Well -
 (18) A And I probably - and I know - I know because the
 (19) reiteration on this particular item is so intense that I know I
 (20) screwed the answer up I didn't get it right
 (21) Q I believe you testified that Mr Delozier went and
 (22) retrieved Captain Hazelwood just for purposes of getting into
 (23) this You obtained - you did in fact obtain the blood samples
 (24) or draw the blood samples from the four individuals you -
 (25) you've identified correct?

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- (1) A Yes sir
 (2) Q Do you recall what - what order you went in?
 (3) A The best of my recollection Captain Hazelwood Gregory
 (4) Cousins Robert Kagan, and Maureen Jones
 (5) Q All right Are you certain at least that Captain Hazelwood
 (6) was the first individual whose - whose blood you drew?
 (7) A Yes sir
 (8) Q And I believe you've also referred to the on board - the
 (9) on board testing kits that Mr Delozier brought to your
 (10) attention Did you - did you then examine those on board
 (11) kits?
 (12) A Yes, sir
 (13) Q And what - I'm sorry Chief Connor I've forgotten the
 (14) term you use today refer to them What - what term did you
 (15) use to refer to them?
 (16) A Vacutainer systems or the kit itself
 (17) Q The kit itself, which one of the crew members did you
 (18) test - take blood from first?
 (19) A Captain Hazelwood, sir
 (20) Q Did someone - was Captain Hazelwood there when you first
 (21) went into his office?
 (22) A No, sir
 (23) Q Did someone go to get him?
 (24) A Yes, sir
 (25) Q And did Captain Hazelwood come to give blood?

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- (1) A Yes sir
 (2) Q Did he resist giving blood?
 (3) A No sir
 (4) Q Was he cooperative in giving you his blood?
 (5) A Yes sir
 (6) Q Tell me what you did as far as Captain Hazelwood was
 (7) concerned what did you say to him?
 (8) A I just explained to him what I was doing that I was going
 (9) to be taking some blood samples and that was it He just -
 (10) go ahead and put his arm up there and I drew three tubes of
 (11) blood from him
 (12) Q Okay
 (13) A I explained - you know, I explained the procedure, you
 (14) know, what I was doing step by step as what and why I was
 doing
 (15) what I was doing And I collected the blood samples and
 made
 (16) sure the information was on the side of the tubes, sealed
 the
 (17) top of the tubes, made sure that he identified the tubes
 (18) Had him sign the form that accompanied the kits, that these
 (19) in fact were my samples and I signed it he signed it,
 (20) initially, witness signed it and this is folded up and placed
 (21) with the samples and the lid was put on
 (22) Q Okay Did you do that immediately after you took the
 (23) samples?
 (24) A Yes sir
 (25) Q Let's back up a second You say that you sealed - after

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- (1) you took the blood -
 (2) A Uh huh
 (3) Q - You sealed the tubes?
 (4) A Yes, sir
 (5) Q How did you do that? Would you describe that?
 (6) A Each kit came where a - a number seals security seals
 on
 (7) a strip of paper about like - like that I guess (indicate)
 (8) Q The seals themselves had a number?
 (9) A I don't recall that there was a number on the seal I
 (10) recall there was writing I recall that they were orange, I
 (11) recall that they had a bunch of scores or cuts on them
 'cause
 (12) they were very hard to get off to make sure they came off in
 (13) one piece
 (14) Q Yes
 (15) A And I placed that after cleansing the top of the stopper on
 (16) the - on the blood tubes, I placed a security seal completely
 (17) around so it encased the plastic top and the glass
 (18) Q Now after you sealed the tubes in the manner that you
 (19) described with respect to Captain Hazelwood -
 (20) A Uh huh
 (21) Q - did you put anything else on the tube?
 (22) A I believe not The tubes already had a decal on it it
 (23) adhered on it
 (24) Q The decal being for the person's name?
 (25) A To put the person's name and social security number?

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- (1) A Yes
 (2) Q Okay And did you in fact put the captain's name and the
 (3) social security number?
 (4) A Yes
 (5) Q Okay
 (6) Did you take the blood from Mr Cousins the same way that
 (7) you took from Captain Hazelwood?
 (8) A Yes sir
 (9) Q Okay I neglected to ask you this You said you took five
 (10) vials of blood from Captain Hazelwood?
 (11) A Yes sir
 (12) Q Did you take three vials of blood from each crew member?
 (13) A Yes sir
 (14) Q In this case you took two gray stoppered vials and one red
 (15) stoppered?
 (16) A Yes sir
 (17) Q Was there a particular reason why you took two gray
 (18) stoppered vials?
 (19) A Yes sir
 (20) Q What was that?
 (21) A I - I personally felt - this was not a direction that was
 (22) given to me -
 (23) Q Yes
 (24) A - but I personally felt due to the severity of the
 (25) situation -

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- (1) Q Yes
 (2) A - I knew this was going to be sent to a lab and I knew
 (3) that if it tested positive that it would be sent to an
 (4) additional independent lab for retest for reconfirmation -
 (5) positive or negative
 (6) Q Yeah
 (7) A There was only enough room in that box to put three
 (8) tubes
 (9) of blood I opted to use a gray topped tube as an additional
 (10) simple because it could when my - my mind set was that
 (11) the
 (12) gray topped tube could be used either for alcohol or drug
 (13) testing if one of the others had shown positive And there
 (14) would be an unopened sealed specimen that could be dealt
 (15) with
 (16) units closer scrutiny if necessary
 (17) Q Chief tell me with respect to Captain Hazelwood the sizes
 (18) that you recall of the tubes containing his blood
 (19) A I recall that - to the best of my knowledge the
 (20) three tubes that I use for Captain Hazelwood were all the
 (21) same
 (22) size
 (23) Q What were the sizes?
 (24) A They were the larger
 (25) Q Let me - let me withdraw that question and ask you a
 (26) follow-up to your previous answer
 (27) You said that with respect to Captain Hazelwood you have a
 (28) recollection of using three tubes of the same size?
 (29) A Yes, sir

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- (1) Q Where did those three tubes of the same size come from?
 (2) A I used - I used tubes from the - your description the
 (3) tox - the tox kits
 (4) Q Uh huh?
 (5) A I used the other equipment from them Those I just
 (6) cannibalized some of the other nicer tubes easier to
 (7) handle
 (8) Q So it's your testimony that you used three tubes - sorry
 (9) Two gray stoppered tubes and one red stoppered tube from the
 (10) kits when you took Captain Hazelwood's samples?
 (11) A Yes I believe - yes sir
 (12) Q Thank you
 (13) And the kits themselves only contain one red stoppered tube
 (14) and one gray stoppered tube?
 (15) A Yes sir that's correct
 (16) Q So you used an extra tube from another kit is that your
 (17) recollection?
 (18) A Yes sir
 (19) Q What is it and how did you do the other crew members did
 (20) you do it the same way?
 (21) A The same way However with particularly Mr Kagan I
 (22) remember missing missing his vein When you do that you
 (23) foul
 (24) a tube Throw the tube away
 (25) Q Yes
 (26) A And I ran out of extra tubes from the tox kits and I began
 (27) to use some of the material that I brought

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- (1) Q Let's go back to the ship We're back on the Exxon
 (2) Valdez
 (3) Now you said you took the samples from Captain Hazelwood
 (4) and the rest of the crew members and you put everything in
 (5) individual - in the individual tox kits
 (6) A Yes sir
 (7) Q The Styrofoam tox kits?
 (8) A Upon the completion of drawing the samples on each
 (9) individual
 (10) Q Yeah
 (11) A Each kit was fully sealed
 (12) Q Okay
 (13) A They were not all laid out all the blood drawn and then
 (14) all sealed up
 (15) Q I see
 (16) A There was a complete evolution per person
 (17) Q Okay What did you use to seal the Styrofoam box?
 (18) A The Styrofoam was two shells, top and bottom, and I used
 (19) these orange security seals, one went on each end of the -
 (20) Q Of the Styrofoam box?
 (21) A Right It covered the break the joint and the two
 (22) Styrofoam piece
 (23) Q Did the orange security seals come from the tox kits
 (24) themselves?
 (25) A Yes, sir

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- (1) Q And then ultimately on the outside of the Styrofoam boxes
 (2) were the orange color seals – that is the blood tubes and the
 (3) outside?
 (4) A To the best of my knowledge yes sir
 (5) Q Now with respect to the box that you had – did you make
 (6) any attempt to put the samples into a secured refrigerator?
 (7) A Yes sir
 (8) Q What happened? What happened?
 (9) A There – nobody had any keys and the individual that had
 (10) the keys was on one of the Coast Guard boats that was out
 doing
 (11) the security perimeter around the Exxon – around the ship,
 the
 (12) Exxon Valdez
 (13) Q Okay There was a refrigerator at MSO Valdez for the
 (14) purpose of putting samples?
 (15) A Oh, yes, sir
 (16) Q Okay And that particular refrigerator had a lock on it?
 (17) A Had a simple hasp and a brass government-issue lock
 yes,
 (18) sir
 (19) Q Had you ever use that had refrigerator before?
 (20) A No sir
 (21) Q Based on your training and handling the blood samples and
 (22) you re samples was it your understanding that these samples
 (23) in order to preserve the chain of custody had to be placed in
 (24) a refrigerated – in secured refrigerator?
 (25) A Formal training, no Up to that point any drug testing I

- (1) A I was fortunate Yes sir
 (2) Q All right What did you do with the box once you got into
 (3) the room?
 (4) A I put it up on top of the window sill
 (5) Q Was the window open at that time?
 (6) A Yes sir
 (7) Q How long did you stay in the room?
 (8) A For about an hour hour and a half
 (9) Q You stayed directly in the room?
 (10) A Yes, sir
 (11) Q Did you leave the room at all?
 (12) A During this period of time?
 (13) Q Yes
 (14) A No, sir
 (15) Q Did you leave the room subsequently?
 (16) A Yes
 (17) Q Where did you go?
 (18) A I went back to the base, back to the MSO
 (19) Q Did you take the box with you?
 (20) A Yes, sir
 (21) Q Did you leave the box on the window sill unattended at any
 (22) time?
 (23) A No sir
 (24) Q You took the box with you back to MSO?
 (25) A Yes sir

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- (1) did with Coast Guard personnel the samples were placed in
 a
 (2) box in the mail the U S Mail No special handling or
 (3) anything
 (4) Q How about if you had to keep them overnight for some
 (5) reason?
 (6) A Then yes, they should be – it is – advised for them to be
 (7) secure
 (8) Q And secure meaning put into a locked refrigerator?
 (9) A Place them in an area where they would not be tampered
 or
 (10) potentially tampered with
 (11) Q Or accessible to people that – that aren't authorized to
 (12) have access is that what you're saying?
 (13) A Yes sir
 (14) Q Now when you found that the refrigerator was locked and
 (15) the man with the key was gone what did you do next?
 (16) A I held on to them
 (17) Q Okay What time did you leave MSO Valdez?
 (18) A I believe around four or five in the afternoon
 (19) Q Where did you go?
 (20) A I went and checked in at my hotel
 (21) Q Had the samples with you at that point?
 (22) A Yes, sir
 (23) Q Okay Still in that box?
 (24) A Yes, sir
 (25) Q Did you get a room?

- (1) Q What do you do with the box after a while?
 (2) A After – after a considerable amount of time, in excess of
 (3) eight o'clock in the evening, at this point, I brought the box
 (4) down to the galley and I walked in the galley and walked into
 (5) the walk in reefer
 (6) Q Was that open?
 (7) A Yes sir
 (8) Q You have been using the word or you have been using the
 (9) word reefer throughout today's deposition Again because I'm
 (10) not sure we ever got a definition on that what is a reefer?
 (11) A Reefer is a walk in refrigerator
 (12) Q What did you do when you walked into the –
 (13) A I walked into the reefer and I put the box on the lower
 (14) shelf just over in the corner of the walk in reefer Put it
 (15) there it was all closed up made sure everything was in
 there
 (16) made sure it was closed up and put it in there and I
 remember
 (17) asking the cook on my way out just make sure he locks the
 (18) reefer before he closes the galley down for the evening
 And
 (19) from there I went back to my hotel room
 (20) Q So the next morning you came back and you picked up?
 (21) A The box
 (22) Q – the box?
 (23) A Yes, sir
 (24) Q What did you do with it then?
 (25) A Put it under my arm, I grabbed my bag and I said
 good bye

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- (1) Q What time was this?
 (2) A Must have been close to eight
 (3) Q In the morning?
 (4) A Yes sir
 (5) Q Where did you go?
 (6) A To the airport
 (7) Q And did you fly to Anchorage?
 (8) A Yes sir
 (9) Q Where did you go from Anchorage?
 (10) A I went from the airport my wife picked me up I went
 (11) home
 (12) Q Took the box with you home?
 (13) A Took the box of samples home
 (14) Q Did you put it in your refrigerator?
 (15) A Yes sir
 (16) Q How long did you keep it in your refrigerator?
 (17) A At least two hours
 (18) Q What did you do in the interim?
 (19) A I contacted Commander Moran -
 (20) Q What did he say?
 (21) A - a while later and he told me to gather up the samples
 (22) and proceed to the marine safety office in the federal
 (23) building
 (24) and meet Lieutenant Stocks [sic] He would be there
 (25) waiting
 (26) for me and he would take care of the samples at that point
 (27) Q Did you proceed to Lieutenant Stock's office?

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- (1) A Yes sir
 (2) Q Who did you understand Lieutenant Stock to be?
 (3) A Lieutenant Stock, I believe was chief of investigations
 (4) I believe I may be incorrect in that but trying to picture
 (5) his desk and the placard on his desk and the sign I believe
 (6) Q Did you - tell me what you said to Lieutenant Stock and
 (7) what Lieutenant Stock said to you
 (8) A What I recall Lieutenant Stock saying was I let me see
 (9) what
 (10) you have And I gave him the four Styrofoam containers
 (11) And
 (12) he signed a change of custody on the outside of the
 (13) container
 (14) (11) on each one, and also there was another custody form that
 (15) he
 (16) had that he signed and I signed
 (17) Q Is that the -
 (18) A Yes, sir
 (19) Q And that's a two page document entitled chain of custody
 (20) card enclosed with equipment It says the case title Exxon
 (21) Valdez item description sealed blood stroke urine samples for
 (22) Joseph Hazelwood Do you have that a copy in front of you?
 (23) A Yes sir
 (24) Q Is that your handwriting on right here where it says
 (25) signature the first signature?
 (26) A That's my signature sir
 (27) Q That your social security number above it?
 (28) A Yes, sir
 (29) Q Is that the first time you saw this particular chain of

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- (1) custody form?
 (2) A Yes sir The time I signed it?
 (3) Q Yes
 (4) A Yes sir
 (5) Q Do you - did you have any further discussion with
 (6) Lieutenant Stock about the samples?
 (7) A No sir
 (8) Q How long did your conversation take - take all together?
 (9) A Oh my total time in the marine safety office was no more
 (10) than a half hour
 (11) Q All right Did you have anything more to do with the
 (12) samples after you gave them over to Lieutenant Stock?
 (13) A No sir
 (14) Q Do you have any knowledge as to once the seal was applied
 (15) to the tube itself whether the seal could be removed without
 (16) being torn?
 (17) A No way
 (18) Q No way that it could be removed without being torn?
 (19) A No way
 (20) Q And why do you say that?
 (21) A Because if I couldn't get it off with my finger nobody was
 (22) getting off of that glass
 (23) Q You mentioned placing the samples in the reefer in the
 (24) galley?
 (25) A Yes sir

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- (1) Q Okay When you went to pick up those samples did you
 (2) inspect them to see if anyone had disturbed the tubes?
 (3) A Yes sir
 (4) Q And what did you find?
 (5) A That - the box hadn't even been opened
 (6) Q Did you look inside the box?
 (7) A Yes sir
 (8) Q Did you look at the tubes?
 (9) A No sir
 (10) Q Did you just look at the box itself?
 (11) A Yes sir The Styrofoam boxes had security seals - seals
 (12) in place still attached to the same ones that I had put in
 (13) place hours prior to
 (14) Q What type of seals was it again that you had put on the
 (15) Styrofoam boxes?
 (16) A These same seals that were on the blood tubes
 (17) themselves
 (18) these same self-destructing seals when tampered with
 (19) Q The orange seals that you had gotten from the tox kits?
 (20) A Yes sir
 (21) Q And you inspected the boxes and found those seals to be
 (22) intact?
 (23) A Yes sir
 (24) Q And again when you - picked the boxes up from the reefer
 (25) in the galley where did you take them next?
 (26) A I went upstairs said good bye, went out the door, went to

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- (1) the airport flew home
 (2) Q Did you have the boxes with you throughout that?
 (3) A Yes, sir, on my lap
 (4) Q Now when you met with Mr. Stock, did he break the seals on
 (5) the boxes?
 (6) A No, sir
 (7) Q Did he look at the tubes themselves?
 (8) A No, sir
 (9) Q He looked at the Styrofoam boxes?
 (10) A Yes, sir
 (11) Q And were you there when he was looking at the styrofoam
 (12) boxes?
 (13) A Yes, sir
 (14) Q And again, were the seals – did they appear to be intact?
 (15) A Yes
 (16) Q Did you look at each box?
 (17) A Yes, sir
 (18) Q Did you look at each seal?
 (19) A Yes, sir
 (20) Q And each seal to be intact?
 (21) A Yes, sir
 (22) Q Did you see any alcohol aboard the ship?
 (23) A Open empty containers, yes, sir
 (24) Q What did you see?
 (25) A I believe that I saw an open bottle meaning that the seal

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- (1) had been broken of Jack Daniels and empty beer cans in
 the
 (2) trash because I was throwing things in the trash. But for
 (3) some reason I recall seeing on the shelf a bottle of Jack
 (4) Daniels. I did not ask where it was from – I didn't care. It
 (5) wasn't my business. It was just for some reason I recall
 (6) seeing it there.
 (7) Q And if I was to test your recollection, I know you said
 (8) earlier that a lot of time has gone by. I mean, could you give
 (9) me with a hundred percent certainty that there was a bottle on
 (10) the shelf?
 (11) A Absolutely 100 percent sure, no, sir. But when I – when I
 (12) think back and I close my eyes and I visualize the room and
 (13) how it was laid out and the desk and the couch and the
 doorway
 (14) or the hatch into the – the captain's bedroom where
 (15) Mr. Cousins and Kagan were seating – seated where
 Maureen
 (16) Flowers [sic] was seated on the opposite side of the room
 (17) Q Maureen Flowers?
 (18) A Oh, yeah, Jones, Jones. Why do I keep thinking
 Flowers?
 (19) Q I don't know. Were there any flowers in the room?
 (20) A I know why I do that, but that doesn't have anything to do
 (21) with this.
 (22) Q Okay.
 (23) A But I just – for some reason I can recall it sitting there
 (24) like – you just know, you know. You see something and it
 (25) sticks in your mind and like, damn, that's trouble.

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- (1) Could I give you my impression of it?
 (2) Q Sure
 (3) A It was like what my dad found in my drawer of my desk
 Out
 (4) there for everybody to see. And you knew it was trouble
 (5) attached to it, but who am I to ask
 (6) Q At – what was it again that you believe you saw in the
 (7) trash can in the master's cabin?
 (8) A Beer cans, sir
 (9) Q Describe what you saw. Was it in the cabin or in the
 (10) office?
 (11) (Noise in video)
 (12) Q Was it in the room where you were taking your blood or
 (13) was in the another room?
 (14) A No, it was in the same room that I was drawing the blood
 (15) samples
 (16) Q So whatever that room?
 (17) A Whatever you want to designate that as, that's –
 (18) Q And what did you see?
 (19) A There were, I saw empty beer cans in the trash
 receptacle
 (20) yes, sir
 (21) Q Now, did you ever report what you saw in the trash can to
 (22) anybody?
 (23) A No, sir
 (24) Q Prior to this deposition?
 (25) A No, sir. First time I ever mentioned it.

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- (1) Q And you knew that the subject of whether someone had been
 (2) drinking alcohol was an issue that was being inquired into by
 (3) the Coast Guard?
 (4) A Yes, sir
 (5) Q In light of that, why did you not tell any of those who you
 (6) worked for or with about your observations?
 (7) A One, I never – it never occurred to me that nobody else
 (8) knew. Two, nobody ever asked.
 (9) Q You say it never occurred to you that nobody else knew. Is
 (10) that because what you saw was open and obvious?
 (11) A Yes, sir
 (12) Q You testified about the bottle of Jack Daniels that you saw
 (13) on the shelf in the captain's quarters. Where was this shelf?
 (14) A It was on the forward bulkhead.
 (15) Q Okay. Was that where the desk was as well?
 (16) A The desk was located forward, forward port quadrant of
 the
 (17) room. You split the room in fours, it would be forward port
 (18) Right there.
 (19) (Noise in video)
 (20) Q Okay. And this was in the where was the shelf again? I'm
 (21) sorry.
 (22) A It was along the forward bulkhead.
 (23) Q Okay. Is that where the couch was?
 (24) A Yes, sir.
 (25) Q It was a shelf above the couch?

Vol 11 1410

- 1 A Yes It was not - wasn't a shelf - It was a shelf but
 2 I think we've got two different interpretations here It was
 3 built into the structure of the ship It was not a free hung
 4 wall shelf The bulkhead went up went in and continued up
 5 So that would provide a horizontal surface that I am stating
 6 to
 7 be a shelf Was a cabinet I can't recall? Was it a heat
 8 register I can not recall But it was not part of the steel
 9 superstructure that directly led to the outdoors
 10 Q Okay How high up was this what you're calling a shelf?
 11 A Four foot
 12 Q Do you recall what else was on this shelf?
 13 A There were - there were the additional tox kits that I -
 14 that had been brought to me They were separate from the
 15 desk
 16 Q Okay
 17 How long was the shelf?
 18 A Oh it was the length of the room I - no I'm not sure
 19 if it went the full length of the room or if it stopped and
 20 there's where the couch started I can't - I can't
 21 specifically recall
 22 Q Would you have an estimate in feet of how long the shelf
 23 was?
 24 A Four five six
 25 Q Okay When you first came in the room - well let me
 26 withdraw that When did you first notice this bottle of Jack
 27 Daniels?

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- 1 A When I walked into the room
 2 Q Okay At that time was there anything else on the shelf?
 3 A I don't recall
 4 Q Where did the bottle sit in relation to the shelf? Was it
 5 in the middle was it off to one side?
 6 A It was off to the - facing the shelf It was off to the
 7 right side
 8 Q Was it in the corner on the right side?
 9 A I don't know sir I mean at this point it could have been
 10 a lava lamp, but for some reason I just recall seeing a bottle
 11 of Jack Daniels sitting there You know I hope I just don't
 12 have this superimposed with some other event in my life
 13 Q What makes you think it was a Jack Daniels bottle?
 14 A Because it had a black label
 15 Q Were you able to read the printing on the label?
 16 A I don't recall if I specifically did
 17 Q Okay You said it was open because you could see that it
 18 was torn the paper seal had been torn?
 19 A Because it had less than - it was less than full
 20 Q Okay Do you recall - say it was less than full?
 21 A No, sir, I don't recall what the volume was
 22 Q How big of a bottle was this?
 23 A No idea It was more than an airplane nip and it was not a
 24 half gal on
 25 Q You said you saw and you thought damn that was trouble

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- 1 Why did you think that?
 2 A There is a ship on the rocks and oil is bubbling out of the
 3 side and I'm brought into the captain's quarters and there's
 4 a
 5 bottle whiskey bourbon on the shelf
 6 Q You also said you saw some empty beer cans in the trash?
 7 A Yes sir
 8 Q Can you describe the beer cans at all?
 9 A Open empty - I think I know what kind they were
 10 Q What kind do you think they were?
 11 A I'm also positive but I'm not a hundred percent sure
 12 Q So what kind do you think they were?
 13 A I think it was Meisterbrau I think I just recall Jesus
 14 what's he drinking that crap for (indicating)
 15 Q Do you recall having that thought when you saw the bottles?
 16 A The cans
 17 Q The cans excuse me
 18 A That it was cheap beer yes sir
 19 Q Do you recall how many cans were in the trash?
 20 A No sir I didn't do a count
 21 Q Now you said you were throwing things in this trash can?
 22 A Yes sir
 23 Q So were you pretty close to these cans?
 24 A Oh yes
 25 Q Was your view of these cans obstructed in any way?
 26 A No sir

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- 1 Q Where was this trash can located?
 2 A Well the desk was here and the trash can was - it was not
 3 alongside of the desk it was sort of off and up against the -
 4 the wall that - the bookcase heat register whatever that
 5 was,
 6 it was up against there because I could stand there and just
 7 throw the stuff right now And I don't recall moving the
 8 trash
 9 can myself
 10 Q Were you throwing things on top of the trash on top of the
 11 beer cans?
 12 A Oh yes sir
 13 Q And by the time you were done throwing things in the trash
 14 can were the beer cans covered?
 15 A Absolutely no idea
 16 Q Okay How close were you to the Jack Daniels bottle when
 17 you first saw it?
 18 A Ten feet
 19 Q At any time during your time in the room did you get any
 20 closer to the Jack Daniels bottle?
 21 A I can't recall
 22 Q Did you just look at the bottle the one time the initial
 23 time you saw it or did you look at it a couple of times?
 24 A No, I - all I can recall is when I walked in I saw it,
 25 went Jesus and, you know went on my - you know, to do
 26 my
 27 thing
 28 Q Do you personally drink Jack Daniels?

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- (1) A I did 15 years ago
 (2) MS HANSON nothing further
 (3) MR RUSSO Your Honor the defendants offer a video
 (4) cross examination
 (5) CROSS EXAMINATION OF SCOTT CONNOR (video)
 (6) BY DEFENDANT S EXAMINATION
 (7) Q Part of your corpsman training were you instructed in -
 (8) in the techniques of drawing blood samples?
 (9) A Yes, sir
 (10) Q Had you had any such training before that point?
 (11) A No sir
 (12) Q As part of that training you received about the drawing of
 (13) blood samples were you instructed about the maintaining a
 (14) chain of custody?
 (15) A That particular mode of training?
 (16) Q Yes sir
 (17) A That period of training? No sir
 (18) Q All right Let me ask the foundation question Have you
 (19) ever received any training or education in the maintaining of a
 (20) chain of custody for biological samples?
 (21) A No, sir
 (22) Q Has - have you received on the job experience in - in the
 (23) maintaining a chain of custody for biological samples?
 (24) A Yes, sir
 (25) Q And if you would then tell us about the nature of - tell

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- (1) us about that on the job experience?
 (2) A I was the Coast Guard urinalysis drug coordinator
 (3) testing
 (4) coordinator while I was in Sault Sainte Marie Michigan
 (5) And
 (6) also at Port Clarence
 (7) Q Okay And it was in connection with that - I m sorry
 (8) that urine testing program that you ve - was that your first
 (9) exposure to the concept of a chain of custody?
 (10) A No sir
 (11) Q What was your first exposure to the concept of a chain of
 (12) custody?
 (13) A That was in boot camp
 (14) Q Oh in boot camp?
 (15) A Basic training Right You asked for biological samples
 (16) Q Oh I didn t I didn t really mean to be that narrow
 (17) Tell me then describe for us your training in boot camp
 (18) that related to the chain of custody
 (19) A I can't recall the exact dates but -
 (20) Q As best you can remember
 (21) A General terms just the need for security for having
 (22) people
 (23) that sign for it as it's passed on
 (24) Q It being what?
 (25) A Whatever What - from - whatever
 (26) Q All right The boot camp training you re talk - when you
 (27) went into the Coast Guard did you - were you already - or
 (28) had you - were you going in to a corpsman position or was your

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- (1) boot camp training the same general training that any Coast
 (2) Guard recruit receives?
 (3) A Same as any other
 (4) Q All right
 (5) Have you received any specific training with regard to
 (6) maintaining a chain of custody for biological samples?
 (7) A No, sir
 (8) Q And when I say biological samples I m talking about blood
 (9) and urine
 (10) A Formal training?
 (11) Q Formal training yeah
 (12) A No
 (13) Q All right
 (14) Prior to the Exxon Valdez incident had you ever been
 (15) involved in a situation in which laboratory results of tests
 (16) performed on blood samples you had drawn had been - had
 (17) been
 (18) used as evidence in a - in a civilian courtroom proceeding?
 (19) A No, sir
 (20) Q Since the Exxon Valdez incident have you had occasion to
 (21) draw any blood samples that ultimately were used as evidence
 (22) in
 (23) a courtroom proceeding to your knowledge?
 (24) A Not to my knowledge
 (25) Q Let me go back just to complete your testimony about your
 (26) background and training Chief Connor
 (27) How far - how far did you go in school?

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- (1) A Graduated high school
 (2) Q Well did you go straight from high school into the Coast
 (3) Guard?
 (4) A Within - within eight month
 (5) Q I believe this is clear from some of your earlier
 (6) testimony but let me make sure I ask the precise question
 (7) Have you ever been involved in obtaining blood samples from
 (8) the
 (9) crew - from one or more crew members of a vessel that had
 (10) been
 (11) involved in a casualty?
 (12) A No, sir
 (13) Q Now at the time - I believe you testified that based on
 (14) your first conversation with Commander McCall you knew that
 (15) you were to go out and draw blood samples for both alcohol
 (16) and
 (17) drug testing is that correct?
 (18) A Yes sir
 (19) Q And you ve - you ve testified about the - the equipment
 (20) that you picked - that you picked up at the Valdez community
 (21) hospital Let me ask you this Did you pick up any alcohol
 (22) swabs at the Valdez community hospital?
 (23) A Absolutely not sir
 (24) Q And why - why not?
 (25) A You do not use alcohol when testing for alcohol
 (26) Q And why is that? Let me just ask one final question?
 (27) A Give you a false positive reading
 (28) Q Let me ask you chief Connor then to look at page 4250 of

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- (1) predesignated document number 1 which is the transcript of
 your testimony in the trial of Captain Hazelwood that we've
 referred to earlier
 (3) And I'll ask you to focus specifically on lines 12 through
 (5) 15
 (6) A Uh huh yes sir I read it
 (7) Q Well instead of reading the - in the interest of brevity
 (8) I'll just ask it this way In that testimony did you indicate
 (9) that you had picked up alcohol pads at the Valdez community
 (10) hospital?
 (11) A Yes sir I did
 (12) Q Does that refresh your recollection as to whether you
 (13) picked up alcohol pads?
 (14) A Well it refreshes my recollection that I said it I don't
 (15) believe I did I'd have known better And I'm sure it was
 (16) said out of common equipment - common supplied You
 draw
 (17) blood, you cleanse the space
 (18) Q All right
 (19) A 99 times you use an alcohol pad I just - well I went
 (20) and picked up tubes - tubes and needles and alcohol pads
 and
 (21) handaids yeah Did I pick up alcohol pads? No Had no
 need
 (22) for them
 (23) Q Had you ever - I've asked you whether you ever drawn blood
 (24) in connection with a marine casualty Chief Connor and you
 (25) answered that you had not Had you ever drawn blood samples

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- (1) for alcohol testing before the Exxon Valdez incident?
 (2) A Yes sir
 (3) Q Can you give us any idea of how many times you might have
 (4) the drawn for alcohol testing over the years?
 (5) A Four or five
 (6) Q Before the Exxon Valdez?
 (7) A Four or five
 (8) Q And - well what - what gave rise to those incidents when
 (9) you drawn for alcohol testing before what had happened?
 (10) A I can't recall Some - some mishap on the military
 (11) installation that I was directed to draw for blood alcohol
 (12) Q I see
 (13) A Who knows I couldn't recall what it was for
 (14) Q Mishaps other than marine casualty?
 (15) A Yes sir
 (16) Q Okay Had you ever - well before the Exxon Valdez
 (17) incident therefore did you - did you know not to use alcohol
 (18) pads if you were going to be drawing for - drawing blood for
 (19) alcohol testing?
 (20) A Yes, sir
 (21) Q And was a helicopter waiting for you at that point?
 (22) A Well I had to wait a little while, while they got the
 (23) whole thing together And - got a helicopter pilot and - you
 (24) know, dash me out there and I - you know I know I waited a
 (25) while and -

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- (1) Q How much is a while?
 (2) A I don't know 20 minutes Half an hour I don't know
 (3) Q All right
 (4) Did anyone fly out with you to the ship?
 (5) A No sir
 (6) Q Just you and the pilot?
 (7) A No sir
 (8) Q Had you flown in a helicopter before?
 (9) A Lots yes Yes sir
 (10) Q Did you go directly to the ship?
 (11) A Yes sir
 (12) Q Tell me about coming down and landing on the ship Tell me
 (13) what that was all about
 (14) A You mean - you mean how scary it was or -
 (15) Q Were you scared?
 (16) A Sure
 (17) Q Were you a little anxious?
 (18) A Very
 (19) Q Nervous?
 (20) A Very
 (21) Q Why?
 (22) A Because the helicopter was not bigger than this table
 (23) This is a little two seater helicopter There's no - no
 (24) bigger than a bug with just glass from over your head down
 to
 (25) your feet We went out We went up over the mountains
 and

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- (1) then I could see - I could see the Exxon Valdez, and I could
 (2) see the oil slick starting, and we flew out, flew around it
 (3) and we landed on the - well not on port bow but forward
 (4) amidships port side Stepped out of the helicopter into a
 big
 (5) puddle of crude oil I remember the heel of my shoe coming
 off
 (6) and I remember stepping on it and all the nails coming up
 (7) through my shoe
 (8) Q Coast Guard issue no doubt?
 (9) A Fine government's yes sir
 (10) Q Go ahead
 (11) A And one of the crew members brought me to - up to
 Captain
 (12) Hazelwood - or up to the deck that Captain Hazelwood's
 (13) quarters were on
 (14) Q Was it your intention to - to get these samples and get
 (15) off the ship as quickly as possible?
 (16) A Yes sir
 (17) Q Did you have a helicopter standing by for you as soon as
 (18) you finish to get back -
 (19) A I - I believe that the helicopter was shut down and just
 (20) waiting for me to finish
 (21) Q For you?
 (22) Okay
 (23) A Forward
 (24) Q Were you able to detect a list on this ship when you got on
 (25) board?

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- (1) A When I initially got on board?
- (2) Q Uh huh
- (3) A No
- (4) Q Did you eventually detect a list?
- (5) A Yes, 'cause it moved
- (6) Q Okay Did you detect - how did you know it moved?
- (7) A You could feel it
- (8) Q Okay Did it happen more than once?
- (9) A I can't recall I just know that it did It did happened
- (10) happen
- (11) Q You felt the ship leaning towards one side?
- (12) A Well, you could just - you could feel it shoulder a little bit
- (13) bit
- (14) Q Let's go back in the house now Somebody took you into the superstructure of the Exxon Valdez
- (15) superstructure of the Exxon Valdez
- (16) A Yes, sir
- (17) Q And then took you up to the captain's deck?
- (18) A Yes, sir
- (19) Q Okay Let's stop a second What you're calling the mishap kits is that the blood testing kits?
- (20) kits is that the blood testing kits?
- (21) A Yeah - well, the - right the sampling kits
- (22) Q They were already on board the vessel?
- (23) A Yes sir
- (24) Q Okay Now after he gave you the tox kits can we call them tox kits?
- (25)

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- (1) A Sure
- (2) Q What you call them mishap kits can we use the word tox kits?
- (3) kits?
- (4) A Sure Yes sir
- (5) Q Did you inspect the contents of the alcohol on board kits?
- (6) A Yes, sir
- (7) Q And what was in those? What equipment was in those on board kits?
- (8) board kits?
- (9) A Within each box each box was open
- (10) Q Uh huh
- (11) A Inside of the box there was a Styrofoam container that was
- (12) two halves a shell
- (13) Q Uh huh
- (14) A Each one of those there were four of those that were open in each container there was a red top tube and a gray top tube, a strip of security seals a custody - chain of custody form - well, not - I don't believe the chain of custody is a proper term but an identification form a sample
- (15) identification form
- (16) identification form
- (17) Q Uh huh
- (18) A With directions And that's all that I recall were in each kit
- (19) kit
- (20) Now, on the Styrofoam container itself there was a chain of custody form that was adhered to the Styrofoam box
- (21) pre-adhered
- (22) pre-adhered
- (23)
- (24)
- (25)

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- (1) Q Uh huh
- (2) A With mishap date type who had it who gave it who witnessed it
- (3) witnessed it
- (4) Q I see Had you ever seen this particular type of kit before?
- (5) before?
- (6) A No sir
- (7) Q Had you seen similar type kits before?
- (8) A Yes sir
- (9) Q You've referred - I'm sorry
- (10) You've referred or among the contents of these kits you refer to security seals How would you - what's your best recollection of - of what those look like?
- (11) refer to security seals How would you - what's your best recollection of - of what those look like?
- (12) recollection of - of what those look like?
- (13) A These seals were approximately one and a half to two inches
- (14) square There were - are one and a half to two inches by two
- (15) and a half to three inches, to the best of my recollection
- (16) They came on a strip, there was a series of them
- (17) Q Uh huh
- (18) A They were very - they were orange They were very thin
- (19) And they were scored They had been cut in a specific pattern
- (20) where if you even took them off the paper backing incorrectly
- (21) they ripped And these were to be placed, the purpose of them
- (22) was to place them on the outside of the Styrofoam box to close
- (23) the two halves together
- (24) Q I see
- (25) A And put these seals on there

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- (1) Q Did these seals have anything imprinted on them?
- (2) A Yes sir
- (3) Q And what was that?
- (4) A I have no idea I - yes I did read it Not to memory
- (5) Q You just don't recall what was printed on it?
- (6) A Huh uh no sir
- (7) Q All right Now the Styrofoam container that you refer to you referred to it being in two halves Were those halves of equal size or how would you - if you have any recollection
- (8) you referred to it being in two halves Were those halves of equal size or how would you - if you have any recollection
- (9) equal size or how would you - if you have any recollection
- (10) A Top and bottom equal size same - same same Flip them
- (11) this way, flip them that way, same thing
- (12) Q Chief Connor just so we're clear When you testified at the Kastigar hearing on November - I think it's 29th 1989 - do you recall that?
- (13) the Kastigar hearing on November - I think it's 29th 1989 - do you recall that?
- (14) do you recall that?
- (15) A At which hearing?
- (16) Q It's called the Kastigar hearing Let me show you?
- (17) ATTORNEY COLLOQUY Why don't you explain to him make it faster?
- (18) it faster?
- (19) Q I think you called it the omnibus hearing It's been referred to That's pre-designated exhibit two
- (20) referred to That's pre-designated exhibit two
- (21) A Okay
- (22) Q Do you remember testifying in this courtroom?
- (23) A Yes sir
- (24) Q In the courtroom up to Anchorage?
- (25) A Yes sir

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- (1) Q Okay And do you remember being asked the size of the test tubes?
- (2) A Yes sir
- (3) Q The vials that you took out of the tox kits that were on the vessel?
- (4) A Yes sir
- (5) Q And do you recall saying that the size were 15 milliliters for both the gray stoppers and the red stoppers?
- (6) A Yes sir
- (7) Q Take a look at page - this is now back in November of 1989 when you testified at the omnibus hearing I'm looking at page 551
- (8) A Uh huh
- (9) Q Starting at line three?
- (10) A All right This is November of '89 and then in -
- (11) Q Page 551 - let's start at page 550 Line 25
- (12) A Yeah, I see the seven and the 15 Now - where did I say this again?
- (13) Q Well at the trial that's pre-designated document number one Bear with me Page 4275 starting at - at line ten Are you with me?
- (14) A Yes sir
- (15) Q All right
- (16) A Uh huh
- (17) Q And did you not say again that it was - that the tubes

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- (1) from the vessel's tox kit were 15 milliliters and the ones you brought from the hospital were 7 milliliters?
- (2) A Yes sir
- (3) Q When you put the seal on did you go from one end of the tube around the top of the tube and then back to the end Is that how you sealed it up?
- (4) A Up one side over the top down the other side and then just - you know sort of twist the top of the whole thing seals It's very irregular It's knots made for that
- (5) Q Okay Did you twist the tape at the top or the bottom of the tube as best you can recall the top being the stopper?
- (6) A I don't recall twisting it More like you know crimping.
- (7) Q Which side did you crimp the top being the stopper end or the bottom?
- (8) UNIDENTIFIED ATTORNEY He says it's vertical could also be the sides
- (9) A Well the stopper end The seal wasn't on the bottom The seal was over the stopper
- (10) Q Did it go over - the bottom of the tube?
- (11) A No sir No It came in contact with the glass on the tube on one side
- (12) Q Right
- (13) A Up over the rubber stopper over the top
- (14) Q Right
- (15) A Down the other side of the rubber stopper and adhered back

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- (1) ou to the glass
- (2) Q Okay
- (3) A Just on the top It did not go all the way around It was just from one side over the top adhered to glass over the top adhered to glass and then crimped on
- (4) Q Where was it crimped on?
- (5) A Just right over the top to make sure it's - to make sure it was adhered to it
- (6) Q Would you mind drawing the tube and then describe - here's a pen - how you did it?
- (7) Let the record reflect that the witness has drawn a tube with a stopper on a yellow piece of paper legal size paper which we'll mark as an exhibit?
- (8) A Okay This is what the tube looks like with the stopper in it Okay Security seal was approximately that big, approximately
- (9) Q Put an A there which represents the security seal that you just -
- (10) A Okay Had a series of cuts in it just like you see on a department store tag
- (11) Q Yeah
- (12) A Okay I adhered the security seal on one side
- (13) Q That you marked with an X
- (14) A Right Up the glass
- (15) Q Okay

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- (1) A Up over the top of the stopper
- (2) Q Yes
- (3) A Back down the other side and adhered it back on to the glass
- (4) Q Okay make that a Y there (indicating) Okay And that's how you sealed it?
- (5) A Yes sir Now this would give - would give the appearance just as you saw - just as you see there It would be tunnelled on both sides
- (6) Q Okay
- (7) A And all I did was just crimp it It would go on - it would go on like this
- (8) Q The camera is not picking up the demonstration Hold it up?
- (9) A How about a little piece of paper
- (10) If this - if this was the top of the - the top of the test tube with the rubber stopper when the seal was in place on the glass, it looked something like that, with the rubber stopper here and all I did was just crunch this around like that (indicating) so that it was fully intact All adhesive surfaces were adhered to something
- (11) Q Okay
- (12) A So that they wouldn't adhere to anything else
- (13) Q All right That's -
- (14) A So that.

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- (1) Q That was the orange seal that you put on?
 (2) A Yes
 (3) Q Let a mark your drawing as the next exhibit please
 (4) Okay Now who was next in line?
 (5) A I believe it was Greg Cousins
 (6) Q Okay Did - was Mr Cousins cooperative in giving you his
 (7) blood?
 (8) A Oh, yes Everyone was
 (9) Q All the crew members?
 (10) A Oh, yes
 (11) Q Had you been involved previous to the Exxon Valdez in
 (12) taking blood samples from crew members after a marine
 casualty?
 (13) A No, sir
 (14) Q This was your first one?
 (15) A Yes, sir
 (16) Q Chief tell me with respect to Captain Hazelwood the sizes
 (17) that you recall of the tubes containing his blood?
 (18) A I recall that, to the best of my knowledge, the three tubes
 (19) that I used for Captain Hazelwood were all the same size
 (20) Q What were - what were the sizes?
 (21) A They were the larger
 (22) Q The 15 milliliter?
 (23) A As - as I had in previous testimony identified them as 15
 (24) yes, sir
 (25) Q Okay Chief at your counsel's suggestion during the break

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- (1) I reread the testimony that you gave at the omnibus hearing
 (2) Hazelwood omnibus hearing and at the Hazelwood trial in
 (3) connection to what you previously testified as to sizes of the
 (4) tubes that you use and I would like you to look at
 (5) predesignated document number three That is the omnibus
 (6) hearing transcript
 (7) All right Let's start at line 21
 (8) ATTORNEY COLLOQUY On page 550?
 (9) Q On page 550 You were asked so you took one gray and one
 (10) red
 (11) Answer No sir Two gray
 (12) Question Two gray
 (13) Answer And one red from each individual
 (14) Question And you don't know which was the hospital one
 (15) and which was the tube from the kit that was on board?
 (16) Answer We're now on page 551 line 3 - well yes sir
 (17) Excuse me The hospital tube was a seven milliliter tube
 (18) seven milliliter tube and the one in the kit I believe was a
 (19) 15 milliliter tube I mean if you had to hold them up I could
 (20) show you which one was which
 (21) Question Well one - obviously one's bigger than the
 (22) other right?
 (23) Answer Yes sir The one in the kit was larger
 (24) Question Okay You're going to have to pardon me because
 (25) I'm -

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- (1) Answer That's okay
 (2) Question Really confused on this point You took a total
 (3) of three samples?
 (4) Answer Yes sir
 (5) Question Now you used two vials if you will or two -
 (6) or drawing kits or whatever you want to call them?
 (7) Answer Right From the Styrofoam container Uh huh
 (8) Affirmative is the answer
 (9) Question My question is I guess how could you
 (10) differentiate between those and the one that you received from
 (11) the hospital? What was - now you're on page 552 the
 (12) difference except size?
 (13) Oh no difference sir except physical characteristics
 (14) none
 (15) Okay?
 (16) A Yes sir
 (17) Q Incidentally before we go to - to the trial testimony
 (18) let's go back to predesignated document number two and let's
 (19) take a look at page 537 Okay Starting with line four are
 (20) you with me?
 (21) A Yes, sir
 (22) Q Sorry Line 3
 (23) Question is what happened next
 (24) Answer Well I noticed that there were blood sampling
 (25) kits already in the room itself prepackaged blood sampling

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- (1) kits so I looked over the kits to see what use they may be
 (2) and they proved to be much better equipped for the situation
 (3) over what I really had with me
 (4) ATTORNEY COLLOQUY Already had with me
 (5) Q Already had with me They already had packaging and
 (6) chain
 (7) of custody paperwork and tampering sealings all located within
 (8) these kits along with a blood drawing equipment
 (9) Question Did you proceed to draw blood samples from
 (10) anybody?
 (11) Answer No - not at that point no sir
 (12) Question What happened then?
 (13) Answer Then Captain Hazelwood was summoned and asked
 (14) to
 (15) come in - into his quarters And at that point I began - I
 (16) got - the kits were - I was assembling the kits and getting
 (17) everything together and I had decided that I was going to
 (18) augment the kits with an additional tube of blood from some of
 (19) the tubes I brought with me - utilize the empty tubes for
 (20) blood drawn
 (21) Question Okay? So Mr Connor do you recall being asked the
 (22) questions that I read to you and giving the answers that I read
 (23) to you?
 (24) Answer A Yes, sir
 (25) Q Okay Now I'd like you to go - I'm going to give you a
 (26) chance to clear it up and we're going to get into that so I'm
 (27) not trying to prohibit you from doing that but I want to go

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(1) now to the trial testimony what we pre-designated as number
 (2) one And we were on page 4274 okay?
 (3) All right starting with line - line 12
 (4) You were asked and I think you've said the ones that were
 (5) on board were the ones that you actually used right?
 (6) Answer Yes sir
 (7) Question Now you said the ones in the kit the ones that
 (8) were on board the vessel had a red top container and a gray
 (9) top container
 (10) Answer Yes sir Question And in addition to these
 (11) gray top containers that was in the kit you used a second
 (12) one? Where did that one come from? Did you have it with you?
 (13) Answer Yes sir This is the material I brought with
 (14) me I was not aware that these kits were on board the vessel
 (15) and I acquired this equipment from the Valdez community
 (16) hospital
 (17) Question And it was exactly the same the gray topped
 (18) tube kit or the tube that you brought on board was it the same
 (19) as the one that contained in the kit that was on board?
 (20) Answer No sir
 (21) Question Well maybe I'm confused Why do you say -
 (22) it's a gray top?
 (23) Answer The difference - the difference - well they are
 (24) the same type of tube They have the same function However
 (25) the one that was in the kit was a 15 milliliter tube and the

(1) defense of our defense
 (2) This is a very important witness The issue of the blood
 (3) test is going to be a very important issue in this case And
 (4) while I think we can go through - I don't know what the
 (5) technicalities are that are involved in editing this film so we
 (6) can shorten the time but I suppose we can go through and knock
 (7) some of this stuff off
 (8) THE COURT Well consider whether that's possible I
 (9) realize that the technology you're using if it's a problem at
 (10) this late date this is the second time I've had to call you on
 (11) this I don't want this to happen again You personally
 (12) review your deposition designations of this sort and see to it
 (13) that you get the material in that's useful to you, that's
 (14) pertinent That is it's not repetitive You're just wasting
 (15) our time with a lot of this
 (16) MR CHALOS I have your instruction yes sir
 (17) (Recess)
 (18) (Jury in at 12:22)
 (19) THE COURT Mr Chalos?
 (20) MR CHALOS Your Honor for the record we're going
 (21) to play two more questions from Mr Connors
 (22) cross examination
 (23) We'll take the rest back tonight reedit it and with your
 (24) permission play the remainder tomorrow morning
 (25) MR O NEILL We have no objection sir
 THE COURT Fine thank you sir We appreciate your

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(1) ones I brought with me were seven milliliters tubes That's
 (2) the difference The only difference was their size Sorry
 (3) That's the only difference was their size
 (4) Okay? Do you remember being asked those questions?
 (5) A Yes, sir
 (6) Q And giving those answers?
 (7) A Yes sir
 (8) Q Did you -
 (9) THE COURT Let's stop it here Where are we in terms
 (10) of being finished with this Mr Chalos?
 (11) MR CHALOS About a - sorry Your Honor I'm
 (12) advised it's about a half hour
 (13) THE COURT More?
 (14) MR CHALOS That's what I'm told
 (15) MR O NEILL I've been advised there's more than an
 (16) hour of it
 (17) MR CHALOS What?
 (18) THE COURT Jury will excuse us We'll take our
 (19) second recess at this point
 (20) (Jury out at 12:01)
 (21) THE COURT Mr Chalos is there something we can do
 (22) to speed this up? This is horribly repetitive We're wasting
 (23) a lot of time with this
 (24) MR CHALOS Your Honor I wasn't involved in this
 (25) particular designation However if I may say something in

(1) help on that
 (2) BY DEFENDANT'S EXAMINERS
 (3) Q Did you - were the answers that you gave at that time
 (4) truthful answers?
 (5) A To the best of my knowledge, yes
 (6) MR CHALOS That's it for today Your Honor on this
 (7) witness
 (8) THE COURT Thank you
 (9) MS HANSON The plaintiff calls their next witness
 (10) Gary Stock by deposition Your Honor
 (11) (The Reader Is Sworn)
 (12) THE CLERK State your name again sir for the
 (13) record
 (14) THE READER Brian Toder St Paul Minnesota
 (15) DIRECT EXAMINATION OF GARY STOCK (read)
 (16) BY MS HANSON
 (17) Q Lieutenant Stock my name is Tom Russo My firm Chalos &
 (18) Brown represents Captain Joseph Hazelwood in litigation
 (19) What
 (20) is your current position?
 (21) A My current position is I'm the chief of the overseas
 (22) inspection branch in Coast Guard MSO Honolulu
 (23) Q What are your duties and responsibilities there?
 (24) A My duties are to oversee the inspection of deep draft
 (25) vessels in southeast Asia Japan Australia New Zealand,
 that
 area

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- (1) Q How long have you been in assignment?
 (2) A It will be two years next month
 (3) Q Previous to this current assignment where were you
 (4) assigned?
 (5) A Previous to that I was the senior investigating officer at
 (6) Coast Guard marine safety office in Anchorage Alaska
 (7) Q That was the assignment that you had in March of 1989?
 (8) A Right
 (9) Q Can you outline for us a little bit about your educational
 (10) background where you went to school?
 (11) A Well, I went to school in a small farming town in southern
 (12) Minnesota I went to college at St. Cloud State University
 (13) which is a branch of the University of Minnesota I got a
 (14) bachelors degree in biology with a minor in chemistry And
 (15) after graduating from college, I worked for the state of
 (16) Minnesota as a biologist for about two and a half or three
 (17) years, I guess, and then I came into the Coast Guard Went
 (18) to
 (19) office candidate school
 (20) Q What year did you come into the Coast Guard?
 (21) A 1977 December
 (22) Q Did you receive any special training in regard to your
 (23) position?
 (24) A No, I - no I read, you know the Coast Guard's policy on
 (25) the program, you know which basically outlines the steps
 and
 (26) responsibilities and safe guards that sort of thing

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- (1) Q In conjunction with reading the Coast Guard guidelines on
 (2) this did you have occasion to review the guidelines relative
 (3) to chain of custody?
 (4) A Yes
 (5) Q And what is your understanding of the term chain of
 (6) custody which you use? What does it mean to you?
 (7) A Well, chain of custody means maintaining a document
 (8) that
 (9) paper trail of a piece of evidence whether it be a urine
 (10) sample or some other piece of physical evidence or
 (11) documented
 (12) evidence but it's being able to pinpoint primarily on a form
 (13) that it never left the custody of an individual that hadn't
 (14) signed for it It's basically making sure that it never got
 (15) lost or set aside, you know, if a room unattended that sort
 (16) of
 (17) thing It's common sense It's not rocket science
 (18) Q All right
 (19) Let me take you now to 1989 March of 1989 What
 (20) specifically was your title or your position in the Coast Guard
 (21) at that time?
 (22) A I was the senior investigating officer at marine safety
 (23) office Anchorage
 (24) Q My question to you before was when was it for the first
 (25) time that you became aware of the grounding of the Exxon
 (26) Valdez?
 (27) A The morning of the grounding
 (28) Q When was it that you had your first quote official

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- (1) contact about the Exxon Valdez where you knew you were
 going
 (2) to get involved in this case at all?
 (3) A It was that day in the afternoon I was at the fish show
 (4) at the coliseum downtown, I guess and I was on the beeper
 I
 (5) had the duty, and I was beeped by I believe it was XO
 (6) Commander Moran He said that petty officer scanners has
 some
 (7) samples taken from the crew, and he wanted to, you know,
 (8) transfer them to me and that I was to take care of it, and he
 (9) basically said, do you know what to do, Gary? They're
 pretty
 (10) important And I said fine, no problem So I think I called
 (11) Scott at home and I said, Scott, meet me down in the office,
 (12) I'll be there in five or ten minutes We'll transfer the
 (13) samples
 (14) Q The first question that came up was the conversations
 (15) which took place on Friday Which is the day supposedly of
 (16) the grounding now You're talking about Scott Connor Was
 (17) that on Friday or Saturday?
 (18) A That was Saturday
 (19) Q And you said you had the duty What is that?
 (20) A Well, basically the officer of the day has the duty for any
 (21) marine safety minded issue that comes up in our area of
 (22) responsibility We are the first point of contact for the
 (23) public Well, not really the public but primarily other Coast
 (24) Guard units that contact our unit to discuss or make us
 aware
 (25) of an issue such as the grounding or some other spill oil

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- (1) spill that sort of thing I would be the first point of
 (2) contact
 (3) Q Okay So you were beeped and you spoke to the XO?
 (4) A I believe it was the XO yes
 (5) Q Okay As a result of that conversation what did you do?
 (6) A I called Scott at home
 (7) Q How did you get his home number?
 (8) A I have it in my billfold I have some home phone numbers
 (9) for everybody at the unit
 (10) Q Where is his home?
 (11) A His home was in Anchorage
 (12) Q All right And approximately what time was this if you
 (13) recall?
 (14) A I would say it was right around one o'clock, 12 o'clock
 (15) something like that in the afternoon
 (16) Q Okay Was he home when you called?
 (17) A Yes
 (18) Q Did he answer the phone?
 (19) A Yes
 (20) Q Can you relate to us what your conversation was with him at
 (21) that time?
 (22) A I said Scott I understand that you have some samples
 (23) And
 (24) he said, yeah I sure do He says, what I like - he says, I
 (25) would like to get rid of them And I said, fine, you know, no
 problem We'll meet down at the office and we'll, you know

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- (1) transfer the samples and I'll take custody of them I said
 (2) meet me down at the office I'll be there in five minutes
 (3) Q Did you have any conversation with him at that time as to
 (4) how he came to take the samples?
 (5) A Sure We discussed things at the office sure
 (6) Q No no I'm talking now on your - we haven't gotten to
 (7) the office yet We'll get to the telephone conversation
 (8) A It was very brief I said fine we'll talk about it You
 (9) make sure that you bring everything totally down to the
 (10) office And I'll take care of them and you can wash your
 (11) hands of them
 (12) Q All right After you had this telephone conversation with
 (13) Connor what did you do?
 (14) A We met in the office
 (15) Q All right You recall him arriving at the office Connor?
 (16) A Yes Yes
 (17) Q All right When he arrived was he carrying anything with
 (18) him?
 (19) A Yes he had a package of boxes and samples
 (20) Q Who opened the bag?
 (21) A He did
 (22) Q Did you open it?
 (23) A He did
 (24) Q When you say open the bag did he have to rip the bag open
 (25) or was the bag open or what?

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- (1) A I don't recall I don't remember him ripping anything so
 (2) just from memory I would say he just opened it
 (3) Q When he opened the bag what did he do?
 (4) A He just said well here they are and I said okay fine
 (5) just set them down on the table, and I'll go through them
 (6) You
 (7) know they were in Styrofoam boxes I said we'll go through
 (8) them box by box and I opened the boxes
 (9) Q Did he have one bag or two bags or three bags?
 (10) A Everything was in one receptacle
 (11) Q All right When he arrived as best you can recollect now
 (12) what did you say to him and what did he say to you?
 (13) A Well I said come on over to my desk and I'll clear
 (14) everything on off my desk and you know let's go through
 (15) this
 (16) thing correct and you know let's take each sample I'll
 (17) take a look at them
 (18) I want to make sure there are no leaks the seals are
 (19) intact and that everybody was in some form of you know
 (20) identification that these samples were Joe Blow's and
 (21) these
 (22) were somebody else's and that's what I concerned about
 (23) that
 (24) they weren't disorganized and a complete mishmash
 (25) Q I want to go threw this step by step So he opened the bag
 then Who took the boxes out of the bag if you recall?
 (22) A He did
 (23) Q He did?
 (24) A Yes

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- (1) Q And he took how many boxes out of the bag if you recall?
 (2) A From memory I would say there were five or six Five or
 (3) six boxes
 (4) Q Can you describe these boxes?
 (5) A Yeah they were typical Styrofoam boxes that had the
 (6) holes
 (7) where the vials sit in individually and then the top fit over
 (8) the bottom and you know top lip covered the bottom lip
 (9) there
 (10) was no overlapping or anything like that
 (11) Q When he put them on the desk did there come a time when
 (12) you opened the boxes or he opened the boxes?
 (13) A Yes
 (14) Q Who opened the boxes?
 (15) A I don't recall I know I opened a few - I don't recall
 (16) when I opened them all but he was literally right next to me,
 (17) so you know we did it together I guess is my best answer
 (18) Q All right when you opened the first box and looked inside
 (19) what did you see do you recall?
 (20) A I saw vials with different colored stoppers and on the
 (21) vials The samples varied I recall that they weren't same
 (22) number and exactly the same type
 (23) Q Now looking at all of the boxes together now do you
 (24) recall in addition to the fact that some of the test tubes may
 (25) have been a different size do you recall anything else about
 the test tubes?
 (21) A Different colored stoppers

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- (1) Q All right What colors did you see?
 (2) A I recall red and gray I believe Two colors
 (3) Q All right Did you see any other colors besides those two
 (4) colors?
 (5) A I don't recall I just recall those two colors That's
 (6) the only two that stick in my mind
 (7) Q Were there any documents contained in these boxes?
 (8) A Yes there were
 (9) Q What documents were contained?
 (10) A These were forms that petty officer Connor used They
 (11) were
 (12) his chain of custody forms that he use
 (13) Q And they were inside the box?
 (14) A Yes
 (15) Q All right So now in conjunction with looking at these
 (16) boxes did you do them one at a time?
 (17) A Yes
 (18) Q Okay And did you physically remove any test tubes from
 (19) the boxes to look at them?
 (20) A Yes I removed them As I recall, I picked up the box and
 (21) you know looked at the vial inspect it to make sure it
 (22) wasn't
 (23) cracked or broken or leaking or anything like that But I
 (24) immediately put it back into the original hole I didn't take
 (25) them out and set them on the table, you know, and put the
 box
 (24) aside I spun them in my fingers and set them back
 (25) Q Indicating lifting up spinning and then?

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- (1) A Then setting it back down in the original hole I didn't
 (2) put any vials back in any other area that they weren't in
 when
 (3) I received them
 (4) Q All right All right So you opened - just so I get this
 (5) straight Did you follow the same routine for each box?
 (6) A Yes
 (7) Q When you opened up the box what was the first thing you
 (8) saw in the box?
 (9) A You see the top of the vials the stoppers
 (10) Q All right Just so I'm clear on this can you describe
 (11) these boxes for us? Are they rectangular boxes Styrofoam?
 (12) A Would I say they are more square than rectangular They
 (13) would hold I would say nine to 12 vials
 (14) Q When you opened the boxes were you looking at the test
 (15) tubes lying flat or were you looking at the top of the test
 (16) tubes?
 (17) A The tops
 (18) Q So you opened the tops of the boxes?
 (19) A The top pulls off Then I don't know maybe half of the
 (20) vials sticks up above or a third or something like that
 (21) Q So you pulled the top of the top Styrofoam box off?
 (22) A Right
 (23) Q Then you could see the tops of these tubes and other
 (24) materials
 (25) And another attorney interjects and says he has already

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- (1) testified that they were in holes in the Styrofoam
 (2) A And little individual holes
 (3) Q In addition to taking these test tubes out and doing what
 (4) you described as far as looking at them and putting them back
 (5) did you do anything else with the material in the box?
 (6) A I just examined them to make sure that everything was
 (7) intact, that there wasn't any contamination by something
 being
 (8) broken or something like that And everything was fully
 (9) intact and as I recall, if there were any seals I made sure
 (10) that the seals were still and intact that sort of thing
 (11) Q But you don't have any specific recollection of examining
 (12) anyone in particular's box?
 (13) A Yes I remember examining Captain Hazelwood's box
 probably
 (14) closer than the rest
 (15) Q All right
 (16) A That's that sticks out in my mind
 (17) Q Okay Why was that?
 (18) A Because I was told that there was allegations that there
 (19) was alcohol on his breath So I in all honesty did pay a
 (20) little more close attention to his
 (21) Q Okay Now in conjunction with that fact when you
 (22) examined his box did you make any written notations as to
 what
 (23) the contents of the box were?
 (24) A The only written notations I made were on my custody
 forms
 (25) that we have here and from memory I couldn't tell you I

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- (1) would have to go to that and see what was there
 (2) Q At this point I would like to have exhibit 130
 (3) Plaintiff's Exhibit 130 please
 (4) Could I have it on the Elmo please
 (5) I would like you to look at a page which is a sequence of
 (6) zeros the last digit being four Do you see the numbers on
 (7) the bottom right hand?
 (8) A Uh huh
 (9) Q Four Do you recognize that?
 (10) A Yes, I do
 (11) Q What do you recognize that to be?
 (12) A This is my chain of custody form that I used
 (13) Q Specifically is this the chain of custody form that you
 (14) used for the blood samples for Joseph Hazelwood?
 (15) A Yes, it is
 (16) Q Okay And is this the notation that you were talking about
 (17) before when you said that you did make notations relative to
 (18) Captain Hazelwood blood samples?
 (19) A Yes This is right - this is what I was referring to
 (20) Q Okay Now this is a xerox of a document that's entitled
 (21) chain of custody card Okay Is this a Coast Guard form?
 (22) A Yes it was our marine safety office Anchorage form that
 (23) I actually put together
 (24) Q All right When you say you actually put together what do
 (25) you mean by that?

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- (1) A I think it was a form that I'd gotten somewhere I think
 (2) it was as I recall from a course that I took in criminal
 (3) justice I sort of copied it and made it into a Coast Guard
 (4) investigation department Anchorage form
 (5) Q All right So you're the one that authored then the
 (6) first full paragraph of this form which reads as follows The
 (7) last person whose signature appears on this card certifies that
 (8) he has received the above described item from the person
 whose
 (9) signature immediately precedes his and is according the item
 (10) proper security by maintaining the item in his presence or by
 (11) storing it in a safe place transfers must be hand to hand or
 (12) by registered mail
 (13) A Yes
 (14) Q Another attorney interjects That is almost accurate You
 (15) inserted the word that but otherwise you read it correctly
 (16) Is that what it says?
 (17) A Yes it does
 (18) Q Did you have any criticism of the way he handled the
 (19) samples in storing them in his refrigerator at home?
 (20) A That's not for me to say
 (21) Q I would like to direct your attention again to the exhibit
 (22) that we were discussing page 04 the chain of custody card
 and
 (23) just go over there a little bit more with you The custody
 (24) originator here on this card is Scott Connor right?
 (25) A Right

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- (1) Q Now underneath - under one they have transfer to
 (2) Lieutenant Garv Stock who is you of course right?
 (3) A Correct
 (4) Q And the date is 25 March 1989 and 1520 is the time?
 (5) A Right
 (6) Q Is that the time that Scott Connor came into the office?
 (7) A Well that would have been about the time that I filled
 (8) this form out I don't know He probably got there I would
 (9) say a half hour or so earlier than that
 (10) Q Did you fill this form out before or after you examined the
 (11) boxes?
 (12) A After
 (13) Q And under place you have Anchorage Is that correct?
 (14) A Right
 (15) Q Via hand Is that what that says?
 (16) A Right
 (17) Q That would mean that Scott Connor physically gave you the
 (18) samples?
 (19) A Correct
 (20) Q You have for the purpose of written in there storage Is
 (21) that correct?
 (22) A Right
 (23) Q Was that your understanding of what you were supposed to
 (24) do
 (25) with the samples store them?
 (26) A Well at the time I knew that that's what I was going to do

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- (1) with them before I sent them somewhere
 (2) Q Now under two we have transfer to Dr Jill Henes
 (3) H-E-N-E-S
 (4) Who is that?
 (5) A That is the doctor that I talked to from Chem West Labs
 (6) Actually when I talked to her that weekend I think it was
 (7) she
 (8) was in North Carolina at the time I called the lab and the
 (9) lab said well yeah I think - I don't know if they called it
 (10) a duty officer or what or a duty individual is Dr Henes, the
 (11) person said give her a call and this is her home phone so I
 (12) called her and I talked to her because I wanted a point of
 (13) contact at the lab to send these to I just didn't want some
 (14) receiving person opening these boxes because I knew the
 (15) importance of the chain of custody So I wanted an
 (16) individual I also asked her the same similar questions that
 (17) I
 (18) asked the lab individual about storages Is it all right to
 (19) refrigerate what temperatures you know that sort of thing
 (20) Q When did you speak to her if you recall?
 (21) A I believe it was a Saturday, the same afternoon
 (22) Q All right Saturday So now we're still talking about the
 (23) 25th of March then correct?
 (24) A Right Right
 (25) Q This would be the same day that Connor gave you the
 (26) samples?
 (27) A Right

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- (1) Q So you - do you recall whether you spoke to her before or
 (2) after Connor gave you the samples?
 (3) A After
 (4) Q Now I see next to her name where it says transfer to
 (5) Dr Jill Henes there is a date and type 27 - 27 March
 (6) 1989 What does that signify?
 (7) A That signifies that it was being transferred to her at
 (8) Chem West lab via Federal Express which is acceptable for
 (9) Coast
 (10) Guard purposes
 (11) Q Okay Well now I want you to tell us what you did with
 (12) the samples between the 25th of March and the 27th of March
 (13) 1989 as best you can
 (14) A Okay Yeah I remember pretty vividly I was with Stan
 (15) Gerhauser who is an unit urinalysis coordinator for the
 (16) MSO
 (17) and I said okay Stan I need to store these and I need to
 (18) store them in a locked refrigerator He said that's fine We
 (19) have a locked refrigerator down in the warehouse And I
 (20) said
 (21) okay fine How about how does it lock And he said well I
 (22) have a clasp on it and a padlock And I said okay, fine I
 (23) need the only set of keys for this lock And he said, yeah, I
 (24) have it It's the only key and nobody else is authorized to
 (25) have a key for it I said fine I'll take the key So I got
 (26) the key from him and we went down and put the samples in
 (27) the
 (28) refrigerator I locked the lock myself and we locked the
 (29) warehouse

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- (1) Q All right Now this you did on the 25th of March 1989?
 (2) A Right
 (3) Q All right Did you do this directly after you left the
 (4) office that day?
 (5) A Yes
 (6) Q Okay Did you stop off anywhere?
 (7) A No
 (8) Q After you put the samples on the shelf what did you do?
 (9) A Then I locked the - I closed the door locked the
 (10) refrigerator and left
 (11) Q All right Was the bag that the samples were in locked or
 (12) taped up in any way?
 (13) A I don't recall
 (14) Q All right When you say you don't recall and you're
 (15) shaking your head no I'm confused as to what you mean by
 (16) that Did you seal up the bag?
 (17) A I don't know To me it was not an issue at all at the
 (18) time The refrigerator was locked, and when I went back in
 (19) there I would have known if they had been tampered with
 (20) Q You described this as a padlock Is that how you described
 (21) it?
 (22) A It is a padlock
 (23) Q And you were given the key by Gerhauser?
 (24) A Right
 (25) Q What type of lock was this? Do you recall?

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- (1) A It was your big standard master lock pretty herky
 (2) Q Master being the name of the manufacturer?
 (3) A Manufacturer right
 (4) Q What did you do with the key?
 (5) A I put it in my billfold
 (6) Q Then what did you do?
 (7) A We left
 (8) Q How did you come to see them on Monday morning?
 (9) A I drove over there after having made arrangements with the individual to pack the samples up and mail them to the lab
 (10) So
 (11) I went there to get the samples took them directly to this package can out fit
 (12) Q All right You retrieved the samples from the refrigerator?
 (13) A Right
 (14) Q You opened the lock?
 (15) A Yes
 (16) Q All right What did you do with the samples after you took them out of the refrigerator then?
 (17) A I took them to the outfit that I had prearranged to package them and mailed them to the lab
 (18) Q What did you do to examine the samples when you took them out of the refrigerator?
 (19) A As I recall, I looked to make sure that they were still there and that they were there as they were from Saturday
 (20) I

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- (1) looked in the boxes to make sure they were still intact I was curious how the blood had changed in the last 48 hours or so
 (2) because I remember petty officer Connors telling me about the different colored stoppers so I was just kind of curious and that sort of thing
 (3) Q Well what did you do when you say you opened the boxes up
 (4) to look at them?
 (5) A I just took the tops off And I'm sure I probably did the same thing, spun them around and put them back in individually,
 (6) that sort of thing I wasn't near as meticulous as I was Saturday It was more of a curiosity I think And I also wanted to make sure that they hadn't been tampered with
 (7) That
 (8) crossed my mind
 (9) Q Did you sit down when you did this?
 (10) A No
 (11) Q You didn't You stood up How long did it take to you to do this examination?
 (12) A A minute or to
 (13) Q A minute or two And you did all the boxes?
 (14) A As I recall, I may have I don't recall if I opened them all up I opened them all up but I don't remember if I physically took out all the vials I opened all the boxes to make sure everything was there as I recalled from Saturday
 (15) I
 (16) probably opened up a few of them and that was it but not all
 (17) of them

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- (1) Q All right And after you do this what - after you did this what did you do then?
 (2) A Then I locked the refrig - then I locked the refrigerator back up took the samples immediately to this packaging out
 (3) fit
 (4) Q Okay And were the samples still in this bag that Connor had brought them in?
 (5) A Yes
 (6) Q What packaging outfit did you bring it to?
 (7) A That's in here I don't remember
 (8) Q Indicating the exhibit?
 (9) A Yeah On page 6 I don't remember the name of the outfit I think it was either AAA or Acme or something like that Packaging And I remember the guy's name His name was
 (10) Hank Schaub I remember specifically talking with him
 (11) Q And that is another chain of custody card in which the item description reads samples for it has one LD Wiedman two R Kagan three J Hazelwood four Greg Cousins five M Jones six and L Blandford?
 (12) A Right
 (13) Q So would it be fair to assume based on that notation that you had six Styrofoam boxes in that bag?
 (14) A Yes
 (15) Q So you went now from the factory to Hank Schaub What did you do when you got there?

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- (1) A I introduced myself and I said you know where's Hank and he said I'm Hank I said okay fine Here's the stuff that we talked about And we started packaging the samples
 (2) Q Okay
 (3) A And I had him sign the custody form as receiving
 (4) Q This would be on the form that we're talking about right?
 (5) A Yes
 (6) Q Now this notation as to date and time 26 March 89 0930 (indicating) that would be the time that you arrived at the packaging office?
 (7) A Right
 (8) Q Now you say that you gave the samples over to Hank Schaub
 (9) in packaging Describe what was done to the package - to package the items?
 (10) A He showed me the package that he was going to pack them in
 (11) and then he commenced to package them to package the samples
 (12) Q What kind of package was it that he showed you?
 (13) A It was a cardboard box and he had a lot of this bubble wrapping and stuff that he wrapped, wrapped in every direction
 (14) around the samples
 (15) Q Were all six boxes placed in the same package?
 (16) A Yes
 (17) Q Was anything done to the six boxes before they were placed in the package as far as you recall?
 (18) A No

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- (1) Q So these six boxes then were in the same condition as
 (2) when you had examined them after you took them out of the
 (3) refrigerator correct?
 (4) A Yes
 (5) Q Nothing in addition had been done to them?
 (6) A No
 (7) Q Did you observe Mr Schaub seal the package?
 (8) A Yes
 (9) Q How did he do that?
 (10) A He used the - this brown glued tape and he sealed them
 (11) up
 (12) and he wrote out the label and all that sort of thing and I
 (13) said fine I had him sign this And I enclosed copies of the
 (14) custody forms in side the box I took care of the paperwork
 (15) the custody forms He did the rest
 (16) Q When you say you had him sign this you are talking now
 (17) about page 6 of this exhibit?
 (18) A Right
 (19) Q In the box did you include a copy of page 6?
 (20) A Yes
 (21) Q All right Did you also include a copy of page 4?
 (22) A Yes
 (23) Q All right In addition to these two items did you include
 (24) other chain of custody card - other chain of custody cards for
 (25) other people such as Mr Kagan Maurcen Jones?
 (26) A Yes

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- (1) Q Greg Cousins?
 (2) A Yes, all of them I did
 (3) Q So for all six individuals there were chain of custody
 (4) cards included?
 (5) A Right
 (6) Q Can you describe specifically what chain of custody
 (7) documents were included in the box that was sent out by Hank
 (8) Schaub and where they were in the box And okay fine
 (9) It's an interjection from another attorney
 (10) A As I recall I put the individual sheets for the persons
 (11) that we talked about such as page 4 which is for Captain
 (12) Hazelwood and also the five other people that were
 (13) sampled
 (14) plus the one, the sixth form in addition to those which was
 (15) used to combine all of the samples
 (16) Q Where did you put them?
 (17) A Inside the box I'm sorry Inside the box
 (18) Q You testified before that you had a conversation with a
 (19) person by the name of Henes?
 (20) A Jill Henes Dr Henes
 (21) Q From ChemWest?
 (22) A Right
 (23) Q When you had your conversation with her did you specify
 (24) what types of tests you wanted done on these blood samples?
 (25) A Yes, I did
 (26) Q What specifically did you tell her you wanted done?

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- (1) A I told her that I wanted them tested for everything under
 (2) the sun the entire spectrum of drugs and she said you
 (3) know
 (4) no problem She says we'll do the broadest test that we
 (5) have
 (6) and you know I talked to her about gas chromatology and
 (7) mass
 (8) spec I'm not intimately familiar with those tests but I've
 (9) seen them and I know what they are And she said, we can
 (10) do
 (11) those no problem She said we can do anything that you
 (12) want
 (13) Q I would like you to look at page 9 of the exhibit And I
 (14) ask you if you recognize that?
 (15) A Yes
 (16) Q What is it?
 (17) A That's the Federal Express form that was billed out by
 (18) Mr Schaub at the packaging store My signature is in the
 (19) lower left
 (20) Q All right And this was the mailing label that went on the
 (21) box?
 (22) A Right As I recall it is a carbon type form that you get
 (23) a receipt for as to - this was my chain of custody receipt
 (24) basically
 (25) Q After you mailed the package out when was the first time
 (26) that you called the lab to ask them about the results?
 (27) A I probably would have - I called them when I got back to
 (28) the office on that Monday
 (29) Q So that would be the 27th?
 (30) A Right So say you know hey they are in the mail They

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- (1) are going out today And I think - I'm pretty sure that the
 (2) guy said well we have 24 hour service to California,
 (3) Federal
 (4) Express
 (5) Q So when was it the next time you spoke to them about -
 (6) A Probably the next day
 (7) Q Which would be the 28th?
 (8) A Right
 (9) Q Who did you speak to?
 (10) A I think as I recall I asked for Jill Henes but I believe
 (11) she was gone And then I talked to this Dr Peat
 (12) Q Right And this was on the 28th At that time he told you
 (13) that he had not received the samples yet?
 (14) A I believe I called in the morning and he had not In the
 (15) afternoon they had or something like that
 (16) Q Okay Now this conversation that you had with Peat then
 (17) would be in the - at what time on the 28th of March?
 (18) A I have no idea Other than as best as I can recall in the
 (19) afternoon
 (20) Q Okay After you received this negotiation what did you do
 (21) with the information?
 (22) A I went in to my XO who is my boss, told him the
 (23) conversation I had and the results And I told him that he'll
 (24) call back when he gets them all done and then he'll fax me
 (25) the
 (26) results and I think he called back and I - I think a couple
 (27) hours and said I have them all Do you want the results
 (28) And

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- (1) I said yeah I would like them in writing Fax them to me
 (2) which he did
 (3) Q What did he fax to you specifically if you remember?
 (4) A He faxed me the forms In fact I recall seeing one in
 (5) here I think it was right at the beginning these forms two
 (6) and three
 (7) Q Just to clarify the record so we don't get confused later
 (8) on I would like to call your attention to this form that
 (9) you're referring to, two and three which is dated April 25,
 (10) 1989 It was a form similar to this?
 (11) A Similar to this that's correct
 (12) Q Now these results were originally sent to you First of
 (13) all you were notified over the phone and then they were faxed
 (14) to you correct?
 (15) A Correct
 (16) Q Did you also receive a hard copy through the mail of these
 (17) results?
 (18) A Yes
 (19) Q When was that?
 (20) A Probably a week later That's probably from memory It
 (21) was - it was these forms, I would think Similar
 (22) Q Were you aware of anybody else receiving documents from
 (23) Compuchem Laboratories relative to these blood tests?
 (24) A NTSB got copies That's the only ones that I know of
 (25) Q You testified earlier that when Petty Officer Connor

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- (1) brought the samples to you you took off the top of the boxes
 (2) and inspected the individual vials is that correct?
 (3) A Right
 (4) Q Did you inspect each and every vial?
 (5) A Yes, I did
 (6) Q During your inspection did you notice the seals that were
 (7) placed on the vials?
 (8) A Yes
 (9) Q Did you specifically inspect the seals themselves?
 (10) A Yes I did
 (11) Q Were the seals intact?
 (12) A They were All of them
 (13) Q Each and every seal was intact?
 (14) A Yes
 (15) Q You also testified that subsequently you inspected the
 (16) vials when you removed them from the warehouse is that
 (17) correct?
 (18) A Right
 (19) Q And at that time did you have occasion to inspect the
 (20) seals themselves?
 (21) A Yes, the ones that I looked at I did
 (22) Q The ones that you looked at Were those seals intact?
 (23) A Yes, they were
 (24) Q Okay Prior to your involvement with this particular case
 (25) had you had any familiarity with these types of seals that were

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- (1) placed on these physical vials?
 (2) A Yes
 (3) Q And just briefly could you tell us what - tell us where
 (4) that familiarity comes from?
 (5) A From our internal urinalysis program same type
 (6) Q Same type seal?
 (7) A Right
 (8) Q This is a paper seal?
 (9) A Right Very easily foreign
 (10) Q From your experience do you know if it's possible to
 (11) remove the stopper from the individual vials without disturbing
 (12) the seals?
 (13) A It's not possible
 (14) Q You said that these seals tear very easily?
 (15) A Yes
 (16) Q Based upon your experience is it possible to remove the
 (17) seals from the vials without tearing the seals themselves?
 (18) A No, it's not I've tried
 (19) Q You've tried to do that?
 (20) A Because I tore a couple ones, and I tried to fix them and
 (21) you can't Have you to tear them off and put a new one on
 (22) Q Concerning these seals that you just testified to
 (23) Lieutenant Commander Stock it is however possible to
 (24) completely remove a seal and put a new seal on in your
 (25) experience is it not?

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- (1) A It is possible but there would be some - residue, glue or
 (2) paper I mean you could do it certainly if you want to take
 (3) some -
 (4) Q In your experience if someone was deliberately trying to
 (5) remove a seal completely that's possible to do is it not?
 (6) A Sure
 (7) Q In addition to what you just stated relative to your
 (8) experience in the removal of the seals have you ever read any
 (9) scientific studies relative to whether or not seals can be
 (10) removed or tampered with without tearing?
 (11) A No
 (12) Q Have you ever been involved - strike that
 (13) Your examination of these seals at the time that you
 (14) examined them according to your testimony was an eyeballing
 (15) examination in the sense that you used your naked eye to
 (16) examine these seal seals?
 (17) A Yes
 (18) Q You did not use any magnifying glass to examine these
 (19) seals?
 (20) A No
 (21) Q Thank you very much
 (22) MR CASEY Your Honor defense before commencing
 (23) cross-examination, Your Honor the defendants would like to
 (24) offer exhibit DX 9040 into evidence
 (25) (Exhibit DX9040 offered)

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- (1) MR O NEILL We have no objection
 (2) THE COURT 9040?
 (3) MR CASEY Thanks
 (4) THE COURT Admitted without objection
 (5) (Exhibit DX9040 received)
 (6) CROSS EXAMINATION OF GARY STOCK (read)
 (7) BY DEFENDANT S EXAMINER
 (8) Q During your time in Anchorage you were an it investigator
 (9) correct?
 (10) A Yes
 (11) Q And – for a minute we ll get to that in a minute but
 (12) excluding the Exxon Valdez in conjunction with your duties as
 (13) an investigator did you ever have an occasion to direct or
 (14) conduct drug alcohol testing of any individuals?
 (15) A I had one other case but it wasn't blood involved
 (16) Q What is was involved?
 (17) A It was a breathalyzer of an operator out in Dutch Harbor I
 (18) worked with the police department on that
 (19) Q In conjunction with your duties were you ever told that
 (20) the reason for maintaining the chain of custody was?
 (21) A Sure
 (22) Q What were the reasons?
 (23) A Well it's to ensure that the sample has not been
 (24) tampered
 (25) with or you know that it didn't get into the wrong hands
 that
 (26) the seals weren t broken you know that sort of thing And

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- (1) it's in all fairness to the individual that gave the sample to
 (2) make sure that it hasn't been tampered with because next
 (3) time
 (4) it might be my sample
 (5) Q I now want to deal with the time when you received the
 (6) samples from petty officer Scott Connor All right And he
 (7) placed these boxes on your desk?
 (8) A Right
 (9) Q Only now were these boxes closed when he placed them on
 (10) your desk or were they open?
 (11) A When he pulled them out they were closed Then when
 (12) we
 (13) set them on the desk I opened them
 (14) Q Okay I want you to describe for us in as much detail as
 (15) you can how the boxes were opened and what you observed
 (16) when
 (17) you opened the boxes You opened the boxes one at a time?
 (18) A Yes
 (19) Q Do you recall whose box it was that you opened first?
 (20) A No, I don't recall
 (21) Q All right did you make a record of whose boxes it was that
 (22) you opened?
 (23) A Yes I wrote down the names that were on the boxes on to
 (24) my custody forms
 (25) Q All right But did you make a notation that you had opened
 these boxes?
 (26) A You mean a written notation?
 (27) Q Yes

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- (1) A No
 (2) Q Do you recall the size I m talking now about? The first
 (3) box you opened the size of the test tubes in that box? Were
 (4) they all the same size? Were they different sizes?
 (5) A They were very close to the same size I think there were
 (6) some smaller ones but they weren't significantly smaller
 (7) you
 (8) know They were about what five inches or so
 (9) Q But they weren t all the exact same size is your
 (10) recollection?
 (11) A That's correct yeah As I recall there were some
 (12) different size
 (13) Q But you did open all the boxes correct?
 (14) A Yes I did
 (15) Q Did you see any seals on the test tubes?
 (16) A I don't recall I really don't I don't recall if the
 (17) boxes were sealed or if the samples remember individually
 (18) sealed I know there was something in some fashion that
 (19) they
 (20) were sealed but whether it was the boxes or the tubes I
 (21) don't
 (22) recall
 (23) Q Do you recall cutting any seals to open up the box?
 (24) A I don't recall doing that no
 (25) Q After you completed this inception of these boxes on your
 (26) desk was Connor present during this time during the time that
 (27) you did this inspection?
 (28) A Yes Yes he was there one hundred percent of the time

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- (1) Q It s my understanding during the break Lieutenant
 (2) Commander Stock that you consulted with Mr Burns and you
 (3) have a clarification that you want to make for the record?
 (4) A Yes actually two different points
 (5) As I recall the individual vials had a paper seal around
 (6) the top of them and I don't recall if the boxes were sealed or
 (7) not
 (8) Q You said that there were two – there were paper seals on
 (9) the vials Can you describe these paper seals?
 (10) A Yeah they are the seals that go down one side of the vial
 (11) over across the top and then down the other side
 (12) Q What color were the seals?
 (13) A As best I can recall, thermal white
 (14) Q All right Now when you received these items from Scott
 (15) Connor and I want to show you Exhibit DX 9040 He s listed on
 (16) this form as a custody originator, is that correct?
 (17) A Right
 (18) Q So you would indicate that you received the items directly
 (19) from him?
 (20) A You misread that
 (21) Q So that you would indicate that you received the items
 (22) directly from him?
 (23) A Still misread it I have it different on my transcript
 (24) Q So that would indicate that you received the items directly
 (25) from him?

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- (1) A Correct
- (2) Q All right Did he reveal to you at that time that there
- (3) had been any breach in proper security of the samples during
- (4) the time that he had possession of the samples?
- (5) A As I recall, he told me that he felt comfortable with this
- (6) end of the chain of custody and that you know he felt there
- (7) was absolutely no tampering You know that nobody
- handled them
- (8) between them taking the samples and giving them to me
- And I
- (9) said, well, you know that will be determined down the road
- I
- (10) said, you know, what is done is done and you know I'll take
- (11) them from here
- (12) Q Did you ever ask him specifically whether he followed the
- (13) criteria in this paragraph that we just read on the chain of
- (14) custody card on this item which is 04?
- (15) A We didn't I didn't specifically go through this
- (16) paragraph, but I generically talked to them about you know
- (17) his maintenance of the chain of custody just for my own
- (18) curiosity At that point, you know, I was only responsible
- for
- (19) receiving the samples and getting them to the lab and I
- knew
- (20) that that was what I was going to be responsible for I you
- (21) know we talked about it but specifics are not in my memory
- at
- (22) all
- (23) Q You indicate though that you did have some discussion
- (24) with him about what a proper chain of custody should be in
- (25) your opinion is that correct?

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- (1) A Yes
- (2) Q All right And in conjunction with that what you tell him
- (3) to be done to maintain a proper chain of custody?
- (4) A Well, I didn't tell him what should be done I just knew
- (5) in my mind that I was going to do once I received - I just
- (6) knew in my mind what I was going to do once I received the
- (7) samples And in my mind I was going to do them the way I
- (8) thought they needed to be done and that was to you know
- get
- (9) the form taken care of and lock them over overnight
- because I
- (10) knew a few phone calls while I was in the office to the state
- (11) trooper lab in Anchorage, talked with their criminology lab
- (12) folks about samples and what they what they'd had to be
- done
- (13) with them because that is not something that I have dealt
- with
- (14) a lot, quite frankly So I talked with an expert somebody
- (15) that I knew in the lab that had done other things for me
- (16) Q Who was that that you spoke to?
- (17) A Some lab that we have you know - I had marijuana and
- (18) cocaine samples taken to this lab so I had a point of
- (19) contacted on my rolodex so I called this person up
- (20) Q What was the person's name?
- (21) A I don't recall
- (22) Q He was a state trooper?
- (23) A A state trooper employee at the lab that I knew that I had
- (24) talked to before
- (25) Q And what was your purpose in calling this person?

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- (1) A To get samples to a number of questions that I had about
- (2) the samples
- (3) Q What?
- (4) A Refrigerators that sort of thing
- (5) Q In addition to whether the samples should be refrigerated?
- (6) A Right
- (7) Q In addition to that what other types of questions did you
- (8) have?
- (9) A I also asked you know, where can I get these things
- (10) analyzed, can I get them done locally and I remember the
- (11) individual saying, well, you can but you know, but I
- recommend
- (12) you go to with this lab because as I recall, the individual
- (13) told me that they didn't have the ability to do the gas
- (14) chromatography and mass spectrometry tests in Anchorage
- and
- (15) that they had to be sent to, I believe, Sacramento,
- (16) California Because I discussed with the individual the
- (17) importance of the samples and the things that I had wanted
- (18) done I wanted a complete spectrum analysis of drugs and
- (19) alcohol, and I remember the individual saying, well, if you're
- (20) really looking for, you know, every type of narcotic, then it's
- (21) best to go to California
- (22) Q And did this individual name specifically?
- (23) A There's more truth in that than I thought
- (24) Q Did this individual specifically name a laboratory in
- (25) California that you should utilize?

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- (1) A Yes
- (2) Q What was the name of that lab?
- (3) A ChemWest
- (4) Q That was in Sacramento California?
- (5) A Yes Yes
- (6) Q Now I want you - I know you defend that you had a
- (7) conversation with the XO relative to the fact that you were
- (8) going to receive these samples Did you have any
- conversations
- (9) with anyone else in the Coast Guard as to what you were
- (10) supposed to do, what you were supposed to be doing with
- these
- (11) samples after you got them from Scott Connor?
- (12) A I don't recall that I did I just remember Scott saying,
- (13) well we need to get these tested and I said well okay, what
- (14) for? And he said I don't know, I suppose for drugs and
- (15) alcohol and we discussed I knew the importance of the
- samples
- (16) so I knew that I had to get them tested for everything under
- (17) the sun That's what I knew I had to do
- (18) Q Did you have any further conversations with your XO or your
- (19) commanding officer before what you should do with the
- samples?
- (20) A No
- (21) Q Did you have any conversation or direction from the Coast
- (22) Guard as to where to send the samples?
- (23) A No I recall sometime talking with Tom Falkenstein and
- as
- (24) I recall the conversation was I says well I don't recall if
- (25) this was afterwards, but the bottom line is that it in much my

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- (1) hands entirely Nobody gave me any direction whatsoever and I
- (2) didn't need any I knew what to do
- (3) Q Turning now to the warehouse in Anchorage where you took
- (4) the samples approximately where was this warehouse in relation
- (5) to your office?
- (6) A It's about three or four miles from the office
- (7) Q Is this a building or is this a place in the building?
- (8) A No, it's a row of kind of garage type warehouses that we leased We leased this It's more like a double garage with a
- (10) huge sliding door so that you can drive a vehicle in there or a
- (11) boat or whatever
- (12) Q And you say you leased this?
- (13) A Right
- (14) Q This warehouse from someone?
- (15) A Right
- (16) Q Who did you lease it from?
- (17) A I have no idea
- (18) Q Are there any personnel assigned to this warehouse?
- (19) A No
- (20) Q On Monday morning when you went to the warehouse was
- (21) anybody at the warehouse?
- (22) A No
- (23) Q Was the warehouse locked?
- (24) A Yes
- (25) Q How did you get into the warehouse?

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- (1) A Through the walk-in door Locked walk in door
- (2) Q Where did you get the keys to get into the warehouse?
- (3) A I believe Stan gave them to me again I gave him the keys
- (4) back into the warehouse on Saturday and then I believe on
- (5) Monday in the office I got them back from him
- (6) Q So when he gave you the keys back you went back into the
- (7) warehouse?
- (8) A Right
- (9) Q Did you make any record of what you observed when you
- (10) opened up the boxes?
- (11) A No written record no
- (12) Q Did you - where physically did you do this? Where
- (13) physically did you open up these boxes?
- (14) A Right there in the warehouse
- (15) Q All right Did you sit at the table when you did this or
- (16) were you standing up?
- (17) A I think I set them on a little table next to the
- (18) refrigerator
- (19) Q There was a table in the room with the refrigerator?
- (20) A I believe, yes
- (21) Q And that - from the time that Scott Connor came into your
- (22) office in Anchorage and showed you the six Styrofoam boxes with
- (23) the samples Up until the time that the samples were packaged
- (24) in Hank Schaub's office did you or anyone else did you or
- (25) anybody add any seals or tape or anything to any of these

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- (1) boxes?
- (2) A I did not
- (3) Q Did you notice whether anything had been added to any of
- (4) these boxes?
- (5) A I didn't notice no
- (6) Q Did you describe specifically what chain of custody
- (7) documents were included in the box that was sent out by Hank
- (8) Schaub and where they were in the box?
- (9) A As I recall I put the individual sheets for the persons
- (10) that we talked about such as page four which is for Captain
- (11) Hazelwood, and also the five other people that were
- (12) sampled
- (13) plus the one the sixth form in addition to those which was
- (14) used to combine all the samples Inside the box I'm sorry,
- (15) inside the box
- (16) Q I just want to go back to one thing that I neglected to ask
- (17) you before And this goes to the sending of the lab samples at
- (18) to ChemWest?
- (19) A Uh-huh
- (20) Q During the course of time that you are waiting to receive
- (21) these samples from Mr Connor and you - and the time that you
- (22) sent them through the mail did you have a conversation with
- (23) anyone about whether or not someone should personally carry the
- (24) samples to the lab?
- (25) A No no
- (26) Q Did that ever come up at all as an option to send over

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- (1) anyone to the lab with the samples?
- (2) A No because nobody knew what to do with them at all you
- (3) know and I talked to my XO he said gee, Gary, I don't know
- (4) where to send them You know you know best Handle it
- (5) Essentially they left it up to me because that is sort of what
- (6) I did I had occasion to do a little of that so they left it
- (7) up to me entirely We got no direction out of Valdez at all
- (8) Q I take it from the what you said You didn't get any
- (9) direction from anyone as to how to deliver the samples to the
- (10) lab?
- (11) A No
- (12) Q Before the Exxon Valdez incident had you ever been
- (13) involved in the handling and transmission of blood samples
- (14) specifically for laboratory analysis?
- (15) A In college we drew blood We had blood samples in
- (16) microbiology class and some of the other human anatomy
- (17) classes
- (18) that I took That would be it but professionally, no
- (19) Q Your previous experience in the Coast Guard was biological
- (20) samples had been limited to urine samples is that a fair?
- (21) A Urine, oil samples, other types of physical evidence
- (22) Ships documents
- (23) Q When you say marijuana and cocaine you mean the
- (24) substances
- (25) themselves?
- (26) A Right
- (27) Q Your Honor that concludes our cross-examination

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- (1) MS HANSON Before we call our next witness Your
- (2) Honor plaintiffs offer Plaintiff's Exhibit 141 pages 6 7 and
- (3) 8 only in evidence
- (4) THE COURT Is there objection?
- (5) MS HANSON Pages 6 7 and 8
- (6) MR RUSSO No objection Your Honor
- (7) (Exhibit 141 Pages 6 7 and 8 received)
- (8) THE COURT Thank you
- (9) MS HANSON Karen Lynn Metcalf by deposition Thank
- (10) you Your honor Plaintiffs call as their next witness Karen
- (11) Lynn Metcalf by deposition
- (12) (The Reader Is Sworn)
- (13) THE CLERK For the record state your full name your
- (14) address, and spell your last name
- (15) THE READER It s Suzanne DuRard S-U-Z A-N-N-E
- (16) D-U capital R-A-R-D My address is 1501 Fourth Avenue
- (17) Seattle WA 98101
- (18) THE CLERK Thank you
- (19) DIRECT EXAMINATION OF MS METCALF (read)
- (20) BY PLAINTIFF S EXAMINER
- (21) Q Ms Metcalf for the record could you state your name on
- (22) the record please?
- (23) A Karen Lynn Metcalf
- (24) Q Could you give your address?
- (25) A 3432 Summer Park Drive Apartment 331 Sacramento
95834

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- (1) Q Why don t you explain to me then a little bit as far as
- (2) your employment history after high school
- (3) A Shortly after high school I was employed by California
- (4) Western Life Insurance Company and I worked for them for
- (5) eight
- (6) years they relocated to Houston Texas, and I was then
- (7) hired by
- (8) CompuChem Laboratory where I was executive supervisor
- (9) and I
- (10) worked for them for two years and they relocated And I
- (11) went
- (12) on to La-Z-Boy Furniture Galleries for a short time and then
- (13) back into drug testing with Roche Biomedical Laboratories
- (14) and
- (15) there I was a screening and did the actual urine screening
- (16) for
- (17) drugs of abuse testing And then they relocated and so I
- (18) am
- (19) now employed by the University of California Davis Medical
- (20) Center as a laboratory assistant in the hematology
- (21) department
- (22) Q Outside of high school did you have any other formal
- (23) education?
- (24) A No, it's all the job experience
- (25) Q When did you begin working for - was it ChemWest or
- (26) CompuChem?
- (27) A The environmental portion was ChemWest The drug
- (28) testing
- (29) portion was CompuChem I started June 30th 1988
- (30) Q When you started working there were you employed by
- (31) ChemWest or CompuChem?
- (32) A I guess really it was - on paper it was ChemWest
- (33) Q Which is the environmental testing?
- (34) A Right

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- (1) Q What was the primary business of that lab when you started working there in June 1988?
- (2) A There were two sections one of course was environmental
- (3) testing which I had no involvement in and then the drug testing portion was kind of split and we did various different
- (4) type - we did some testing for the corner's office and different private industry and later on branched into getting more private industry and went into more like a production type
- (5) testing
- (6) Q So you weren't involved - you were involved in the drug testing portion of the lab correct?
- (7) A Right
- (8) Q I would like you to go over a little bit as to what your duties and responsibilities were when you first started working for CompuChem on June 30th 1988
- (9) A I was hired in as a supervisor of receiving At that point in time, I was the entire receiving department I was responsible for logging in all specimens for testing in a log book and keeping track of storage setting up the specimens for testing mainly urine at that point in time
- (10) And just - I was also in charge of the lab and position of making sure the dishes were washed and the lab was kept clean and can I have responsibilities like that
- (11) Q When you were first hired by CompuChem in June of 1988 what type of training did they give you?

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- (1) A I was given two weeks training with the supervisor that I was replacing and then basically it was just on the-job experience When I had questions I would ask if there was a new task that I had not been shown by the supervisor that I replaced then one of the managers would come in and work with me
- (2) Q Who was the supervisor that you replaced?
- (3) A Shelley Edwards
- (4) Q And did she continue to work for CompuChem or did she go on to another job?
- (5) A No, she went to a higher position at Strangs Restaurant
- (6) Q Now during this break in period this training period for two weeks what type of things did she show you?
- (7) A Basically the logging in of the specimens how to aliquot the urines I think that's really about all she and I went over, just the basics that I needed to know just to get things started
- (8) Q Were you ever given any pamphlets or manuals to read?
- (9) A Yes, we had an operations manual that I could refer back to
- (10) Q What type of information did this information manual did it have that was relative to your job?
- (11) A It pretty much told you step by step what each procedure was you could pretty much go through the manual and know much
- (12) how to do what you needed to do because it was pretty much

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- (1) spelled out for you
- (2) Q Did the manual contain a discussion of chain of custody?
- (3) A Yes It referred to chain of custody yes
- (4) Q As part of your training when you started to work for CompuChem were you trained as to the importance of maintaining
- (5) a chain of custody for a sample when it came into the lab?
- (6) A Yes
- (7) Q What types of things were you instructed relative to chain of custody as best you can recall?
- (8) A Basically as best I can recall it was just when logging a specimen out of a refrigerator or logging it back into storage
- (9) when it came in making sure that the dates and that it was released to my custody and released back to the custody of either the aliquotting or the refrigerator or whatever needed to be done
- (10) Q What about blood samples? Did you receive training in blood samples?
- (11) A Yes
- (12) Q What type of training did you receive in that?
- (13) A For the bloods basically in that time it was just basically as I said logging them into the chain of custody and releasing them to temporary storage I did not aliquot them at that time
- (14) Q What time are we talking about now?
- (15) A I would say I didn't start aliquotting bloods until

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- (1) probably the summer of 1989
- (2) Q You used the term aliquot a number of times and I think it would be helpful if you would define that for it?
- (3) A Aliquotting is basically removing a measured portion of the specimen in a container and putting into a test tube for an analysis
- (4) Q I want to draw your attention to March of 1989 okay? Do you have a recollection of receiving blood samples in the lab in Sacramento on or about March 28 1989?
- (5) A Yes
- (6) Q Concerning blood testing for the crew of the Exxon Valdez?
- (7) A Yes
- (8) Q When did you first learn you were going to receive samples for the crew of the Exxon Valdez?
- (9) A The morning of the day they came in, Mike came back and told me that we were going to be getting these in the same day
- (10) Q When you say Mike you mean Dr Peat?
- (11) A Yes
- (12) Q As best you can recollect tell us what he told you that morning
- (13) A Just - he told me about the incident that there had been an incident oil spill and that we would be receiving specimens for the crew to be tested
- (14) Q Do you recall approximately what time on that date the samples came in?

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- (1) A Our ships usually came in probably around ten or 11 so I
 (2) would have to say sometime around there As I recall it
 came
 (3) in Federal Express
 (4) Q What was the procedure on that day for receiving this
 (5) shipment?
 (6) A As far as they came they always came into the
 (7) environmental receiving area and the manager of
 environmental
 (8) called me to come pick them up and so I would go and get
 them
 (9) and bring them back to the receiving and then open the
 package
 (10) and start logging them in
 (11) Q Tell us what you remember now as far as receiving the
 (12) samples and what you did with the samples when you received
 (13) them I want you to as best you can go through the sequence
 (14) of you know of what you did?
 (15) A Basically I - what I remember is opening the box that they
 (16) were packaged in and then inside the box there were the
 little
 (17) white Styrofoam boxes But Captain Hazelwood specimens
 were
 (18) all in one white Styrofoam box as I recall and I would open
 (19) the box and breaking the seal on the white Styrofoam box
 and
 (20) then check specimens and log them in on the chain of
 custody
 (21) And I did one person at a time from that incident So I didn't
 (22) try and log them in all at once I went one box at a time and
 (23) logged all the specimens in one at a time
 (24) Q Do you recall that the box that all this stuff came in do
 (25) you recall that box?

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- (1) A Not the box I remember more the Styrofoam boxes that
 the
 (2) actual specimens were housed in than I do the regular
 shipping
 (3) container
 (4) Q At this time did you have occasion to examine the box that
 (5) it came in to see that it was sealed up and -
 (6) A Oh, yes I always made sure the seals were intact
 (7) Q Do you have a recollection of doing that?
 (8) A Yes
 (9) Q And after examining the box in that fashion what did you
 (10) do after examining the box?
 (11) A Then I would slice it open you know cut the tape and
 open
 (12) it up
 (13) Q I think we now got to the point where you opened the box
 (14) that they came in You say you recall there being Styrofoam
 (15) boxes in that box correct?
 (16) A Yes
 (17) Q And specifically a Styrofoam box containing Captain
 (18) Hazelwood's samples correct?
 (19) A Yes
 (20) Q As best you can recollect what did you notice about that
 (21) Styrofoam box and what did you do with that Styrofoam box
 (22) containing Dr Hazelwood's samples?
 (23) A The Styrofoam box was sealed and usually what they had
 was
 (24) a white chain of custody that came around the side It didn't
 (25) go all the way around the box but came around the side As I

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- (1) recall the seals were all intact
 (1) Q What we're doing is putting this in words so we have to as
 (3) best we can describe what you mean There was a white chain
 of
 (4) custody around the sides Can you describe that more?
 (5) A Basically a chain of custody seal that is on the top
 (6) portion of the box and then it flaps down over the sides
 both
 (7) sides of the box, but it does not go around the bottom
 (8) Q This is a seal?
 (9) A Yes
 (10) Q Was that like tape or -
 (11) A It's like a label It would be like you could - and it
 (12) would generally have the identification of the person's
 (13) specimens held inside the box
 (14) Q So you saw this type of seal on the Styrofoam box going
 (15) around the sides?
 (16) A As I recall, yes
 (17) Q What else?
 (18) A Okay Then you open it up I believe in his case we had a
 (19) graduated cylinder
 (20) Q So now we opened - you opened up the box What did you
 (21) see?
 (22) A As I was saying, I believe there was a plastic graduated
 (23) cylinder of urine and three blood tubes
 (24) Q What did you do then?
 (25) A Then I just identified the specimens on the chain of

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- (1) custody At that point there was no breaking of any seals
 (2) Then they were put into the temporary storage receiving
 area
 (3) where the technician pulled them out
 (4) Q Let's back up and go through a little more carefully When
 (5) you opened up the Styrofoam box the way you described and
 saw
 (6) the contents did you take the tubes out?
 (7) A Oh yes
 (8) Q Can you describe how you did that and what you did when
 you
 (9) took them out?
 (10) A Well, I take - I take the tubes out one by one and inspect
 (11) them to make sure that the seals were intact to make sure
 the
 (12) identification on the tubes match the identification with the
 (13) paperwork, and then proceeded to put the identification on
 the
 (14) chain of custody again making sure that they matched
 (15) Q When you say you made sure the seals were intact what
 (16) specifically did you do on these tubes?
 (17) A I just inspected them to make sure that there were no
 slice
 (18) marks no area where the seals had been pulled back no
 area
 (19) where the tape had been cut These tubes were received
 with
 (20) the red evidence tape completely wrapped around the tube
 and
 (21) the stopper and then I believe it had the white chain of
 (22) custody from the Coast Guard from side to side and the
 stopper
 (23) on the tube
 (24) Q So your recollection of these test tubes then concerning

(5) Captain Hazelwood is that they had - talking about the test

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- (1) tubes now as opposed to the urine vial
 (2) **A Okay**
 (3) **Q** That they had a seal wrapped around the top Can you describe that?
 (4) **A** It was just a thin white seal that was placed - it had identification of Captain Hazelwood on there and it was placed
 (5) **on the tube by the Coast Guard** It was a Coast Guard seal
 (6) **Q** When you say this was over the top I want you to describe how that was
 (7) **A** Basically it started on one side of the tube went over the top of the stopper down the other side of the tube
 (8) **Q** And it had Captain Hazelwood's name written on it?
 (9) **A** I believe so yes
 (10) **Q** In addition to that seal over the top what other seal did you see?
 (11) **A** It had what I call the red evidence tape It's red sticky tape that says confidential on it I believe is what it says and it was wrapped a couple of times around the tube and across the top of the stopper
 (12) **Q** Now other than that white seal that went over the top of the tube and the red seal that you just described what other seal do you recall on the test tubes?
 (13) **A** I don't recall any other seal
 (14) **Q** In addition to - you looked at each test tube in the box?
 (15) **A** Yes

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- (1) **Q** And were they all packaged the same way as you just described?
 (2) **A** Yes
 (3) **Q** After you inspected the seals on the test tubes what did you do?
 (4) **A** Then I logged them in on the chain of custody and assigned them what we call the CW number from our logbook
 (5) **Q** Now when you say you logged them in what do you mean by that?
 (6) **A** Meaning I put detailed information on the chain of custody as to how the tubes were sent, how they were packaged, what the box was that they were received in and again as I said assigning it a - an identification number so that we can do the test
 (7) **Q** Now in terms of logging in these samples you recall describing the samples insofar as their size and number and the stopper?
 (8) **A** Yes
 (9) **Q** I'd like to show the witness for purposes of refreshing your recollection relative to the logging of Captain Hazelwood's tubes what has been marked Plaintiff's Exhibit
 (10) **130** Previously 26027 in the deposition of Gary Stock and specifically I'm referring her attention to Bate stamp number
 (11) **00030** of that exhibit Deposition I for this deposition
 (12) **Ms Metcalf** I would like you to take a look at this

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- (1) document and ask you do you recognize it?
 (2) **A** Yes
 (3) **Q** And what is it?
 (4) **A** It's a chain of custody for Captain Hazelwood's specimens
 (5) **Q** Does that refresh your recollection as to how you logged in the size and number and color of the test tubes?
 (6) **A** Yes
 (7) **Q** And now that your recollection is refreshed do you recall how you described his blood samples when you logged them in?
 (8) **A** Yes There were three ten milliliter red stoppered tubes
 (9) **Q** And why don't we just go through this line by line if we can
 (10) You see here on the top left hand corner there is a number (indicating)
 (11) **A** Right
 (12) **Q** What is that line?
 (13) **A** That reference number is the CW number which I explained we got out of a logbook
 (14) **Q** In Captain Hazelwood's case what is that number?
 (15) **A** CW78 89
 (16) **Q** Now right under that there is another line requesting agency Do you see that?
 (17) **A** Yes
 (18) **Q** What is supposed to go in that particular line?
 (19) **A** That is the agency that is requesting us to do the drug

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- (1) **analysis for them**
 (2) **Q** And in this particular case who was the requesting agency for Captain Hazelwood's blood test?
 (3) **A** The U S Coast Guard
 (4) **Q** Is this your handwriting on this form?
 (5) **A** Yes
 (6) **Q** And this entry is in your handwriting correct?
 (7) **A** Yes
 (8) **Q** Where did you get the information that you used?
 (9) **A** If I recall correctly there was a letter received with the specimens which gave the information on it
 (10) **Q** And could you just for the record read what you entered in the space there for requesting agency?
 (11) **A** U S Coast Guard marine safety office, 222 East 7th, resume D 148 Anchorage AK 99501 To the attention of Lieutenant Gary Stock
 (12) **Q** Now the next line is identification What is supposed to go in that space?
 (13) **A** That is generally the name and the social security number
 (14) **if -**
 (15) **Q** Of who?
 (16) **A** Of the person that we're testing
 (17) **Q** And in this case what entry did you make there?
 (18) **A** Joseph Hazelwood 071 38 8376
 (19) **Q** Where did you get that information?

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- (1) A That would have been from the test tubes and also again as
- (2) I stated, I double checked the information with the letter that corresponded with the specimens
- (3) Q The next line down says specimen or specimens What is supposed to go in that space?
- (4) A That is identification of the type tubes that we received to do the testing
- (5) Q And what did you enter in that space for Captain Hazelwood?
- (6) A Three ten milliliter red-stoppered tubes of blood
- (7) Q The next line down says test required correct?
- (8) A Yes
- (9) Q And where would you get that information as to what test was required?
- (10) A That generally comes with the letter accompanying the specimen, what they want and in some instances I'm just instructed by my manager on what to do
- (11) Q Now what did you enter in that space for Captain Hazelwood's samples?
- (12) A Full screen of drugs - full screen for drugs of abuse including alcohol
- (13) Q Now, the next entry is date received
- (14) A Yes
- (15) Q And what would be indicated in that box?
- (16) A March 28, 1989
- (17) Q What would that indicate?

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- (1) A That's the actual date that the specimens came into the laboratory for testing
- (2) Q Would there be any provision in the lab to clock in the time that the specimens arrived in the lab?
- (3) A No we do not have a time clock
- (4) Q Is it your recollection as to whether the specimens came in the morning in the afternoon -
- (5) A It was the morning
- (6) Q Then on that same line over to the right there is a line received by
- (7) A Yes
- (8) Q And what is supposed to go in that line?
- (9) A That is my name both printed or in this case stamped I had a name stamp and handwritten above it saying I am the one who has received the specimens now from the shipping company
- (10) Q And on that line you have a stamp Karen L. Metcalf and above it some handwriting Is that your signature?
- (11) A Yes, it is
- (12) Q And what entry did you make concerning Captain Hazelwood's
- (13) samples on the comments section?
- (14) A Sample received in a sealed white container within a sealed white box with five other samples White box sent in large sealed brown box So basically you had three levels to the sealing of these specimens They were shipped in a large brown box and inside the large brown box we had a white box that was

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- (1) also sealed and inside that white box was a Styrofoam container I was referring to earlier
- (2) Q In the next entry here you have specimen container (indicating) And what is being referred to there?
- (3) A That's referring to the actual tubes
- (4) Q When you say the actual tubes can you specify what you mean?
- (5) A The actual tubes of blood That's referring to were they sealed or not sealed If there would have been any tampering
- (6) with the seal, it would have been notated there
- (7) Q On this particular document this specimen container it was noted three ten milliliter red stoppered tubes of blood?
- (8) A Yes
- (9) Q What do you have under this entry of shipment container sealed?
- (10) A Yes
- (11) Q What does that mean?
- (12) A That means that the seals were intact on the tube, that there had been no evidence of tampering
- (13) Q And these are the seals that you described previously that you saw on these test tubes?
- (14) A Yes
- (15) Q Can you ones again at this point describe what the sealings were Captain Hazelwood's test tubes?
- (16) A We had the red evidence tape wrapped at the top of the tube

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- (1) completely covering the stopper and then there was a thin white Coast Guard chain of custody seal that went on one side
- (2) of the tube across the stopper and down the other side
- (3) Q This was like a long thin strip?
- (4) A Yes
- (5) Q White seal?
- (6) A Yes
- (7) Q Long thin strip?
- (8) A Yes
- (9) Q And those were the only seals?
- (10) A That's all I recall
- (11) Q Next you have labeled
- (12) A Yes
- (13) Q What does that mean on this form?
- (14) A That's meaning that these tubes were labeled with Captain Hazelwood's identification his name social security number
- (15) other identifying things
- (16) Q Now after this section of the form there's a line and the next section says chain of custody right?
- (17) A Yes
- (18) Q What is that part of the form?
- (19) A That basically is from here on everything that's done to that specimen is documented on the chain of custody, whether it's taken out of the refrigerator to aliquot or whether it's transferred from one storage to another Anything that's done

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- (1) with that specimen from there on out has to be documented on
- (2) this chain of custody and signed in and out
- (3) Q And that was the procedure that you followed in the lab at that time relative to these samples?
- (4) A Yes
- (5) Q Now I want to go through the chain of custody entries on this exhibit
- (6) A Okay
- (7) Q And I see that it's divided up into various columns Date and time received by - received by purpose/remarks on the first set of entries can you describe what those entries mean?
- (8) A Well the above portion chain of custody released it from Federal Express into my custody So the very first entry was myself releasing the specimen from my custody and placing it into our temporary storage receiving area which is the refrigerator
- (9) Q This entry says March 28 1989 under date and time
- (10) A Yes
- (11) Q And it has a notation on this and it's a stamp?
- (12) A Yes
- (13) Q And underneath it there's handwriting Is that your handwriting?
- (14) A Yes
- (15) Q What does that say?
- (16) A That's the time I released the specimen from my custody

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- (1) into the receiving area
- (2) Q What time is that?
- (3) A 10 14 in the morning
- (4) Q Over to the right it says released by and has the Karen L Metcalf stamp?
- (5) A And signature
- (6) Q And that is your signature?
- (7) A Yes
- (8) Q And received by what does it say under received by?
- (9) A Temporary storage receiving area
- (10) Q What does that specify?
- (11) A That is our refrigerator
- (12) Q So in other words you put it in the refrigerator?
- (13) A Yes
- (14) Q How did you store it in the refrigerator?
- (15) A Basically we just kept it in its original Styrofoam container and put it in a - actually we kept the white box that was sealed in as well and just kept all of the specimens together and put it on a shelf in the refrigerator
- (16) Q When you say that you put it in a white box you put Captain Hazelwood's specimens in the Styrofoam box in the white box?
- (17) A Yes
- (18) Q And was it in the box alone or were there other samples in the box with it?

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- (1) A Everything regarding this incident was maintained in the same white box
- (2) Q Okay Now the next line over to the right the next column over to the right it says purpose/remarks What is the reason for this column?
- (3) A That area is just for us to explain why we're doing what we're doing on the chain of custody This particular instance it's transferring the specimens to temporary storage That's just basically explaining why I took it from my custody and put it in temporary storage
- (4) Q And that is stamped that column?
- (5) A Yes
- (6) Q And the next line down on this chain of custody series can you explain that for us what that is?
- (7) A Yes That was Matt Noedel removing it from temporary storage on March 28 1989 at 11 55 for the purpose of ethanol testing
- (8) Q Now under date and time it says March 28 1989 and written in 11 55?
- (9) A Yes
- (10) Q Do you know whose handwriting that is?
- (11) A That's Matt's
- (12) Q And the next box over it says - the released by column it says temporary storage receiving area
- (13) A Yes

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- (1) Q That's a stamp Who would have put that stamp there?
- (2) A Matt
- (3) Q And that indicates it's being taken out of the temporary storage receiving area?
- (4) A Yes
- (5) Q At 11 55?
- (6) A Yes
- (7) Q And that is in fact the refrigerator
- (8) A Right When he did his testing they were completely taken out of my area
- (9) Q This entry here released by temporary storage receiving area?
- (10) A That is the refrigerator
- (11) Q Were you present when he removed the sample on March 28th 1989 11 55?
- (12) A I believe I was I don't - I mean, he had access to them he could get them without me being there I can't tell you for sure but most likely yes, I was
- (13) Q The next box received by has Matt Noedel's stamp and a signature above it Is that Matt Noedel's signature?
- (14) A Yes
- (15) Q And the next box under purpose/remarks it has an entry What is that entry?
- (16) A ETOH which as an abbreviation for ethanol testing
- (17) Q So this would indicate to you that this was being taken out

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- (1) by Matt Noedel to do what type of test?
 (2) A They did a GCMS test for ethanol
 (3) Q Which is an alcohol test?
 (4) A Right
 (5) Q Now on the next line under date and time there is another
 (6) entry from March 28 1989 correct?
 (7) A Yes
 (8) Q What does that entry tell you?
 (9) A That entry is saying that Matt is taking it from his
 (10) custody and putting it back into temporary storage
 (11) Q And what does it tell you as far as what time that was
 (12) done?
 (13) A That was done at three p m
 (14) Q I d like to direct your attention to pages 30 31
 (15) A Okay
 (16) Q Once again is this the chain of custody document for the
 (17) blood samples for Joseph Hazelwood as received by you in
 1989?
 (18) A Yes
 (19) Q And is this your handwriting on this document filling in
 (20) the information concerning the identification specimens tests
 (21) required requesting agency date received received by
 (22) shipment container and comments specimen container as well
 as
 (23) various entries on that chain of custody
 (24) A Yes
 (25) Q Where was that document kept?

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- (1) A This document was kept in a CW file 78 89 in our file
 (2) cabinet
 (3) Q And was this document kept in the regular course of
 (4) business?
 (5) A Yes
 (6) Q I call your attention to - I call your attention to an
 (7) entry for May 1st 1989 Do you see that?
 (8) A Yes
 (9) Q Do you recognize the handwriting on that entry?
 (10) A That's Judy Peat
 (11) Q What does that entry say?
 (12) A That entry says that she took it out of the long term
 (13) storage freezer and transferred it to the temporary storage
 (14) refrigerator It looks like at 9 25 in the morning
 (15) Q Excuse me
 (16) Going to the next entry May 2nd 1989 do you see that?
 (17) A Yes
 (18) Q Can you describe that entry for us?
 (19) A May 2nd at four o'clock I took the specimen out of
 (20) temporary storage and we had aliquotted part of it to be
 sent
 (21) to Salt Lake City for testing and then on May 2nd at 4 15
 p m
 (22) I released it from my custody back to temporary storage
 (23) Q So in other words on May 2nd at four o'clock you took it
 (24) out of the refrigerator
 (25) A Yes

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- (1) Q And you aliquotted it?
 (2) A Yes
 (3) Q And put it back in the refrigerator?
 (4) A Yes
 (5) Q In terms of aliquotting it at this time what did you do?
 (6) A I aliquotted it into another blood tube with a stopper and
 (7) then sent to it Salt Lake City
 (8) Q When you took the sample did you open up a new test tube
 (9) or did you -
 (10) A No, I remember specifically taking it from the same tube
 (11) The seal had already been broken I don't like to break too
 (12) many seals
 (13) Q Do you recall on whose directions that you took this -
 (14) A I believe this was Judy Peat
 (15) Q And did you fill out certain documents in preparation for
 (16) sending this to - where was it Salt Lake City you said?
 (17) A The Center for Human Toxicology in Salt Lake City If my
 (18) memory serves me correctly there should have been an
 internal
 (19) chain of custody We have a special chain of custody that
 we
 (20) sent when we were sending specimens to another lab so it
 would
 (21) be like almost like a shipping chain of custody And I would
 (22) release it to my custody to the shipping company It would
 (23) probably have been Federal Express or Airborne Express
 and in
 (24) turn when Salt Lake City received it they have to complete
 the
 (25) chain of custody saying they received it from the shipping

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- (1) company and they have to keep their documentation
 (2) Q And did you physically pack up this sample to send out?
 (3) A I believe so, yes
 (4) Q And when I say physically pack it up exactly what did you
 (5) do to prepare the sample to be sent out?
 (6) A If memory serves correctly, I aliquotted it into the tube
 (7) and then sealed the tube and then packed it in a box and
 sealed
 (8) the box And then shipped it
 (9) Q I d like you now to look at the first page of this document
 (10) concerning Joseph Hazelwood s blood tubes on Plaintiff's
 (11) Exhibit 141 Do you see that?
 (12) A Yes
 (13) Q And specifically I want to direct your attention to the
 (14) entry under specimens First of all is that your handwriting
 (15) on this document?
 (16) A Yes
 (17) Q And is your handwriting in this section on specimens?
 (18) A Yes
 (19) Q And can you tell us how that reads?
 (20) A Basically I have made a change from three ten milliliter
 (21) red stoppered tubes of blood to one ten milliliter red
 (22) stoppered and two ten milliliter gray stoppered tubes of
 blood
 (23) Q And how have you made that change? You've crossed out a
 (24) three?
 (25) A Yes I put a line through the three, put an one above it,

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- (1) initialed it and dated
 (2) Q And that s your initials And the date is what?
 (3) A 5 I 89
 (4) Q And then you added another line to the document?
 (5) A Yes
 (6) Q And that would be two ten milliliter gray stoppered tubes
 (7) of blood
 (8) A Yes
 (9) Q And you initialed it?
 (10) A Yes And dated it
 (11) Q Were you directed to do this by anybody at the lab?
 (12) A I believe I was directed to do this by Judy Peat
 (13) Q What did Judy Peat tell you to do when she told you to do
 (14) this?
 (15) A Again if I'm remembering this correctly, she approached
 me
 (16) and told me that there was an error made when I logged the
 (17) specimens in and then asked me to correct - and I believe
 she
 (18) pulled the box out storage Since I was not the one that cut
 (19) open the tube to begin with I didn't question when she
 brought
 (20) them back to me because I would have had no way of
 catching an
 (21) error on the color of the stopper at that time
 (22) Q Let s back up on this point
 (23) Do you recall when she came to see you about this?
 (24) A Vaguely I've been going over and over this trying to
 (25) remember this

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- (1) Q On approximately what date was this that she came to see
 (2) you about changing the entry?
 (3) A It would have been 5 1-89
 (4) Q Were you in the receiving room or did -
 (5) A I was in the receiving I believe she came into the
 (6) receiving went to the refrigerator and pulled the boxes and
 (7) then approached me and told me there was a mistake made
 when
 (8) they were logged in
 (9) Q And when she did this did she ask you to change the entry
 (10) or did she ask you to pull the chain of custody document?
 (11) A Yes
 (12) Q And did you make the change at that point?
 (13) A Yes
 (14) Q Now at that point that you made the change did you
 (15) yourself physically inspect the test tubes to verify that they
 (16) were in fact two gray and one red?
 (17) A No, I believe she only showed me the one tube
 (18) Q What tube did she show you? Did she show you one tube
 with
 (19) a split seal?
 (20) A I believe so
 (21) Q And after she showed you that one tube with the split seal
 (22) you made the change?
 (23) A Yes
 (24) Q And then did she leave the receiving room?
 (25) A I believe so I think the next step was a memo for record.

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- (1) but yes I do believe she left the receiving room after that
 (2) Q You talked about when you received the samples you
 (3) observed evidence tape around the blood test tubes?
 (4) A Yes
 (5) Q Could you describe to me again and you probably have
 (6) already done it exactly how you observed the red tape to the
 (7) best of your recollection the red tape on the tube?
 (8) A Well the red tape was wrapped around the top of the
 (9) stopper and over the top of the stopper, so it was
 completely
 (10) encasing the stopper of the tube and it was just a regular
 red
 (11) evidence tape You see sometimes the police departments
 use
 (12) it for their specimens and then it had the white Coast Guard
 (13) seal that started from one side of the tube, went over the
 top,
 (14) and came down the other side
 (15) Q And did you observe the red evidence tape on all of the
 (16) blood samples that you received on the Exxon crew?
 (17) A As I recall yes
 (18) Q On some of the chain of custody internal chain of custody
 (19) documents with regards to the Exxon Valdez crew samples -
 crew
 (20) samples you noted a gray test tube stopper a red test tube
 (21) stopper Do you recall how it is that you observed the gray
 (22) test tube stopper if the red tape was around and over it?
 (23) A As I said earlier in some instances if I could not
 (24) determine the color of the stopper you could make a tiny
 (25) little slit in the very top of it so you're not breaking any

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- (1) sales or anything, just so you can see the color of the tape
 (2) Q Do you recall doing that?
 (3) A I may have I really don't know
 (4) Q Would you note that? If you had to make the slit would you
 (5) note that anywhere?
 (6) A No, because I'm not breaking the seal in any way The slit
 (7) would be right on top where you can't get into the tube any
 (8) way
 (9) MS HANSON Thank you Nothing further Your Honor
 (10) MR RUSSO Your Honor the defendants have some
 (11) cross examination for Karen Metcalf prior to cross-examination
 (12) for the purposes of cross examination I would like to offer as
 (13) exhibits DX3468 DX9040 and DX9042
 (14) (Exhibit DX3468 DX9040 and DX9042 offered)
 (15) MR O NEILL There s no objection to the first two
 (16) 9042 was not used in Ms Metcalf's deposition has not been
 (17) authenticated and is argumentative
 (18) THE COURT We ll hold up on 9042 and talk about it
 (19) later
 (20) (Exhibits DX3468 and DX9040 received)
 (21) MR RUSSO Olay fine
 (22) CROSS EXAMINATION OF MS METCALF
 (23) BY DEFENDANT S ATTORNEY
 (24) Q Ms Metcalf regarding the laboratory s history, when did
 (25) Compuchem laboratory start up in Sacramento if you know?

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- (1) A Let's see I was hired on June 30th of '88 and I believe
(2) at that time - that point in time they had been in business
(3) for a year and a half
(4) Q How long did you remain in that job function?
(5) A A little over two years My end date was August 14th of
(6) 1990
(7) Q So did your duties and responsibilities change at all
(8) between June 30th 1988 and the time that you finished
(9) working
(10) for them?
(11) A Yes I was - we expanded - we went through an
(12) expansion
(13) period and I was sent back east for training for the more
(14) production type drug testing, and of course I was then in
(15) charge of more staff, and as I got more experienced I was
(16) given
(17) more duties as far as I got into aliquotting the bloods and
(18) some of the other forensic things that we had received
(19) Q Now as far as what you were taught relative to chain of
(20) custody you mentioned that you received instruction as to what
(21) to do when samples came into the lab Can you describe for us
(22) what you were instructed to do well active to when samples
(23) came
(24) into the lab?
(25) A Well we had a form that was already made up for the
(26) chain
(27) of custody form which you have a copy of and basically I
(28) was
(29) taught how to log in as far as what this container of the
(30) specimen was received in how it was packaged the air bill
(31) for instance if it came in Airborne Express the air bill

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- (1) number would go on chain of custody with it A complete
(2) identification of the specimen and then of course logging in
(3) from my custody into the storage
(4) Q I want to get into a little bit more detail relative to the
(5) procedure that you were taught relative to the receipt of blood
(6) samples Now you described the form that you would fill out
(7) These forms were filled out in a similar fashion for all types
(8) of samples is that correct?
(9) A Yes
(10) Q And you mentioned that one of the things that you would
(11) want to fill out is the identification of the sample What
(12) types of things would you look for in order to identify the
(13) sample and fill out that portion of your form?
(14) A We would look them Usually there's an ordering form
(15) that
(16) comes with the specimen of some sort a letter something
(17) telling us what they want I double-check identification on
(18) the tube compared to what the information package came
(19) with
(20) it the color of the stopper size of the tube what type of
(21) packaging it was in what type of - how it was sealed You
(22) know, if it was unsealed then obviously a problem would
(23) report We'd end up calling to client if they still wanted it
(24) tested
(25) Q So was it your practice and also part of your instructions
(26) to record all of this information on the form?
(27) A Yes

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- (1) Q Ms Metcalf regarding Judy Peat and Michael Peat you
(2) mentioned Judy Peat Who is she?
(3) A She was my manager and she was the manager of the
(4) director Mike Peat
(5) Q Do you know how long Judy Peat had been working at the
(6) lab
(7) prior to March 9 1989?
(8) A I believe the lab only had been opened about a year and a
(9) half prior to that and to my knowledge they were there in the
(10) beginning, her and Mike
(11) Q She was married to Mike Peat?
(12) A Yes
(13) Q And the laboratory in Sacramento went out of business I
(14) believe you testified in August 1990?
(15) A Yes
(16) Q It was only the drug and alcohol testing part of the
(17) laboratory that closed down?
(18) A That's right
(19) Q Regarding the distribution of testing among the
(20) environmental and drug testing divisions at the lab just so I
(21) get this straight you described the lab being divided into the
(22) environmental unit and the drug testing unit is that correct?
(23) A Correct
(24) Q You were responsible for receiving only the drug testing
(25) unit?
(26) A Yes

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- (1) Q Did the environmental unit have its own receiving facility?
(2) A Yes
(3) Q And that was not located at all in the room that you were
(4) in?
(5) A No
(6) Q Would you say that the bulk of the lab's business at that
(7) time or the volume of the lab's peace business was in the
(8) environmental area at that time?
(9) A Yes
(10) Q If you were to estimate the portion of drug testing as
(11) compared to environmental testing what would you say it was?
(12) A Probably 70/30 at that time
(13) Q So meaning that approximately 30 percent of the lab's
(14) volume of business had to do with drug testing?
(15) A Right
(16) Q The rest had to do with environmental testing?
(17) A Right
(18) Q Now insofar as these drug tests are concerned about what
(19) proportion of the drug as far as you know had to do with blood
(20) testing?
(21) A I'd say less than half Most of it was urine testing
(22) Q Less than half of the positive percent?
(23) A Yes, at that time
(24) Q We're talking March 1989?
(25) A That would be my estimate

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(1) Q Ms Metcalf turning now to your original receipt of the
 (2) samples from the crew of the Exxon Valdez Now I want to go
 (3) back now to the time that the blood samples came in okay?
 (4) A (Witness nods)
 (5) Q Do you recall whether there was anything on the box
 (6) indicating that the box should be kept refrigerated?
 (7) A No I don't recall anything being on there
 (8) Q Did it come in any refrigerated packaging?
 (9) A I don't believe so
 (10) Q If it had would you make a notation of that?
 (11) A I believe I would have yes
 (12) Q And after reviewing this document and also according your
 (13) recollection there is no notation that it came refrigerated
 (14) is that correct?
 (15) A Yeah I don't think it did
 (16) Q As you testified before you did not directly receive the
 (17) shipment from Federal Express you received it from someone
 (18) else in the lab?
 (19) A Yeah It would come through the environmental area and
 (20) Bill would call me and tell me there were some specimens
 and I
 (21) would go get them
 (22) Q So you did in fact receive it from Bill what is his last
 (23) name?
 (24) A McBenge
 (25) Q The package -

(1) A Yes
 (2) Q Who was Jill Henes?
 (3) A Jill Henes was one of the head people of the viral section
 (4) Q When did you first learn you were going to receive the
 (5) samples for the crew of the Exxon Valdez?
 (6) A The morning of the day they came in Mike came back and
 (7) told me that we were going to be getting these in the same
 day
 (8) Q When you say Mike you mean Dr Peat?
 (9) A Yes
 (10) Q Now now that your recollection has been jogged I want you
 (11) to try as best you can to recount for us what he told you at
 (12) that meeting on the morning of March 28th?
 (13) A I think he just he came back to the receiving area and I
 (14) think he had these specimens, and then he told me about
 the
 (15) incident
 (16) Q When you say the incident what incident?
 (17) A About the accident and the oil spill and that this was - I
 (18) believe he said that this was a - how did he put it? I think
 (19) he said this was a big case and so we had to be very careful
 on
 (20) how these are handled something like that
 (21) Q What did you take him to mean when he said you have to be
 (22) very careful as to how these are handled?
 (23) A I took him to mean that there was going to be a lot of
 (24) litigation involved in this and that they had to be handled
 (25) appropriately

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(1) A No that's not it The package but not seals the package
 (2) but not seals had been opened had been broken
 (3) Q I understand that but in this case you didn't receive it
 (4) from Federal Express you received it from someone else in the
 (5) laboratory?
 (6) A Yes
 (7) Q And this gentleman's name was who?
 (8) A Bill McBenge
 (9) Q Now I'd like you to turn to page 34 DX9040
 (10) A Okay
 (11) Q Okay and I'll ask you if you recognize this?
 (12) A I believe this was the chain of custody that accompanied
 (13) the specimens when we got them in the lab
 (14) Q And specifically according to what's written on this
 (15) document does that deal with blood samples for Joseph
 (16) Hazelwood?
 (17) A Yes it does
 (18) Q Does your signature appear on this?
 (19) A Yes it does
 (20) Q And where is that?
 (21) A It's the last entry on the chain of custody
 (22) Q And that would be in paragraph two here?
 (23) A Yes
 (24) Q I'd like to you look at paragraph two You see where it
 (25) says transfer to Dr Jill Henes?

(1) Q Did that indicate to you that you should do anything
 (2) different than what you normally did when you log in samples
 (3) and inspect them?
 (4) A No - well I mean, yes and no It meant that I had to be
 (5) careful about what I was doing, but I was always
 conscientious
 (6) and careful about what I logged in maybe making me pay
 (7) attention more detail to what I logged there, but I always
 pay
 (8) attention to what I'm doing
 (9) Q Now he had the samples with him at that time?
 (10) A I think he did yeah I really do
 (11) Q So therefore you received the samples directly from
 (12) Dr Peat then?
 (13) A Gosh I think so
 (14) Q And did he give you any specific instructions regarding
 (15) these samples?
 (16) A I can't remember word for word I know that he informed
 me
 (17) that they would require special handling
 (18) Q What did that mean to you?
 (19) A It just meant being very careful about what I do
 (20) Q So he reinforced to you that as far as he was concerned
 (21) this was a very important package that was coming and wanted
 (22) you to take particular care with it?
 (23) A Yes
 (24) Q Is that correct?
 (25) A Yes

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(1) Q Was it unusual for him to come up to you and alert you to
 (2) the fact that a particular package was coming in and request
 (3) special care for it?
 (4) A No, no, not really because like I said, we did work for
 (5) the coroner's office and some of that was pretty important
 (6) Q Did you ever recall him coming to you before a package
 (7) arrived and alerting you that a package was coming and tell you
 (8) to give it special handling?
 (9) A The only time would be - well, he always let me know
 when
 (10) the coroner was going to be bringing and that would be
 (11) delivered by the coroner himself and he let me know when
 he
 (12) was going to be coming
 (13) Q Did he ever say on any - on any other time that something
 (14) needed special handling?
 (15) A Not that I recall
 (16) Q Was it your impression after having your conversation with
 (17) him that this was a very important package and he wanted you
 to
 (18) take particular care with it?
 (19) A Yes
 (20) Q Your Honor this may be a good point to break
 (21) THE COURT We'll adjourn for the day Ladies and
 (22) gentlemen please remember my instructions that you not read
 or
 (23) listen to any broadcast or publication about the case We'll
 (24) reconvene at 8 00 tomorrow morning Have a good evening
 (25) Counsel remain for a moment please

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(1) (Jury out at 2 01 p m)
 (2) THE COURT There are a couple of things that I want
 (3) to take up with you at this point
 (4) First about exhibits we had another bit of a miscue this
 (5) morning We really need to have somebody on the defense
 side
 (6) who is going to be the spokesman for the defendants so that the
 (7) plaintiffs get clear signals about whether they do or don't
 (8) have an agreement about the admission of exhibits I don't
 (9) care how you work it out but please meet with one another and
 (10) get it straightened out so we don't continue having that kind
 (11) of miscommunication
 (12) Second thing if you would please take a careful look
 (13) at - at the remainder of this series of witnesses that we're
 (14) in right now to see that the cross examination doesn't unduly
 (15) and needlessly repeat that which is not in controversy Focus
 (16) on what is disputed and - and leave it at that please
 (17) The third thing I think this involves Mr Jamin - yes
 (18) you're there We have received a motion that I think you
 (19) inquired about this morning having to do with the recent
 (20) removal of a case involving one or more of the native
 (21) corporations
 (22) MR JAMIN Yes Your Honor
 (23) THE COURT Defense counsel have probably not seen
 (24) this yet
 (25) MR LYNCH I have not seen it

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(1) THE COURT This is a motion that has been filed
 (2) sometime today in which the plaintiffs are asking for expedited
 (3) treatment and the lifting of our stay order for purposes of
 (4) permitting the filing of a motion to remand the case involving
 (5) the Chugach Alaska Corporation Eyak subsidiary Tattilek and
 (6) I guess a string of others that was recently removed Trying
 (7) in the - in the state court case that will involve these
 (8) parties is very close Mr Lynch could we have your - I am
 (9) going to lift the stay so that we can look at this right away
 (10) Could we have your opposition in by a couple of days from
 (11) now?
 (12) MR LYNCH I believe so Your Honor Mr Daum is
 (13) handling all that but I know he will do whatever the Court
 (14) would like
 (15) THE COURT If we could please have any opposition by
 (16) the 19th and Mr Jamin if you or someone who's working this
 (17) would let us know promptly whether there will or will not be
 (18) any reply memorandum if you'll alert my secretary Marty on
 (19) that that will cue me when to look for this matter and review
 (20) the papers And I'll discuss it with you at that point
 (21) MR JAMIN I will do so Your Honor Thank you
 (22) THE COURT Anything else we need to take up at this
 (23) time?
 (24) MR NEAL Your Honor we have assigned someone to the
 (25) exhibits and we do regret that we have had two miscues One
 of

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(1) the problems and I can get with Mr O'Neill and I think
 (2) straighten this out one of the problems is that there are
 (3) times when on the very morning of the trial we get a list of
 (4) exhibits We had this with Mr O'Neill the other day and he
 (5) and I walked outside and we straightened it all out but all
 (6) I'm saying is if we could get the exhibits for the witnesses
 (7) the next day a little earlier would help us out
 (8) MR O'NEILL We endeavor to try to get them to them
 (9) the next day and I will jump on our people to make sure that
 (10) it's done
 (11) THE COURT Please Thank you very much We will be
 (12) in recess until 8 00 tomorrow morning
 (13) (Recess)

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(1) STATE OF ALASKA)
 (1) Reporter s Certificat
 (3) DISTRICT OF ALASKA)
 (6) I Marianne Y Lindley RPR CM 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
 (1) MARIANNE Y LINDLEY RPR
 Notary Public for Alaska
 (1) My Commission Expires 8 21 95

Look-See Concordance Report

UNIQUE WORDS 2,740
TOTAL OCCURRENCES 14,614
NOISE WORDS 385
TOTAL WORDS IN FILE 50,825
SINGLE FILE CONCORDANCE
CASE SENSITIVE
NOISE WORD LIST(S)
NOISE NOI
INCLUDES ALL TEXT OCCURRENCES
IGNORES PURE NUMBERS
WORD RANGES @ BOTTOM OF PAGE
MAXIMUM TRACKED OCCURRENCE THRESHOLD 50
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(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF ALASKA
 In re:) Case No. A89-0095 CIV (HRH)
 (3)) Anchorage Alaska
 The EXXON VALDEZ) Wednesday May 18 1994
 (4)) 8:00 a.m.
 TRANSCRIPT OF PROCEEDINGS
 (5) TRIAL BY JURY 12TH DAY
 (6) BEFORE THE HONORABLE H. RUSSEL HOLLAND JUDGE
 (7) VOLUME 12, Pages 1524 1719
 (8) Realtime Transcription

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(1) PROCEEDINGS
 (2) (Jury in at 8 00 a m)
 (3) THE CLERK All rise
 (4) (Call to Order of the Court)
 (5) THE COURT Good morning ladies and gentlemen This
 (6) is the continuation of trial in Case A89 0095 Civil in re the
 (7) Exxon Valdez A couple of administrative things as we start
 (8) this morning I think some of the attorneys inquired and I
 (9) should tell you ladies and gentlemen we will be standing down
 (10) for Memorial Day which is May 30th so you ll have that day
 (11) off
 (12) Also there had been some inquiry about a comment I made
 (13) somewhere in the initial instructions about standing down on
 (14) another occasion I m obligated to attend a chief judges
 (15) meeting on June 15th 16th and 17th So we will probably be
 (16) off that day Now I hedge it just a little but because it a
 (17) theoretically possible that we could be in a phase where you
 (18) all are deliberating at that time I think we will be through
 (19) phase one and into phase two at that point in which case we
 (20) will be standing down then If it should come to pass that
 (21) you re deliberating then you probably could go ahead without
 (22) me That s the way I see it now We ll keep you updated on
 (23) that
 (24) Mr O Neill or Mr Chalos where were we? We had a
 (25) deposition

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 (12) Deputy Clerk: TOM MURTIASHAW
 U.S. District Court
 (13) 222 W. 7th Avenue, #4
 Anchorage, AK 99515
 (14) Ph: 907/271-4529
 Reported by:
 (15) LEONARD J DIARCIO
 Registered Professional Reporter
 (16) Midnight Sun Court Reporters
 2850 Denali Street, Suite 1505
 (17) Anchorage, AK 99505
 (18) Ph. 907/258-7100

(1) MR CHALOS It s Mr Russo today Your Honor
 (2) MR RUSSO Good morning Your Honor
 (3) THE COURT Good morning sir
 (4) MR RUSSO Before I resume the cross the defendants
 (5) would like to offer exhibits DX9041 and also Exhibits 9042
 (6) with the exception of the first and last page page 1 and page
 (7) 40
 (8) (Exhibits DX9041 & 9042 offered)
 (9) THE COURT Page 1 and page?
 (10) MR RUSSO 40 40
 (11) THE COURT Are omitted
 (12) MR O NEILL No objection
 (13) THE COURT Defendants 941 and 942 with the exception
 (14) of the first and 40th page is admitted thank you
 (15) (Exhibit DX9041 and 9042 with exception of pgs 1 and 40
 (16) received)
 (17) CONTINUED CROSS EXAMINATION OF KAREN METCALF
 (18) (read)
 (19) BY MR RUSSO
 (20) Q Ms Metcalf regarding your description of the Hazelwood
 (21) blood samples and in terms of logging in these samples do you
 (22) recall the samples insotar as the size and number and the
 (23) stopper?
 (24) A Yes
 (25) Q And now that your recollection is refreshed do you recall
 (26) how you described his blood samples when you logged them
 in?

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- (1) **A Yes they were three ten milliliter red stoppered tubes**
 (2) **MR RUSSO Can we have DX9042 page 30 please?**
 (3) **You're having some difficulty**
 (4) **BY MR RUSSO**
 (5) **Q Okay I want you now to turn to page 26 which is the first**
 (6) **page of Robert Kagan's chain of custody document**
 (7) **A Okay**
 (8) **Q Would you display DX9042 page 26 please**
 (9) **These forms are all uniform correct?**
 (10) **A Yes**
 (11) **Q And specifically I would like you to look at this form and**
 (12) **tell us how you describe the specimens received for Robert**
 (13) **Kagan in this chain of custody form**
 (14) **A I described one ten milliliter red stoppered tube of blood**
 (15) **and one ten milliliter gray stoppered tube of blood and two**
 (16) **five milliliter gray stoppered tubes of blood**
 (17) **Q This entry is a description of the size and color of the**
 (18) **test tubes for Robert Kagan's specimen right?**
 (19) **A Yes**
 (20) **Q I notice on the top of this form there is a reference**
 (21) **number CW79 of 89**
 (22) **A Yes**
 (23) **Q That would be Kagan's number?**
 (24) **A Yes**
 (25) **Q If you recall Captain Hazelwood's form the number was 78**

- (1) **A Apparently so yes**
 (2) **Q And do you recall whether in order to identify the colors**
 (3) **of the stoppers on Mr Kagan's stoppers you had to break the**
 (4) **seals in any way?**
 (5) **A No**
 (6) **Q How did you determine the color?**
 (7) **A I honestly can't answer that at this time Like I say, by**
 (8) **looking at it I would determine the color of the stopper I**
 (9) **know in some instances I put a little slice mark in the top of**
 (10) **the red tip just enough so I could see the color underneath**
 (11) **the tape Whether I did that in this case or not I don't know**
 (12) **honestly**
 (13) **Q Would it be of your understanding that as part of your**
 (14) **duties in logging in these samples that it was important for**
 (15) **you to accurately record the colors of the stopper tubes?**
 (16) **A Yes**
 (17) **Q And as of the time that these samples were logged in did**
 (18) **you understand the significance between gray stoppered tubes**
 (19) **and red stoppered tubes?**
 (20) **A Yes**
 (21) **Q What was the significance?**
 (22) **A Gray stopper have the anticoagulant in them, the red**
 (23) **stoppered tubes do not At that time that was my**
 (24) **understanding**
 (25) **Q Now I'd like to you turn to page 20 okay**

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- (1) **of 89?**
 (2) **A Yes**
 (3) **Q Would that refresh your recollection that you logged Robert**
 (4) **Kagan's immediately after Captain Hazelwood's?**
 (5) **A Yes**
 (6) **Q Could you recall for me as best you can how you examined**
 (7) **Mr Kagan's test tubes to come up with this description on the**
 (8) **test tubes?**
 (9) **A Basically the same way I would have looked at Captain**
 (10) **Hazelwood's by just looking at the color of the stopper you**
 (11) **look at the tube and there is quite a bit of difference**
 (12) **between a five milliliter tube and a ten milliliter tube They**
 (13) **are much shorter and they are very easy to identify**
 (14) **generally**
 (15) **the red evidence tape does hinder a little bit being able to**
 (16) **tell what the color is so basically I would have looked at it**
 (17) **and just, you know at the time put down what I saw**
 (18) **Q And in this particular case with Robert Kagan you saw one**
 (19) **red stoppered tube of blood ten milliliters?**
 (20) **A Yes**
 (21) **Q And one ten milliliter gray stoppered tube of blood?**
 (22) **A Yes**
 (23) **Q And two five milliliter gray stoppered tubes of blood?**
 (24) **A Yes**
 (25) **Q So you were able to distinguish between the color red and**
 (26) **gray on those tubes?**

- (1) **MR RUSSO Can we display page 20 of DX9042?**
 (2) **BY MR RUSSO**
 (3) **Q Is this the chain of custody first page of the chain of**
 (4) **custody document for Gregory Cousins?**
 (5) **A Yes**
 (6) **Q And I see that he's - that this is that this is his CW**
 (7) **reference number is 80 of 89?**
 (8) **A Yes**
 (9) **Q So that you would indicate you logged his in immediately**
 (10) **after Mr Kagan's?**
 (11) **A Yes**
 (12) **Q Can you tell us by looking at this form how you described**
 (13) **his specimens or test tubes?**
 (14) **A I described one ten milliliter red stoppered tube of blood**
 (15) **and two ten milliliter gray stoppered tubes of blood**
 (16) **Q Can you describe how you were able to describe them that**
 (17) **way what did you do to examine them?**
 (18) **A Again it would be just looking at stoppers and trying to**
 (19) **make a determination between the color of the two**
 (20) **Q Would it be your recollection that - you mentioned before**
 (21) **that you had occasion to slit the seal or in some way to cut**
 (22) **seal to see the stopper if in terms of examining a test tube**
 (23) **you were unable to determine what the stopper color was**
 (24) **would**
 (25) **it be your practice then to nick the seal or slit the seal so**
 (26) **you could see what the color was?**

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- (1) A Yes
 (2) Q So would it be fair to say that when you logged these
 (3) samples that if you had trouble identifying what the color of
 (4) the stopper was you would have slit the seal so you could see
 (5) it?
 (6) A A portion of the seal yes
 (7) Q I'd like now to turn to page 14 which is the first page
 (8) for Maureen Jones chain of custody form
 (9) A Okay
 (10) Q I direct your attention to the description of specimen for
 (11) Maureen Jones In looking at this document can you tell us
 (12) how you described Maureen Jones test tubes?
 (13) A Yes I described one ten milliliter red stoppered tube of
 (14) blood and two ten milliliter gray stoppered tubes of blood
 (15) Q Once again how did you examine these test tubes to
 (16) determine this description?
 (17) A The same way I did the others By looking at the stopper
 (18) to determine the color
 (19) Q Would it be fair to say that on this day when you were
 (20) examining the test tubes for the crew of the Exxon Valdez that
 (21) you used a uniform procedure to determine the color of the test
 (22) tubes?
 (23) A Yes
 (24) Q I would like you to turn to page 40 of the exhibit
 (25) predesignated number one which this one we don't display

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- (1) You see here we're looking at a chain of custody document
 (2) for Lowell Weidman?
 (3) A Yes
 (4) Q And this was one of the samples that came in with Captain
 (5) Hazelwood's samples in that box correct?
 (6) A Yes
 (7) Q And do you see the reference number on this CW76 of 89?
 (8) A Yes
 (9) Q Would that reference number indicate that this was logged
 (10) in before Captain Hazelwood's sample was logged in?
 (11) A Yes
 (12) Q And you see under specimen description of Mr Weidman's
 (13) blood samples?
 (14) A Yes
 (15) Q Would you please tell us what that description was that you
 (16) put there?
 (17) A One ten milliliter red stoppered tube of blood with
 (18) approximately seven milliliters meaning it wasn't full and
 (19) five milliliter gray stoppered tubes of blood
 (20) Q In terms of noting this description did you go through the
 (21) same procedure in noting his test tubes as you did with the
 (22) others you just described?
 (23) A Yes
 (24) Q Now turning to the testing of the samples taken from the
 (25) crew of the Exxon Valdez can you describe what you did

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- (1) relative to aliquotting these samples page 14?
 (2) A I would cut the seal and remove the stopper on the tube
 and
 (3) then aliquot a measured portion of the specimen into the
 test
 (4) tube and release that to the technician for testing
 (5) Q Can you describe how you would cut the seal?
 (6) A I had a just a regular knife that most people have that
 (7) retractable kind of knife and I just open up the blade and
 (8) slice around the top of the seal
 (9) Q After doing that would you remove the stopper from the
 (10) tube?
 (11) A Yes
 (12) Q Would you remove the stopper completely from the tube?
 (13) A In that case yes, I would
 (14) Q Just so I'm clear concerning this particular entry
 (15) concerning Captain Hazelwood's blood tube you took a test
 (16) tube of the blood, you cut the seal take the stopper off and
 (17) remove a portion of the blood correct?
 (18) A Yes
 (19) Q And put that into another test tube?
 (20) A Yes
 (21) Q Now when you were doing this aliquot for all of these
 (22) different crew members simultaneously you would have cut the
 (23) seals and removed the stoppers for all the testers that were
 (24) involved?
 (25) A One at a time Never together but yes I would have

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- (1) Q And this entry would indicate that they were all out of the
 (2) refrigerator at the same time and all returned to the
 (3) refrigerator at the same time?
 (4) A Basically what I did was pull out the white box that
 (5) contained all the specimens and put them back in at the
 same
 (6) time yes
 (7) Q Turning now to the alteration of the chain of custody
 (8) document of Captain Hazelwood's blood samples -
 (9) MR RUSSO Can I have DX3468 please?
 (10) BY MR RUSSO
 (11) Q I'd like you to turn to the document which is the copy of
 (12) the internal chain of custody form for Joseph Hazelwood and
 (13) that is the document that has a reference 78 89 sample blood
 (14) It's a continuation of the chain of custody beginning with the
 (15) assigning entry of March 30th and ends with an entry on May
 (16) 2nd 1989 Do you have that in front of you?
 (17) A Yes
 (18) Q I would like to turn your attention to the second page I
 (19) ask you the second page do you recognize this as a
 (20) continuation of the chain of custody for Joseph Hazelwood's
 (21) blood samples?
 (22) A Yes
 (23) Q I call your attention to an entry from May 1st 1989 Do
 (24) you see that?
 (25) A Yes

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- (1) Q Do you recognize the handwriting on the entry?
 (2) A That's Judy Peat
 (3) Q What does that entry say?
 (4) A That entry says that she took it out of the long term
 (5) storage freezer and transferred it to the temporary storage
 (6) refrigerator it looks like at 9 25 in the morning
 (7) Q 0925 correct?
 (8) A Yes
 (9) Q And I notice everything is written in as opposed to being
 (10) stamped?
 (11) A Judy did not like using stamps she always hand wrote it
 (12) Q The long term storage was what?
 (13) A The freezer
 (14) Q And transferred to?
 (15) A Temporary storage
 (16) Q What was temporary storage?
 (17) A The refrigerator
 (18) Q Right under that there is another entry and what does that
 (19) say?
 (20) A That's releasing it from her custody to the temporary
 (21) storage It says, transfer for -
 (22) Q Let's first go on to date and time
 (23) A May 1st 1989 9 25
 (24) Q And that's 0925 and that's the same time as the entry
 (25) above?

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- (1) A Yes
 (2) Q What does it say in the box next to that?
 (3) A This looks like transfer for subsequent aliquotting for -
 (4) Q You're reading now under the purpose and remarks column?
 (5) A Yes I can't read the next word
 (6) Q You can't make it out?
 (7) A No I can't
 (8) Q Going from that box to the received by what does that say
 (9) in the received by box if you can read it?
 (10) A On the same line?
 (11) Q Yes
 (12) A That says Judy Peat I'm sorry, received by, that was
 (13) released by, excuse me Short-term storage
 (14) Q Now on May 1st 1989 the fact that this transaction
 (15) occurs in and out at 0925 out at 0925 does that indicate she
 (16) took the sample from the freezer and put it in the
 (17) refrigerator?
 (18) A Yes
 (19) Q Is there anything about this entry that indicates that Mrs
 (20) Peat opened the samples and inspected the contents?
 (21) A No
 (22) Q Would it be normal if someone opened the samples and
 (23) inspect the contents or did something with the contents for
 (24) them to indicate that on the chain of custody?
 (25) A Yes

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- (1) Q Now turning specifically to the alteration of the
 (2) description of Captain Hazelwood's blood samples were you
 (3) directed to do this by anybody at the lab?
 (4) A I believe I was directed to do this by Judy Peat
 (5) Q On approximately what date was this that she came to see
 (6) you about changing the entry?
 (7) A It would have been 5/1/89
 (8) Q And when she did this did she ask you to change the entry
 (9) or did she ask you to pull the chain of custody document?
 (10) A Yes
 (11) Q And did you make the change at that point?
 (12) A Yes
 (13) Q Now at the point that you made the change did you yourself
 (14) physically inspect the test tubes to verify that they were in
 (15) fact two gray and one red?
 (16) A No I believe she only showed me the one tube
 (17) Q Now what is the normal procedure in the lab? If say
 (18) you're looking at a sample all right and you notice that
 (19) there is a discrepancy in the sample insofar as it's not
 (20) conforming with the way it's logged in what procedure would
 (21) you normally follow if you found just such a discrepancy on
 (22) your own?
 (23) A If the discrepancy was my own and it was something I had
 (24) done myself I would bring it to the attention of the manager
 (25) and then of course do the formal documentation And at that

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- (1) time I was only in the job for eight months, so I probably
 (2) would have needed help in understanding how to rectify
 (3) that
 (4) kind of situation
 (5) Q But it would be your understanding that if you discovered a
 (6) mistake like that any mistakes that you would be obliged to
 (7) correct it immediately?
 (8) A Oh absolutely yes
 (9) Q Now up until May 1st 1989 I want you to look at the chain
 (10) of custody going from March 28th to May 1st?
 (11) A Yeah
 (12) Q I want you to read off how many times you were involved in
 (13) transferring or handling the specimens from March 28th to May
 (14) 1st Why don't you - you have one entry on March 28th
 (15) correct?
 (16) A Yes
 (17) Q When was the next one?
 (18) A I have two entries on March 30th
 (19) Q Right and on March 30th you took an aliquot on the
 (20) sample?
 (21) A Yes and then on April 17th transferred the specimens to
 (22) long term storage And then on April 20th I pulled them out
 (23) of
 (24) long term storage for purposes of copying the specimen
 (25) container, and then on April 20th again I placed it back into
 (26) long term storage and then it comes down to May 2nd
 (27) Q Only through May 1st?

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- (1) A I m sorry That was it then
 (2) Q So then would it be fair to say that you have entries
 (3) handling the specimen on the change of custody from March
 28th
 (4) to May 1st approximately seven entries in which you were
 (5) handling these samples from March 28th to April 20th which is
 (6) the last entry before May 1st correct?
 (7) A Yes
 (8) Q And if you had noted any discrepancy between the way
 these
 (9) samples looked to you during these transfers and the way you
 (10) had originally entered them and when I say originally entered
 (11) them I mean three ten milliliter red stoppered tubes of
 (12) blood would you have drawn that to someone's attention and
 (13) make the correction?
 (14) A Absolutely, right away
 (15) Q So it's fair to say that in all of these transfers from
 (16) March 28th to April 20th you did not notice any discrepancy?
 (17) A That's correct
 (18) Q Would it have been incumbent upon anyone else in the lab
 (19) handling those samples if they noticed a discrepancy to make a
 (20) notation so that it would be changed and corrected?
 (21) A Yeah they were all very good about things like that
 (22) Q You testified about Matt Noedel removing the sample to do
 (23) the ETOH test The ethanol test on March 28th correct?
 (24) A Yes
 (25) Q And at that time is that Mr Noedel - did you speak to Mr

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- (1) 11 55 to 3 00 p m to do an ETOH test correct?
 (2) A Yes
 (3) Q And it's your understanding that would have been his
 (4) responsibility if in his moving or examining these samples he
 (5) had noticed a discrepancy between the description of three ten
 (6) milliliter red stoppered tubes and the way the samples were to
 (7) bring that to someone's attention?
 (8) A He would have brought that to me right away
 (9) Q And he certainly didn't come to you and make such a
 (10) indication?
 (11) A No
 (12) Q Have you ever made such an error in marking samples?
 (13) A No
 (14) Q Have you ever made such an error since?
 (15) A No
 (16) Q And you were never made aware of any other error made by
 (17) you in reference to your description of the stopper colors of
 (18) the blood samples of any other crew members received in that
 (19) package concerning the crew members of the Exxon Valdez?
 (20) A No
 (21) Q Now looking at the chain of custody form again here, the
 (22) one that's been changed looking at the chain of custody
 (23) through May 8th 1989 does Judy Peat's name appear in the
 (24) chain of custody in any other place except for May 1st 1989?
 (25) A No not that I see

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- (1) Noedel prior to or after he performed the test?
 (2) A I most likely didn't have any conversation with him at all
 (3) about this test I mean, I don't recall any, and Matt had
 (4) access to the area He was the one doing the testing He
 (5) could go into the refrigerator and pull it out without
 (6) consulting me
 (7) Q But he didn't say anything to you about the discrepancy in
 (8) the stoppers?
 (9) A No
 (10) Q And he had to remove the seal for at least one tube
 (11) correct?
 (12) A Uh huh
 (13) Q And at that time he never said anything about a discrepancy
 (14) between your log sheet and what he observed?
 (15) A No
 (16) Q Do you know whether he pulled the internal chain of custody
 (17) document when he did this test?
 (18) A Yes he had to
 (19) Q He had to because he made the entry?
 (20) A Right
 (21) Q From your observation of him did he review the internal
 (22) chain of custody document? Is it his practice?
 (23) A Yes
 (24) Q In addition to yourself looking at this document you see
 (25) that on March 28th 1989 Matt Noedel removed the samples from

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- (1) Q Judy Peat had nothing to do with the actual testing of
 (2) these samples did she?
 (3) A No not that I know, Matt did all the testing
 (4) Q Judy Peat had nothing to do with maintaining the chain of
 (5) custody of the blood samples did she?
 (6) A No
 (7) Q Would it be normal for Judy Peat if she wanted to have the
 (8) samples transferred from long term storage to short term
 (9) storage to call you to tell you to do it?
 (10) A Sometimes she did, sometimes she did it herself It's not
 (11) abnormal for her to do it There were days she called me
 and
 (12) had me do it, but if I was really busy, she would do it
 (13) herself
 (14) Q But looking at this document May 1 1989 that's the only
 (15) time she has herself transferred these blood samples in this
 (16) particular case is that correct?
 (17) A Yes that's correct
 (18) Q All other times transfers were made either by you or Matt
 (19) Noedel?
 (20) A That's correct
 (21) Q And you were the supervisor of the receiving area correct?
 (22) A That's correct
 (23) Q And Matt Noedel was the chemist who performed the test?
 (24) A That's correct
 (25) Q Do you know where Dr Peat was on May 1st 1989?

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- (1) A I think he was out of town
- (2) Q Subsequent to May 1st 1989 did Dr Peat speak to you
- (3) about this change that he made on Captain Hazelwood's chain
- (4) of
- (5) custody sheet?
- (6) A No everything came to Judy that I remember Not until
- (7) when all this became a real thing about a year ago when
- (8) everything kind of blew up then he came to me but he was
- (9) more
- (10) supportive than angry so I don't know
- (11) Q After you made this change in the entry in the chain of
- (12) custody on the direction of Judy Peat when did Dr Michael
- (13) Peat first speak to you about it?
- (14) A I don't think he did speak to me about it until - not that
- (15) I remember All I remember was Judy and I talking about it
- (16) I
- (17) don't think he did speak to me about it until everything blew
- (18) up and became an issue
- (19) Q Did you find that unusual that he never spoke to you about
- (20) it?
- (21) A Kind of because he was very adamant about letting me
- (22) know
- (23) when I made mistakes whether it was my fault or the fault of
- (24) a
- (25) person that was under my supervision I was the one that
- (26) took
- (27) the heat so to speak and he made that very clear
- (28) Q And in this situation he never took you to task for it?
- (29) A No he didn't Actually he didn't Judy let me know about
- (30) the problem Because I'm harder on myself than anybody
- (31) when I
- (32) make mistakes so I was thinking I was already feeling bad

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- (1) enough about the change and maybe he was just going to
- (2) hack
- (3) off on it I don't know
- (4) Q Were you ever disciplined for this?
- (5) A No
- (6) Q You mentioned before that there came a time when this -
- (7) when this change in the chain of custody form became known
- (8) and
- (9) it was a - I don't recall the words you used what was the
- (10) word you described?
- (11) A When everything blew up
- (12) Q Okay That was approximately when?
- (13) A I believe that was approximately - I'm wanting to say May
- (14) of '90, May or June of '90
- (15) MR RUSSO Your Honor that's the end of defense
- (16) cross examination on this witness thank you
- (17) MR CHALOS Your Honor at this time we have the
- (18) edited version of Mr Conner's testimony We would like to
- (19) play
- (20) THE COURT Fine we'll finish that
- (21) THE COURT Who did we have for a reader on that
- (22) deposition?
- (23) MR O NEILL I believe that one is videotaped Your
- (24) Honor
- (25) CONTINUED CROSS EXAMINATION OF SCOTT CONNER
- (26) BY VIDEO EXAMINER
- (27) Q Let me ask you this The difference between a 15

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- (1) milliliter tube and a seven milliliter tube is eight
- (2) milliliters right?
- (3) A Correct
- (4) Q So one would have been almost twice the size of the other?
- (5) A Yes sir
- (6) Q Let me ask you this Have you had after your trial
- (7) testimony back in February of 1990 have you had discussions
- (8) with anyone from the federal government with respect to the
- (9) size of the test tubes that contained Captain Hazelwood's
- (10) blood?
- (11) A Yes
- (12) Q Who did you have such discussions with?
- (13) A I believe it was Mr Linsin
- (14) Q And Mr Linsin is who?
- (15) A He is DOJ attorney or investigator
- (16) VIDEO ATTORNEY Attorney
- (17) Q When did that discussion take place?
- (18) A In August of 1990
- (19) Q Where were you at the time?
- (20) A In Cleveland
- (21) Q Where was Mr Linsin at the time?
- (22) A He flew in from Washington
- (23) Q Was he by himself?
- (24) A When we spoke?
- (25) Q Yes

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- (1) A No there was somebody else in the room
- (2) Q Who else was in the room with you?
- (3) A It was in the FBI office
- (4) Q There was an FBI agent there?
- (5) A I don't recall what his official capacity was I believe
- (6) so
- (7) Q What was his name?
- (8) A I can't recall I can't recall
- (9) Q Was it explained to you what the FBI - why you were at an
- (10) FBI office?
- (11) A When I asked they were hosting - they had the
- (12) conference
- (13) room They were hosting the meeting the inquiry,
- (14) whatever
- (15) Q Besides you Mr Linsin and the FBI gentleman was there
- (16) anyone else present?
- (17) A No, sir not to my recollection And I can't - I can't
- (18) honestly say that third individual was FBI I believe he was,
- (19) but I -
- (20) Q Did that third individual ask you any questions?
- (21) A I don't recall
- (22) Q Were you shown any documents?
- (23) A I believe I was shown a lab document a lab receipt
- (24) document
- (25) Q Was the purpose of showing you the document explained to
- (26) you?
- (27) A Yes sir

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- (1) Q What was said to you?
 (2) A When I looked at the document I was asked in that was the
 (3) size of the tubes My response was that's what's going on
 (4) Q What was the size of the tubes that they showed you?
 (5) A I don't recall sir
 (6) Q Did you feel intimidated by the fact that they could track
 (7) you down and bring you into the FBI office? Did you feel
 (8) intimidated?
 (9) A Sure
 (10) Q Was it suggested to you that perhaps you might have made a
 (11) mistake at your testimony during the trial or the omnibus
 (12) hearing as to the sizes of the test tubes containing Captain
 (13) Hazelwood's blood?
 (14) A I don't think it was directly suggested It was a self
 (15) imposed type of suggestion It was like are you sure that
 (16) the
 (17) size that you stated in testimony was really the size, and I'm
 (18) looking at this lab form and I'm going, Jesus that's what
 (19) it's all about, that's what's going on
 (20) Q What was that?
 (21) A That there is a discrepancy in the sizes of the tubes
 (22) That the lab is saying they received this and I have already
 (23) told the world what I had drawn - what I had drawn the blood
 (24) samples in
 (25) Q Now did you tell anyone on the Exxon Valdez that you could
 get into the refrigerator that had the lock on it?

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- (1) A Yes
 (2) Q Who did you tell that too?
 (3) A Senior Chief Moore
 (4) Q Did Senior Chief Moore have any bright ideas?
 (5) A Not that I recall, because I still had it in my lap
 (6) Q When you left the box you say you put it on a shelf next to
 (7) the lettuce the tomato?
 (8) A Whatever was there, it was a refrigerator walk in
 (9) refrigerator
 (10) Q Did you become aware at that time that because of what was
 (11) going on because of the Valdez Spill that the galley was
 (12) going to remain open 24 hours?
 (13) A Yes, sir
 (14) Q Now you said you told the cook to go ahead and lock the
 (15) reefer when he locked up the galley but in fact the galley was
 (16) staying open?
 (17) A Right
 (18) Q And you don't know whether the cook ever locked the reefer
 (19) did you?
 (20) A I believe he did not
 (21) Q When you came back the next morning to pick up the box -
 (22) A Yes, sir
 (23) Q - The refrigerator was unlocked was it not?
 (24) A That's true sir
 (25) Q This is a two page document entitled chain of custody card

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- (1) enclosed with equipment It says the case title Exxon Valdez
 (2) item description sealed blood samples for Joseph Hazelwood
 (3) Had you used a form similar to this previously?
 (4) A No, sir
 (5) Q You used the form with the legend that's contained on the
 (6) top starting with the sentence the last person whose signature
 (7) appears on this card?
 (8) A No, sir
 (9) Q Had you used any forms previously? Let me read you the
 (10) legend and ask you if you had used any forms that the a similar
 (11) legend The last person whose signature appears on this card
 (12) certifies he has received the above described item from the
 (13) person whose signature immediately precedes his and is
 (14) according the item proper security by maintaining the item in
 (15) his presence or stowing it in a safe Transfers must be hand
 (16) to hand or by registered mail?
 (17) A No, sir
 (18) Q You had never seen that letter before?
 (19) A No, sir
 (20) Q Were you aware of the requirement for proper security, have
 (21) the item either in that person's possession or stored in a safe
 (22) if it was out of his possession?
 (23) A Yes sir
 (24) Q One follow up question Mr Conner When you were
 drawing
 (25) blood samples that morning was Mr Delozier present the entire

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- (1) time?
 (2) A Yes, sir
 (3) Q Was that at your request?
 (4) A That was a non-communicative agreement, he knew he
 needed
 (5) to be there, I knew he needed to be there
 (6) Q Why did he need to be there?
 (7) A A witness
 (8) Q A witness to the drawing of the blood samples?
 (9) A To the whole procedure yes, sir
 (10) Q When Captain Hazelwood when the blood sample was
 being
 (11) drawn was Mr Delozier in the room the whole time that
 (12) occurred?
 (13) A I believe so yes sir
 (14) Q Did Lieutenant Falkenstein ever come into the master's
 (15) cabin while you were taking blood or getting any samples from
 (16) the crew members?
 (17) A Yes sir
 (18) Q How long was he in the room with you when you were
 drawing
 (19) blood?
 (20) A Never for a substantial period of time It was just in and
 (21) out to see how the progression of events was going along
 (22) Q Do you recall the officer who I think has been identified
 (23) as perhaps a Fish and Wildlife type? Do you recall that
 (24) individual?
 (25) A Yes sir

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(1) Q All right And was he in the cabin at any point in time
 (2) where the blood samples were being taken?
 (3) A Yes sir
 (4) Q Describe what you saw him doing while in the cabin?
 (5) A Other than being nosy nothing sir
 (6) Q And describe to me what I believe this individual's name
 (7) is Fox so let's use that for purposes of our discussion
 (8) What was Mr Fox doing that appeared to you to suggest that
 (9) he was being nosy?
 (10) A Just - he just come in just looking around to see what I
 (11) was doing
 (12) Q Were you surprised to see that bottle there?
 (13) A I don't know if I was surprised or not
 (14) Q Was it something that sticks out in your mind?
 (15) A What came to mind when I saw this on the shelf was
 (16) uh oh
 (17) somebody's butt is in a ringer That's just what I felt to
 (18) myself It's like the same thing when I get called in
 (19) UNIDENTIFIED VIDEO SPEAKER You testified six or
 (20) seven times on this
 (21) A When I get called into a Coast Guardman's room as a
 (22) witness
 (23) or the drug representative and there is marijuana there oh
 (24) Jesus
 (25) Q Now did that thought cross your mind as soon as you saw
 (26) it as soon as you saw the bottle?
 (27) A Yes sir

(1) A I did
 (2) Q Now this is important and I would like to you think about
 (3) it carefully You said I hope I'm not superimposing this
 (4) notion that I saw a bottle with something else in my life Is
 (5) that a possibility?
 (6) A Yes sir
 (7) Q You've testified that you returned to Anchorage after you
 (8) left Valdez on March 25th Was there not sensitive publicity
 (9) in Anchorage about the grounding?
 (10) A Oh yes sir
 (11) Q And included in that publicity about the grounding were
 (12) allegations that Captain Hazelwood has been drinking?
 (13) A Yes sir
 (14) Q And that was both on newspaper in radio and on television
 (15) I take it?
 (16) A I'm sure sir
 (17) Q Now on April 5th of 1989 you were interviewed by
 (18) Investigator Grimes I guess he was with the Alaska State
 (19) Troopers correct?
 (20) A Yes sir
 (21) Q And indeed she asked you questions about your obtaining of
 (22) the blood samples of the various crew members?
 (23) A Yes sir
 (24) Q And did you understand that at that point the State of
 (25) Alaska was conducting a criminal investigation of the grounding

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(1) Q Has that thought stuck with you for these three plus years?
 (2) A No sir not until it was brought up, and I can't even
 (3) remember why it was brought up A few hours ago it was
 (4) brought
 (5) up and I have no recollection on why I blurted that out
 (6) Q You said you never told anybody this an investigator or
 (7) attorneys or anyone because no one has asked you?
 (8) A Correct sir
 (9) Q Have you ever told anyone casually a friend an
 (10) acquaintance family member?
 (11) A That I saw a bottle?
 (12) Q Yes sir
 (13) A No, sir
 (14) Q You say you saw the bottle when you first walked into the
 (15) room?
 (16) A Yes, sir
 (17) Q And Mr Delozier was standing in that same vicinity from
 (18) time to time while you were there?
 (19) A Yes, sir In the same vicinity as -
 (20) Q When you first saw the bottle?
 (21) A Well, he was standing there between the - excuse me the
 (22) door and the desk I came in through the door yes, sir
 (23) Q Was there anything in front of the bottle blocking its
 (24) view?
 (25) A Not to my knowledge sir
 (26) Q Now who placed the tox kits on the shelf?

(1) of the Exxon Valdez?
 (2) A No sir
 (3) Q What did you think Ms Grimes was doing?
 (4) A Just you know state police they wanted testimony I
 (5) don't know exactly what for I'm sure it was for something
 (6) they weren't asking me questions just out of sheer
 (7) boredom
 (8) They are asking me for some reason but specifically I don't
 (9) know Maybe she told me maybe I didn't hear her I've
 (10) tried
 (11) very hard all my life for the cops not even to know what my
 (12) name was I mean I worked at it very hard, and all the
 (13) sudden
 (14) they all know who I am I was very uncomfortable with that
 (15) Q As of April 5th when you were being interviewed by Ms
 (16) Grimes had you heard by that point in some fashion or another
 (17) that there were allegations that Captain Hazelwood had been
 (18) drinking?
 (19) A I am sure
 (20) Q At that point did you think it would have been of interest
 (21) to Ms Grimes that you had seen this bottle of Jack Daniels in
 (22) Captain Hazelwood's office?
 (23) A I did not walk into the state troopers office with that on
 (24) my mind no sir It wasn't that I didn't want to be a
 (25) tattletale or anything like that, it's just - it just never
 (26) dawned on me I know it's important, obviously, we're here
 (27) quite late but nobody ever asked me I just (noise)
 (28) Q Why did you think Ms Grimes was asking you questions
 (29) about

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- (1) the obtaining of the blood samples specifically?
 (2) A I don't recall sir Everybody was asking me questions
 (3) Q Don't you think it would have been significant to Ms
 (4) Grimes for you to tell her that you had seen a bottle of Jack
 (5) Daniels in the captain's quarters?
 (6) A I'm sure it would have lit her day right up sir
 (7) Q In fact Ms Grimes asked you if there was anything that
 (8) might have been significant to her investigation that she
 (9) hadn't specifically asked you?
 (10) A Is that what it says there sir
 (11) Q I'll hand you page 14 of pre-designated document number 4
 (12) Have you had a chance to review that transcript Mr Conner?
 (13) A No, this is the first time I've seen it
 (14) Q Take your time
 (15) A Well, I've read previous to it, I've read to it and I've
 (16) read past it I see where we're going on about custody and
 (17) urine samples and blah, blah, blah And if there is anything
 (18) you think I haven't asked you that you think might be
 (19) significant to this investigation Being more of an expert in
 (20) what did obviously, have I missed anything that might be
 (21) significant
 (22) Q Let me stop you right there That was at least as it
 (23) appears in this transcript that is Ms Grimes question to you
 (24) on page 14?
 (25) A Yes, sir

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- (1) Q And what was your answer?
 (2) A I answered not, that I can think of
 (3) We really tried to do this and you know you see so many
 (4) times that you lose something and continuity of custody
 And I
 (5) believe that I answered that question which falls in line with
 (6) the previous questions on custody turning it over to or
 (7) contacting Commander Moran my boss and meeting with
 (8) Lieutenant Stock at the time and what happened to it
 (9) MR CHALOS Your Honor that ends our cross
 (10) examination of Mr Conner
 (11) THE COURT Next plaintiff's witness
 (12) MS WAGNER Your Honor plaintiffs call Lee Raymond
 (13) by videotape deposition
 (14) DIRECT EXAMINATION OF LEE RAYMOND (video)
 (15) BY VIDEO EXAMINER
 (16) Q Sir will you please state your full name?
 (17) A Lee Roy Raymond
 (18) Q I'm going to be asking questions and others may ask
 (19) questions after me You're entitled to a fair question fairly
 (20) asked If you think the question is unfair tell me If you
 (21) don't understand the question tell me If at any time you
 (22) want to go back and revisit an answer you've given feel free
 (23) to do that
 (24) What is your position today?
 (25) A Today I'm president and director of Exxon Corporation

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- (1) Q And at the time of the grounding of the Exxon Valdez on
 (2) Good Friday of 1989 what was your position?
 (3) A The same as it is today
 (4) Q And as the president of Exxon Corporation what are your
 (5) responsibilities?
 (6) A Well, they are very broad in nature obviously Most
 (7) fundamental is to conduct the affairs of the corporation in a
 (8) way to accrue maximum benefit to the shareholders of the
 (9) corporation
 (10) Q You're a member of the board of directors of the company?
 (11) A Yes I am
 (12) Q And how often does the board of directors meet?
 (13) A The board of directors on a regular basis currently meets
 (14) ten times per year
 (15) Q In reviewing copies of board agendas I notice that on
 (16) occasion you reported to the board with regard to the Valdez
 (17) Spill Did you in fact report to the board with regard to the
 (18) Valdez Spill on a number of occasions?
 (19) A Yes, I did
 (20) Q What were the substance of your reports to the board
 (21) generally?
 (22) A Well -
 (23) Q What kinds of things did you report to the board on?
 (24) A Well it depended on what the - what events had
 transpired
 (25) since whatever the prior review or discussion with the
 board

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- (1) was and there were far ranging subjects, as you might
 expect
 (2) All the way from in the early days speaking of the details of
 (3) the clean up effort to public affairs aspects of the
 (4) corporation to operational aspects to costs and overall
 (5) conduct of the - of all of the issues that flowed from the
 (6) grounding of the Valdez
 (7) Q Did you ever report to the board on how the accident
 (8) happened?
 (9) A From time to time, when information became available
 that
 (10) surrounded events either before or during or immediately
 (11) following the grounding, the board was made aware of
 those -
 (12) of that information
 (13) Q Did you make the board aware of that information?
 (14) A Generally, yes
 (15) Q When you reported to the board of directors with regard to
 (16) the events leading up to the incident where did you get your
 (17) information?
 (18) A Well depending on what the subject was I would get
 (19) information from a variety of sources, but most normally for
 (20) those aspects of the report that related to what I will call
 (21) operational activities the clean up, the state of the ship,
 (22) that type of thing They flowed to me through Exxon USA,
 and
 (23) some of that information was in Exxon USA and I'm sure
 they
 (24) got it from the shipping company There were other
 aspects of
 (25) course that flowed to me through Exxon corporate
 headquarters

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- (1) for issues relating sometimes to public affairs types of things
 (2) or employee relations human resources activities They would tend to come through the functional groups in this building
 (3) Q In the weeks after the Spill did you have any responsibilities that concerned the Spill? For example public relations congressional relations stockholder relations
 (4) investigation?
 (5) A Well I think to some degree as president of the company you have responsibility for all those items
 (6) Q In the days and weeks after the Spill did you have occasion to meet or talk to major stockholders in Exxon with regard to the Spill?
 (7) A Yes, I did
 (8) Q In the days and weeks following the incident did you have occasion to appear on any TV or radio shows?
 (9) A Yes, I did As I recall I appeared the Sunday after the Sunday of the Spill so that would have been ten days after the Spill on the ABC program in the morning with David Brinkley,
 (10) and as I recall Sam Donaldson was there
 (11) Q Were there any other appearances that you recall?
 (12) A Not in those early days There were a couple subsequent
 (13) you know several ones later
 (14) Q In the days and weeks following the Spill with regard to the Spill what other kinds of activities did you involve yourself in other than the ones we've just talked about?

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- (1) A You mean activities as relate to the Spill?
 (2) Q Yes sir
 (3) A Well, I think it would be fair to say that to the extent that issues came up of almost any broad nature that had an impact or potentially had an impact on the corporation as a whole, and were significant I probably was involved in them
 (4) Q When was the first time you visited the State of Alaska after the Spill?
 (5) A I can't recall whether that was - it was in early April I just can't recall whether that was before I was on the Brinkley television program or right after So it was either right before or right after that, but I can't recall which
 (6) Q How many days did you spend in Alaska?
 (7) A I believe I spent two days in Alaska
 (8) Q Sir the reporter has placed in front of you a document which she has been kind enough to mark as 43409 and it appears
 (9) to be a transcript of This Week with David Brinkley April 2nd 1989 Have you ever seen the transcript before?
 (10) A Yes, I have
 (11) Q Have you ever had an opportunity to review the transcript?
 (12) A Well, the direct answer to your question is that the first time I saw this transcript was in preparation for this deposition, when this was I guess, the right word noticed or
 (13) whatever it is
 (14) Q Yes sir Have you read through the transcript?

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- (1) A I read through the transcript as relates to my participation on the program I didn't read the whole transcript when they start talking about Cuba and so forth
 (2) Q Neither did I With regard to the words attributed to you in the transcript do you take strong issue with anything in the exhibit?
 (3) A No to the best of my recollection no I would not
 (4) Q If you would go to page 7 of the transcript
 (5) A Yes sir
 (6) Q The top of the page Mr Brinkley asked the question first let's deal with this Was it a good policy to leave a man with a substantial record of alcohol abuse in command of a tanker loaded with oil And your answer was no it was not a good policy Do you see that?
 (7) A Yes, I do
 (8) Q Was the question asked and did you give the answer?
 (9) A Pardon?
 (10) Q Was that question in fact asked and did you in fact give that answer?
 (11) A I think that - I think that as I recall at the time that question was asked and that was the answer I gave
 (12) Q And at the time you gave it you believed it to be true?
 (13) A At the time I gave it given the information I had available to me at that time I thought it to be true
 (14) Q In the - Mr Brinkley asked how did it happen And you

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- (1) give a lengthy answer and in the answer there is the statement made that Captain Hazelwood came forth and said he had a drinking problem Do you see that?
 (2) A Yes I do
 (3) Q Did Captain Hazelwood self identify do you know?
 (4) A I do not personally know by my own knowledge
 (5) Q Do you know if at or about the time Captain Hazelwood went into treatment he was under investigation with regard to drinking?
 (6) A I do not know
 (7) Q At the time you appeared on This Week with David Brinkley would it be fair to say that you believed that returning Captain Hazelwood to duty as the master of a vessel was an error in judgment?
 (8) A No I don't believe that's what I said I said if there was an error in judgment I don't think I made a conclusion at that time that they in fact had made an error in judgment
 (9) Q Mr Raymond would you read the answer from well I think there are two or three points here David down to the bottom of the answer
 (10) A Well, I think there are two or three points here David My English wasn't very good I think that they are important to try and to put the whole thing in perspective The early - as I understand it in going back and trying to find out exactly what happened as you can expect in the last several

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- (1) days, there have been a lot of questions like this Captain
 (2) Hazelwood came forth and said he had a drinking problem
 and
 (3) asked that he be treated for that Under our company
 policy,
 (4) I'm sure under a lot of company policies these days
 recognizing
 (5) the societal impact of alcoholism, we all try and encourage
 (6) people if they have a problem to come forth so they will be
 (7) treated In so doing he went and was treated, and we were
 told
 (8) or the shipping company was told that he had had the
 treatment
 (9) and was returned to duty
 (10) If there was an error in judgment in my view it was at
 (11) that point The people in the shipping company, of course,
 are
 (12) the people who really make the judgments about the
 (13) qualifications of people who operate tankers Then that's
 (14) where that judgment should be Only they can really judge
 how
 (15) good these people are But I'm afraid in hindsight they were
 (16) probably put in the position of make making a broader
 judgment,
 (17) a societal judgment which in hindsight shouldn't have been
 (18) made And that is when someone comes - should be out of
 (19) alcohol or rehabilitation he obviously is still a risk That
 (20) we all know percentage wise and there is a risk that he will
 (21) not recover, and under pressure certain things can happen
 I
 (22) would guess that that's what happened here
 (23) Q Let's have the question completely clear If Captain
 (24) Hazelwood was drinking at all after his rehabilitation did
 (25) Exxon Corporation including Exxon USA have a policy with

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- (1) regard to that?
 (2) A Well, let me be clear I understand You mean at any time
 (3) during a 24-hour day, whether he was on or off anywhere
 (4) Q After rehabilitation?
 (5) A If a person him or her had any alcohol anywhere?
 (6) Q That's right?
 (7) A Did we have a policy on that?
 (8) Q That's right
 (9) A Not to my knowledge
 (10) Q In one of the statements that was made to the congressional
 (11) committees by Mr Rawls he referred to Captain Hazelwood
 was
 (12) the most closely monitored man in Exxon Do you recall that
 (13) or words to that event?
 (14) A Yes, I do
 (15) Q Do you know how Captain Hazelwood was monitored?
 (16) A Only by what the shipping company has said after the
 fact
 (17) so to speak
 (18) Q Who in the shipping company?
 (19) A Who in the shipping company what?
 (20) Q Said about him being monitored?
 (21) A I believe the source of Hazelwood the source of the
 (22) statement in the shipping company about Hazelwood being
 highly
 (23) monitored or monitored frequently or most monitored or
 (24) however you want to phrase it the source of that was Frank
 (25) Iarossi

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- (1) Q Do you know if in fact he was monitored or do you know?
 (2) A My understanding is that in fact he was monitored
 (3) consistent with the statement that Iarossi had made
 (4) Q And your understanding comes from conversations with
 (5) Mr Iarossi?
 (6) A No they come through other reports
 (7) Q Sir the reporter has placed in front of you a document
 (8) which he has marked as 43410 and it purports to be a
 (9) transcript of Nova Have you ever seen the document before?
 (10) A Yes, I have
 (11) Q In preparation for your deposition today did you get a
 (12) chance to review the document?
 (13) A Briefly, yes
 (14) Q With regard to the words that are attributed to you in the
 (15) document do you take issue with the accuracy of the
 (16) attribution?
 (17) A Not to the best of my recollection
 (18) Q Page 3 of the document I'm interested in the words
 (19) attributed to you in the middle of page 3 Lee Raymond
 (20) president of Exxon Corporation, quote we have never said from
 (21) day one that Exxon wasn't responsible in the broad sense of the
 (22) word I mean we own the ship we own the cargo The crew
 (23) worked for Exxon Shipping Company which is a company that
 (24) Exxon Corporation owns and therefore from the very first day
 (25) we accepted that responsibility I think it is kind of

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- (1) peculiar in the sense that we obviously didn't tell the ship
 (2) captain to go out and run the ship on the rocks and put a lot
 (3) of oil into Prince William Sound That was never the
 (4) intention and we were as horrified as probably anybody else
 (5) Did you ever say that?
 (6) A Yes I did
 (7) Q And at the time you said it did you believe it?
 (8) A Yes sir
 (9) Q In connection with the incident were there any Exxon
 (10) Corporation policies or any Exxon Shipping Company policies
 (11) that were violated?
 (12) A To my knowledge there were shipping company policies
 that
 (13) were violated
 (14) Q Do you know what those policies were?
 (15) A Well, my answer cannot be all inclusive
 (16) Q Just the ones you know if any?
 (17) A I believe that Captain Hazelwood had violated at least two
 (18) policies He was not on the bridge of the ship, and
 apparently
 (19) I'm told that he had had something to drink within four
 hours
 (20) of returning to duty on the ship
 (21) Q Have the directors and I'm going to use a colloquialism
 (22) but have the directors called anybody onto to the carpet with
 (23) regard to the Valdez incident?
 (24) A I think all the directors whether they are employee
 (25) directors or non employee directors had a concern of
 whether

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- (1) or not there had been appropriate management practices and
- (2) policies in Exxon Shipping Company and in Exxon USA as the
- (3) designee of the corporation to oversee our shareholder interest
- (4) in the shipping company
- (5) Q Have you caused anyone to be fired as a result of the
- (6) Valdez incident?
- (7) A Are you - me personally?
- (8) Q Yes sir?
- (9) A No sir I have not
- (10) Q Let me ask the general question Has Exxon Corporation
- (11) its division Exxon USA and/or Exxon Shipping Company caused
- (12) anybody to be fired as a result of the Valdez incident?
- (13) A Well I believe Mr Hazelwood was terminated and some
- (14) others have been reassigned
- (15) Q Who was reassigned as a result of the Valdez incident?
- (16) A I believe Mr Cousins was reassigned
- (17) Q Anybody other than Hazelwood or Cousins - did anyone
- (18) other than Hazelwood or Cousins have any adverse personnel action
- (19) taken with regard to the Valdez incident?
- (20) A Not to my knowledge
- (21) Q Are there risks associated with the transit the
- (22) transportation of oil from the Valdez terminal?
- (23) A There are risks associated with everything
- (24) Q Would it be fair to say that a way to manage those risks is
- (25) to take care in the selection and the evaluation of the masters

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- (1) of the vessels that you use to transport the oil?
- (2) A That's one of several ways to try the and deal with risks
- (3) Q The selection of the master and the evaluation of a master
- (4) that is in charge of a vessel that takes oil from the Valdez
- (5) terminal is a matter of some significance isn't it?
- (6) A Yes it is
- (7) Q And in light of what you know today was Captain
- (8) Hazelwood
- (9) in March of 1989 qualified professionally emotionally and
- (10) physically to master a vessel from the Valdez terminal?
- (11) A Well I think the point was made earlier today when you
- (12) referenced the interview that I had on the David Brinkley
- (13) show
- (14) is that the judgment as to who should be ship captains or
- (15) tank
- (16) truck drivers or any of those who run control houses and
- (17) refineries that's not an area of my expertise that's
- (18) delegated into the organization
- (19) Q So as you sit here today three and a half years after the
- (20) incident as the president of Exxon Corporation you have no
- (21) judgment as to whether Captain Hazelwood was qualified or not
- (22) to master the Valdez?
- (23) A Based on the information available to me in the ordinary
- (24) course of business I do not have a judgment
- (25) MR LYNCH There is no cross of the Raymond
- (26) deposition Your Honor
- (27) MR O NEILL Your Honor we have the following
- (28) admissions of exhibits by agreement Exhibits 195 200 and

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- (1) 600 subject to the qualifications that we talked to Your Honor
- (2) about yesterday
- (3) MR SANDERS I beg your pardon I think 195 was one
- (4) we agreed - that's the one we clearly said -
- (5) MR O NEILL I withdraw 195 200 and 600 with regard
- (6) to the qualifications we talked about yesterday
- (7) THE COURT That's the use qualification
- (8) MR O NEILL Yes sir Exhibit numbers 93 182 183
- (9) 184 185 187 188 189 190 192 193 194 196 197 198
- (10) 199 630 710 711 1794 and defendants Exhibit 9309
- (11) MR SANDERS That is correct Your Honor we have no
- (12) objection
- (13) (Exhibits 93 182 183 184 185 187 188 189 190 192
- (14) 193 194 196 197 198 199 630 710 711 1794 and Exhibit
- (15) 9309 offered)
- (16) THE COURT The exhibits beginning with 93 and through
- (17) defendants exhibits 9309 are admitted 200 and 600 are
- (18) identified only
- (19) (Exhibit 93 182 183 184 185 187 188 189 190 192
- (20) 193 194 196 197 198 199 630 710 711 1794 and Exhibit
- (21) 9309 received)
- (22) MR O NEILL That's correct Your Honor
- (23) MR LYNCH I believe Your Honor that we've also
- (24) agreed that defendants 3607 and 9045
- (25) THE COURT Say again

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- (1) MR LYNCH 3607 and 9045
- (2) MR O NEILL That's correct Your Honor
- (3) THE COURT In addition defendants exhibits 3607 and
- (4) 9045 are admitted
- (5) (Exhibit 3607 and 9045 received)
- (6) MR O NEILL Plaintiffs call for cross examination as
- (7) an adverse witness Laurence Rawl
- (8) THE CLERK Please raise your right hand sir
- (9) (The Witness Is Sworn)
- (10) THE CLERK For the record sir state your full name
- (11) your address and spell your last name
- (12) THE WITNESS Laurence G Rawl R-A W L My address
- (13) is 305 Steeplechase Drive Irvin TX 75062
- (14) DIRECT EXAMINATION OF LAWRENCE G RAWL
- (15) BY MR O NEILL
- (16) Q Sir we've got to quit meeting like this
- (17) In March of 1989 what was your position?
- (18) A I was the - can you hear me all right? I was the
- (19) chairman, chief executive of the Exxon Corporation
- (20) Q If you would would you tell us a little bit about Exxon
- (21) Corporation?
- (22) A Well Exxon Corporation is a large oil company It's been
- (23) in business about 112 years and it operates in roughly 80
- (24) countries around the world It's basically in all phases of
- (25) petroleum business and exploration production, refining and

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- (1) marketing and has a large chemical unit around the world
 And
 (2) of course within each of those different divisions of kinds of
 (3) work there are several transportation units
 (4) Q How many employees does Exxon Corporation have?
 (5) A Well it has as I recall about 96 000 employees
 (6) worldwide
 (7) Q I want to bring you back to the time of the grounding of
 (8) the Exxon Valdez and would it be fair to say that in the weeks
 (9) and months after the grounding you were interviewed on
 division
 (10) and by people for various magazines and newspapers?
 (11) A Many, many times
 (12) Q And you testified before a subcommittee of the United
 (13) States House of Representatives?
 (14) A Yes, that's correct
 (15) Q And you testified before a subcommittee of the United
 (16) States Senate?
 (17) A Yes, sir
 (18) Q And Congressman Young of Alaska was on the house
 (19) subcommittee and Congressman Stevens of Alaska was on the
 (20) Senate subcommittee?
 (21) A I believe Mr Stevens would argue that he was a Senator
 at
 (22) the time, but yes, he was there I think you called him a
 (23) Congressman
 (24) Q I'm sorry Senator Ted Stevens thank you
 (25) In the course of your relations with the Senate in May of

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- (1) '89 not only did you testify before the Senate but the Senate
 (2) asked you certain questions and the company responded in
 (3) writing to those questions?
 (4) A I believe those hearings were in April of '89
 (5) Q And you submitted the answers in May?
 (6) A I submitted a whole lot of answers verbally in a full day
 (7) I believe it was April 6th of '89 and then I had some
 (8) questions from the chairman of the Senate committee
 which then
 (9) he sent those to me his questions in May, a letter - I'm
 (10) getting - in April requesting answers to certain other
 (11) questions which I then submitted I think in the May set I'm
 (12) not quite certain of the date Toward the end of May I
 (13) believe it was
 (14) Q In preparation for your congressional testimony between
 (15) the spill and about April 6th of 1989 would it be fair to say
 (16) that you spent time preparing for that testimony?
 (17) A It's fair to say I spent time, but very little time
 (18) Q Would it be fair to say that you met with senior people
 (19) from the company prior to testifying?
 (20) A It's fair to say that yes
 (21) Q Including Mr Harrison?
 (22) A I think I saw Mr Harrison the night before the hearing,
 (23) late that night
 (24) Q Who is Mr Harrison?
 (25) A Well Mr Harrison is sitting in the court here today

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- (1) He's currently a senior vice president and he's with the
 (2) corporation in Dallas or Irving At that time he was a
 (3) executive vice president with Exxon USA in Houston Texas
 (4) Q Did you meet with Mr Cattarula?
 (5) A I'm sure I did
 (6) Q And Mr Cattarula was in public relations is that a fair
 (7) statement?
 (8) A Well at the time he was a corporate secretary and vice
 (9) president for public affairs in Exxon Corporation in New
 York
 (10) Q And prior to testifying before the Senate you met with a
 (11) Mr Clark?
 (12) A Jack Clark, yes
 (13) Q Who is Mr Clark?
 (14) A Mr Clark may be in the court I don't see him But in
 (15) any event he's a retired Exxon executive as I am, but at that
 (16) time he was a senior vice president and director, employee
 (17) director of the Exxon Corporation
 (18) Q And he's by training a lawyer?
 (19) A He's by training, a lawyer I don't know whether he still
 (20) practices or whether he's still licensed to practice
 (21) Q Would it be fair to say that prior to your congressional
 (22) testimony then you had Mr Harrison's judgment and Mr
 (23) Cattarula's judgment and Mr Clark's judgment available to you
 (24) in preparation for that testimony?
 (25) A Well I had a lot of people's judgment certainly

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- (1) Q And you consider yourself a careful man?
 (2) A I wasn't too careful at that period of time I was under a
 (3) lot of pressure, actually
 (4) Q Are you aware sir that in May of 1989 and some time -
 (5) I'm sorry in May of 1985 and possibly for some time before
 (6) that Captain Hazelwood was the subject of a review with regard
 (7) to his drinking within Exxon Shipping Company?
 (8) A I'm aware of that now yes
 (9) Q And are you aware that officials in Exxon Shipping Company
 (10) were aware of the fact that Captain Hazelwood occasionally
 (11) drank aboard ship and he occasionally came back to ship from
 (12) port drunk?
 (13) A No I'm not aware of that
 (14) Q Let me ask you a question If somebody gets - do you
 (15) understand what the concept of self identification is?
 (16) A Yes
 (17) Q And self identification is if an employee comes in and says
 (18) I have a problem with alcohol he's self identifying to the
 (19) company, and there are policies that go into place if in fact
 (20) one self identifies?
 (21) A Correct
 (22) Q And the antithesis the opposite of self identification
 (23) would be getting caught by the company is that a fair
 (24) statement?
 (25) A I think that's fair

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(1) Q If in fact Captain Hazelwood was caught by the company as
 (2) opposed to self identifying in 1985 would it be fair to say
 (3) that Captain Hazelwood should have been fired?
 (4) A Caught doing what? I don't think you said
 (5) Q Drinking on board ship coming back to ship occasionally
 (6) drunk found to be in an alcohol rehabilitation program without
 (7) telling his superiors?
 (8) A The last one I don't know that that would be cause for
 (9) termination Drinking on board ship or being drunk on the
 ship
 (10) would certainly be cause in that period of time
 (11) Q If in fact an employee was caught with regard to drinking
 (12) aboard ship or caught returning to the ship drunk on occasion
 (13) without self identifying without self identifying and there
 (14) is a written report in the company with regard to that there
 (15) should have been some personnel action taken Isn't that a
 (16) correct statement?
 (17) A I would assume so, but I can't - one of my problems I
 (18) don't have enough facts I made some mistakes early on in
 this
 (19) because I used information that wasn't valid to make some
 of
 (20) those statements that I'm sure I'm going to hear about
 (21) Q You are We're going to get to them
 (22) I'm asking you if in fact the report exists and the
 (23) report reads - I want your best business judgment If the
 (24) report reads and the report goes to the president of Exxon
 (25) Shipping Company and its lawyer and the report reads I
 asked

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(1) Joe if he ever drank aboard ship He commented that he
 (2) occasionally drank aboard the ship but not frequently He also
 (3) indicated that he came back from port drunk on several
 (4) occasions and he was caught in this he didn't come in and
 (5) fess up
 (6) Your best business judgment is he should have been
 (7) terminated?
 (8) A Did he say that that he had been caught? I mean that
 (9) sounds like that might have been a confession after the fact
 (10) when he said I've got a drinking problem and I need some
 help
 (11) I don't know I have enough information to comment
 (12) Q Let's assume he got caught and this is what he got caught
 (13) at
 (14) A I can't assume anything I'm afraid of that I've made
 that mistake before
 (15) Q Would you go to - I've stacked in front of you Exhibit
 (16) 711?
 (17) A Like my lucky number here Is that the one on top?
 (18) Q House of Representatives document look at the blue
 (19) stickers to figure it out
 (20) A Thank you
 (21) Q Do you have Exhibit 711 And if we could go to page 85 of
 (22) Exhibit 711?
 (23) A 711 This wouldn't be this big thing here would it?
 (24) Q No sir that's your deposition transcript Do you get

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(1) 711?
 (2) A These are the numbers like 188 190
 (3) MR O NEILL Can I approach?
 (4) THE COURT Yeah help him Too many marks on these
 (5) exhibits
 (6) THE WITNESS I apologize There is 710 we're
 (7) getting close Here it is on the bottom Thank you
 (8) BY MR O NEILL
 (9) Q And I'd like you to go to page 85?
 (10) A 85
 (11) Q You have Exhibit 711?
 (12) A Yes sir I've got it
 (13) Q And I put it up on the Elmo so that it's on the TV screen?
 (14) A Can I read it off of here? I've got bifocals
 (15) Q Read it wherever you want to sir
 (16) This is from your testimony to the House of Representatives
 (17) on April 6th 1989 isn't it?
 (18) A Yes that's what it says
 (19) Q And your testimony at that point in time with regard to the
 (20) issue we were just talking about is the other point in that
 (21) argument is if as an employee you do not tell your supervisor
 (22) that you have a drinking or a drug problem and do not come in
 (23) for rehabilitation then when we find out we are going to fire
 (24) you This is a pretty serious thing
 (25) Is that a statement you made to the Congress back on 4/6 of

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(1) 89?
 (2) A I'm sure it is if this is a congressional record
 (3) Q It is
 (4) A Yes I did make that I made it with watching Mr
 (5) Raymond's testimony on the TV monitor within the first two
 or
 (6) three weeks of that Spill and some of the important
 (7) information didn't come out for over a year I made a
 number
 (8) of statements and based on information that I've
 subsequently
 (9) found out was incorrect so I'll just state right now that I
 (10) was wrong
 (11) Q Testimony before the Congress of the United States at
 (12) least for most of us is an important event in our lives is
 (13) that a correct statement?
 (14) A That's correct for me too Yes very important
 (15) Q And at the time you testified before the Congress of the
 (16) United States you were testifying on behalf of Exxon
 (17) Corporation that's a correct statement?
 (18) A Yes sir
 (19) Q With regard to the Valdez incident?
 (20) A Yes sir
 (21) Q After having been advised by your best people with regard
 (22) to what your testimony was going to be on April 6th 1989?
 (23) A Correct and I told the truth totally, but I had bad dope,
 (24) basically
 (25) Q Now in - with regard to the reinstatement of Captain

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- (1) Hazelwood as a ship captain back in 1985 would it be fair to
 (2) say that the man should not have been put back on the bridge
 (3) after his treatment?
 (4) A I'm not in a position to say that no
 (5) Q Have you ever said that?
 (6) A Yes, I said that
 (7) Q Who did you say it to?
 (8) A I said it to the Congress of the United States immediately
 (9) post of the spill because I understood at the time based on
 a
 (10) Coast Guard press release which predated my testimony to
 the
 (11) Congress of the United States that there was irrefutable
 proof
 (12) by the Coast Guard due to a blood alcohol and drug test that
 (13) Captain Hazelwood's blood level exceeded that allowed by
 the
 (14) Coast Guard regulations to be the captain on the ship
 Based
 (15) on that, based on a lot of information that I got out of the
 (16) press, which was - of course I knew before, I have known
 since
 (17) that you can't always believe everything you read or see
 but
 (18) under the stress of the situation, we had a horrible accident,
 (19) tragedy, and we felt very badly about it We had a lot of
 (20) other things we needed to do As I said earlier I said some
 (21) things, that if I had more time to get information, I wouldn't
 (22) have said those things
 (23) Q And you also made the statement or a similar statement on
 (24) Face the Nation do you recall that?
 (25) A I'm sure the thrust of it is probably the same at the time

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- (1) Q Let a take a look at you on Face the Nation with the
 (2) Court's permission
 (3) (Videotape Played)
 (4) BY MR O NEILL
 (5) Q Would it be fair to say sir that alcoholism is a disease
 (6) that you never get over as you understand it?
 (7) A I've read that and heard it but I don't know whether
 (8) that's fair to say or not
 (9) Q Did you say it to the House of Representatives?
 (10) A I probably did I'm not sure of course that I've
 (11) determined since that Captain Hazelwood is actually an
 (12) alcoholic
 (13) Q That's from your lawyers isn't it?
 (14) A No In fact, you'll find my lawyers regret that frequently
 (15) they tell me things they told me I should have listened too
 and
 (16) didn't, but in any event that's not from the lawyers
 (17) Q Would it be fair to say that when somebody undergoes
 (18) alcohol treatment they have to be watched closely on follow
 (19) up a better plan and it can be done within the same policy
 (20) is to not give the person that job back but to give them a less
 (21) stressful job give them a way to recover and continue to work
 (22) but certainly not as a captain of a ship or airplane pilot or
 (23) someone in the control room of a refinery or chemical plant or
 (24) jobs of that nature Is that a fair statement?
 (25) A If I may, I'll answer it by explaining a little bit more

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- (1) about how Exxon monitors employees if you'd let me
 mention
 (2) this to the jury
 (3) Q My question was was that a fair statement
 (4) A I don't know whether it's fair or not
 (5) Q Have you ever made that statement?
 (6) A I'm sure I did during that period I mentioned to you
 (7) Q Would you go to page 85 of Exhibit 711?
 (8) A Yes I'm on it thank you
 (9) Q Now do you see the last full paragraph on the page?
 (10) A Yes I do
 (11) MR LYNCH I think you're on 19
 (12) MR O NEILL I'm sorry is it page 19? Page 79 of
 (13) the testimony but page 19 of the exhibit on the bottom
 (14) MR LYNCH Okay
 (15) THE WITNESS Page 19
 (16) MR LYNCH No 79
 (17) BY MR O NEILL
 (18) Q Numbered 79 at the top of the page?
 (19) A Okay I was on 85 I'm there
 (20) Q Is that a statement you made to the House of
 (21) Representatives of the United States of America?
 (22) A I'm sure it is but do you want me to read the whole
 (23) thing?
 (24) Q Read it out loud
 (25) A Mr Coble I was a little late in getting here and you may

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- (1) have already covered this If so I apologize for repeating it
 (2) but I want to shift gears to the captain and I want to
 (3) recall -
 (4) Q Sir I'm interested in the full paragraph that begins The
 (5) facts are though that in terms of an alcoholic ?
 (6) A I'm sorry The facts are though that in that in terms of
 (7) an alcoholic it's a disease that you never get over, as I
 (8) understand it They have to be watched closely on follow
 up
 (9) A better plan - and it can be done within the same policy -
 (10) is to not give the person that job back but give them a less
 (11) stressful back job, give them a way to recover and continue
 to
 (12) work, but certainly not as a captain of a ship or airplane
 (13) pilot, so forth, that's what you read to me
 (14) Q Yes it is
 (15) Putting Captain Hazelwood back on the ship was a judgment
 (16) that was made at the operating level is that a correct
 (17) statement?
 (18) A Yes
 (19) Q Would it be fair to say that it was a bad judgment on a
 (20) going in basis?
 (21) A That sounds like something else I probably said in one of
 (22) these things Once again I had information that was
 (23) incorrect
 (24) Q Let's see what you said
 (25) A What page is that?

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(1) Q I m going to just show it to you
 (2) (Videotape Played)
 (3) BY MR O NEILL
 (4) Q Is that you? That was you?
 (5) A Looked a lot like me
 (6) Q Yeah it did And you described it as a bad judgment in a
 (7) lot of people s eyes on a going in basis yours being one of
 (8) them is that a correct statement?
 (9) A That's what I said
 (10) Q Would it be fair to say in addition that it was a gross
 (11) error?
 (12) A It was an error
 (13) Q How about a gross error?
 (14) A My view at the time I said it was an error I don't know
 (15) the word you use but I tried to explain that I was wrong in
 (16) all those statements
 (17) Q There are a lot of them aren t there?
 (18) A They certainly were and they were all made within a
 (19) couple
 (20) weeks of that spill before I had any indication that - some of
 (21) the things that I thought were facts were not or certainly
 (22) some of the tests I thought were valid were flawed and
 (23) that's
 (24) about all I can tell you
 (25) Q Let s see if we can explore the expression gross error for
 (26) a minute
 (27) (Videotape Played)

(1) going to read the last paragraph and you can follow along and
 (2) let s see if I can get it right
 (3) A Page 3?
 (4) Q It s on the page with - this paragraph here
 (5) A This last page 1?
 (6) Q Yeah
 (7) A Thank you
 (8) Q And this article purports to be an interview with you
 (9) isn t that right?
 (10) A There was an interview Now whether I said these words
 (11) or
 (12) not is something else
 (13) Q We ll read the paragraph and then if you want to deny it
 (14) you can deny it?
 (15) A No the thrust of this paragraph is, I've read it, is what
 (16) I generally said I don't know whether I've used those
 (17) words
 (18) go back in genesis but there is no question there was bad
 (19) judgment involved and even putting a person with a critical
 (20) skill back in that kind of work I said that Something like
 (21) that And whether or not these are my words are something
 (22) else
 (23) Q Now let s go to the first page of the article and the
 (24) paragraph in the bottom right hand corner reads Well take
 (25) the case of the captain of the ship We can certainly minimize
 (26) this type of thing from happening again We ve had a policy on
 (27) alcohol abuse since 1977 The first drink the captain had

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(1) BY MR O NEILL
 (2) Q Your expression was "gross error That was your
 (3) expression?
 (4) A My definition of gross of course may be different than
 (5) yours but that's the word I used
 (6) Q Let me offer a proposition to you The proposition is the
 (7) first drink the captain had after he had been rehabilitated was
 (8) a basis for dismissal That s the proposition Do you agree
 (9) with that proposition?
 (10) A Of course in the context of being on the job or on the
 (11) ship, that was basically what my intention was there
 (12) Q Would you go to Exhibit 182 please It s the Fortune
 (13) Magazine article?
 (14) A 182?
 (15) Q Yes sir
 (16) A When you get to magazine articles that's a little different
 (17) than going to the Federal Register where you have an
 (18) opportunity to read it before they print it This magazine
 (19) article was a result of three people interviewing me over
 (20) about
 (21) two or three hours, and they took little snippets out of it and
 (22) they put things in it and they didn't - a lot of them are not
 (23) quotes That was their interpretation of what I was saying at
 (24) the time, you've seen that before and I've seen it before, but
 (25) I'm here, I'm at this point
 (26) Q And I want to go to the Fortune Magazine article and I m

(1) after he had been rehabilitated was the basis for dismissal
 (2) Someone in management should have been notified and our
 (3) policy
 (4) would not have permitted this man back on the ship Captain
 (5) Joseph Hazelwood entered an Exxon drying out program in
 (6) 1985
 (7) Do you see that paragraph?
 (8) A This is the same 182?
 (9) Q Yes Yes sir Bottom right hand corner?
 (10) A Yeah I see it
 (11) Q Did you make those statements to the reporters from Fortune
 (12) Magazine?
 (13) A I think in the context of drinking on the job, that policy
 (14) was pretty clear In the context of someone social drinking,
 (15) not overdoing it what we judge on in our company, and
 (16) have
 (17) forever, is employees are sort of continuously rated as to
 (18) performance I think everyone here that has a job and has a
 (19) boss, you got the same kind of a thing You just
 (20) continuously
 (21) make sure that people are capable of doing their job If they
 (22) are incapable or don't do it very well, you look for reasons
 (23) they didn't do it Now, as I understand it, that was the basis
 (24) upon which Captain Hazelwood went back on the ship
 (25) After he
 (26) got out of rehabilitation he had taken the 90 day leave of
 (27) absence He came back to work They put him on a ship,
 (28) several ships transiting between the east coast of the U S
 (29) and
 (30) the gulf coast of the U S sometimes more than one stop, I
 (31) presume Monitored him closely then and continued to
 (32) monitor

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- (1) him as to his job performance and his job performance was
 (2) satisfactory and then they put him on this run from San
 (3) Francisco or thereabouts to Valdez and to my knowledge
 to
 (4) this day, he's been a satisfactory performer In terms of
 (5) the - I've learned a lot of things since then that says he
 (6) wasn't drunk at that time
 (7) Q Your next to the last sentence was and to my knowledge to
 (8) this day he has been a satisfactory performer You just said
 (9) that a minute ago?
 (10) A That's correct
 (11) Q You fired him didn't you?
 (12) A For breaking a couple of rules, yes I was talking about
 (13) in terms of the alcohol thing
 (14) Q Well, let's talk for a minute You testified before the
 (15) Congress of the United States before the House of
 (16) Representatives that Exxon had no reports of Captain
 Hazelwood
 (17) drinking after his rehabilitation Do you recall that
 (18) testimony?
 (19) A I recall that, yes
 (20) Q If there were reports of his drinking after rehabilitation
 (21) what should have been done?
 (22) A I don't know that there were It's difficult for me to sit
 (23) here and not being privy to all the information that
 management
 (24) of Exxon Shipping Company had and for to you give me
 (25) hypothetical situations and me guess what the right answer
 is

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- (1) I'm having trouble with that frankly but I'm sure that's not
 (2) your intention but that's the way it's coming across and -
 (3) Q Sir I'm trying to be fair and I haven't cut you off and
 (4) I'm not going to cut you off
 (5) A No I'm not concerned about that treatment
 (6) Q Would it be fair to say that Captain Hazelwood's impairment
 (7) created the spill to begin with and also created a situation
 (8) where the master could have brought another officer to the
 (9) bridge but he didn't?
 (10) A It's my understanding he wasn't impaired
 (11) Q Did you make this statement to the Senate of the United
 (12) States?
 (13) Let's take a look at Exhibit 71 page 49
 (14) THE COURT Does he have that one or are you calling
 (15) it up?
 (16) THE WITNESS You want me to look at it
 (17) BY MR O NEILL
 (18) Q We can put it up on the screen if you want to do it
 (19) quicker
 (20) A Which paragraph are you talking about
 (21) Q Let me assume it It's the one beginning now Now the
 (22) same impairment apparently that created the spill to begin
 (23) with created a situation where the master could have brought
 (24) another officer to the bridge
 (25) Do you see that?

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- (1) A Yes yes, I do
 (2) Q I want to talk a little bit about this statement The
 (3) captain subsequently left the bridge and tests made sometime
 (4) after the grounding showed the captain's alcohol level was
 (5) above the limits set by the Coast Guard That is clear Did
 (6) you make that statement to the Senate?
 (7) A Yes, I did Or to the House or both, I'm not sure which
 (8) Q Had you also made that statement to Exxon's employees in
 an
 (9) employee information circular at or after the time of the
 (10) grounding?
 (11) A I may have I made it everywhere - apparently, I said
 (12) everybody that would listen to me I said that was true
 (13) Q We can agree as we stand here right now though that at a
 (14) minimum Captain Hazelwood was terminated because he
 wasn't on
 (15) the bridge and he consumed alcohol within four hours of
 (16) boarding the ship?
 (17) A That's my understanding, yes
 (18) Q I want to talk a little bit about the subject of piloting
 (19) Did you report to the Senate in April of 1989 that your
 (20) understanding was that the captain was the only man on board
 (21) licensed as the pilot to run his ship?
 (22) A That was my understanding
 (23) Q And that he was the only one so licensed?
 (24) A The two went together in my mind yes
 (25) Q That when Captain Hazelwood left the bridge in command of

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- (1) the mate the mate did not possess the piloting endorsement to
 (2) command the bridge during the passage from Prince William
 Sound
 (3) to Hinchinbrook?
 (4) A That was my understanding
 (5) Q Would it be fair to say that Exxon Shipping Company did not
 (6) expect to rely on the Coast Guard to get them out of the
 (7) harbor?
 (8) A I think that's fair yes
 (9) Q And would it be fair to say that in a conversation that you
 (10) had with Mr Studds he asked you the question or had
 (11) expressed the concern that somewhere in some court a lawyer
 (12) representing Exxon is going to suggest that the Coast Guard
 did
 (13) not do all that it could that it should or could have been
 (14) done That therefore at least some of the legal liability
 (15) should fall on the government and the taxpayers of the United
 (16) States rather than the corporation
 (17) And you answered A large number of those items we did not
 (18) expect any radar help and we did not get any radar help, if
 (19) that's what you're getting at right now and therefore when we
 (20) put that ship in there the last time and unfortunately did not
 (21) get it out of there as far as the people that were running the
 (22) company Exxon Shipping Company they did not expect to
 have to
 (23) rely on the Coast Guard to help them get out of that harbor
 (24) A I think that's fair but you keep asking me if that's a
 (25) fair statement Now I think it's also fair for everyone to

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- (1) recognize that when I said that statement I had other
 (2) information which led me to say it
 (3) Then I subsequently found out that the Coast Guard had a
 (4) radar station that could have had that ship on the radar
 could
 (5) have notified whoever was on the bridge or the radio that
 they
 (6) were out - that they were in jeopardy and I also said I think
 (7) in the Senate hearing that I really would have anticipated
 them
 (8) having done that and I assumed that was the purpose to
 have
 (9) radar station, that they just didn't set it up for people
 (10) practicing using a radar They were supposed to look at the
 (11) ships using the radar and I found out there was a big gap in
 (12) there
 (13) Q This is the last one of the statements but I want to see
 (14) whether you were calm confident and careful when you made
 the
 (15) statements about the Coast Guard
 (16) A I can assure you I wasn't cool at the time
 (17) (Videotape Played)
 (18) BY MR O NEILL
 (19) Q Sir I have one follow up question If you could go to
 (20) volume two of your deposition transcript and go to page 360
 (21) We talked a little bit about whether it made any difference as
 (22) to whether Captain Hazelwood after rehabilitation was found
 (23) to have been drinking on the job or off the job Do you recall
 (24) that a couple minutes ago?
 (25) A Yes I do

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- (1) Q And in your transcript we talked about the same subject at
 (2) your deposition and I'll read from the question on line 12
 (3) down to the bottom of line 25 Well now if -
 (4) Question Well now if they had been found to have been
 (5) drinking subsequent to that?
 (6) Answer? After the drying out?
 (7) Question After the drying out
 (8) Answer That's what all this refers to
 (9) Question They would have been dismissed is that
 (10) correct?
 (11) Answer I don't know They could have been dismissed now
 (12) if they hadn't let's assume somebody on their own time after
 (13) they had gone through recovery and someone found them
 drinking
 (14) they probably could have either been dismissed - dismissed
 (15) them or not giving them a less sensitive job might have been
 (16) another alternative
 (17) Do you see that?
 (18) A Yes
 (19) Q I want to ask one final question You were interviewed by
 (20) somebody from the Chicago Tribune There was a reporter
 from
 (21) the Chicago Tribune present when you talked to a group of
 about
 (22) 200 analysts and reporters in April of '89 Do you recall the
 (23) meeting? You talked to analysts sometime after the spill?
 (24) A Yes
 (25) Q The Chicago Tribune reports that you said it's not clear

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- (1) to me why people are so angry at us
 (2) A I felt that way I don't remember that particular
 (3) statement at that group
 (4) MR O NEILL Thank you for your patience Mr Rawl
 (5) THE WITNESS Thank you
 (6) THE COURT Let's take our first recess at this point
 (7) ladies and gentlemen We'll be in recess for 15 minutes
 (8) (Jury out at 10 00 a m)
 (9) (Recess at 10 00 a m)
 (10) (Jury in at 10 18 a m)
 (11) THE COURT Mr Lynch?
 (12) MR LYNCH May I proceed?
 (13) CROSS EXAMINATION OF LAWRENCE RAWL
 (14) BY MR LYNCH
 (15) Q Mr Rawl you told us that Exxon Corporation had been
 (16) around for about a hundred years How many of those years
 were
 (17) you with Exxon?
 (18) A 41
 (19) Q Could you give the jury just a quick run through of when
 (20) you came to Exxon and what your background was?
 (21) A Well I came to Exxon in 1952 Before that I had gone to
 (22) the University of Oklahoma for four years to get a degree in
 (23) petroleum engineering I went to work in south Texas deep
 (24) south Texas close to the Mexican border Background? Do
 you
 (25) want me to just run through what I did?

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- (1) Q What you did after you joined the company?
 (2) A Well I started out as a roughneck which is a person that
 (3) works on the drilling rig and that was one of the training
 (4) programs they had no those days And then after that I
 worked
 (5) as an engineer in drilling wells and developing wells and
 tving
 (6) in flow lines to tank batteries and so forth
 (7) After three or four years of doing that kind of work I
 (8) became a supervising engineer where I had three or four
 other
 (9) engineers and some administrative staff working for me in
 (10) Corpus Christi Texas and I got a few promotions there
 And
 (11) then I went to New York for a year-and-a-half, I think it was
 (12) in 19 -
 (13) Well I got married in the interim and went ahead and had
 (14) four children and currently have four grandchildren And
 then
 (15) I went to New York for Borderline (ph) a couple years, came
 (16) back to Houston worked in the production headquarters
 (17) department and the production department of an oil
 company
 (18) Sort of like the things that people do in Prudhoe Bay,
 develop
 (19) oil fields and so forth And then we - I got promoted to an
 (20) operations manager in, we called it then, Humble Oil
 Refinery,
 (21) still owned by Standard Oil in New Jersey, changed the
 name to
 (22) Exxon Went to New York again went back to Houston I
 went
 (23) to Europe and participated in development of North Sea
 (24) properties in the late '70s Came back to New York in 1980

as

(.5) a senior vice president of Exxon Corporation and a director
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(1) In 1985 I became president of the company In 1987
January of

(.2) '87, I became the chief executive officer and chairman of the
(3) board

(4) Q What s your current situation?

(5) A I retired last year I was 65 last year, and they have a
(6) mandatory retirement for senior people, and I retired last
(7) year

(8) Q Mr Rawl you went through quite a number of positions you
(9) had starting at roughneck Did you ever have direct operating
(10) responsibility for the operation of any tankers or ocean going
(11) vessels?

(12) A No, I did not

(13) Q Do you have any experience in that field?

(14) A No, sir, I have not

(15) Q When did you first hear that the Exxon Valdez had run
(16) aground in Alaska?

(17) A Well, there was Good Friday as mentioned 1989 I was at
(18) home, it was a holiday, and my wife and I were - I lived in
(19) Greenwich, Connecticut at that time My wife and I were
going

(20) to Massachusetts to see my son and daughter in law and the

(21) phone rang about 7 30 in the morning which would have
been I

(22) guess about 3.30 Alaska time if I have the right time

(23) difference and it was Mr Cattarula who was mentioned
earlier

(24) who was the VP of public affairs and he had heard from
someone

(.5) in Houston that we had a spill I didn't at the time have any

(.5) not but you think that says that I concluded that we were

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(1) comprehension how large it was I then got a call from Mr
(2) W D Stevens, who at the time was president of Exxon USA,
and

(3) he ran the company that was in fact a regional company in
the

(4) U S and the management of Exxon Shipping Company for
that

(5) company He had a little more information I'm not sure
(6) whether Raymond called me or I called him sort of vague
but

(7) we talked, and some of us went to New York

(8) Well that day I went to New York by myself thinking I
(9) would have better communications but they were worse
There

(10) wasn't anybody in the office you know, complex trying to
(11) communicate The communications at Valdez initially was
loaded

(12) up, obviously So we then convened a meeting in New York,
some

(13) associates and myself I'm trying to think coming over here
(14) who was at the meeting I'm having trouble doing that But

(15) one thing we decided right at that point was that as Ford

(16) Motor Company would say job one was to get on with it try
to

(17) mitigate the spill We still didn't know how large it was We
(18) were still talking about the weekend We knew it was
getting

(19) larger, quite large, and we wanted to pull out all the stops to

(20) clean it up as quickly as possible and do whatever was

(21) necessary and that's about what happened in that
weekend

(22) Q You've been shown by Mr O'Neill a lot of your statements

(23) this morning and I want to call your attention to one of them

(24) which I don't know whether you were quoted correctly here or

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thing

- (1) going to be up to our butts in alligators right here Did that
 (2) statement prove to be true sir?
- (3) A That sounds like something I might have said
 (4) unfortunately but yes
- (5) Q Did that prove to be true?
 (6) A It certainly can
- (7) Q Now a lot of the statements that you were shown by Mr
 (8) O Neill occurred on April 6th What happened on April 6th?
- (9) A Well I had between 24th of March and April 6th I had a
 (10) lot of conversations with people that called both
 congressman
 (11) senators people that were running various government
 (12) departments I think Governor Sununu who was President
 Bush's
 (13) chief of staff or whatever they named that job He called a
 (14) couple times I went to Washington a couple times I
 visited
 (15) with Sununu and an aid I don't know who that was and then
 at
 (16) some point I had a meeting with Sununu and secretary of
 (17) transportation Sam Skinner We went through a lot of
 things,
 (18) and of course needless to say I pretty promptly got some
 (19) letters from the Senate I don't know when they came
 probably
 (20) like the Monday or Tuesday after the spill to say we want
 you
 (21) to show up on the 6th of April And the Senate hearing was
 in
 (22) the morning on the 6th of April and lasted all morning from
 (23) time they started in the House hearing - was that afternoon
 (24) after lunch? And I don't know what after lunch was but
 maybe
 (25) 1 30 2 00

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- (1) Q That occurred about ten 12 days after the spill?
 (2) A Yes 6th of April
- (3) Q Now between March 24th when you learned about the spill
 (4) and April 6th when congress summoned you to come to
 Washington
 (5) to talk to them were you spending all your time trying to find
 (6) out what happened?
 (7) A Well I tried to find out you know Somebody was
 spending
 (8) all their time trying to find out what happened The NTSB
 was
 (9) having an investigation which we were helping them with to
 the
 (10) extent we could That's National Transportation and Safety
 (11) Board I believe is the name of have organization but I
 (12) wasn't - you know I was still oh oh some of these things I
 (13) still don't understand but I didn't learn a whole lot
- (14) Q Were you working on the clean up statement?
 (15) A Oh, yes I stayed in - on the northeast coast of the U S
 (16) because we had concluded early on that it was important for
 me
 (17) to do everything I could to mobilize all our resources I
 mean
 (18) just financial resources, being the CEO and chairman of the
 (19) board Of course I was in touch with our board also
 (20) continuously A lot of times there would be - the phone
 kept
 (21) ringing, but to begin with it was quite important to mobilize
 (22) all our resources We had a large number of people all
 around
 (23) the world, we have people all around the world that had
 handled
 (24) large jobs The reason I felt it was incumbent on me and the
 (25) another people agreed to be sort of the gearbox of this

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(1) was that I could call the president of let's say SO France or
 (2) SO UK or some company like that and say we need these people,
 (3) we need these resources I wasn't going to get in an argument,
 (4) see that's unfortunately - unfortunately the way it works
 (5) It was unfortunate that I was in that position that I had
 (6) to do that all the time, but it worked I could tell somebody
 (7) you know this is serious They already knew it was serious
 (8) but when you say, I want these people that might be running
 (9) something that was pretty serious to them Where are they going?
 (10) I said they are going to Valdez Alaska And they would say, where is that
 (11) I'd say it's south of Anchorage, but
 (12) don't worry about it, we'll get them there So I did a lot of that stuff
 (13) And the resources, at times I would have to call directors because I didn't have - I don't want to go ahead and commit to
 (14) everything where you really need more authority so I called and talked about it So I spent most of my time doing that
 (15) kind of thing with people and resources chemicals stockpiles
 (16) that we participated in with other companies gulf coast east
 (17) coast west coast U S and then in the UK and places as far
 (18) afield as Singapore and other places like that
 (19) Q Now I understand part of your last answer at that parts of your career
 (20) when you talked to somebody and you wanted them to do something
 (21) you didn't expect them to talk back to you?
 (22) A I would say that

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(1) Q That would be true of lawyers who worked for you as well?
 (2) A They are tougher to deal about with but that's correct
 (3) Q When you went to Congress on April 6th was it your intention to tell Congress the way it was as best you could see
 (4) it at that point in time?
 (5) A Absolutely
 (6) Q When you made the statements that you made did you honestly believe them at that time?
 (7) A Yes
 (8) Q Now since that time have you started letting lawyers tell you what to say?
 (9) A I thought I was doing that until I got up this morning and I slipped back into my old habits
 (10) Q You concluded at that some point in time that some of the things you said on that day April 6th and a few days prior to that were incorrect is that correct?
 (11) A Yes
 (12) Q What did you learn that led you to conclude that some of those statements were incorrect?
 (13) A Well, in the interim - immediately thereafter the time to visit with some of the people with the shipping company you
 (14) see I was reading newspapers in New York They were talking about things they had discovered out on Long Island about
 (15) Captain Hazelwood which of course our shipping management didn't know it And as far as I'm concerned they are not

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(1) really relevant but in any event they were printed that way
 (2) I also had -
 (3) The thing that influenced me greatly was the press release of the Coast Guard and I think that was the Friday before
 (4) those hearings I went to, that said that the blood alcohol tests of Captain Hazelwood exceeded the Coast Guard's
 (5) permissible level I also believed what I read Of course these people that interview you on television, they sort of
 (6) put words in your mouth by saying this man was impaired and you
 (7) shouldn't have put him on the bridge If he's impaired, he shouldn't be on the bridge was my response I subsequently
 (8) found out though, and this came quite a bit later, I don't know, like six months later, that Captain Hazelwood, in his
 (9) trial there were 16 witnesses that had seen him on the ship at that time
 (10) post and prespill on that same evening that said he was not impaired Now, the thing that was quite important to me was a large number of those witnesses were called by the
 (11) State to convict Captain Hazelwood so that, I thought, meant a lot in terms of the way that jury ruled in that case So I
 (12) learned that
 (13) Subsequently I learned almost a year later that we had a lot of trouble getting anything from the Coast Guard, but
 (14) fortunately I guess Mr Chalos got some things from the Coast Guard when they took his license or something like that
 (15) Which indicated these problems we heard about this morning and

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(1) talking to this young man or watching him on television, and when I found those out, of course I kept think back to the way
 (2) we operate and the way we evaluate employee performance continuously, and I felt sure that if Captain Hazelwood had been as bad off as everyone told me at the outset, not our
 (3) people but the press and the media and the Coast Guard, there is no way he would have even gotten that ship started, let
 (4) alone out of there And then the Coast Guard left him in charge, as I understand it, after they went aboard after it hit
 (5) the rock which says something about what they thought of his performance So anyway, that's a long -
 (6) Q Mr Rawl you have in front of you exhibit - plaintiffs Exhibit 190 in evidence I wonder if you would pick that up
 (7) I think it is the document I handed you during the break Now Mr O Neill asked you whether you had said at a meeting of the
 (8) securities analyst that you didn't understand why people were so angry at you
 (9) Now do you recall being interviewed on the MacNeil Lehrer Hour discussing the question of anger?
 (10) A Yes
 (11) Q And from your perspective did you think it was understandable why people would be angry about this spill?
 (12) A Well certainly I was, needless to say angry myself about the spill but I could see particularly the people that lived
 (13) there in that pristine environment that oil all over, even

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(1) before the oil got - some people I guess were not - didn't
 (2) have oil but just to see it would make them very angry and I
 (3) could sympathize with them In fact I can honestly say I was
 (4) devastated My wife was depressed my kids The
 employees we
 (5) talked earlier this morning about some material we sent out
 to
 (6) employees about the spill There wasn't an employee
 certainly
 (7) in the U S but around the world that didn't feel very very
 (8) badly Not personally they didn't feel personally
 (9) responsibility as I did and as the shipping company did but
 (10) they felt, you know it was just terrible and they felt for
 (11) the people that were damaged by this thing So that's what I
 (12) meant when I said -
 (13) Q When you made the comment that you could not understand
 why
 (14) people were so angry what was behind that thinking if you can
 (15) recall?
 (16) A I can I think I just mentioned that we had - of course
 (17) this anger, in some areas still persists but it was most
 (18) heated early on I think everybody would agree with We
 were
 (19) doing all we could We were getting all the assets we could
 (20) bring to bear on the spill As I'm sure all of you that have
 (21) been to Prince William Sound I'm sure most people in this
 (22) courtroom have - realize that in March April May and even
 (23) comes back serious problems in September the
 environment down
 (24) there is big waves working in an oily environment using
 small
 (25) boats which is about as risky we're talking about risking

5) don't know he was marvelous That was pretty much the

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(1) boats and boats between the beach and other boats and so
 (2) forth, thank God and thank God for the people and the
 (3) majority of those people had good experience
 (4) I feel like most of them were Alaskans not inexperienced
 (5) with dealing with the conditions of being on boats and off
 (6) boats and so forth and they worked side by side with
 people
 (7) that they had every reason to be angry at which were other
 (8) people, our people And a lot of those people we had so
 many
 (9) volunteers it was unbelievable
 (10) Now, we couldn't take them all because we didn't want to
 (11) bring up just people here but certain ones had expertise
 and
 (12) several research companies we had expert people used to
 dealing
 (13) with these things and the guy we brought up to handle the
 (14) clean up, Mr Larossi, handled the operation through off
 (15) loading that ship Handling the clean up was a fella named
 (16) Otto Harrison who you saw in levy (ph) and other places
 He
 (17) was in Australia We decided he should come up, he was
 working
 (18) the offshore in Australia the head of it and I said we better
 (19) give him a call and see if he could come And I really
 (20) through, you know he would be reluctant and you see him
 in
 (21) Australia on TV His answer was when do you want me
 there,
 (22) because I can get a plane out at such and such And he
 knew
 (23) the schedules because he had been used to coming to the
 U S
 (24) And he hit the west coast the next day He came up here I

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(1) situation that we found ourselves in
 (2) We decided we would do all we could We got a lot of help
 (3) out of the Coast Guard besides this blood alcohol thing,
 and
 (4) I'm sure Captain Hazelwood feels very badly about that
 himself,
 (5) but the Coast Guard in managing the Coast Guard the
 Coast
 (6) Guard vessels and the people that worked for the Coast
 Guard
 (7) here, they were terrific We would still be mopping up out
 there if we hadn't had all this support of Alaskans and
 (9) government agencies I don't want to leave the impression
 that
 (10) we didn't get a lot of help
 (11) MR LYNCH I have no further questions Your Honor
 (12) THE COURT Redirect?
 (13) REDIRECT EXAMINATION OF LAWRENCE RAWL
 (14) BY MR O NEILL
 (15) Q Immediately after the spill you went or stayed in New York?
 (16) A Well on the east coast between New York and
 Washington
 (17) Q Would it be fair to say that in the week or so after the
 (18) spill you did not come to Alaska?
 (19) A That's correct yes
 (20) Q Would it be fair to say that in the week after the spill
 (21) you had access to Senators and Congressman and the
 President of
 (22) United States chief of staff?
 (23) A That's one way of putting it I was down there because
 (24) they insisted I come I guess I had access
 (25) Q Again would it be fair to say that in many of the material

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(1) aspects of this case many of the important aspects of this
 (2) case you told the Congress of the United States one version of
 (3) the facts and you're telling this jury another version is
 (4) that a fair statement?
 (5) A Another version of which facts what I was doing?
 (6) Q No about Captain Hazelwood about drinking
 (7) A What I thought at the time yes in the course of the five
 (8) year hiatus of course we all know
 (9) Q Show the truth changed in five years?
 (10) A No, the truth didn't change I told the truth as best I
 (11) knew it then and I'm telling the truth now
 (12) Q With regard to Captain Hazelwood you never retracted your
 (13) press release with regard to why you fired him did you?
 (14) A Well I never put out a press release I read a press
 (15) release that the shipping company put out as to why they
 fired
 (16) him I guess that's why they fired him so I don't know why
 (17) they would retract it
 (18) Q Did they rehire him?
 (19) A No not to my knowledge
 (20) Q With regard to your knowledge about what went on in the
 (21) criminal trial that you talked about you got most of that
 (22) information from lawyers too didn't you?
 (23) A I'm not sure I think we might have had some person
 (24) from - well, we had a number of people but I don't know I
 (25) heard - quite a bit I heard from lawyers In fact part of

(1) it I'm not sure all of it
 (2) Q So the stuff you had before you testified Congress was
 (3) lawyers - and much of the information you had before you
 (4) testified here today was from lawyers?
 (5) A No the stuff I had from Congress was principally from old
 (6) recall which was just stuff I gleaned out of newspapers and
 (7) the alcohol thing I got out of the Coast Guard press release
 (8) I talked to people about it I talked to lawyers about it
 (9) before the congressional hearings, and they didn't know
 (10) anything else but to tell the truth that's what they told me
 (11) to tell them, and that's to the best of my knowledge what I
 (12) did
 (13) Q And I'm going to go right back to where I started when we
 (14) started here today When the chairman of the board of one of
 (15) the most powerful companies in the world goes before the
 United
 (16) States Congress to talk about something as momentous as the
 (17) grounding of the Exxon Valdez that was an important moment
 in
 (18) your life wasn't it?
 (19) A Very important low point in my life yes
 (20) Q And you're a careful man and you've been a careful man for
 (21) your entire career and that's how you got to be the chairman
 (22) of the board of the 26 - one of the largest corporations in
 (23) the world?
 (24) A Well I don't know I'm not careful in what I say,
 (25) obviously but or haven't been in this case sir but I'm a

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(1) careful man I drive carefully
 (2) MR O NEILL Thank you sir
 (3) THE COURT Thank you sir you may step down
 (4) MS WAGNER Your Honor plaintiffs call as their next
 (5) witness Jerry Aspland by video deposition
 (6) DIRECT EXAMINATION OF JERRY ASPLAND (video)
 (7) BY VIDEO EXAMINER
 (8) Q Good morning Mr Aspland?
 (9) A Good morning
 (10) Q Could you start by telling us your current - how you're
 (11) currently employed?
 (12) A Yes I am president of ARCO Marine Incorporated
 (13) Q How long have you held that position?
 (14) A I've got this job in December 1st 1985 Excuse me,
 (15) September 1st, 1985
 (16) Q Prior to September 1st 1985 were you employed by ARCO
 (17) Marine?
 (18) A No I wasn't
 (19) Q Whom were you employed by?
 (20) A ARCO Transportation Company
 (21) Q In what capacity?
 (22) A I was manager of planning
 (23) Q How long did you have that position?
 (24) A Approximately two years
 (25) Q So that would have been approximately 1983 to 1985?

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- (1) A That's correct
 (2) Q Prior to being manager of planning for ARCO transportation
 (3) can you tell us how you were employed?
 (4) A I was employed by ARCO Marine
 (5) Q In what capacity?
 (6) A I was the manager of chartering evaluation and materials
 (7) management
 (8) Q How long did you hold that position?
 (9) A Approximately 18 months
 (10) Q Prior to that position how were you employed?
 (11) A By ARCO Marine
 (12) Q In what capacity?
 (13) A I was manager of marine operations
 (14) Q So how long did you hold that job?
 (15) A Approximately two years
 (16) Q That would have been approximately 1979 to '81?
 (17) A No I really started that job in about early 1980
 (18) Q Prior to that how were you employed?
 (19) A I was employed by Atlantic Richfield Company
 (20) Q In what capacity?
 (21) A I was manager of health safety environment
 (22) Q Okay can you tell us during what years approximately you
 (23) held that position?
 (24) A Mid 1978 to 1980
 (25) Q Prior to 1978 how were you employed?

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- (1) A By Atlantic Richfield Company
 (2) Q In what capacity?
 (3) A Manager of health safety and navigation
 (4) Q That was your first position?
 (5) A Yes
 (6) Q I'm sorry Maybe I didn't understand How long did you
 (7) hold the job of manager of health safety and navigation?
 (8) A Approximately 18 months
 (9) Q Can you give me a brief description of your educational
 (10) background?
 (11) A Yes I have a BS degree in nautical science from the
 (12) California Maritime Academy in Vallejo California And I
 have
 (13) a masters of business administration from California State
 (14) University Long Beach
 (15) Q Now let's move up to when you were manager of marine
 (16) operations in the given years approximately '81 to '82 Can
 (17) you tell us generally what that job entailed?
 (18) A During that period of time I was responsible for the
 (19) day-to-day operation of the vessels, which included
 personnel,
 (20) personnel assignments included port operations being
 sure the
 (21) vessels had tug boats had pilots responsible for
 developing
 (22) operating policies and also responsible for being sure that
 the
 (23) vessels received their proper supplies
 (24) Q This was for all of ARCO Marine's vessels is that correct?
 (25) A Yes, for all ocean-going vessels

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- (1) Q Did ARCO Marine when you were manager of the marine
 (2) operations have any policy with respect to alcoholism or
 (3) substance abuse of its employees?
 (4) A Yes
 (5) Q What was that policy?
 (6) A We had an employee assistance program in which people
 could
 (7) volunteer if they had an abuse problem to go to assist them
 in
 (8) helping them get over this abuse problem
 (9) Q You were president or manager rather of ARCO Marine
 (10) operations Do you recall any circumstances where you had
 (11) under your authority a captain who had a history of alcohol
 (12) abuse?
 (13) A We had a number of cases of all kinds of employees in
 which
 (14) we referred to the employee - the employee program We
 had a
 (15) captain who went into the program
 (16) Q While you were manager?
 (17) A Yes
 (18) Q How do you know that he went in the program?
 (19) A I know because as part of his rehabilitation, or
 (20) assistance to help himself, he volunteered himself to do
 that
 (21) Q Was this employee relieved or put on a leave of absence or
 (22) his position reduced in any fashion so that he was not piloting
 (23) a vessel while he was receiving help for his alcohol problem?
 (24) A This person was relieved of their duties
 (25) Q Who made the decision to do that?

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- (1) A Captain Charles Lynch then president of ARCO Marine
 (2) Q Were you involved at all in that decision making process?
 (3) A Yes, I was
 (4) Q Did you concur in relieving the captain of his duties?
 (5) A Yes, I did
 (6) Q Why was that?
 (7) A Because I felt at the time that the captain needed
 (8) assistance for his illness and that it would be in everyone's
 (9) best interest that he not sail as master for the time being
 (10) Q Did there come a point in time when the captain was put
 (11) back on normal duty?
 (12) A Yes there was
 (13) Q Were you involved at all Mr. Aspland in the decision with
 (14) respect to whether or not that captain should be put back on
 (15) active duty?
 (16) A He never left active duty
 (17) Q Maybe I'm using the terminology wrong, but you mentioned
 (18) that he was relieved of duty as being a captain or pilot is
 (19) that correct?
 (20) A That's correct
 (21) Q And he - at some point resumed his capacity as a pilot or
 (22) captain is that correct?
 (23) A That's correct
 (24) Q Were you involved in the decision to allow him to do so?
 (25) A Yes, I was

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- (1) Q And how did you reach the decision that it was now prudent
(2) for him to do so?
(3) A Reviewing his performance and discussing with the
(4) medical
(5) department, we determined that this person was capable of
(6) resuming their duties
(7) Q Reviewing his performance You're talking about in the
(8) program he was in the assistance program?
(9) A No This captain was assigned as chief officer
(10) Q So in other words you were able to observe his performance
(11) as chief officer and that was part of the decision making that
(12) caused you to conclude it was now prudent for him to go back
(13) to
(14) captain?
(15) A That's correct
(16) Q Did ARCO Marine institute any follow up procedures after
(17) the captain had been put back in his position as captain to
(18) determine whether or not his alcohol problem was recurring?
(19) A Yes, we did
(20) Q Can you describe that procedure for us please?
(21) A In this case our procedure was to closely monitor this
(22) captain's behavior and review his performance as a captain
(23) as
(24) he finished his tours
(25) Q Let me ask you a few questions about that answer
(26) When you say closely monitor this captain how did you
(27) accomplish that?
(28) A Through face to face discussions through discussions
(29) with

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- (1) those aboard the vessels
(2) Q Did you yourself have discussions with persons on the
(3) vessels with respect to the captain?
(4) A Yes I did
(5) Q What - can you describe for us what form these discussions
(6) generally would take?
(7) A They would generally center around how the vessel was
(8) run
(9) what the behavior of the captain was how people were
(10) performing their responsibilities under him
(11) Q Did you generally try to do this after each tour or how
(12) often?
(13) A There was no set time that we did it
(14) Q Did you do it more than once?
(15) A Yes, we did
(16) Q Do you know how many times you did it before you stopped?
(17) A Never stopped
(18) Q You've been monitoring his performance in this regard ever
(19) since this incident arose?
(20) VIDEO ATTORNEY When you say this incident arose you
(21) mean ever since he returned to his position as master of the
(22) vessel?
(23) Q Yes
(24) A Yes, the master is no longer employed We continually
(25) monitored until he left and he left last year
(26) VIDEO ATTORNEY What he wants to know is what was the

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- (1) period of time from the time he went back as a master until the
(2) time he went back in terms of years or months?
(3) A Approximately he returned to be master in 1986 and he
(4) finished last year
(5) Q Was he fired by the company?
(6) A No sir
(7) Q Now I'd like to change topics just so you can stay with
(8) me go back in time for a moment Mr Aspland
(9) Were you involved in a study in 1977 time frame with
(10) respect to the Columbia Glacier and its potential impact of
(11) icebergs on tanker traffic?
(12) A I recall having discussions about the Columbia Glaciers
(13) Whether that's the correct time and the study was done at
(14) that
(15) time, I do not recall
(16) Q Let me see if I could refresh your recollection as to the
(17) time frame by showing you what's been predesignated by the
(18) State as Number 2 First of all just try to get this study in
(19) your mind and just take a moment to glance through it and then
(20) I'll ask you some questions
(21) A Yes, I recall this
(22) Q And is this a memo that you prepared to Captain Lynch?
(23) A It appears to be so
(24) Q Could you describe generally what the nature of this study
(25) was?
(26) A I don't recall exactly what we were going to do I would

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- (1) have to read some of the things out of this interim report
(2) Q Well do you recall whether you were involved in any
(3) discussions on whether there should be a policy among the
(4) companies who own tankers transiting Prince William Sound as
(5) to
(6) what would be considered safe procedures for navigating
(7) through
(8) ice?
(9) A I don't recall that kind of a discussion
(10) Q Do you recall at any time now expanding beyond the time
(11) that this report was being discussed and taking it all the way
(12) up to the date of the Exxon Valdez spill discussing internally
(13) at ARCO Marine whether there should be some kind of
(14) procedures
(15) that would be standardized for what would be considered safe
(16) practice in navigating ice in Prince William Sound?
(17) VIDEO ATTORNEY Steve when you say standardized, do
(18) you mean standardized within ARCO Marine or standardized
(19) between ARCO Marine and other companies that own tankers
(20) it is
(21) unclear
(22) Q Let's start within ARCO Marine
(23) A We had two separate issues with regard to icebergs or
(24) the
(25) Columbia Glacier in Prince William Sound One issue is the
(26) traffic lane situation and our general policy was that we
(27) wanted masters to adhere to traffic lanes, except when they
(28) felt that from a navigational safety consideration, that they
(29) had to make the determination they could leave the traffic
(30) lanes We also have at that time that if icebergs were
(31) going

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(1) to be in the lanes and they had learned about them that they

(2) could leave the dock and go through They could stay at the

(3) dock and wait It was their - depending on the conditions

(4) that existed they then could decide what was the prudent thing

(5) to do We did not have a hard and fast rule that thou shall

(6) not do this or thou shall not do that

(7) Q Did you have - was there ever - were there ever any rules

(8) as to what speed would be considered a prudent speed in

(9) transiting through ice in Prince William Sound?

(10) A I don't recall having put out a written memo but I do

(11) recall having discussed that we could go - if there was ice in

(12) the area you could go up to five knots

(13) Q When you say it was discussed what do you mean by that

(14) you guys would sit around and discuss things kind of informally

(15) without establishing a written policy?

(16) A Well you have to remember that at ARCO Marine we put the

(17) test of prudence on the master We make

(18) recommendations We

(19) felt that five knots was sufficient if they were to hit a large

(20) glacier That I would assume was discussed at some of our

(21) master conferences that we had or in conversations with

(22) operating people and the masters

(23) MS WAGNER Nothing further Your Honor

(24) THE COURT Is there cross?

(25) MR NEAL No cross

(26) THE COURT I m sorry?

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(1) MS WAGNER He said no cross

(2) THE COURT Thank you

(3) MS WAGNER Plaintiffs call Frank J Iarossi by

(4) deposition That s a video depo

(5) MR NEAL Your Honor before that goes on could we

(6) confer with counsel just a moment to see

(7) (Discussion off record)

(8) MR O NEILL Thank you Judge

(9) DIRECT EXAMINATION OF FRANK IAROSSSI (video)

(10) BY VIDEO EXAMINER

(11) Q Mr Iarossi I m Laddie Montague and I m going to be the

(12) first of several attorneys to ask you questions on behalf of

(13) the plaintiffs If there are any questions I ask you and you

(14) don t understand them please let me know and I ll try to

(15) rephrase them

(16) A Okay

(17) Q Could you state your full name please?

(18) A Frank James Iarossi

(19) Q And your - are you currently employed?

(20) A Yes

(21) Q And can you tell me by whom?

(22) A The American Bureau of Shipping

(23) Q What position do you hold?

(24) A I'm chairman president and chief executive officer

(25) Q When did you attain that position?

(1) A April 2nd 1990

(2) Q Could you tell us your educational background please?

(3) A I graduated Orange High School U S Coast Guard

(4) Academy in

(5) 1959 University of Michigan Rackem Graduate School in

(6) 1965

(7) New York University School of Business Administration

(8) 1971

(9) Q What degrees did you get from the Michigan and New York

(10) University?

(11) A Michigan I received a master of science and engineering

(12) and naval architecture marine engineering and mechanical

(13) engineering

(14) Q And NYU?

(15) A Master of business administration and international

(16) business

(17) Q Could you give us a brief history of your employment

(18) background?

(19) A Following graduation in 1959 I was on active duty with the

(20) U S Coast Guard for approximately ten years, four years of

(21) which was at sea positions both as a deck officer and later

(22) as

(23) an engineer There was a two year tour at the University of

(24) Michigan and then a four year tour in marine technical

(25) positions I started - left the Coast Guard at the end of

(26) 1968 Shortly thereafter was employed by Exxon

(27) International

(28) Company in marine research position And I spent the next

(29) 23

(30) years with Exxon Of those 23 years one year was in the

(31) marketing position one year in a corporate planning

(32) position

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(1) and the remainder of the time was in various marine related

(2) positions April of 1990 I joined the American Bureau of

(3) Shipping as chairman

(4) Q What was the last position you held with Exxon?

(5) A I was president of Exxon Shipping Company As I recall

(6) that position began in April of 1982

(7) Q So in April of 1982 you became the general manager of

(8) Exxon

(9) USA s marine department?

(10) A Yes

(11) Q And then in July of 1982 you became president of now

(12) activated Exxon Shipping Company?

(13) A Yes, sir

(14) Q And am I correct that that was the marine department of

(15) Exxon USA became Exxon Shipping Company?

(16) A Yes

(17) Q Was one of the reasons that Exxon Shipping corporation was

(18) activated was due to tax benefits to Exxon Corporation?

(19) A Yeah there were a number of factors I would say both

(20) tangible and intangible Tangible benefits was that it

(21) changed

(22) the legal structure of the marine transportation activity -

(23) U S flag marine transportation activities of Exxon The

(24) intangible benefits were that it allowed us to move from a,

(25) what I would say a cost center focus to a P&L center focus

(26) profit and loss center focus, and allowed the people within the

(27) shipping company to exercise more latitude and direction in

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- (1) optimizing the marine transportation for Exxon USA
 (2) Q Mr Larossi while you were president of Exxon Shipping -
 (3) strike that
 (4) Prior to Exxon Shipping being activated was the primary
 (5) purpose of the marine department of Exxon USA to transport
 (6) petroleum products for Exxon USA?
 (7) A Yes
 (8) Q And after Exxon Shipping Company was activated did that
 (9) remain the main purpose of Exxon Shipping Company?
 (10) A The main purpose yes
 (11) Q Other than board of directors being established for Exxon
 (12) Shipping Company, was the executive structure of Exxon
 Shipping
 (13) Company the same as its predecessor the marine department
 of
 (14) Exxon USA?
 (15) A I believe the basic management structure of the shipping
 (16) company in its day-to-day operations was essentially the
 same
 (17) as the marine department
 (18) Q Is it correct that prior to 1989 none of Exxon's alcohol
 (19) policies made any provision for ensuring that employees in
 (20) safety sensitive positions were evaluated or monitored after
 (21) treatment?
 (22) A The written policy itself I do not believe had any stated
 (23) provisions
 (24) Q And a tanker master a tanker captain would be a safety
 (25) sensitive position is that correct?

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- (1) A Yes
 (2) Q Now Exxon Shipping Company is in the business of
 (3) transporting crude oil by sea?
 (4) A Crude oil, yes
 (5) Q And other substances?
 (6) A Yes
 (7) Q Substances which Exxon Shipping and Exxon USA were
 aware
 (8) created a danger to the environment if released?
 (9) A We understood the nature of crude oil yes
 (10) Q Exxon Shipping and Exxon USA were aware that a master of
 a
 (11) tanker where the master had an alcohol abuse problem was a
 (12) potential for a disaster to the environment?
 (13) A We understood the risks in the business yes We
 (14) understood the responsibilities yes
 (15) Q Now in 1985 Joseph Hazelwood was a master employed by
 (16) Exxon, is that correct?
 (17) A Yes
 (18) Q He voluntarily went for alcohol abuse treatment in 1985?
 (19) A Yes, we learned that subsequently
 (20) Q Could you tell us how you learned of it?
 (21) A The then employee relations manager may have been
 human
 (22) resources manager I don't recall when we changed the title
 of
 (23) that department but he informed me that he had wanted to
 talk
 (24) to Hazelwood about some matter and he was not able to
 because
 (25) he was told that Hazelwood was under going treatment in
 Long

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- (1) Island It was in patient treatment And that was some time
 (2) in late May when he told me that
 (3) Q Do you recall who that was?
 (4) A Ben Graves G R-A V E S
 (5) Q Did Mr Graves tell you for what reason Mr Hazelwood was
 (6) an in patient?
 (7) A I think he did I believe he told me that it was alcohol
 (8) treatment center
 (9) Q Am I correct that when Mr Hazelwood returned from his
 (10) alcohol treatment and reported back to Exxon Shipping for
 duty
 (11) you personally did not want him returned to his position as a
 (12) tanker master is that correct?
 (13) A My first reaction was that we should not return him to his
 (14) vessel
 (15) Q And the reason being?
 (16) A I felt that - I guess I was really angry with the guy
 (17) But I felt that that was not the appropriate thing to do My
 (18) first reaction
 (19) Q And were one of your concerns safety?
 (20) A Yes
 (21) Q Am I correct that in fact Mr Hazelwood or Captain
 (22) Hazelwood was returned to his position as a tanker master?
 (23) A Yeah subsequent to my initial reaction Ben Graves and
 I
 (24) had a long discussion about what the policy provided in
 terms
 (25) of employee rights what the risks were in either returning
 him

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- (1) or not returning him and in particular the need within the
 (2) shipping company since we do not have continuous access
 to
 (3) people like masters - the overwhelming need to encourage
 (4) voluntary identification And the risks that we would incur
 (5) if we denied Captain Hazelwood his job back what that
 would do
 (6) as far as the whole future identification program
 (7) And I think we both knew that there were risks on both
 (8) sides There was no easy answer If we did not accord
 Captain
 (9) Hazelwood his rights around the policy - in fact I remember
 (10) Ben Graves saying to me while we had this discussion he
 said
 (11) Frank you know what will happen if we do not give Joe his
 job
 (12) back I said yes, that will be the last time we have anybody
 (13) volunteer for rehabilitation And clearly after reviewing all
 (14) the facts and the risks on both sides I agreed that we would
 (15) return Joe back to the fleet but we would have to monitor
 his
 (16) performance quite closely but even before we sent him to a
 (17) ship to make sure we were comfortable with his disposition
 and
 (18) also during the subsequent periods following his return to
 the
 (19) ship
 (20) Q Now you stated that you weighed the risks of returning him
 (21) versus the risks of not returning him?
 (22) A I viewed it as a question that had no correct answer We
 (23) had risks on both sides
 (24) Q Now what were the risks of returning him?
 (25) A We had to make sure that he in fact was remaining clean
 or

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- (1) not using alcohol
 (2) Q And the risks of his using alcohol were what? What were
 (3) the risks if he continued to use alcohol?
 (4) A Well the risks if he continued to use alcohol was that it
 (5) brought in the question whether he could discharge his
 (6) responsibilities
 (7) Q And it brought in the question of safety of the vessel?
 (8) A Yes
 (9) Q And the risks of not returning him were that it would be a
 (10) signal to others who might have a problem not to seek help on
 (11) their own is that correct?
 (12) A We didn't know how many future Hazelwoods there would
 (13) be
 (14) and our concern was that if we backed away from the policy
 (15) we
 (16) would never see self identification of any of the potential
 (17) other risks that might be out there
 (18) Q Did you know how many other Hazelwoods you had at that
 (19) time?
 (20) A No We had discussions about whether we knew or had
 (21) any
 (22) reason to believe we had others We recognized right away
 (23) it
 (24) was kind of a useless question because we didn't know
 (25) about
 (26) Hazelwood before the event either as managers So we
 (27) recognized the fact that we could not identify risks didn't
 (28) mean that they didn't exist
 (29) Q Again you're using the pronoun we Who did that include?
 (30) A Myself Ben Graves John Tompkins who was a ship
 (31) group

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- (1) manager Paul Revere who was the operations vice
 (2) president
 (3) Q Was there any discussion of this of the risks one way or
 (4) the other with the Exxon USA medical department?
 (5) A Not that I was involved with
 (6) Q Anyway Ben Graves advised you that the - strike that
 (7) is it correct that the policy the alcohol abuse policy
 (8) that was in effect when Mr - Captain Hazelwood returned from
 (9) his rehabilitation was that he should be returned to his
 (10) position?
 (11) A Yes Ben Graves explained the policy to me, explained it
 (12) in
 (13) terms of employee rights We had a long discussion about
 (14) the
 (15) risks on either side, and Ben Graves also explained to me
 (16) that
 (17) the policy aside, that under federal disability or laws, that
 (18) alcohol was considered a disabling injury and that we would
 (19) probably lose anyway in it was contested
 (20) Q When you say lose?
 (21) A Lose if we attempted to deny Hazelwood his rights under
 (22) the
 (23) policy
 (24) Q Who advised you of that?
 (25) A Ben Graves and the closing part of the discussion told me
 (26) that under federal law, alcoholism was considered a
 (27) disability And we could not deny an employee a position
 (28) solely based on that disability
 (29) Q I'm sorry You finished your answer?
 (30) A I seem to recall Ben telling me that the law was vague and

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- (1) untried but that was the current understanding of the way
 (2) things would go
 (3) Q In any event Mr Hazelwood Captain Hazelwood was
 returned
 (4) as a vessel master?
 (5) A Yes
 (6) Q Do you recall what his first assignment was after he
 (7) returned?
 (8) A He was - well, the first thing after - there was an
 (9) in-patient period of treatment There was an out-patient
 (10) period of treatment Subsequent to the conclusion of the
 (11) out patient period he returned to Houston and then from
 there
 (12) he was assigned to I believe the Exxon Yorktown
 (13) Q Now was it Exxon medical department's responsibility to
 (14) evaluate the fitness of Mr - of Captain Hazelwood when he
 (15) returned from his alcohol rehabilitation treatment?
 (16) A We had no medical background ourselves, we being in
 (17) shipping company, so we had to rely on the medical
 department
 (18) Q Of Exxon USA?
 (19) A Yes
 (20) Q And was it their responsibility to evaluate Captain
 (21) Hazelwood upon his return from the - from rehabilitation if
 (22) you know?
 (23) A I don't know
 (24) Q Do you know whether or not Captain Hazelwood was in fact
 (25) evaluated by the Exxon USA medical department after Captain

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- (1) Hazelwood returned from his alcohol rehabilitation treatment?
 (2) A I don't know what review was carried out
 (3) Q From the time Captain Hazelwood returned which was some
 (4) time in 1985?
 (5) A Yes, August I believe
 (6) Q From the time he returned and up to the time of the Exxon
 (7) Valdez grounding and oil spill did you as president of Exxon
 (8) Shipping Company receive any report from the Exxon USA
 medical
 (9) department evaluating Captain Hazelwood's condition?
 (10) A I personally did not
 (11) Q Are you aware of anyone within Exxon Shipping Company
 who
 (12) received such a report?
 (13) A It would have probably gone to the E HAP coordinator
 which
 (14) would have been Ben Graves
 (15) Q So you personally as president of Exxon Shipping never
 (16) received a report from the Exxon USA medical department
 (17) relating to Captain Hazelwood?
 (18) A No
 (19) Q Is that correct?
 (20) A That's correct No I did not
 (21) Q Apart from receiving a report did you personally have any
 (22) discussions with Exxon USA's medical department relating to
 Mr
 (23) Hazelwood Captain Hazelwood from the time he returned from
 (24) his rehabilitation until the time of the grounding and the oil
 (25) spill of the Exxon Valdez?

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- (1) A About Captain Hazelwood in particular?
 (2) Q About Captain Hazelwood?
 (3) A No
 (4) Q Subsequent to the grounding and oil spill from the Exxon
 (5) Valdez you had a discussion with a medical director of Exxon
 (6) USA?
 (7) A Yes
 (8) Q Did that discussion relate in any way to Captain Hazelwood
 (9) specifically?
 (10) A No
 (11) Q Did that discussion relate to Captain Hazelwood's condition
 (12) as of March 23 or 24 of 1989?
 (13) A No
 (14) Q Am I correct that was the first time you had had
 (15) discussions with Exxon USA's medical department about a
 alcohol
 (16) policy?
 (17) A In that relationship, yes How it went to other companies
 (18) how it compared to other companies
 (19) Q Had you had prior discussions with the Exxon USA medical
 (20) department in any way as it related to the alcohol policy?
 (21) A No
 (22) Q After Captain Hazelwood returned from his alcohol abuse
 (23) rehabilitation treatment in 1985 were you aware of whether he
 (24) met with the Exxon USA medical department?
 (25) A I don't know that he met with the medical department

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- (1) Q In the alcohol policy of Exxon Shipping was there any
 (2) provision for how a crew member could report or should report
 a
 (3) master who is drinking on duty?
 (4) A I don't believe there was
 (5) Q Was there any kind of a hot line that was available to a
 (6) crew member to somebody off of the ship?
 (7) A No I believe they all knew the office numbers, but there
 (8) was no specific hot line for that particular -
 (9) Q Is it correct that a master of a ship participates in the
 (10) ranking of the deck officers?
 (11) A Yes
 (12) Q And how about the ranking of the crew members the
 (13) non-officer crew members?
 (14) A Probably the deck department member but I don't
 believe he
 (15) takes part in the engine department
 (16) Q Did you ever receive a report from Mr Graves a written
 (17) report allegations?
 (18) A Yeah he gave me a two-page - sent me a two page memo
 very
 (19) late in May and then he asked for a meeting to discuss it
 (20) further and we had that meeting within a couple days of
 (21) receiving his memo
 (22) Q Now at the time leading up to the grounding of the Exxon
 (23) Valdez in March of 1989 was Captain Hazelwood considered to
 be
 (24) a competent master?
 (25) A Yeah All of the reports I had from the operating
 managers

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- (1) was that he probably was our most professional manager
 (2) Q And that he was - had good judgment?
 (3) A That he had good judgment he had excellent professional
 (4) skills that he from a professional standpoint was extremely
 (5) reliable and if he had a tough job he would be the guy to get
 (6) it done
 (7) Q Now there was a rating system for masters correct?
 (8) A Yes
 (9) Q Now other than that rating system was there any other
 (10) evaluation of masters? And I'm not talking have to do with
 (11) alcohol I'm talking general evaluations
 (12) A There was a long - well fairly extensive subjective
 (13) rating that eventually got down to a number rating and there
 (14) were discussions at different levels like between the port
 (15) captains and then between the managers It ultimately got
 (16) transferred into numerical ratings
 (17) Q How often did those numerical ratings come out?
 (18) A The objective was to do it once a year but quite frankly I
 (19) can't swear that it was done every year
 (20) Q Other than numerical ratings were there any other written
 (21) evaluation reports of masters on a periodic basis?
 (22) A There was - there should have been periodically written
 (23) reports
 (24) Q And periodically would mean annually?
 (25) A It was either annually or every two years I think we

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- (1) started out annually but it turned out to be so difficult to
 (2) accomplish that somewhere along the way it was translated
 (3) into
 (4) every two years
 (5) Q And who was responsible for preparing those reports?
 (6) A The ship group managers and the fleet managers with the
 (7) input of the port captains
 (8) Q Now do you recall that there was no evaluation report of
 (9) Captain Hazelwood from June of 1984 until March of 1987?
 (10) A I was not aware of that prior to the NTSB
 (11) Q Are you aware of it now?
 (12) A I learned of it at the NTSB hearing, yes
 (13) Q All right So at the time - at the time of the incident
 (14) you had no knowledge of any evaluation reports on behalf of
 (15) Captain Hazelwood?
 (16) A No I did not read the evaluation reports myself
 (17) Q Now would you explain for us please the - what actions
 (18) either Exxon Shipping or Exxon USA took to satisfy themselves
 (19) that once Captain Hazelwood was rehab - completed his
 (20) rehabilitation treatment in 1985 he was competent and in a
 (21) competent condition to continue as a master?
 (22) A The primary responsibility went to the program
 (23) coordinator
 (24) which in this case early on was Ben Graves, plus the fleet
 (25) manager, which initially was John Tompkins for only about a
 (26) month after his return Then Dwight Koops replaced John
 (27) Tompkins So Dwight Koops had the primary contact

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- (1) responsibility along with his port captain who was Captain
 (2) Bill Sheehy
 (3) When Hazelwood shifted from the Yorktown to the Valdez
 (4) that contact would have shifted to Harvey Borgen and
 (5) Harvey
 (6) port captain who I believe was Bill Deppe Captain Deppe
 (7) Q What steps were taken to - strike that
 (8) Were any steps taken to satisfy Exxon Shipping or Exxon USA
 (9) that Captain Hazelwood was fit for duty?
 (10) A Yes it was my understanding that that the fleet manager
 (11) and the port captain were taking every opportunity that they
 (12) could to meet Hazelwood during the in-port periods and to
 (13) assess his condition his demeanor and to look for any
 (14) signs
 (15) either that they themselves could develop or with other
 (16) discussions with crew members that Hazelwood was
 (17) remaining
 (18) clean
 (19) Q And who were the persons who actually met with Mr
 (20) Hazelwood if you know?
 (21) A For the first two-year period it was Dwight Koops and
 (22) Captain Bill Sheehy primarily
 (23) Q For the first two years?
 (24) A Yes
 (25) Q That would have been '86 -
 (26) A '85 into '87
 (27) Q Okay And then after that?
 (28) A About mid '87 it shifted to Harvey Borgen, and it might

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- (1) have been Captain Martineau during that time and then
 (2) later
 (3) Captain Deppe
 (4) Q When was it Captain Deppe do you remember?
 (5) A It was probably 1989
 (6) Q When did Captain Deppe become involved in interviews with
 (7) Captain Hazelwood?
 (8) A I'm trying to think It actually may have been Paul Myers
 (9) instead of Bill Deppe I don't believe Bill Deppe was
 (10) responsible for the vessels that Hazelwood was on so it
 (11) might
 (12) have been Harvey Borgen and then Paul Myers
 (13) Q Mr Larossi so that the record is clear It's your
 (14) understanding that from the time of Mr Hazelwood's return
 (15) from
 (16) his rehabilitation until mid 1987 he was monitored by Dwight
 (17) Koops and Bill Sheehy?
 (18) A Yes
 (19) Q And that was while he had duty on the Yorktown?
 (20) A Exxon Yorktown
 (21) Q And then in mid '87 Captain Hazelwood went to the Valdez?
 (22) A That's right
 (23) Q The Exxon Valdez?
 (24) A Yes
 (25) Q And he was then monitored by Harvey Borgen and Captain
 (26) Martineau and then later instead of Captain Martineau Paul
 (27) Myers?
 (28) A Yes

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- (1) Q Is that correct?
- (2) A Yes
- (3) Q And those are the persons to the best of your knowledge who
- (4) monitored?
- (5) A Yes
- (6) Q Captain Hazelwood?
- (7) A Yes
- (8) Q Now with respect to Captain Hazelwood's duty tour on the
- (9) Yorktown what were the ports that the Yorktown visited?
- (10) A The ship was moving product from the Gulf Coast and the
- (11) two
- (12) loading ports were Baytown and Baton Rouge And he was
- (13) delivering cargo to the east coast, primarily New York
- (14) harbor
- (15) There may have been other ports on the east coast but
- (16) primary
- (17) designation, I think, was New York harbor
- (18) Q What port or ports did Dwight Koops and Captain Sheehy
- (19) visit Captain Hazelwood?
- (20) A I think most of their visits were in Baytown and Baton
- (21) Rouge
- (22) Q And not at the New York harbor port?
- (23) A It's my recollection that most of their connect was
- (24) Baytown
- (25) and Baton Rouge
- (26) Q How long a round trip was that from the time the Yorktown
- (27) left Baytown or Baton Rouge and left New York and came back
- (28) again? What was the length of that trip?
- (29) A On average it was probably round trip around 12 days

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- (1) Q Do you recall at that time what the tour of duty was for
- (2) Captain Hazelwood?
- (3) A He was on a 60 day on 60 day off rotation
- (4) Q He would be in the port in Baton Rouge or Baytown for how
- (5) long?
- (6) A I would say 24 hours maybe a little more or less
- (7) Q Is it your understanding that every time he arrived in the
- (8) Baytown or Baton Rouge port either Dwight Koops or Bill
- (9) Sheehy
- (10) or both went to see him?
- (11) A I don't know whether it was every time but it was nearly
- (12) every time
- (13) Q Where was Dwight Koops located?
- (14) A In Baytown
- (15) Q And where was Bill Sheehy?
- (16) A Baytown
- (17) Q Any documentation at all for the records of Exxon Shipping
- (18) that they in fact met with him?
- (19) A There was nothing written at all about the rehabilitation
- (20) Q And nothing to document that they in fact met with Captain
- (21) Hazelwood?
- (22) A I don't know what they had in their own records but the
- (23) existence of the rehabilitation was kept confidential except
- (24) for just a small handful of people
- (25) Q Now in mid 1987 Captain Hazelwood was switched to the
- (26) Exxon Valdez correct?

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- (1) A Yes
- (2) Q And from mid '87 until was it December 1988 the route of
- (3) the Exxon Valdez was between Panama and the Port of Valdez?
- (4) A Valdez down to Panama back up to Long Beach and then
- (5) up to
- (6) Valdez again, and stop in Long Beach to change crews
- (7) refuel
- (8) carry out any repairs or -
- (9) Q Then after December of '88 it was San Francisco/Valdez?
- (10) A San Francisco/Valdez or Valdez/Long Beach Los
- (11) Angeles,
- (12) wherever their particular cargo was destined
- (13) Q What was the tour of duty during that time?
- (14) A Again, 60 days on, 60 days off
- (15) Q Then the - in December of '88 the San Francisco/Valdez
- (16) run that was a much shorter period of time is that correct?
- (17) A Yeah That was about - be 14 days round trip
- (18) Q Now, to whom did - in the hierarchy of things, to whom did
- (19) Dwight Koops and Bill - Captain Sheehy report?
- (20) A Prior to the middle of '86, let me tell you, Dwight
- (21) Koops - Dwight Koops and Harvey Borgen it would be
- (22) easier to
- (23) take those two together They reported to Paul Revere the
- (24) senior vice president or the vice president of operations
- (25) prior to the middle of '86 restructuring After the middle of
- (26) '86 restructuring they reported directly to me The others
- (27) that I mentioned Sheehy reported to Koops Martineau and
- (28) later Myers reported to Borgen
- (29) Q Did you have any meetings with any of those gentlemen

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- (1) specifically relating to Captain Hazelwood?
- (2) A Yes
- (3) Q How many such meetings did you have from 1985 through
- (4) March
- (5) of 1989?
- (6) A Most of the meetings that took place with Dwight Koops
- (7) were
- (8) incidents with other meetings We didn't have any specific
- (9) meeting for that topic then we had phone conversations
- (10) We
- (11) had a phone conversation in July of 1987 I did with Borgen,
- (12) about Hazelwood That's when I learned he had been
- (13) transferred
- (14) to the west coast, and we had a long conversation about
- (15) that
- (16) Then in March of 1988 I believe it was around March it
- (17) was either late February or - could have been late February,
- (18) early April somewhere in that time period Borgen myself
- (19) and
- (20) Dan Paul had a specific meeting about Hazelwood and what
- (21) we
- (22) were observing and what we knew and that was the last
- (23) occasion
- (24) I had to discuss Hazelwood's rehabilitation
- (25) Q Did Harvey Borgen personally monitor Hazelwood?
- (26) A Yes
- (27) Q And did Dwight Koops personally monitor Hazelwood?
- (28) A Yes
- (29) Q Did you meet at all with either Captain Sheehy or Captain
- (30) Martineau or Paul Myers with respect to Hazelwood?
- (31) A No
- (32) Q Now to your knowledge what training did any of those
- (33) gentlemen have with respect to monitoring a person who had
- (34) been

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- (1) rehabilitated from alcohol abuse?
 (2) A Formal training I do not know
 (3) Q Do you know whether or not they received training from any
 (4) other health care professional?
 (5) A Dwight Koops confided early on that he had past
 experience
 (6) with a member of his family who was an alcoholic Now
 whether
 (7) he had formal training to help out in that circumstance I do
 (8) not know
 (9) Q Were these gentlemen who monitored Captain Hazelwood
 were
 (10) they instructed to report anything to the Exxon USA medical
 (11) department?
 (12) A I do not know They were to report anything they knew to
 (13) me But I do not know if they had instructions from medical
 (14) department
 (15) Q Did you instruct them to report anything to the medical
 (16) department?
 (17) A No
 (18) Q The only reporting they did was to you?
 (19) A Yes That I know of yes
 (20) Q And did you have any discussion - I think we went through
 (21) this but in this context did you have any discussions with the
 (22) Exxon USA medical department with respect to the monitoring
 by
 (23) these gentlemen of Captain Hazelwood?
 (24) A No
 (25) Q Am I also correct that there was no one on board the Exxon

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- (1) Valdez who was instructed to monitor Captain Hazelwood while
 he
 (2) was away from port?
 (3) A No
 (4) Q Is it your testimony today that neither Mr Koops nor
 (5) Captain Sheehy nor Mr Borgen nor Mr Myers nor Captain
 (6) Martineau ever advised you that they knew that Hazelwood
 (7) Captain Hazelwood was drinking alcohol after his
 (8) rehabilitation?
 (9) A I was never advised by anyone
 (10) Q Did those gentlemen ever advised you that it was reports to
 (11) them by others that Captain Hazelwood had been drinking on
 (12) board?
 (13) A No They never advised me of anything other than
 positive
 (14) situation that there was no signs is what they reported
 (15) Q Captain Hazelwood was terminated by Exxon Shipping is
 that
 (16) correct?
 (17) A Yes
 (18) Q Whose decision was that?
 (19) A Mine
 (20) Q Mark as exhibit -
 (21) VIDEO ATTORNEY 26792
 (22) Q - 26892 a one page document on Exxon Shipping Company
 (23) letterhead dated March 30th 1989 entitled for immediate
 (24) release Exxon Shipping terminates captain of Exxon Valdez
 (25) And is this a press release issued by Exxon Shipping
 Company?

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- (1) A Yes
(2) Q And are you the author of this press release?
(3) A No
(4) Q Was it prepared by -- by whom was it prepared?
(5) A I don't know It originated in Houston but I do not know
(6) by whom
(7) Q It states that --
(8) A I did approve it, by the way
(9) Q You saw it and approved it?
(10) A Yes
(11) Q So I take it that all matters attributed to you were
(12) accurate as far as you were concerned?
(13) A I didn't object to the wording
(14) Q This states that he was terminated because he violated
(15) company policy concerning alcohol?
(16) A That's what it says
(17) Q Is that correct?
(18) A No
(19) Q That is not correct?
(20) A No
(21) Q But you approved this?
(22) A Yes
(23) Q Why was he terminated?
(24) A When I arrived in Valdez Friday night I spoke before I
(25) went to the press conference I had an opportunity to meet
with

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- (1) Captain Deppe and Paul Myers At that time for the first
time
(2) they told me that Captain Hazelwood was not on the bridge
at
(3) the time of the accident That was in direct violation to our
(4) company policy At that point I ordered that Captain
Hazelwood
(5) be relieved of his duties on the ship that Captain Deppe
take
(6) over as master of the Exxon Valdez That Bob Nicholas go
to
(7) the ship and accompany Captain Hazelwood back to Valdez
because
(8) I wanted to interview him myself to determine whether he
had
(9) any defense for not being on the bridge That was just a
(10) courtesy prior to dismissing him. I never did get the
(11) opportunity to meet with him
(12) Q Did anyone on behalf of Exxon meet with Captain
Hazelwood?
(13) A Attorneys did, yes
(14) Q Why did you approve this press release assaying he was
(15) terminated because he violated company policy concerning
(16) alcohol when your testimony today is that he was terminated for
(17) not being on the bridge at the time of the accident as
(18) violating company policy?
(19) A I was shown the press release in the middle of the control
(20) room on Tuesday morning, and my comment was well it's
as good
(21) as any, go ahead
(22) Q Are you aware that this was a statement that would receive
(23) a great deal of publicity nationwide?
(24) A I was aware of the fact that it was day five of which I had
(25) probably an hour or two sleep each day At this particular

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- (1) point in time this was the least of my problems
- (2) Q What you re saying is that you were harried at this time
- (3) correct?
- (4) A Yes and of all the things I needed to do at that point in
- (5) time at the time this was the least important to worry about
- (6) how we got this wording right
- (7) Q Prior to preparing this press release were you advised of
- (8) whether or not Hazelwood had a defense as to why he was not
- (9) on
- (10) the bridge at the time of the accident?
- (11) A I had subsequently learned that other members of the
- (12) crew
- (13) confirmed that was not on the bridge The first word I heard
- (14) about it was Hazelwood's words to Myers I subsequently
- (15) heard
- (16) from the investigators and other crew members confirmed
- (17) that
- (18) Q What were Hazelwood s words to Myer?
- (19) A That he was - as Myer relayed them to me Myers told me
- (20) that Hazelwood told him that it was all his fault that he was
- (21) not on the bridge and that he was in his cabin at the time of
- (22) the incident
- (23) Q Did Mr Myers record that statement on paper?
- (24) A It was a telephone conversation from Paul Myers to
- (25) Hazelwood on the ship I subsequently learned from
- (26) counsel
- (27) that Captain Hazelwood also told counsel that he was not
- (28) on the
- (29) bridge
- (30) Q Did Myers write you a memorandum of that conversation?
- (31) A No

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- (1) Q You say that that statement was subsequently confirmed by
- (2) others in the crew?
- (3) A My understanding was yes
- (4) Q When an employee or officer is terminated is it the normal
- (5) process to have some document placed in the file in the
- (6) personnel file of that -
- (7) A Yes
- (8) Q - terminated officer?
- (9) A Yes Usually there is a personnel board that meets
- (10) before
- (11) I make my recommendation
- (12) Q That was not done in the case of Captain Hazelwood?
- (13) A No, and I don't think there is any procedure that requires
- (14) that, but usually that's what we do
- (15) Q The shipping company was aware of ice conditions in Prince
- (16) William Sound isn t that correct?
- (17) A You mean that particular night?
- (18) Q Yeah?
- (19) A We knew that at certain periods during the year there
- (20) were
- (21) ice calvings, I believe they call it from the glacier
- (22) Q And that was recognized as a safety problem is that
- (23) correct?
- (24) A It was recognized as a navigational problem We never
- (25) viewed the calvings as a real threat to the vessels
- (26) Q I d like to mark as Exhibit 26793 an article from a
- (27) publication entitled underway dated January/February 94
- (28) The

- (1) article is entitled ESC third mates track icebergs in Alaska
- (2) Columbia Bay all right?
- (3) A Yes
- (4) Q Do you recognize this as an article for publication from
- (5) the publication underway of Exxon Shipping Company?
- (6) A Yes
- (7) Q And this article demonstrates that Exxon Shipping was aware
- (8) that the calving of ice in the Prince William Sound could cause
- (9) a problem for ships is that correct in Prince William Sound?
- (10) A Well I think the document relates the study that was done
- (11) to track the ice coming off of the Columbia Glacier and to
- (12) then use that study to help vessels navigate when the ice
- (13) was
- (14) in the traffic lanes
- (15) Q Does this refresh your recollection as early as 1984 Exxon
- (16) Shipping was aware that calving of ice in Prince William Sound
- (17) was a safety factor or a safety consideration for its
- (18) shipping?
- (19) A It was certainly a factor that we were aware of and we
- (20) knew we needed to minimize the hazards that was
- (21) associated with
- (22) it
- (23) MS WAGNER Your Honor there are about 35 or 36 more
- (24) minutes but if you want to take a break -
- (25) THE COURT We ll take our second recess at this
- (26) point ladies and gentlemen Please remember my instructions
- (27) that you not have any discussions about the case we ll resume

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- (1) in 15 minutes
- (2) (Jury out at 12 04 p m)
- (3) (Recess at 12 04 p m)
- (4) (Jury in at 12 20 p m)
- (5) THE CLERK All rise
- (6) BY VIDEO EXAMINER
- (7) Q With regard to Captain Hazelwood s termination have you
- (8) ever made the statement to anyone I fired Hazelwood for not
- (9) being on the bridge during a critical passage and after test
- (10) results showed he was more than the maximum permissible
- (11) blood
- (12) alcohol It wasn t clear to me when he drank whether it was
- (13) pre incident or post incident drinking it didn t make any
- (14) difference Did you ever make a discussion comment like that
- (15) to anybody?
- (16) A It might have been a discussion long after the incident
- (17) with Art Davidson the author of that book
- (18) Q Does that quote reflect what you believed at the time you
- (19) talked to Mr Davidson?
- (20) A Yes Clearly the statement that it was with the knowledge
- (21) that he was not on the bridge, and it did occur after the
- (22) results of the blood alcohol test were announced
- (23) Q Was anyone else terminated from Exxon Shipping Company
- (24) as a
- (25) result of the Exxon Valdez incident?
- (26) A No
- (27) Q From the time that Captain Hazelwood went through his

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- (1) program to the time of the incident did you yourself ever meet
 (2) with Captain Hazelwood and ask him about his fitness for duty?
 (3) A I met with him on probably two and perhaps three occasions,
 (4) all during the time of the ship group managers meetings
 (5) Q Did you ask him whether he was drinking?
 (6) A Directly, no
 (7) Q Would it be fair to say that to your knowledge there is not
 (8) a single piece of paper in the files of Exxon Shipping Company
 (9) that reflect the monitoring activity?
 (10) A If there is I don't know of any
 (11) Q Would it be fair to say that to your knowledge there are no
 (12) reports that were generated by Exxon Shipping Company to Exxon
 (13) USA that reflect the monitoring?
 (14) A To my knowledge there are none
 (15) Q So we have no paper trail at all with regard to what
 (16) monitoring occurred?
 (17) A That's true
 (18) Q From 1983 through the time of the incident is there any
 (19) paper in Exxon Shipping Company any pieces of paper that
 (20) you're aware of that are evaluations of Captain Hazelwood?
 (21) What paper is there from '83 to the time of the incident?
 (22) A There should be performance appraisals by the ship
 (23) group
 (24) managers, assuming they were done on a two-year cycle
 (25) Q At the time you made the decision to reinstate Captain
 Hazelwood to duty you didn't know yourself what the events

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- (1) were that led to his disclosure that he underwent treatment?
 (2) A I do not know the specific sequence of events that led to
 (3) Graves' knowledge, and I don't know what the medical
 department
 (4) knew of him
 (5) Q And that was the state of your knowledge with regard to his
 (6) disclosure at the time you decided to reinstate him to duty?
 (7) A At the time he came through the second phase of his
 (8) rehabilitation and was reinstated I did not reinstate him
 (9) Q Who reinstated him?
 (10) A It probably was the employee relations department
 (11) Q Of Exxon Shipping corporation?
 (12) A Yes
 (13) Q Did you get a chop on that?
 (14) A No, I found out he was back in the fleet about four weeks
 (15) after he was back on duty
 (16) Q Were you disturbed about that?
 (17) A Yes
 (18) Q What did you do about it?
 (19) A I asked what steps we had taken before sending him
 back I
 (20) was told that he had been ordered to Houston where he met
 with
 (21) John Tompkins and Bill Sheehy, and it was their decision
 that
 (22) he had met the terms of the rehabilitation program and in
 (23) their view he was ready to go back to sea I do not know
 what
 (24) other steps they took whether or not they had reviewed that
 (25) with Ben Graves, but I found out about it by chance about
 four

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- (1) weeks after he was on board
 (2) Q What did you do when you found out about the fact four
 (3) weeks after that he was on board?
 (4) A I tried to find out who had - what the procedure was to
 (5) get him on board and what the procedure was to then
 monitor him
 (6) from then on What procedures had been developed by
 Tompkins
 (7) and later by Koops, and what steps that had they taken
 before
 (8) returning him back to the fleet
 (9) Q And with regard to his assignment to the Valdez who made
 (10) that decision?
 (11) A That was made between Harvey Borgen and Dwight
 Koops I
 (12) also found out about that after the fact
 (13) Q Were you upset about that?
 (14) A Yes
 (15) Q Why?
 (16) A Because I didn't understand - I knew that Dwight Koops
 was
 (17) keeping a very close eye on him, and I didn't understand
 why we
 (18) would want to change his assignment Harvey explained to
 me
 (19) all of his reasons, including - we started out by saying there
 (20) was an opening on the Valdez because the prior master, I
 think
 (21) his name was Bill Greig had left to become a San Francisco
 (22) pilot That there was a meeting of the port captains to
 (23) determine who should fill that that spot that their
 (24) recommendation was the spot be filled by Hazelwood, that
 the
 (25) division was reviewed by Koops and later Harvey Borgen
 That

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- (1) the decisions to move Hazelwood to the Valdez were based
 on the
 (2) fact one Hazelwood had more big ship experience going in
 and
 (3) out of Valdez than any master we had He was the first
 master
 (4) in the entire fleet to receive his Prince William Sound
 (5) pilotage certificate That and this is Borgen telling me,
 (6) that Dwight Koops had told him, Borgen, that Joe was
 absolutely
 (7) clean, and that there was no sign that the rehabilitation was
 (8) being violated in any way
 (9) Based on all of those, it was the recommendation of the two
 (10) port captains that Hazelwood be transferred, and both
 Dwight
 (11) and Harvey concurred with that and saw no need to tell me
 about
 (12) it
 (13) Q Did you have concern about the fact that Captain Hazelwood
 (14) had had a history of some problem with alcohol?
 (15) A Well that was the basis for my questioning Harvey in the
 (16) first place
 (17) Q Why would you be concerned about this assignment for
 (18) Captain Hazelwood in light of his past problem with alcohol?
 (19) It's an obvious question but it's a question
 (20) A Well, I just felt that we needed to exercise special care
 (21) in where we put Joe, and to make sure that the monitoring
 (22) process continued I had confidence that Dwight Koops had
 the
 (23) situation well in hand and I just wanted to make sure that
 (24) Harvey knew he had to pick up that responsibility
 (25) Q That's Harvey Borgen?

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- (1) A Yes I told him specifically to make sure that Paul Mvers
(2) and Martineau were aware of the circumstance because the
(3) knowledge of Hazelwood's rehabilitation was closely held
(4) within
(5) the shipping company There were only a handful of people
(6) who
(7) knew about it at the time
(8) Q Did you ever talk with Paul Mvers yourself about monitoring
(9) Joe Hazelwood?
(10) A Prior to the incident I don't recall
(11) Q Did you ever talk with Mr Martineau prior to the incident
(12) about personally monitoring Captain Hazelwood?
(13) A No
(14) Q How many total discussions were there between you and Mr
(15) Borgen about Captain Hazelwood and the subject of alcohol?
(16) A There was the discussion we had in August of '87 that I
(17) just related to you and that had - that was at the time I
(18) learned that Hazelwood was now on the west coast The
(19) following discussion was in February or March of 1988
(20) about
(21) six, seven months later
(22) Q So with regard to your involvement in the monitoring
(23) program from when Borgen took over until the incident there
(24) were two conversations?
(25) A Yes My involvement was to be informed immediately if
(26) anything was going on if they had any indication that was
(27) going on any indication of anything going wrong with
(28) Hazelwood's rehabilitation

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- (1) Q From 1985 to 1987 what were the universe of your contacts
(2) with regard to Captain Hazelwood's - the monitoring program
(3) for Captain Hazelwood?
(4) A I recall perhaps three or four brief discussions with
(5) Dwight Koops just asking if everything was okay with Joe
(6) was
(7) there any indication anything was going wrong And
(8) Dwight's
(9) response in all those times was that Joe was clean he was
(10) very
(11) proud of him and then just the reiteration during those
(12) times
(13) that if anything suspicious shows up we had to take action
(14) and
(15) I needed to be informed So it was an exception basis type
(16) of
(17) report
(18) Q So have we covered all of the involvement that you had in
(19) monitoring from when the monitoring program began to the
(20) incident?
(21) A Yes Starting with finding out that Joe was back and had
(22) been reinstated back in the fleet through to the March '88
(23) discussion
(24) Q You also testified yesterday about Captain Hazelwood being
(25) visited by various persons from Exxon Shipping at the port?
(26) A Yes
(27) Q Is it correct that to the best of your knowledge Captain
(28) Hazelwood when he came into those ports was aware that he
(29) was
(30) going to be visited by those persons?
(31) A I can only assume he understood the pattern but I'd have
(32) to assume that

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- (1) Q Do you recall being asked about that at the NTSB hearing?
(2) A I recall being asked only a number of specific questions
(3) I remember there was the subject being discussed
(4) Q For the record let me read in the following question and
(5) answer that you were asked
(6) A Yes
(7) Q Question Mr Larossi you mentioned that after Captain
(8) Hazelwood's rehabilitation the fleet operation manager and the
(9) ship group coordinator were assigned to make visits and I
(10) believe you said about perhaps two visits a month when he was
(11) in port to observe him and I believe also to discuss his
(12) problems with him So obviously Captain Hazelwood knew the
(13) purpose of their visit is that correct?
(14) Answer yes And I think he felt he was the most
(15) scrutinized employee of our company I think he felt a little
(16) uncomfortable with it Were you asked that question and did
(17) you give that answer?
(18) A Yes
(19) Q And to the best of your knowledge was that a truthful
(20) answer at the time?
(21) A Yes it was a truthful answer and it was based on
(22) comments
(23) that Dwight Koops had relayed to me about how he felt
(24) Hazelwood
(25) felt
(26) Q Prior to the grounding of the Exxon Valdez in March of
(27) 1989 was there a loading mate assigned to the Exxon Valdez?

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- (1) A You mean in addition to the regular crew?
(2) Q Yes
(3) A No
(4) Q Was that ever discussed to your knowledge within Exxon
(5) Shipping prior to the grounding? That is having a loading
(6) mate?
(7) A Not at my level
(8) Q You were never privy to any discussions?
(9) A No not that I recall
(10) Q And with regard to press conference on Saturday the 25th
(11) the first press conference did you make statements that
(12) quote we intend to tell you everything we know closed quote?
(13) A I don't recall the statement I can't whether I did or
(14) didn't
(15) Q At any of the press conferences did you make the statement
(16) we intended to tell you everything we know?
(17) A Can you tell me what the question was?
(18) Q I'll show you the question - I'll show you the
(19) transcript We have a transcript that was produced by Exxon
(20) and I'm interested and I'll tell you ahead of time I'm
(21) interested in the entire page 19 Will you read the entire
(22) page 19 and tell me if that's what you said? Will you read it
(23) out loud?
(24) A Okay Could I read the question from 18 so I understand?
(25) Q You can read all you want to read

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- (1) A The speaker who is not identified says what does the crew
 (2) tell you about what went wrong
 (3) And Mr Iarossi's answer People are asking questions and making an investigation We are doing that right now
 (4) The speaker says Sir my answer to you is you can take that as a fact It will be my job to tell you first before they tell you
 (5) Speaker who again is not identified says have you suspended any personnel or in any way removed them from command
 (6) as a result of this?
 (7) Could I ask what day this is so I can figure it out?
 (8) VIDEO ATTORNEY I think it s the 25th maybe the 24th
 (9) Q My question is on or about the 24 or 25th did you make those statements?
 (10) A I can't figure out what this - looks like it's Saturday morning, the 25th I think it's Saturday morning the 25th
 (11) Yes
 (12) Mr Iarossi, no, we are far from really having assessed damage or cause We'll wait until we have or really got an assessment of what was going on Hopefully that will be later
 (13) today and maybe by tonight we'll be able to tell you a little more but believe me I'm going to be the first to tell you
 (14) And then another speaker identifies himself as Bill Peters
 (15) Q I m interested in -

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- (1) A Bill Peters
 (2) Q Did you commit publicly at the press conference to be the one to first tell the public what went wrong?
 (3) A To the extent we found out yes
 (4) Q And did you believe that your commitment to the people at the press conference was to tell them the truth about what went wrong?
 (5) A To the extent we knew, yes
 (6) Q And on March 30th you approved press release 2679 - which is Exhibit 26792 Would you read that?
 (7) A Yes
 (8) Q Would you read it out loud for us?
 (9) A Exxon Shipping Company announced today that it has terminated the employment of Captain Joseph J Hazelwood The termination following announcement by government investigators that this employee had failed the blood alcohol test administered on the Exxon Valdez last Friday morning Frank Iarossi press of Exxon Shipping Company said the decision to terminate the employee was made because he violated company policy concerning alcohol We are all extremely disappointed and outraged that an officer in such a critical position would have jeopardized his ship, crew and the environment in such action Our policy in this area are very clear as Iarossi explained
 (10) Q This is a press released you authorized?

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- (1) A I agreed to the release
 (2) Q And it attributed words to you?
 (3) A It attributed words to me
 (4) Q Was it part of your commitment your earlier commitment to be the first one to tell the public what happened?
 (5) A I'm not - this press conference doesn't say anything about what happened Or this press release doesn't say anything about the incident
 (6) Q Were you extremely disappointed and outraged?
 (7) A I was disappointed and outraged, yes
 (8) Q In the book In the Wake of the Exxon Valdez you were reported as saying, let me read the whole paragraph In fact in Exxon s 1982/ 83 review of officer performance the appraisal of Joseph Hazelwood recommended that he be reassigned
 (9) to shore duty, however this approval was never assigned or forwarded to Exxon headquarters for review Hazelwood was assigned to the Exxon Valdez in April of 1987 because, as Iarossi put it quote supervisors who hadn t seen the negative appraisal felt that he was our most experienced masters in terms of operating in and out of Valdez closed quote
 (10) A I don't recall any reference to negative appraisal I do recall comments about being the most experienced master
 (11) Q Do you deny that you made the statement?
 (12) A I don't recall ever having made the statement that included negative appraisals and I don't know what the context of it

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- (1) was
 (2) Q Were there any negative appraisals at all in Captain Hazelwood s files?
 (3) A Well, during the NTSB a - must have been pencil copy, unsigned, was produced at the NTSB report that recommended that Hazelwood have a rotational assignment to shore We were never able to determine who made the appraisal There was no - the recommendation There was no signature It looked like it was a half completed appraisal and there was no copy of it in headquarters and nobody ever had a recollection of seeing it
 (4) Q Did it come out of the Exxon files?
 (5) A According to the NTSB it did, but no one could figure out where
 (6) Q Now from the date you found out about Captain Hazelwood and his treatment program to the date of the accident, is it fair to say that you never talked to Exxon USA medical about that subject?
 (7) A To my recollection I do not recall any conversations with the Exxon USA medical department
 (8) Q And you had never seen his medical files?
 (9) A No The medical files are confidential
 (10) Q And you had never talked to him directly about any problems he may have had with regard to alcohol?
 (11) A Captain Hazelwood?

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(1) Q That's right
 (2) A I asked him how he was doing how things were going
 (3) questions like that but I never asked about I never
 (4) mentioned alcohol
 (5) Q And you never looked into yourself the subject of
 (6) recidivism rates for people that had alcohol problems?
 (7) A No
 (8) Q And you never verified in any detail the extent of the
 (9) monitoring that was going on with regard to Captain
 Hazelwood?
 (10) A I on a number of occasions asked Dwight Koops how
 Joe was
 (11) going, and what he was seeing I asked Harvey Borgen on
 at
 (12) least two occasions that I remember three three that I
 (13) clearly remember discussing the subject with
 (14) Q Did you ever ask him how long they monitored him?
 (15) A Yes
 (16) Q What did they say?
 (17) A They said that they were attempting to get to Joe
 whenever
 (18) they were able to whenever he was in port
 (19) Q Did you ever get a list of the dates that they monitored
 (20) him?
 (21) A No
 (22) Q Now in the middle of 1985 with knowledge that Captain
 (23) Hazelwood had some kind of alcohol problem did you conduct
 any
 (24) independent investigation to determine whether any employees
 of
 (25) the company may have observed Captain Hazelwood
 consuming

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(1) alcoholic beverages?
 (2) A No
 (3) Q So as far as you were concerned the subject of any further
 (4) investigation was over at that time mid 1985?
 (5) A At the time that Graves spoke to Hazelwood Hazelwood
 (6) admitted that he had been drinking There wasn't any need
 to
 (7) go back for another investigation
 (8) Q Was there any characterization put on this admission that
 (9) is how much or how long or where?
 (10) A I don't recall
 (11) Q Was that admission to Mr Graves reduced to writing to
 (12) your knowledge?
 (13) A If it was it would have been in the report that memo
 (14) report of late May I don't know of any other place that
 would
 (15) have been
 (16) Q Now at the time you returned Captain Hazelwood to service
 (17) as a master were there other options available to you such as
 (18) a desk job?
 (19) A The issue was if Captain Hazelwood requested his job
 back,
 (20) would we be obligated to give it to him The answer was
 yes
 (21) If Captain Hazelwood asked for a desk job, we would have
 given
 (22) him a desk job
 (23) Q So as far as you know in this three or three and a half
 (24) year time period the only one who talked to any crew members
 (25) was Mr Koops and that would have been in the 1987 to 1989

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(1) time frame?
 (2) VIDEO ATTORNEY I think it would have been in the
 (3) 1985 to 1987
 (4) A No it was 1985 to 1987 And you know I don't know who
 (5) the others did Koops is the only one who told me that he
 did
 (6) Q During this period of time to your knowledge there was no
 (7) alcohol blood testing for Captain Hazelwood is that correct?
 (8) A There was no alcohol blood testing for anybody
 (9) Q These four people who were charged by you with observing
 (10) Captain Hazelwood to your knowledge they have no training in
 (11) observing somebody in this condition isn't that correct?
 (12) A Training no and I think I also in my answer told you that
 (13) Dwight Koops told me that because of his certain family
 (14) circumstances he had a lot of knowledge about dealing
 with an
 (15) alcoholic and spent some of his life having to deal with it
 (16) So he explained to me that he knew and understood the
 (17) circumstances because of certain circumstances in his
 family
 (18) Q Did you have personnel in your human resources
 department
 (19) or in the Exxon USA human resources department to -- were
 able
 (20) by professional training to do a monitoring program of this
 (21) kind?
 (22) A I don't know
 (23) Q Did you ever make such an inquiry?
 (24) A I did not ask
 (25) Q You talked at some length yesterday about the investigation

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(1) you did in 1985 regarding Mr Hazelwood being in an alcohol
 (2) rehabilitation and I want to ask you some follow up
 (3) questions Why did you want to monitor Captain Hazelwood
 after
 (4) he came out of alcohol rehabilitation sir?
 (5) A To ensure that the effects of the rehabilitation and the
 (6) intent of the rehabilitation was in fact being followed
 (7) through I wanted to make sure that the rehabilitation was
 (8) effective
 (9) Q Were you concerned about potential risks if in fact the
 (10) rehabilitation wasn't effective?
 (11) A The one time we really addressed the term risks,
 although
 (12) we didn't define what risks were we considered risks on
 both
 (13) sides of the question of whether we lived up to his employee
 (14) rights under the alcohol policy, or whether we denied him
 those
 (15) rights under the policy, and we decided there were risks on
 (16) both sides There was no easy answer That's the only time
 I
 (17) recall in my own mind risks
 (18) Q What were the identified risks on the other side of the
 (19) issue?
 (20) A That we didn't sit down and draw up any risks I think the
 (21) risk of having a master on board who was in any way using
 (22) alcohol we didn't sit down and define what the risks were
 (23) Q And that risk that you just articulated could have posed a
 (24) risk potentially of a collision correct?
 (25) A It could have posed a lot of risks Collision, yes

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- (1) Q Grounding is another risk it could have posed?
 (2) A Yes
 (3) Q It could have imposed or posed a risk of loss of judgment
 (4) on the part of the captain if he was in fact impaired is that
 (5) correct?
 (6) A We did not sit down and enumerate risks
 (7) Q As you sit here today and as former president of Exxon
 (8) Shipping Corporation do you believe that those were risks that
 (9) were -
 (10) A I think you could categorize them all in one phrase and
 (11) that is a risk that the captain did not discharge his duty as
 (12) he should have
 (13) Q Did you make any attempt to institute a program of random
 (14) urinalysis with regard to the monitoring of Captain Hazelwood?
 (15) A No
 (16) Q Did you institute any attempt to have Captain Hazelwood
 (17) after he was back on the ship, after alcohol rehabilitation
 (18) submit to either breathalyzer or blood alcohol tests?
 (19) A No
 (20) Q Was it anything you even discussed sir?
 (21) A I don't think it was in our right to expect that
 (22) Q And what do you base that on sir?
 (23) A I think there are certain prohibitions on what a company
 (24) can impose on the privacy of an individual of its
 employees
 (25) It was just not part what we did

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- (1) Q So it is not something you even discussed?
 (2) A No we didn't even discuss it
 (3) Q And it is not something that entered into your calculus when
 (4) you were talking about the monitoring program?
 (5) A No
 (6) Q And you mentioned yesterday that Mr Hazelwood was only
 (7) monitored in court When you were setting up this monitoring
 (8) program did it ever occur to you that Captain Hazelwood might
 (9) try to hide alcohol use?
 (10) A We never discussed it
 (11) Q I'm asking notwithstanding the fact that you didn't
 (12) discuss it did it ever occur to you as the person who helped
 (13) set up the monitoring program that Captain Hazelwood -
 (14) A I was not the person who set up the monitoring program I
 (15) ordered the monitoring program he established
 (16) Q The person who ordered that the monitoring program be
 (17) established did it ever occur to you that Captain Hazelwood
 (18) might try to hide alcohol use to avoid detection?
 (19) A I stated that Captain Hazelwood's - Captain Hazelwood
 (20) needed to be monitored I did not place any bounds on it I
 (21) did not have any preconceived notion of what those
 boundaries
 (22) were
 (23) Q Is it fair to say that other than the conversations that
 (24) you detailed to us you did not supervise the monitoring?
 (25) A I was not a supervisor I was a president of the company

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- (1) MR NEAL May it please the court we will not offer
 (2) cross examination at this time We will if he is available
 (3) call Mr Larossi in our case He is no longer with the company
 (4) THE COURT Plaintiff may call its next witness
 (5) MS WAGNER Plaintiffs call William G Duncan by
 (6) video deposition
 (7) DIRECT EXAMINATION OF WILLIAM DUNCAN (video)
 (8) BY VIDEO EXAMINER
 (9) Q Sir would you please state your full name for the record?
 (10) A William George Duncan
 (11) Q Where do you presently reside sir?
 (12) A 15118 Morning Pine Lane M o r n i n g P i n e L a n e,
 (13) Houston, Texas 77068
 (14) Q Are you presently in the employ of Exxon Shipping
 Company?
 (15) A Yes, I am
 (16) Q What is your present position sir?
 (17) A Marine advisor
 (18) Q How long have you been employed by Exxon Shipping
 Company?
 (19) A Since 1983
 (20) Q When you first became employed by Exxon Shipping
 Company
 (21) what position did you occupy?
 (22) A Same position marine advisor
 (23) Q Can you briefly describe your job function as a marine
 (24) advisor?
 (25) A The job function is a multifaceted one Some of the key

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- (1) elements are port, port approval system, whereby we keep a
 (2) record of all the terminals that we use for our ships going
 (3) into, and we keep the physical dimensions of those
 terminals
 (4) the water depth and along with that we look at the physical
 (5) size of the ships that maybe going to those terminals and
 we
 (6) approve the ships based on the limitation of the terminal
 (7) Q Is that the same job function that you had as of March
 (8) 23rd 1989 sir?
 (9) A Yes it was
 (10) Q Who did you advise on that?
 (11) A Well primarily I think the key point I think is that I'm
 (12) in the services organization We operate in Houston
 (13) independent of the field and freight offices I don't have any
 (14) direct operation with the day-to-day running of it In
 (15) addition to the port activities, I can often get involved in
 (16) the project For example, the last few months I've been
 (17) involved with looking at types of store (ph), so I get involved
 (18) in different projects I'm involved in some substantial
 (19) activities such as the marine so I get involved in different
 (20) projects
 (21) I'm involved in some substantial activities such as the
 (22) Marine Index Bureau I'm on the board, the advisory board
 of
 (23) the Marine Index Bureau of New York New York The
 advisory
 (24) board of marine index firefighter I'm chairman of the oil
 (25) companies international marine forum and so my job is
 split

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- (1) between marine and also internally and externally the number
- (2) of different activities
- (3) Q You also mentioned that you were a charter superintendent
- (4) for a while What does a charter superintendent do?
- (5) A When I came to New York into Exxon International in 1977
- (6) the corp Exxon International at that time had over a hundred
- (7) ships on time charter and I was one of five charter
- (8) superintendents that were assigned a number of vessels in the
- (9) charter fleet to monitor performance vis a vis charter
- (10) parties
- (11) Q You said you came to Exxon International in 1977 I may
- (12) have missed this Were you just a charter superintendent
- (13) during your time with Exxon International or were you also
- (14) involved in ship management during that time?
- (15) A No, I believe I spent two years as a charter
- (16) superintendent one year in port services and the last three
- (17) years, which would have been '74 to '77 I was a ship group
- (18) manager in the international fleet operating out of Florham
- (19) Park
- (20) Q And in 1983 you went over to Exxon Shipping Company?
- (21) A That's correct
- (22) Q Was that at the time of the creation of Exxon Shipping
- (23) Company or had it existed for sometime prior?
- (24) A It was in existence when we came here
- (25) Q Does part of your job duties include the accumulation

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- (1) analysis and dissemination of technical information as it
- (2) relates to the operation of vessels?
- (3) A Primarily, you know the fleet that we have has been fairly
- (4) well stabilized for a number of years so the operation such
- (5) as
- (6) cargo handling in and out of port those are pretty well
- (7) established I would get involved if there was some new - I
- (8) would generally view the Federal Register for any new
- (9) requirements coming up from the Register and hand that
- (10) out to
- (11) the fleet I serve as kind of information disseminator if you
- (12) like, in terms of any new regulations coming out
- (13) Q Did you have any involvement with the navigation and bridge
- (14) organization manual?
- (15) A Yes, sir I have over the years
- (16) Q Is that true for your time with Exxon International as well
- (17) as Exxon Shipping Company?
- (18) A I don't recall having anything during my tenure When I
- (19) was sailing, the manual was not in the Esso petroleum fleet
- (20) in
- (21) 1969, '70, came subsequent to that I don't recall having
- (22) any
- (23) participation in the manual with Exxon International With
- (24) Exxon Shipping I did attend a meeting of marine affiliate
- (25) representatives in New York, I believe It was '84 and the
- (26) marine affiliate subsequently had another discussion which I
- (27) was not a participant so I participated in the bridge manual
- (28) on one occasion since I came directly to Exxon Shipping
- (29) Q Does the bridge organizational manual state the corporate

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- (1) navigation policy by which the vessels in the corporation are
- (2) to be governed?
- (3) A The navigation - the bridge organization manual does
- (4) state
- (5) a policy but it also contains a set of guidelines and also I
- (6) think we have to keep in mind that the bridge organization
- (7) manual has to take into account a variety of ship sizes and
- (8) trades and so the individual affiliates have always had the
- (9) latitude to make adjustments to their particular operation
- (10) If
- (11) an affiliate for example only has got small ships, and some
- (12) have differences in trade and ship sizes a lot of them make
- (13) that flexibility
- (14) Q Captain Duncan have you had an opportunity to review
- (15) Exhibit 27198 yesterday at least?
- (16) A I saw it briefly for saw it briefly for a moment or two
- (17) Q I m going to be asking you about Exhibit 27198 Do you
- (18) feel comfortable testifying about that document?
- (19) A Let's try yes
- (20) Q Again I d ask you to turn to page five of the document
- (21) and ask if the signature that appears on that page is your
- (22) signature?
- (23) A It is
- (24) Q So again you authored this document?
- (25) A Yes
- (26) Q There are some attachments and you didn t author the
- (27) attachments?

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- (1) A No sir
- (2) Q But the cover letter at least you authored?
- (3) A That's correct
- (4) Q This Exhibit 27198 which is a letter from you dated May
- (5) 30th 1986 going from you to the master of the Exxon Shipping
- (6) Company?
- (7) A Yes
- (8) Q It references an - officers conferences held in Houston
- (9) during 1985 do you recall the officers conferences you were
- (10) referring to in this letter?
- (11) A Yes I remember certain conferences taking place yes
- (12) Q What was the purpose of the conferences do you recall?
- (13) A Well the purpose of kind of I would say multifaceted It
- (14) was an opportunity for the seagoing personnel to meet the
- (15) shore
- (16) side personnel and discuss a whole range of topics In my
- (17) particular case I was involved with the navigation, but the
- (18) agenda was I believe a two or three day seminar and it
- (19) covered a lot of different things that were going on in Exxon
- (20) Shipping, so it was an opportunity for exchange and
- (21) updating,
- (22) if you like, and here's some feedback from fleet officers
- (23) Q The letter itself also references that it was - the
- (24) officers conferences meeting were so called to apprise the
- (25) masters of recent external discussions involving revisions to
- (26) the corporate navigation policy and general sailing route
- (27) guidelines Do you see where I m referring?

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- (1) A Yes
- (2) Q That was one of the objectives of these?
- (3) A Well, I see them use the same language on the same date for
- (4) the circular letter, yes
- (5) Q Well you actually used different language in one language
- (6) you called it the general navigation policy and in the other
- (7) the corporate navigation policy Are they interchangeable
- (8) terms?
- (9) A Yes, I would say so
- (10) Q Was it your department you in particular you the person
- (11) within Exxon Shipping who was most involved with any changes to
- (12) the navigation manual?
- (13) A The mechanism that we had in place I think as I indicated
- (14) before, and it's one of the - my way of working with my
- (15) marine
- (16) colleagues is that we had at some of these officers
- (17) conferences, as I indicated, an opportunity to discuss any
- (18) subject they so desired, and one of which was navigation
- (19) and
- (20) bridge organizational manual and there were occasions
- (21) when
- (22) they questioned because we had new people coming
- (23) through, and I
- (24) think almost every time you read through a document some
- (25) new
- (1) pair of eyes can see possible changes and I've always had an
- (2) open policy of being receptive to any comments from my
- (3) fellow
- (4) mariners and if I felt it was of value I would accept it,
- (5) review it and then go back through the field office or the
- (6) fleet offices and send it out

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- (1) Q Back to 27198 On page three of that document you
- (2) reference a publication titled Standing and their Causes by
- (3) Richard Cahill we spoke yesterday and one of the questions I
- (4) asked you when you ran across an article that you thought was
- (5) relevant or important or that contained information that you
- (6) wanted to disseminate you would do that?
- (7) A Yes
- (8) Q I gather that Exhibit 27198 is this an instance where this
- (9) occurred?
- (10) A That's right
- (11) Q And the reason that you attached the conclusion section of
- (12) Richard Cahill's article and also had extracted certain
- (13) portions of the article was because you thought the objections
- (14) by Richard Cahill were important and relevant to the operation
- (15) of Exxon Shipping Company is that a fair statement?
- (16) A I would say that's generally correct Again going back to
- (17) my previous comments, I've been a mariner all my life I
- (18) believe there are many instances when lessons can be
- (19) learned
- (20) I believe Captain Richard Cahill did a very professional job
- (21) in
- (22) writing conclusions and recommendations over a whole
- (23) variation
- (24) of casualties, and to the extent that he was a mariner and to
- (25) the extent that it was professionally done I believe in this
- (1) world, that there are things we can always learn from and
- (2) the
- (3) whole purpose was to give, reinforce outside of what we
- (4) were
- (5) trying to say as an organization that here is some
- (6) examples,

- (1) you know especially junior officers or coming in new to our
- (2) business he would be aware of
- (3) Q In addition to attaching the conclusion section of Captain
- (4) Cahill's article you also extracted certain portions and I
- (5) guess you extracted three sections and I gathered you felt
- (6) those were the sections most pertinent or most important from
- (7) Captain Cahill's analysis is that right?
- (8) A I think that's a fair summary I think the, in reading
- (9) through Captain Cahill's publication at the time, I tried to -
- (10) we did, by the way, at my recommendation, provide a full
- (11) copy
- (12) to each vessel in the fleet for their on board library, and in
- (13) this particular instance rather having to generate a lot of
- (14) paper, I just picked out two, three what I thought was the
- (15) most appropriate excerpts that I could use
- (16) Q If you would, Captain Duncan I would like you to read one
- (17) of those excerpts into the record On page 4 you extracted a
- (18) portion that you entitled passage planning It's a fairly
- (19) short paragraph beginning with planning the most
- (20) rudimentary Could you just read that for the record?
- (21) A I'm reading an excerpt from Captain Richard Cahill's
- (22) publication, and this is page 169 from that publication titled
- (23) passage planning Probably the most rudimentary aspect
- (24) of
- (25) passage planning and the only one that could not be
- (1) ignored by
- (2) the mariner since it determines the courses to be steered
- (3) and
- (4) approaching and passing headlands and shoals is the
- (5) choice of

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- (1) how far off to pass such dangers In many places today the
- (2) decision would be circumscribed by separate schemes but
- (3) there
- (4) are many places where the mariner free to make decisions
- (5) unhampered by any consideration other than his
- (6) seamanship
- (7) This is also one of those areas where mariners who by
- (8) every
- (9) other consideration, would be regarded as excellent
- (10) seaman are
- (11) tempted to rely on their navigational skills to pass closer to
- (12) rocks and shoals than good seamanship would allow Such
- (13) a
- (14) rescue course of action may stem from the vital, though in
- (15) these days of tight schedules and expensive fuel the desire to
- (16) make the most economic passages exerts a powerful
- (17) temptation to
- (18) expose the vessel to substantial though perhaps remote
- (19) risks
- (20) for slight gain
- (21) Q Let me ask you Captain is it fair to say that you
- (22) extracted that particular passage because you were concerned
- (23) that some masters may be tempted to expose the vessel to
- (24) substantial although perhaps remote risk for slight economic
- (25) gains?
- (1) A I had no knowledge of anybody doing anything in our
- (2) fleet
- (3) for economic gains and I think as I indicated the main drive
- (4) for this kind of excerpt was the junior officer
- (5) Q Where you at least wanted to warn some of them This
- (6) document that went to all the masters?
- (7) A Yeah
- (8) Q You at least wanted to warn that that was something to be

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- (1) watched out for taking risk for economic gain and you were
 (2) concerned that that may be happening?
 (3) A As I indicated I have never had any example in my own
 (4) experience of that happening and there was no particular
 (5) instance in - that triggered off this particular excerpt
 (6) Q So you had no reason to believe this was happening You
 (7) just thought you'd throw it in?
 (8) A Yes sir
 (9) Q Are you familiar with a regulation that requires six hours
 (10) of off duty in any 12 hours prior to taking charge of the
 (11) navigational watch?
 (12) A I've read it It was only since I came to Exxon Shipping
 (13) Company
 (14) Q Was there any procedure established within Exxon Shipping
 (15) Company to make sure that was followed?
 (16) A I personally don't know if any but that's part of the
 (17) codes of the Federal Register one of the duties of the
 (18) masters
 (19) is to do that yeah
 (20) Q But you're not aware of any procedure that was established
 (21) by Exxon Shipping internally to come comply with that?
 (22) A I'm not aware of any
 (23) Q Hazelwood leaving the bridge was in violation of the watch
 (24) type that was present?
 (25) A That's correct
 (26) Q And you would believe wouldn't you that his leaving the

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- (1) bridge at least was a contributing cause to this accident?
 (2) A Yes
 (3) Q Captain Duncan I've presented 27206 which appears to be
 (4) a
 (5) letter signed by you to William R. Woody, investigator in
 (6) charge NTSB?
 (7) A Yes
 (8) Q Did you indeed sign this document on approximately
 (9) February
 (10) 27th 1990 being the date that's on it?
 (11) A Yes sir
 (12) Q Did you draft this document?
 (13) A No, sir
 (14) Q Who drafted it?
 (15) A Legal counsel
 (16) Q Did you review the document prior to signing it?
 (17) A I read through it but I was nothing more than - I think
 (18) from yesterday's deposition, Captain Deppe was the
 (19) designated
 (20) Exxon Shipping Company representative at the NTSB
 (21) hearings I
 (22) was the substitute or alternate and my understanding of
 (23) the
 (24) protocol was that any correspondence between the
 (25) members
 (26) between Exxon Shipping and others, and the NTSB would
 (27) only be
 (28) recognized by either the initial nominee or the designee So
 (29) for me this is merely a signature
 (30) Q In being merely a signature, did you mean by signing it
 (31) that you understood that the statements made in this letter
 (32) were true and accurate?

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- (1) A I certainly read through them and on my best advice of
 (2) counsel accepted that
 (3) Q Based on your own personal knowledge did you know if the
 (4) statements made in this letter were true and accurate?
 (5) A I haven't seen this document in two years so I couldn't -
 (6) I don't know exactly all the statements that are in here
 (7) Q Captain Duncan at the time you signed the document on
 (8) about February 27th 1990 did you have as you sit here today
 (9) a recollection that when you signed it you had - you
 (10) personally knew that the statements made in it were accurate?
 (11) A I would say so, sir yes
 (12) Q Now the next series of questions I'm going to ask you are
 (13) as of March 23rd 24th 1989 Okay?
 (14) A Okay
 (15) Q Keep that date in mind
 (16) A Fine
 (17) Q What I want to talk about is the role of the watch
 (18) officer
 (19) A Yes
 (20) Q In various functions on the bridge the watch officer could
 (21) be a third mate second mate chief mate or master?
 (22) A Yes, sir
 (23) Q It's got to be one of those?
 (24) A Correct
 (25) Q Let's assume for our purposes that there is just a watch

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- (1) officer and a helmsman
 (2) A Okay
 (3) Q That's on the bridge and there is a lookout out on the
 (4) bridge wing
 (5) A Yes, sir
 (6) Q And for purposes of our example let's say we're on the
 (7) Exxon Valdez Okay?
 (8) A Okay Post?
 (9) Q March 23rd March 24th 1989
 (10) A On the day, okay
 (11) Q Which of those people would be responsible for deciding
 (12) which mode, steering mode the ship should be operating?
 (13) A The watch officer
 (14) Q Which of those individuals is responsible for actually
 (15) physically selecting the mode?
 (16) A We have a requirement that that should be done with the
 (17) officer, the officer of the watch under the supervision of the
 (18) ship the A B Unless there is occasion when the particular
 (19) because we do have some A B S who have a license unless
 (20) they
 (21) have enough experience to do it But it's always done under
 (22) the observation on the watch
 (23) Q Who is responsible among those three individuals? Watch
 (24) officers or lookout for selecting a course?
 (25) A The watch officer
 (26) Q Who is responsible to give commands to change course?

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- (1) A Either the watch officer or the captain whoever happens
 to
 (2) be the conning officer
 (3) Q Let's assume for our purposes the master is off the
 (4) bridge
 (5) A Okay
 (6) Q Watch officer helmsman lookout Who is responsible to
 (7) give the rudder commands?
 (8) A Watch officer
 (9) Q And he instructs the helmsman to make a rudder change?
 (10) A Yes, sir
 (11) Q And then the helmsman will assuming he's in hand mode
 (12) turn the wheel and let's say, for example ten degrees?
 (13) A Normally that's correct
 (14) Q What does the helmsman physically do?
 (15) A He applies the appropriate - since we're on the Valdez,
 he
 (16) would turn the wheel appropriately to the right and watch
 the
 (17) rudder angle indicator
 (18) Q Which rudder angle indicator?
 (19) A He has a choice that on that ship he can use the one on
 the
 (20) SRP 2000 or the one on the bridge
 (21) Q The three sided one?
 (22) A Yes
 (23) Q Whose responsibility is it to make sure the rudder has
 (24) moved ten degrees?
 (25) A Officer on watch

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- (1) Q So let me do a little scenario The watch officer is
 (2) standing he decides he wants to go ten degrees right and he
 (3) will go ten degrees right and the helmsman will turn the wheel
 (4) what he believes is ten degrees right?
 (5) A Correct
 (6) Q And it's the responsibility of the watch officer to make
 (7) sure the rudder has moved ten degrees?
 (8) A Yes
 (9) Q And that's part of his duties?
 (10) A Yes
 (11) Q And he should do that every time?
 (12) A Yes
 (13) Q Does the helmsman have that responsibility? Is he
 supposed
 (14) to check the rudder angle indicator?
 (15) A I can give you my experience as an A B If I had a
 (16) request for the officer of the watch for a command, I would
 (17) normally check it to make sure that I done it
 (18) Q And what would you do as an A B if the rudder angle
 (19) indicator didn't show that the rudder had moved ten degrees?
 (20) A I would advise the officer of the watch
 (21) Q Normally or would you do it every time?
 (22) A Every time, yes
 (23) Q You'd do it every time?
 (24) A Yes
 (25) Q And if the officer of the watch was doing his job, he would

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- (1) be looking at the rudder angle indicator correct?
 (2) A In concert with other things yes
 (3) Q Giving a helm command is an important part of his function?
 (4) A It is
 (5) Q And making sure that the rudder has responded is a critical part of his job?
 (6) A Correct
 (7) Q Would it be proper for a mate officer of the watch to wait six minutes to make sure that the rudder had moved ten degrees?
 (8) A I would say very unusual
 (9) Q Would it be proper?
 (10) A No
 (11) Q Now, what is the role of a lookout on March 23rd 1989?
 (12) A The role of the lookout is to report whatever any lights any traffic, anything that he or she sees in the role of lookout
 (13) Q And does is that person report to?
 (14) A The watch officer
 (15) Q And its up to the watch officer to decide what he does with the information?
 (16) A Correct
 (17) Q For all of our purposes I want to make sure that you and I understand that we re talking about what Exxon Shipping Company employees should be doing on an Exxon Shipping Company vessel?

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- (1) A Okay
 (2) Q You ve understood that?
 (3) A Yes
 (4) Q Have you not?
 (5) A Yes, sir
 (6) Q I believe you stated earlier that watch type C was in effect when the ship ran aground?
 (7) A Correct
 (8) Q And watch type C requires two officers to be on the deck?
 (9) A Correct, on the bridge
 (10) Q On the bridge?
 (11) A Correct
 (12) Q And there were not is that correct?
 (13) A That's correct
 (14) Q Why under watch type C do you have two officers on the bridge?
 (15) A Well, the primary reason for that is to guard against a one man error, so you have an opportunity to double-check and also depends on the extent of - in this particular case where the ship was navigating through ice, there was some unusual circumstances which required the attention of more than one individual
 (16) Q I m sorry One of the reasons is to guard against one man error Is that what you said?
 (17) A Yes

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- (1) Q And the one man you re referring to is the watch officer?
 (2) A Yes
 (3) Q If you only have one -
 (4) A It's a double check
 (5) Q Just to make sure for example there would be something else there to make sure that the rudder was moving?
 (6) A I wouldn't necessarily say that that would be a specific - maybe checking on a vessel position, maybe a number of different things to double-check on
 (7) Q But that would be one?
 (8) A Could be one could be one
 (9) Q And Exhibit 27206 and again I ll just show you my copy to make this easier for you This is the document that you wrote to Mr Woody or at least you signed that went to Mr Woody?
 (10) A Yes
 (11) Q And I believe you testified twice that watch type C was in effect correct?
 (12) A Yes
 (13) Q And that is the position that Exxon Shipping Company indicated to Mr Woody?
 (14) A Yes leaving the terminal yes
 (15) Q Right Well it was in watch type C at the time of grounding?
 (16) A Yeah But leaving the terminal it had already been set watch type C

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- (1) Q But at the time it ran aground it was in watch C?
 (2) A Yes
 (3) Q What is con mean?
 (4) A Con?
 (5) Q Yes con
 (6) A Whoever is in charge of navigating the vessel
 (7) Q When Captain Hazelwood left the bridge did he give the con to Greg Cousins?
 (8) A As I understand Captain Hazelwood gave instructions to Mr Cousins, and he assumed the con
 (9) Q Cousins did?
 (10) A Yes
 (11) Q So Cousins was the watch officer?
 (12) A Yes
 (13) Q At the time of the grounding?
 (14) A Yes
 (15) Q As soon as Hazelwood left the bridge?
 (16) A Yes
 (17) Q When Captain Hazelwood left the bridge he violated Exxon Shipping Company policy?
 (18) A Yes sir
 (19) Q The master is - let me ask you Is a master supposed to be on the bridge when the ship - his vessel is coming near hazards to navigation?
 (20) A Depends on what you define by coming near

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- (1) Q How about going down the - in Prince William Sound past
 (2) Bligh Reef?
 (3) A That's open ocean - sorry open waters
 (4) Q So you don't believe the master has to be on the bridge?
 (5) A Yes, the transit down would still require watch condition
 (6) C, but there may be a situation that in the open waters of
 (7) Prince William Sound south of Bligh Reef he may have a
 head
 (8) call, or whatever He can leave for a few minutes
 (9) Q South of Bligh Reef?
 (10) A Yes, sir
 (11) Q But not going past Bligh Reef?
 (12) A I would say that would be an area where, in confines
 (13) that's correct
 (14) Q So between Rocky Point and until you pass Bligh Reef the
 (15) master should be on the bridge?
 (16) A In ideal situations, yes
 (17) Q And Captain Hazelwood leaving the bridge between Rocky
 (18) Point and Bligh Reef was a violation of Exxon Shipping
 Company
 (19) policy?
 (20) A Correct.
 (21) Q And it was improper in your opinion?
 (22) A Yes
 (23) Q The rudder angle indicators are present on the bridge to
 (24) act as an independent source of information to the mate so that
 (25) he will know that an ordered rudder movement has occurred

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- (1) correct?
 (2) A Correct
 (3) Q It was Cousins responsibility as the watch officer at the
 (4) time of the grounding to ensure that the rudder had moved in
 (5) accordance with his orders?
 (6) A To verify that the rudder angle indicator had moved
 (7) Q I didn't understand you
 (8) A To verify that his helm command was showing on the
 rudder
 (9) angle indicator yes
 (10) Q And the helm command showing on the rudder angle
 indicator
 (11) indicates the rudder has moved?
 (12) A Yes
 (13) Q It also means the steering system operates?
 (14) A Yes
 (15) Q Now so assume that the rudder angle indicator does not
 (16) move at all right for a period of nine minutes okay The
 (17) failure of Cousins to note that the rudder angle indicator is
 (18) not moving would be poor seamanship?
 (19) A Well, I'm not sure of the significance of nine minutes
 (20) but -
 (21) Q I know That would be poor seamanship?
 (22) A I don't know exactly about poor seamanship I would say
 (23) poor duties, poor attention to duty
 (24) Q It would certainly would be a violation of his
 (25) responsibilities as a watch officer?

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- (1) A Yes
 (2) Q And now the same question instead of nine minutes eight
 (3) minutes that would be a violation of his violation?
 (4) A Yes
 (5) Q Even one minute would be a violation of his
 (6) responsibilities as a watch officer?
 (7) A For that length of time yes, you normally would have
 (8) observed it
 (9) Q It's his duty to make sure as soon as he gets that command
 (10) the rudder is moved?
 (11) A Pretty soon after
 (12) Q Pretty quick?
 (13) A Yes, sir
 (14) Q And one minute is too long?
 (15) A Yeah
 (16) Q And who was responsible for determining the applicable
 (17) watch condition the vessel would be under at any given time?
 (18) A The captain
 (19) Q Would anyone else on the vessel have any input into the
 (20) captain's decision as to what watch condition would be in
 (21) effect at any particular time?
 (22) A He has the full authority
 (23) Q Would anyone ashore have any input into the Captain's
 (24) decision with respect to the watch condition?
 (25) A The expectations is that the captain makes a summary of
 all

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- (1) the particular circumstances and he therefore sets the
 watch
 (2) condition that he thinks fulfills that requirement
 (3) Q The watch conditions as they are set forth in the manual
 (4) are they absolute mandates in which the master is obligated to
 (5) comply with?
 (6) A Well sir They are guidelines
 (7) Q So given the conditions as the master understands them to
 (8) be and the situation the vessel is in is it fair to say the
 (9) master has the discretion as to what watch condition he would
 (10) invoke for any given time period?
 (11) A Yes, he can certainly increase as appropriate
 (12) Q Captain Duncan did I just understand you to say that the
 (13) watch types are only guidelines and that the master can
 (14) increase them as appropriate?
 (15) A Yes
 (16) Q Can't decrease them?
 (17) A No sir
 (18) Q So Captain Hazelwood didn't have the discretion to decrease
 (19) the watch type C on the night of the grounding?
 (20) A Yes
 (21) Q Did I also understand you to say it's the possibility of
 (22) the helmsman to report to the watch officer that the rudder
 (23) angle is achieved?
 (24) A Yes
 (25) Q So does that mean when on the night of the grounding when

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- (1) Cousins said to Kagan I want ten degrees right?
 (2) A Yes sir
 (3) Q Kagan was supposed to say to Cousins I've achieved ten
 (4) degrees right?
 (5) A That is fairly standard practice I don't know from the
 (6) testimony whether that was done in that particular instance
 or
 (7) not
 (8) Q But it should have been done?
 (9) A It's normal practice yes
 (10) MR NEAL Once again Your Honor you'll be proud of
 (11) us We have no single cross
 (12) MS WAGNER Your Honor the plaintiffs call Nathan
 (13) Carr by deposition
 (14) THE COURT Name was what?
 (15) MS WAGNER Nathan Carr C A R R
 (16) (The Reader Is Sworn)
 (17) THE CLERK Please state your full name address and
 (18) spell your last name
 (19) A Brian Toder St Paul Minnesota T O-D E R
 (20) THE CLERK Thank you sir
 (21) DIRECT EXAMINATION OF NATHAN CARR (read)
 (22) BY MS WAGNER
 (23) Q I'd like to get some background information on you if I
 (24) could Would you tell me the date of your birth and the place
 (25) of your birth?

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- (1) A I was born August 2nd, 1938 in Exeter New Hampshire
 (2) Q And generally could you give me your educational
 (3) background?
 (4) A I'm a high school graduate
 (5) Q What did you do in 1970?
 (6) A I joined Exxon Shipping Company It was Humble Oil and
 (7) Refining at that time
 (8) Q Where were you located when you joined them?
 (9) A New York City
 (10) Q What was your position initially when you joined Humble
 (11) Oil?
 (12) A Ordinary seaman
 (13) Q Okay Let me ask you just generally is that how your time
 (14) with Exxon back in the 70s would be spent go a few months on
 (15) one vessel and maybe some time off and then maybe be
 assigned
 (16) to another vessel?
 (17) A That's correct
 (18) Q Were you a third mate throughout that time?
 (19) A Yes Up until '78
 (20) Q What did you become in 1978?
 (21) A Second mate
 (22) Q What types of duties does a second mate have?
 (23) A Well, the second mate is a navigation officer primarily
 (24) He takes care of the charts and the navigation
 (25) Q Does the second mate have different watch standing duties?

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- (1) A Different hours
 (2) Q How long were you on the Exxon Valdez?
 (3) A I was there from the maiden voyage whatever that
 (4) December
 (5) 6 of '86 I believe until March of 1989
 (6) Q Do you remember when in March of '89 you left the Valdez?
 (7) A Not specifically, no I got relieved off that ship the
 (8) week before the fateful voyage
 (9) Q Are you aware of a requirement that when leaving a port a
 (10) person should only be allowed deck watch if the individual had
 (11) been off at least six hours within the preceding 12 hour
 (12) period?
 (13) A Yes I believe there was something along those lines yes
 (14) Q Did you see that implemented by the company during your
 (15) time?
 (16) A No
 (17) Q Do you have any idea if there was a procedure established
 (18) to make sure that that requirement was upheld?
 (19) A Not to my knowledge, no
 (20) Q Were you aware of any instances where an individual was
 (21) allowed to be on the deck standing watch without having been
 (22) off duty at least six hours within the preceding 12 hours?
 (23) A Sure
 (24) Q Was that a common occurrence?
 (25) A Yes
 (26) Q Was that necessitated by anything in particular that you

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- (1) were aware of?
 (2) A Well it was necessitated by the fact that you had to sail
 (3) the ship and if you had been pumping cargo all day and you
 (4) were on watch you went on watch
 (5) Q Was there any effort made by the company to allow those
 (6) people who were scheduled to stand watch duties to not be
 (7) involved in loading the cargo and having duties during the day?
 (8) A No that - no no
 (9) Q You could not do that?
 (10) A Couldn't do that
 (11) Q Why couldn't you do that?
 (12) A Because you had to go in and stand your watch You had
 (13) to
 (14) relieve the guy that was there, and you had to go and stand
 (15) your watch You had your hours to work and you did them
 (16) That's all
 (17) Q Do you have any personal knowledge of Captain Hazelwood
 (18) ever drinking alcohol on board a vessel?
 (19) A Yes
 (20) Q Okay Could you tell me about - first let me ask you
 (21) where that knowledge comes from?
 (22) A Well we'll get right to the meat of it The good captain
 (23) and I had a beer or two in the Portland shipyard one time
 (24) Q When was this?
 (25) A When we were in the yard? '88
 (26) Q And this was on board the vessel?

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- (1) A Uh-huh
 (2) Q Yes?
 (3) A Yes
 (4) Q Do you recall how much Captain Hazelwood had to drink on
 (5) that occasion?
 (6) A A beer or two
 (7) Q And it was beer that he was drinking?
 (8) A Yes
 (9) Q Where did the beer come from?
 (10) A It was mine
 (11) Q Was it typical for officers to keep beer or alcohol on the
 (12) vessel?
 (13) A No
 (14) Q Was that an unusual circumstance for you as well as -
 (15) A That was an unusual circumstance
 (16) Q What were the circumstances behind the drinking?
 (17) A Well, it was a very hot day in the middle of the summer
 and
 (18) we had been climbing through those 95-foot tanks all day,
 and
 (19) we were dry
 (20) Q Why was it that you happened to have beer on board the
 (21) vessel on this occasion?
 (22) A I brought it on board
 (23) Q Did you bring it on board on other occasions as well?
 (24) A No
 (25) Q Just this one occasion that you brought beer on board?

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- (1) A Yes
 (2) Q Are you aware of Captain Hazelwood ever bringing beer or
 (3) alcohol on board the vessel?
 (4) A No
 (5) Q Are you aware of him ever having any alcohol whatsoever in
 (6) his quarters?
 (7) A Not to my knowledge, no
 (8) Q The time that you drank was it more than one beer with
 (9) Captain Hazelwood?
 (10) A No
 (11) Q Was the only occasion on board the vessel where you had a
 (12) drink of alcohol with Captain Hazelwood?
 (13) A Yes
 (14) MR SANDERS Can you read that again please?
 (15) BY MS WAGNER
 (16) Q Was that the only occasion on board the vessel where
 (17) you had a drink with Captain Hazelwood?
 (18) A Yes
 (19) Q Had you heard anything, that he had had alcohol in his
 (20) quarters?
 (21) A Yeah You hear things you know but that's rumors
 (22) Q Sure and I understand that they are rumors but I would
 (23) like to at least hear about what rumors you heard about Captain
 (24) Hazelwood having alcohol in his quarters First let me ask
 (25) you, where did you hear these rumors? What people or
 persons?

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- (1) A I don't recall
 (2) Q What was the substance of the rumor?
 (3) A Well a rumor might be going around that the old man had
 a
 (4) drink
 (5) Q This would be during a voyage that someone might say that
 (6) Captain Hazelwood had had a drink?
 (7) A Yes
 (8) Q And you mentioned that you had some drinks with Captain
 (9) Hazelwood in Long Beach?
 (10) A Yes
 (11) Q Was that on more than one occasion?
 (12) A I believe it might have been one or two occasions over
 the
 (13) years, yeah
 (14) Q Was this at a bar that was in town?
 (15) A Yes Yankee Whaler, ports of call, nice place
 (16) Q The times that you drank with Captain Hazelwood would
 (17) he - do you recall what he was drinking?
 (18) A No
 (19) Q Did he have more than one drink?
 (20) A He might have You know, I wasn't paying any attention,
 (21) you're not paying attention, no big deal
 (22) Q When was it that you would have had these drinks with
 (23) Captain Hazelwood in Long Beach?
 (24) A Sometime during those years
 (25) Q Sometime between 88 and 89 probably?

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- (1) A '87, I believe, to '89 that two-year period
 (2) Q Anybody else with you during the occasions that you drank
 (3) with Captain Hazelwood in Long Beach?
 (4) A Well probably, yes There is crew members around
 sitting
 (5) over there, sitting over there
 (6) Q Were you able to observe Mr Kagan's ability as a
 helmsman?
 (7) A Yep
 (8) Q And are you able to compare his ability as a helmsman to
 (9) other helmsmans you've sailed with?
 (10) A Sure
 (11) Q What would that -
 (12) A Kagan wasn't the best quartermaster in the world
 (13) Q Why do you say that?
 (14) A He didn't have a good feel for the ship, know how to steer
 (15) that ship
 (16) Q Would you say that he had steering problems?
 (17) A I would say that he had some steering problems, yes
 (18) Q Are you able to be any more specific as to what the
 (19) problems with steering were in regard to Mr Kagan?
 (20) A Well, yeah, yeah Kagan didn't have the ability to feel
 (21) that ship, whatever the speed was, the weather conditions,
 all
 (22) part of steering a ship, wherever the sea is or the wind or
 (23) your speed He didn't have -
 (24) MR SANDERS Excuse me you left out the counter
 (25) designation

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Vol 12 1700

- (1) BY MS WAGNER
 (2) Q Go to page 10 read 74 21 to 75 22
 (3) You sailed with Robert Kagan while on the Valdez?
 (4) A Yes
 (5) Q Had you sailed with him at all prior to that?
 (6) A Never met the man
 (7) Q When did you first sail with Mr Kagan?
 (8) A On that last tour I was on the Valdez he came aboard there
 (9) as A B on my watch
 (10) Q What was his position when he came aboard?
 (11) A He was an able seaman
 (12) Q And that didn't change during the time?
 (13) A No
 (14) Q And you were a second mate at that time?
 (15) A Yes
 (16) Q Would you have been Kagan's supervisor?
 (17) A I was his supervisor
 (18) Q Were you responsible for evaluating him at all during your time?
 (19) A Yes
 (20) Q Do you recall what evaluation you gave Mr Kagan?
 (21) A I don't know if I specifically made out the evaluation I had some input to it I believe the chief mate made out that evaluation He asked me a few questions about Kagan a little
 (22) input as far as Kagan and I interaction

- (1) Q Was it your understanding that that was a Coast Guard requirement?
 (2) A I don't know whose requirement that was I believe it was the Coast Guard's I'm not positive about that
 (3) Q Was it your understanding that that requirement applied to watch officers as well as unlicensed personnel?
 (4) A Yes
 (5) Q Well were you aware of incidents then where members of the crew stood watch with less than a six hour break from previous duty?
 (6) A Sure
 (7) Q Were you aware of the watch officers doing that as well?
 (8) A Sure
 (9) Q And I think you said one of the reasons that that would come up is that while you were leaving port because of additional personnel would be needed in connection with the loading of cargo?
 (10) A Yes
 (11) Q Now was it standard practice for you to serve the same - for your watch to be at the same time every day?
 (12) A That's standard practice, yes
 (13) Q And the watch change over times are what?
 (14) A 4 to 8 8 to 12 12 to 4 twice a day
 (15) Q All right and so if you're leaving port - so if it's necessary for you to work while you're in port and it's not

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- (1) Q Do you recall what your comments were to the chief mate in regard to Mr Kagan?
 (2) A I don't recall specifically but they probably were along the lines that he needed a little more training or something of that nature
 (3) Q Do you recall any incidents at all regarding Mr Kagan which - specific instances you observed which led you to your conclusions regarding Mr Kagan as a helmsman?
 (4) A Sure I had him at watch all the time and I had him at the wheel on occasion
 (5) Q When he was at the wheel and you were on deck would you take special care in observing what he was doing because of your knowledge of his ability?
 (6) A Yes Nothing special for Kagan, you watch everybody everybody that's at the wheel you watch Any maneuver you watch Anytime you move that rudder you watch and to make sure that you're going the right way
 (7) Q Were you able to observe Mr Kagan's ability as a helmsman?
 (8) We did that All right sorry
 (9) This morning you were asked about your awareness of a requirement that there be at least a six hour break between previous duty and going on duty as a - second time, do you recall that?
 (10) A Yes

- (1) your time to be on watch you go to duty then but when your watch comes up next time you report to watch right?
 (2) A That's right
 (3) Q Was it customary to make any effort to give the person who was going to be the watch officer on the way out of Valdez relief from any assignment during the period just before the ship departed?
 (4) A That took place on occasion If he wasn't needed he could knock the guy off for an hour or two, that was pretty standard
 (5) Q Because it was also pretty standard that you would work in connection with the port duties or getting underway duties and then report immediately for your watch?
 (6) A If that's how it fell, yes
 (7) Q Do you recall any circumstances coming out of Valdez where the normal watch officer was exchanged - relieved because that person had been involved in working during his normal off duty time?
 (8) A Sure, sure
 (9) Q Were there any guidelines on when that would happen?
 (10) A No
 (11) Q Who made that decision?
 (12) A Usually the captain or the mate
 (13) Q When you say the mate which mate?
 (14) A Chief mate Chief mate is the mate
 (15) Q I see You told me a few minutes ago that it was customary

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- (1) to change watches at the specified times that you outlined?
 (2) A Yes
 (3) Q Who has authority to excuse the next watch officer from
 (4) coming on duty?
 (5) A The captain
 (6) Q Does the mate who has on duty to have the authority to make
 (7) the decision to allow the next mate to sleep in?
 (8) A No
 (9) Q Only the captain should do that?
 (10) A Yes
 (11) Q Is that a yes?
 (12) A Yes, yeah
 (13) **CROSS EXAMINATION OF NATHAN CARR (read)**
 (14) **BY MR SANDERS**
 (15) Q First questions have to do with your experience at the
 (16) helm Do you need -
 (17) **THE COURT** He needs a script
 (18) **THE WITNESS** I can ad lib it
 (19) **MR SANDERS** I don't want you guessing up here.
 (20) **Captain**
 (21) **BY MR SANDERS**
 (22) Q These questions refer to Mr Kagan, are you with me?
 (23) A I am
 (24) Q You described earlier some problems that you had observed
 (25) with Mr Kagan's steering I think you described it as he

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- (1) didn't have his sense of the ship in weather conditions and so
 (2) forth?
 (3) A Yes
 (4) Q Did you have any occasion to observe any specific problems
 (5) with Mr Kagan steering other than the general not having a
 (6) sense of the ship?
 (7) A No, no I have maneuvered with him before but we didn't
 (8) have any problem
 (9) Q Have you ever maneuvered with Mr Kagan at the helm in
 (10) Prince William Sound?
 (11) A Yep
 (12) Q In your judgment was it necessary to pay closer attention
 (13) to where the rudder was when Mr Kagan was at the helm?
 (14) A Yeah, probably a little bit more Well no, not really,
 (15) because you pay attention, period, whoever is there
 (16) Q You're supposed to know no matter who the helmsman is?
 (17) A That's right, I don't think I watched him any closer than I
 (18) watched anybody else
 (19) Q Did you give Mr Kagan any specific instruction in handling
 (20) the helm while he was in your watch?
 (21) A Yep
 (22) Q Do you recall the nature of what instructions you gave him?
 (23) A Well, yes I was trying to teach him how to steer and
 (24) when you leave him if the wheel and the ship is rolling
 (25) around
 (25) in the heavy seas I'm trying to teach him when you put the

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- (1) rudder on and when to take it off you know There was a
 touch
 (2) to it I was trying to teach him how to steer
 (3) Q Is it fair to say that that sense of the ship is important
 (4) in steadying up and holding to a course?
 (5) A That's important yes
 (6) Q What are the helmsman responsibility when he's given a
 (7) command ten degrees right rudder?
 (8) A He puts ten degrees right rudder on there
 (9) Q When he has put ten degrees on is he expected to hold the
 (10) rudder at ten degrees until further order?
 (11) A That's correct
 (12) Q Is there any occasion in which the helmsman without further
 (13) command should back off from ten degrees?
 (14) A Never, unless the mate dropped dead or something, but
 as a
 (15) rule you take the last command
 (16) Q But barring the mate dropping dead he keeps it at ten
 (17) degrees until otherwise ordered?
 (18) A Yes
 (19) Q I believe you testified it's the watch officers
 (20) responsibility to watch the rudder and confirm his commands
 (21) have been carried out?
 (22) A Right
 (23) Q I want to move to the Portland shipyard I would like to
 (24) direct your attention to the Portland matter that you testified
 (25) to before The Exxon Valdez was in the Portland shipyard at

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- (1) that time?
 (2) A Yes
 (3) Q What was being done to the ship at that time if you recall?
 (4) A I think we were there for an annual and some repairs that
 (5) came up that needed to be done from the time we took
 delivery
 (6) to that point I believe that was a scheduled annual
 (7) inspection the first one, I believe
 (8) Q Do you recall approximately how long the ship was there in
 (9) the Portland shipyard?
 (10) A No, not offhand I joined the ship, I believe I came
 (11) aboard - I relieved the second mate after it was in the yard
 (12) I didn't take the ship in the yard
 (13) Q So the ship had been in the yard for a while by the time
 (14) you joined her?
 (15) A Yes
 (16) Q What about Captain Hazelwood? Was he on board the ship
 in
 (17) the yard when you arrived?
 (18) A No when I joined Stalzer was there Shortly after
 (19) Hazelwood came and relieved Captain Stalzer
 (20) Q So Captain Hazelwood relieved Captain Stalzer while the
 (21) ship was in the yard?
 (22) A Yes
 (23) Q While the ship was in the yard Was the ship put into
 (24) dry dock?
 (25) A I think so, I'm not positive It was on the wet dock when

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- (1) I came aboard but I believe it might have been on the
 (2) dry dock I'm not sure
 (3) MR SANDERS Your Honor that concludes the cross
 (4) MS WAGNER Plaintiffs call Katherine Haven by
 (5) deposition H a v e n
 (6) THE CLERK Raise your right hand
 (7) (The Reader Is Sworn)
 (8) THE CLERK For the record would you please state your
 (9) full name address and spell your last name
 (10) THE WITNESS Sara Armstrong Minneapolis Minnesota
 (11) A r m s t r o n g
 (12) THE CLERK Thank you
 (13) DIRECT EXAMINATION OF KATHERINE HAVEN (read)
 (14) BY MS WAGNER
 (15) Q Would you state your full name for the record ma'am?
 (16) A Katherine Rose Haven
 (17) Q May I ask your date of birth?
 (18) A May 29th 1961
 (19) Q What is your current occupation?
 (20) A I'm a marine engineer
 (21) Q And did you go to sea before you went to California
 (22) Maritime Academy?
 (23) A Not deep sea no
 (24) Q And after going to the California Maritime Academy will
 (25) you tell me your employment experience?

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- (1) A I was hired by Exxon I sailed exclusively for Exxon I
 (2) quit Exxon in April of last year I worked on a fishing vessel
 (3) in Alaska for one month and I most recently worked on a
 (4) U S
 (5) flag ship out of the east coast operated by International
 (6) Maritime Carriers which I signed off of on April 3rd of this
 (7) month
 (8) Q Showing you what has been marked as Exhibit 2 it is a copy
 (9) of your license Look at it please It shows you hold a
 (10) second assistant engineers license steam and motor?
 (11) A Yes
 (12) Q And then you were recruited and hired by Exxon you say in
 (13) 1986 Do you recall approximately what month that was?
 (14) A Summer summertime
 (15) Q In the summer of '86 Will you tell me as your
 (16) recollection directs you the vessels that you served on for
 (17) Exxon?
 (18) A The Exxon Lexington the Exxon Boston the Exxon
 (19) Princeton,
 (20) the Exxon Valdez the Exxon Baltimore the Exxon New
 (21) Orleans,
 (22) and the Exxon Jamestown
 (23) Q Were there any regularly held meetings that you were aware
 (24) of where Exxon's policies about the use of controlled
 (25) substance including alcohol were discussed?
 (26) A No
 (27) Q Were you ever instructed by any Exxon supervisory
 (28) personnel
 (29) on what the policy of the Exxon Shipping Company was relative

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- (1) to the use of controlled substances including alcohol?
 (2) A No no
 (3) Q Were you ever made aware ma'am or were you ever
 (4) involved
 (5) in the searching of any Exxon vessel you served on for
 (6) contraband or for controlled substances including alcohol?
 (7) A No
 (8) Q Were you ever made aware that your room had been - ever
 (9) been searched for controlled substances?
 (10) A No
 (11) Q Apart from receiving the material in the mail relative to
 (12) the Exxon Company's policy on the possession of and use of
 (13) including alcohol do you recall any other instruction
 (14) meetings that you had with any Exxon company officials either
 (15) aboard or ashore on that subject?
 (16) A No
 (17) Q What date did you join the Exxon Valdez? September you
 (18) said?
 (19) A September of '87
 (20) Q Were you on her continuously? Tell me about your service
 (21) on board that vessel
 (22) A I was on let's see I was on her continuously, I think
 (23) except for a week for a week they sent me as an order for the
 (24) Exxon Baltimore and then I came back to the Valdez
 (25) Q Ms Haven in the time that you spent on board the Exxon
 (26) Valdez did you ever see any liquor on the vessel?

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- (1) A Yes
 (2) Q Tell me about the occasions you saw liquor aboard the
 (3) vessel
 (4) A I don't remember a specific occasion
 (5) Q Did you ever bring liquor aboard a vessel?
 (6) A No
 (7) Q Do you use liquor?
 (8) A In my daily life?
 (9) Q Yes Do you drink?
 (10) A Yes
 (11) Q Did you ever drink aboard the vessel?
 (12) A Yes
 (13) Q Now in response to my earlier questions that I passed on
 (14) you indicated that you have seen liquor on board the Exxon
 (15) vessels that you have served on Let us go right through the
 (16) vessels and you tell me what you recall
 (17) When you first served on the Lexington did you observe
 (18) liquor on that vessel?
 (19) A I don't remember
 (20) Q How about on the Boston?
 (21) A I don't remember
 (22) Q How about on the Princeton?
 (23) A I don't remember
 (24) Q And on the Valdez?
 (25) A Yes

Vol 12 1710

- (1) Q Tell us what you recall about the liquor aboard the Valdez?
- (2) A It was there I don't know I never saw anybody bring it on board or induce it I don't know whose it was
- (3) Q Where was it? Where did you see it?
- (4) A In different people's rooms
- (5) Q I see When you say different people more than one occasion and more than one room?
- (6) A Yes
- (7) Q Can you remember any specifically where you saw the liquor
- (8) Ms Haven?
- (9) A In, let's see one two three at least three different rooms
- (10) Q Can you tell me in whose quarters you saw that liquor?
- (11) A The first assistant, the second assistant and the captain's
- (12) Q Approximately when did you see the first assistant's liquor in his room?
- (13) A I don't know exactly I just know there were parties
- (14) Q There were parties?
- (15) A Yes
- (16) Q Did you see them drinking?
- (17) A Yes
- (18) Q On board while at sea?
- (19) A Yes
- (20) Q You said you saw it in the chief engineers room that's Mr

Vol 12 1711

- (1) Glowacki?
- (2) A No, I didn't see -
- (3) Q I thought you said the first -
- (4) A The first the second and the captain
- (5) Q And the captain all right The second - the first assistant was Mr Jones?
- (6) A Yes, on that particular trip
- (7) Q And the second was?
- (8) A Graham Oldham
- (9) Q Oldham When did you see liquor in the master's room Joe Hazelwood?
- (10) A Previous trips
- (11) Q On previous trips?
- (12) A Yes
- (13) Q Did you see Captain Hazelwood consume alcohol on previous trips?
- (14) A Yes
- (15) Q On board the vessel?
- (16) A Yes
- (17) Q While at sea?
- (18) A Yes
- (19) Q Now can you be more specific on any of the occasions? You said parties Were there ever any parties on board that you observed on the Valdez?
- (20) A Yes I can't be specific

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- (1) Q Well generally?
- (2) A Generally, yes
- (3) Q And who was attendees at these parties?
- (4) A Most of the people on the ship I don't know exactly
- (5) Q Can you be more specific if you can If you can't I understand but more specific in time and place?
- (6) A No, I have no specific memory
- (7) Q All right do you have any recollection what kind of liquor it was you witnessed the shipmaster or Captain Hazelwood -
- (8) A Various types
- (9) Q At various times I take it?
- (10) A Yes
- (11) MS WAGNER That concludes the direct
- (12) MR SANDERS Do you have a script?
- (13) THE WITNESS I do
- (14) MR SANDERS Excuse me Your Honor
- (15) Do you have a script?
- (16) THE WITNESS I do
- (17) MR SANDERS I'm going to start on page 2 under Roman numeral two
- (18) CROSS EXAMINATION OF NATHAN CARR (read)
- (19) BY MR SANDERS
- (20) Q Do you recall ever seeing Captain Hazelwood drinking during a voyage?
- (21) A I don't recall

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- (1) Q Now in response to Mr Cochrane's questions awhile ago you said you recall being interviewed or at least recall that you were interviewed by the Federal Bureau of Investigation the FBI?
- (2) A I remember yes
- (3) Q Okay And you recall I believe you said this occurred while you were still up in Alaska before you left the Valdez?
- (4) A Yes
- (5) Q So that would have been some time in either the very last days of March April or the early days of May 1989?
- (6) A Yes
- (7) Q And after that interview do you remember the name of the FBI agent?
- (8) A No
- (9) Q Do you remember - can you describe him or -
- (10) A No
- (11) Q I'm going to skip down to the bottom of the page Isn't it true that when you talked to the FBI you didn't tell them that you had seen Captain Hazelwood drinking aboard the Exxon Valdez -
- (12) A I don't remember
- (13) Q - on previous voyages?
- (14) A I don't remember what I told them
- (15) Q Well I'll ask you
- (16) Isn't it true indeed to the contrary that you told them

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- (1) you had never seen him drinking aboard the Exxon Valdez?
 (2) A I don't remember what I told them
 (3) MR SANDERS We have no further questions Your
 (4) Honor
 (5) THE COURT Do you want to start something or do you
 (6) want to call it a day? Do you want to start something or do
 (7) you want to call it a day?
 (8) MR GERRY I never want to start anything this is up
 (9) to you It s about an eight minute one or ten minutes one
 (10) THE COURT Let s call it a day Ladies and
 (11) gentlemen please remember my instructions about listening to
 (12) or reading anything We ll see you at 8 00 tomorrow morning
 (13) Counsel stay just a moment please
 (14) (Jury out at 2 00 p m)
 (15) THE COURT I have two things that I wanted to ask you
 (16) about Mr Murtiashaw told me early on this morning that there
 (17) was a question about a couple of exhibits that had arisen
 (18) Defendants Exhibits 3460 and 61 are those the correct ones?
 (19) MR CHALOS I got it Jim thanks
 (20) THE COURT I ve located my notes on those two
 (21) exhibits My notes reflect that 3461 was admitted and that
 (22) 3460 was mentioned but was not offered
 (23) MR CHALOS I think that s the way the transcript
 (24) reads as well Your Honor But you remember the exhibits they
 (25) were the pilot slips for the 22nd of March and the 23rd of

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- (1) March that Captain Hazelwood had signed
 (2) MR O NEILL No objection judge
 (3) THE COURT 3460 will be treated as having been
 (4) admitted back when we were talking about it if it makes any
 (5) difference to anyone
 (6) (Exhibit 3460 received)
 (7) THE COURT The second thing that I wanted to mention
 (8) to you was a motion that was filed I believe yesterday having
 (9) to do with - defendants motion having to do with arguments
 (10) The motion came in without a motion to lift the stay it got
 (11) filed anyway The motion is going to be denied It s a
 (12) subject that I will take up with you when we re talking about
 (13) jury instructions and that sort of thing I don t want to
 (14) encumber what we re doing now with this kind of problem But
 (15) we will certainly take it up in the course of dealing with
 (16) instructions for this phase
 (17) MR O NEILL Thank you Judge
 (18) THE COURT Anything else?
 (19) MR O NEILL We eliminated 13 witnesses over the
 (20) weekend
 (21) THE COURT Thank you sir
 (22) MR O NEILL You re welcome
 (23) MR NEAL We ll match their elimination elimination
 (24) for elimination
 (25) THE COURT Maybe you can eliminate some more

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- (1) THE CLERK Court is adjourned until 8 00 a m
 (2) tomorrow morning
 (3) (Proceedings recessed at 2 05 p m)

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 (6) 9309 received 1570
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 (7) 3460 received 1715

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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
 (22) Notary Public for Alaska
 (23) My Commission Expires 2 3-96

Look-See Concordance Report

UNIQUE WORDS 2,779
TOTAL OCCURRENCES 12,801
NOISE WORDS 385
TOTAL WORDS IN FILE 40,280

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S)
NOISE NOI

INCLUDES ALL TEXT OCCURRENCES

IGNORES PURE NUMBERS

WORD RANGES @ BOTTOM OF PAGE

MAXIMUM TRACKED OCCURRENCE THRESHOLD 50

NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD 16

LIST OF THRESHOLD WORDS

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